

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX  
ATTORNEY GENERAL

P.O. Box 30755  
LANSING, MICHIGAN 48909

December 16, 2010

Via e-mail

Kathryn Tierney  
Bay Mills Indian Community  
12140 West Lakeshore Drive  
Brimley, MI 49715

Dear Ms. Tierney:

This letter follows up on conversations between representatives of the Bay Mills Indian Community (Bay Mills) and representatives of the Governor's office and the Attorney General's office concerning the operation of class III gaming by Bay Mills at a site in Vanderbilt, Michigan (Vanderbilt casino). In brief, Bay Mills asserts that the Vanderbilt property is "Indian lands" and that class III gaming can take place on the property under the Indian Gaming Regulatory Act (IGRA) without the need for any review, approval, or other actions by the state or federal governments because Bay Mills has an approved gaming ordinance and compact with the State.

Our office and the Governor's legal counsel have considered the arguments presented by Bay Mills both in meetings with State representatives and in the written document you provided, a "Request for Indian Lands Opinion" submitted to the Secretary of the U.S. Department of Interior dated July 7, 2009. After due deliberation, the State of Michigan respectfully disagrees with your position and is not persuaded that the Vanderbilt casino is on "Indian lands" as required for lawful gaming under IGRA and Bay Mills' compact with the State.

Bay Mills' reliance on the Michigan Indian Land Claims Settlement Act (MILCSA) is misplaced. Simply stated, the phrase "as Indian lands are held" within Section 107 of the MILCSA does not indicate Congressional intent to vest Bay Mills with broad and unconstrained authority to buy land anywhere within the State to be held by Bay Mills in "restricted fee" status. Even if such status might be obtained through some additional federal action (we are not aware of any tribe in Michigan that holds land in restricted fee status), the mere purchase of real property with MILCSA funds, as apparently Bay Mills now contends, does not convert such property to a restricted fee status. Further, even assuming that the provisions of the MILCSA could vest restricted fee status upon lands properly acquired with the trust moneys, Section 107 only authorizes the purchase of property for the "consolidation and enhancement of tribal landholdings." The purchase of land in Vanderbilt does not meet this requirement.

Additionally, even if the Vanderbilt casino were located on Indian lands, either lands held in trust or restricted fee lands, Bay Mills' use of this property for class III gaming violates the prohibition against gaming on property acquired by a tribe after October 17, 1988, as set forth in

Section 20 of IGRA. We understand your argument that this prohibition only applies to trust lands, and that the Vanderbilt property is not held in trust. But the only court decision we could find that addresses this issue unequivocally held that the prohibition against gaming on after-acquired property included gaming on *both* trust lands and lands held in restricted fee status. *Citizens Against Casino Gambling v Hogen*, 2008 U.S. Dist. LEXIS 52395 (W.D.N.Y. July 8, 2008). Thus, even assuming the Vanderbilt property were restricted fee land, IGRA's prohibition is operative here.

These are the three primary points of disagreement with your position. But this is not intended to be an exhaustive analysis and you should be aware that we believe there are multiple deficiencies in the analysis and reasoning underlying your position. And all lead to the conclusion that the operation of this casino is not authorized by IGRA and therefore violates state and federal laws prohibiting gambling, including but not limited to MCL 750.301 *et seq*, and 18 USC § 1955. The State therefore demands that Bay Mills immediately cease operation of all class III gaming at the Vanderbilt casino. If such class III gaming is not terminated after Bay Mills' receipt of this letter, the State will take appropriate action to ensure compliance with its laws and compel closure of the Vanderbilt casino.

Please do not hesitate to call me or Louis Reinwasser if you have any questions.

Sincerely,



S. Peter Manning  
Division Chief  
Environment, Natural Resources,  
and Agriculture Division  
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