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Ms. Diane Boyer-Vine
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Re: SB 175 Amendments And Cal.Constit.Art. IV Section 19(f)

Dear Legislative Counsel:

The Gabriellino-Tongva Tribe retained me to independently analyze SB 175, as amended, and Cal.Constit.Art. IV, §19(f). SB 175 would, among other things, create a state Indian reservation for the state-recognized Gabrielinos and interpret Section 19(f).

My impressions set forth below are only preliminary. I have not yet completed my review of legislative and ballot materials associated with Cal.Constit.Art. IV, §19(f). Nor have I finished reading relevant California cases, or reviewed federal law and other states' law that use the terms "Indian lands" and "tribal lands". So please understand that I will render a more thorough letter at a later date.

Cal.Constit.Art. IV, §19(f) is constituted by two sentences and contains a definitional problem. The two sentences read as follows:

Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

The first sentence is clear and relatively free from ambiguity. It authorizes the Governor to negotiate and conclude compacts for Las Vegas-style gaming with federally-recognized tribes. If the compacts are ratified by the Legislature, it allows the federal tribes to conduct gaming on "Indian lands" in California, and in accordance with federal law. The clarity of the sentence is enhanced by the use of the term "Indian lands", which is a term of art defined by the Indian Gaming Regulatory Act, 25 U.S.C. sections 2701 *et seq* ("IGRA"). IGRA is the key federal law that

regulates gaming by federally-recognized tribes, IGRA defines "Indian lands", and allows gaming on "Indian lands". So far, so good.

The second sentence is another matter altogether. It contains a different term, "tribal lands", and so creates a definitional problem. What are "tribal lands"? Because well-accepted principles of constitutional interpretation require that different words addressing the same subject matter be accorded different meanings, "tribal lands" would seldom if ever be interpreted to simply mean "Indian lands".

And so, depending upon the definition of "tribal lands", the second sentence may be viewed as a separate and different grant of authority to conduct compacted, Las Vegas-style gaming. To determine if this is the case, and to analyze that grant of authority, one approach would be to make a judicial interpretation of "tribal lands", and attempt a judicial resolution of that definitional problem. In the absence of SB 175, that result would be hard to predict.

However, SB 175, as amended, makes a legislative resolution of the same definitional problem. In Sections 201 through 206, SB 175 provides that "tribal lands" means state Indian reservations as well as federal "Indian lands", and creates just such a reservation for the state-recognized Gabrielinos. SB 175 continues on to state that the Gabrielinos may conduct Las Vegas-style gaming on their new "tribal lands" at Hollywood Park.

As a former Supreme Court justice, I know well the deference that should be accorded by California courts to constitutional interpretations by our Legislature. Should SB 175 become law, the definitional problem of what "tribal lands" means must ultimately be resolved by the Legislature. Once the legislative branch interprets Section 19(f), the court's responsibility is to weigh both the constitutional language, as well as the legislative interpretation of that language.

Should SB 175 become law, the question of "tribal lands" and its meaning is transformed into the larger question as to whether the Legislature can interpret "tribal lands" to include a state Indian reservation.

Legislative authority over constitutional interpretation is very broad. SB 175's interpretation of Cal. Const. Art. IV, §19(f) and the term "tribal lands" appears reasonable and in line with my early review of its legislative and ballot history. The definitional problem for "tribal lands" is not especially unique, and the legislative interpretation is not especially unusual.

Thus, without more, the Legislature appears well within its powers to pass SB 175 as amended. The Legislature appears to be able to interpret Section 19(f) to allow the state-recognized Gabrielino-Tongva Tribe to conduct compacted, Las Vegas-style gaming at Hollywood Park.

Very truly yours,



Hon. Armand Arabian

ARMS PROVIDERS, INC.
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HON. ARMAND ARABIAN, PRESIDENT

Profession Alternative Dispute Resolution, Attorney at Law 1996-Present

Work History Associate Justice, California Supreme Court, 1990-96; Associate Justice, California Court of Appeal, Second Appellate District, 1983-90; Superior Court Judge, Los Angeles County, 1973-83; Municipal Court Judge, Los Angeles, 1972-73; Attorney, Private Practice, 1963-72; Deputy District Attorney, Los Angeles County, 1962-63.

Experience Authored 104 majority opinions at the Supreme Court. Appointed Trustee of the Albert Einstein Correspondence Trust. Conducts arbitration and mediation in complex commercial litigation, insurance coverage, real estate disputes, environmental contamination, bad faith, personal injury, medical malpractice, wrongful death and family law. Expert witness in legal malpractice, fee disputes and indemnification. Adjunct Professor of Law, teaching appellate advocacy, Pepperdine University School of Law.

Graduate University of Southern California Law Center, Los Angeles, California, L.L.M., 1970. Boston University School of Law, Boston, Massachusetts, J.D. 1961. Boston University, Bachelor of Science in Business Administration, 1956.

Awards Recipient of Women of Los Angeles Highlight Awards, 2005; the 2004 Ellis Island Medal of Honor; awarded the "St. Gregory the Illuminator" highest medal of honor by His Holiness Karekin II, Supreme Patriarch and Catholicos of All Armenians, 2003; the Albert Einstein Gold Medal of Honor, Russian Academy of Natural Sciences, 2003; annually, Project Sister, an anti-rape support group, presents the "Justice Armand Arabian Healing the Heart" award to those persons devoted to giving hope and dignity to victims of sexual assault, 2002; San Fernando Valley Bar Association dedicated the Justice Armand Arabian Attorneys' Research and Communication Centers in Van Nuys and San Fernando Courthouses, 1999; annually, the San Fernando Valley Bar Association gives the "Armand Arabian Law and Media" award; Pepperdine Law School's Fall Moot Court Competition named the "Armand Arabian Advocacy Tournament" 1999; annually, starting in 1999, the "Leaders in Public Service Award" is presented by the Encino Chamber of Commerce; "Honorary Doctor of Laws Degree" Western State University School of Law, 1998; "Outstanding Jurist of the Year" by the Malibu Bar Association, 1996; "Honorary Doctor of Laws Degree" University of West Los Angeles School of Law, 1994; only recipient of the "Lifetime Achievement Award" by the San Fernando Valley Bar Association for "Dispensing Justice Tempered With Mercy", 1993; named Who's Who in America, 1992; Who's Who in American Law; "Honorary Doctor of Laws Degree" Pepperdine University School of Law, 1990; "Honorary Doctor of Laws Degree" Southwestern University School of Law, 1990; "Pappas Distinguished Scholar", Boston University School of Law, 1987.

Publications "The Sense of a Dissent" Metropolitan News and Los Angeles Daily Journal, 2000; "Condos, Cats and CC&R's: Invasion of the Castle Common", 23 PEPPERDINE LAW REVIEW 1, December 1995; "Informed Consent: From the Ambivalence of Arato to the Thunder of Thor", 10 ISSUES IN LAW & MEDICINE, Winter, 1994; "Rape Reform and its Continuing Journey" Metropolitan News, 1980; "The Day the Earth Shook" Los Angeles Times, 1979; "Time to Remember the Other Holocaust" Los Angeles Times, 1979; "Rape: The Second Trauma is Court" Los Angeles Times, 1978; "Rapists Find Judicial Odds Changing" Los Angeles Times, 1978; "The Cautionary Instruction in Sex Cases: A Lingering Insult", 10 SOUTHWESTERN LAW REVIEW 585, 1978.

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