



Office of the Gaming Commissioner

September 8, 2022

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

Re: Tribal Comments on Proposed Rules Published on August 10, 2022

Dear Chair Simermeyer & Commission members:

Included in with this letter are the Seneca-Cayuga Nation Office of the Gaming Commissioner's comments regarding the National Indian Gaming Commission's proposed amendments to its regulations at 25 C.F.R. §§ 502, 556, and 558, each of which were published in the federal register on August 10, 2022.

Thank you for your consideration of our comments. If you have any questions, please do not hesitate to contact me by email at dbrashear@sctribe.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "Danielle Brashear", written over a horizontal line.

Danielle Brashear, Commissioner
Seneca-Cayuga Nation Office of the Gaming Commissioner

Enclosure.

I. Introduction

The Seneca-Cayuga Nation Office of the Gaming Commissioner (“SCOGC”) appreciates the opportunity to submit comments in response to proposed changes to regulations concerning definitions, backgrounding, and licensing for consideration by the NIGC. Given the significant changes between the proposed rules discussed here and those considered during previous consultations with the NIGC, however, we also respectfully request that the NIGC conduct additional, formal consultation on these subjects.

II. Comments

A. Proposed Amendments to Definitions in 25 C.F.R. § 502

The SCOGC does not support the proposed elimination of a compensation threshold for Key Employees. In our experience, § 502.14 (b), which provided that any person “whose total cash compensation is in excess of \$50,000 per year” constituted a Key Employee, provide the authority for a TGRA to comprehensive background casino employees whose position is not otherwise delineated at a key employee or primary management official.

We are concerned that the elimination of the compensation threshold would undermine a TGRA’s ability to protect the integrity of gaming. Hiring and maintaining employees of good character is mutually beneficial to both TGRAs and the gaming operations they regulate, and we believe that the strength of those shared interests, as well as the intentional relationships built between TGRAs and gaming operation management, is best advanced by a broad licensing program that provides TGRAs the tools to ensure casino employees are of good character.

The SCOGC respectfully renews its opposition to the other changes proposed for the definitions of Key Employee and Primary Management Official. Specifically, we are concerned that the proposed language in §§ 502.14 (d) and 502.19 (e) is inconsistent with the Indian Gaming Regulatory Act (“IGRA,”) which intended the licensing provisions thereof to pertain to employees of tribal gaming operations, not employees of the tribe itself or its regulatory agencies. Moreover, we are concerned that, even if adopted, any language added regarding licensing and compliance officials will not achieve the aims of allowing tribal governments to background and license such individuals considering the terms and conditions of the Memorandums of Understanding (“MOU”) entered into between TGRAs, the NIGC, and ultimately, the FBI.

In the same vein, while the SCOGC generally supports the addition of the definitions for “Gaming Enterprise” and “Tribal Gaming Regulatory Agency” at §§ 502.25 and 502.26, respectively, we are concerned that the choice to use “Gaming Enterprise” rather than “Gaming Operation” at the sections described, and indeed throughout the regulations, may lead to unintended results, specifically presenting conflicts between complying with licensing regulations and the MOU with

the NIGC and the FBI concerning criminal history record information. While we recognize the efforts that the NIGC has taken toward remedying similar issues following its limited consultation sessions, we are concerned that troublesome ambiguities still exist. As such, we recommend revising § 502.14 (b) to specify that it is limited to employees *of the gaming operation* who are entitled to unescorted access and modifying § 502.19 (b) to read as “any person, other than an employee of a TGRA, who has authority...”.

B. Proposed Amendments to Backgrounding and Licensing in 25 C.F.R. §§ 556 and 558

The SCOGC is strongly opposed to the proposed amendments to § 558.3 (e), which would require TGRAs to provide the NIGC with “its license revocation decision and a summary of the evidence it relied upon” Key Employee and Primary Management Official license revocation actions. First, we are concerned that the NIGC does not have a specific, demonstrated purpose for these materials that is in line with its statutory mandate, and we are concerned that enforcement of this proposed requirement may risk classification as arbitrary and capricious, given that the NIGC has proven able to achieve any purposes this may seek to address with the more limited scope of information to which it is currently entitled.

While the SCOGC appreciates the benefits of compiling information in the Indian Gaming Individuals Record System, given the stringent requirements for backgrounding Key Employees and Primary Management Officials, including provisions of a detailed report on the status of licenses that an applicant holds, formerly held, or has applied for, the additional submission document would prove more onerous than beneficial for TGRAs and their mission.

Core tenets of fundamental fairness and due process require that TGRAs gather and rely on evidence in matters wherein a license may be subject to revocation. However, in our opinion, it is not clear that such evidence is ordinarily summarized independently from a TGRA’s written decision document in an enforcement matter. Accordingly, this proposed revision would require TGRAs to create a new document beyond those already produced in the enforcement process.

Revoking a license is among the most serious of actions that a TGRA may take to protect the integrity of gaming, and like all TGRAs, the SCOGC does not take revocation actions lightly. As a result, the breadth of information considered as evidence in such a matter is usually vast and preparing a summary of such information would take time that would otherwise be spent dedicated to other vital responsibilities under federal and tribal law. In the interest of respecting the roles of the NIGC and TGRAs outlined by law, then, we respectfully request that the NIGC not intrude upon the administrative processes of TGRAs by omitting this proposal from its final rule.

Furthermore, we note that the subject of the promulgation of a rule requiring submission of a summary of evidence was not discussed during consultation sessions. Because the proposed rule significantly intrudes upon the administrative process used by TGRAs in enforcement actions, we

strongly feel that a revision of this significance should be further discussed with tribal representatives. We would also like to see a cost-benefit analysis prepared in relation to this proposal. We urge the NIGC to withdraw consideration of this proposed revision until it is given full consideration through the consultation process.

III. Conclusion

The SCOGC appreciates the NIGC's consideration of our comments and those of other tribal governments and TGRAs. We are confident that such collaboration will result in regulations and policies that will benefit the tribal gaming industry and economic development in Indian country.