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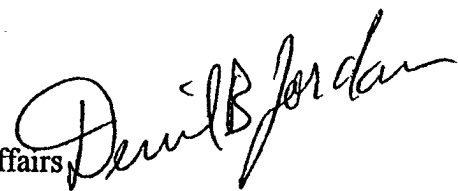


IN REPLY REFER TO:
Division of Indian Affairs
Mail Stop 6456

AUG 5 1999

Memorandum

To: George Skibine
Director, Indian Gaming Management Staff

From: Derril B. Jordan, Associate Solicitor, Division of Indian Affairs 

Subject: Little Traverse Bay Bands of Odawa Indians of Michigan "Victories Tract"

On July 28, 1999, you requested a legal opinion as to whether a certain parcel of land known as the "Victories Tract" qualifies as "restored" lands within the meaning of section 20 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2719. The Little Traverse Bay Bands has an application pending before the Minneapolis Area Office to acquire the Victories Tract in trust for gaming purposes.¹

IGRA places a general prohibition against gaming on lands acquired in trust after October 17, 1988. 25 U.S.C. § 2718(a). There are several exceptions to this prohibition, and one is if the "lands are taken into trust as part of... the restoration of lands for an Indian tribe that is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii). There is a two-pronged analysis to this exception. First, the tribe must be "restored" within the meaning of IGRA. Second, the land to be acquired must be "restored" within the meaning of IGRA.

In a memorandum dated November 12, 1997, the Associate Solicitor - Division of Indian Affairs determined that the Little Traverse Bay Bands was a restored tribe within the meaning of section 20. The next question, then, is whether the Victories Tract qualifies as "restored" land under section 20.

On September 21, 1994, Congress enacted Pub. L. 103-324, which reaffirmed the federal recognition of the Little Traverse Bay Bands of Odawa Indians. 108 Stat. 2156, *codified at* 25 U.S.C. §§ 1300k-1 through 1300k-7 (hereinafter referred to as the "Reaffirmation Act"). Section 6 of the Reaffirmation Act states:

The Secretary shall acquire real property in Emmet and Charlevoix Counties for the benefit of the Little Traverse Bay Bands. The

¹ This memorandum does not discuss the trust acquisition of the Victories Tract.

Secretary shall also accept any real property located in those counties for the benefit of the Little Traverse Bay Bands if conveyed or otherwise transferred to the Secretary, if at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages or taxes owed.

25 U.S.C. § 1300k-4(a). Several documents submitted in the acquisition application describe the Victories Tract as located within Emmet County. For example, the documents contain boundary descriptions, maps, pictures, and a contract. These documents, which the Solicitor's Office has independently verified through research, prove that the Victories Tract, located at 1966 U.S. 131 South in Petoskey, Michigan, is indeed within Emmet County.² Therefore, the Victories Tract is located within the land acquisition provisions as set forth in 25 U.S.C. § 1300k-4, and qualifies as "restored" land within the meaning of section 20(b)(1)(B)(iii).

In the November 12, 1997 memorandum, it was also determined that trust acquisition of a parcel known as the "Mackinaw City Tract" qualified as "restored" lands. The Mackinaw City Tract is located within Emmet County. The memorandum concludes that "[a]ny lands to be acquired that lie within the 1836 ceded area, the 1855 Treaty area, or are otherwise located within Emmet or Charlevoix Counties are properly characterized as 'restored' lands."

This sentence is potentially ambiguous. On the one hand, it could be read to mean that land can qualify as "restored" if it falls within the 1836 ceded area or the 1855 Treaty area or within Emmet or Charlevoix counties. On the other hand, it says the lands must "otherwise" fall within Emmet or Charlevoix counties, indicating that only where the 1836, 1855 and either of the two counties overlap would the land be "restored." This memorandum clarifies that land must fall the within Emmet or Charlevoix Counties in order to qualify as restored land.³

In conclusion, the Victories Tract qualifies as "restored" land within the meaning of section 20 of IGRA because it falls within the land acquisition provisions of the Little Traverse Bay Bands' Reaffirmation Act. Therefore, the parcel is exempt from the general prohibition against gaming on land acquired in trust after October 17, 1988.⁴

² In fact, Petoskey is the county seat of Emmet County.

³ Documents in the Little Traverse Bay Bands' acquisition application indicate that the Tribe's attorney and the Chairman understood the memorandum to require that the land in question lie within Emmet or Charlevoix Counties. Chairman Ettawageshik states that the November 12, 1997, Memorandum "determin[ed] that the lands within Emmet and Charlevoix County which are acquired as part of our land base restoration under the Reaffirmation Act will qualify for the conduct of gaming under an exception to the prohibition contained in the IGRA at 25 U.S.C. § 2719(b)(1)(B)(iii)." *See also* page 3 of the document entitled "Victories Tract" in the acquisition application.

⁴ The Little Traverse Bay Bands of Odawa Indians is authorized to conduct Class II gaming on the Victories Tract, but still must comply with the compact provisions in IGRA to conduct Class III gaming. *See, e.g.*, 25 U.S.C. §2710(d).