

[Nation will file motion to reconsider in reservation tax case](#)

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By Shannon Shaw
Osage News

The Nation will file a motion to reconsider after the U.S. 10th Circuit Court of Appeals ruled against the Nation on Friday in the Nation's case against the Oklahoma Tax Commission. The case was heard Jan. 11.

"The Osage reservation is crucially important politically, socially, culturally and economically for the Osages, and we will stand firm in defending our rights," said Osage Nation Principal Chief Jim Gray in a prepared release. "In this case, the court departed from precedent and glossed over uncontroverted evidence provided by our counsel and established new law based on theories and opinions of a handful of historians."

"Acts of Congress specific to the Osage clearly recognize the Osage Nation has a reservation, and that has never changed," Gray said.

The appeals court affirmed the case made by the attorneys for the Oklahoma Tax Commission, that the reservation was always intended to be disestablished and that the 1906 Act and others did disestablish the reservation.

The Nation maintains that the Osage Reservation was never disestablished by any act of the U.S. Congress and that it has been repeatedly recognized by the state in terms of gaming revenues and has been recognized by the National Indian Gaming Commission as Indian Country. The Nation argues that Osages working on the reservation are exempt from paying state taxes because of these facts.

The nine-year-old case was first filed in 2001 in federal court in Tulsa. The case then went to the 10th U.S. Circuit Court of Appeals where it ruled in December 2007 that the Nation could proceed against individual members of the Oklahoma Tax Commission. U.S. District Judge James Payne ruled in February of 2009 that Osage Nation employees are not exempt from paying state income taxes and that Osage County is not the Osage Reservation's boundaries. The Nation asked him to reconsider his "lousy decision," as Gray put it at the time, but Payne let the ruling stand.

“The state might view this as an opportunity to continue collecting tax revenue from Osage citizens, but the minimal amount of money at issue in this case is vastly exceeded by the economic losses to the state that will ensue should this decision stand,” Gray said in the release. “The state has handled this matter very recklessly and apparently without consideration of the true impact to Oklahoma’s economy.”

In reference to the court’s handling of the case, Gray warned all federally-recognized tribal governments within the jurisdiction of the court that the 10th Circuit is no longer bound by precedent.

“They’re operating under new rules and all tribes had best take notice. By establishing new law and not following precedent, their own and that of the Supreme Court, the 10th Circuit court has signaled that every tribe with a reservation is at risk,” Gray said. “The same thing could happen to them so we are hopeful that the 10th Circuit will reconsider its decision and remain faithful to established federal law.”

Gray said that if the appeals court decides not to reconsider its ruling the Nation will appeal to the highest court, the U.S. Supreme Court.

Three casinos still not on trust land

In a March 10, 2009 article by the Osage News, an anonymous source in the Chief’s office said that the Nation was in the process of filing trust applications for the Tulsa, Skiatook and Ponca City Million Dollar Elm casinos. Chief Gray said in a phone interview today that the Nation has been involved in the filing process for the past six months and is currently gathering necessary information to give to the Bureau of Indian Affairs.

Approval of a land-into-trust application could take between six months to three years. If the Nation ultimately loses the case against the tax commission, and the three casinos still aren’t on trust land, the Nation could lose all three casinos.

In order for tribal Nations to own and operate gaming facilities the federal government requires that those gaming facilities be on restricted Indian land, in other words, trust land. The Nation bought the land that houses the Tulsa, Skiatook and Ponca City MDE’s from private landowners.

The Nation didn’t immediately put the land into trust when it first bought the land for the three casinos because the federal National Indian Gaming Commission approved the Osages’ claim that Osage County was also the reservation, the source said in the 2009 Osage News article. The state signed the compact as well, a de facto recognition that the county is also the reservation, the source said.

The Nation employs over 1,600 people in Oklahoma, with a payroll of over \$62 million.

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