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DISTRICT OF WYOMING
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U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

NORTHERN ARAPAHO TRIBE,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 00-CV-221-J
)	
STATE OF WYOMING AND GOVERNOR)	
JAMES GERINGER, his agents,)	
employees and successors,)	
in their official capacities,)	
)	
Defendants.)	

**ORDER PARTIALLY GRANTING PLAINTIFF'S MOTION FOR JUDGMENT
ON THE PLEADINGS**

The Northern Arapaho Tribe moves this Court to grant a judgment on the pleadings against the State of Wyoming. The Court, having heard the arguments of the parties, having reviewed the parties' written submissions, the pleadings of record, the applicable law, and being fully advised PARTIALLY GRANTS Arapaho's motion for the reasons stated below.

BACKGROUND

The Northern Arapaho Tribe wishes to engage in the business of casino-style gambling on the Wind River Indian Reservation in Central

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Wyoming. Under the Indian Gaming Regulatory Act ("IGRA") a tribe must negotiate with a state and enter into a tribal-state compact regarding such gaming. Responding to the Tribe's request, representatives from the State and the Tribe met on July 4, October 4, and October 25, 2000 to discuss gaming issues. The Tribe submitted its proposed gaming compact to the State on October 4, 2000. Under the Tribe's compact, the Tribe would operate gaming and gaming machines such as poker, video poker, roulette, dice games, sportsbook, parimutuel, wheel of fortune, keno, video keno, raffle/lottery, multi-line slot, regular slot, blackjack, video blackjack, video pull-tab, and video horse racing. See Exhibit B, Draft 10-04-00 Gaming Compact Between the Northern Arapaho Nation and the State of Wyoming, at 2-3, attached to Preliminary Statement.

On November 8, 2000, the State responded to the Tribe as to the proper scope of negotiations under IGRA and Wyoming law. See Exhibit E, attached to Preliminary Statement. In its response the State contended that IGRA only required Wyoming to negotiate with the Tribe over games that Wyoming law permits. See id. The State took the position that Wyoming has a broad criminal prohibition against gambling and exceptions to the prohibition are "very narrowly drawn." Id. at 2. The State further stated that

"the only games which Wyoming law permits outside of social relationships are raffles, bingo, pull tabs, calcuttas, and parimutuel wagering."

Accordingly, the State argued that IGRA required Wyoming to negotiate with the Tribe only over raffles, pull tabs, calcuttas, and parimutuel wagering."

Id. at 3.

The Tribe then responded by explaining that it felt the State needed to negotiate over (1) contests of skill, (2) raffles, (3) pull tabs, (4) "any game, wager or transactions," (5) calcuttas, (6) parimutuels, (7) antique gaming devices, and (8) casino nights. See Exhibit F, attached to Preliminary Statement. The Tribe took the position that the State "permits a nearly unlimited variety of gaming, including 'any game, wager or transaction'. . . ."

Id. at 8. The Tribe went on to say that the State's failure to negotiate over the above listed games violated IGRA's requirement that the State negotiate in good faith.

The Tribe then filed a Preliminary Statement in this Court maintaining that the State failed to negotiate in good faith. The Tribe requested that this Court order the State to enter into a tribal-state compact within sixty days. In the alternative, the Tribe requests that this Court enjoin the State from interfering with the Tribe's "rights to conduct or regulate class III gaming on

Indian lands within the District of Wyoming.” Preliminary Statement at 4. The Tribe further requests any other relief that this Court deems just and equitable.

STANDARD OF REVIEW

A motion for judgment on the pleadings is treated like a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Mock v. T.G. & Y. Stores, Co., 971 F.2d 522, 528 (10th Cir.1992). The moving party must establish that there is no material issue of fact remaining and that they are entitled to judgment as a matter of law. 5A Wright & A. Miller Federal Practice and Procedure § 1368 (1990). “We accept the well-pleaded allegations of the complaint as true and construe them in the light most favorable to the [non-moving party].” Ramirez v. Department of Corrections, 222 F.3d 1238, 1240 (10th Cir. 2000).

