

# ***Stand Up For California!***

“Citizens making a difference”

standupca.org

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November 1, 2005

Honorable Sam Aanestad  
California State Senator  
State Capitol - 2054  
Sacramento, CA. 95814  
Attn: Josh Cook - By Facsimile: 530-895-6820

## **RE: Request for an Attorney General Opinion-“Allottee Shopping”**

Dear Senator Aanestad:

Stand Up for California, serves as an advocate and information resource for community groups and policy makers at the local, state and federal levels of government trying to understand and respond to the complexities surrounding the off-reservation impacts and the expansion of tribal gaming. We support the efforts of citizens who want to make sure that there are adequate protections for all communities adversely impacted by unregulated gambling expansion. We respect and support the recent efforts of the California Tribal Business Alliance keeping the promises voters agreed to in Proposition 1A. We do not seek to impede the economic progress and advancement of California’s native peoples; rather we seek regulatory reforms in the gaming industry that we believe are in the best interests of all the inhabitants of this State.

We write to you today as in recent months your legislative district appears to have numerous off-reservation proposals that are inconsistent with the spirit and intent of the Indian Gaming Regulatory Act. We urge you to request a ‘formal Attorney General Opinion’ on the definition of Indian lands in California eligible for gaming.

California is significantly affected by tribes continuing to reservation shop for new casino sites off established reservations and without historic ties. Tribes and gaming investors continue to promote numerous exceptions under IGRA for off reservation casinos that allow for the development of gaming on lands acquired after the 1988 cut off. Off reservation gaming has created a domino effect of impacts. It has created numerous instances of internal enrollment disputes over Indian lands, gaming money and power. It has set off political and legal impacts on local governments and the surrounding communities of citizens.

Gaming investors are ever-clever, coming up with new ways of acquiring new land in order to create new unchallenged exceptions for gaming. Two examples exist in your legislative district:

- The Alturas tribe is currently constructing a gaming facility on fractional interest allotment land over which it has just recently begun to exercise governance--land which

is a significant distance from the tribe's established land base and recently proclaimed to be under the tribe's governance.

- Second are the unfounded land claims of 'takings' intended to justify Enterprise Rancheria #2's quest for land in Yuba County to develop a casino with a Chicago Developer. Clearly this issue demonstrates the significant legal and political impacts affecting local government as well as the internal dispute within the Enterprise band.

While Governor Schwarzenegger's May 18<sup>th</sup> Proclamation addresses the Enterprise Rancheria's 'reservation shopping' and limits its ability to move forward absent a clear independent public policy beneficial to the State it does not address the latest move of gaming investors and tribes, "**Allottee shopping**"<sup>1</sup>.

### **Background on allotment lands:**

Alturas Tribe is attempting to put a casino on **Allotment lands**.

**Allotment lands** are held in trust for individuals by the United States. That is, the legal title was held by the United States and the allottee was given beneficial title, the right to live on, use and profit from the allotment. So long as the title was held in trust by the United States it was not subject to state or local taxation or regulation. Some allotment land is held in "fractional interest". Fractional Interest deeds mean more than one allottee on the deed, sometimes as many as 18 or 20.

The definition of Indian Lands for gaming in IGRA has a two-part test. 25 U.S.C. Section 4 [2703] 4

- (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.**

Thus critical questions remain regarding 'allotment lands':

(1) Was this land held subject to restriction by the United States against alienation? This is an unknown until we see the deed to know if it is still fractional interest in trust or did the allottees ever transfer the trust to a fee-patent. Evidence indicates that some of allottee land is held in fee-patent and therefore the State of California may exercise both civil and criminal authority over these lands including taxation.

(2) Did the Tribe exercise "***governmental power***" over re-acquired lands? Here the evidence points to NO or not until date of the transfer of the land title. Is the date of the

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<sup>1</sup> There are over 200 individually owned parcels of allotment land in California. This heightens the public's concern over the unmanaged growth of tribal gaming.

transfer of title after 1988, if so, the land must be considered a land acquisition for gaming and potentially subject to the processes imposed on after 1988 land acquisition including a full Environmental Impact Statement, the two-part determination and potential gubernatorial concurrence imposed by IGRA 25 U.S.C. section 2719 (b) (1) (A).<sup>2</sup>

(3) Are the parcels in question within the established boundaries of the original reservation? In the case with the Alturas the answer is unequivocally NO. Therefore, allotment proposals could potentially be treated as compacted gaming at an unauthorized location under section 4.2 of the 1999 tribal state compacts giving the State jurisdiction.

Herein lies a gray area of law, do both the state and the federal government have jurisdiction? Thus, an **AG Opinion** would be beneficial in significantly clearing up this vague area of law and clarify for the state whether or not it has an immediate jurisdictional role in addressing issues of **compacted gaming at an unauthorized location**.

- **Can the State apply compact language in section 11.2.1 intended to provide the offending tribe with a 60 day period to cure a potential material breach? Can the State require the tribe to enter into a ‘meet and confer’ to discuss the potential material breach in good faith? (Compact Section 9.2)**

Below is the section of the California State Constitution that legalized casino gaming on Indian lands. I have highlighted words that would be useful in defining where and by whom gaming is permitted. Allotment land has a different legal status than tribal lands. What is the meaning of Indian lands in California? Does this language encompass fee-land owned by individual Indians or a Tribal government? If so when and under what circumstances would gaming be permitted?

Tribal lands imply land within the boundaries of a reservation, land which is held in common or a tribal reserve, not individually owned allotment lands or fractional interest allotment lands located outside of the exterior boundary of a reservation.

California Constitution Section 19 Article IV (f):

(f) 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.

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<sup>2</sup> Serious questions are being raised by other fractional interest parties on the deed of the allotment lands. There are “rumors” of **fraud** regarding the **WILL** which Darren Rose is using to claim governance over the land. Since a potential allegation of fraud would fall under PL 280, the AG could investigate the legal ownership of the land.

Stand Up for California respectfully urges you to request a formal Attorney General Opinion on whether or not Class III gaming may lawfully be conducted on **Allottee lands** held in the name of individual Indians – lands outside of the exterior boundaries of an established reservation, transferred to the governance of a federally recognized tribe with a 1999 tribal state compact after the 1988 cut off date of IGRA. Moreover, does the State have an immediate jurisdictional role to enforce compacted gaming at an unauthorized location in compliance with the 1999 tribal state compact section 4.2?

Your assistance in this matter is sincerely appreciated.

Sincerely,

Cheryl Schmit – Director  
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