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A SUMMARY AND THE IMPLICATIONS OF

WEST FLAGLER ASSOCIATES, LTD. V. HAALAND

To: Chairperson Carpenter
Members of the Joint Committee on State-Tribal Relations

From: Jason B. Long, Senior Assistant Revisor

Date: September 11, 2024

In 2023 and 2024, the Legislature approved gaming compact amendments with the Prairie Band Pottawatomi Nation and the Iowa Tribe of Kansas and Nebraska (collectively the Amendments). The Amendments governed each Tribe's ability to offer gambling on sporting events. While the language of the Amendments clearly authorized sports wagering conducted on reservation land, both amendments contained identical provisions making remote sports wagering conditional on the outcome of pending litigation.

This memorandum reviews the relevant case that was being litigated at the time the Amendments were negotiated and approved. It will also summarize the effect of that case's resolution on tribal gaming activities in Kansas.

West Flagler Associates, Ltd. v. Haaland

The case that was pending at the time the gaming compact amendments were being negotiated is known as *West Flagler Associates, Ltd. v. Haaland*.[1] In 2021, the State of Florida agreed to a compact with the Seminole Tribe of Florida (Tribe) to permit the Tribe to conduct online sports wagering in the state (Compact). The most relevant provision was the authorization for the Tribe to accept bets from a person regardless of where that person was physically located in the state. The Compact stated that all such bets would be considered placed at the location of the servers managing the online betting:

> The Tribe and State agree that the Tribe is authorized to operate Covered Games on its Indian lands, as defined in [IGRA]. … Subject to limitations set forth herein, wagers on Sports Betting … made by players physically located within the State using a mobile or other electronic device *shall be deemed to take place exclusively*

[1] 71 F.4th 1059 (D.C. Cir. 2023).

> *where received at the location of the servers* or other devices used to conduct such wagering activity at a Facility on Indian Lands.[2]

The plaintiffs, including West Flagler Associates, Ltd., were private businesses operating casinos in Florida. The lawsuit was filed in the District of Columbia federal court as a challenge under the Administrative Procedure Act to actions of the U.S. Secretary of the Interior (Secretary). Under the federal Indian Gaming Regulatory Act (IGRA), gaming compacts between states and tribes must be submitted to the Secretary for approval. Upon receiving such a compact, the Secretary may approve the compact, disapprove the compact if it violates federal law or the federal government's trust obligations to the Indians, or take no action and allow the compact to be considered approved after 45 days.[3] Here, the Secretary chose not to act, and the Compact was considered approved after 45 days.

The plaintiffs argued that the Secretary must disapprove the Compact because it violated the IGRA and other federal laws that prohibit the use interstate communications for the purposes of gambling.[4] The primary issue was whether the IGRA authorized tribal gaming outside of a Tribe's reservation land. The plaintiffs argued that it did not.

The Tribe moved to intervene for the purpose of filing a motion to dismiss based on the Tribe's sovereign immunity. However, the trial court denied the Tribe's motion and granted summary judgment to the plaintiffs. In its decision the trial court ruled that, as a matter of law, the Compact attempted "to authorize sports betting both on and off Indian lands[,]" which the court found to be a violation of IGRA's requirement that gambling occur on Indian lands.[5] The Secretary appealed to the Court of Appeals for the District of Columbia.

Both before the trial court and on appeal, the Secretary argued that the Compact only authorized sports betting on Indian lands and the legality of any gambling activity taking place off of Indian lands was subject to Florida state law. Since the Secretary's authority under IGRA was only to review the Compact for compliance with federal law and not to review the legality of any related state law, the Secretary argued that she properly allowed the Compact to take effect.[6] The appellate court agreed.

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[2] Id. at 1063 quoting Compact § IV.A (emphasis added).
[3] Id. at 1062-63.
[4] Id. at 1061.
[5] Id. quoting *West Flagler Associates v. Haaland*, 573 F.Supp.3d 260, 273 (D.D.C. 2021).
[6] Id. at 1065.

In its decision, the appellate court panel held that the IGRA only governs gaming activity conducted on Indian lands. To comply with the IGRA, the Compact would necessarily have to only authorize gaming on Indian lands and "nowhere else."[7] In analyzing the Compact's language, the appellate court found that the text plainly only authorized gaming activity occurring on Indian lands. With respect to bets placed by individuals located outside of Indian lands, the court noted that the Compact only states that such bets are deemed to take place on Indian lands. The Compact did not expressly authorize such bets.[8] Such authorization, the court held, must come from state law. The court stated that "if the state statute … related to this action were to be challenged in Florida state court and were to fall, the compact that they crafted would give no independent authority for the Tribe to continue to receive bets from outside Indian lands."[9]

The appellate court also recognized that the IGRA allowed gaming compacts to include other provisions related to the gaming activity. These include the "allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for enforcement of such laws and regulations[,]" the "standards for the operation of such activity and maintenance of the gaming facility, including licensing[,]" and "any other subjects that are directly related to the operation of gaming activities."[10] The court held that the consideration of bets placed outside of Indian lands to be "directly related" to the operation of the Tribe's sports betting operations and, therefore, within the scope of the IGRA's requirements.[11] Further, the court held that "[t]he lawfulness of any other related activity such as the placing of wagers from outside Indian lands, under state law or tribal law, is unaffected by its inclusion as a topic in the Compact."[12] As stated previously, such lawfulness is dependent on the applicable state or tribal law governing such activity.

