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April 11, 2008

Honorable Lloyd E. Levine
Room 5136, State Capitol

ONLINE POKER: STATE AUTHORIZATION - #0808054

Dear Mr. Levine:

You have asked us to address four questions, separately stated and considered below, regarding the possible authorization by the Legislature of a form of online poker that would have the following characteristics: (1) games would be played online according to the rules currently authorized for games played at card clubs in California; (2) play would be available only to persons 21 years of age or older located within the geographic boundaries of California; (3) appropriate data security standards would be required to prevent access by unauthorized persons; (4) an operator of an Internet Web site offering online poker would be required to hold a license issued by the state, and would be subject to state regulation as prescribed by statute; (5) player participation would require the payment of a flat fee; and (6) payment for fees and wagers could be made by credit card, electronic funds transfer, or other electronic or nonelectronic means of payment involving federally regulated financial institutions.

I. Question No. 1

You have asked whether, under applicable federal and state law, the Legislature may authorize the operation of Internet Web sites offering online poker, as described above.

(a) Federal law

The federal Unlawful Internet Gambling Enforcement Act of 2006 (P.L. 109-347, Sec. 801 and following., 31 U.S.C. Sec. 5361 and following; hereafter the UIGEA) prohibits "a person engaged in the business of betting or wagering" from knowingly accepting specified methods of payment, including credit, electronic fund transfers, and checks, "in connection with the participation of another person in unlawful Internet gambling" (31 U.S.C. Sec. 5363). Under the UIGEA, "unlawful Internet gambling" means "to place, receive, or otherwise

knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made" (31 U.S.C. Sec. 5362(10)(A)). The UIGEA states that none of its provisions "shall be construed as altering, limiting, or extending any Federal or State law or Tribal-State compact prohibiting, permitting, or regulating gambling" (31 U.S.C. Sec. 5361(b)). Thus, although it prohibits accepting certain types of payments in connection with unlawful Internet gambling, the UIGEA does not purport to affect whether a particular gambling activity is lawful or unlawful under federal or state law.

The UIGEA exempts certain transactions from the prohibition described above, including intrastate and intratribal transactions (31 U.S.C. Secs. 5362(10)(B) and 5362(10)(C)). The exemption for intrastate transactions applies to "placing, receiving, or otherwise transmitting a bet or wager" when the bet or wager is initiated and received exclusively within a single state and is expressly authorized by, and placed in accordance with the laws of, the state (31 U.S.C. Sec. 5362(10)(B)(i) and (ii)). The state law must include age and location verification requirements, and appropriate data security standards to prevent access by unauthorized persons (31 U.S.C. Secs. 5362(10)(B)(ii)(I) and 5362(10)(B)(ii)(II)). In addition, the bet or wager must not violate the Interstate Horseracing Act of 1978 (15 U.S.C. Sec. 3001 and following), the Professional and Amateur Sports Protection Act (28 U.S.C. Sec. 3701 and following), the Gambling Devices Transportation Act (15 U.S.C. Sec. 1171 and following), or the Indian Gaming Regulatory Act (25 U.S.C. Sec. 2701 and following; 31 U.S.C. Sec. 5362(10)(B)(iii)).

As discussed above, the form of online poker addressed in this opinion would involve wagers initiated and received exclusively within California, would require geographical and age verification, and would employ appropriate data security standards to prevent unauthorized access. These requirements, in our view, would satisfy those elements of the intrastate gaming exemption contained in the UIGEA.

With respect to the four federal acts listed in the UIGEA, we believe that it cannot reasonably be argued that the conduct of online poker as described above would violate the Interstate Horseracing Act of 1978, the Professional and Amateur Sports Protection Act, or the Gambling Devices Transportation Act. However, it may be argued that, if an Internet Web site offering online poker was operated by a federally recognized Indian tribe and the server or other hardware supporting the Web site was located on Indian lands, state regulation of that Web site would violate the Indian Gaming Regulatory Act (hereafter IGRA).

