

Oneida Appeals Commission

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Trial Court

Linda S. Dallas
Petitioner

Docket No. 04-TC-058

vs.

Oneida Gaming Commission
Respondent

January 5, 2005

Final Decision

This petition has come before the Oneida Appeals Commission for trial.
Judicial Officers Stanley R. Webster, Lois Powless and Jennifer Webster presiding.

I. Background

The Oneida Appeals Commission, pursuant to the Oneida Administrative Procedures Act has subject matter jurisdiction to hear matters between individuals and commissions concerning ordinances, rules or regulations duly adopted by the Oneida Nation.

On July 23, 2004, the Oneida Gaming Commission found Linda S. Dallas ineligible to retain her seat on the Oneida Gaming Commission, declared Ms. Dallas' continued work with the Oneida Gaming Commission violated the Oneida Nation Gaming Ordinance and terminated her from her position as Gaming Commissioner on the Oneida Gaming Commission.

On August 09, 2004, Linda S. Dallas filed for an injunction and restraining order against the Oneida Gaming Commission, alleging that the Gaming Commission wrongfully terminated her from the Oneida Gaming Commission. The injunction motion includes a request for Declaratory Judgement on whether or not the Oneida Nation Gaming Ordinance, adopted July 05, 2004, applies to Ms. Dallas's position on the Oneida Gaming Commission; she was elected September 27, 2003, and whether the amended portion of the Ordinance by the Oneida Business Committee is valid.

Injunction Hearing, August 31, 2004. Attorney Shawn Frank appeared representing Respondent Oneida Gaming Commission, Petitioner Dallas appeared representing herself. Ms. Dallas filed motion for additional time to retain an attorney. Motion Granted. Rescheduled for September 13, 2004.

Injunction Hearing, September 13, 2004. Appearance by Attorney Shawn Frank representing Respondent Oneida Gaming Commission, along with Louise Cornelius, Chair of the Oneida Gaming Commission. Appearance by Attorney Timothy T. Blank representing Petitioner Dallas. Injunction granted, Petitioner reinstated to position as Gaming Commissioner on the Oneida Gaming Commission. Injunction remains in effect pending final outcome of Declaratory Judgement as to whether or not the Oneida Nation Gaming Ordinance, adopted July 05, 2004, applies to Ms. Dallas's position on the Oneida Gaming Commission; to which she was elected September 27, 2003, and whether the amended portion of the Ordinance by the Oneida Business Committee is valid. Motion to Adjourn November 4, 2004 hearing until Motion to Dismiss Oneida Business Committee as a party is decided. Granted.

Motion Dismissing Oneida Business Committee as a party to this matter. Granted.

Hearing, November 18, 2004. Appearance by Attorney Henry M. Buffalo representing Respondent Oneida Gaming Commission, along with Louise Cornelius, Chair of the Oneida Gaming Commission. Appearance by Attorney Timothy T. Blank representing Petitioner Dallas. Issues argued: 1. Declaratory Judgement, whether amended portion of Oneida Nation Gaming Ordinance applies to Commissioner Dallas' current position on the Oneida Gaming Commission, and whether amended portion of the Oneida Nation Gaming Ordinance violates the constitution and/or was improperly adopted. 2. If amendment is found valid, did the Oneida Gaming Commission properly apply the law in stopping Commissioner Dallas from fulfilling her duties as a Gaming Commissioner, i.e. remove her.

Motion for Summary Judgment. Denied because Ms. Dallas was improperly removed from the

Gaming Commission.

II. Issues

Declaratory Judgement: Does the Oneida Nation Gaming Ordinance adopted on July 05, 2004, apply to Ms. Dallas as Gaming Commissioner, a position to which she was elected September 27, 2003, on the Oneida Gaming Commission?

Was the Oneida Nation Gaming Ordinance properly amended?

Is the Gaming Commission's removal of Ms. Dallas from the Oneida Gaming Commission wrongful?

Facts:

May 29, 2001 Linda S. Dallas elected to the Oneida Gaming Commission.

April 3, 2003 Oneida Gaming Commission removed Commissioner Dallas from the Oneida Gaming Commission.

On September 27, 2003, while appeal was pending, Linda S. Dallas was elected to fill a vacant position with a longer term on the Gaming Commission.

May 24, 2004, the Oneida Appeals Commission Appellate Body overturned the Oneida Gaming Commission 2003 removal of Ms. Dallas. Ms. Dallas awarded reinstatement to her former position as Gaming Commissioner on the Oneida Gaming Commission.

June 30, 2004, Commissioner Dallas resigned from the Gaming Commission position to which she was elected on May 29, 2001.

