NATIONAL
INDIAN
GAMING
COMMISSION

JUN 21 1999

Don W. Abney, Principal Chief
Sac and Fox Nation
Route 2, Box 246
Stroud, Oklahoma 74079

Dear Chief Abney:

The purpose of this letter is to respond to your fax transmission of March 29, 1999, in which you request the National Indian Gaming Commission (NIGC) to review the proposed Lease Agreement, dated November 22, 1994 (Lease), and Indemnity, dated November 22, 1994, between the Sac and Fox Nation (Nation) and Telemark, LLC. The purpose of our review is normally to determine whether the agreement is a contract for management of an Indian tribal gaming operation or a collateral agreement to such a management contract, and therefore subject to our review and approval under the Indian Gaming Regulatory Act (IGRA).

Because we were unfamiliar with the game being offered under the Lease, we also reviewed the game to determine whether its play is lawful under IGRA. We have determined: that Tele-Bingo is not being run as a tribal gaming operation under IGRA; that, in any event, it is a class III game which cannot be played lawfully on Indian land in Oklahoma; and that, therefore, the Nation should immediately close down the game.

Authority to review the Lease and Indemnity

The authority of the NIGC to review and approve gaming related contracts is limited by the IGRA to management contracts and collateral agreements to management contracts. 25 U.S.C. § 2711. The authority of the Secretary of the Interior to approve such agreements under 25 U.S.C. § 81 was transferred to the NIGC pursuant to the IGRA. 25 U.S.C. § 2711(h).

Management Contracts

The NIGC has defined the term "management contract" to mean "any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation." 25 C.F.R. § 502.15. The NIGC has defined "collateral agreement" to mean "any contract, whether or not in writing, that is related either directly or indirectly, to a management contract, or to any rights, duties or obligations created between a tribe (or any of its members, entities, organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor)." 25 C.F.R. § 502.5.

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Determination as to management of the game.

Although it is not clear from the face of the lease, NIGC field investigators visiting the site report that the Nation is not involved in the operation of Telemark's game, "Tele-Bingo." It appears that the game is wholly operated by Telemark on the Nation's land, and the Nation does not participate materially in any aspect of the operation. Under this arrangement, Tele-Bingo is not tribal gaming, and therefore does not meet the fundamental requirement of the Indian Gaming Regulatory Act (IGRA) that the Nation have the sole proprietary interest and responsibility for the conduct of the game. Based upon this determination, it is not necessary to decide whether or not the Lease and Indemnity constitute a management agreement. The question of whether Telemark is managing a tribal gaming operation would only arise if Tele-Bingo was in fact a tribal gaming operation, but that is not the case. Stated otherwise, this operation does not meet even the basic requirement of being gaming by an Indian tribe under IGRA, and we cannot therefore get to the management issue. There is no legal basis for the conduct of Tele-Bingo on the Nation's land.

Classification of the game

In addition I am informed that the description of the game in the Lease, which involved play using a 900 telephone number to get payment, is incomplete and inaccurate. As currently played the game apparently uses the Internet to provide the player with the bingo card (all players use the same card), to solicit payment and to provide a PIN to the player. Utilizing the PIN, the player then engages in "play" by phone. The play consists of telephoning a location on the Nation's land and receiving, from the person on the other end, 20 randomly generated numbers. Payouts are based upon achieving a bingo with the fewest numbers, although a bonus is paid for covering the top row with the first five numbers.

IGRA (25 U.S.C. § 2703) defines class II gaming to mean:

1. The game of chance commonly known as bingo:

    a. Which is played for prizes with cards bearing numbers or other designations

    b. In which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn

    c. In which the game is won by the first person covering a previously designated arrangement on such card (s)

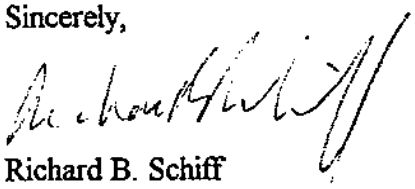
Tele-Bingo is far removed from the "game of chance commonly known as bingo." The Tele-Bingo player is not engaged in play of a game with other players, covering numbers as they are called, and does not win by being "the first person covering a previously designated arrangement." Rather, the Tele-Bingo player receives randomly generated numbers by telephone, and wins by matching those numbers to a card which remains the same for all players in all games.

Tele-Bingo is simply a lottery, and as such it is a class III game.

Please be advised that the Nation should take all necessary steps to close down this game, without delay. Operation of this non-tribal game on the Nation's land is a violation of IGRA. Additionally, operation of a class III game on Indian land, without a compact, is a violation of IGRA and constitutes a crime under 18 U.S.C. § 1166.

If you have any questions or concerns, please call me at (202) 632-7003.

Sincerely,



Richard B. Schiff
Senior Attorney