IGRA allows Indian tribes recognized by the federal government to conduct gaming "on Indian lands" under certain circumstances (see 25 U.S.C. Sec. 2710). For example, an Indian tribe may conduct class I gaming on Indian lands within the exclusive jurisdiction of the tribe without being subject to IGRA (25 U.S.C. Sec. 2710(a)(1)). Class I gaming is defined as social games solely for prizes of minimal value or traditional forms of Indian games engaged in

by individuals as part of, or in connection with, tribal ceremonies or celebrations (25 U.S.C. Sec. 2703(6)). Other forms of gaming, such as class II and III gaming, are more extensively regulated by IGRA (see 25 U.S.C. Sec. 2710).[1] Class II gaming generally consists of the game of chance commonly known as bingo and bingo-like games, and card games that are not explicitly prohibited by the laws of the state and are played at any location in the state (25 U.S.C. Sec. 2703(7)).[2] Class III gaming is defined as "all forms of gaming that are not class I gaming or class II gaming" (25 U.S.C. Sec. 2703(8)). IGRA is "intended to preempt the field in the governance of gaming activities on Indian lands" (1988 U.S. Code Cong. & Admin. News, at p. 3076).

As noted above, IGRA applies only to gaming that is conducted "on Indian lands" (see 25 U.S.C. Secs. 2710(b)(1) and 2710(d)(1)). IGRA does not govern gaming that takes place outside of a tribe's Indian lands. Thus, a question exists as to whether an online poker Web site that was operated by a federally recognized tribe and was supported by a server or other hardware located on the tribe's Indian lands, but was available outside the boundaries of those Indian lands, would be a gaming activity conducted "on Indian lands" for the purposes of IGRA.

No courts have construed the reference in IGRA to gaming "on Indian lands" in this context. In *AT&T Corp. v. Coeur d'Alene Tribe* (9th Cir. 2002) 295 F.3d 899, the court upheld the validity under IGRA of a tribe's operation of a National Indian Lottery in which persons from outside the boundaries of the tribe's reservation could call and purchase tickets, but the tickets themselves remained on the reservation. However, the court held that the issue of whether the gaming activities were conducted on the tribe's Indian lands was not properly before the court (Id., at p. 910, fn. 12). The author of the dissenting opinion would have reached the merits of that question and held that the gaming activity took place outside the boundaries of those Indian lands (Id., dissenting opinion, at p. 916).

It is a rule of statutory construction that words should be construed in accordance with "their ordinary, contemporary, common meaning" (*United States v. Akintobi* (9th Cir. 1998) 159 F.3d 401, 403). The term "Indian lands" is used in IGRA with reference to specific geographical sites (see 25 U.S.C. Sec. 2703(4)). In our view, therefore, the ordinary meaning of

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[1] IGRA requires tribes seeking to conduct class III gaming activities on their lands within a state to enter into negotiations with that state for the purpose of coming to an agreement, in the form of a tribal-state gaming compact, concerning the conduct and regulation of those activities, and requires the state to negotiate in good faith in entering into a compact (25 U.S.C. Sec. 2710(d)(3)(A)). Section 19 of Article IV of the California Constitution specifically authorizes the Governor "to negotiate and conclude compacts, subject to ratification by the Legislature" for the conduct by federally recognized Indian tribes of various gambling activities on Indian lands that would be classified as class III gaming activities (subd. (f), Sec. 19, Art. IV, Cal. Const.).

[2] Based on the description of online poker provided to us, it appears that online poker, if conducted on Indian lands, would be appropriately characterized as a class II game under IGRA.

activity "on Indian lands" is activity that takes place, either wholly or in significant part, within the bounds of those geographic sites. Because a person playing online poker could do so without ever entering a tribe's Indian lands, a significant portion of the gambling activity, especially the initiation of wagers and the collection of winnings, would occur outside of those lands. We believe that IGRA's application to gambling activity that occurs "on Indian lands" does not embrace gambling activities in which wagers can be initiated and winnings collected outside the boundaries of the tribe's Indian lands. Thus, we also believe that state regulation of an online poker Web site that was operated by a federally recognized tribe and was available for play outside of its Indian lands would not violate IGRA, even if the Web site was supported by a server or other hardware located on those Indian lands.

Consequently, it is our view that the operation of online poker as described above would not violate any of the four federal acts referred to in the UIGEA. As a result, it is also our view that wagers made in connection with online poker conducted as described above would fall within the exemption contained in the UIGEA for intrastate transactions, thereby allowing payments to be made lawfully by credit card, electronic funds transfer, and the other means of payment addressed by the UIGEA.