June 30, 2004, Ms. Dallas was given oath of office by the Oneida Business Committee to fill the vacant position to which she had been elected on September 27, 2004.

July 5, 2004, the Oneida General Tribal Council adopted Resolution 7-05-04-A, the Oneida Nation Gaming Ordinance.

July 14, 2004, the Oneida Business Committee, on an emergency basis, amended BC Resolution 7-14-04-A, Section 21.6-7, the Qualifications section of the Oneida Nation Gaming Ordinance by adding the term *elected*.

July 23, 2004, the Oneida Gaming Commission adopted OGC Resolution 07-23-04 and removed

Linda S. Dallas as Gaming Commissioner from the Oneida Gaming Commission.¹

III. Analysis

Declaratory Judgement: Does the Oneida Nation Gaming Ordinance apply to Gaming Commissioner Dallas' current position as an elected official to the Oneida Gaming Commission?

The Oneida Gaming Commission argues that the Oneida Nation Gaming Ordinance adopted July 05, 2004 applies to Ms. Dallas, (elected in September 2003), even though she was elected prior to adoption of the new Ordinance. In reviewing the new Ordinance, the Oneida Gaming Commission found that individuals serving on the Oneida Gaming Commission must meet the criteria for qualifications specified under Section 21.6-6 (b)(4) of the Oneida Nation Gaming Ordinance. Section 21.6-7 provides, *no individual shall be eligible for . . . continued service on the Commission if:* under Subsection (5), *He or she has been removed from office pursuant to the Oneida Removal Law.* On July 23, 2004, the Oneida Gaming Commission rendered its interpretation of the Oneida Nation Gaming Ordinance and decided that Section 21.6-7 (5) made Ms. Dallas ineligible to continue serving on the Oneida Gaming Commission. The Oneida Gaming Commission adopted OGC Resolution 07-23-04 affirming its interpretation of the Oneida Nation Gaming Ordinance and terminated Ms. Dallas as Gaming Commissioner.

The Oneida General Tribal Council adopts, or enacts a law, by resolution. The resolution describes the power of the General Tribal Council's authority as the governing body, to adopt laws, the title of the law, and the law itself is attached. On July, 05, 2004, the Oneida General Tribal Council adopted GTC Resolution 7-05-04-A, entitled *Adoption of the Oneida Nation Gaming Ordinance (ONGO)*.

¹ OGC Resolution 07-23-04

Now Therefore Be It Resolved, the Oneida Gaming Commission determines that Ms. Dallas is no longer eligible to retain her seat on the Oneida Gaming Commission and the Oneida Gaming Commission declares that her continued work with the Oneida Gaming Commission violates the Oneida Nation Gaming Ordinance.

Be It Further Resolved, that Ms. Dallas no longer an Oneida Gaming Commissioner and she is prohibited from representing herself as such. Ms. Dallas is to return all Oneida Gaming Commission property.

Be It Finally Resolved, that the Oneida Gaming Commission respectfully requests that the Oneida Business Committee declare Ms. Dallas's position vacant and appoint a successor to fill the position pursuant to Section 21.6-14 of the Oneida Nation Gaming Ordinance.

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According to the Resolution, *The Oneida Nation Gaming Ordinance shall go into effect immediately upon adoption. Followed by . . . there will be a Transition Period that shall end when the new Gaming Commission, as established under the ONGO, takes the oath of office. During this Transition Period, the following shall occur:*

1. *All Gaming Commissioners in office on the date ONGO is passed . . . prior to the July, 2005 Tribal election, shall meet the qualifications under the ONGO for Gaming Commissioners.*
2. *The initial election for the five (5) Gaming Commissioners shall be held no later than July 2005 . . .*

The language "*shall go into effect upon adoption*". The July 05-04 adoption of ONGO means that ONGO becomes effective as of July 05, 2004. ONGO repeals and replaces previous gaming ordinances and resolutions.

The language "*will be a Transition Period that shall end when the new Gaming Commission . . . takes the oath of office*" is explicit. The "shall end when" means that the current Gaming Commission remains in place until the new Gaming Commission is elected and sworn in. (There has been no election).

The following language however, in number 1. "*all Gaming Commissioners in office on the date ONGO is passed, prior to the July 2005 election . . . shall meet the qualifications under ONGO for Gaming Commissioners*" is in contradiction to the "transition period". This section is a contradiction because it makes changes to the eligibility of Gaming Commissioners immediate, and without transition. This Commission interprets the "transition period" to end at the next election.

The language in number 2. "*The initial election . . . shall be held no later than July 2005*" affirms that an election will be held. Ms. Dallas can not be deemed ineligible to serve as a Gaming Commissioner until the July 2005 election.