In conclusion, the court reversed the trial court's decision and held that the Secretary's decision was consistent with the IGRA and the Compact was properly approved in accordance with the provisions of federal law. The court expressly made a point of not issuing any opinion with respect to the legality sports betting under Florida law.[13]

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[7] Id.
[8] Id. at 1066.
[9] Id. at 1068 quoting Counsel for the Secretary *see* Oral Arg. Tr. at 6:14-21.
[10] Id. at 1065 citing 25 U.S.C. § 2710(d)(3)(C) (statutory quotes added).
[11] Id. at 1066.
[12] Id.
[13] The court also rejected the plaintiffs' other federal law challenges in that they were all dependent on the argument that the Compact had *authorized* sports betting outside of Indian lands, which the court had rejected in its analysis of the IGRA challenge. *See* id. at 1068-70.

The plaintiffs filed a petition for certiorari for review by the U.S. Supreme Court. That petition was denied on June 17, 2024, making the appellate court's decision the final ruling in the case.[14]

Kansas Gaming Compact Amendments

The gaming compact amendments negotiated and agreed to with the Prairie Band Pottawatomi Nation and the Iowa Tribe of Kansas and Nebraska include identical provisions governing remote sports wagers:

> (2) Remote sports wagers shall be accepted on a server or other computer equipment at a facility established by the Tribe on its Reservation. The parties agree (a) that in accordance with and for purposes of State and Tribal law, remote sports wagers originating within the boundaries of the State but outside of the Tribe's Indian lands within the meaning of the [IGRA] are sports wagers that take place on, and within the boundaries of, the Tribe's Indian lands where the server accepting remote sports wagers is located, and (b) that the sports wagers described in clause (a) shall be referred to as "Hub-and-Spoke remote sports wagers" and the general model of sports wagering described in clause (a) shall be referred to as the "Hub-and-Spoke Model."[15]

These provisions contain very similar language to that included in the compact between the State of Florida and the Seminole Tribe. Specifically, the State and the Tribes agree that the server or other computer equipment that accepts sports wagers is to be located at a facility located on the Tribe's Indian lands. Further, both parties agree to "deem" wagers placed by individuals located outside the Tribe's Indian lands to take place on the Indian lands where the server is located. The Amendments go on to name this the "Hub-and-Spoke Model," which is a name generally used for this type of sports betting. Because the Amendments use language that is very similar to that of the Florida compact, the same legal analysis can arguably be applied and the Amendments are in compliance with the IGRA.

The Amendments also contain a conditional provision that reads as follows:

> [T]he Tribe … shall not accept any Hub-and-Spoke remote sports wager unless the Hub-and-Spoke Model is expressly found to comply with the [IGRA] by any of the United States District Court for the District of Kansas, the United States Court of Appeals for the Tenth Circuit, the United States Court of Appeals for the District of Columbia Circuit, or the United States Supreme Court in a judgment that is final and not appealable; provided, however, that the Tribe shall not accept any Hub-and-Spoke remote sports wager if the Hub-and-Spoke Model is expressly found not

[14] *See West Flagler Associates, Ltd. v. Haaland*, 2024 WL 3014599 (June 17, 2024) (denying cert.).
[15] Amendment to the Prairie Band Pottawatomi Nation – Kansas Gaming Compact, Paragraph 3.c; Amendment to the Iowa Tribe of Kansas and Nebraska – Kansas Gaming Compact, Paragraph 2.c.

> to comply with the [IGRA] by any federal court of competent jurisdiction in a judgement that has not been reversed, overruled, or superseded.[16]

The parties to the Amendments agreed that the Tribe would only be permitted to use the Hub-and-Spoke Model if it was found to comply with the IGRA by one of the identified federal courts. The *West Flagler* decision was issued by the U.S. Court of Appeals for the District of Columbia Circuit, which is one of the identified courts in the conditional provision. As described above, that court held that the remote sports betting model described in the Florida compact, which is a Hub-and-Spoke Model, complied with the IGRA. Therefore, the conditional provision in the Amendments has been met and the Tribes that agreed to the Amendments may proceed to offer Hub-and-Spoke remote sports wagering in Kansas.

[16] Id.