DISCUSSION

A. Prerequisites in IGRA

In their answer, the State denied that the Northern Arapaho is an “Indian tribe” as that term is defined in IGRA. See Answer at 3. The State argued that the Northern Arapaho is one of two tribes on the Wind River

Reservation, neither one having sole authority to bind the reservation. See id. at 2.

IGRA provides that, “[a]ny Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted...shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities.” 25 U.S.C. § 2710(d)(3)(A). In order for this Court to determine whether the Tribe is an “Indian tribe” under IGRA, it must consider several issues: (1) whether the Northern Arapaho Tribe meets the definition, as stated in IGRA, of “Indian tribe”; (2) whether the proposed land where gaming activity is to take place meets the requirements of “Indian lands,” as stated in IGRA; and (3) whether the Northern Arapaho have jurisdiction over the proposed lands.

1. Status of Northern Arapaho as an “Indian tribe” under IGRA

IGRA defines an “Indian tribe” as a group that:

- (A) is recognized as eligible by the Secretary for the special programs and services provided by the United States to Indians because of their status as Indians, and
- (B) is recognized as possessing powers of self-government.

25 U.S.C. § 2703(5). IGRA does not define "powers of self-government."

Therefore, this Court adopts the definition provided in the Indian Civil Rights Act, the definition that most accurately and thoroughly defines the phrase.

According to the Indian Civil Rights Act:

'powers of self-government' means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;

25 U.S.C. § 1301(2).

The State does not dispute that the government recognizes the Arapaho as eligible for special programs. For example, the Arapaho are eligible for governmental programs under 65 Fed. Reg. 13298, 13299 (3-3-2000). Therefore, the Court finds that the first prong is satisfied.

The State, however, maintains that the Arapaho is not a "tribe" because it does not fulfill the second prong of the IGRA test. The State argues that the Arapaho do not have powers of self government because they share concurrent jurisdiction over the Wind River Indian Reservation with the Eastern Shoshone. Since the Arapaho have concurrent jurisdiction over the Wind River Reservation, the Tribe does not have the ability to

govern itself. Its governmental decision making is subject to the approval of another tribe. Thus, the State asserts that the Tribe does not have the powers of self government.

The Court finds that the Arapaho satisfy the second-prong of the IGRA test. See 25 U.S.C. § 2703(b). The Tribe possesses those attributes of self-government listed in the Indian Civil Rights Act because the tribe “possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.” United States v. Wheeler, 435 U.S. 313, 323 (1978). The Tribe is a party to two treaties with the United States.¹ Nothing in those treaties suggest that the tribe has lost powers of self-governance. See Treaty of Fort Laramie, 1851, dated September 17, 1851, 1851 WL 4397; Treaty with the Northern Cheyenne and Northern Arapaho, 1868, dated May 10, 1868, 1868 WL 5269.

Furthermore, the Secretary of Interior recognized the Tribe as possessing powers of governance when it recognized the Tribe as being

¹ Those treaties are the Treaty of Fort Laramie, 1851, dated September 17, 1851 (see 1851 WL 4397) and Treaty with the Northern Cheyenne and Northern Arapaho, 1868, dated May 10, 1868 (see 1868 WL 5269).

eligible to receive services from the Bureau of Indian Affairs.² The Tenth Circuit and this Court have also recognized that the Eastern Shoshone and Northern Arapaho have both separate and joint governing bodies. See Northern Arapahoe Tribe v. Hodel, 808 F.2d 741, 743-44 (10th Cir. 1987). Thus, the Northern Arapaho meets the definition of Indian tribe. The Court must next determine whether the proposed lands meet the requirements of IGRA.

2. Status of proposed lands under IGRA

The next step in this Court's analysis is to determine whether the Tribe has jurisdiction over Indian lands which the class III gaming is to be conducted. See 25 U.S.C. § 2710(d)(3)(A). "Indian land" is defined as:

- (A) all lands within the limits of any Indian reservation; and
- (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or Individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

² The Assistant Secretary of Indian Affairs, Kevin Grover, commented that "[t]he listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes." Supplementary Information, 65 Fed. Reg. 13298, 13299 (3-3-00).