Because the UIGEA, as noted above, does not purport to alter other federal laws, it is necessary to consider whether any other federal laws prohibit or limit the conduct of online poker. In our view, the only federal law that might reasonably be interpreted to apply to online poker is the federal Wire Act (18 U.S.C. Sec. 1084; hereafter the Wire Act). The Wire Act prohibits a person "engaged in the business of betting or wagering" from knowingly using "a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers" (18 U.S.C. Sec. 1084(a)). Thus, subdivision (a) of the Wire Act contains three prohibitory clauses: the first expressly applies to wagers, or information assisting in the placing of wagers, on sporting events; the second applies to the receipt of money or credit in connection with wagers; and the third applies to information assisting in placing wagers. Subdivision (b) of the Wire Act contains an exception for the transmission of certain information relating to wagering on sporting events if the transmission originates in a state where the wagering is legal and is received in a state where it is also legal (18 U.S.C. Sec. 1084(b)).

It may be argued that, because the prohibitions contained in the second and third clauses of subdivision (a) of the Wire Act, quoted above, are not expressly limited to sporting events or contests, those prohibitions apply to all wagers transmitted in interstate commerce by means of a wire communication facility.

Case law on the applicability of the Wire Act to forms of gambling other than gambling on sporting events is conflicting. In *In re MasterCard International, Inc. Internet Gambling Litig.* (E.D. La. 2001) 132 F.Supp. 468, 480 (hereafter *MasterCard*), a federal district court found the act inapplicable to gambling that was not related to sporting events. The court concluded that, based upon a reading of the Wire Act as a whole, along with applicable legislative history, the reference to a "sporting event or contest" in the first clause of

subdivision (a) of that act also applied to the second and third clauses. On appeal, the appellate court adopted the district court's analysis of the act (*In re MasterCard International, Inc. Internet Gambling Litig.* (5th Cir. 2002) 313 F.3d 257, 662-263). However, in *People v. World Interactive Gaming Corp.* (N.Y. Sup. Ct. 1999) 714 N.Y.S. 844, 851, a New York state trial court found the Wire Act applicable to Internet gambling on casino games. A similar result was reached by a federal district court in *U.S. v. Lombardo* (D. Utah 2007) 2007 U.S. Dist. LEXIS 91696, 12-23.[3]

In our view, the court's ruling in *MasterCard* that subdivision (a) of the Wire Act does not apply to wagers unrelated to sporting events is persuasive. It is a rule of statutory construction that "a statute is to be read as a whole . . . , since the meaning of statutory language, plain or not, depends on context" (*King v. St. Vincent's Hosp.* (1991) 502 U.S. 215, 221). Subdivision (b) of the Wire Act provides an exception that is expressly applicable only to wagering on sporting events. We are aware of no reason why, if the second and third clauses of subdivision (a) applied to wagering unrelated to sporting events, Congress would have applied that exception only to wagering on sporting events, particularly in light of the fact that, under such a construction, subdivision (a) of the act would treat wagering on sporting events as more serious than other types of wagering by virtue of being subject to all three prohibitory clauses. Thus, construing the statute as a whole, we conclude that subdivision (a) of the federal Wire Act does not prohibit the transmission of wagers that are not related to sporting events.

In addition, although the UIGEA does not purport to alter any other federal laws, we believe that it indicates Congress' intent with respect to the interpretation of other federal acts relating to gambling, including the Wire Act. If Congress believed that the Wire Act prohibited all forms of gambling information transmitted over wire communications, and that it applied to wagers initiated and received within a single state where the gambling activity was legal, the intrastate exemption set forth in the UIGEA would have no purpose or effect. It is a principle of statutory construction that Congress should not be supposed to have enacted an unnecessary statute (*People of Gambell v. Hodel* (9th Cir. 1985) 774 F.2d 1414, 1420). Moreover, the Wire Act is not listed in the UIGEA among the four federal acts that may not be contravened in order for the intrastate exemption to apply (31 U.S.C. Sec. 5362(10)(B)(iii)). In our view, these facts indicate that, when the UIGEA was enacted, Congress viewed the

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[3] Interpretations of the Congressional intent behind the Wire Act have also been conflicting. One purpose of the act that has been cited by courts is to "assist the various States, territories, and possessions . . . in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses and to aid in the suppression of organized gambling activities . . . ." (*Martin v. United States* (5th Cir. 1968) 389 F.2d 895, 898 fn. 6, quoting letter from Attorney General Robert F. Kennedy to Speaker of the House of Representatives, April 6, 1961). However, some courts have found that the act is also part of an independent federal anti-gambling policy (Ibid.; see also *United States v. Corrar* (N.D. Ga. 2007) 512 F.Supp.2d 1280, 1289).

Wire Act as inapplicable to the types of wagers encompassed by its exemption for intrastate wagers.[4]

For the reasons cited above, we believe that the federal Wire Act would not prohibit the operation of Internet Web sites offering online poker in accordance with the requirements described above. Further, in our view, no other federal law can reasonably be construed to prohibit the conduct of online poker in accordance with those requirements.

