



July 3, 2012

Via U.S. Mail

Principal Chief Michell Hicks
Eastern Band of Cherokee Indians
PO Box 455
561 Sequoyah Trail
Cherokee, NC 28719

Re: Review of loan documents for the Eastern Band of Cherokee Indians

Dear Principal Chief Hicks:

This letter responds to the request on behalf of the Eastern Band of Cherokee Indians (Tribe) for the National Indian Gaming Commission's Office of General Counsel to review several agreements related to the refinancing of existing debt of the Tribe's instrumentality the Tribal Casino Gaming Enterprise. Specifically, the Tribe has asked for an opinion whether these agreements are management contracts requiring the NIGC Chairwoman's approval under the Indian Gaming Regulatory Act. The Tribe has also asked for an opinion whether the 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 Loan Documents") all unexecuted, but represented to be in substantially final form:

- Third amended and restated loan agreement marked at top right corner as "OHS DRAFT 7-2-12" and bottom left as "OHSUSA:750093302.11" (Loan Agreement);
- Schedule 4.3 entitled "INSURANCE" marked at top right as "OHS DRAFT 6-20-12" and at bottom left as "OHSUSA:750204350.7" (Schedule 4.3);
- Exhibits A-Q to Loan Agreement marked at top right as "OHS DRAFT 6-20-12" and at bottom left as "OHSUSA:750131933.8";
- Exhibit F to Loan Agreement entitled "ASSIGNMENT OF CONSTRUCTION CONTRACT" and marked at top right as "OHS DRAFT 5-8-12" and at bottom left as "OHSUSA:750161870.2";
- Unjust enrichment and sovereign immunity agreement marked at top right as "OHS DRAFT 5-8-12" and at bottom left as "OHSUSA:750125079.6";
- Amended and restated security agreement marked at top right as "OHS DRAFT 5-8-12" and at bottom left as "OHSUSA:750142534.5";

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- Amended and restated demand deposit account agreement in favor of Wells Fargo Bank, National Association marked at top right as “OHS DRAFT 5-16-12” and at bottom left as “OHSUSA:750163978.4”;
- Third amended and restated tribal agreement marked at top right as “OHS DRAFT 6-18-12” and at bottom left as “OHSUSA:750098829.6”; and,
- Tribal subordination agreement marked at top right as “OHS DRAFT 5-8-12” and at bottom left as “OHSUSA:750145177.7”.

The Loan 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 collectively the Loan 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 Loan Documents are represented to be in substantially final form with respect to terms affecting this opinion, and if such terms 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 or documents not submitted for review.

I anticipate that this letter will be posted to the NIGC’s website. Prior to posting, NIGC 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 Loan 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 Senior Attorney Melissa Schlichting at (202) 632-7003.

Sincerely,



Eric Shepard
Associate General Counsel

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

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