25 U.S.C. 2703(4).

The Tribe states that the lands are lands “within the exterior boundaries of the Reservation and on lands owned by the United States in trust for the Tribe or lands owned by the Tribe in fee simple.” Plaintiff’s Brief in Support of Motion for Judgment on the Pleadings at 7. The State does not directly contest this assertion, and thus the Court will assume that the lands in questions are within the limits of the Wind River Reservation and are held in trust by the United States for the Tribe or owned by the Tribe in fee simple.

3. Jurisdiction over the proposed lands

Indian tribes possess “*inherent powers of a limited sovereignty which has never been extinguished.*” United States v. Wheeler, 435 U.S. 313, 322 (1978) (quoting F. Cohen, Handbook of Federal Indian Law 122 (1945) (emphasis in original)). The sovereignty which Indian tribes possess is a fragile sovereignty and is subject to the will of Congress. Id. Nonetheless, Indian tribes possess those facets of sovereignty “not divested by Congress, relinquished by treaty or held to be inconsistent with a superior interest of the United States.” Donovan v. Navajo Forest Products Industries, 692 F.2d 709, 712 (10th Cir. 1982) (citing Oliphant v. Suquamish Indian Tribe, 435

U.S. 191 (1978)). Furthermore, any limitations on tribal sovereignty must be clear and unequivocal. See Bryan v. Itasca County, Minnesota, 426 U.S. 373, 392 (1976). This Court further notes that “statutes passed for the benefit of dependent Indian tribes . . . are to be liberally construed, doubtful expressions being resolved in favor of the Indians.” Id. (citations omitted).

Like the First Circuit, this Court believes that “jurisdiction is an integral aspect of retained sovereignty.” State of Rhode Island v. Narragansett Indian Tribe, 19 F.3d 685, 701 (1st Cir. 1994). This Court has not been provided, nor can it find, any statute or treaty that takes away the jurisdiction of the Northern Arapaho. Indeed, this Court has previously recognized the Northern Arapaho’s jurisdiction to form and operate a housing authority separate from the Eastern Shoshone’s housing authority. See Eastern Shoshone v. Northern Arapaho, No. 96-CV-17-J at 17 (Feb. 16, 1996).

The State argues that the Arapaho do not have jurisdiction over the Wind River Reservation because the Arapaho co-occupy the Reservation with the Shoshone. This argument is more properly characterized as a concern on their part on how to deal with two tribes living on the same reservation who might both wish to conduct gaming activities. This Court is not

persuaded that the unique circumstance of the two tribes places an obligation on the tribes to operate all governmental functions and programs as one entity. Given that the Northern Arapaho are wanting to conduct such gaming activity on lands owned by them or held in trust by the Government, this Court finds no reason to subject them to a different set of requirements from other tribes on other reservations. IGRA is applicable to all tribes falling within its definition.

This Court thus finds that the prerequisites in IGRA have been met. Therefore, the State has an obligation to negotiate with the Arapaho, in good faith, for proposed gaming activity on the reservation.³

B. The Indian Gaming Regulatory Act

The Indian Gaming Regulatory Act defines class III gaming as "all forms of gaming that are not class I gaming or class II gaming." 25 U.S.C. 2703(8). Class I gaming is defined as "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by

³ The Court's ruling is limited to whether the Arapaho are a "tribe" under IGRA. Since nothing in IGRA's language suggests that the benefits of the statute extend only to single-tribe reservations, the Court finds that Wyoming must negotiate with the Arapaho. The Court, however, does not decide whether the Arapaho could unilaterally invoke the fruits of such negotiations without the Shoshone's consent or approval.

individuals as a part of, or in connection with, tribal ceremonies or celebrations.” 25 U.S.C. § 2703(6). Class I gaming is solely within the jurisdiction of Indian tribes and is not subject to the provisions of IGRA. 25 U.S.C. § 2710(a)(1). Class II gaming consists of

(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) –

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards,

including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) card games that –

(I) are explicitly authorized by the State, or

(II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wages or pot sizes in such card games.

