



# GABRIELINO-TONGVA TRIBE

*A California Indian Tribe historically known as San Gabriel Band of Mission Indians*

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## 1. THREE LEGAL ISSUES SUMMARIZED

The Gabrielino-Tongva Tribe provides answers to three frequently asked legal questions. You may address further questions to Mr. Jonathan Stein, CEO for the Tribe and President of St. Monica Development Company. Mr. Stein is a published author and nationally-recognized expert on state-recognized Indian tribes.

(1) The Tribe holds an inherent right to conduct gaming under the existing language of California Constitution, Art IV, §19(f). To implement its right to conduct gaming, the Tribe requires

- New legislation establishing a California State Indian Reservation for the Gabrielinos and interpreting §19(f). And,
- A tribal gaming compact signed by the Governor and ratified by the Legislature.

(2) The federal Indian Gaming Regulatory Act (“IGRA”) does not “preempt” California law outside of federal “Indian lands”, or otherwise prevent the Tribe from gaming on a California State Indian Reservation. The Gabrielino tribal gaming compact may allow for, but does not require, any federal approval. And,

(3) There are 15 states which recognize a total of 61 Indian tribes not recognized by the United States. There are one or more State Indian Reservations in 8 states, although none has gaming yet. The mechanism for establishing a California State Indian Reservation is discussed.

## 2. CONSTITUTIONAL ANALYSIS OF PROP 1A, CAL. CONST. ART. IV, §19(F)

According to the California Constitution Article IV, Section 19(f):

“... the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California in accordance with federal law. Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.”

Two retired California Supreme Court Justices, Cruz Reynoso and Armand Arabian, interpret the second sentence of §19(f) to permit the state-recognized Gabrielinos to conduct gaming on “tribal lands”.

### Tribal Council

Hon. Bernie Acuna

Hon. Linda Candelaria

Chief Executive Officer: Jonathan Stein, St. Monica Development Co., LLC

Hon. Martha Gonzalez Lemos

Hon. Suzanne Rodriguez

Tribal Administrator: Barbara Garcia

Hon. Laurie Salse

“**Tribal lands**” is a term of art which normally includes both state Indian reservations and federal Indian reservations. Its use appears to indicate that, if the California Legislature passes the Gabrielino gaming bill and creates a new state Indian reservation, the Gabrielinos would be legally allowed to conduct gaming there pursuant to a tribal gaming compact.

The two former California Supreme Court justices employed different legal analysis’ to reach the same result. Both agreed that the term of art “**Indian lands**”, used in the first sentence of §19(f), refers to federal Indian reservations and is consistent with other references in the first sentence to federally-recognized tribes. And both agreed that, in the second sentence, “**tribal lands**” is a different term of art, and according to the standard rules of Constitutional interpretation used in California, “tribal lands” must be accorded a different meaning than “Indian lands”.

Professor Reynoso argued that the use of different terms creates an ambiguity that must be resolved by legislative interpretation, and so allows the Legislature to pass the Gabrielino gaming bill. Mr. Arabian argued that the Legislature’s inherent power to interpret the meaning of any constitutional provision is sufficient to uphold the Gabrielino gaming bill, irrespective of whether any ambiguity exists.

These arguments are not unprecedented. In 2004, the Tribe presented similar arguments in a 120-page legal brief to the California Attorney General. They were presented in 2006 to Legislative Counsel (the official legal office representing the Legislature).

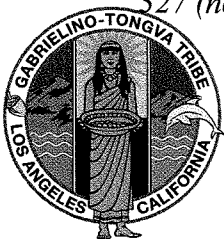
Since that time, both agencies have disagreed with these interpretations, for both legal and political reasons. Importantly, both agencies do agree that, should the Legislature adopt the Gabrielino gaming bill, their statutory duties require them to support this legislative action and its constitutional interpretation in any subsequent legal challenge.

Therefore, should the Legislature and Governor act to adopt legislation allowing the Gabrielinos to conduct gaming on a Gabrielino State Indian Reservation, and should an opposing party challenge the legislation adopted in court proceedings, both the California Attorney General and Legislative Counsel would argue for the constitutionality of the Gabrielino gaming bill.

### **3. IGRA DOES NOT PREEMPT CALIFORNIA LAW OR BLOCK GAMING ON A GABRIELINO STATE INDIAN RESERVATION**

California holds inherent authority to regulate vice activities, such as gaming, under the 10<sup>th</sup> Amendment Of the United States Constitution and the State’s well-recognized police powers.

Federal case law and statutory language make clear that the *Indian Gaming Regulatory Act*, 25 U.S.C. §§ 2701 *et seq* (“**IGRA**”), does not preempt the field of gaming by state-recognized tribes in California. *See, e.g., Nixon v. Coeur d’Alene Tribe* 164 F.3d 1102 (8th Cir. 1999); Koenig & Stein, *Lost In The Shuffle: State-Recognized Tribes & The Tribal Gaming Industry* 40 U.S.F.L.R. 327 (no. 2, winter 2006).



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In Nixon, a federal Indian tribe conducting gaming on its federal Indian reservation decided to undertake a new gaming activity, internet gaming. To avoid rules established by the National Indian Gaming Commission prohibiting such gaming, it conducted the internet gaming activity from a location off reservation and within the State of Missouri.

The State of Missouri sued to stop the federal tribe from conducting internet gaming, claiming that, as a sovereign State, Missouri possesses the right to regulate gaming by federally-recognized Indian tribes, under the 10<sup>th</sup> Amendment, and that this right was not be preempted by IGRA, which reaches gaming activity on “Indian lands” alone.

