



APR 24 2008

Dan Belcourt, Esq.
Licensing Agent
RST Gaming Commission
HC 14, Box 136
Valentine, NE 69201

RE: Employment Agreement between Chippewa Cree Development Corporation and [REDACTED]

Dear Mr. Belcourt:

On April 18, 2008, you sent an unsigned agreement between the Chippewa Cree Development Corporation (CCDC) and [REDACTED] to the National Indian Gaming Commission's (NIGC) Office of General Counsel (OGC) for review. The purpose of this review is to determine whether the agreement is a management contract or collateral agreement to a management contract and therefore subject to approval of the NIGC Chairman under the Indian Gaming Regulatory Act ("IGRA"). It is my opinion that the agreement with [REDACTED] is a contract of employment, not a management contract, and therefore does not require the approval of the Chairman. However, as [REDACTED] for the Northern Winz Casino, [REDACTED] subject to all requirements for such positions under IGRA, the NIGC regulations, and the Chippewa Cree Tribal Gaming Ordinance.

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Authority

The authority of the NIGC to review and approve gaming-related contracts is limited by IGRA to management contracts and collateral agreements to management contracts to the extent that they implicate management. 25 U.S.C. § 2711. The authority of the Secretary of the Interior to approve such agreements under 25 U.S.C. § 81 was transferred to the NIGC pursuant to the IGRA. 25 U.S.C. § 2711(h).

Management Contracts

The NIGC has defined the term "management contract" to mean "any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation." 25 C.F.R. § 502.15. The NIGC has defined "collateral agreement" to mean "any contract, whether or not in writing, that is related either directly or indirectly, to a management contract, or to any rights, duties or obligations created between a tribe (or any of its members, entities, organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor)." 25 C.F.R. § 502.5.

Analysis

The agreement, without question, gives [redacted] management responsibilities. He is responsible, generally, for the operations at Northern Winz Casino. He is also tasked, specifically, with the following duties:

- providing "management, technical, and advisory services to the CCDC for the casino
...." See [redacted] contract § 1.
- "manage the day to day operation of the Northern Winz Casino." See [redacted] contract § 3.
- "develop, execute and advise the CCDC operating policies and procedures, human resources recruitment and strategies, operating concepts, training concepts and processes, product/service enhancements, new products and services, and gaming equipment." See [redacted] contract § 3.3.
- "advise and execute personnel issues, personnel reviews and other human resource matters including recruitment and termination options and human resource policies." See [redacted] contract § 3.4
- "advise and execute for the CCDC all activities necessary or reasonably required to operate the casino facilities for business." See [redacted] contract § 3.5

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Furthermore, the contract gives [redacted] "[f]ull authority to operate or manage for the CCDC directly and independently." See [redacted] contract § 5. Specifically, Section 5 provides:

"[n]othing contained in this agreement prohibits, nor shall anything be construed to limit Employee to directly: (i) operate or manage the permanent casino facility (the "gaming facility") or establish the

costs of operating or administering the same; (ii) to hire, terminate or determine wages, salaries or benefits for any "tribal" employee directly in conjunction with operating the gaming facility[;] (iii) to establish policies and procedures for the operation or management of the gaming facility; (iv) to instruct, direct or supervise the Northern Winz Casino employees or any other person employed to work at or about the gaming facility regarding operation or management of the gaming facility; or (v) to take any other action that could reasonably be construed as managing or operating the gaming facility."

The nature of these activities would certainly make the agreement a management contract, except for the fact that the agreement makes [redacted] a CCDC employee.

One of the ways IGRA attempts to ensure that tribes are the primary beneficiaries of gaming as Congress required, 25 U.S.C. § 2702(2), is to set certain requirements for management contracts and to require the Chairman's approval. Thus, IGRA requires a monthly reporting to the tribal governing body, caps on fees paid by tribes from net revenues, etc. These concerns and requirements, however, do not apply to a tribe's relationships with its own employees.

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That this contract is an employment contract is undisputed. It expresses a clear intent to create an employment relationship with [redacted] individually, and provides for a fixed monthly salary. See [redacted] contract first paragraph and § 8.1. In employment relationships such as this, IGRA protects tribes from undesirable elements through its primary management and key employee requirements, to which [redacted] is subject.

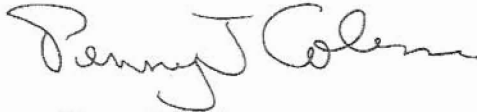
Determination

The contract is, by its terms, an employment contract. After careful review, it is my opinion that [redacted] will be functioning as an employee of the tribe and that his employment contract does not qualify as a management contract as that term is used in the Indian Gaming Regulatory Act, 25 U.S.C. § 2711. The provision in IGRA requiring the Chairman's review and approval of management contracts (25 U.S.C. § 2711) applies only to contracts with third parties. The agreement, therefore, does not require the approval of the Chairman.

Dan Belcourt, re: [-] page 4

As a matter of practice, I am forwarding a copy of this agreement to the Office of Indian Gaming Management for its review. If you have any questions, please call Staff Attorney Jennifer Ward at (202) 418-9814.

Sincerely,



Penny J. Coleman
General Counsel (Acting)

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cc: []

George Skibine, Office of Indian Gaming Management, Department of the Interior (w/ contract)

John Peterson, Director, NIGC Region IV