



August 20, 2020

VIA EMAIL

Mr. Matt Wesaw, Chairman
Pokagon Band of Potawatomi Indians
58620 Sink Road
P.O. Box 180
Dowagiac, MI 49047

Re: Review of Amendments to Loan Documents for Pokagon Gaming Authority

Dear Mr. Wesaw:

This letter responds to your August 11, 2020 request for the National Indian Gaming Commission's Office of General Counsel to review a limited waiver in connection to its loan agreement between the Pokagon Gaming Authority and its lenders and Bank of America, as administrative agent.

Specifically, you have asked for my opinion whether the amendments to the credit agreement constitute a management contract or whether the amendments impact the prior declination letters for the credit agreement that would require the NIGC Chair's approval under the Indian Gaming Regulatory Act (IGRA). You also asked for my opinion whether the amendments violates IGRA's requirement that the Tribe have the sole proprietary interest in its gaming activity.

In my review, I considered the Second Amendment to Credit Agreement (marked as "SMRH:4817-7218-9636.5" in the footer, and "SMRH 08-05-20" in the header), which included the following attachments:

- A redline of the conformed copy of the Credit Agreement (marked as "SMRH 4832-5782-4964.3" in the footer);
- Exhibit A – Compliance Certificate (labeled as Exhibit D marked as "SMRH:4838-3390-6373.3" in the footer);
- Exhibit B – Distribution Certificate (labeled as Exhibit M marked as "SMRH:4850-9023-2005.2" in the footer); and
- Exhibit C – Joinder Agreement (labeled as Exhibit N marked as "SMRH:4846-5710-2789.1" in the footer).

The amendments are unexecuted, but represented to be in substantially final form.

Mr. Matt Wesaw, Chairman

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The amendments contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed, which are available on the NIGC's website. Applying the same analysis here, it is my opinion that the amendments do not constitute a management contract and does not require the approval of the NIGC Chair. It is also my opinion that the amendments do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the draft is represented to be in substantially final form, and if the amendments change in any material way prior to execution or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the documents listed above. This opinion does not include or extend to any other agreements not submitted for review.

Please note that it is my intent that this letter be released to the public through the NIGC's website. If you have any objection to this disclosure, please provide a written statement explaining the grounds for the objection and highlighting the information that you believe should be withheld.¹ If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption Four of the Freedom of Information Act (FOIA),² please be advised that any withholding should be analyzed under the standard set forth in *Food Marketing Institute v. Argus Leader Media*.³ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."⁴ Please submit any written objection to FOIASubmitterReply@nigc.gov within thirty (30) days of the date of this letter. After this time elapses, the letter will be made public and objections will no longer be considered.⁵

If you have any questions, please contact Joshua Proper at (202) 632-0294 or joshua_proper@nigc.gov.

Sincerely,



Michael Hoenig
General Counsel

cc: Michael Phelan, General Counsel, mike.phelan@pokagoband.nsn

¹ See 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ 139 S. Ct. 2356 (2019).

⁴ See 25 C.F.R. § 517.7(d).

⁵ *Id.*