5 U.S.C. § 2703(7)(A). The definition of class II gaming excludes “(i) any banking card games, including baccarat, chemin de fer, or blackjack (21), or (ii) electronic or electromechanical facsimiles of any game of chance or slot

machine of any kind.” 25 U.S.C. § 2703(7)(B). Class II gaming “continues to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of [IGRA].” 25 U.S.C. § 2710(a)(2).

IGRA requires the state to negotiate with the tribes over class III gaming which the State “permits . . . for any purpose by any person, organization, or entity,” 25 U.S.C. 2710(d)(1)(B). Therefore, this Court must determine what gaming the State permits.

Courts employ different analyses to determine whether a state permits certain gaming.⁴ This Court has reviewed all the cases cited in the parties’ briefs and below will summarize most the cases by extensively quoting from a District of Idaho case dealing with a similar IGRA issue. See Coeur d’Alene Tribe v. State of Idaho, 842 F.Supp. 1268 (D. Idaho 1994).

⁴ All courts, however, rely on the prohibitory/regulatory distinction laid out in California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987). Cabazon dealt with a California tribe that wanted to engage in a bingo operation on their reservation. Id. at 206. The issue was whether California could enforce its gambling laws (laws against bingo) within the Cabazon Indian reservation. See id. The Supreme Court drew a prohibitory/regulatory distinction between California’s laws and held that California could only enforce the prohibitory laws within the Cabazon and Morongo Reservations because such laws were pronouncements of state policy, not mere regulation. Id. at 211-12. The Court found that California’s laws against bingo were mere regulation because the state permitted bingo under certain circumstances. Therefore, the Court held that California could not enforce its bingo statutes within the reservations. See id.

In United States v. Sisseton-Wahpeton Sioux Tribe, 897 F.2d 358 (8th Cir.1990), the Indian tribe established a blackjack operation on its reservation in South Dakota on April 15, 1988. *Id.* at 359. The same day the tribe opened its blackjack operation, it filed a complaint in district court seeking a declaration of its legal right to run the operation. *Id.* IGRA then became effective on October 17, 1988. IGRA contains a grandfather clause which accords Class II treatment to card games already in existence at the time of enactment. The Eighth Circuit Court of Appeals held that the tribe had not altered the nature and scope of its blackjack operation since May 1, 1988, and that the operation would therefore be classified as Class II gaming because of the grandfather provision. *Id.* at 363.

The Eighth Circuit then reviewed the district court's holding that the blackjack operation was unlawful, even if classified as Class II gaming, because it was not conducted in compliance with wage limits and other requirements set by South Dakota law. That case, like the case at hand, turned on the proper interpretation of the phrase "permits such gaming for any purpose by any person, organization or entity." 25 U.S.C.S. § 2710(d)(1) (Law.Co-op.1983 & Supp.1993). The Eighth Circuit addressed the case by focusing on the particular gaming activity--blackjack. The court did not hold that the case turned on whether or not a particular class of gaming was permitted by the state. "[W]e believe that the legislative history reveals that Congress intended to permit a particular gaming activity, even if conducted in a manner inconsistent with state law, if the state merely regulated, as opposed to completely barred, that particular gaming activity." United States v. Sisseton-Wahpeton Sioux Tribe, 897 F.2d at 365 (emphasis added).

The court went on to hold that because South Dakota permitted commercial card games, including blackjack, the Indian tribe could also conduct a blackjack operation.

...

In Mashantucket Pequot Tribe v. Connecticut, 913 F.2d 1024 (2d Cir.1990), cert. denied, 499 U.S. 975, 111 S.Ct. 1620, 113 L.Ed.2d 717 (1991), the Indian tribe sought to conduct casino-type gaming activities on its reservation and the state refused to negotiate a compact regarding such activities. Id. at 1025. The court reviewed Connecticut law and noted that Connecticut allowed non-profit charitable organizations to conduct casino gambling on so-called "Las Vegas Nights" for charitable purposes. In light of 25 U.S.C. § 2710(d)(1)(B), the court ruled that the state was required to negotiate with the tribe regarding the conduct of casino-type games of chance because the state permitted other organizations and entities to engage in such activities. Id. at 1032. The state would not have had to negotiate casino-type gaming had it prohibited such gaming to all persons, organizations, and entities within the state.

In Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin, 770 F.Supp. 480 (W.D.Wis.1991) (hereafter "Lac du Flambeau II"), Indian tribes and the State of Wisconsin disagreed over whether the state was required to include casino games, video games, and gaming machines in its negotiations with the tribes. Id. at 482. The state constitution was amended in 1987. As amended, the constitution authorized a state lottery and pari-mutuel betting and did not prohibit other forms of gaming involving the elements of prize, chance, and consideration. Id. at 486. Thus, the court concluded that "the state is required to negotiate with plaintiffs over the inclusion in a tribal-state compact of any activity that includes the elements of prize, chance and consideration and that is not prohibited expressly by the Wisconsin Constitution or state law." Id. at 488 (emphasis added). Given the broad definition of lottery and the fact that Wisconsin law no longer had any express prohibition against games involving the elements of prize, chance, and consideration, Wisconsin was required to negotiate regarding the games proposed by the tribes.

At least one other court has noted that the court in Lac du Flambeau II took a more expansive view of the Cabazon decision than had previous courts, and declined to follow Lac du Flambeau II:

To some extent, the court in Lac du Flambeau II utilized a different interpretation of Cabazon.... For example, the court observed:

If the policy is to prohibit all forms of gambling by anyone, then the policy is characterized as criminal-prohibitory and the state's criminal laws apply to tribal gaming activity. On the other hand, if the state allows some forms of gambling, even subject to extensive regulation, its policy is deemed to be civil-regulatory and it is barred from enforcing its gambling laws on the reservation.

This approach is broader than the one employed by the Supreme Court in Cabazon and other courts which have faced the same question and, to the extent the court in Lac du Flambeau II based its conclusion on that analysis, we decline to follow its lead.

Seminole Tribe of Florida v. Florida, No. 91-6756-CIV-MARCUS, 1993 WL 475999, Order at 15-16 (S.D.Fla. Sept. 22, 1993) (quoting Lac du Flambeau Band of Lake Superior Chippewa Indians v. Wisconsin, 770 F.Supp. at 485) (footnote omitted). The court in Seminole Tribe of Florida went on to declare that:

[T]he thrust of Cabazon and its progeny requires a particularized inquiry into the proposed gambling activity (in this case, casino gambling and machine or computer-assisted gaming). For example, in Cabazon, where California ran a state lottery and permitted parimutuel betting, the lower courts and the Supreme Court looked at the state's public policy regarding bingo, the specific gambling activity at issue. Thus, we do not agree that Lac du Flambeau II dictates the outcome of the instant case, without a review of the State's public policy toward gambling in general and its public policy toward the specific gaming activities in question.

Seminole Tribe of Florida v. Florida, No. 91-6756-CIV-MARCUS, 1993 WL 475999, Order at 16 n. 1 (S.D.Fla. Sept. 22, 1993).

...

In the final decision relied on by the Tribes, Ysleta Del Sur Pueblo v. Texas, No. P-93-CA-29 (W.D.Tex. Nov. 1, 1993) (Memorandum Opinion & Order), the State of Texas refused to negotiate with the plaintiff Indian tribe regarding casino-type games. The tribe sought to engage in blackjack, roulette, baccarat, craps, and gaming machines, including electronic and electromechanical games of chance. Id. at 15. The court noted that Texas allowed bingo, pari-mutuel betting on horse and dog races, charitable raffles, the state lottery, mechanical games of chance so long as the reward is a non-cash prize of no more than \$5.00, wagers on carnival contests so long as the prize is limited to merchandise worth less than \$25.00, and private social gambling if conducted in private with even chances and risks and no bank. The court then held that Texas no longer had a broad public policy against gambling. Id. at 13.

