C&W Indian Law

**News from Conner & Winters, LLP** **December 21, 2015**

***56 Attorneys at Conner & Winters Named to the Best Lawyers in America© 2016***

Conner & Winters is proud to announce that 56 of the firm's lawyers were recently selected by their peers for inclusion in The Best Lawyers in America© 2016. Read more.

## C&W Indian Law Practice Team

John L. Williams
(918) 586-8990
jwilliams@cwlaw.com

R. Daniel Carter
(918) 586-8541
dcarter@cwlaw.com

Daniel E. Gomez
(918) 586-8984
dgomez@cwlaw.com

Stephen R. Ward
(918) 586-8978

# New Support for Tribal Sovereignty and Rejection of a Bid to Expand Suits Against Tribal Officers

A new federal decision reaffirms the right of Indian tribes to regulate class II gaming, and also rejects an effort by the attorney general of Kansas to expand the legal grounds on which states may sue tribal officers to enjoin activities on Indian lands.

The State of Kansas filed suit last spring against the National Indian Gaming Commission to challenge an advisory letter opinion confirming that the Quapaw Tribe of Oklahoma's trust land in that state was eligible for gaming under the so-called "last reservation" exception provided in the Indian Gaming Regulatory Act of 1988. Subsequently, Kansas amended its complaint to name three of the Tribe's governmental entities and 18 tribal officers, agency personnel, and enterprise directors-many of whom had no authority over or involvement in gaming.

The state's claims against the individual tribal officers rested solely on the so-called doctrine of *Ex parte Young*, a legal theory that permits certain suits for forward-looking injunctive relief-but not money damages-against state and tribal officers to prevent ongoing violations of federal law. The *Young* theory emerged early in the early 20th century to permit suits against state officers despite the bar of state sovereign immunity.

In this case the tribe was not violating any federal laws. In fact, the tribe had followed the regulatory

sward@cwlaw.com

www.cwlaw.com

Join Our Mailing List!

processes for obtaining an advisory legal opinion from the NIGC before conducting any gaming on the land. The state relied instead on a common law theory of equitable estoppel, the application of which conceivably could have made it much easier for states to sue tribal officers-and for tribes to sue state officials-for injunctive relief.

In late 2012, Governor Sam Brownback of Kansas and various leaders in Cherokee County actively encouraged the Quapaw Tribe to consider developing a casino on its Kansas reservation as a means to generate compact fees to benefit local governments. Remarkably, the governor conditioned the compact negotiations on the tribe's obtaining the advisory opinion. The governor later withdrew support for the compact in favor of a failed effort to develop a state-owned casino in Cherokee County. John L. Berrey, Chairman of the Quapaw Tribe, has characterized the claims against the individual tribal officers as harassment, and as an attempt by the state to interfere with the Tribe's federally recognized rights to conduct gaming on its Indian lands.

In a 38-page opinion issued on Friday, United States District Judge Daniel D. Crabtree confirmed previous decisions holding that NIGC letter opinions are not a final agency action subject to judicial review. The Court also ruled as untimely Kansas' claims seeking to invalidate certain regulations promulgated under the IGRA. The Court dismissed Kansas' claims against the NIGC and other federal parties.

The Court also dismissed the claims against the Tribe and its officers, along with the state's request for an injunction. In addition to rejecting the state's argument that a civil estoppel theory can support a *Young* claim, the Court followed existing decisions holding that the theory cannot be used to override the intricate remedial scheme created for Indian gaming under the IGRA.

The case is *State of Kansas, et al. v. National Indian Gaming Commission, et al*., No. 5:15-cv-04857-DDC-KGS (D. Kan.). To read the opinion, click here. To view the Tribe's statement about the decision, click here.

*The Conner & Winters Indian law practice team represents the Quapaw Tribe and its individual officers in this litigation.*


C&W | | llinthicum@cwlaw.com| http://www.cwlaw.com

,