



June 23, 2011

*VIA U.S. Mail*

Matthew Wesaw, Chairman and CEO  
Pokagon Gaming Authority  
58620 Sink Road  
Dowagiac, MI 49047

Re: Review of financing documents for Pokagon Band of Potawatomi Indians

Dear Mr. Wesaw:

This letter responds to your June 1, 2011 request on behalf of the Pokagon Band of Potawatomi Indian ("Tribe") and the Pokagon Gaming Authority ("Gaming Authority") for the National Indian Gaming Commission's Office of General Counsel to review the Gaming Authority's financing documents with Bank of America. 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 ("IGRA"). You also asked for my opinion whether the development and financing documents 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 Financing Documents"), which were represented to be in substantially final form:

- Credit Agreement marked "Dorsey & Whitney Draft 6/1/11" with changed pages marked "Dorsey & Whitney Draft 6/16/11" and Exhibits;
- Security Agreement marked "D&W Draft 06/01/11";
- Continuing Guaranty marked "D&W Draft 6/01/11";
- Patent, Trademark and Copyright Security Agreement marked "D&W Draft 6/1/11";
- Securities Account Control Agreement marked "06/16/11";
- Deposit Account Control Agreement unmarked;
- Assignment of Leases and Rents marked "D&W Draft 6/15/11";
- Dealer Manager and Solicitation Agreement marked "Execution Version" but unsigned;
- Supplemental Indenture dated June 30, 2011 but unsigned;
- ISDA 2002 Master Agreement and Schedule to the 2002 Master Agreement unsigned;
- Letter from Pokagon Gaming Authority dated June 1, 2011; and
- Letter from Pokagon General Counsel's Office dated June 17, 2011.

Matthew Wesaw

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The Financing 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](http://www.nigc.gov/Reading_Room/Management_Review_Letters.aspx). Applying the same analysis here, it is my opinion that the Financing 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. I understand that the drafts are represented to be in substantially final form, but if the Financing Documents change in any material way prior to closing, this opinion shall not apply.

I anticipate that this letter will be the subject of Freedom of Information Act ("FOIA") requests. Since we believe that some of the information in this letter may fall within FOIA exemption 4(c), which applies to confidential and proprietary information the release of which could cause substantial harm, I ask that you provide me with your views regarding release within ten days.

I am also sending a copy of the submitted Financing 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 Dorinda Hanrahan at (202) 632-7003.

Sincerely,



Michael Gross  
Associate General Counsel, General Law  
(Acting General Counsel)

cc: Paula Hart, Director Office of Indian Gaming (via US Mail w/incoming)  
Justin Lien, Director Bank of America (via US Mail)  
Christine Swanick, Esq. (via email: [swanick.christine@dorsey.com](mailto:swanick.christine@dorsey.com))  
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