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To: 'schmit@quiknet.com'
Subject: FW: NIGC bulletin #1 on tribal gaming commissions

No. 94-3 April 20, 1994**Subject: Functions of a Tribal Gaming Commission****INTRODUCTION/OVERVIEW**

In response to numerous requests, the National Indian Gaming Commission (NIGC) is providing this Bulletin regarding the establishment and functions of tribal gaming commissions. While neither the Indian Gaming Regulatory Act (IGRA) nor the NIGC regulations require tribes to establish tribal gaming commissions, there are specific governmental responsibilities tribes must undertake to engage in gaming under the IGRA. The NIGC believes that tribal gaming commissions are an appropriate type of governmental agency that can implement the regulatory responsibilities of the tribes under the IGRA. In fact, most governments that sanction gaming do so within a comprehensive regulatory environment, including active regulation through the use of gaming commissions. Aside from fulfilling the requirements under the IGRA, there are also many other regulatory duties that a tribal gaming commission can perform on behalf of a tribe.

This Bulletin addresses some of the regulatory responsibilities that are required under the IGRA and the regulations of the NIGC. This Bulletin also contains some recommendations for establishing tribal gaming commissions. Lastly, this Bulletin lists some of the regulatory responsibilities that tribal gaming commissions can perform on behalf of tribes. Also, it is important to note that many Indian tribes have already established tribal gaming commissions after which a tribe may wish to pattern its own commission.

TRIBAL REGULATORY RESPONSIBILITIES

Tribal governments are recognized as having the right to engage in gaming. This authority is confirmed through the IGRA. Under the IGRA and the regulations of the NIGC, tribal governments are responsible for the regulation of gaming conducted on Indian lands. While tribal governments have the authority to engage in gaming either through tribally run operations or through operations run by management contractors, tribes must understand the importance of establishing a governmental regulatory framework under which gaming will be conducted. Most importantly, comprehensive regulation is a necessary component in the system of checks and balances needed to ensure the integrity of the games and to protect the interest of the tribe.

Effective regulatory oversight requires that there be a separation between the regulation and operation of tribal gaming activities. For example, if a tribe owns and operates its own gaming facility, the governmental entity must be structured to ensure that the regulation of gaming is separate from the operation of gaming. On the other hand, if a tribe has entered into a management agreement, the management entity is responsible only for the operation of gaming. In such cases, the management entity is required to comply with all tribal gaming ordinances and regulations including those that address background investigations, suitability determinations, and licensing of key employees and primary management officials. Also, the regulatory entity should have no involvement in the operational or managerial decisions of a gaming facility, except to the extent that such issues may involve tribal law or regulations.

The authority to establish a regulatory structure or tribal gaming commission comes from the sovereign powers of

tribal governments. An effective regulatory scheme should work to ensure that all gaming within a tribe's jurisdiction is operated in accordance with tribal laws and regulations. The tribal gaming commission should be an arm of the tribal government, established for the exclusive purpose of regulating and monitoring gaming on behalf of the tribe. It is important to note that if a tribe does not establish a tribal gaming commission, some other office or agency of the tribal government must fulfill these governmental obligations.

ESTABLISHING A TRIBAL GAMING COMMISSION

There are many different factors a tribe should consider when establishing a tribal gaming commission. Most importantly, a tribal gaming commission should be established by ordinance. The following organizational and operational issues should also be considered when establishing a tribal gaming commission:

1. The tribal gaming commission's responsibilities, powers, and enforcement authority should be specifically set forth in the tribal ordinance. Any responsibility reserved to the governing body of the tribe should also be specifically stated.
2. The ordinance should include provisions regarding the number of commissioners, the method of selecting commissioners including the qualifications needed and the background requirements, their terms of office, and the methods and grounds for removal of commission members. The NIGC suggests staggering the terms of the commissioners so as to provide continuity in the tribal gaming commission's activities during transition of commission members.
3. The ordinance should include a method for funding the tribal gaming commission and its staff. The NIGC suggests that funding be appropriated from the tribal government instead of direct funding from the gaming operation.
4. The ordinance should include the basic procedures for conducting official commission business, including provisions regarding appeal procedures of tribal gaming commission actions.
5. The ordinance should provide for the tribal gaming commission's autonomous authority. This authority should include, among other things, unrestricted access to any area of the gaming operation, including the books and records of the operation, in order to carry out the regulatory duties.

