

SUPREME JUDICIAL COURT OF MAINE

Opinion of the Justices

2018 ME 154 · No. OJ-18-1 · Decided November 20, 2018

SUMMARY

The Maine Supreme Judicial Court considered a question propounded by the Maine House of Representatives under Article VI, Section 3 of the Maine Constitution concerning whether California v. Cabazon Band of Mission Indians allowed the Houlton Band of Maliseet Indians to conduct gambling on tribal trust land without state permission. The Justices concluded that no solemn occasion existed and declined individually to answer the question.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Leigh I. Saufley; Donald G. Alexander; Andrew M. Mead; Ellen A. Gorman; Joseph M. Jabar; Jeffrey L. Hjelm; Thomas E. Humphrey
JURISDICTION	Maine
DECIDED	November 20, 2018
DOCKET	OJ-18-1
DISPOSITION	other
PROCEDURAL POSTURE	The Maine House of Representatives referred a constitutional question to the Justices of the Supreme Judicial Court pursuant to article VI, section 3 of the Maine Constitution. The Justices invited briefing on whether the referral presented a solemn occasion, but the House did not submit a brief addressing that issue.
PRECEDENTIAL VALUE	Published opinion addressing the constitutional requirements for advisory opinions under article VI, section 3 of the Maine Constitution; the court did not reach the underlying tribal-gambling issue.

TOPICS

[appellate procedure](#) [tribal gaming](#) [indian affairs](#) [gambling](#) [constitutional law](#)

PRACTICE AREAS

[appellate procedure](#) [constitutional law](#) [tribal law](#) [gaming law](#)

QUESTIONS PRESENTED

1. Whether the referral presented a solemn occasion under article VI, section 3 of the Maine Constitution sufficient to require the Justices to answer the propounded question.
2. Whether the Justices should answer whether *California v. Cabazon Band of Mission Indians* permits the Houlton Band of Maliseet Indians to conduct gambling on tribal trust land without state permission.

HOLDINGS

1. When the legislative body that propounded a question does not respond to a request for briefing by asking the Justices to determine that a solemn occasion exists, the Justices will determine that the question is not of a serious and immediate nature and that the situation does not present an unusual exigency. Because the House did not provide such a response, no solemn occasion existed.
2. The Justices declined to answer the propounded question because no solemn occasion existed.

KEY QUOTATIONS

“When the body propounding a Question does not, upon our request for briefing of the issue, provide any response that asks us to determine the existence of a solemn occasion that would justify our consideration of a propounded question, we will determine that the question is not “of a serious and immediate nature” and that the situation does not “present[] an unusual exigency.”” (¶ 4)

“Accordingly, we conclude that no solemn occasion exists, and we each decline to answer the Question propounded.” (¶ 5)

FACTUAL BACKGROUND

The Maine House of Representatives asked whether federal law, as interpreted in *California v. Cabazon Band of Mission Indians*, allowed the federally recognized Houlton Band of Maliseet Indians to conduct gambling on tribal trust land without state permission. The referral was made before the Legislature adjourned sine die. The House did not file a brief addressing whether the question presented a solemn occasion, although other interested persons and entities submitted briefs.

PROCEDURAL HISTORY

On August 30, 2018, the Maine House of Representatives propounded a question asking whether *California v. Cabazon Band of Mission Indians* permitted the Houlton Band of Maliseet Indians to conduct gambling on tribal trust land without state permission. The Justices requested briefing concerning the existence of a solemn occasion. Because the House did not provide a response supporting consideration of the question, the Justices concluded that no solemn occasion existed and declined to answer.

DISPOSITION

other

CASES CITED

- California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987)
- Opinion of the Justices, 682 A.2d 661, 663 (Me. 1996)
- Opinion of the Justices, 2017 ME 100, ¶ 22, 162 A.3d 188

OPINION

Opinion of the Justices 2018 ME 154

PER CURIAM.

