



SEP 23 2008

Robert Miller, Director
Gaming Commission
Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
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Dear Mr. Miller:

The National Indian Gaming Commission's (NIGC) northwest regional office recently forwarded a development agreement and employment agreement between the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (Tribes) and [redacted] for this office to review.

The purpose of the review is to determine whether the agreements create a management contract or agreement collateral to a management contract and, therefore, are subject to the review and approval of the NIGC Chairman under the Indian Gaming Regulatory Act (IGRA). 25 U.S.C. §§ 2701, *et seq.* After careful review, it is my opinion that the agreements do not constitute a management contract under IGRA and do not require the Chairman's approval.

One of the agreements at issue employs [redacted] of the Tribes' gaming facility. Under the other, [redacted] will consult with the Tribes on the development and construction of an expansion of the facility. Neither agreement is a management contract.

A management contract is "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 (emphasis added). 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.* In the view of the NIGC, 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.

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[redacted] employment agreement is not a management contract. One of the ways IGRA attempts to ensure that tribes are the primary beneficiaries of gaming as Congress required, 25 U.S.C. § 2702(2), is to set certain requirements for management contracts and to require the Chairman's approval. Thus, IGRA requires a monthly reporting to the tribal governing body, caps on fees paid by tribes from net revenues, etc. These concerns and requirements, however, do not apply to a tribe's relationships with its own employees.

In employment relationships such as that created by [redacted] employment agreement, IGRA protects tribes from undesirable elements through its primary management and key employee requirements, to which [redacted] is subject. Because [redacted] will be an employee of the tribe, his employment agreement does not qualify as a management contract as that term is used in the Indian Gaming Regulatory Act. 25 U.S.C. § 2711. b6

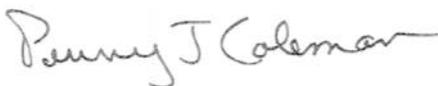
Similarly, the development agreement is not a management contract simply because it does not grant [redacted] any management responsibility for the operation of the gaming facility. The development agreement is limited to construction and design aspects of the expansion and is by its nature a consulting agreement.

A consulting agreement typically identifies finite tasks or assignments to be performed, specifies the dates by which such tasks are to be completed, and provides for compensation based on an hourly or daily rate or a fixed fee. *NIGC Bulletin 94-5*. Here, [redacted] is paid a fixed amount per the completion of each of five scheduled deliverables, rather than a percentage of revenues. Further, the authority and responsibility bestowed on [redacted] by the development agreement ceases on the termination date, defined, in part, as the date the expanded facility opens to the public. The development agreement does not give [redacted] any authority to manage the gaming activity. That authority stems from the employment agreement. These factors indicate that the development agreement does not constitute a management contract.

While it is unusual for a tribe to contract with a managing employee as an outside consultant, it is not a violation of IGRA to do so and does not, by itself, create a management contract. Additionally, as discussed above, neither agreement standing alone constitutes a management contract as defined in NIGC regulations. As such, neither agreement requires the Chairman's approval.

Thank you for your assistance in our review. We will forward a copy of the agreements and this letter to the Department of the Interior's Office of Indian Gaming. If you have any questions, please contact NIGC Attorney Michael Hoenig at the number below.

Sincerely,



Penny J. Coleman
Acting General Counsel

cc: Mark Phillips, Director, Region I
George Skibine, Director, Office of Indian Gaming