NATIONAL INDIAN GAMING COMMISSION

BIENNIAL REPORT

BIENNIAL REPORT OF THE NATIONAL INDIAN GAMING COMMISSION 1998–2000

WASHINGTON, D.C.

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FROM THE COMMISSIONERS

The National Indian Gaming Commission is pleased to present its Biennial Report to the Congress covering the period December 31, 1997, to January 1, 2000. In March 1999 Chairman Montie R. Deer formally took office and was joined by commissioners Teresa E. Poust and Elizabeth L. Homer four months later. Together, we have had the privilege of leading the commission through an important period of rapid growth and transformation.

In 1997, Congress amended the Indian Gaming Regulatory Act to allow the commission to assess fees on class III gaming and raised its budget cap to $8 million. Congress made clear to the commission that it expected the larger funding base to be used to increase the commission's role and presence in Indian gaming. Since taking office, we have worked hard to meet those expectations.

We are pleased to report that our presence in Indian Country has improved with the opening of five regional offices. The addition of an Audits Division and the Office of Self-Regulation has improved operations and expanded services. At the beginning of 1998, the commission had a staff of approximately 30 employees, with only 7 located outside of Washington, D.C. We now have 33 employees—about 45 percent of the commission's work force—located outside of Washington and much closer to where gaming occurs. This increased presence in Indian Country enables us to work more closely with tribal governments and to advance important policy and regulatory objectives aimed at protecting the overall integrity of tribal gaming.

Even with our recent expansion, we recognize that the commission remains modest in size compared to the scope of the industry. The Indian gaming industry has experienced exponential growth since the passage of the Act. In 1988, tribal governmental gaming produced approximately $500 million in total annual revenue. In 1999, the industry generated revenue in excess of $9.6 billion. If we are to succeed in our mission, strong regulation at the tribal government level is vital. Accordingly, the commission has spent considerable time and resources on providing training, technical assistance, and consultation with gaming tribes. We believe that our success in developing strong relationships with tribal governments will serve to facilitate high levels of voluntary compliance with the commission's regulations. In turn, this will be a key factor in determining the need for, and pace of, the commission's future growth.

Each of us recognizes that we serve at an important time in the history of this institution and share important responsibilities that will affect its course long into the future. In the coming two years, the commission will increasingly focus its efforts on strengthening its institutional and operational capacities. We are committed to leaving the commission an even stronger, more productive institution. We hope you find this report both informative and useful.

Montie R. Deer Elizabeth L. Homer Teresa Poust

The National Indian Gaming Commission

As an independent federal regulatory agency of the United States, the National Indian Gaming Commission (commission), was established pursuant to the Indian Gaming Regulatory Act of 1988 (Act). The commission comprises a chairman and two commissioners, each of whom serves on a full-time basis for a three-year term. The chairman is appointed by the president and must be confirmed by the Senate. The secretary of the Interior appoints the other two commissioners. Under the Act, at least two of the three commissioners must be enrolled members of a federally recognized Indian tribe, and no more than two members may be of the same political party.

The commission maintains its headquarters in Washington, D.C., and recently established five field offices in Portland, Oregon; Sacramento, California; Phoenix, Arizona; St. Paul, Minnesota; and Tulsa, Oklahoma. The commission is divided into 7 separate divisions with a combined staff of 72 full-time employees. The chief of staff oversees staff functions and directs the commission's day-to-day activities. Barry Brandon, a member of the Muscogee (Creek) Nation, serves as chief of staff. The general counsel oversees the Office of General Counsel, which handles the commission's legal affairs. Kevin Washburn, a member of the Chickasaw Nation, serves as general counsel. The chairman appoints both the chief of staff and the general counsel.

MISSION AND RESPONSIBILITIES

The commission's primary mission is to regulate gaming activities on Indian lands for the purpose of shielding Indian tribes from organized crime and other corrupting influences; to ensure that Indian tribes are the primary beneficiaries of gaming revenue; and to assure that gaming is conducted fairly and honestly by both operators and players. To achieve these goals, the commission is authorized to conduct investigations; undertake enforcement actions, including the issuance of notices of violation, assessment of civil fines, and/or issuance of closure orders; conduct background investigations; conduct audits; and review and approve tribal gaming ordinances.

THE COMMISSIONERS

CHAIRMAN MONTIE R. DEER, a member of the Muscogee (Creek) Nation, serves as the commission's chairman. Nominated by President Clinton on July 30, 1998, Chairman Deer was confirmed by the Senate on March 8, 1999, and took the oath of office on March 24, 1999. Chairman Deer received his Juris Doctor degree in 1971 from Washburn University School of Law. After more than a decade of practicing law, he assumed the bench and served as District Court Judge for the 10th Judicial District of the State of Kansas from 1983 to 1994.

In 1994, Chairman Deer became an assistant U.S. attorney for the District of Kansas. During his tenure with the U.S. Attorney's Office, Chairman Deer also served on the Indian Affairs Subcommittee of the Attorney General's Advisory Committee of United States Attorneys.

Throughout his career, Deer has been active in Indian Country. In addition to serving as the director of legal services at the North Topeka Indian Center in Topeka Kansas, Chairman Deer also served as special tribal court judge under an appointment by the Supreme Court of the Muscogee (Creek) Nation. He is a member of the Wichita Warriors Society and has served on the board of directors of the Mid-American All-Indian Center and the Hunter Health Clinic, located in Wichita, Kansas.

Chairman Montie R. Deer

Chairman Deer is a member in good standing of the state bars of Kansas and Texas and is admitted to practice before the Federal District Court for the District of Kansas, the United States Courts of Appeals for the 5th and 10th Circuits, and the U.S. Supreme Court. Chairman Deer is a member of the Muscogee (Creek) Nation Bar, the Native American Bar Association, the Oklahoma Native American Bar Association, and the Nevada Native American Bar Association. He also serves on the faculty of the National Judicial College.

COMMISSIONER ELIZABETH L. HOMER, an enrolled member of the Osage Nation of Oklahoma, serves as the commission's vice chairman. Commissioner Homer was appointed to the commission by Interior Secretary Bruce Babbitt and sworn into office on July 28, 1999.

Commissioner Elizabeth L. Homer, Vice Chair

Immediately prior to her appointment to the commission, Commissioner Homer served as the director of the Office of American Indian Trust at the U.S. Department of the Interior where she worked closely with tribal governments and federal agencies in matters pertaining to federal Indian policy, particularly in relation to the federal Indian trust relationship and tribal self-governance.

Commissioner Homer began her legal career with the Office of the District Attorney for the Second Judicial District of New Mexico where she prosecuted violent felony offenses. In 1992, Ms. Homer became a special attorney with the Criminal Division of the U.S. Department of Justice. Her work to increase the investigation and prosecution of crimes against children in Indian Country earned her one of the division's highest awards for special initiative. She also served on the Attorney General's Task Force on Violent Crime and as the Criminal Division's representative to the

Indian Affairs Subcommittee of the Attorney General's Advisory Committee of United States Attorneys. Commissioner Homer's professional experience also includes positions with the Osage Nation, the Council of Energy Resource Tribes, and Americans for Indian Opportunity.

Commissioner Homer earned her Juris Doctor degree from the University of New Mexico. She is a member of the State Bar of New Mexico and the Federal Bar for the District of New Mexico.

