

**THE DIEPENBROCK LAW FIRM
A PROFESSIONAL CORPORATION**

400 Capitol Mall, Suite 1800
Sacramento, CA 95814

Telephone No.: (916) 446-4469

Facsimile No.: (916) 446-
4535

MEMORANDUM

TO: James Bowersox
Stephen Eckis

FROM: Michael Vinding

DATE: August 10, 2004

RE: State's Jurisdiction over Liquor Licensing Requirements on Indian Lands

Question Presented

What gives the Department of Alcoholic Beverage Control (ABC) the authority to require an Indian gaming casino to have a state mandated liquor license in order to sell liquor on its premises?

Short Answer

Case law holds that liquor transactions are within a state's regulatory power and do not lie within the activities exempt from liability under sovereign immunity. 18 U.S.C. section 1161 expressly authorizes, rather than pre-empts, state regulation over Indian liquor transactions.

Discussion

Rice v. Rehner, (1983) 463 U.S. 713, is the leading case holding that Congress authorized state regulation of liquor licensing for Indian lands.

In Rice, the respondent, an Indian trader, operated a general store on an Indian reservation (Pala Tribe). The tribe had adopted a tribal ordinance permitting the sale of liquor on the reservation, provided the sales conformed to state law. The Indian trader sought an exemption based on sovereign immunity for the sale of liquor without a license. The court held that he was not entitled to the exemption, and that Congress authorized, rather than pre-empted, state regulation over Indian transactions of this nature.

In holding that Congress authorized state regulation of liquor licensing for Indian lands, it held that the role of tribal sovereignty in a pre-emption analysis varies with the particular notions of sovereignty that have developed with tribal independence. With respect to liquor transactions, "tribal sovereignty implicated by imposition of California's alcoholic beverage regulation only exists insofar as the state attempts to regulate respondent's sale of liquor to other members of the Pala tribe on the Pala reservation." (Id. at p. 721.) The court recognized that: "tradition simply

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has not recognized a sovereign immunity or inherent authority in favor of liquor regulation by Indians.” (Id. at p. 722.)

For example, the court noted that the colonists regulated Indian liquor trading before this Nation was formed and Congress exercised its authority over these transactions as early as 1802. Because of the lack of tradition of self-government in the area of liquor regulation, it is not necessary that Congress expressly indicate a state’s regulatory authority, provided that the state has jurisdiction to regulate the licensing and distribution of alcohol.

The Rice court cited to White Mountain noting, “there can be no doubt that Congress has divested the Indians of any inherent power to regulate in this area, in the area of liquor regulation, we find no ‘congressional enactments demonstrating a firm federal policy of promoting tribal self-sufficiency and economic development.’” (White Mountain Apache Tribe v. Bracker, (1980) 448 U.S. 136, 143.)

The Rice court found that 18 U.S.C. section 1161¹ expressly authorized, rather than pre-empted, state regulation over Indian liquor transactions noting that the legislative history of section 1161 indicates that Congress intended to remove federal prohibition on the sale and use of alcohol imposed on Indians in 1832.

Additionally Rice held, that it is “clear that Congress viewed section 1161 as abolishing federal prohibition, and legalizing Indian liquor transactions as long as those transactions conformed both with tribal ordinances and state law.” (Rice, supra, 463 U.S. at 728.)

In Fort Belknap Indian Community v. Mazurek, 43 F.3d 428 (9th Cir. 1994), the 9th Circuit court expanded the ruling in Rice, and held that states also have the power to impose criminal prosecutions for violations of their respective laws regulating liquor licenses. (Id. at 428.) The court held that the states have an interest in enforcing its liquor laws, if necessary, through criminal prosecutions. The states’ interest is heavier in the balance than the Indian community’s interest in self-government and tribal sovereignty. (Id. at p. 432.)

Fort Belknap was heavily supported by Rice’s notion that section 1161 delegated part of the federal government’s regulatory authority to tribes and the other part to the states. (Id. at p. 433.) Overall, State’s have an interest in regulating their state liquor laws, and it logically follows they should be able to prosecute those that violate those laws.

In California, the Department of Alcoholic Beverage Control (“ABC”) was created by a constitutional amendment (effective January 1, 1955) as an independent department of the executive branch of the State Government. The Board of Equalization no longer has any

¹ Section 1161. “Application of Indian liquor laws,” states: “The provisions of sections 1154, 1156, 3113, 3488, and 3669, of this title, shall not apply within any area that is not Indian country, nor to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register.”

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responsibility in liquor control matters except taxing authority. (http://www.abc.ca.gov/questions/admin_faq.html.)

ABC has the exclusive power, in accordance with laws enacted, to license and regulate the manufacture, importation and sale of alcoholic beverage licenses. See Section 22 of Article XX, California Constitution² and http://www.abc.ca.gov/questions/admin_faq.html.

ABC has full jurisdiction to require that Indian gaming facilities comply with all state laws that pertain to liquor sales.

Conclusion

Case law holds that liquor transactions are within a state's regulatory power and do not lie within the activities exempt from liability under sovereign immunity. 18 U.S.C. section 1161 expressly authorizes, rather than pre-empts, state regulation over Indian liquor transactions.

² California Constitution Article XX, Section 22 states in pertinent part: "The State of California, subject to the internal revenue laws of the United States, shall have the right and power to license and regulate the manufacture, sale, purchase, possession and transportation of beverages within the State, and subject to the laws of the United States regulating commerce between nations and among the state shall have the exclusive right and power to regulate the importation, including exportation from the State, of alcoholic beverages... The Department of Alcoholic Beverage Control shall have the exclusive power,...to license manufacture, importation and sale of beverages in this State, and to collect license fees or occupation taxes on account thereof.