



February 7, 2008

VIA FACSIMILE AND U.S. MAIL

Benedict Kawaykla, Chairman  
Fort Sill Apache Tribe  
Office of the Gaming Commission  
P.O. Box 809  
Lawton, Oklahoma 73502-0809  
Fax: (580) 354-1500

Re: Document Request Pursuant to 25 U.S.C. 2706(b)(4) and 25 C.F.R. § 571.3

Dear Chairman Kawaykla,

On January 18, 2008, the National Indian Gaming Commission (NIGC) Office of General Counsel (OGC) sent correspondence to the Fort Sill Apache Tribe (Tribe) requesting information and documentation which would enable OGC to confirm that the Tribe's development of a gaming facility in Luna County, New Mexico is on Indian lands upon which the Tribe may game under the Indian Gaming Regulatory Act (IGRA) and NIGC regulations. *See* 25 U.S.C. §§ 2703(4); 2719 and 25 C.F.R. § 502.12.

In correspondence addressed to Chairman Hogen, dated February 1, 2008, the Tribe's Gaming Commission informed the NIGC it has requested that the Tribe not respond to our inquiry until the Tribe's Gaming Commission has made a determination regarding the Indian lands question.

In addition, the Tribe's Gaming Commission requested a legal opinion from the NIGC regarding:

1. NIGC's authority to make an Indian lands determination; and
2. Whether the NIGC has the authority to overturn a tribal gaming commission's facility license issued pursuant to a tribal gaming ordinance which has been approved by the NIGC Chairman.

Chairman Hogen has asked the OGC to respond to your letter. IGRA requires tribes to game on Indian lands over which they have jurisdiction. *See* 25 U.S.C. §§ 2710(b)(1) and 2710(d)(1). Furthermore, IGRA prohibits gaming on trust lands acquired

after October 17, 1988 except in limited circumstances. *See* 25 U.S.C. § 2719. In order to ensure compliance with IGRA and NIGC regulations, the NIGC relies upon its general enforcement authority. *See* 25 U.S.C. § 2713(a)(1). "IGRA delegates responsibility for Indian gaming to the NIGC, which exercises wide discretion in overseeing the interplay of federal, state, and tribal authorities in this area. . . . [T]he statutory scheme is one that necessarily relies upon the NIGC's enforcement authority to ensure compliance with the Act." *See North County Community Alliance, Inc., v. Dirk Kempthorne*, No. C07-1098-JCC (W.D. Wash. Nov. 16, 2007). Consequently, the NIGC has authority to make an Indian lands determination as part of our enforcement authority. Moreover, as an initial matter, the NIGC has authority to make this determination to assess whether we have jurisdiction to regulate your facility.

To answer your second question, a facility license issued by the tribal gaming commission does not preclude the NIGC from exercising its oversight and enforcement responsibilities. 25 U.S.C. § 2713. For instance, if a tribe were to license and operate a gaming facility in violation of IGRA's general prohibition against gaming on after-acquired lands, the NIGC would not seek to overturn the tribal gaming license, but would be authorized to pursue an enforcement action. *See* 25 U.S.C. §§ 27198 and 2713.

The NIGC hopes to work cooperatively with the Tribe. We are not assuming that the Tribe's trust land in Luna County, New Mexico are not Indian lands upon which it may game under IGRA and NIGC regulations. *See* 25 U.S.C. §§ 2703(4) and 2719 and 25 C.F.R. § 502.12. However, without further information, we are unable to assure that the Tribe is complying with IGRA and NIGC regulations. Please provide the NIGC with a copy of the Tribe's analysis and all documents supporting its determination that the Tribe's trust land in Luna County, New Mexico is Indian lands upon which it may lawfully game.

Sincerely,



Penny Coleman  
Acting General Counsel

cc: Jeff Houser, Chairman, Fort Sill Apache Tribe  
Fax: (580) 558-3133

Phillip Thompson  
Fax: (202) 905-0057