COMMISSIONER TERESA E. POUST, an enrolled member of the Poarch Band of Creek Indians, serves as the commissioner in charge of the Office of Self-Regulation. Commissioner Poust was appointed to the commission by Interior Secretary Bruce Babbitt and sworn into office on July 28, 1999. Commissioner Poust comes to the commission having served the Poarch Band of Creek Indians in several capacities.

Commissioner Teresa E. Poust

Immediately before her appointment to the commission, Commissioner Poust was the tribal administrator for the Poarch Band of Creek Indians. In this position, she was responsible for the tribe's daily operations, which included supervision of a staff of approximately 130 and management of 13 tribal departments, including law enforcement, health, human resources, and education. Ms. Poust had primary oversight responsibility for the tribe's contracts and grants, including tribal priority allocation funds, and was responsible for negotiating the tribe's indirect cost rate. She also worked closely with the tribal chairman and tribal council in setting both short- and long-term goals for the tribe.

Before assuming duties as the tribal administrator, Commissioner Poust served as tribal attorney. Her responsibilities in this position included in-depth involvement with the tribe's gaming efforts. Ms. Poust was closely involved with the tribe's attempts to secure a tribal-state compact. She authored the tribe's gaming ordinance and oversaw the tribe's compliance with tribal and federal gaming laws. She served as a member of the gaming board of directors and was an elected member of the tribal council. Commissioner Poust also served as a judge in both the tribal court and the tribal drug court.

Commissioner Poust received her Juris Doctor degree from the Columbus School of Law at the Catholic University of America in Washington, D.C. She is licensed to practice before the tribal court of the Poarch Band of Creek Indians and is a member of the Alabama State Bar Association.

COMMISSIONERS' RECOMMENDATIONS

The Indian Gaming Regulatory Act requires the commission to include in each biennial report its views on whether the associate commissioners should continue as full or part-time officials.

Indian gaming has grown dramatically since the Act was passed in 1988. What began as a handful of tribal bingo operations producing about $500 million in revenue annually has evolved into more than 300 tribal gaming operations producing annual revenue of $9.6 billion and encompassing full-scale casino style gaming as well as bingo operations. As this fast-growing industry has expanded, the demands and responsibilities of the commission have increased accordingly. The associate commissioners have assumed increasing responsibility, particularly with regard to regulatory responsibilities and special initiatives. Decisions concerning the self-regulation program, for example, are the responsibility of an associate commissioner; and it is anticipated that the associate commissioners will assume additional responsibilities in future commission programs as well.

The availability of full-time associate commissioners enhances the overall effectiveness of the commission and enables the commission to initiate and carry out activities, projects, and initiatives that would not otherwise be practicable. Another consideration is the need for a knowledgeable, well-informed commission. Because tribal gaming is becoming increasingly complex, it is critical to the integrity of the commission's decision-making processes that each of the commissioners be well informed on the issues. As the associate commissioners have an important role to play in the formulation of the budget, it is essential that they understand the day-to-day operations and needs of the commission. Development of this level of understanding would be poorly facilitated were the associate commissioners to serve in a part-time capacity.

To carry out the commission's statutorily mandated responsibilities, the associate commissioners have taken the lead and instituted initiatives and activities that would have been delayed possibly for years without their leadership and hands-on involvement. This has enabled the chairman to focus on enforcement matters without sacrificing other priorities. The ability to share and divide responsibilities has enhanced the ability of the commission to carry out its mission and to reach out to a larger audience than would otherwise be possible. In the final analysis, the regulation of Indian gaming is facilitated by the presence of a fully constituted, full-time commission, as is evidenced by the commission's recent accomplishments (see pages 16–18).

Notwithstanding our recent expansion, the commission remains a lean agency, given its broad mission and the geographic dispersion of tribal gaming.

Introduction to Tribal Gaming

Tribal government-sponsored gaming is a relatively new phenomenon dating to the late 1970s when a number of Indian tribes established bingo operations as a means of raising revenue to fund tribal government operations. At about the same time, a number of state governments were also exploring the potential for increasing state revenue through state-sponsored gaming. By the mid-1980s, a number of states had authorized charitable gaming, and some were sponsoring state-operated lotteries.

Although government-sponsored gaming was an issue of mutual interest, tribal and state governments soon found themselves at odds over tribal gaming. The debate centered on the issue of whether tribal governments possessed the authority to conduct gaming independently of state regulation. Although many lower courts affirmed the tribal view in the early cases, the matter was not finally resolved until 1987 when the U.S. Supreme Court confirmed the authority of tribal governments to establish gaming operations independent of state regulation, provided that the state in question permits some form of gaming. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

Congress took up the issue of tribal gaming and conducted a series of hearings, ultimately culminating in the passage of the Indian Gaming Regulatory Act of 1988. Embodied in the Act was a compromise between state and tribal interests. The states were offered a voice in determining the scope and extent of tribal gaming by requiring tribal-state compacts for class III gaming, but tribal regulatory authority over class II gaming was preserved in full. The Act further provided for general regulatory oversight at the federal level and created the National Indian Gaming Commission as the responsible agency.

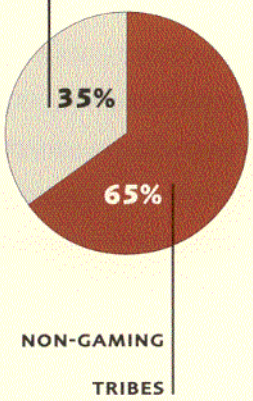
From 1988 to 1999, the size of the Indian gaming industry has increased nearly 20-fold—from annual gross revenue of $500 million in 1988 to $9.6 billion in 1999.

THE INDIAN GAMING REGULATORY ACT

Enacted in 1988 as Public Law 100-497 and now codified at 25 U.S.C. §2701, the Indian Gaming Regulatory Act establishes the jurisdictional framework that presently governs Indian gaming. The Act establishes three classes of games with a different regulatory scheme for each. Class I gaming is defined as traditional Indian gaming and social gaming for minimal prizes. Regulatory authority over class I gaming is vested exclusively in tribal governments.

Class II gaming is defined as the game of chance commonly known as bingo (whether or not electronic, computer, or other technological aids are used in connection therewith) and if played in the same location as the bingo, pull tabs, punch boards, tip jars, instant bingo, and other games similar to bingo. Class II gaming also includes non-banked card games, that is, games that are played exclusively against other players rather than against the house or a player acting as a bank. The Act specifically excludes slot machines or electronic facsimiles of any game of chance from the definition of class II games. Tribes retain their authority to conduct, license, and regulate class II gaming so long as the state in which the tribe is located permits such gaming for any purpose and the tribal government adopts a gaming ordinance approved by the commission. Tribal governments are responsible for regulating class II gaming with commission oversight.

The definition of class III gaming is extremely broad. It includes all forms of gaming that are neither class I nor II. Games commonly played in casinos, such as slot machines, black jack, craps, and roulette, would clearly fall in the class III category, as well as wagering games and electronic facsimiles of any game of chance. Generally, class III gaming is often referred to as full-scale casino-style gaming. As a compromise, the Act restricts tribal authority to conduct class III gaming. Before a tribe may lawfully conduct class III gaming, the following conditions must be met: (1) The particular form of class III gaming that the tribe wants to conduct must be permitted in the state in which the tribe is located; (2) the tribe and the state must have negotiated a compact that has been approved by the secretary of the Interior, or the secretary must have approved regulatory procedures; and (3) the tribe must have adopted a tribal gaming ordinance that has been approved by the chairman of the commission.