2018 ME 154

OPINION OF THE JUSTICES

OF THE SUPREME JUDICIAL COURT

GIVEN UNDER THE PROVISIONS OF

ARTICLE VI, SECTION 3 OF THE MAINE CONSTITUTION

Docket No. OJ-18-1 _____

QUESTION PROPOUNDED BY

THE MAINE HOUSE OF REPRESENTATIVES

ON AUGUST 30, 2018

OPINION ISSUED NOVEMBER 20, 2018

QUESTION PROPOUNDED BY THE MAINE HOUSE OF REPRESENTATIVES

ON AUGUST 30, 2018

WHEREAS, it appears to the House of Representatives of the 128th Legislature that the following is an important question of law and that this is a solemn occasion; and WHEREAS, the Constitution of Maine, Article VI, Section 3 provides for the Justices of the Supreme Judicial Court to render their opinion on such a question; and WHEREAS, the House of Representatives has repeatedly considered proposals to authorize tribal gaming such as House Paper 838, Legislative Document 1201, “An Act To Authorize Tribal Gaming” and House Paper 999, Legislative Document 1447, “An Act To Recognize and Provide for the Right of the Houlton Band of Maliseet Indians To Operate a Casino on Houlton Band Trust Land Exempt from Certain Gaming Laws”; and WHEREAS, the State authorizes and regulates casinos, including the operation of table games and slot machines, pursuant to the Maine Revised Statutes, Title 8, chapter 31; authorizes and regulates betting on harness racing pursuant to Title 8, chapter 11; and authorizes and regulates a state lottery pursuant to Title 8, chapter 14-A; and WHEREAS, the revenue provided to the Houlton Band of Maliseet Indians by tribal gaming will ensure tribal self-sufficiency and self-determination and will be used by the tribal government for critical social and health programs vital to the well-being of tribal members including reducing chronically high rates of unemployment, depression and mortality and providing services such as health care, elder care, housing and education; and WHEREAS, the Supreme Court of the United States decided in California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987) that state and local

governments do not have the authority to regulate gambling on Indian land; and WHEREAS, it is important that the Legislature be informed as to the question raised in this order; now, therefore, be it 3 ORDERED, that, in accordance with the provisions of the Constitution of Maine, the House of Representatives respectfully requests the Justices of the Supreme Judicial Court to give the House of Representatives their opinion on the following question of law: Question. Does the decision of the Supreme Court of the United States in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) allow the Houlton Band of Maliseet Indians, a federally recognized Indian tribe, to conduct gambling on tribal trust land without permission to do so from the State? 4
OPINION OF THE JUSTICES

To the Maine House of Representatives: [¶1] On August 30, 2018, before the 128th Maine Legislature adjourned sine die, the Maine House of Representatives referred a Question to us as individual Justices of the Maine Supreme Judicial Court pursuant to article VI, section 3 of the Maine Constitution, which states, “The Justices of the Supreme Judicial Court shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Senate or House of Representatives.” Me. Const. art. VI, § 3; see *Opinion of the Justices*, 682 A.2d 661, 663 (Me. 1996). [¶2] The Question presented is this: Does the decision of the Supreme Court of the United States in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) allow the Houlton Band of Maliseet Indians, a federally recognized Indian Tribe, to conduct gambling on tribal trust land without permission to do so from the state? [¶3] By procedural order, we invited the House of Representatives, the Senate, the Governor, the Houlton Band of Maliseet Indians, other Maine tribes, the Attorney General, and any interested person or entity to submit briefs addressing whether the question propounded presents a “solemn occasion” pursuant to article VI, section 3 of the Maine Constitution. 5 [¶4] Although we received briefs from others, including a brief urging the existence of a solemn occasion filed by an individual member of the House, Representative Henry John Bear of the Houlton Band of Maliseet Indians, we did not receive a brief from the House of Representatives. When the body propounding a Question does not, upon our request for briefing of the issue, provide any response that asks us to determine the existence of a solemn occasion that would justify our consideration of a propounded question, we will determine that the question is not “of a serious and immediate nature” and that the situation does not “present[] an unusual exigency.” *Opinion of the Justices*, 2017 ME 100, ¶ 22, 162 A.3d 188 (quotation marks omitted). [¶5] Accordingly, we conclude that no solemn occasion exists, and we each decline to answer the Question propounded. Signed: November 20, 2018 Each Justice Individually Opining. For the Justices, /s/

LEIGH I. SAUFLEY

Chief Justice

DONALD G. ALEXANDER

ANDREW M. MEAD

ELLEN A. GORMAN

JOSEPH M. JABAR

JEFFREY L. HJELM

THOMAS E. HUMPHREY

6 Henry John Bear, pro se John Clark, pro se Daniel W. Walker, Esq., and Matthew S. Warner, Esq., Preti Flaherty Beliveau & Pachios, LLP, Portland, for Oxford Hills Chamber of Commerce Joshua A. Tardy, Esq., Edmond J. Bearor, Esq., and Brent A. Singer, Esq., Rudman Winchell, Bangor, for HC Bangor, LLC