



July 8, 2019

Via First Class Mail

Lynn Williams, Chairwoman
Kaw Nation
Drawer 50
Kaw City, Oklahoma 74641

Re: Review of loan documents for the Kaw Nation

Dear Chairwoman Williams:

This letter responds to your May 30, 2019, request for the National Indian Gaming Commission's (NIGC) Office of General Counsel to review loan agreements between the Kaw Gaming, Inc. (Borrower) and BOFK, NA dba Bank of Oklahoma (Bank). Specifically, you have asked for my opinion on whether the documents are management contracts requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the loan documents violate IGRA's requirement that the Tribe have the sole proprietary interest in its gaming activity.

In my review, I considered the following submissions (collectively, "the Loan Documents").

- Second Loan Agreement between Kaw Gaming, Inc., as Borrower, and BOFK, NA dba Bank of Oklahoma, as Lender, 5/30/2019 Exhibits to Letter to the NIGC;
- Second Security Agreement by Kaw Gaming, Inc., a wholly owned subsidiary of Kaw Nation, the debtor, in favor of BOFK, NA dba Bank of Oklahoma, the secured party, 5/30/2019 Exhibits to Letter to the NIGC;
- Revolving Note between Kaw Gaming, Inc., and BOFK, NA dba Bank of Oklahoma, as Lender, 5/30/2019 Exhibits to Letter to the NIGC;
- Term Note between Kaw Gaming, Inc., and BOFK, NA dba Bank of Oklahoma, as Lender, 5/30/2019 Exhibits to the Letter to the NIGC;
- Non-Interference Agreement between Kaw Nation and BOFK, NA dba Bank of Oklahoma, 5/30/2019 Exhibits to the Letter to the NIGC.

The Loan Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed, which are available on the NIGC's website. Applying the same analysis here, it is my opinion that the Loan Documents are not management

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contracts and do not require the approval of the NIGC Chair. It is also my opinion that the Loan Documents do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the drafts are represented to be in substantially final form, and if the Loan Documents change in any material way prior to closing or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Loan Documents listed above. This opinion does not include or extend to any other agreements not submitted for review.

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. *See* 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 any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*, No. 18-481, 2019 WL 2570624, at *7 (U.S., June 24, 2019). Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter." *See* 25 C.F.R. § 517.7(d). 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 have any questions, please contact NIGC Staff Attorney Tana Fitzpatrick at (202) 632-7003 or by e-mail at tana_fitzpatrick@nigc.gov.

Sincerely,



Michael Hoenig
General Counsel

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