

Oct. 21, 2006

Court rules federal agency can't regulate tribal gaming

By TONY BATT

STEPHENS WASHINGTON BUREAU

WASHINGTON -- The federal agency overseeing Indian gaming does not have authority to regulate tribal casinos, the U.S. Circuit Court of Appeals in Washington, D.C., ruled Friday.

Instead, states and tribes are empowered to regulate Indian casinos through compacts they negotiate, the court said.

"While the (Indian Gaming Regulatory Act of 1988) grants the (National Indian Gaming) Commission audit authority ... the statute does not indicate that these duties extend to (Indian casino) regulation," wrote U.S. Circuit Judge Raymond Randolph in the court's opinion.

U.S. Circuit Judges Harry Edwards and David Tatel joined Randolph in the decision, which affirmed a ruling in August 2005 by U.S. District Judge John Bates of Washington, D.C.

The decision is a victory for the Colorado River Indian Tribes who denied financial records from their Blue-Water casino in Parker, Ariz., to the National Indian Gaming Commission in January 2001.

Sen. John McCain, the chairman of the Senate Indian Affairs Committee, has said Bates' ruling should be "corrected," and Friday's ruling may provoke new efforts in Congress to broaden the authority of the National Indian Gaming Commission.

Indian gaming has mushroomed into a \$23 billion industry. In March, the Senate Indian Affairs Committee agreed by voice vote to pass legislation by McCain that would give the commission authority to regulate tribal casinos.

But the bill has stalled and McCain acknowledged last month it is unlikely to pass this year. That would mean McCain would have to start over with a new bill in 2007.

Calls and e-mails to McCain's office on Friday were not returned.

The National Indian Gaming Association, the primary lobbying group for tribal casinos in Washington, D.C., embraced the court's decision.

"Today, the federal court of appeals told us what Indian tribes already knew -- it's not the (National Indian Gaming Commission's) job to make regulations that override the regulatory standards set forth in tribal-state ... gaming compacts," Ernest Stevens Jr., chairman of the National Indian Gaming Association, said in a statement.

Stevens said Congress increased the commission's budget by 50 percent this year from about \$12 million to \$18 million so it could develop a five-year plan to provide technical assistance to tribal regulators.

"It's time for (the commission) to begin government-to-government consultations so it can get going on its plan," Stevens said.

Phil Hogen, the chairman of the National Indian Gaming Commission, has urged Congress to give his agency regulatory authority because tribal casinos are not cooperating with commission auditors.

"We are finding the door slammed in our face," Hogen told the House Resources Committee in May.

Calls to Hogen on Friday were not returned.