(b) State law

The California Constitution provides that the Legislature "has no power to authorize, and shall prohibit, casinos of the type currently operating in Nevada and New Jersey" (subd. (e), Sec. 19, Art. IV, Cal. Const.; hereafter the casino prohibition).

Under the decision of the California Supreme Court in *Hotel Employees & Restaurant Employees Internat. Union v. Davis* (1999), 21 Cal.4th 585 (hereafter *Hotel Employees*), the casino prohibition applies to "one or more buildings, rooms, or facilities, whether separate or connected, that offer gambling activities including those statutorily prohibited in California, especially banked table games and slot machines" (Id., at p. 605). That case also held that the casino prohibition "was designed . . . to elevate statutory prohibitions on a set of gambling activities to a constitutional level" (Id., at pp. 605-606). Thus, under the court's decision, gambling activities that were statutorily prohibited when the casino prohibition was enacted are among the activities covered by the casino prohibition, thereby precluding the Legislature from authorizing those activities by statute.

The casino prohibition was enacted by Proposition 37 at the November 6, 1984, general election. In 1984, California card clubs were not authorized to offer lotteries, banking or percentage card games,[5] slot machines, or certain card games proscribed by name, such as

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[4] It is evident that Congress was aware of the conflicting interpretations of the Wire Act when it enacted the UIGEA. The UIGEA refers to the 1999 report of the National Gambling Impact Study Commission, which "recommended the passage of legislation to prohibit wire transfers to Internet gambling sites or the banks which represent such sites" (31 U.S.C. Sec. 5361(a)(2). That study noted the ambiguity inherent in the Wire Act in connection with its recommendation that new federal legislation be enacted (see National Gambling Impact Study Commission Final Report, available at http://govinfo.library.unt.edu/ngisc/reports/finrpt.html, pp. 5-6 – 5-7).

[5] A "banked" game is one in which the house has a stake in the outcome of the game (*Flynt v. California Gambling Control Com.* (2002) 104 Cal.App.4th 1125, 1130, fn. 5; hereafter *Flynt*). It is a game conducted by one or more persons from a fund against which everyone has the right to bet, with the bank responsible for payment of all of the funds.

A "percentage" game is a game in which the house collects a given share of the amount wagered (*Flynt*, supra, at p. 1130, fn. 6).

twenty-one (see *Hotel Employees*, at p. 605). Online poker would be played in accordance with the rules currently authorized for games played in card clubs, which are substantially the same as the rules in effect in 1984.

Thus, the primary difference between online poker and the forms of poker authorized for play in 1984 is the fact that online poker would be played on computer terminals over the Internet. It may be argued that this difference makes online poker sufficiently similar to a slot machine to fall within the casino prohibition. However, although online poker would involve the use of a mechanical device and an electronic monitor, that similarity does not affect the rules applicable to the two activities. We find nothing in the casino prohibition, or the court's construction of that prohibition in *Hotel Employees*, indicating that the medium used to play a gambling game is relevant to a determination of whether the game falls within the scope of the casino prohibition. Rather, it is our view that the rules by which gambling games are played determine whether the activities fall within that scope.

Moreover, slot machines are house-banked games in which the player competes against the machine (see *Trinkle v. California State Lottery* (2003) 105 Cal.App.4th 1401, 1412). As discussed above, online poker would not be conducted as a banked game.

Because online poker would be played in accordance with the same rules that applied to the forms of poker available in card rooms in 1984, it is our view that the Legislature's authorization of online poker on that basis would not violate the casino prohibition.

No other provision of state law can reasonably be construed to prohibit the Legislature from authorizing online poker conducted in accordance with the requirements described above. Thus, we conclude that no provision of state law prohibits the Legislature from authorizing online poker conducted on that basis.

Accordingly, it is our opinion that, under applicable federal and state law, the Legislature may authorize the operation of Internet Web sites offering online poker in accordance with the requirements described above.

II. Question No. 2

You have also asked us to address whether, if the Legislature authorized online poker, that authorization would violate the exclusivity provisions contained in Section 3.2 of the amendments to the tribal-state gaming compacts that were executed by the Governor and five Indian tribes in 2006.

