



The Washington Deal

by Joseph Valandra

Tribal leaders and advocates are well aware of the strong desire of some anti-gaming and anti-Indian groups to limit or destroy tribal sovereignty by controlling Indian lands, with the main strategy of making the federal obligation of taking land into trust virtually impossible to accomplish. The Carciere decision has given those groups a very potent platform from which to advance their cause.

Rhetoric using “Off-Reservation Gaming,” “Reservation Shopping,” or “aboriginal and modern connections to land” has been given renewed strength and vigor. The first two are meant to drum up political support. The third, contained in proposed legislation, is meant to severely limit or quash the ability of tribes to have land taken into trust.

Remember, during the lame duck session at the end of the last Congress, there was a concerted effort by Senator Feinstein to make it virtually impossible for land to be taken into trust resulting in the death of the Carciere fix. The fix passed in the House but died in the Senate because it was “too controversial.” Senator Feinstein along with those opposed to “Off-Reservation Gaming” manufactured the “controversy.”

As you may already know, Senators Feinstein, McCain, and Kyle have introduced legislation that brings most of the worst-case scenarios into focus again. If you were not aware of this take note. We now have S. 1424 titled, “Off-Reservation Land Acquisition Guidance Act” by Senators McCain and Kyle, and S.771 titled, “Tribal Gaming Eligibility Act,” by Senators Feinstein and Kyle. Both bills address problems that do not exist and are clearly designed to block or dilute a Carciere fix. In short, S.771 requires applicants to prove aboriginal and modern connections to the land to be taken into trust for gaming. S.1424 revives the commutability requirements, just abolished by the Department of Interior (DOI), as a requirement for taking land into trust for gaming.

It is not a coincidence that S.1424 bill was introduced shortly after the Senate Committee on Indian Affairs moved a Carciere fix by attaching it to the Hearst Act (S.703). By introducing their anti-Indian gaming bills, Senators Feinstein, McCain and Kyle have made sure that they have a big chip in the negotiations that will determine if, when, and what a Carciere fix will look like.

“Off-Reservation” has become a tag meant to stir an emotional response and to perpetuate a view that tribes are clamoring to build gaming facilities far from established reservation lands and, it is presumed, on land to which they have little or no claim. This is a reactionary strategy designed to solicit support from other reactionary groups

opposing tribal governmental gaming.

The Carciere decision has caused concern and fury. The issues surrounding land-into-trust decisions are crucial to all tribes. For newly recognized and restored tribes, land is vital to their very survival, economically and culturally; for all tribes, the impact on economic development and community services as well as recovery of misappropriated lands is vital.

The problem, as I see it, is that groups using the same reactionary tags as Senators Feinstein, McCain, and Kyle focus their concerns and most of their fury on gaming. The emotions of “Off-Reservation Gaming” are so charged and filled with misinformation that the purpose is clearly to muddy the waters and create an impression, if not the actuality, of another bogus “controversy.”

These proposals are also designed to drive wedges between tribes – divide and conquer is the fundamental strategy. The postulation is that tribes with land, and perhaps gaming, will either not care about the issue or will not want new competition for resources and, therefore, will support or at least not oppose the Senators’ bills. The battle over the Feinstein amendment in the lame duck has shown how subtly and effectively this strategy can be used. The road to a Carciere fix will be very difficult to find through S.1424 and S.771.

In political deals, all key points are made fungible to reach an “agreement” – an effective tactic used in the recent debt ceiling battle. The questionable Washington, D.C. logic is that all Indian land issues are the same and anything that affects Indian land is the same. Therefore, because a Carciere fix affects Indian land and S.771 and S.1424 affect Indian lands, a deal is ripe for the making by some Washington, D.C. lobbyists, politicians and policy makers. An unacceptable deal may emerge that puts restrictions on gaming land in return for a Carciere fix. Tribes must be diligent and wary so that we do not become victims of a Washington, D.C. political deal.

Let’s be perfectly clear – gaming has nothing to do with a Carciere fix. Land into trust is a legal obligation of the federal government. The fact that tribes have been and continue to be recognized or restored by federal actions since 1934 clearly shows that jurisdiction over tribes, inchoate or not, has been continuous. Otherwise, it seems to me, tribal sovereignty takes on a whole new meaning. ♣

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