The regulatory scheme for class III gaming is more complex than a casual reading of the statute might suggest. Although Congress clearly intended regulatory issues to be addressed in tribal-state compacts, it left a number of key functions in federal hands, including approval authority over compacts, management contracts, and tribal ordinances. Congress also vested the commission with broad authority to issue regulations in furtherance of the purposes of the Act. Accordingly, the commission plays a key role in the regulation of class II and III gaming.

Structure and Operations

Having experienced significant growth, the Enforcement Division has expanded the scope of its oversight as well as the training opportunities offered to gaming tribes. The opening of regional offices in Portland, Oregon; Sacramento, California; Phoenix, Arizona; St. Paul, Minnesota; and Tulsa, Oklahoma, has made it possible for the commission to operate in closer proximity to gaming facilities. In addition, the staffing of these offices has resulted in a significant increase in the number of field investigators involved in enforcement activities.

The increase in the number of field investigators from 7 to 25 has enabled the commission to make the transition from reactive to a more proactive method of monitoring gaming operations. The number of gaming operations for which each investigator is responsible has been reduced, and field investigators are now able to make regularly scheduled visits to all the gaming operations for which they are responsible. (See "Site Visits," page 13.)

ENFORCEMENT DIVISION

During the past two years, the division emphasized basic statutory and regulatory compliance obligations of gaming tribes as set forth in the Act and commission regulations and has closely monitored tribal regulatory compliance. In 1997, the commission began publishing a semiannual compliance report as a method of tracking overall compliance and measuring it over time. The report contains the compliance record of each gaming tribe in eight critical areas. If a tribe were operating a gaming facility without a valid compact, for example, this would be shown in the report, as would failure to operate under a valid gaming ordinance or to properly license facilities. The report would also reflect the failure to submit investigative reports on key employees, fingerprint cards, and employment applications. Failure to submit an annual audit or remit fees would also be reflected.

The compliance report has been a useful tool in aiding the commission's policy goal to increase voluntary compliance. The availability of a compliance snapshot helps the division design better, more relevant training programs. Over the past two years, the division has expanded its training activities for tribal gaming regulators. In 1999 alone, the division provided 25 training conferences, covering a wide range of compliance and law enforcement issues.

The division also plays a critical role in the processing of background investigations of key employees at tribal gaming facilities. The Act requires that Indian tribes conduct background investigations on their key employees and primary management officials and notify the commission of the results of the background investigations before issuing a license to those individuals. The minimum requirements for background investigations are set forth in 25 CFR part 556. More than 53,000 investigative reports, 80,700 fingerprint cards, and 55,000 employee applications were processed during this reporting period.

The division is now much better situated to work closely with tribal regulatory agencies to ensure even higher levels of voluntary compliance. Education and outreach are among the division's best tools to achieve this goal, and the efforts are paying dividends as evidenced by the division's compliance report, which shows significant improvement in the compliance record of gaming tribes in every category.

AUDITS DIVISION

Recognizing that effective regulation of gaming requires the kind of expertise that only trained auditors can provide, the commission approved the creation of an Audits Division in June 1999. A primary focus of the division is the administration of the commission's regulations on Minimum Internal Control Standards (MICS), which became final in 1999. These important regulations, which establish uniform internal control standards similar to those used in other gaming jurisdictions, such as Nevada, Mississippi, and New Jersey, have proved to be exceedingly effective in protecting the integrity of gaming operations and gaming revenue.To ensure effective implementation of the MICS, the division provides advice to tribes and to the commission regarding internal controls. The division monitors tribal internal control systems and conducts audits at tribal gaming operations to determine the degree of compliance with the MICS.

Another important responsibility of the division is to assist the commission's Office of Self-Regulation. When a tribe petitions for a certificate of self-regulation, division auditors conduct an extensive and detailed review of the records of the gaming operation, tribal regulatory authority, and tribal government. The results of these reviews provide valuable feedback to a tribal government regarding the level of regulatory compliance achieved by its gaming operation.

Finally, the division provides critical support to the commission's Enforcement Division. Auditors are assigned to assist investigations into possible violations of the Indian Gaming Regulatory Act. The division has facilitated the investigations of alleged financial irregularities at gaming operations as well as compliance with approved per capita distribution plans. In the cash-intensive gaming industry, the auditors' ability to identify financial irregularities has proved to be an especially valuable asset to the commission's enforcement effort.

A well-run tribal gaming commission, free to regulate without undue interference, is the best vehicle for effective regulatory oversight.

CONTRACTS DIVISION

The Contracts Division is responsible for reviewing all management contracts and amendments to management contracts between tribes and gaming management contractors. Upon completion of a management contract review, the division will forward a recommended action to the chairman, who must approve the contract before it can become effective. This review and approval process is mandated by the Act as a means of shielding Indian gaming from organized crime and other corrupting influences and to ensure that the Indian tribe is the primary beneficiary of gaming revenue.

In performing its function during the review process, the division's staff works closely with all interested parties, including tribal officials, management contractors, attorneys and accountants, and tribal gaming commissioners, to ensure that all essential information is submitted. To recommend approval, the staff must be satisfied that the contract meets all the requirements established by Congress in the Act. Additionally, required investigations must be satisfactorily completed and related suitability criteria met. And, finally, the parties must demonstrate compliance with the National Environmental Policy Act (NEPA).

OFFICE OF GENERAL COUNSEL

Under the leadership of the general counsel, the Office of General Counsel (OGC) is the legal arm of the commission. Chief among its many responsibilities, the office provides legal advice and counsel to the commission. It represents the chairman in all enforcement actions and coordinates with the U.S. Justice Department when needed to enforce the chairman's enforcement actions. The office also plays an important role in handling appeals before the full commission arising from enforcement actions initiated by the chairman. When an action of the commission results in federal litigation, the office works closely with the Justice Department attorneys handling the case.

The office also handles the day-to-day legal affairs of the commission. Attorneys provide counsel and legal support to each division and provide guidance on issues requiring statutory interpretation of the Act as well as other federal laws. The office plays an important role in reviewing

tribal gaming ordinances and management contracts. It also provides advisory opinions on the appropriate classification of games played in gaming facilities operated on Indian lands.

Traditionally, the office has taken the lead in drafting the commission's regulations and in managing the rulemaking process. (See "Public Hearings," page 20.) Promulgated during this reporting period were regulations involving MICS for tribal gaming operations, published at 25 CFR part 542; issuance of certificates of self-regulation to tribes for class II gaming, published at 25 CFR part 518; and responses to subpoena and testimony by current and former commissioners and commission employees respecting official duties, published at 25 CFR part 516. The office also drafted commission regulations to establish a more formalized process for obtaining game classification opinions.

In addition to its other responsibilities, the office oversees the commission's compliance with the Freedom of Information Act (FOIA). The commission's FOIA officer is a member of the OGC staff. In the past year, the office established a FOIA section on the commission's web site, which now contains an electronic reading room with files containing documents commonly requested under FOIA. The availability of this feature on the web site significantly improves the availability of information of interest to the public.