REGULATORY FUNCTIONS OF A TRIBAL GAMING COMMISSION

If a tribe elects to utilize a tribal gaming commission, the commission might be responsible for the regulatory functions outlined below. Items 1 - 12 are requirements contained in the IGRA and the NIGC's regulations. The remaining activities are additional and related functions a tribal gaming commission might perform.

1. Develop licensing procedures for all employees of the gaming operation pursuant to 25 CFR § 558.1(b).
2. Issue, suspend, revoke, and renew licenses of primary management officials and key employees upon completion of background investigations and after following the procedures contained in 25 CFR Parts 556 and 558.
3. Conduct background investigations on primary management officials and key employees according to requirements that are at least as stringent as those in 25 CFR Parts 556 and 558 pursuant to 25 CFR § 522.4(b)(5).
4. Forward completed employment applications for primary management officials and key employees to the NIGC pursuant to 25 CFR § 558.3. These applications should include the Privacy Act notice and the notice regarding false statements contained in 25 CFR §§ 556.2 and 556.3.
5. Forward completed investigative reports on each background investigation for each primary management official or key employee to the NIGC prior to issuing a license pursuant to 25 CFR § 556.5.
6. Review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a

finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation pursuant to 25 CFR § 558.2.

7. Notify the NIGC if, after conducting a background investigation on a primary management official or a key employee, the tribe does not license the individual pursuant to 25 CFR § 556.5(d)(1).

8. Retain applications and reports of background investigations of primary management officials and key employees for no less than three years from termination of employment pursuant to 25 CFR § 558.1(c).

9. Issue separate licenses to each place, facility, or location on Indian lands where a tribe elects to allow gaming pursuant to 25 CFR § 522.4(b)(6).

10. Ensure that gaming facilities are constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety pursuant to 25 CFR § 522.4(b)(7).

11. Obtain annual independent outside audits and submit these audits to the NIGC pursuant to 25 CFR § 522.4(b)(3). The scope of these audits should include all gaming related contracts that result in purchases of supplies, services or concessions for more than \$25,000 in any year pursuant to 25 CFR § 522.4(b)(4).

12. Ensure that net revenues from any gaming activities are used for the limited purposes set forth in the tribal gaming ordinance pursuant to 25 CFR § 522.4(b)(2).

13. If the tribe authorizes individually owned gaming, issue licenses according to the requirements contained in the tribal gaming ordinance pursuant to 25 CFR §§ 522.10 and 522.11.

14. Promulgate tribal gaming regulations pursuant to tribal law.

15. Monitor gaming activities to ensure compliance with tribal law/regulations.

16. Interact with other regulatory and law enforcement agencies regarding the regulation of gaming.

17. Conduct investigations of possible violations and take appropriate enforcement action with respect to the tribal gaming ordinances and regulations.

18. Provide independent information to the tribe on the status of the tribe's gaming activities.

19. Take testimony and conduct hearings on regulatory matters, including matters related to the revocation of primary management official and key employee licenses.

20. Establish or approve minimum internal control standards or procedures for the gaming operation, including the operation's credit policies and procedures for acquiring supplies and equipment.

21. Establish any supplementary criteria for the licensing of primary management officials, key employees, and other employees that the tribe deems necessary.

22. Establish standards for and issue licenses or permits to persons and entities who deal with the gaming operation such as manufacturers and suppliers of machines, equipment and supplies.

23. Maintain records on licensees and on persons denied licenses including persons otherwise prohibited from engaging in gaming activities within the tribe's jurisdiction.

24. Perform audits of business transactions to ensure compliance with regulations and/or policy.

25. Establish or approve rules of various games, and inspect games, tables, equipment, machines, cards, dice, and chips or tokens used in the gaming operation. Establish or approve video surveillance standards. Establish

standards/criteria for gaming machines and facilitate the testing of machines for compliance.

26. Resolve patron disputes, employees grievances, and other problems, pursuant to the tribal gaming ordinance.

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