



June 12, 2019

Via U.S. Mail & Facsimile

Russell Martin, President
Tonkawa Tribe of Indians of Oklahoma
One Rush Buffalo Road
Tonkawa, OK 74653
Fax: 405-377-3842

Re: Review of Machine Vendor Lease Agreement

Dear President Martin:

This letter responds to the March 29, 2019, request on behalf of the Tonkawa Tribe for the National Indian Gaming Commission's Office of General Counsel to review a Machine Vendor Lease Agreement (Lease Agreement). The Lease Agreement was revised as part of the Nation's Corrective Action Plan dated March 28, 2019. Specifically, you have asked for my opinion on whether the Agreement is a management contract requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for an opinion whether the agreement violates IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following document submitted on behalf of the Nation which was unexecuted, but was represented to be in substantially final form:

- Gaming Machine Vendor Lease Agreement marked as "Version 12.12.14"

Confining my review to the four corners of the document, it is my opinion that the Lease Agreement is not a management contract and does not require the approval of the NIGC Chairman. It is also my opinion that it does not violate IGRA's sole proprietary interest requirement.

It is my understanding that the draft is represented to be in substantially final form, and the Lease Agreement changes in any material way prior to closing or is inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the First Amendment listed above. This opinion does not include or extend to any other agreements not submitted for review. Should the parties enter into additional agreements, I ask that the parties include this contract for consideration with any future submissions.

President Russell Martin

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Please note that it is my intent that this letter be released to the public through the NIGC's website. If you have any objection to this disclosure, please provide a written statement explaining the grounds for the objection and highlighting the information that you believe should be withheld. 25 C.F.R. § 517.7(c). If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption Four of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4), please be advised that the information was voluntarily submitted and, as such, any withholding should be analyzed in accordance with the standard set forth in *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992). Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." 25 C.F.R. § 517.7(c). Please submit any written objection to FOIASubmitterReply@nigc.gov **within thirty (30) days of the date of this letter**. After this time elapses, the letter will be made public and objections will no longer be considered. *Id.* If you need any additional guidance regarding potential grounds for withholding, please see the United States Department of Justice's Guide to the Freedom of Information Act at <http://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

If you have any questions, please contact NIGC Staff Attorney Heather McMillan Nakai at (202) 527-5577.

Sincerely,



Michael Hoenig
General Counsel

cc: Zeke Fletcher, via email at zfletcher@fletcherlawpllc.com
Vic Gallo, via U.S. Mail