OFFICE OF SELF-REGULATION

Since the inception of Indian gaming, tribal gaming commissions have become increasingly skilled in regulating gaming activities on Indian land. As a reflection of this growing sophistication, the commission published its final rule regarding the issuance of certificates of self-regulation to tribes for class II gaming (25 CFR part 518) on August 6, 1998. The commission's regulation implements the framework established by Congress in the Act by detailing the program requirements and establishing the Office of Self-Regulation (OSR).

SITE VISITS

Indian gaming does not occur in Washington, D.C. It happens across the United States on 198 different Indian reservations in 28 states. That is why the commission places the utmost importance on visiting the tribal governmental gaming facilities. Through visits to the various gaming facilities, the commission and its staff gain a thorough understanding of the numerous issues raised under the rubric of gaming regulation. During a site visit, the commission not only looks at the four walls of the casino but will also hold informal consultations with tribal gaming commissions and tribal councils. Additionally, site visits often include tours of the reservation and of tribal government buildings that house programs funded with gaming revenue.

The OSR is under the direct supervision of the commission with Commissioner Poust serving as the commissioner in charge. The office's primary responsibility is to process tribal petitions for self-regulation for class II gaming. Self-regulation status provides tribal governments with increased regulatory responsibility and greater autonomy by diminishing the role of the commission in the areas of monitoring, inspection, and review of background investigations. Such status will also result in a reduction of fees paid to the commission.

To participate in the self-regulation program, a tribal government must satisfy a number of requirements. First, it must demonstrate that it has a system for effective and honest accounting of all revenue. It must also show that a system for investigation, licensing, and monitoring of all employees of the gaming activity is in place. Reviewers will look to see that the tribal government has established standards and practices to ensure that the facility is operated on a fiscally and economically sound basis. Another key element is compliance with the Act, commission regulations, and applicable tribal regulations and/or ordinances. Finally, a petitioning tribe must show that its operations have met the minimum requirements for a period of three years.

During its first year of operation, program development and outreach occupied a substantial portion of the staff's time. Guidelines were developed to assist the commission's auditors and field investigators conducting the on-site portion of the review. In keeping with the commission's commitment to outreach and education and to stimulate interest in the program, numerous training sessions were held throughout Indian Country. Gaming revenue continues to provide much needed services and infrastructure in Indian Country. With strong tribal self-regulation proving to be the best protector of Indian gaming, astute tribes are looking for ways to prove their abilities. Participation in this program can be a key component in this effort.

INCREASED OUTREACH

Tribal gaming does not exist in a vacuum. The commission has taken steps to improve communications with tribal and state governments, Congress and other federal agencies, and the American public. Meetings are regularly held with tribal representatives, both in the field and at the commission's headquarters. The Office of Congressional and Public Affairs corresponds regularly with representatives from Congress, the White House, and other federal agencies. The commission is continuing to increase the range of information available on its web site and to make the site more user-friendly. And, the commission has been able to better inform the public of its activities through its quarterly newsletter.

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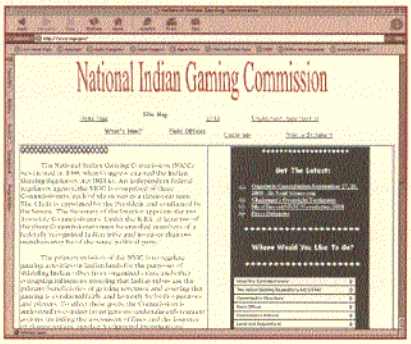


OFFICE OF CONGRESSIONAL AND PUBLIC AFFAIRS

The Office of Congressional and Public Affairs serves as the voice of the commission. The office works to keep information flowing between the commission and the Congress, tribal governments, and the public in a timely and effective manner. Among its principal duties, the office closely monitors pending legislation affecting Indian gaming and alerts the commission about developments that may affect its operations or its statutory duties and responsibilities.

As the focal point for receiving and coordinating actions on legislation referred to the commission for comment, the office serves as the commission's primary liaison with other federal agencies, including the Office of Management and Budget, regarding pending bills or resolutions, reports, testimony, and other statements about legislation. The office receives and responds to inquiries and other communications from members of Congress; congressional committees; committee staffs; local, tribal, and state governments; and other agencies. All correspondence, reports, and other communication addressed to Congress containing the commission's policy views flow through the office.

Public and media relations have become an increasingly important aspect of the office's work. In addition to handling public inquiries, the office is responsible for responding to calls from newspapers and television and radio stations across the United States. The staff also monitor media coverage of tribal gaming issues to keep the commission informed about the latest developments. (See "Increased Outreach" on the previous page.)

ADMINISTRATION DIVISION

In addition to handling the the commission's fiscal and budgetary matters, the Administration Division is responsible for overseeing the fee collection process. The division provides vital support and essential services, including personnel management, procurement activities, and information technology support, to all organizational components of the commission.

During the past year, the division has shouldered much of the workload associated with the commission's expansion initiative. In addition to handling logistics for the establishment of the field offices, the division successfully supervised the upgrade of the commission's computer and communication systems as well as the Y2K compliance initiative. At the same time, the division has increased it own efficiency and reduced the commission's overhead expenses. Through the effective use of technology, improved economies of scale, and new procedures to increase operational efficiency, the division has decreased its support-to-operations staff ratio from 24 to 17 percent in 1999.

Activities and Accomplishments

Under the Act's original funding mechanism, the commission assessed fees on class II gaming only with an overall budget cap of $3 million. Fashioned at a time when Indian gaming generated $500 million in annual revenue, this funding mechanism quickly became impracticable. Since passage of the Act in 1988, the industry has grown rapidly and spread throughout the country. In 1999, the Indian gaming industry generated $9.6 billion in total revenue.

In response to this rapidly growing industry, and a concern that budget limitations prevented the commission from fulfilling its mandates, Congress amended the Act in 1997 to allow fees to be assessed on class III gaming and to raise the budget cap to $8 million. Further, Congress made clear that it expected the commission to use its larger funding base to increase its role and presence in Indian gaming.

GROWTH AND EXPANSION

The former structure of seven field investigators working from their homes was grossly inadequate. To address these concerns, the commission outlined a plan of expansion. Of first priority was the opening of five strategically located regional field offices. In addition to increasing the commission's presence in Indian Country, such an undertaking would provide better services to tribes and increase the effectiveness of the commission's oversight.

The first field office was opened in St. Paul, Minnesota in late 1998. Shortly thereafter offices opened in Portland, Oregon; Sacramento, California; Phoenix, Arizona; and Tulsa, Oklahoma. Each field office is managed by a regional director and staffed with investigators and an auditor. Regional field offices not only allow the commission to be located closer to Indian Country where the gaming is actually occurring but they also permit quicker response to the numerous requests for assistance that the commission receives from tribal gaming facilities. Those in the field spend a large amount of time providing technical assistance and training.

In addition to regional offices, two new organizational components were established: the Audits Division and the Office of Self-Regulation. The added capability of the auditing staff has already significantly improved the commission's regulatory effectiveness and increased the level of services it is able to provide.

WORKPLACE EXCELLENCE

Notwithstanding the recent expansion, the commission remains an extremely lean organization, especially given the scope of its mission and the geographic dispersion of tribal government gaming across the country. It is, therefore, essential that the commission's staff comprise individuals of the highest work ethic and standards of performance. Even with the best available staff, true excellence in today's workplace requires more. True excellence requires that the entire organization be properly organized to achieve its mission and that each member have access to the tools needed to get the job done. Well aware of these principles and cognizant that the staff expansion and organizational changes were placing new stresses on the organization, the commission undertook two initiatives: a management review process and a complete overhaul of its central computer network and telecommunications systems.