In 2006, amendments to five tribal-state gaming compacts (hereafter collectively the 2006 Compact Amendments) were executed by the Governor and the following five tribes: the Agua Caliente Band of Cahuilla Indians (hereafter the Agua Caliente Band); the San Manuel Band of Mission Indians (hereafter the San Manuel Band); the Morongo Band of Mission Indians (hereafter the Morongo Band); the Pechanga Band of Luiseño Indians (hereafter the Pechanga Band); and the Sycuan Band of the Kumeyaay Nation (hereafter the Sycuan Band). The Legislature ratified those amendments in 2007 (see Secs. 12012.46, 12012.47, 12012.48, 12012.49, and 12012.51, Gov. C.).

Section 3.2 of each 2006 Compact Amendment grants certain rights to the signatory tribe if the state authorizes any person or entity to engage in specified gambling activities within the tribe's core geographic market, as defined in each amendment. The gaming activities covered by the 2006 Compact Amendments executed by the San Manuel, Morongo, and Pechanga Bands are (1) slot machines and (2) banking or percentage card games offered at a facility with 25 or more tables. The 2006 Compact Amendment executed by the Sycuan Band also covers slot machines but does not cover banking and percentage card games. Section 3.2 of the 2006 Compact Amendment executed by the Agua Caliente Band covers any "gaming activity," which is defined in the tribe's original compact as the class III gaming activities authorized under the compact (see Sec. 2.4, 1999 Model Tribal-State Gaming Compact). Thus, that provision would apply to slot machines, banking and percentage card games, and lottery games. A violation by the state of Section 3.2 of any of the 2006 Compact Amendments allows the tribe to either terminate the compact or continue to conduct its gambling activities under the terms of the compact and cease making certain payments to the state[6].

As discussed in our analysis of state law under Question No. 1, it is our view that online poker, as described above, would not constitute a slot machine. In addition, because online poker would be conducted on the same basis as the forms of poker authorized for play at card clubs, which do not constitute lotteries, banking card games, or percentage card games (see *Hotel Employees*, supra, at p. 605), it is also our view that online poker would not constitute a lottery or a banking or percentage card game. Thus, we believe that it would not fall within the gaming activities that are covered by Section 3.2 of any 2006 Compact Amendment.

Accordingly, it is our opinion that, if the Legislature authorized online poker in accordance with the requirements described above, that authorization would not violate the exclusivity provisions contained in Section 3.2 of the amendments to the tribal-state gaming compacts that were executed by the Governor and five Indian tribes in 2006.

III. <u>Question No. 3</u>

You have also asked us to discuss the effect that the Legislature's authorization of online poker would have on the authority of a federally recognized Indian tribe within California to offer online poker to persons located outside the boundaries of its Indian lands.

As noted above, IGRA authorizes federally recognized Indian tribes to offer certain types of gaming only "on Indian lands" (see 25 U.S.C. Secs. 2710(b)(1) and 2710(d)(1)). Thus, as discussed in our response to Question No. 1, it is our view that IGRA would not govern the

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[6] Those payments include fixed payments made to the state by each tribe, in varying amounts (see Sec. 4.3.1(b)(i), 2006 Compact Amendments), payments based on a percentage of net win, as defined, from gaming devices over a specified baseline (see Sec. 4.3.1(b)(ii), 2006 Compact Amendments), and payments made to the Indian Gaming Revenue Sharing Trust Fund for the benefit of noncompact tribes (Sec. 4.3.2.2, 2006 Compact Amendments).

operation by an Indian tribe of an Internet Web site offering online poker to persons outside the boundaries of the tribe's Indian lands. Instead, a tribe's operation of such a Web site would be governed by generally applicable federal and state law.

With respect to federal law, the prohibitions contained in the UIGEA regarding the acceptance of certain methods of payment would apply to tribal as well as nontribal operators of online poker Web sites. Thus, wagers made on such a Web site would be authorized under the UIGEA only if the Web site met the requirements applicable to the intrastate exemption contained in that act (see 31 U.S.C. Sec. 5362(10)(B)), as discussed above.[7] Among the provisions applicable to wagers under that intrastate exemption is the requirement that those wagers be made in accordance with the laws of the state (31 U.S.C. Sec. 5362(10)(B)(ii)).

With respect to state law, the United States Supreme Court has held that, "[a]bsent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to nondiscriminatory state law otherwise applicable to all citizens of the State" (*Mescalero Apache Tribe v. Jones* (1973) 411 U.S. 145, 148-149). Thus, a tribe's authority to operate an Internet Web site offering online poker to persons located outside the boundaries of its Indian lands would be subject to the state's licensing and regulatory laws regarding those Web sites.

