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ResearchReport

Connecticut Casino Gaming Timeline

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Issue

Provide a timeline of casino gaming in Connecticut.

This report updates OLR Report 2015-R-0284.

Summary

After gaining federal recognition, the Mashantucket Pequot and Mohegan tribes have operated tribal casinos under the federal Indian Gaming Regulatory Act (IGRA). This law allows federally recognized Indian tribes to engage in Class III gaming (i.e., casino-type games) as long as the state in which the tribe is located permits gambling.

Currently, the state has separate, but virtually identical gaming agreements with the tribes where each contributes at least 25% of its gross video facsimile (e.g., slot machine) revenue monthly to the state. The tribes agree to continue to make these payments as long as the state does not pass a law or regulation allowing anyone else to operate any video facsimile games of chance or commercial casino game.

The tribes are jointly attempting to build an off-reservation commercial casino in East Windsor. PA 17-89 authorizes the operation of such a casino once certain conditions are met, including receiving federal approval of amendments to the gaming agreements. The Mohegan amendments have been approved, but the Mashantucket Pequot amendments have not due to differences in how the amendments were adopted. Since all the conditions have not been satisfied, casino operations have not been authorized.

Timeline of gaming-related events

1987: The U.S. Supreme Court ruled that if a state prohibits all forms of gambling, its policy is "criminal-prohibitory," and its criminal laws apply to tribal gaming. But if the state allows some forms of gambling, even subject to extensive regulation, its policy is "civil-regulatory," and it therefore cannot enforce its gambling laws on a reservation (*California v. Cabazon Band of Mission Indians*, (480 U.S. 202 (1987)).

1988: Partly as a response to the *Cabazon* decision, Congress passed the IGRA which, among other things, created a framework for resolving jurisdictional and legal issues surrounding gaming on Indian reservations (25 U.S.C. § 2710 et seq.). Among other things, the act generally gives tribes the exclusive right to regulate gambling on tribal lands in states that do not criminally prohibit gambling. The Mashantucket Pequots sought to negotiate a compact with the state to operate a casino under the IGRA; the state refused to negotiate.

1990: The Mashantucket Pequots sued the state for failing to negotiate a compact. The Second Circuit Court of Appeals cited the *Cabazon* decision in ruling that Connecticut's gambling public policy was "civil regulatory" because the state allowed "Las Vegas Nights," which allowed charities to operate certain casino games at fundraising events. Thus, the state was required to enter into good-faith negotiations for formulating a tribal-state gaming compact (*Mashantucket Pequot Tribe v. State of Connecticut*, 913 F.2d 1024 (2nd Cir. 1990)).

1991: The U.S. Department of the Interior (DOI) secretary, as prescribed by the IGRA, issued gaming procedures governing casino gaming (*Final Mashantucket Pequot Gaming Procedures*, 56 Fed. Reg. 24996, May 31, 1991). The federal procedures imposed a moratorium of video facsimile gaming (e.g., slot machines) until the dispute between the state and tribe about their legality at the casino was resolved. Under the moratorium, the tribe can only operate video facsimile machines pursuant to (1) an agreement between the tribe and state (e.g., memoranda of understanding (MOU)); (2) a court order; or (3) a change in state law that allows the operation of video facsimile machines by any person, organization, or entity.

1992: The Mashantucket Pequot Tribe opened Foxwoods Resort Casino with table games but not video facsimile machines.

1993: The Mashantucket Pequots and the state signed an MOU resolving the dispute surrounding the operation of video facsimile games. The state gave the tribe the exclusive right to operate video facsimile machines at Foxwoods in return for a monthly contribution of 25% of gross video facsimile

revenue. If the contribution were to fall below $100 million in any year, the rate would increase to 30%.

1994: The Mohegan Tribe gained federal recognition through the DOI's Bureau of Indian Affair's administrative process and negotiated a gaming compact with then-Governor Weicker. The compact also has a moratorium on video facsimile games.

