

Written by Administrator
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It has been nearly six months since a U.S. District Court ruled the Fond du Lac Band of Lake Superior Chippewa must abide by an agreement to share a portion of profits from the Fond-du-Luth Casino with the city of Duluth. But so far, the city hasn't seen a penny

of the money the band was ordered to repay.

Also, Duluth's ongoing share of casino revenues since the court rendered a summary judgment in April has gone unpaid, with the city last receiving a cut more than a year ago.

But band officials say they have continued to explore their legal options since the summary judgment was handed down.

"Obviously, we have our position, and the city has its position," said Karen Diver, chairwoman of the Fond du Lac Band.

The band sought to have its profit-sharing agreement with the city thrown out as a violation of the National Indian Gaming Regulatory Act. That act requires American Indian bands to use gambling revenues for "the sole proprietary interests of the tribe" and that payments to outside entities must be justifiable for the amount of goods and services received. In its profit-sharing agreement with Duluth, the Fond du Lac Band argued that threshold was not met.

To put it in perspective, consider that in a typical year, Duluth collects \$5 million to \$6 million from the casino.

The band not only halted its payments but demanded repayment of about \$75 million it forked over in the past under the profit-sharing agreement.

To call the case complicated would be an understatement. Since September 2009, the docket has involved seven lawyers making 163 separate legal filings and generating more than 3,000 pages, said Bob Maki, an attorney representing the city. That's not to mention another 30,000 pages of discovery submitted so far, he said.

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While the summary judgment upheld the validity of the agreement, it didn't put the entire case to rest.

Maki explained that the court has yet to determine an accounting issue. The profit-sharing agreement provides the city with 19 percent of gross profits from the casino, but if an accounting method called contra revenue is deemed acceptable, the band could lay claim to the repayment of \$889,137 it sent to the city between 1994 and 2010.

The other issue is the negotiation of a new profit-sharing agreement for the next 25 years, beginning in April 2011. In June, both the band and the city asked the National Indian Gaming Regulatory Commission to help mediate an agreement, but the body declined, explaining that the work would go beyond its role as a regulator.

Diver said her band also has asked the court for a continuance, providing the National Indian Gaming Regulatory Commission with time to determine the appropriateness of its profit-sharing agreement with the city of Duluth.

"I can't imagine why a district court would choose to override the agency charged with implementing federal law in this area," she said.

But Judge Ann Montgomery denied the continuance request, saying: "There is no evidence that the NIGC would depart from its course of several years and commence an enforcement action now."

With no progress made on extending its profit-sharing agreement with the Fond du Lac Band, Maki said the city exercised its right on Oct. 2 to demand the matter be taken to binding arbitration. He said arbitration, which is scheduled for a final resolution by January, also will resolve the issue of any back payments the city is due.

Maki said the city will suffer little from a short delay, as it should be entitled to collect interest at the federal prime lending rate plus 2 percent — about 5 percent at the time.

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Casino revenue provides critical funding for Duluth's Community Investment Trust, said Dave Montgomery, the city's chief administrative officer. This fund is used to help pay for road and street improvements. It also has proven valuable in another sense.

"It helps the city sustain its very healthy bond rating. And that reduces the cost of borrowing for a host of other projects," Montgomery said.

Montgomery expects to finish 2010 with \$34 million to \$35 million in the Community Investment Trust, plus about another \$7 million in receivables it is due to receive from the casino. He said the trust began the year with a balance of about \$47 million.

Diver said that while some are quick to criticize the Fond du Lac band for the ongoing legal dispute, it was the city, not the band, that filed the initial suit. She also said the city has shown little interest in solving the matter outside of the courts.

"We've never once received a phone call from the city asking to sit down and talk face to face," she said. "Every piece of correspondence we've sent has been answered by an attorney. We've made overtures to the city that have all been rebuffed."

Maki said the city and tribe did meet for an unsuccessful settlement conference before a judge, but he recalls no offer to meet informally to discuss the matter.

"If there was such a letter sent, I would ask that they send another copy," he said.

Maki said he's inclined to take Diver's comments to the newspaper as an invitation. And if the offer still stands, he said a favorable response can be expected.

"The city is always willing to talk," he said.

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