



Bay Mills Indian Community

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July 11, 2006

Comments on Class II Classification Standards
National Indian Gaming Commission
Attn: Penny Coleman, Acting General Counsel
1441 L Street NW, Suite 9100
Washington DC 20005

Dear Ms. Coleman:

Thank you for the opportunity to consider and comment on the proposed rule concerning Class II classification standards as those standards are used by the Indian Gaming Regulatory Act, 25 U.S.C. 2701, et seq. (Hereinafter, the "IGRA" or the "Act"). The Bay Mills Indian Community has reviewed the proposed rule. We make no specific comment on the content of this rule as presented, but instead take this opportunity to respectfully remind the National Indian Gaming Commission ("the Commission" or the "NIGC") of its limited ability to regulate class III gaming and of the position of the Bay Mills Indian Community regarding this ability. Specifically, we object to your organization's characterization of its authority over Class III gaming under the IGRA, in the "Background" section of the supplementary information that you have provided along with this proposed rule.

In the "Background" section of the supplementary information you provided to accompany the proposed rule, you comment that, ". . . [T]he NIGC also exercises regulatory authority over Class III gaming under IGRA, . . ." It has long been the position of the Bay Mills Indian Community, that the National Indian Gaming Commission's regulatory scope is limited to the regulation of Class II gaming as it is defined by the IGRA. We have asserted in the past, and continue to believe, that your body's regulatory responsibility remains in this realm, so long as IGRA mandates the regulation of Class III gaming through the state-tribal compact process as set forth in the Act.¹

We note that when in 2001, your organization attempted to demand an audit of the Class III gaming facilities owned and operated by the Colorado River Indian Tribes, your organization was found to have been acting beyond its statutory authority when it attempted to enforce the Minimum Internal Control Standards (hereinafter, the "MICS") that purported to regulate the tribes' Class III gaming. *Colorado River Indian Tribes v. National Indian Gaming Commission*, 383 F.Supp.2d 123. In that case, the court considered the several provisions relied upon by the NIGC in the Act, along with the legislative history of the Act, as well as the structure of the Act

¹ The Community is aware of 25 USC §2710 (d)(7)(B)(vii), whereby the NIGC may prescribe certain procedures under which Class III gaming may be conducted without a gaming compact, but takes no position on the question of who would regulate the Indian tribe in such circumstances.

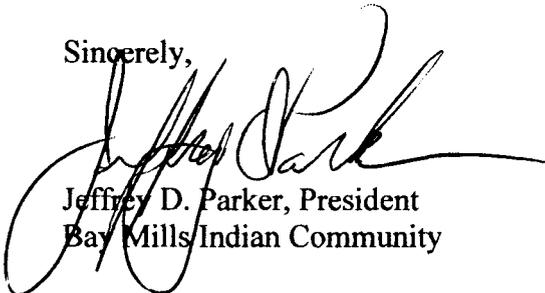
itself and concluded that the Act was not intended to, and in fact did not, confer broad regulatory authority over Class III gaming to the Commission. The Bay Mills Indian Community believes that the court's reasoning in this case was correct.

The Community recognizes that this decision is on appeal, and is therefore not a final opinion. We also recognize that the Commission strongly disagrees with the decision in *Colorado River Indian Tribes v. National Indian Gaming Commission*, 383 F.Supp.2d 123, and notes that the court in that case did not enjoin the NIGC from enforcing these Minimum Internal Control Standards against other tribes. *Letter from NIGC Chairman, Philip N. Hogen to Tribal Leaders, dated August 30, 2005*. We nonetheless find the court's reasoning and conclusion to be a true, sound and sustainable reading of the Act. Additionally, we find little factual distinction to be made between the position of the Colorado River Indian Tribes and one that could be asserted by any other gaming tribe in the Nation.

That having been said, the Bay Mills Indian Community, has not ignored the Minimum Internal Control Standards which the NIGC has promulgated. Instead, the Community has made all the necessary efforts to comply with the MICS as they have been set forth by the NIGC. The Community does this because it believes that it is important to maintain the continuity of the system of regulation of its gaming, which has allowed the Community to grow and prosper to this point. Therefore, despite our concern with the NIGC's ability to promulgate these MICS, the Community will continue to adhere to the MICS as they have been promulgated, for the foreseeable future.

Once again, thank you for the opportunity to comment on these proposed regulations.

Sincerely,



Jeffrey D. Parker, President
Bay Mills Indian Community