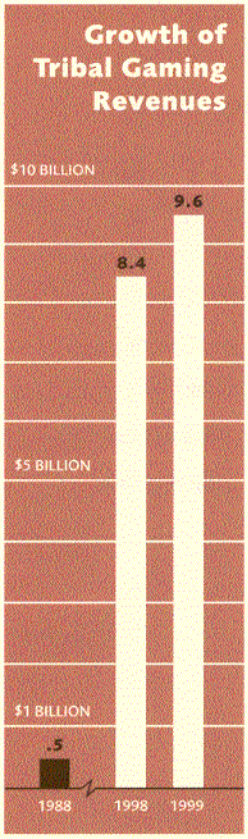
MANAGEMENT REVIEW PROCESS. To help the commission identify its short- and long-range management goals and measure them against the backdrop of the changes taking place, the commission undertook a management review process to determine whether the changes were creating barriers or obstacles to the efficient operation of the commission; whether accommodations or adjustments in the process are or may be needed; and whether anything was slipping through the cracks that could affect the commission's operational efficiency. The commission secured the assistance of the Federal Management Council to help identify and prioritize short- and long-term management objectives.

The management review process resulted in some important adjustments affecting the organizational chart and processes then under way. It also produced new initiatives to shore up gaps created by changes in the organization. A significant change affecting multiple organizational components was the establishment of a deputy chief of staff, whose role is to provide executive direction and oversight to the commission's three primary operational divisions: Audits, Contracts, and Enforcement. It became apparent that with the establishment of a field structure, a line manager was needed to coordinate functions and address priorities across organizational lines.

Another area of concern raised in the management review process was staff development. Given the unique circumstances surrounding the regulation of tribal government gaming, the rapid pace of expansion, and the relative newness of the industry, a solid staff development program is essential. Although all staff possesses the requisite credentials and qualifications for the positions they occupy, the assessment revealed a need for additional training in a number of areas. Employees hired from outside federal government, for example, must be provided the mandatory training requirements for government employees, such as ethics and diversity training. All employees must have a basic understanding of federal Indian law and policy, particularly as it relates to the status

The commission processed more than 53,000 investigative reports, 87,000 fingerprint cards, and 55,000 employee background applications in 1997 and 1998.

and authority of tribal governments. The commission also deems it essential that all staff members understand the overall mission and responsibilities of the commission and where their work relates to that mission. The commission is now in the process of developing or updating its educational and organizational materials. As new positions have been added to each division, senior managers have been encouraged to review operations carefully so as to ensure that duties and responsibilities are efficiently allocated among the staff. After identifying those areas prone to backlogs, senior managers have been deployed to examine current practices and processes more closely and to determine the steps needed to increase efficiency.



TECHNOLOGICAL INNOVATIONS. The management review process identified several areas in need of additional attention, including the need to make better use of information management and communications technologies. Substantial progress in these areas has already been made with the installation of a new Y2K-compliant central computer network with sufficient capacity to support the computing needs of the entire organization well into the future. Antiquated desktop computers have been replaced with reliable new hardware equipped with up-to-date software programs. A new central server has been installed, and the obsolete database has been replaced.

The commission is in the process of instituting an electronic central records and document management system that, in combination with the new database, will significantly enhance the commission's ability to access and process information. It is anticipated that the commission will soon have a central electronic record and document management system.

Another important technological innovation designed to increase the commission's operational efficiency is the planned installation of an imaging device capable of creating an exact image of hard copy fingerprint cards. This device will enable the commission to transmit fingerprint cards electronically to the Federal Bureau of Investigation for processing. The FBI has already approved the establishment of the necessary telecommunications link, and it is anticipated that the new system will be in operation by the end of 2000. This technology in combination with the new computer system, a new telecommunications system, and additional telephone lines has increased the commission's communications capability 100 percent.

Policy Initiatives

Tribal governmental gaming is subject to three layers of regulation in many instances. On the front line, tribal gaming operations are subject to regulation by tribal gaming commissions. Next, those tribes that have signed class III gaming compacts may also be subject to certain state regulations pursuant to those agreements. Finally, the National Indian Gaming Commission provides oversight and monitoring of the industry and is authorized to regulate in many areas, as previously discussed. Of these three regulatory levels, the key to effective oversight rests with tribal governments. It is therefore essential that tribes have a strong regulatory framework in place for the exclusive purpose of regulating and monitoring gaming.

Effective regulatory oversight requires separation between the *operation* of tribal gaming and the *regulation* of that gaming. In the commission's experience, a well-run tribal gaming commission, free to regulate without undue interference, is the best vehicle for achieving this separation. The goal of the policy initiative to strengthen independent tribal gaming commissions is to encourage establishment of such independent gaming commissions where they do not now exist and to support the independent exercise of regulatory authority by those already in place. Doing so enhances the integrity of the overall regulatory structure established under the Act.

STRENGTHENING INDEPENDENT TRIBAL GAMING COMMISSIONS

In October 1999, the commission updated its bulletin on independent tribal gaming commissions and distributed it to elected tribal officials, gaming commissioners, and regulators. Instructive rather than binding, the revised bulletin emphasizes the importance of the autonomy of tribal regulatory bodies to the integrity of the regulatory process and discusses the structural elements most likely to facilitate this autonomy.

Training activities have become a regular service of the commission, and the area of tribal gaming commissions is no exception. Commission staff members, particularly those in the field, discuss this issue frequently with individual tribes and during more formal training seminars. Also to this end, the chairman secured the assistance of the National Judicial College in Reno, Nevada, to develop a week-long training seminar geared specifically for tribal gaming commissioners. The commission is particularly appreciative of the support that this initiative has received from the Department of Justice, which provided full funding to cover the expenses of each participant.

COMPLIANCE THROUGH EDUCATION

The commission has made a strong effort to provide education, training, and technical assistance as a means of securing regulatory compliance. By targeting tribal gaming commissions and staff, the commission believes its efforts are paying dividends.

Tribal governmental gaming is a relatively new industry governed by relatively new regulatory requirements. Like any industry undergoing substantial growth, tribal gaming commissions and staff need high-quality training on a regular basis to ensure operational compliance. This training also benefits tribal gaming commissioners and regulators by supplementing their knowledge of tribal requirements with a deeper understanding of federal requirements.

In 1999, the commission provided more than 20 training seminars on topics such as the MICS, independence of tribal gaming commissions, ethics, management contracts, and employee background screening. More than 1,000 tribal gaming commissioners, regulators, and employees attended these seminars. Given the positive feedback, the commission intends to continue providing such training, as well as to develop new programs in collaboration with other appropriate federal agencies.

PUBLIC HEARINGS

An important tenet of the commission's coordination and consultation policy is to hold public hearings when the commission promulgates new regulations, particularly when the regulations have a direct effect on tribal governments, tribal gaming commissions, or tribal governmental gaming facilities. In addition to the opportunity to provide written comment, the commission holds public hearings to provide a live forum in which it can hear and consider comments of tribes, industry experts, state officials, and the general public as to the best way to handle a specific issue.

In August of 1998, the commission finalized its rule regarding the issuance of certificates of self regulation to tribes for class II gaming. As part of the process of developing the regulation, small and large gaming operations participated in both agency led consultations and a public hearing. This collaborative process proved critical in developing and completing the final rule.

