

March 11, 2011

Via First Class mail & Facsimile

The Honorable Robert Bentley, Governor State of Alabama State Capitol Montgomery, Alabama 36130

Fax: (334) 242-0937

Re: Indian gaming in Alabama

Dear Governor Bentley:

On January 11, 2011, the National Indian Gaming Commission (NIGC) received a letter from former Governor Bob Riley. In the letter, Governor Riley clarified his administration's position on gaming being conducted by the Poarch Band of Creek Indians and asked the NIGC to investigate and shut down the Poarch Band's facilities. More recently, Attorney General Luther Strange submitted comments to the NIGC in response to a Notice of Inquiry regarding agency regulations. Unlike Governor Riley's letter, Mr. Strange's comments were not specific to the Poarch Band, but spoke to the status of electronic bingo machines under Alabama law in general. In light of these letters, I want to take this opportunity to set forth NIGC's authority under the Indian Gaming Regulatory Act (IGRA) for ensuring that all tribal gaming facilities, including those in Alabama, are operating within the strictures of IGRA.

The Indian Gaming Regulatory Act was passed by Congress in 1988 to create a federal statutory framework for Tribal gaming. 25 U.S.C. § 2701, et seq. The purposes of the Act include "the establishment of independent Federal regulatory authority for gaming on Indian lands" and "the establishment of Federal standards for gaming on Indian lands." 25 U.S.C. § 2702(3). Further, Congress established the National Indian Gaming Commission to meet its concerns regarding gaming and the protection of it as a means of generating tribal revenues. *Id.*

Subject to the Act's provisions, qualifying tribes conduct Class II and III gaming on their lands. Unlike Class III gaming, which accords a discrete role for states, Class II gaming is within the jurisdiction of the Indian tribes, subject to regulation by the Federal government as set forth in IGRA. 25 U.S.C. § 2710(a)(2). A tribe may engage in Class II gaming on Indian lands within its jurisdiction if the gaming is located within a state that permits such gaming for any purpose, by any person, organization or entity, and the tribe adopts a gaming ordinance approved by the NIGC Chairwoman. *Id.* at § 2710(b)(1).

At the time IGRA was passed, the United States Senate understood that most states permitted bingo pursuant to varying restrictions and regulations. Rather than bind tribes to the various state laws, and thereby create different standards for different tribes, Congress defined the game of bingo in IGRA. See 25 U.S.C. § 2703(7). In the Senate Report accompanying an earlier version of IGRA, the Senate Committee on Indian Affairs stated, "In...forty-five states, some form of bingo is permitted and where Indian tribes and Indian lands exist in those states, such tribes would be permitted to operate bingos as otherwise regulated by this Act." S. Rep. No. 99-493 at p. 14. That is to say, tribes are permitted to play bingo pursuant to and as defined by IGRA, not state law.

IGRA defines bingo through its definition of Class II gaming. "Class II gaming" includes:

- (i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) -
- (I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,
- (II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and
- (III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo.

25 U.S.C. § 2703(7).

In enacting this definition, Congress clearly intended that tribes should have every opportunity to take advantage of technology in the play of bingo. IGRA specifically includes bingo played with an "electronic, computer, or other technological aid." *Id.* Further, in its report accompanying IGRA, the Senate Committee on Indian Affairs stated that it "specifically rejects any inference that tribes should restrict class II games to existing games sizes, levels of participation, or current technology." S. Rep. No. 100-446 at p. 9. As an example, the Committee noted that:

tribes may wish to join with other tribes to coordinate their class II operations and thereby enhance the potential of increasing revenues. For example, linking participant players at various reservations whether in the same or different States, by means of telephone, cable, television or satellite may be a reasonable approach for tribes to take.

Id.

The Committee further stated that "[s]imultaneous game participation between and among reservations can be made practical by use of computers and telecommunications technology as long as the use of such technology does not change the fundamental characteristics of the bingo or lotto games and as long as such games are otherwise operated in accordance with applicable Federal communications law." *Id.*

Thus, so long as a state permits the game of bingo, regardless of the state's definition of the game, an Indian tribe within that state may also play bingo as defined in IGRA. Accordingly, tribes are not bound to state definitions of the game of bingo. If a state permits paper bingo only, as Mr. Strange represents Alabama does, a tribe within that state may play electronic bingo so long as it otherwise meets IGRA's Class II gaming definition.

Although IGRA's definition of bingo may be more expansive than that of a particular state, tribes may operate class II bingo as set forth in IGRA's definition. In IGRA, Congress vested NIGC, and not states, with the authority to monitor Class II gaming conducted on Indian lands.

I hope this letter answers any questions you may have about Indian gaming in Alabama generally, as well as any specific concerns raised by Governor Riley's January letter. Additionally, Attorney General Strange's recent comments on electronic gaming are being considered as part of the NIGC's comprehensive review of all comments received in response to the Notice of Inquiry. If you or your staff has further questions or concerns, please do not hesitate to contact me.

Sincerely,

Tracie L. Stevens

NIGC Chairwoman

cc: Luther Strange, Attorney General, State of Alabama