

Attorney General's Opinion

Attorney General, Richard Blumenthal

October 1, 2003

The Honorable Louis C. DeLuca
Senate Republican Leader
Suite 3400
Legislative Office Building
Hartford, CT 06106-1591

Dear Senator DeLuca:

You have asked for a formal opinion as to whether Public Act No. 03-45, An Act Concerning Secondhand Smoke in Work Places, applies to Foxwoods and the Mohegan Sun casinos. In particular, you ask whether section 14 of the gaming compacts,¹ which requires the Mashantucket Pequot and Mohegan Tribes to adopt health and safety standards that are at least as rigorous as the State's health and safety laws, requires application of the smoking ban to the Tribes' gaming facilities. We conclude that Public Act No. 03-45 expressly excludes casinos with casino liquor permits from the smoking ban, and that section 14 of the gaming compacts does not require a different result.

Pursuant to Public Act No. 03-45, smoking is prohibited in most places of employment and most places open to the public, including restaurants and bars where alcohol is served. The legislation was clearly intended to protect employees and the public from the well-documented and detrimental health effects of secondhand smoke.

Public Act No. 03-45 specifically applies to bars, cafes, restaurants and other establishments that sell alcoholic beverages pursuant to a permit issued by the Department of Consumer Protection under specified subsections of Title 30 of the General Statutes.² Public Act No. 03-45, § 1(b)(1)(E). Conn. Gen. Stat. § 30-37k authorizes a special liquor permit exclusively for casinos, and this particular statutory section was excluded from the enumerated list of permits subject to the smoking ban. Thus, as long as the casinos operate under a valid casino liquor permit issued pursuant to Conn. Gen. Stat. § 30-37k, the casino premises are not subject to the smoking ban.³ We understand that the Mohegan Tribe operates the Mohegan Sun under a casino permit and that the Mashantucket Pequot Tribe has applied for a casino permit for Foxwoods, and is presently operating under a temporary casino permit pending action on its permit application.

The fact that the gaming compacts with the Tribes include a provision governing health and safety matters does not change the outcome of our opinion. The gaming compacts contain identical provisions concerning the applicability of the State's health and safety standards to the Tribes' gaming facilities. Section 14 of the compacts provides:

Tribal ordinances and regulations governing health and safety standards applicable to the gaming facilities shall be no less rigorous than standards generally imposed by the laws and regulations of the State relating to public facilities with regard to building, sanitary, and health standards and fire safety.

Section 14 requires the Tribes to adopt and impose health and safety laws that are at least as rigorous as the State's health and safety standards.⁴ The phrase "health and safety standards" is not specifically defined in the compacts, but, by its terms, applies broadly to include all of the State's health and safety laws. The smoking ban legislation involves an obvious and important health issue, and therefore, implicates application of section 14 of the compacts.

Thus, under section 14 of the gaming compacts, the Tribes are required to adopt health and safety standards that are as restrictive as the State's standards. In enacting Public Act No. 03-45, the Legislature chose to exclude casino premises operating under a casino liquor permit from the smoking ban. Since the State does not ban smoking in casinos operating under a casino permit, section 14 of the compacts does not require the Tribes to ban smoking in their casino premises.

Accordingly, as long as the Tribes operate the casinos under a valid casino liquor permit pursuant to Conn. Gen. Stat. §30-37k, state law does not require them to prohibit patrons from smoking on the casino premises. I trust that this letter responds to your question.

Very truly yours,

RICHARD BLUMENTHAL
ATTORNEY GENERAL

¹The document that governs the Mashantucket Pequot Tribe's gaming operations is not technically a "gaming compact" but rather "federal procedures" that were imposed on the State by the Secretary of Interior under the Indian Gaming Regulatory Act. Because that distinction has no relevance to this opinion, and the health and safety provisions of the two gaming documents are identical, for ease of reference, we refer to both documents as "gaming compacts."

²The statutory subsections specified in Public Act No. 03-45(b)(1)(E) are: sections 30-20a, 30-21, 30-21b, 30-22, 30-22c, 30-28, 30-28a, 30-33a, 30-33b, 30-35a, 30-37a, 30-37c, 30-37e, 30-37f, 30-23, and after April 1, 2004, 30-22a and 30-26.

³"Casino" is defined in the statute as "the premises within which a gaming facility is operated with other facilities, including, but not limited to, restaurants, hotels, nightclubs, bingo halls or convention centers." Conn. Gen. Stat. §30-37k(a)(1).

⁴Tribes may impose more restrictive health and safety measures, if they choose to do so.