

Nevada Gaming Law History

in the Making

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Mohegan Tribe and San Manuel Band of Mission Indians Lead Native American Tribes in Establishing Operational Foothold in Las Vegas



One of the important recent developments in regulated gaming in Nevada, and concomitantly, Nevada gaming law, is the entrance into the Las Vegas market of Native American tribes with no historical connection to this state as casino owners or operators.

Beginning in 2009 with the U.S. Supreme Court's decision in *California v. Cabazon Band of Mission Indians*,¹ Native American tribes, typically with the assistance of non-tribal gaming enterprises, began developing and operating casinos and casino resorts on tribal lands. In most cases, a tribe would contract with a known third-party commercial casino entity to

finance and develop a casino property on the tribe's reservation, or on additional land taken into trust by the tribe and enter into a separate management agreement for the third party to operate the property once developed. These management agreements were (and are) typically limited by the Indian Gaming Regulatory Act (IGRA)² to a term of five years, but seven-year terms may be approved by the chair of the National Indian Gaming Commission.³ In many cases, by the end of the term, or perhaps following a second term, the tribe will have learned enough about casino and resort operations to allow the management agreement to expire and assume operational control of its own property.

Additionally, IGRA requires that a tribe enter into a compact with the government of the state where its reservation is situated.⁴ Among other things, the compact provides for some

degree of regulatory oversight of the tribal casino by a state agency or tribal regulatory authority.⁵

Until 2020, only two tribes had developed and operated casinos in Nevada, both under compacts entered into with the state and approved by the governor.



Neither were located in Nevada's population centers of Reno or Las Vegas. That changed in 2020 when the Mohegan Tribal Gaming Authority, doing business as Mohegan Gaming & Entertainment (MGE), entered the Las Vegas market. MGE is an instrumentality of Mohegan Tribe of Indians of Connecticut with its flagship casino resort, the Mohegan Sun, developed in the 1990s on tribal land in Uncasville, Connecticut. Through a newly created wholly owned subsidiary that does business as Mohegan Sun Casino Las Vegas, MGE entered into a lease agreement in July 2019 with the owners of the former Hard Rock Hotel Casino to operate the casino in the redeveloped Virgin Hotels Las Vegas resort. The resort closed in February 2020 and was scheduled to reopen in November or December of that year following an extensive remodel.



Because the Mohegan Sun Casino Las Vegas would not be situated on the reservation or trust lands of the Mohegan Tribe, the entity leasing the casino was subject to the Nevada Gaming Control Act,⁶ just as any other commercial casino operator. Mohegan Sun Casino Las Vegas was therefore compelled to obtain a nonrestricted gaming license from the Nevada Gaming Commission upon the recommendation of the Nevada Gaming Control Board prior to reopening of the property. It was, however, the unique ownership of the casino operator that drove the significant gaming law, which could be framed as follows: Because MGE is not a corporation, partnership, limited liability company, or other traditional business entity, and because Nevada law typically requires all shareholders of a gaming licensee to be licensed,⁷ who among the approximately 2,000 members of the Mohegan Tribe would be required to apply for a gaming license or finding of suitability to own or control the gaming licensee?

MGE's Mohegan Sun Casino Las Vegas operating entity is a limited liability company that is wholly owned by a single member, another limited liability holding company, which in turn is wholly owned by MGE. Moreover, MGE – by virtue of having issued debt that is publicly traded – is considered a publicly traded corporation (PTC) under Nevada gaming law.⁸ This ownership structure allowed MGE to approach the gaming application process in much the same way a typical PTC would. That is, in lieu of having all of its shareholders apply for licensing (or in this case all of its tribal members), only those shareholders having significant influence over the entity's management of

the Nevada gaming enterprise would need to be found suitable.

Thus, with respect to obtaining Nevada gaming approvals, Mohegan Sun Casino Las Vegas applied for a nonrestricted gaming license and a license to operate a gaming salon (private gaming area), as well as manufacturer's and distributor's licenses for the operation of the casino inside the Virgin Hotels Las Vegas. Its sole member, a limited liability company known as MGNV Holding, LLC, applied for registration as an intermediary holding company and to be licensed as sole member of the casino operating entity. MGE applied for registration as a PTC and for a finding of suitability as the sole member of the intermediary holding company.

In addition to the entity applications, a total of 14 individual applications were initially filed, one for each of the nine members of the tribe's management council (who also serve concurrently as MGE Management Board members); one for each of MGE's chief executive officer, chief operating officer, chief financial officer, and chief information officer (also commonly known as the chief technology officer); and one for the general manager of the casino. Four of the individual applicants (the board chair, CEO, COO and CFO) filed for licensing as managers and officers of both Mohegan Sun Casino Las Vegas and the intermediary holding company. Those same four, as well as the CIO and other eight members of the MGE Board, also applied for findings of suitability as officers or directors and, in the case of the MGE Board members, "controlling persons" of MGE.

The choice to have all its members apply and be investigated for suitability rested entirely with the MGE Management Board. It could have delegated operational control of the Nevada casino to a smaller committee of the board and had just two or three committee members applied for licenses and findings of suitability, but the board concluded that such a decision was inconsistent with how it conducted the tribe's gaming business, which had already spread beyond Connecticut to other regulated gaming jurisdictions.

MGE's Nevada gaming applications were filed in October 2019. A lengthy

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and expensive investigation followed, made even more difficult and complex by the onset of the COVID-19 pandemic in March 2020. Fortunately, by February 2020, the Nevada Gaming Control Board investigators had conducted the initial interviews of the individual applicants and made site visits to the Mohegan Sun resort, as well as the headquarters of both MGE and the Mohegan Tribe in Connecticut.

Thanks to the extensive efforts of all involved, the Nevada gaming applications were brought to hearings before the Nevada Gaming Control Board and the Nevada Gaming Commission in October 2020, just 12 months after filing. Following a lengthy presentation that covered the history of the Mohegan Tribe, its operations in Connecticut and elsewhere, its management team, and its plans for the Las Vegas casino, all the requested licenses and approvals were granted. This made the Mohegan Sun Casino Las Vegas the first off-reservation, purely commercial casino operated by a Native American tribal enterprise in the state of Nevada. Ultimately, following construction delays and complications caused by the pandemic, the casino and the redeveloped resort opened in March 2021.

Following this accomplishment, Native American tribes continued to enter Nevada's gaming market. The San Manuel Band of Mission Indians, owners and operators of a casino resort in Highland, California (in the Inland Empire region of Southern California), entered into an agreement with Red Rock Resorts in May 2021 to acquire the then-shuttered Palms Casino Resort in Las Vegas for \$650 million. Unlike the Mohegan Tribe, the San Manuel Band decided to delegate responsibility for its off-strip Las Vegas casino to a small committee of its management council, which greatly streamlined the application and investigation process. In December 2021, the San Manuel Band was granted the necessary licenses and approvals by the commission to close the acquisition of the Palms that month. The resort is expected to reopen to the public sometime this year.

Just days before the San Manuel Band's licensing hearing, Hard Rock International, which is owned by the Seminole Tribe of Florida, announced it had entered into an agreement with MGM Resorts International to acquire The Mirage resort on the Las Vegas Strip for \$1.1 billion. That transaction is still pending. At the time this article was written, there was no insight as to its specific corporate structure or its approach to licensing Hard Rock International intends to employ in Nevada.

3. Id. § 2711(b)(5).
4. Id. § 2710(d)(1)(C).
5. See Id. § 2710.
6. See generally chapter 463 of NRS.
7. NRS 463.5735.
8. NRS 463.643.



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ENDNOTES:

1. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).
2. Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721.

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