

20 February 2012

The Honorable Tracie Stevens, Chairwoman
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, D.C. 20005

Dear Chairwoman Stevens:

On behalf of the Cherokee Nation Gaming Commission (CNGC), please accept our comments on the National Indian Gaming Commission's (NIGC) proposed changes to Parts 556 and 558 – Tribal Background Investigations and Licensing.

In reviewing the proposed revisions, it became apparent that the NIGC rearranged and moved a number of requirements from one section to another but made few additions to the background and licensing requirements. Although the rearrangement of the requirements made the comparison of the proposed language to the existing requirements cumbersome and confusing, the majority of the changes do not affect the CNGC's licensing process; some existing requirements were rewritten while retaining the same effect as the original. Therefore, the CNGC's comments focus on the language added by the NIGC.

There is potential for confusion and/or possible non-compliance to be created when attempting to reconcile the requirements in parts 556.1, 556.6(b)(2), 558.1, and 558.3(b), which state: (respectively)

556.1 – “Unless a tribal-state compact assigns sole jurisdiction to an entity other than a tribe with respect to background investigations, the requirements of this part apply to all class II and class III gaming. The procedures and standard of this part apply only to primary management officials and key employees. **This part does not apply to any license that is intended to expire within 90 days of issuance.**” (emphasis added)

556.6(b)(2) – “Submit a notice of results of the applicant's background investigation to the Commission **no later than sixty (60) days** after the applicant begins work.” (emphasis added)

558.1 – “Unless a tribal-state compact assigns sole jurisdiction to an entity other than a tribe, the licensing authority for class II or class III gaming is a tribal authority. The procedures and standard of this part apply only to licenses for primary management officials and key employees. **This part does not apply to any license that is intended to expire within 90 days of issuance.**” (emphasis added)

558.3(b) – “A gaming operation shall not employ a key employee or primary management official who does not have a license after ninety (90) days.”

Further confusion is created when considering the language in the preamble concerning the proposed changes wherein the NIGC states:

“Many tribes utilize a temporary license system. The NIGC does not propose to restrict the tribes’ authority to send applicants to work while processing their background investigations, so long as they are not employed for more than 90 days without obtaining a license that meets the requirements of these parts.”

The language added to 556.1 and 558.1, as supported by the NIGC preamble comment, allows for prospective licensees to begin work prior to the issuance of a regular gaming license. In addition, the new language can also be read to allow for the use of temporary employees and temporary licenses¹, which are useful tools for tribes to use. However, should a tribal gaming regulatory authority (TGRA) allow for temporary employees to be used and/or issue a temporary license² for a period of ninety (90) days or less, and it is decided during that time to hire that person as a regular, full time key employee or primary management official, would the TGRA be out of compliance with sections 556.6(b)(2) and/or 558.3(b)?

While a revision to the proposed standard may not be necessary, the NIGC is urged to provide additional guidance on applying the revised language in the preamble to the final rule.

Finally, the CNGC suggests the NIGC create and make available to tribes a comparative document separate from what appears in the Federal Register that clearly identifies the addition and removal of language. Such a document would greatly facilitate a tribe’s review and evaluation of proposed regulatory changes, as well as assist in the process of formulating comments.

Respectfully,

Jamie Hummingbird
Director

¹ This would be applicable to temporary employees and independent contractors/consultants that may be hired for projects that are expected to last no longer than ninety (90) days.

² Subject to any background investigation and/or licensing requirements that the tribal gaming regulatory authority may prescribe.