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The Mess in Texas

The Lone Star State's dealings with the Tigua tribe are an example of something, alright. But what?

They said they wouldn't, but they did. And now the state of Texas is making an example of them.

On Feb. 11, the Tigua Ysleta del Sur Pueblo closed their tribal casino by order of the U.S. Supreme Court. The ruling – which says the casino can't stay open while the tribe fights Texas in federal court – was the latest turn in a legal offensive launched by state attorney general John Cornyn in 1999. Now Cornyn is going after the Alabama-Coushatta tribe north of Houston, which opened a gaming facility in its museum late last year.

The types of gaming the tribes want, the state says, are illegal under Texas law. The state's decision to legalize a lottery in 1991, the tribes say, gives them the right to conduct similar Class III gaming. Courts have waffled on the matter, landing most recently on Cornyn's side.

Authorities in Texas and other states might be looking at the closure of Speaking Rock Casino as a rare and invigorating victory over tribal stubbornness. Some, such as former Assistant Secretary of Indian Affairs Kevin Gover, have even suggested that it might start a new "cycle" in which states are empowered to clamp down on the tribal casinos that sprout like weeds when compact negotiations fail.

The situation in Texas is an example of something, alright. But what?

An example of the ills of uncompacted tribal gaming? No; the Tigua apparently were not the bad neighbors that some gaming tribes are.

Despite a federal judge's recent declaration that the Tigua casino was a "public nuisance," it seemed to have won the loyalty of most folks in nearby El Paso. Last year a poll by the *El Paso Times* and local TV station KVIA found that two thirds of the city's voters would favor a state law allowing casino gaming at Speaking Rock. Such a bill was approved by the House but blocked from Senate consideration by acting Lt. Governor Bill Ratliff earlier in the year.

The tribe also had the support of the El Paso city council, chamber of commerce, and

county judge Dolores Briones. When legalization was being considered, Briones testified before the legislature that the tribe had given "new life" to the area by boosting employment, housing and healthcare. She even described how the tribe had purchased badly needed emergency equipment for El Paso's police and fire departments.

Before it closed, the casino's \$14 million payroll included 800 workers, only 50 of whom were tribal members. The state comptroller estimated that El Paso would lose a total of 2,200 jobs and \$55 million in personal income as a long-term consequence of Speaking Rock's demise.

Of all the tribes in all the states fighting Indian gaming wars, the Tigua may be the least compelling example of how uncompacted casinos can be harmful to nearby communities.

A demonstration of state authority and federal clout? Hardly. Cornyn threatened to call on federal marshals if necessary, but Speaking Rock closed peacefully and voluntarily in accordance with the Supreme Court's decision.

Instead of congratulating themselves for sticking to their guns, Texas' anti-gaming crusaders should consider that the tribe's obedience at that crucial moment probably earned an extra measure of public sympathy. In western Texas and among tribal gaming supporters nationwide, it's pretty clear who's wearing the black hat.

An example of fair gaming policy? Once again, no. The closure of Speaking Rock and ongoing attempts to close the Alabama-Coushatta's casino look even more suspicious when a third facility, operated by the Kickapoo in southwest Texas, embarks unfettered upon a \$47 million expansion.

Why would the state take such a hard line against the first two tribes while apparently allowing the Kickapoo to build a full-fledged casino resort? Officials say it's because the Tigua and Alabama-Coushatta have a different status under state law. Like most tribes, the Kickapoo's gaming rights are subject to the Indian Gaming Regulatory Act of 1988 - but the Tigua and Alabama-Coushatta owe their tribal status to the 1987 Indian Restoration Act, with special provisions for gambling.

The Restoration Act says any gambling that's illegal in Texas is also illegal on the Tigua and Alabama-Coushatta reservations. While many gaming and legal experts say the Restoration Act doesn't give Texas any more authority to regulate tribal gaming than the IGRA, past and present political powers disagree: In 1988, then-governor George W. Bush expressed the view that the Tigua were under Texas jurisdiction, while the Kickapoo were not. Attorney General Cornyn appears to have taken the same position.

The Tigua and Alabama-Coushatta tell another story, suggesting that Cornyn is carrying out a Republican grudge against the Tigua, who've contributed far more generously to Democratic candidates than Republicans -- including backing Bush's rival during his second gubernatorial campaign. Meanwhile, a Kickapoo tribal representative has alluded to a comfortable relationship with Cornyn.

Whether the crux of the Tigua battle is political or legal, neither side is completely right.

As Cornyn likes to point out, the Tigua and Alabama-Coushatta *did* vow in 1997 to

refrain from all future gambling. And the tribes' claim that a state lottery automatically opens the door to tribal casino gambling is legally dubious, at best. The Alabama-Couchetta's insistence that their facility is a "private entertainment center" instead of a casino is simply absurd.

The state, however, is reading far too much into the Restoration Act as a vehicle to ban tribal gaming. It's also being unfair and unreasonable in the context of today's tribal gaming landscape. As for politicians' protests over broken promises, it doesn't get more hypocritical than that.

What example will Texas and its tribes set for the other tribes and lawmakers now following this drama?

It could yet be a profoundly positive example, if lawmakers were to acknowledge the role of tribal gaming in the El Paso economy and consider legislation to authorize compacted tribal gambling -- preferably subject to voter approval. It would be the first time voters were consulted on the matter in any official venue. It would also send a message to other tribes that there are alternatives to hostile defiance.

But if lawmakers don't act, two things could happen. The Tigua might re-open their casino in desperation, forcing a destructive confrontation with state and federal authorities. Or, the tribe and the town of El Paso could be left to deal with the fallout of permanent closure. What message would that send to other tribes in the Tigua's position?

One final thought: Despite the unique circumstances of Texas' gaming tribes, the underlying issues in this conflict are larger than the Lone Star State.

If the language of state gaming laws were more specific about what games are included -- and if federal law was more helpful in explaining the rights of tribes in lottery states - - then perhaps both sides could be fighting about rights instead of words. Is this an unreasonable request?

If President Bush wishes to leave a positive legacy in the area of Indian gaming rights, both in his home state and the rest of the nation, he should encourage new interior secretary Gale Norton and Congress to revamp the unwieldy laws from which so much conflict has sprung. That would be an example worth following.

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