

MAY 7 2008



Mr. Justin P. Weinberg
Gislason & Hunter LLP
Attorneys at Law
P.O. Box 458
New Ulm, MN 56073-0458

Re: Casino Resource Corporation Memorandum of Understanding

Dear Mr. Weinberg:

This is in response to your January 11, 2008 letter asking for an opinion as to whether the March 9, 1995 memorandum of understanding (MOU) between [redacted] and Casino Resource Corporation (CRC) is a management contract under 25 U.S.C. § 2711 that requires the NIGC Chairman's approval. It is my opinion that it does not. I note, however, that the MOU may give [redacted] a financial interest in the management contract between Lakes Management Company (Lakes) and the Pokagon Band of Potawatomi Indians (Pokagon). 25 U.S.C. § 2711(a)(1)(A). As a result, we are sending the MOU to the NIGC's Contracts division for further review. b6

The MOU grants [redacted] and [redacted] each [redacted] of net revenues from any business CRC enters into with an Indian tribe, including gaming. *Net revenue* is defined as the gross revenues of the businesses minus operating expenses of those businesses and/or properties. CRC's operating expenses are not included. b6 b4

On May 20, 1999, CRC and Lakes entered into a "Conditional Release and Termination Agreement." CRC agreed to release Lakes from an earlier agreement establishing a joint venture in exchange for [redacted] of any management fee Lakes earns under its management contract with Pokagon.

We understand that the submitted MOU may be the subject of litigation and wish to make clear that this opinion is limited to determining whether the MOU constitutes a management contract. We do not comment on whether the MOU is valid or applies to any particular contract or agreement CRC may have entered into.

AUTHORITY

The authority of the NIGC to review and approve gaming-related contracts is limited by IGRA to management contracts and collateral agreements to management contracts to the extent that they implicate management. 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 IGRA. 25 U.S.C. § 2711(h).

MANAGEMENT CONTRACTS

The NIGC has defined *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.

Management encompasses activities such as planning, organizing, directing, coordinating, and controlling. *See NIGC Bulletin No. 94-5*. The performance of any one of these activities with respect to all or part of a gaming operation constitutes management for the purpose of determining whether an agreement for the performance of such activities is a management contract requiring the Chairman’s approval. *Id.*

Management contracts include all collateral agreements to a contract for management of class II gaming activity “that relate to the gaming activity.” 25 U.S.C. § 2711(a)(3). The NIGC has applied this concept to Class III management contracts as well. *See United States ex rel. Saint Regis Mohawk Tribe v. President R.C.-St. Regis Management Co.*, 451 F.3d 44, 48 n.2 (2nd Cir. 2006); *Catskill Development, L.L.C. v. Park Place Entertainment Corp.*, 217 F. Supp. 2d 423, 432-33 (S.D.N.Y. 2002). Specifically, the NIGC’s regulatory definition of *management contract*, which applies to both Class II and Class III management contracts, includes any collateral agreement if “such . . . agreement provides for the management of all or part of a gaming operation.” 25 C.F.R. § 502.15. Therefore, only collateral agreements that provide for the management of all or part of a gaming operation are management contracts requiring the NIGC Chairman’s approval. *Jena Band of Choctaw Indians v. Tri-Millennium Corp., Inc.*, 387 F. Supp. 2d 671, 677-78 (W.D. La. 2005); *United States ex rel. St. Regis Mohawk Tribe v. President R.C.-St. Regis Management Co.*, No. 7:02-CV-845, 2005 U.S. Dist. LEXIS 12456, at 9-10 (N.D.N.Y. June 13, 2005), *aff’d on other grounds*, 451 F.3d 44 (2nd Cir. 2006).

MEMORANDUM OF UNDERSTANDING

By its terms, the MOU is an agreement collateral to a management contract. The MOU is a contract, in writing, between [redacted] and [redacted] and CRC that is directly related to any gaming management contract CRC enters into with an Indian tribe. Specifically, the MOU grants [redacted] and [redacted] each a [redacted] interest in CRC businesses with Indian tribes. CRC, in turn, holds a [redacted] interest in Lakes’ management contract with Pokagon. As such, the MOU is directly related to Lakes’ contract with Pokagon, Lakes’ obligation to manage the facility, and Lakes’ right to a share of the Pokagon gaming facility revenue.

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However, by its terms, the MOU does not provide for the management of all or part of Pokagon's, or any other, gaming operation. Indeed, the MOU appears to place no requirements or duties on [redacted] or [redacted] in exchange for their percentage of net revenues. As such, the MOU does not require the Chairman's approval.

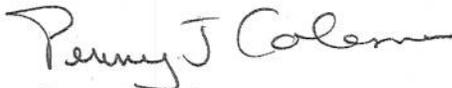
Although the MOU does not require the Chairman's approval, it appears to grant [redacted] and [redacted] a financial interest in Lakes' management contract with Pokagon. When an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management contract, all parties of that entity are deemed to be persons having a direct financial interest in a management contract. 25 C.F.R. § 502.17(e). For each contract for management of Class II gaming, the ten persons who have the greatest direct or indirect financial interest in the management contract, and any other person with a direct or indirect financial interest in the management contract otherwise designated by the Commission, must submit to NIGC background investigations. 25 C.F.R. §§ 537.1(a)(3) and (a)(5). Because [redacted] and [redacted] have an interest in CRC, which in turn has an interest in Lakes' management contract with Pokagon, [redacted] and [redacted] appear to have a financial interest in the management contract. The NIGC may require that any person with a direct or indirect financial interest in a management contract undergo a background check. 25 C.F.R. § 537.1. Management contracts and changes in persons with a financial interests or management responsibility for a management contract that have not been approved by the Chairman are void. 25 C.F.R. § 533.7.

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I am, therefore, forwarding the MOU and a copy of this letter to the NIGC Contracts Division to review and determine whether any further action under the Management Contract, including background investigations of [redacted] and [redacted] is necessary. I am also forwarding the MOU and a copy of this letter to the Department of the Interior Office of Indian Gaming for review under 25 U.S.C. § 81.

If you have any questions, please contact NIGC Attorney Michael Hoenig at (202) 632-7003.

Sincerely,



Penny J. Coleman
Acting General Counsel

cc: Elaine Trimble-Saiz, Director of Contracts, NIGC
George Skibine, Director, Office of Indian Gaming