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2020 OK 64

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

THE HONORABLE GREG TREAT,
SENATE PRESIDENT PRO TEMPORE,
in his official capacity, and THE
HONORABLE CHARLES MCCALL,
SPEAKER OF THE HOUSE, in his
official capacity,

Petitioners,

v.

THE HONORABLE J. KEVIN STITT,
GOVERNOR OF THE STATE OF
OKLAHOMA, in his official capacity,

Respondent.

Date (date)	7/21/20
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No. 118,829

FILED
SUPREME COURT
STATE OF OKLAHOMA

JUL 21 2020

JOHN D. HADDEN
CLERK

FOR OFFICIAL PUBLICATION

MEMORANDUM OPINION

¶0 Petitioners brought this action seeking declaratory relief that Respondent lacked authority to enter into two tribal gaming compacts on behalf of the State and that the agreements do not bind the State. Original jurisdiction is assumed, and the declaratory relief sought by Petitioners is granted.

Winchester, J.

¶1 Original jurisdiction is assumed. Okla. Const. art. VII, § 4. The Court invokes its *publici juris* doctrine to assume original jurisdiction here as the Petitioners, the Honorable Greg Treat, Senate President Pro Tempe, and the Honorable Charles McCall, Speaker of the House, have presented this Court with an issue of public interest in urgent need of judicial determination. *Fent v. Contingency Review Bd.*, 2007 OK 27, ¶ 11, 163 P.3d 512, 521. The declaratory relief sought by Petitioners

is granted. *Ethics Comm'n of State of Okla. v. Cullison*, 1993 OK 37, ¶ 4, 850 P.2d 1069, 1072.

¶2 Through mediation efforts in connection with a federal lawsuit pending in the United States District Court for the Western District of Oklahoma,¹ Respondent, the Honorable J. Kevin Stitt, Governor of the State of Oklahoma, negotiated and entered into new tribal gaming compacts with the Comanche Nation and Otoe-Missouria Tribes to increase state gaming revenues. The tribal gaming compacts were submitted to the United States Department of the Interior, and the Department of the Interior deemed them approved by inaction, only to the extent they are consistent with the Indian Gaming Regulatory Act (IGRA). 25 U.S.C. § 2710(d)(8)(C). The Court acknowledges that the Comanche Nation and Otoe-Missouria Tribes are not parties in this matter; these tribes are sovereign nations and have not submitted to the jurisdiction of this Court.

¶3 The limited question before this Court is whether Governor Stitt had the authority to bind the State with respect to the new tribal gaming compacts with the Comanche Nation and Otoe-Missouria Tribes. We hold he did not.

¶4 This question implicates the core notion of our constitutional structure: separation of powers. The legislative branch sets the public policy of the State by enacting law not in conflict with the Constitution. Okla. Const. art. V, § 1. The Governor has a role in setting that policy through his function in the legislative

¹ Complaint, *The Cherokee Nation, et al. v. J. Kevin Stitt*, Case No. CIV-19-1198-D (W.D. Okla. Dec. 31, 2019).

process, but the Governor's primary role is in the faithful execution of the law. Okla. Const. art. VI, §§ 8 & 11. Oklahoma's separation of powers doctrine is evident in the State's negotiation of tribal gaming compacts with Indian Tribes.

¶5 The Legislature, through the vote of the people, enacted those laws in the State-Tribal Gaming Act. 3A O.S. Supp. 2018, §§ 261-282. The State-Tribal Gaming Act sets forth the terms and conditions under which the State's federally recognized tribes can engage in Class III gaming on tribal land through Model Gaming Compacts. The Governor has the statutory authority to negotiate gaming compacts with Indian tribes to assure the State receives its share of revenue. However, the Governor must negotiate the compacts within the bounds of the laws enacted by the Legislature, including the State-Tribal Gaming Act. See 74 O.S. Supp. 2012, § 1221; *Griffith v. Choctaw Casino of Pocola*, 2009 OK 51, ¶ 12, 230 P.3d 488, 492.

¶6 The tribal gaming compacts Governor Stitt entered into with the Comanche Nation and Otoe-Missouria Tribes authorize certain forms of Class III gaming, including house-banked card and table games and event wagering. Any gaming compact to authorize Class III gaming must be validly entered into under state law, and it is Oklahoma law that determines whether the compact is consistent with the IGRA. *Pueblo of Santa Ana v. Kelly*, 104 F.3d 1546, 1557 (10th Cir. 1997); see also 25 U.S.C. § 2710(d)(8)(C).

¶7 Under Oklahoma law, conducting and participating in Class III gaming is not subject to criminal penalties as long as it occurs in conformance with the State-

Tribal Gaming Act. 3A O.S. Supp. 2018, § 262(A). The State-Tribal Gaming Act is “game-specific” and allows for specified forms of Class III gaming. The State-Tribal Gaming Act expressly bars house-banked card games, house-banked table games involving dice or roulette wheels, and event wagering. See 3A O.S. Supp. 2018, § 262(H). The Legislature has yet to amend the State-Tribal Gaming Act to include house-banked card and table games and event wagering as covered games. As a result, the tribal gaming compacts at issue authorize types of Class III gaming expressly prohibited by the State-Tribal Gaming Act. In turn, any revenue to the State, the Comanche Nation Tribe or the Otoe-Missouria Tribe that would result from the tribal gaming compacts is prohibited. The Court must, therefore, conclude Governor Stitt exceeded his authority in entering into the tribal gaming compacts with the Comanche Nation and Otoe-Missouria Tribes that included Class III gaming prohibited by the State-Tribal Gaming Act. Even if the Governor had sought and obtained the Joint Committee’s approval of these compacts as set forth in 74 O.S. Supp. 2012, § 1221, they would nevertheless be invalid. Just as the Governor is constrained by the statutory limitations on Class III gaming, so too is the Joint Committee.

CONCLUSION

¶8 The tribal gaming compacts Governor Stitt entered into with the Comanche Nation and Otoe-Missouria Tribes are invalid under Oklahoma law. The State of Oklahoma is not and cannot be legally bound by those compacts until such time

as the Legislature enacts laws to allow the specific Class III gaming at issue, and in turn, allowing the Governor to negotiate additional revenue.

Gurich, C.J., Darby, V.C.J., Kauger, Winchester, Combs, and Rowe (**by separate writing**), JJ., and Reif, S.J., concur.

Kane, J., dissents;

Kane, J., dissenting:

“The Comanche Nation and Otoe-Missouria Tribes are indispensable parties to this action. I would dismiss the case for lack of indispensable parties. See 12 O.S.2011 § 2019; *Northern Arapaho Tribe v. Harnsberger*, 697 F.3d 1272, 1277-84 (10th Cir. 2012); *Dewberry v. Kulongoski*, 406 F.Supp.2d 1136, 1146-48 (D. Or. 2005); see also 12 O.S.2011 § 1653(A).”

Edmondson and Colbert, JJ., recused.