



Prairie Band Potawatomi Tribal Gaming Commission

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NATIONAL INDIAN
GAMING COMMISSION
2022 JUL 11 AM 10:55

June 30, 2022

Mr. E. Sequoyah Simermeyer, Chair
National Indian Gaming Commission
1849 C. Street NW
Mail Stop #1621
Washington, D.C. 20240

Re: Prairie Band Potawatomi Nation Comments on the NIGC's Proposed Rule and Amendments to 25 C.F.R. Part 571 Audit Standards

Dear Chairman Simermeyer and Members of the Commission:

Included in with this letter are the Prairie Band Potawatomi Nation Tribal Gaming Commission's comments on the National Indian Gaming Commission's proposed amendments to its regulations and policies as related to its audit standards, which were discussed and presented via video conference on September 21-22, 2021, and October 21, 2021, during its Series B Consultation. We appreciate the NIGC's efforts in consulting with Tribal governments and Tribal gaming regulatory agencies on these matters, which will have a tangible effect on the regulation of gaming, as well as the opportunity to comment on such potential changes.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rey Kitchkumme". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Rey Kitchkumme, Chairman
Prairie Band Potawatomi Tribal Gaming Commission

Enclosure.

Comments of the Prairie Band Potawatomi Nation Tribal Gaming Commission on the National Indian Gaming Commission's Proposed Revisions to its Regulations.

I. Introduction

These comments are submitted in response to the notice of proposed amendments to 25 C.F.R. Part 571, published by the NIGC in the Federal Register on June 1, 2022. We are pleased to provide input on the proposed changes to the NIGC's proposed changes to its regulations. The Prairie Band Potawatomi Nation Tribal Gaming Commission ("PBPGC") therefore submits the following comments, provided below the NIGC's related prompts and/or suggested amendments.

II. Comments

A. Small and Charitable Gaming and Related Impacts

Before we address the specifics of the NIGC's proposals concerning financial reporting by qualifying charitable gaming operations, the PBPGC expresses its general support of the creation of a third tier of financial reporting for charitable gaming operations. We hope that by creating this third tier, Tribal governments will be incentivized to establish their own charitable gaming operations that will be able to generate funds for worthy causes. We believe that increasing opportunity for charitable gaming across Indian county will be beneficial to tribal and non-tribal communities.

To this end, we request that the NIGC consider raising its \$50,000 gross revenues threshold in its proposal. We understand that the NIGC reached this number after reviewing many financial reporting waiver requests, but we believe that if the threshold amount for charitable gaming revenues was increased, Tribal governments would adapt and aspire to meet that threshold. Without any such standards to base financial reporting waiver requests on, it makes sense that such waiver requests in the past have been for relatively low amounts. As such, we request that the NIGC consider raising this threshold to at least \$100,000 in order to encourage new and successful charitable gaming operations.

- a. Part 571.12 (c)(3) currently reads, "If the Chair of the NIGC has reason to believe that the assets of a gaming operation are not being appropriately safeguarded or the revenues are being misused under IGRA, the Chair may, at his or her discretion, require any gaming operation subject to this paragraph (c) to submit additional information or comply with the annual audit requirement of paragraph (b) of this section."

And,

this provision as creating a wholly new cause of action (so to speak) against a Tribe with no intermediate steps between the submission of an adverse opinion and the commencement of a formal enforcement action by the Chair. As stated in the materials accompanying this proposed revision last September, the Chair retains discretionary enforcement authority. However, this does not assuage our fears that the NIGC is again seeking to create another pitfall for potential noncompliance that Tribes will have to maneuver around. Additionally, Chairman Simermeyer will not be serving in this position for life, and thus regulations need to contemplate the very real possibility that future Chairs may not be so forgiving after receiving an adverse opinion should this proposed language go into effect. We additionally are confused as to why there is now no mention of disclaimed opinions. We, and we are sure other tribal governments and organizations, are unsure of how the NIGC plans to address disclaimed opinions—are they also required submissions, and if so, in what instances do they satisfy the reporting requirements?

While we do not fully support this proposed revision for the reasons stated above, if it were to be promulgated, we recommend adding language addressing the consequences for first time “offenders” versus repeat or serial “offenders.” It is our belief that minor, non-systematic issues may result in the odd adverse opinion and those submitting tribal governments should not be penalized with the same severity as those with ongoing systematic issues that require further attention to rectify.

- b. Part 571.12(d) current reads, “If a *gaming operation* has multiple gaming places, *facilities* or locations on the tribe’s Indian lands, the annual audit requirement of paragraph (b) of this section is satisfied if:...” (emphasis added)

The PBPGC supports the intent of the NIGC’s proposed revisions to 25 C.F.R. § 571.12 (d), but we do not think the NIGC is effectuating its intent in the proper manner. The proposed language in § 571.12 (d) reads to us that “gaming operation” and “gaming facility” have distinct meanings because both terms are still included in the proposed § 571.12 (d). If the intent is to clarify that these terms are one of the same and interchangeable, rather than just *treated* the same for the purposes of § 571.12 (d), this should happen in the definitions section in Part 502. This would effectuate the Audit Division’s and our understanding of the terms throughout the NIGC’s regulations. In any event, we do not believe the NIGC’s objectives here are met with its proposed reworking of § 571.12 (d).

III. Conclusion

The PBPGC is appreciative of the opportunity to participate in the NIGC’s Series B Consultation by providing the comments herein, and we believe that through such continued consultation efforts, the NIGC will achieve regulations that protect the integrity of gaming without imposing undue burdens on TGRAs and Tribal governments. We look forward to continuing to engage in meaningful consultation with the NIGC regarding these proposed revisions and furthering the government-to-government relationship between the Nation and the United States.