



September 1, 2009

Via Facsimile and U.S. Mail

George Blanchard, Chairman  
Absentee Shawnee Tribe of Oklahoma  
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Ken Blanchard, Chairman  
Absentee Shawnee Tribe Gaming Commission  
15700 East State Highway 9  
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Re: By-Laws of Thunderbird Entertainment Center Inc. (June 17, 2008) and  
Management Agreement by and between the Absentee Shawnee Tribe of  
Oklahoma and Thunderbird Entertainment Center Inc. (June 26, 2008).

Dear Tribal Chairman Blanchard and Gaming Commission Chairman Blanchard:

On July 7, 2009, Gaming Commission Chairman Blanchard asked the National Indian Gaming Commission ("NIGC" or "Commission") to opine whether operating under the above-referenced agreements constituted managing without an approved contract under the Indian Gaming Regulatory Act ("IGRA"). 25 U.S.C. § 2701 *et seq.* I have reviewed both agreements, and it is my opinion that because they create a wholly-owned tribal instrumentality to operate the Absentee Shawnee casino, they are not management contracts within the meaning of IGRA. Therefore, the agreements do not require the approval of the NIGC Chairman, and operating under them is not managing without an approved contract.

Under IGRA, Congress meant to protect the integrity of Indian gaming and ensure that tribes are the primary beneficiaries of their operations. Congress specifically stated that IGRA is meant to "ensure that the Indian tribe is the primary beneficiary of the gaming operation." 25 U.S.C. § 2702(2). One way IGRA helps ensure that tribes are the primary beneficiaries of their gaming operations is through section 2711. For example, this section limits the fees that a third party can charge a tribe for management of a gaming operation and limits the duration of management contracts. 25 U.S.C. § 2711(b)(5), (c). But section 2711 refers only to management contracts and collateral

agreements between the gaming tribe and an outside third party. It does not apply to instrumentalities owned and operated completely by the tribe.

That said, nothing in IGRA requires a gaming operation to be run exclusively by the central tribal government. The tribal government is free to create a separate arm, branch, or wholly-owned corporation to manage its business ventures. IGRA permits a tribal instrumentality to run the gaming operation, provided that the central tribal government authorizes such and still requires the tribe to handle all regulatory functions.

The Thunderbird Entertainment Center Inc. ("TEC") is a wholly-owned instrumentality of the Tribe. The TEC essentially functions as a corporate arm of the Tribe, authorized to do business by the Tribe's government, with appropriate regulatory oversight from the Tribe's gaming commission. The TEC's by-laws refer to it as "a legal entity wholly owned by the Absentee Shawnee Tribe of Indians of Oklahoma" despite the fact that it is "distinct and separate from the Tribe." By-Laws, Art. III(A). Further, the by-laws state:

All shares in the Corporation shall be owned by the Absentee Shawnee Tribe for the benefit of the Tribe and its recognized members. No individual or legal entity other than the Absentee Shawnee Tribe shall acquire any shares in the Corporation or be paid any dividends.

By-Laws, Art. IV(B). Finally, the management agreement binds the TEC to tribal laws and regulations by requiring it to "comply with all federal, state, and tribal regulations." Management Agreement ¶2(g).

Given this, the Management Agreement here is not with a third party, and thus it is not a management contract under IGRA that requires the Chairman's approval. Operating under the agreement, then, is not managing without an approved contract. Thank you for submitting these documents for review and I wish you continued success.

Sincerely,



Penny J. Coleman  
General Counsel (Acting)