In January 2000, the commission held a hearing in Tulsa, Oklahoma, to hear from tribal leaders and gaming commissioners, tribal attorneys, state attorneys general, and vendors on proposed game classification regulations. For years, the Office of General Counsel has provided classification advisory opinions on an ad hoc basis. These advisory opinions are not binding, however, and do not protect the tribe other enforcement actions. The proposed regulations would formalize a process for determining the classification of class II and class III games, guarantee procedural due process by establishing an appellate review process, reduce litigation potential, provide fairness and uniformity, and ensure deference to the commission's decision making. The commission is currently considering the comments it has received and is attempting to reach a final determination.

TRIBAL CONSULTATION

In the spirit of the government-to-government relationship that the commission shares with Indian tribes, the commission recognizes that the exchange of information and views is vitally important to realizing the Act's goals. Such interaction promotes and supports strong tribal regulatory structures, fosters healthy intergovernmental working relationships, and, ultimately, protects the integrity of tribal gaming as a means of promoting the social and economic well being of tribal communities. The approach is also consistent with the President's Executive Order on Consultation and Coordination with Indian Tribal Governments.

Securing meaningful tribal consultation in the rulemaking process is of particularly high priority. Such consultation not only helps to ensure informed decision making, but also promotes the promulgation of a more finely tuned regulation. Tribal advisory committees, public hearings, and field consultations are but some of the tools the commission is presently using and will continue to use in order to carry out its commitment to tribal consultation.

During the reporting period, the Commission has hosted numerous consultations on topics such as the self-regulation program, game classification regulations and general consultations on the work of the Commission. Commission field employees carry out face-to-face consultation meetings with tribal representatives daily.

TRIBAL ADVISORY COMMITTEES. During the period covered by this report, the commission convened two tribal advisory committees to assist in the development of regulations. Intergovernmental cooperation is a cornerstone of the commission's policy agenda, and the use of consultative processes such as advisory committees are important tools in ensuring the development of regulations that are both effective and attuned to the needs and concerns of the regulated community.

In 1998, a request was sent out to tribal governments seeking assistance in development of the federal **Minimum Internal Control Standards** (MICS). As with any gaming operation, tribal casino operations are subject to risk of loss because of customer or employee access to cash and

In 1999, the commission provided more than 20 training seminars on such topics as MICS, self-regulation, and management contracts. These free training sessions were attended by more than 1,000 Indian gaming commissioners and personnel.

cash equivalents within a casino. Internal controls are intended to minimize that risk of loss. The commission believes that the development and maintenance of strong internal controls are critical to the success of tribal casino operations.

In April 1999, the commission issued an advance notice of proposed rulemaking regarding the establishment of **Environment, Public Health, and Safety procedures** to implement the provision in the Act aimed at ensuring that tribal gaming facilities are constructed and maintained in a manner that adequately protects the environment and the public health and safety. This rulemaking effort was undertaken in furtherance of the commission's responsibility under the Act to provide standards to ensure adequate compliance in this area of the law.

A tribal advisory committee was formed to help the commission develop a rule that strikes an appropriate balance between the inherent authority of tribal governments and the statutory authority of the commission in overseeing matters affecting the environment, public health, and safety. The proposed rule was published for comment in the *Federal Register* in July 2000.

In both instances, the committee members brought a wealth of knowledge and experience to the process. Represented on the committees were gaming regulators, internal auditors, casino operators, facilities managers, and tribal governmental officials. Several members had at least 20 years' experience in gaming. The availability of this level of experience in the commission's rulemaking process has been invaluable.

TRIBAL INPUT

CONSULTATION. The commission has long recognized the value of receiving input from those within the regulated community. Recently, the commission established a policy of holding formal quarterly field consultations to discuss issues with tribal governments engaged in gaming in different regions of the country.

The first such consultation was held in Sacramento, California, with tribal leaders, tribal gaming commissioners, tribal gaming regulators, trade organizations, and state officials from that region of the country. This consultation was particularly timely given the recent signing of numerous tribal-state compacts in the state of California. Discussed were the respective roles of the tribes, the commission and the state in the regulation of Indian gaming in California. This consultation provided an excellent opportunity for the various parties involved in tribal governmental gaming to discuss what they are doing to ensure the integrity of tribal governmental gaming in California and explore ways that all parties can work together.

Partnerships

Cooperation with other federal agencies is an important part of the commission's work and enhances its overall effectiveness. The commission views the U.S. Department of Justice as a partner in enforcing Indian gaming laws and strives to keep department attorneys abreast of commission enforcement actions and other activities within each federal district. The commission meets regularly with the Native American Affairs Subcommittee of the Attorney General's Advisory Committee of United States Attorneys. The commission also cooperates with the Department of Justice and the subcommittee on its regulatory initiatives.

Another important partner is the U.S. Department of the Interior, which shares a number of important responsibilities in the tribal gaming arena with the commission under the Act. The commission meets regularly with Interior officials to coordinate activities and discuss issues of mutual concern. The Office of General Counsel participates monthly in a joint meeting with both Interior and Justice Department attorneys.

In addition, the commission works closely with other federal officials with whom it now meets and consults regularly. The following Memoranda of Understanding have been developed to streamline the commission's regulatory efforts:

Interior Department Office of the Solicitor Division of Indian Affairs. This memorandum details the process for cooperation between the commission and the Department on Indian lands determinations under the Act.

Interior Department Office of the Solicitor. This memorandum establishes a process for receiving legal services from the Interior Office of the Solicitor.

Federal Bureau of Investigation. This memorandum establishes the process for FBI processing of tribal employee fingerprints and criminal history checks.

Office of Personnel Management. This memorandum establishes the process for the completion of routine background investigations initiated by the commission.

The commission also strives to maintain effective working relationships with state, federal, and international law enforcement and regulatory agencies working in the gaming area. Because a number of class III tribal-state gaming compacts provide state agencies with a regulatory role in Indian gaming, the commission has worked hard to build cooperative relationships with these state agencies. Memoranda of understanding are in place with several agencies authorizing the sharing of investigative information and establishing protocols for working together.

The commission has also entered into agreements with the Federal Bureau of Investigation, the Nevada Gaming Control Board, the Colorado Division of Gaming, the Michigan Gaming Control Board, the New York Racing and Wagering Board, the New York State Police, the Kansas Bureau of Investigation, the Oregon Department of State Police, the Illinois Gaming Board, the Indiana Gaming Commission, the North Dakota Office of Attorney General, the New Jersey Department of Law and Public Safety, the Arizona State Gaming Agency, the Washington State Gambling Commission, the Mississippi Gaming Commission, the New South Wales Casino Control Authority, the Nova Scotia Gaming Control Commission, and the Gaming Board for Great Britain. In addition, two other collaborative initiatives of note are presently under way:

FEDERAL BUREAU OF INVESTIGATION. The commission recently accepted an invitation from the Federal Bureau of Investigation (FBI) to have one of its field investigators trained by the FBI Racketeering Records Analysis Unit, the division of the FBI responsible for investigating illegal gambling activities. This training includes instruction in the analysis and classification of gambling machines, the detection of money laundering activities, and the providing of expert testimony in cases where illegal gaming activities are alleged to have occurred. Upon completion, the participating field investigator will be certified as an expert in the field of gambling machine classification.