The Tribe argued that the opposite was true, that IGRA preempts state law entirely, and so Missouri law could not stop the gaming activity, even though it was not conducted on “Indian lands” as defined in IGRA, but rather on state sovereign lands.

The Court found that IGRA does not preempt state law or otherwise control any gaming activities that are not conducted on “Indian lands” as defined by IGRA itself.

As our opinion in *Dorsey* explained at length, the IGRA established a comprehensive regulatory regime for tribal gaming activities *on Indian lands*. **Both the language of the statute and its legislative history refer only to gaming on Indian lands....Once a tribe leaves its own lands and conducts gambling activities on state lands, nothing in the IGRA suggests that Congress intended to preempt the State's historic right to regulate this controversial class of economic activities.** For example, if the State of Missouri sought an injunction against the Tribe conducting an internet lottery from a Kansas City hotel room, or a floating crap game in the streets of St. Louis, the IGRA should not completely preempt such a law enforcement action simply because the injunction might “interfere with tribal governance of gaming.”\*\*\*\* If the Tribe's lottery is being conducted on its lands, then the IGRA completely preempts the State's attempt to regulate or prohibit. See 25 U.S.C. §2710(d)(1). But if the lottery is being conducted on Missouri lands, the IGRA does not preempt the state law claims--indeed, it does not even appear to provide a federal defense--and the case must be remanded to state court.

*Nixon v. Coeur d'Alene Tribe*, 164 F.3d at 1108-09 (emphasis added). The Gabrielino State Indian Reservation would be California sovereign lands, and the gaming would be conducted pursuant to California law.

The Gabrielino State Indian Reservation would be designated as “tribal lands” consistent with the second sentence of Cal.Const.Art. IV, §19(f), and not as “Indian lands” as defined in IGRA in the legislative bill.

The absence of federal preemption was confirmed at U.S. Department of Justice and U.S. Department of Interior meetings. In May 2006, Mr. Stein and The Crane Group met with officials



at Indian Resources Section of the Department of Justice as well as the Office of Solicitor General at the Department of Interior.

Based on these meetings, the Tribe believes that USDOJ and USDOI agree with the Tribe, that IGRA does not preempt gaming by a state-recognized tribe operating on a state Indian reservation. These federal officials saw no federal interest at stake in AB 1561. Nonetheless, the Gabrielino compact might seek a “federal approval” to the extent that a formal opinion that there is no federal preemption is desired.

**4. 16 STATES RECOGNIZE 62 INDIAN TRIBES WHICH ARE NOT FEDERALLY RECOGNIZED. 8 STATES HAVE ONE OR MORE STATE INDIAN RESERVATIONS.**

Professor Koenig and Mr. Stein have collaborated on a second law review article, which was recently published this month by Santa Clara Law Review. See, *Federalism and the State Recognition of Native American Tribes: A Survey of State-Recognized Tribes and State Recognition Processes Across the United States*, 48-2 S.C.L.R. \_\_\_\_ (2007).

The article provides a national overview of the legal status of state-recognized Indian tribes, which are not recognized by the United States. Part One discusses how state recognition functions within our federalist system and Part Two categorizes the various state recognition schemes into state law, administrative, legislative (used in California) and executive recognition processes. The table on page 5 summarizes the article’s findings.

A California State Indian Reservation would be established following much the same legal mechanism by which state parks have been established for over 140 years. First, the Gabrielinos would purchase land. Then, the State of California would take this land into trust for the purpose of establishing a State Indian Reservation for the Gabrielinos.

This mechanism can be seen at work in famous spots in both Sacramento and Los Angeles County. For example, in the Leland Stanford Mansion State Historic Park, lies in urban Sacramento at 8<sup>th</sup> and N Streets. Mr. Stanford purchased the land, built his mansion, and the State took the land and mansion into trust.

NO.	STATE	# STATE TRIBES	STATE RESERVATIONS	RECOGNITION PROCESS	ERA(S) OF STATE RECOGNITION
1	Alabama	7	Yes	State Law / Administrative	Modern (1970s)
2	California	2	No	Legislative	Modern (1990s)
3	Connecticut	3	Yes	Executive / State Law	Pre-Revolutionary/ Modern (1970s)
4	Delaware	1	No	State Law	Post-Revolutionary (1880s)



5	Georgia	4	No	State Law / Legislative	Modern (1990s/2000s)
6	Hawaii	1 (consisting of native Hawaiians as a group)	Yes (although not technically a reservation, considerable land held in trust by the state for the benefit of native Hawaiians)	State Law	Modern (1950s)
7	Louisiana	9	No	Legislative	Modern (1970s to 2000s)
8	Massachusetts	6	Yes	Administrative	Modern (1970s)
9	Montana	1	No	Executive/ State Law	Modern (2000s)
10	New Jersey	3	Yes	Legislative/State Law	Modern (1980s/1990s)
11	New York	2	Yes	Executive / State Law	Pre-Revolutionary/ Modern
12	N. Carolina	7	No	State Law	Post-Revolutionary (1880s)/Modern (1950s- 2000s)
13	Ohio	1	No	Legislative	Modern (1970s)
14	S. Carolina	5	Yes	State Law / Administrative	Modern (2000s)
15	Vermont	2	No	State Law	Modern (2000s)
16	Virginia	8	Yes	Executive / Legislative / State Law	Pre-Revolutionary/ Modern (1980s)
	Totals	62	8 states	11 State Law 3 Administrative 6 Legislative 4 Executive	3 Pre-Revolutionary 2 Post-Revolutionary 14 Modern

Reprinted with permission from Koenig & Stein, *Federalism and the State Recognition of Native American Tribes: A Survey of State-Recognized Tribes and State Recognition Processes Across the United States*, 2007 *Santa Clara Law Review* \_\_\_\_.



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