Although one part of the resolution contradicts itself, basically, the fundamental principle behind the Oneida General Tribal Council using the resolution is to adopt the Oneida Nation Gaming Ordinance. The resolution is undisputed.

The Oneida Nation Gaming Ordinance

21.6 Oneida Gaming Commission. 21.6 through 21.6-18 refers to the Oneida Gaming Commission.

21.6-6 Number of Commissioners, Qualifications, Background Investigations

21.6-6 (4) *Must meet all other qualifications set forth in this Ordinance or in the By-Laws of the Commission.*

21.6-7 *Gaming Commission Background Investigation.*

All candidates for the office of Oneida Gaming Commissioner shall submit to a thorough background investigation conducted by the Oneida Tribe and completed prior to placement on the ballot or eligibility for appointment. In addition, prior to placement on the ballot or eligibility for appointment, all candidates shall disclose all conflicts of interest as required by the Oneida Conflict of Interest Policy. No individual shall be eligible for election or appointment to, or continued services on, the Commission, if:

(5) He or she has been removed from office pursuant to the Oneida Removal Law.

Section 21.6-7 of the Ordinance sets forth specific requirements that must be met by future “candidates”. Ms. Dallas is not a candidate. Ms. Dallas is a Gaming Commissioner, elected to the Oneida Gaming Commission prior to the adoption of the 2004 Ordinance. Ms. Dallas currently serves as an elected official on the Oneida Gaming Commission. The following language of Section 21.6-7. . . . *No individual shall be eligible for . . . or continued services on, the Commission . . .* applies to Ms. Dallas in the event she seeks re-election to the Gaming Commission. The fact that Ms. Dallas is not a candidate at this time, is undisputed. Ms. Dallas, as an elected official by the Oneida General Tribal Council, was sworn in by the Oneida Business Committee prior to adoption of the Oneida Nation Gaming Ordinance. Ms. Dallas shall continue to serve as a Gaming Commissioner until the new Gaming Commission is elected and sworn in. Oneida has no law saying otherwise. The Oneida Nation Gaming Ordinance applies to all future candidates seeking election to the Oneida Gaming Commission.

Was the Oneida Nation Gaming Ordinance properly amended?

Yes. The official title of the Ordinance is Chapter 21 Oneida Nation Gaming Ordinance.

Section 21. 2-2. *Amendment. This Ordinance may be amended by the Oneida Business Committee in accordance with Tribal Law.*

Exhibit #1 GTC Resolution # 7-05-04-A, shows public hearings on the Ordinance were held on July 8, July 15 and December 9, 2003. The Ordinance was amended on July 14th 2004.

Ms. Dallas argues that the Oneida Administrative Procedures Act applies and that the Oneida Business Committee did not abide with the Act in amending the Ordinance. The Oneida Administrative Procedures Act specifically excludes application of the Act to either the Oneida Business Committee or the Oneida Appeals Commission.

Is the Gaming Commission's removal of Ms. Dallas from the Oneida Gaming Commission wrongful?

Yes. The Oneida Nation Gaming Ordinance has no provisions authorizing removal of any Gaming Official by the Gaming Commission. Section 21.6-13 *Removal*. Removal of Commissioners shall be pursuant to the Oneida Removal Law. The Appellate Court interpreted the Removal Ordinance in Oneida Gaming Commission v. Linda Dallas, Rochelle Powless. Case # 04-TC-002.

In that decision, the Appellate Court ruled that the Gaming Commission has no removal authority under the Oneida Nation Gaming Ordinance or the Removal Ordinance. Removal calls for a resolution for removal which must be filed with the Oneida Appeals Commission. The Oneida Appeals Commission shall adjudicate the matter to decide if the person shall be removed.

It is not part of the Gaming Commission's role to remove a Commissioner. The Gaming Commission can only bring a resolution for removal to the Oneida Appeals Commission.

IV. Decision

Ms. Dallas was elected to the Oneida Gaming Commission prior to passing of the Oneida Nation Gaming Ordinance. At the time the most recent version of the Oneida Nation Gaming Ordinance passed, Ms. Dallas was not a candidate, she was a Gaming Commissioner. Therefore, she is eligible to retain her position as a Gaming Commissioner until her term expires or until she is properly removed. However, once the new Oneida Nation Gaming Ordinance takes effect at the next election, Ms. Dallas will be ineligible to run for re-election because she does not meet the requirements for a candidate under the Oneida Nation Gaming Ordinance.

The Oneida Gaming Commission is ordered to reinstate Ms. Dallas to her elected position as Gaming Commissioner. Ms. Dallas is also to receive back pay and benefits from the date of her removal.