NATIONAL JUDICIAL COLLEGE. Working with Chairman Deer, the National Judicial College in Reno, Nevada, agreed to develop and host a weeklong training seminar on "Essential Skills for Tribal Gaming Commissioners." The curriculum includes such diverse subjects as ethics, background investigation and licensing, and bench skills for conducting a hearing. The commission anticipates that this program will be a positive contribution to the collective effort of tribal governments to enhance the professionalism of tribal gaming commissions, which play such a critical role in the regulation of Indian gaming.

These relationships have enhanced the quality of the commission's effectiveness. The commission remains committed to a policy of constructive intergovernmental cooperation at all levels of government—tribal, state, and federal. The complex legal and regulatory framework relative to Indian gaming mandates nothing less.

Budget and Finance

Despite the growing demands, pressures, and increased availability of resources, the commission has taken a careful and disciplined approach to its expansion initiative. The commission made a conscious effort to institute change at a pace that could be readily absorbed. Accordingly, careful planning and cautious execution has enabled the commission to keep the assessment of tribal fees below the permissible threshold while, at the same time, increasing service effectiveness.

The commission is permitted to collect up to $8 million annually in fees on gross gaming revenue of class II and class III tribal gaming operations. For 1998 and 1999, the first $1.5 million of gaming revenue has been exempt from any fee assessment. Gross gaming revenue in excess of $1.5 million has been assessed at a modest .08 percent. Fees assessed at .08% of gross gaming revenue for FY98 generated $5,029,398 and for FY99 generated $6,387,902.

TRIBAL GAMING REVENUE AND OPERATIONS

	1996		1997		1998		1999	
$100 Million and Over	$2,604,463	12	$3,298,611	15	$4,674,895	23	$5,845,787	28
$25–100 Million	2,354,838	44	2,859,244	57	2,444,790	51	2,490,816	51
$3–25 Million	1,256,060	103	1,202,425	105	1,289,153	111	1,210,654	100
Under $3 Million	85,507	73	91,069	88	79,079	88	67,439	73
Total Revenue / Total Operations	$6,300,868	232	$7,451,349	265	$8,487,917	273	$9,614,696	252

BUDGET EXPENDITURES

	1998	1999	2000 †	2001 †
Employee Count	37	60	77	77
Gross Compensation and Benefits	$ 2,613,027	$ 3,484,645	$ 5,200,000	$ 5,500,000
Travel and Transportation*	421,111	564,030	600,000	620,000
Rent and Communications	347,585	563,094	695,000	710,000
Printing and Reproduction	30,555	17,511	20,000	22,000
Services**	698,375	1,981,030	665,000	450,000
Supplies	37,866	78,848	50,000	52,000
Equipment	30,444	220,844	40,000	42,000
Total	$ 4,178,963	$ 6,910,002	$ 7,265,000	$ 7,396,000

Collected at .08%
†Estimated
**Field investigators and auditors spend approximately three out of five days each week in travel status conducting business on site at each gaming operation.*
***Includes fingerprint, background investigation costs, and Y2K technology initiative.*

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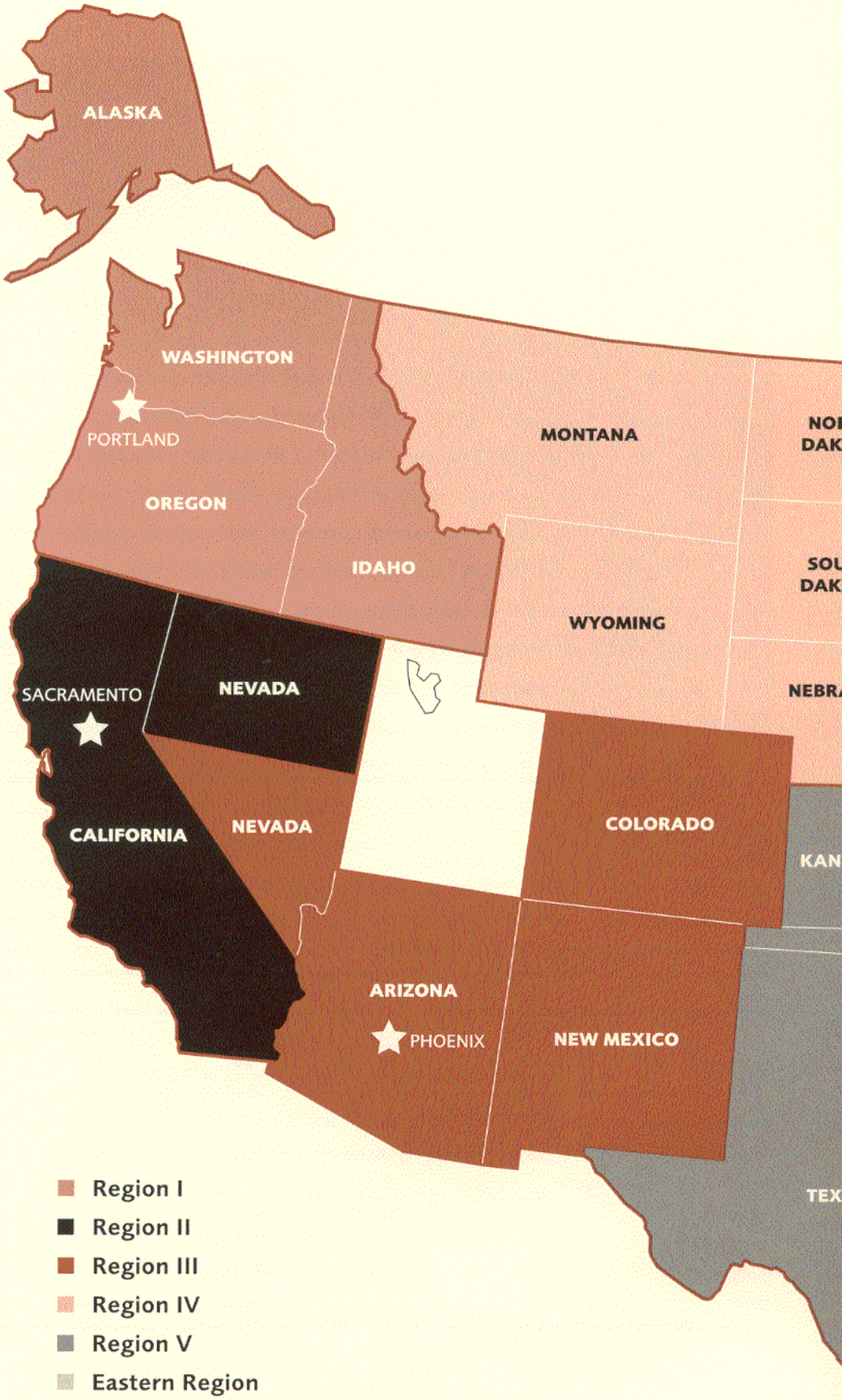
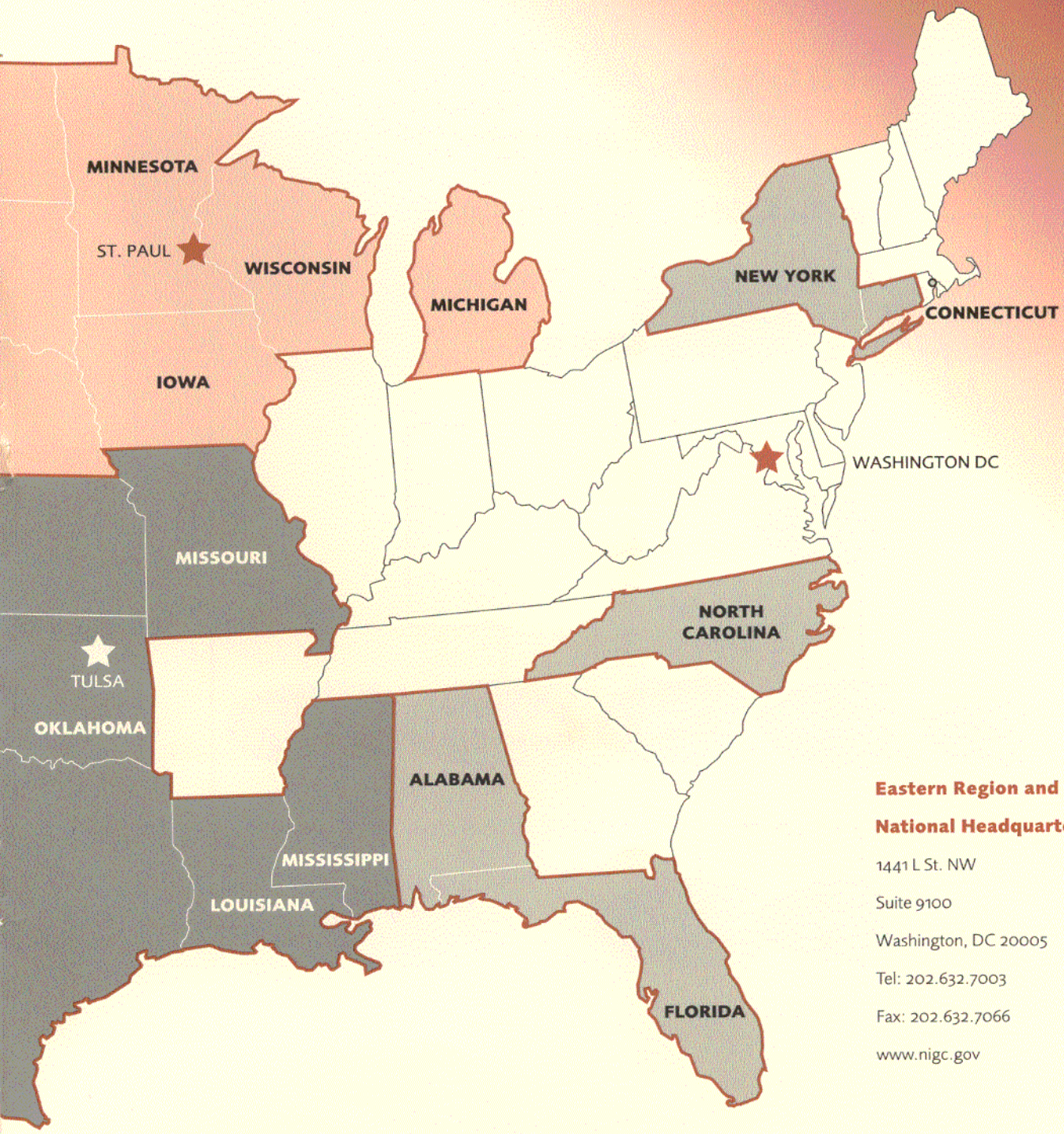


