

STATE OF TENNESSEE
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May 1, 2006

Opinion No. 06-080

Casino Gambling on Land Held by Federally Recognized Indian
Tribe Under Lease Agreement with the Tennessee Valley Authority

QUESTION

Does Article XI, Section 5, of the Tennessee Constitution, or any other state law provision, prohibit the establishment of a casino on lands within the State of Tennessee owned or leased from a federal agency by a federally recognized Indian tribe?

OPINION

The Tennessee Constitution prohibits the legislature from authorizing games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like. No exceptions are made in state law that would allow a federally recognized Indian tribe to conduct games of chance associated with casinos.¹

ANALYSIS

You provided a description of the land in question (near Vonore) and how it is held (by lease). Where the land is located, who holds the land and how it is held (in fee, by lease, etc.) is not relevant under state law. The Tennessee Constitution prohibits games of chance associated with casinos.

The Tennessee Constitution prohibits all lotteries, except a state lottery, and charitable lotteries in narrow circumstances, and it prohibits all games of chance associated with casinos, including, but not limited to slot machines, roulette wheels and the like. Tenn. Const., Art. XI, § 5. The constitutional provision does the following:

1. Prohibits the legislature from authorizing lotteries.
2. Requires the legislature to pass laws to prohibit the sale of lottery tickets in this state.

¹See also Op. Tenn. Att’y Gen. 01-064 (April 24, 2001) and Op. Tenn. Att’y Gen. 01-019 (February 7, 2001).

3. Creates two exceptions to the prohibition against lotteries:
 - (a) The legislature may authorize a state lottery if the net proceeds of the lottery's revenues are allocated to specified educational uses; and
 - (b) The legislature may authorize an annual event (lottery) operated for the benefit of a 501(c)(3) organization located in this state, as defined by the United States Tax Code.² Each house of the general assembly must pass the authorization by a two-thirds vote of all members.
4. Prohibits the legislature from authorizing games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels, and the like.

TN Const. Art XI, § 5.³

The Tennessee Charitable Gaming Implementation Law, Tenn. Code Ann. §§ 3-17-101, *et seq.*, fleshes out the 501(c)(3) annual event exception. It specifically states that the charitable games permitted at an annual event approved by the legislature may include raffles, reverse raffles, cakewalks and cakewheels. Tenn. Code Ann. § 3-17-102(8)(A). The law prohibits the following: pulltabs, punchboards, bingo, instant bingo, video lottery, instant and on-line lottery games of a type operated by the Tennessee education lottery corporation, keno and games of chance associated with casinos including, but not limited to, slot machines, roulette wheels, and the like.⁴ Tenn. Code Ann. § 3-17-102(8)(A) and (B).

²26 U.S.C. § 501 exempts certain organizations from federal taxation. 26 U.S.C. § 501(c)(3) describes one such exempt organization: basically, a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes.

³Tenn. Const., Art. XI, § 5, reads, in pertinent part, as follows:

The legislature shall have no power to authorize lotteries for any purpose, and shall pass laws to prohibit the sale of lottery tickets in this state, except that the legislature may authorize a state lottery if the net proceeds of the lottery's revenues are allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state. The excess after such allocations from such net proceeds from the lottery would be appropriated to [K-12 capital outlay projects] and [early learning and after school programs. . . .

All other forms of lottery not authorized herein are expressly prohibited unless authorized by a two-thirds vote of all members elected to each house of the general assembly for an annual event operated for the benefit of a 501(c)(3) organization located in this state, as defined by the 2000 United States Tax Code or as may be amended from time to time. . . . **[T]he amendment to Article XI, Section 5 of the Constitution of the State of Tennessee provided for herein does not authorize games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels, and the like.** (Emphasis supplied).

⁴See also <http://tennessee.gov/sos/charity/gaming/index.htm>.

Thus, under state law, the Eastern Band of Cherokees may not conduct games of chance associated with casinos in this state.

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