Additionally, the Mashantucket Pequot Tribe renegotiated its MOU with the state and the Mohegans entered into an MOU with the state. Under separate, but virtually identical, MOUs, each tribe contributes 25% of its gross video facsimile machine revenue to the state monthly. If either tribe's contribution falls below $80 million in any year, its rate increases to 30%. The MOUs also expanded the scope of the original Pequot memorandum by conditioning the tribes' contribution to the state on the state not permitting others to operate casino games, instead of just video facsimile games.

1995: The General Assembly held a special session to consider a bill (SB 2001) allowing the Mashantucket Pequots to conduct casino gaming in Bridgeport. The bill was rejected by the Senate.

1996: The Mohegan Tribe opened Mohegan Sun Casino.

2003: The General Assembly repealed the "Las Vegas Nights" statute, which was the law the court cited when it ruled that the state's gambling policy was "civil regulatory" and required the state to negotiate a gaming compact. The purpose of the repeal was to eliminate the "trigger" for any future federally acknowledged tribes from building a casino.

2015: After the Public Safety and Security Committee passed SB 1090, which authorized up to three off-reservation casinos, the six legislative leaders asked the attorney general how the bill would affect the existing MOU agreements.

In his letter (see Appendix 1), the attorney general raised concerns that passing such legislation may (1) eliminate the requirement that the tribes pay video facsimile revenue to the state, (2) lead to third-party challenges over the casino licensing process, and (3) allow additional tribes that gain federal recognition to build new casinos. Further, he cautioned that these issues "pose significant uncertainties and potentially serious ramifications for the existing gaming relationships between the State and the Tribes."

As a result, the General Assembly passed SA 15-7, which created a process for the tribes, through a business entity owned exclusively by them, to issue a request for proposals (RFP) to possibly

establish an off-reservation casino. The tribes formed MMCT Venture, LLC as the jointly owned business entity the act required and published instructions to municipalities on how to submit an RFP.

After passage of the special act, MGM Resorts International and the Schaghticoke Tribal Nation, a tribe seeking federal recognition, separately applied to the secretary of the state to establish a limited liability corporation pursuant to the special act. Both were denied. Both MGM and the tribe filed federal lawsuits claiming that SA 15-7 violated both the Equal Protection Clause of the 14th Amendment, because the act is a race-based set-aside, and the Commerce Clause, because it favors the tribes and bars outside competitors (see *MGM Resorts v. Malloy et al.*, 3:15- cv-1182-AWT *and Schaghticoke Tribal Nation v. Merrill et al.*, 3:16-cv-00380-AWT).

2016: The Mashantucket Pequot and Mohegan tribes sought technical assistance from the U.S. Department of the Interior's Bureau of Indian Affairs (BIA), which is the federal agency that approves amendments to tribal agreements. The tribes wanted the agency's assistance on whether the BIA would approve a proposed amendment to allow MMCT to operate a casino which does not terminate the moratorium against operating video facsimile games or relieve the tribes from their obligation to contribute 25% of such revenue to the state under the MOUs.

In April, the BIA responded (see Appendix 2) that the proposed amendment generally confirms that a proposed law authorizing a new state-regulated casino would not violate the tribe's existing exclusivity arrangement if the casino is jointly and exclusively owned by the tribes. But the BIA reiterated that the letter should not be construed as a preliminary decision or advisory opinion.

In June, the federal court dismissed MGM's case because MGM did not adequately allege an injury, thus did not have legal standing to sue (see *MGM Resorts v. Malloy et al.*, 3:15- cv-1182-AWT and *Schaghticoke Tribal Nation v. Merrill et al.*, 3:16-cv-00380-AWT). After the dismissal of MGM's lawsuit, the Schaghticoke Tribal Nation voluntarily dismissed its lawsuit. The tribe withdrew its lawsuit without prejudice, which means it could file it again if it chose to. But MGM appealed to the Second Circuit Court of Appeals.