Regions and Field Offices



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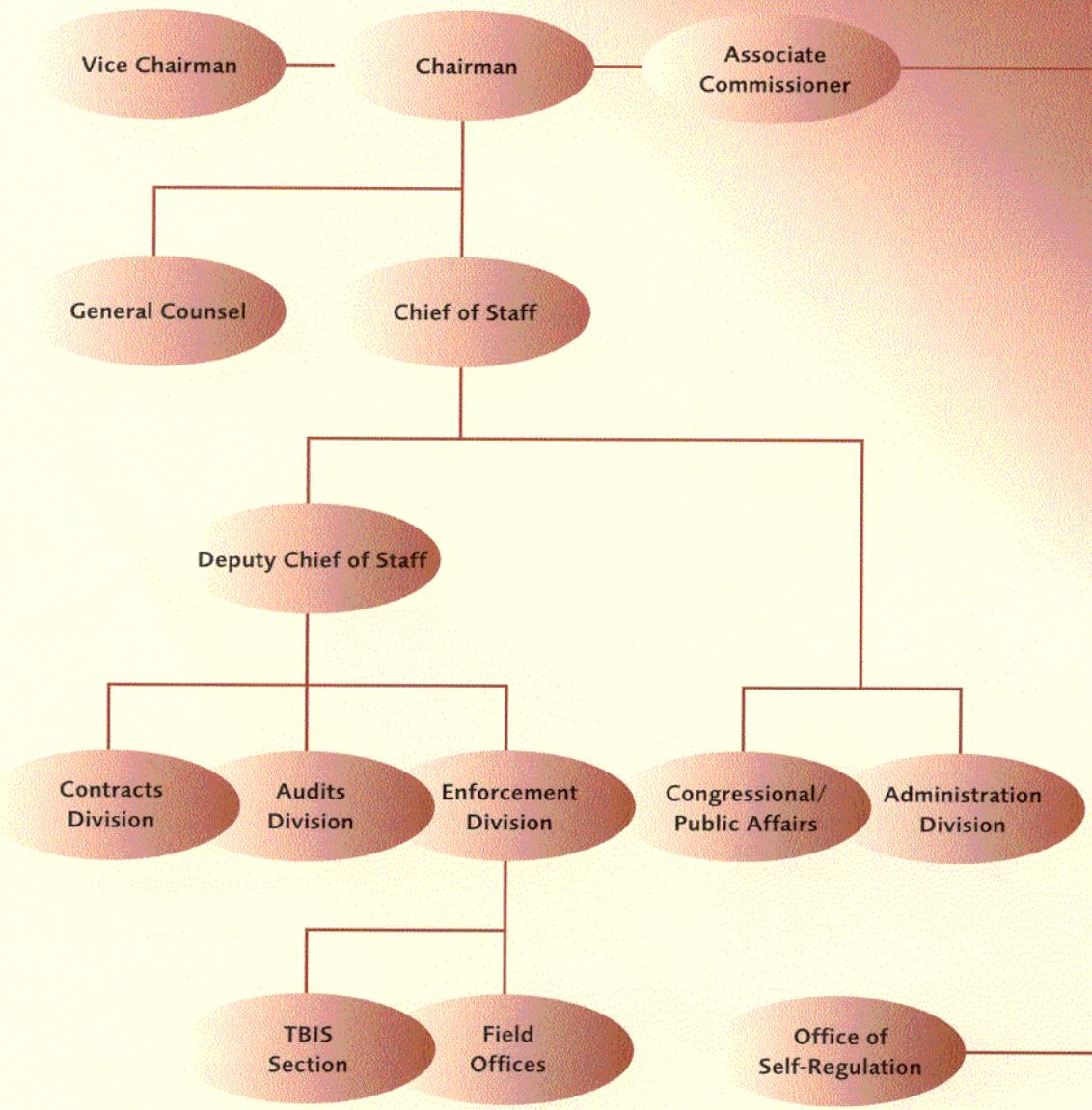
Organizational Chart