

**Subject:** [Fwd: Attn: Penny Coleman - Senaneca Nation of Indians illegal gamin on lands acquired after October 17, 1988]

**From:** Daniel Warren <d.warren@upstate-citizens.org>

**Date:** Fri, 29 Jul 2005 10:45:26 -0400

**To:** Penny\_Coleman@nigc.gov

----- Original Message -----

**Subject:**Attn: Penny Coleman - Senaneca Nation of Indians illegal gamin on lands acquired after October 17, 1988

**Date:**Fri, 29 Jul 2005 09:34:56 -0400

**From:**Daniel Warren <[d.warren@upstate-citizens.org](mailto:d.warren@upstate-citizens.org)>

**To:**[info@nigc.gov](mailto:info@nigc.gov)

**CC:**[George.Skibine@bia.gov](mailto:George.Skibine@bia.gov), [James\\_Cason@ios.doi.gov](mailto:James_Cason@ios.doi.gov), [Michael\\_Olsen@ios.doi.gov](mailto:Michael_Olsen@ios.doi.gov)

I am writing to you regarding the Seneca Nation of Indians plan to acquire land in Erie County for the purpose of opening a Casino with Class III gaming as well as the land it has acquired and is currently attempting to acquire in Niagara County.

In your Secretary's letter of November 12, 2002 to the Governor and the President of the Seneca Nation, she set forth your reasons to neither approve nor disapprove the Compact, rather to let it take effect without action. Under these circumstances, the Compact is considered to have been approved, "but only to the extent the compact is consistent with [IGRA]" (25 USC § 2710 [d] [8] [C]). Contrary to the Secretary's belief in that letter the Seneca Nation Settlement Act does not qualify under the land claim settlement exception for the reasons that follow.

The IGRA permits gaming on Indian Land as defined in 25 U.S.C. § 2703(4), 25 CFR § 502.12. Lands that do not qualify as Indian lands under IGRA generally are subject to state gambling laws. See National Indian Gaming Commission: Definitions Under the Indian Gaming Regulatory Act, 57 Fed. Reg. 12382, 12388 (1992). The Seneca Nation of Indians currently did not have any Indian land within the City of Niagara Falls and does not have any within the City of Buffalo. In order for the Seneca Nation to acquire any property within the City of Buffalo it must go through the discretionary fee to trust process under either the Seneca Nation Settlement Act (25 U.S.C. § 1774 et seq.) or the Indian Reorganization Act (25 U.S.C. § 465).

The IGRA also prohibits gambling on land acquired after October 17, 1988 ("after acquired lands") with limited exceptions. The only arguable exception to this general prohibition relevant to this situation is the exception for lands acquired as a settlement of a land claim. The Seneca Nation's land claim has been dismissed by Judge Arcara in 2002 and this dismissal has been affirmed by the United States Court of Appeals for the Second Circuit. (see *Seneca Nation of Indians v. State of New York*, 382 F.3d 245, 383 F.3d 45 (09/09/2004) & *Seneca Nation of Indians v.*

State of New York, 382 F.3d 245, 383 F.3d 45 ( 09/09/2004)) Which leaves the Seneca Nation Settlement Act (25 U.S.C. § 1774, et.seq.) as the basis for acquiring any land. This act did not settle a land claim it settled a lease rate dispute not title to land.

Congressman LaFalce a co-sponsor of the legislation which became the Seneca Nation Settlement Act stated "This bill provides Federal sums to compensate the Seneca Nation for 3,000 leases that were obtained and perpetuated without the consent of the rightful owners--the Senecas. For nearly 99 years, the Senecas have been receiving minuscule payments averaging \$1 to \$3 per year per parcel of land. Clearly, the Senecas deserve appropriate compensation." (Cong. Rec., October 10, 1990, H9289) Likewise Congressman Houghton who was the sponsor of the legislation stated "The leases were imposed by Congress upon the Nation and upon the citizens. What happened was when these leases were imposed it kept the Nation in a near state of poverty, and also put a lock on any increasing increments in the rentals which could be received by the Nation. So this bill in front of us today gives a one-time \$35 million payment to be matched by \$25 million from the State. So this is what I respectfully ask of the Congress." (Cong. Rec., October 10, 1990, H9288) See also 25 U.S.C. § 1774(a)(1). Clearly this was a claim for monetary compensation much like a claim that could have been pursued through the Indian Claims Commission (ICC).

The National Indian Gaming Commission has issued a decision in In Re Wyandotte Nation Amended Gaming Ordinance and held that in order to fall within the land claim settlement exception to the IGRA's general prohibition of gaming on lands acquired after October 17, 1988, the claim involved must seek the return of the disputed land and not just monetary compensation for its loss. Specifically the NIGC held "To find that ICC money judgments fit within the plain language of the after-acquired lands exception would result in the exception swallowing the rule. The ICC handled large numbers of claims during its lifetime, and substantial relief was granted to many tribes. William C. Canby, Jr., American Indian Law at 267 (2nd Ed. 1988). Interpreting the land claim settlement exception to apply any time a tribe uses such monetary judgments to purchase land would open up the exception far beyond what was intended."

An Indian tribe may conduct gambling activities on trust lands acquired after October 17, 1988, if it meets the requirements of Section 20(b)(1)(a) of IGRA. Section 20(b)(1)(a) provides that gambling can occur on the land if the Secretary, after consultation with appropriate state and local officials and officials of nearby Indian tribes, determines that a gambling establishment on newly acquired land will (1) be in the best interest of the tribe and its members, and (2) not be detrimental to the surrounding community, but only if the Governor of the state in which the gambling activities are to occur concurs in the Secretary's two-part determination. This type of review has not been done

Furthermore since the Secretary has discretion under the Seneca Nation Settlement Act to take a particular piece of land into trust or not the requirements set forth in NEPA and 25 C.F.R. Part 151 are triggered. Also under state law the State has to comply with SEQRA (see Concern Inc. v. Pataki, 7 Misc.3d 1030(A) (N.Y.Sup. 05/25/2005)).

On behalf of the members of Upstate Citizens for Equality I request that

you take action to insure that the applicable laws are followed in the Seneca Nation's acquisition of land (past and present) and establishing a Class III gaming facility and all legal and environmental concerns are addressed as well as the required public comment periods prior to taking any land in to trust or permitting any gaming on these after acquired lands. If they are not in compliance with law we request that you compel the closure of such illegal gambling until such time, if any, they are able to comply with the law.

Sincerely,

Daniel T. Warren  
Chair

Niagara Frontier Chapter of Upstate Citizens for Equality, Inc.

<http://www.upstate-citizens.org>