2017: After receiving five proposals, MMCT ultimately selects East Windsor as the site of its casino in February. The tribes and the town executed a development agreement on February 28.

The Public Safety and Security Committee heard and passed legislation (sSB 957) authorizing an off-reservation casino in East Windsor.

The governor asked the attorney general for a formal opinion on the effect of the legislation. In his opinion, the attorney general reiterated his 2015 concerns to the legislature about the dangers of developing a casino without federal approval.

In addition to the previous concerns, the attorney general briefly discussed some of the developments that occurred since 2015. He writes, among other things, that the BIA's technical assistance letter does not resolve his concerns from before because it is not binding, and does not address the likelihood of an amendment being approved. Furthermore, the attorney general states that there has been a change in presidential administrations since the last letter and there is no guarantee that the new administration will follow past practices. He specifically mentions that President Trump has had previous dealings with Connecticut casinos and it is difficult to judge how those dealings may affect the outcome.

As a result of the attorney general's opinion, the tribes wrote to the BIA requesting further technical assistance. The BIA's response (see Appendix 3) in May reiterated its previous technical assistance letter expressing the view that the tribes' existing exclusivity agreement with the state would not be affected by a new commercial casino that is exclusively owned by them. Further, the BIA writes that in practice the department has not disturbed the underlying compact when reviewing amendments to underlying agreements.

The legislature ultimately passed PA 17-89 which authorized the East Windsor casino once certain conditions are met and, among other things, requires MMCT to pay the state 25% of all gross gaming revenue (e.g., video facsimile and table games).

In June, the Second Circuit Court of Appeals agreed with the district court that, among other things, MGM did not have standing because it did not suffer an injury and failed to demonstrate the alleged harms were actual and imminent (*MGM Resorts Int'l Glob. Gaming Dev., LLC v. Malloy*, 861 F.3d 40, 43 (2d Cir. 2017)).

In July, as required by PA 17-89, the tribes signed amendments to the tribal agreements and sent them to the BIA. In September, the BIA responded (see Appendix 4) by stating that it had completed a review of the amendments, but returned them because the department felt the amendments were premature and unnecessary and there was insufficient information to make a decision as to whether the amendments would violate the exclusivity clauses.

Under IGRA and its regulations, the DOI has 45 days to affirmatively approve or disapprove the proposed amendments or, without approving or disapproving within that time, the amendments are to be deemed approved (25 U.S.C. § 2710(d)(8)(C) and 25 C.F.R. § 293.12). The secretary must

then publish the approval in the Federal Register and the approval is effective upon publication (25 U.S.C. §§ 2710(d)(8)(D), 2710(d)(3)(B), and 25 C.F.R. 293.15). In November, the state along with the two tribes sued the DOI under the assertion that the amendments were deemed approved and that the DOI must publish such approval in the Federal Register (*Connecticut, et al. v. Zinke, et al.,* No. 1:17-cv-2564-RC).

2018: In April, the House speaker asked the attorney general about the status of the gaming agreements, among other things. The attorney general wrote that the conditions set by PA 17-89 have not been met and eliminating the condition of receiving federal approval would raise the risks of violating the current gaming arrangements for the reasons he gave before. As such, the attorney general recommended that any legislative authorization for a casino include federal approval as one of its conditions.

In June, the DOI published its approval of the Mohegan compact amendments in the Federal Register.

In September, the D.C. District Court approved the DOI's motion to dismiss the Connecticut and Mashantucket Pequot Tribe's lawsuit to compel the department to act. (Since the Mohegan amendment was approved, they were removed from the lawsuit.) The court ruled that, among other things, neither had standing to compel the DOI to act because the Mashantucket Pequot Tribe operates Foxwoods under procedures and not a compact, and the IGRA and regulations compel the DOI to act only for compacts. After the ruling, the tribe and state have amended their lawsuit with claims that the decision was made under undue political pressure.

Since the conditions of PA 17-89 have not been satisfied, casino operations have not been authorized.

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