



**Upstate Citizens for Equality
Niagara Frontier Chapter**

836 Indian Church Road
West Seneca, NY 14224-1235
<http://www.upstate-citizens.org>

September 27, 2003

Philip N. Hogen, Chairman
National Indian Gaming Commission
1441 L Street NW
Suite 9100
Washington, DC 20005

Dear Chairman Hogen:

I am writing to you today on behalf of the members of Upstate Citizens for Equality regarding the purported Compact between the State of New York and the Seneca Nation of Indians.

This purported Compact is not valid under the Indian Gaming Regulatory Act. The Indian Gaming Regulatory Act makes Class III gaming lawful on Indian lands only if such activities are: (1) authorized by an ordinance or resolution adopted by the governing body of the Indian tribe and the Chairman of the National Indian Gaming Commission; (2) located in a State that permits such gaming for any purpose by any person, organization, or entity; and (3) conducted in conformance with a valid Tribal-State compact entered into by the Indian tribe and the State and approved by the Secretary of the Interior. 25 U.S.C. § 2710(d)(1), (3)(B). Currently the compact between New York and the Senecas fail the last two conditions.

Article 1 § 9 of the New York State Constitution which provides that no "gambling, except lotteries operated by the state and * * * pari-mutuel betting on horse races * * * shall hereafter be authorized or allowed within this state". New York Penal Law § Article 225 criminalizes the promotion of gambling, possession of gambling records and devices. Therefore the second condition set forth above is not met in that gaming is not allowed for any purpose by any person, organization, or entity within the State of New York.

The purported Compact is not valid under State law. This Compact is illegal and unconstitutional in that the State Legislature exceeded its power as limited by Article III Section 17 which provides "No private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title."; the State Legislature exceeded its power as limited by Article III § 20 of the New York Constitution which prohibits the legislature from passing any private or local bill "Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever."; in that it requires the state to lend its money or credit in violation of Article VII section 8 of the New York Constitution; the State Legislature exceeded its power by ratifying it through a special law in violation of the Home Rule provisions of Article IX of the New York State Constitution and the laws of the State of New York; the State will receive money from gambling activities in violation of various provisions of New York Penal Law Article 225 and 18 USC § 1166 and is otherwise against the public policy of the State of New York as expressed in various laws of this State which include, but is not limited to, The Donnelly Act (General Business Law § 340) and The Organized Crime Control Act (Article 460 of the New York Penal Law).



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Since this purported Compact is clearly in violation of the IGRA and invalid under State Law the Class III gaming being conducted at the Seneca Niagara Casino is illegal under 18 USC § 1166 and we hereby demand that you issue a closure order for the Seneca Niagara Casino until such time as it ceases the conduct of Class III gaming and we renew our request that you take immediate action to order the Mohawk and Oneidas to cease and desist from conducting any Class III gaming until such time as a Compact that complies with the IGRA is obtained that would cover the Turning Stone Casino and the Akwesasne Mohawk Casino.

Sincerely,

Daniel T. Warren
Chairman
Niagara Frontier Chapter of Upstate Citizens for Equality

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