The term "lottery" is broadly defined in Texas. See Tex.Rev.Stat. Ann. art. 179g, § 1.02(3) (Vernon Supp.1992), quoted in Ysleta Del Sur Pueblo v. Texas, No. P-93-CA-29, (W.D.Tex. Nov. 1, 1993) Mem.Op. & Ord. at 16. Although Texas could authorize casino gambling under its broad definition of lottery, it argued that the Indian tribe could not engage in casino gambling because such gambling was not actually played or allowed in Texas. The court pointed out that the proper focus was on whether Texas permitted such gaming by any person, organization, or entity. The court agreed with the decision in Seminole Tribe of Florida, declaring that "just because the state allows some types of Class III gaming to occur the state is not required to engage in negotiations over all types of Class III gaming activities." Ysleta Del Sur Pueblo v. Texas, No. P-93-CA-29, (W.D.Tex. Nov. 1, 1993), Mem.Op. & Ord. at 17-18 (emphasis added).

The court then noted that the only restriction in Texas law as to the operation of the state lottery was that the State Lottery Act only excluded "video forms of casino games, not the live or other non-video electronic games." Id. at 18. The court also found that a limited form of casino- type gaming could occur under what it referred to as the

"carnival exception," and that charitable organizations could also use this exception. Id. at 19. The court then concluded as follows:

Because casino gaming is permitted by some persons and individuals under the carnival exception, and based on the definition of "lottery" in the Texas Lottery Act allowing games which include chance, prize, and consideration, the Court is of the opinion that the casino games requested by the Tribe should be included in the negotiations of a Tribal-State Compact under the IGRA.

Id. at 20.

Coeur d'Alene Tribe, 842 F.Supp. at 1276-1279.

A close reading of the above cases suggests that Circuit Courts and District Courts have employed at least two different tests to determine the scope of negotiations between tribes and states. The broader test, employed by the District of Wisconsin ("the Wisconsin analysis"), requires courts to generally review the status of gambling in a state. If the state allows for some gambling then all gambling is merely regulated and subject to negotiation.

The narrower test employed by the District of Florida ("the Florida analysis") requires courts to analyze each type of gaming specifically. If a

state allows a particular type of gaming, for any purpose, it must negotiate over that specific game only.⁵

Since neither the Tenth Circuit nor a district court in the Tenth Circuit has decided this issue, the Court must choose which analysis to apply to the Wyoming Statute. For the reasons stated in the Coeur d' Alene Tribe case the Court adopts the Florida analysis.

C. Gaming permitted in the State of Wyoming

The tribe requested negotiations over a number of class III gaming activities. This Court divides those activities into three types: (1) calcutta and parimutuel wagering , (2) gaming machines, and (3) casino-style gambling. If Wyoming permits either type of activity for any purpose, it must order the State to enter into negotiations with the Arapaho regarding that specific game.

With respect to calcutta and parimutuel wagering, Wyoming law specifically permits those activities. See Wyo. Stat. 6-7-101(a)(iii)(F) and

⁵ The subject of such negotiations would be whether the tribe could offer such gaming in an Indian-run casino, not whether the tribe could offer such gaming in conformance with the state statute. If the latter were the case, there would not be reason to negotiate because the tribe could clearly operate gaming under the restrictions of the existing state statute without negotiating with the state.

11-25-105. Therefore, those activities are subject to negotiation. Those negotiations, as indicated in note 5, must not be limited to the scope that Wyoming allows under the law. For example, Wyoming must negotiate with the Arapaho regarding a full gamut of calcutta and parimutuel wagering, not just wagering subject to the conditions of Wyo. Stat. § 6-7-101(a)(iii)(F) and 11-25-105.⁶ Nevertheless, Wyoming does not have to negotiate over games that are similar to calcutta or parimutuel wagering (e.g. lotteries) because such games are not permitted in Wyoming.

