

MAY 17 1994

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COURT OF THE SHAKOPEE MDEWAKANTON
DAKOTA (SIOUX) COMMUNITY

COUNTY OF SCOTT

STATE OF MINNESOTA

Leonard L. Prescott and
Frank William Johnson,

Plaintiffs,

vs.

No. 040-94

Shakopee Mdewakanton Sioux
(Dakota) Community Business
Council, Stanley Crooks, and
Shakopee Mdewakanton Sioux
(Dakota) Gaming Commission,

Defendants.

MEMORANDUM AND ORDER

In this matter, which was filed with the Court on May 16, 1994, the Plaintiffs seek declaratory and injunctive relief against actions of the Gaming Commission ("the Gaming Commission") of the Shakopee Mdewakanton Sioux (Dakota) Community ("the Community"). The Plaintiffs are officers of Little Six, Inc. ("LSI"), a corporation chartered by the Community. LSI owns and operates the gaming enterprises of the Community.

The Plaintiffs allege that the Gaming Ordinance, under which LSI has functioned since April, 1993, was not properly adopted by the Community; and they assert that the Gaming Commission, which has suspended gaming licenses which the Plaintiffs hold, acted improperly because it purported to be implementing the allegedly inoperative ordinance. The Plaintiffs also allege that the Gaming

Commission has scheduled a hearing on May 19, 1994, on the issue of whether the licenses should be repealed, again under the allegedly non-existent ordinance; and they allege that the Defendant Stanley Crooks, the Chairman of the Community, has signed a "Trespass Order", forbidding the Plaintiffs from entering the premises of the gaming enterprises owned and operated by LSI, pending the results of that hearing.

With the filing of their Complaint, the Plaintiffs moved for a Temporary Restraining Order, asking the Court to restrain the Defendants from taking any action to enforce the Gaming Commission's license suspension or Mr. Crooks' Order. A hearing on the Plaintiffs' motion, by telephone conference call not on the record, was held on May 17, 1994. The Plaintiffs were represented by Douglas A. Kelley, Esq., John M. Lee, Esq., and Steven E. Wolter, Esq.; the Defendants were represented by Kurt Bluedog, Esq., and Andrew Small, Esq..

At the conclusion of the hearing, the undersigned denied the Plaintiffs' motion, on the grounds that the record before the Court did not justify the extraordinary relief of a Temporary Restraining Order. Specifically, when the harm that might be worked to the public interest if the Order were granted is weighed against the harm that may be worked to the Plaintiffs if it is denied, the balance requires denial.

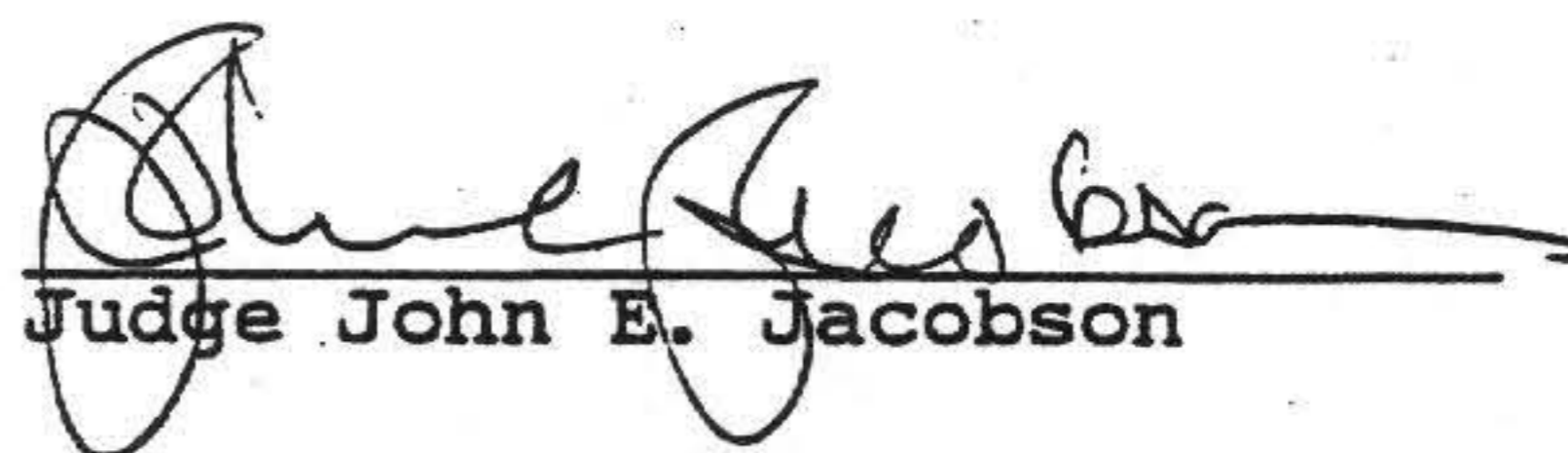
One significant factor in the Court's decision concerns the timing of the Plaintiffs' request. The ordinance at issue was twice voted on by the General Council of the Community, in March and April, 1993. It subsequently was sent to the National Indian

Gaming Commission for review and, Defendants' counsel asserted during the hearing, was approved by that entity. The Plaintiffs apparently have applied for and received licenses under the ordinance. Apparently at no time prior to the filing of this litigation did the Plaintiffs take formal steps to challenge the ordinance's validity. With this history, although the Plaintiffs may not be foreclosed from raising the question of the ordinance's effectiveness, they bear an extremely heavy burden in attempting to convince the Court that the extraordinary remedy of preliminary relief is appropriate.

The Plaintiffs maintain that reputations--theirs and the Community's--may be damaged by adverse publicity, if the Gaming Commission is permitted to proceed. But if such harm occurs, and if it is not justified by the law, then at least to some extent it can be mitigated by subsequent proceedings. On the other hand, if the Court were to issue an Order that restrained the Community from operating under the single legislative act that, under section 11 of the Indian Gaming Regulatory Act of 1988, permits its gaming to take place, the consequences to the Community's businesses, its members, its employees, and the public at large would be difficult to calculate.

Accordingly, since at least three of the factors which are required for the issuance of a temporary restraining order are not present at this time in this matter, the Plaintiffs' motion is DENIED.

May 17, 1994


Judge John E. Jacobson