

June 6, 1995

Richard M. Milanovich, Chairman
Agua Caliente Band of Cahuilla Indians
960 E. Tahquitz Way
106
Palm Springs, CA 92262

Dear Chairman Milanovich:

A number of California Indian tribes have expressed concern that Bulletin No. 95-1, an advisory opinion on the classification of banking card games under the Indian Gaming Regulatory Act (IGRA), could result in the classification of certain card games as class III gaming even though such card games are not considered banking games under California law.

We are aware of state court decisions that have determined that certain Asian card games, pai gow, pai gow poker, and pan 9, are not banking games within the meaning of California law if played using a certain betting format. City of Bell Gardens v. County of Los Angeles, 231 Cal. App. 3d 1563, 283 Cal. Rptr. 91 (1991); Huntington Park Club Corporation v. County of Los Angeles, 206 Cal. App. 3d 241, 253 Cal. Rptr. 408 (1988). In City of Bell Gardens, the California Court of Appeals for the Second District found that pai gow, pai gow poker, and pan 9 shared the same betting format:

The position of dealer rotates systematically among the players and each player has the opportunity to act as the dealer for two consecutive rounds. The player/dealer makes the initial bet, and the other players bet against him. The player/dealer pays off winners and collects from losers, but only until the player/dealer wins or loses his initial wager. Thereafter, the round of play terminates even though there are remaining players at the table who have winning or losing hands. Accordingly, the player/dealer is not required to pay all winners, and the player/dealer may only collect from losers up to the amount the player/dealer wagered.

231 Cal. App. 3d at 1566.

In promulgating a definition for "house banking", the National Indian Gaming Commission (NIGC) was guided in large part by California case law. "Banking game has come to have a fixed and accepted meaning: the 'house' or 'bank' is a participant in the game, taking on all comers, paying all winners, and collecting from all losers." Sullivan v. Fox, 189 Cal. App.3d 673, 678, 235 Cal. Rptr. 5, 8 (1987). Compare this definition with 25 C.F.R.

§ 502.11.¹ To the extent that pai gow, pai gow poker, pan 9, and other card games (excluding blackjack, chemin de fer, and baccarat) are played using the above described betting format, it is the view of the NIGC that such games are not banking games as that term has been defined in the regulations of the NIGC. However, as the court noted in City of Bell Gardens, "if a rule change [for pai gow] permitted a player to take all comers, pay all winners, and collect from all losers, the game would, under the Sullivan definition, be a banking game." 283 Cal. Rptr. at 94. Likewise, such a rule change would make pai gow or such other card games house banking games as that term is defined in regulations of the NIGC.

This clarification in no way alters the determination of the NIGC that player banked blackjack is a banking card game thereby falling within class III gaming. The IGRA expressly prohibits the game of blackjack from class II gaming. 25 U.S.C. § 2703(7)(b)(i).

If you have any questions, please do not hesitate to contact the legal staff at (202) 632-7003.

Sincerely,

/s/ Harold A. Monteau

Harold A. Monteau
Chairman

¹ "House banking means any game of chance that is played with the house as a participant in the game, where the house takes on all players, collects from all losers, and pays all winners, and the house can win.