With respect to gaming machines, Wyoming law specifically prohibits them. See Wyo. Stat. § 6-7-103 (“All gambling devices, gambling records and gambling proceeds are subject to seizure by any peace officer and shall be disposed of in accordance with the law. An antique gambling device...shall not be subject to seizure unless it is used in any way in violation of this article.”) Wyoming even prohibits gaming on antique gaming machines even though it allows persons to possess them for their personal amusement. See Wyo. Stat. § 6-7-101(a)(x). Since Wyoming

⁶ Specifically, this means that the State will have to negotiate with the Tribe for, among other things, calcutta wagering on out-of-state contests or events. In addition, the State will have to negotiate over the amount that the house can take when it engages in parimutuel betting.

does not allow any gaming on any gaming machine for any purpose, gaming machines are not within the scope of Tribal-State negotiations.

With respect to casino-style gambling, Wyoming narrowly allows such activities, if they are conducted between persons with a bona fide social relationship. See Wyo. Stat. 6-7-101(a)(iii)(E). Other than that narrow exception, Wyoming does not permit casino-style gambling and punishes such activity as either a misdemeanor or felony. See Wyo. Stat. 6-7-102 (punishing gambling as a misdemeanor or felony).

Under a straightforward Florida analysis, Wyoming would have to negotiate over casino-style gambling with the Arapaho because it allows such gaming for any purpose; namely, a social one. The Court, however, will not blindly apply this standard because it leads to an absurd result. Wyoming, unlike all the other states that allow Indians to operate casino-style gaming, does not allow for casino night exceptions,⁷ carnival

⁷ See Mashantucket Pequot Tribe v. State of Connecticut, 913 F.2d 1024, 1031 (2nd Cir. 1990).

exceptions,⁸ or state lotteries.⁹ Of all the states this Court has examined, Wyoming has the most stringent gambling statute.¹⁰

Wyoming's exception for social gambling was codified before IGRA and is not found in most state's statutes.¹¹ Wyoming's statute simply codifies an

⁸ See Ysleta Del Sur Pueblo v. State of Texas, 852 F.Supp. 587, 595 (W.D.Tex.1993); rev'd on other grounds 26 F.3d 1325 (5th Cir. 1994).

⁹ Mashantucket Pequot Tribe, 913 F.2d at 1031; Ysleta Del Sur Pueblo, 852 F.Supp. at 595; Lac du Flambeau Band of Lake Superior Chippewa Indians v. State of Wisconsin, 770 F.Supp. 480, 483-84 (W.D. Wis. 1991);

¹⁰ Unfortunately, the Wyoming Legislature does not maintain minutes or any records from their sessions. Therefore, this Court cannot accurately determine the objective behind the social gambling exception. Nevertheless, a review of the Wyoming gambling statutes is instructive. See Wyo. Stat. 6-9-101 (1901). According to that Section's Editor's note, Wyoming permitted and licensed gambling in 1876. In 1901, Wyoming repealed that policy in favor of a nearly total prohibition of gaming. The 1901 amendments prohibited "[e]very person" from conducting casino-style gambling. See Wyo. Stat. 6-9-101 (1901). The latest amendments came in 1982. The 1982 amendments modified the 1901 statute by allowing calcutta wagering and providing for a social gambling exception. In light of this history, the Court does not believe that Wyoming altered its state policy by amending the gambling statutes in 1982. Rather, the Court finds that the State was clarifying a state policy. If the State wanted to amend its public policy with respect to gambling it would have made more expansive changes to the 1901 laws. As it stands, however, the Court finds that Wyoming simply wished to clarify the statute and inform citizens that friendly gaming was sanctioned; acknowledging the obstacles to enforcement of a ban.

¹¹ This Court Found only six statutes with similar exceptions for social gaming: Alaska, Arizona, Guam, Hawaii, Iowa, and Maine. See Alaska

activity that most states implicitly permit. The Court is not aware of a single state that prohibits friendly poker games conducted in a social setting. The fact that a state expressly permits social gambling does not mean that it permits Class III gaming. This Court should not force the State to negotiate over activities it so clearly prohibits just because it did not have the foresight to omit a statutory clause that was probably included to reassure citizens that the State's stringent statute was not going to put them in jail for engaging in a generally accepted social activity. As such, the Court finds Wyoming does not permit casino-style gaming for "any purpose" and therefore does not have to negotiate over such gaming with the Arapaho.