Nonetheless, although the United States Supreme Court has held that the state may generally regulate the off-reservation activities of Indian tribes, it has also held that "[t]here is a difference between the right to demand compliance with state laws and the means available to enforce them" (*Kiowa Tribe v. Manufacturing Techs.* (1998) 523 U.S. 751, 755; hereafter *Kiowa*). Under the doctrine of tribal sovereign immunity, an Indian tribe may not be sued in court unless Congress has authorized the suit or the tribe has waived its immunity (Id., at p. 754). In *Kiowa*, the Supreme Court held that the doctrine of tribal sovereign immunity extends to commercial activities conducted away from the tribe's reservation, despite the fact that it found "reasons to doubt the wisdom of perpetuating the doctrine" of tribal sovereign immunity in this context (Id., at p. 760; see also *Redding Rancheria v. Superior Court* (2001) 88 Cal.App.4th 384, 386).

Some courts have found the doctrine of tribal sovereign immunity inapplicable under the specific factual situations presented. In *Agua Caliente Band of Cahuilla Indians v. Superior Court* (2006) 40 Cal.4th 239, for instance, the California Supreme Court held that the doctrine did not prevent a tribe from being sued in state court for violations of the Political Reform Act of 1974 (Title 9 (commencing with Sec. 81000), Gov. C.). The court noted the criticism of the doctrine in *Kiowa* as evidence of "evolving United States Supreme Court precedent" on this issue, and held that its holding was "narrow and carefully circumscribed" to apply only to suits for violations of state fair political practice laws (Id., at p. 261). The Court of Appeals for the

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[7] The intratribal exemption contained in the UIGEA would not apply because the Web site would be available to persons outside the boundaries of the tribe's, or another tribe's, Indian lands (see 31 U.S.C. Sec. 5362(10)(C)).

Fifth Circuit has also cited *Kiowa's* criticism of the doctrine of tribal sovereign immunity in holding that the doctrine applies only to suits for damages and not for injunctive or declaratory relief (*TTEA v. Ysleta Del Sur Pueblo* (5th Cir. 1999) 181 F.3d 676, 680-681; see also *Comstock Oil & Gas, Inc. v. Ala. & Coushatta Indian Tribes* (5th Cir. 2001) 261 F.3d 567).

We are not aware of any case in which a court has addressed the applicability of the doctrine of tribal sovereign immunity when a tribe has applied for and obtained a license from the state to engage in an off-reservation commercial enterprise. It may be argued that, even if the doctrine applies in such a case, a tribe's application for a license constitutes a waiver of its sovereign immunity. However, a waiver of sovereign immunity must be express, not implied (*Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 59). Thus, whether such a waiver has occurred may depend upon the language contained in the license application or other document executed by tribal representatives.

Accordingly, it is our opinion that, if the Legislature authorized online poker as described above, a federally recognized Indian tribe within California would be authorized to offer online poker to persons outside the boundaries of its Indian lands if it complied with the applicable licensing and regulatory laws enacted by the state. However, the state may not be able to bring suit against such a tribe in court to enforce its licensing and regulatory laws without an express waiver of sovereign immunity from the tribe.

IV. Question No. 4

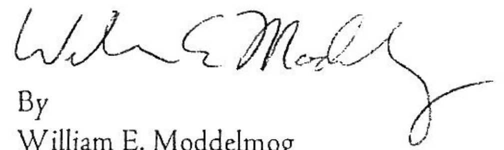
The final question you have asked us to address is whether the authority of a federally recognized Indian tribe to offer online poker to persons outside the boundaries of its Indian lands would depend upon whether the server and other hardware used to support the online activity were located on the tribe's Indian lands.

As discussed in the response to Question No. 3, we believe that a tribe offering online poker to persons outside the boundaries of a tribe's Indian lands would not be governed by IGRA because the wagers would not be initiated "on Indian lands" (see 25 U.S.C. Secs. 2710(b)(1) and 2710(d)(1)). As a result, such a tribe would be subject to state laws governing the licensing and regulation of online poker. Because a tribe's authority to offer online poker would be subject to state law rather than to IGRA, that authority would not be subject to IGRA's requirement that the gaming activity occur on Indian lands. Thus, the location of the server or other hardware supporting the online activity would be immaterial to a determination of whether the tribe may offer online poker to persons outside the boundaries of its Indian lands.

Accordingly, it is our opinion that the authority of a federally recognized Indian tribe to offer online poker to persons outside the boundaries of its Indian lands would not depend upon whether the server and other hardware used to support the online activity were located on the tribe's Indian lands.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel



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