



September 16, 2011

Governor George Rivera
78 Cities of Gold Road
Santa Fe, NM 87506
Fax: (505) 455-0174

Re: Buffalo Thunder Development Authority Restructuring Agreement

Dear Governor Rivera:

This letter responds to your request for the National Indian Gaming Commission to review the Buffalo Thunder Development Authority Restructuring Agreement and related documents. (Restructuring Documents) These documents will allow the Buffalo Thunder Development Authority to restructure its existing bonds. Specifically, you have asked for my opinion whether the documents are management contracts requiring the NIGC Chairwoman's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether these agreements violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In my review, I considered the following submissions (collectively, "the Restructuring Documents") which were represented to be in substantially final form:

- Buffalo Thunder Development Authority Restructuring Agreement As Amended (Including Proposed Third Amendment), undated and unsigned (received by NIGC on June 22, 2011)
- Indenture, undated and unsigned, marked Exhibit D, #4832-3922-3303" (received by NIGC on November 12, 2010);
- Supplemental Indenture, undated and unsigned, marked Exhibit B, "#4813-9772-2631v6" (received by NIGC on January 17, 2011);
- Amended and Restated Creditor Parties Depository Agreement, unexecuted, marked Exhibit A, "OHS East:160791674.9 #43248-4 A4Z/A4Z" (received by NIGC on January 17, 2011);
- Amended and Restated Security Agreement, undated and unsigned, marked Exhibit C (received by NIGC January 17, 2011).

I note that the Restructuring Documents preclude the secured parties' ability to withhold or condition the payment of operating expenses, through which a party could control the gaming operation, even in the event of a default. Based on that understanding, the Restructuring Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed. See www.nigc.gov/Reading_Room/Management_Review_Letters.aspx. Applying the same analysis here, it is my opinion that the Restructuring Documents are not management contracts and do not require the approval of the Chairwoman. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the drafts provided are represented to be in substantially final form. If they change in any material way prior to closing, this opinion shall not apply. Should the Pueblo chose to grant any third party authorization to conduct management activities either directly or through the exercise of any provision of the Restructuring Documents, that action would be subject to the provisions of 25 U.S.C. § 2711.

I anticipate that this letter will be posted to the NIGC's website. Prior to posting, the NIGC FOIA Officer will notify you and give you an opportunity to identify and request that information subject to the exemptions under FOIA be redacted or withheld. A list of the FOIA exemptions may be found at 25 U.S.C. § 552(b).

I am also sending a copy of the submitted Restructuring Documents to the Department of the Interior Office of Indian Gaming for review under 25 U.S.C. § 81. If you have any questions, please contact NIGC Staff Attorney Heather L. McMillan Nakai at 202-632-7003.

Sincerely,



Lawrence S. Roberts
General Counsel

cc: Paula Hart, Director, Office of Indian Gaming (via agency mail w/ incoming)