

# CASINO IMMUNITY

The following current issues analysis deals with a decision of the Minnesota Supreme Court that “*Indian-owned casinos are immune from lawsuit because their tribal owners are sovereign governments*”<sup>1</sup>.

According to U.S. law, no individual can sue a government of a sovereign nation: For instance, executive offices of the U.S. government (such as the IRS, the CIA or even the Army) cannot be sued for any damage they might have inflicted upon individual U.S. citizens. This is why Vietnam or Gulf War veterans have no means of enforcing compensation for the health consequences of chemical warfare they might have suffered. Government agencies are generally immune under U.S. law.

It then follows that Indian tribes are considered sovereign nations: They were originally declared independent nations because the U.S. government needed some legal basis for treaties with American Natives in order to cede their lands. To ensure that the President would be the only one entitled to signing treaties with Indian nations, the Non-Interference Act was issued (however largely ignored and also seldom enforced). When the status of Native tribes as sovereign nations later interfered with the U.S. government policy of assimilation, attempts were made to pressure Indians into giving up this status: some were forced to adopt U.S. government models that denied their tribal traditions of leadership. These activities peaked in the Menominee Termination Act which declared the very existence of Menominee culture null and void. Since the undoing of the Termination Act, however, tribal independence has been more or less secured, which is underlined by the recent decision of the Minnesota Supreme Court stated above.

Unlike many non-Indian casinos, tribal gaming halls are mostly run by the tribe itself, that is, there is no single owner. Rather, all the members of the Indian nation participate in the ownership of the casino and share the profits. This illustrates the basic traditional value of community: the entire tribe shares the work as well as the “harvest”. The decisions necessary for running a casino are discussed and carried out by a council rather than one “boss”.

The individual case in question deals with the following: “*A former guard sued the owner of Mystic Lake Casino, Little Six, Inc., contending that her ex-boss coerced her to have sex and assaulted her and fired her when she told him she was pregnant with his baby.*”<sup>1</sup> Interestingly enough, the article gives no intelligence whatsoever as to the truth of

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1 Source: “*News From Indian Country - The Nation’s Native Journal*”, late Nov. 1996, Volume X, Number 22, Page 3A.

these accusations. There is no evidence presented because this would require a lawsuit - which has been declared groundless before it could have started. The primary question was not what had actually taken place, but whether it was at all possible to sue the representative of an Indian Nation in the first place.

As a result of the court's 5-2 decision that representatives of sovereign nations could not be sued, "*the attorney of the woman who filed suit [...] said he is seriously considering appealing to the U.S. supreme court*". He also stated that "*anyone who is an employee in one of these organizations or is a patron at one of these casinos essentially is without any rights.*" This demonstrates mainly the critical implications of the impossibility of suing government offices in general. It would be interesting to know how many cases of attempting to sue the Army or the like have fumbled in the same way. The attorney of this specific case does not so much make an incorrect observation, he merely fails to include the perspective on other cases: When it comes to lawsuits, the employees of Indian casinos are no more or less disadvantaged than U.S. soldiers - and *there* is an aspect to set the perspective right: how many more people serve in the U.S. armed forces than in Indian casinos?

The Indian attorney involved in the case pointed out that this lawsuit would better be resolved at a tribal court - although he could not be reached for a comment, it can be assumed that this confrontation could be handled in the fashion of an orderly lawsuit at the tribal court which is not subject to the U.S. directive that makes it impossible to sue government representatives. It would instead be subject to Indian laws outside of the validity of federal or state U.S. law. The article does however not give any information about how this proposal from the Native side was received by the suing party. The declaration to proceed to the U.S. supreme court, however, suggests unwillingness to consider this alternative.

Also, in addition to suing the boss of the casino as a representative of the tribal organization, the former guard is suing him (and others) individually. I assume that these suits will take place just like any other because they are directed against individual persons, not representatives. These individuals are probably not protected from being sued since legal immunity only arises from political positions, not from the person itself. However, these are only assumptions I have to make because the article does not offer any more information about them. After all, this case demonstrates the problematic implications of the U.S. law forbidding lawsuits against governments as well as the still prejudiced approaches to American Indian organizations.