

Casino Questions - Updated May 18, 2006

1. According to the MOU on the signature page, it states: "To carry into effect this MOU the parties intend to enter into an Intergovernmental Agreement and all other supplementary agreements, as may be necessary, which upon approval and execution by the governing bodies of each Party binds to those promises and commitments that may be set forth therein." If the city approves the MOU and later chooses, for any reason, not to enter into an IGA and wishes the casino complex not to be built, can the casino be built under any circumstances? Could the city be held financially liable for approving the MOU now and later not allowing the complex to be built?

The tribe does not need city approval to build a casino. As a sovereign nation, Federal law exempts them from most U.S. and state and local laws and regulations. The purpose of the IGA is for the tribe to relinquish some of their sovereignty and set up a framework for them to be taxed and regulated.

Assuming that the tribe met several other contingencies, it is certainly conceivable that they could build a casino without an IGA. As stated above, they are not required to have an IGA. But it is not likely that they will build without an IGA.

The MOU does not bind the city to agree to an IGA. At the same time, the Tribe is not required to have an IGA to build. Therefore, I find it inconceivable that the city could be held financially liable for not approving an IGA.

We make that even clearer in the latest draft of the MOU which will be provided either prior to or at the next meeting.

2. If the MOU is approved by the city, and an IGA cannot be completed to the satisfaction of both parties, can the casino complex be built under any circumstances?

The tribe does not need city approval to build a casino. Assuming that several other contingencies were met it is certainly conceivable that the tribe could build a casino without an agreed upon IGA. I do not believe that is their goal or is it likely.

3. If the city does not approve the MOU and the Eastern Shawnee Tribe settles their lawsuit in Federal Court with the other MOU's in place from the other communities, can the casino complex be built near Canal Fulton under any circumstances? Will the settlement preclude the building of other casino complexes in the state other than those

identified with MOU's?

It would depend upon the terms of the settlement, but it significantly reduces the chances of the Tribe building near Canal Fulton. It certainly could, but that would depend upon the terms of a settlement if one is reached.

3. If the MOU is approved by the city, how can a citizen begin the referendum process and under what time constraints is that process placed? How will the referendum process effect the MOU's implementation and how the Federal court views it in the settlement? What can happen if the settlement includes the MOU from the city, but the referendum turns down the MOU?

If the MOU is approved by the city with an emergency clause, it would not be subject to referendum and would be submitted immediately to the tribe to be made a part of their court filing that is due on May 31. If the MOU is approved without an emergency clause, then it will not go into legal effect until 30 days after its passage thus missing the deadline for the tribe to submit it by May 31st as a part of their court filings.

If Council does not approve the MOU with the emergency clause it will likely end our discussions with the tribe.

4. In the MOU, it states: "The Tribe agrees that it will not permit the use or establishment of any 'adult' (i.e., sexually oriented) entertainment facility or sexually-oriented business as those terms are defined by Tribal ordinances, upon any portion of tribally owned development." What is the current definition? Could this definition be changed by the Tribe? Who would interpret the definition in relation to implementation (i.e., beauty is in the eye of the beholder)?

I am researching this issue. In addition, my draft revised MOU requires the tribe to comply with federal, state, and local laws along with tribal laws concerning adult entertainment.

5. How many of the jobs created in the casino complex are anticipated to be at or near (within \$2) of minimum wage? How many of the jobs in the complex are anticipated to be full-time and how many are to be part-time? What is the youngest age that will be employed by the complex for any job (including retail, restaurant personnel, landscaping, and housekeeping)?

It is my understanding that their lowest paid jobs, which receive tip income, start at \$7 per hour or more. I am awaiting info on the other two questions.

6. Should Route 93 be determined to be insufficient for traffic and needs to be widened, who will pay the cost of the widening? Could any financial burden be placed on the residences living on that road?

The point of the IGA is to negotiate a formula to reimburse the effected schools and governmental units for the impact of such things. I do not believe that any financial burden would be borne by local residents.

7. Scott--After talking with you last night, I do have one more clarifying question: Can the casino be built after May 31 even if the city does not sign the MOU at this time? Assumption: The decision to build would not be solely dependent upon the Federal lawsuit. The Tribe is saying--sign the MOU now so it could be part of the federal suit, or we won't be interested in you in the future, not because the federal judge will preclude us but because we choose not to be interested. Is this assumption correct? If not, why not?

The City risks both being precluded from the settlement and the Tribe looking elsewhere. Can the tribe still build without an MOU or IGA, of course, but not likely.

8. Will the Tribe allow the workers at the casino to unionize?

I'm not sure, researching that issue although they intend to pay prevailing wages, enter into a project labor agreement for construction.

9. If the IGA is voted upon through a referendum, and the vote turns down the IGA, would that be the end of the casino issue? Or would it simple be renegotiated by Council again? Could this result in a continual referendum situation?

If the IGA is turned down by voters, it will most likely end the issue. Could council legally negotiate again and force continual referendums? Yes, but it would be the height of political stupidity. When the people have spoken most elected officials respect those wishes and listen.

10. Could the council add "Declared an Emergency" to an IGA resolution, pass it, and thus prevent the voters the opportunity of a referendum?

Yes, with a 2/3's vote of council. But I have recommended against that as has most of council. The citizens can repeal legislation that has been enacted by council via emergency by initiating legislation to repeal what they did.

It's much easier to do and easier to understand if council simply passes the IGA without an emergency clause, thus allowing it to be referred to the voters.

11. Is your website correct that you have been practicing law for only 3 years?

Yes. I have been working pretty much continuously in the field of public policy since 1986. Starting in 1999 I went to law school part time at night for four years. I passed the bar on my first attempt in 2003 and started practicing.