D. Good Faith

To the extent that the Tribe is requesting negotiations for casino-style gambling and gaming machines, this Court finds that the need to determine good faith is moot based on our finding that such games are not the proper subject of negotiations. With respect to calcutta and parimutuel wagering,

Stat. § 11.66.280 (Michie 2001); Ariz. Rev. Stat. § 13-3302 (2001); 9 Guam Code Ann. 64.30 (2001); Haw. Rev. Stat. § 712-1226 (2001); Iowa Code § 99B.1 (2001); Me. Rev. Stat. Ann. tit. 17, § 331 (West 2001). Of these only three housed Indian reservations: Arizona, Iowa, and Maine. Of those three, none prohibited lotteries and in fact permitted this widespread form of gambling. Therefore, the application of IGRA to Wyoming's gambling statute is necessarily unique.

the Court finds that the State must negotiate as to the full gamut of such games, not only to the extent that Wyoming law authorizes. The Tribe alleged and the State conceded that the State only negotiated to the extent that Wyoming law permitted such gaming. Wyoming has a duty to negotiate for terms beyond that which Wyoming law expressly permits. Therefore, this Court finds that Wyoming must renegotiate with the Tribe with respect to calcutta and parimutuel betting.

CONCLUSION

It is squarely within the power of the legislature to chose whether casino-style gambling should be permitted within Wyoming. The Wyoming gaming statutes plainly indicate that casino-style gambling and slot machine wagering are against the public policy of Wyoming and are thus not subject to negotiation. Calcutta and parimutuel betting are not against the state's policy and as stated above, the Court finds that Wyoming did not negotiate such gaming in good faith. Given the Court's finding, this Court orders the parties to enter into a compact within sixty days regarding only calcutta and parimutuel betting. Furthermore, this Court will not enter an order enjoining the State from interfering with the Tribe operation or regulation of class III

gaming, since such injunction would be antithetical to IGRA. See 25 U.S.C. § 2710(1)(C) (stating that class III gaming is permitted when "conducted in conformance with a Tribal-State compact"). Therefore the Tribe's requested relief is partially granted.

IT IS THEREFORE

ORDERED that the State enter into a compact with the Tribe within 60 days with respect to calcutta and parimutuel betting only.

Dated this 6th day of February, 2002.

Alan B. Johnson, U.S. District Judge

ENTERED
ON THE DOCKET
February 6th, 2002
(Date)
Betty A. Griess, Clerk
by Johanna [Signature]
Deputy Clerk

FILED
DISTRICT OF WYOMING
CHEYENNE

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CLERK
U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

NORTHERN ARAPAHO TRIBE,)
)
Plaintiff,)
)
vs.)
)
STATE OF WYOMING AND GOVERNOR)
JAMES GERINGER, his agents,)
employees and successors,)
in their official capacities,)
)
Defendants.)

Case No. 00-CV-221-J

JUDGMENT

This action came before the Court on pleadings, Honorable Alan B. Johnson, District Judge, presiding. The Court, having reviewed the briefs of the parties, the applicable law, all matters of record, and being fully advised partially finds in favor of the plaintiffs. It is,

ORDERED, ADJUDGED AND DECREED that defendant State of Wyoming and the plaintiff Northern Arapaho Tribe enter into Tribal-State negotiations with respect to calcutta and parimutuel waging within 60 days. It is further

ORDERED, ADJUDGED AND DECREED that each party bear its own costs. It is further

ORDERED, ADJUDGED AND DECREED that each party bear its own attorney's fees.

Dated this 6th day of February, 2002

**ENTERED
ON THE DOCKET**
February 6th, 2002
(Date)
Betsy A. Griess, Clerk
by *[Signature]*
Deputy Clerk

ALAN B. JOHNSON, U.S. DISTRICT JUDGE