



November 2021

## Helpful Hints: Requesting a Declination Letter

### **What is a declination letter?**

A declination letter is an opinion from the Office of General Counsel informing the requestor whether documents submitted for review comply with the Indian Gaming Regulatory Act (IGRA). Specifically, a declination letter, analyzes whether certain documents are management contracts that require the NIGC Chair's approval, or if the documents violate IGRA's requirement that a tribe maintain the sole proprietary interest in its gaming operation.

### **Why are declination letters issued?**

Declination letters are often issued to address a party's concern regarding IGRA's requirements. Specifically, potential issues surrounding management contracts and sole proprietary interest. Declination letters may help parties avoid enforcement action.

### **Who may request a declination letter?**

A tribe or an entity representing a tribe may submit a request for a declination letter.

### **How do you request a declination letter?**

There are two ways to request a declination letter:

- (1) mail the declination letter request to the NIGC Headquarters in Washington, DC; or
- (2) submit your declination letter request by electronic mail at: [legal\\_opinions@nigc.gov](mailto:legal_opinions@nigc.gov).

### **What should be included in a request for a declination letter?**

Your submission should include any documents you would like the OGC to review for potential violations of IGRA's management contract, or sole proprietary interest requirements. Documents should be unexecuted drafts in final or substantially final form. If any terms of the documents change in any material way or are inconsistent with the assumptions made within an opinion, the opinion shall not apply. Therefore, the submitted documents should reflect as closely as possible the document(s) the parties intend to execute. A declination letter is limited to the documents submitted for review.

Documents should be submitted prior to execution. OGC will not review documents that have already been executed. If documents submitted for OGC review are executed, the documents will be forwarded to the Compliance Division for review.

The submission should also specify the date by which parties hope to receive the legal opinion. Please note that the submission of additional documents or changes to any previously submitted documents will delay the review and thus the issuance of an opinion.

### **What is the review process?**

The initial review of a declination letter request will be conducted by an OGC staff attorney. Upon receiving the request, the assigned attorney will reach out to the submitter to discuss the request. Submitters should feel free to contact OGC throughout the process. During the review stage, the staff attorney may contact the parties to request additional information or inform the parties that a legal opinion cannot be issued. The review process is not a negotiation between the parties and the OGC, as the OGC is simply providing a legal opinion. Following review, OGC staff attorneys will make a recommendation to the Associate General Counsels. Once the Associate General Counsels complete their review, the recommendation and supporting documents will be submitted to the General Counsel. The General Counsel will make the final decision whether to issue a legal opinion.

### **How long does a review take?**

As a general matter, legal opinions are issued by the OGC as a courtesy to the industry. Neither IGRA nor NIGC regulations require the OGC to issue legal opinions. Thus, there are no deadlines by which an opinion must be issued.

The amount of time it takes to review the documents depends on several factors – completeness of the submission, the complexity of the documents, the responsiveness of the parties, the availability of OGC staff, and competing priorities set by the Commission. OGC is not required to issue declination letters, therefore statutory mandates and matters with regulatory deadlines take priority over declination letters. We will do our best to meet reasonable time frames for providing an opinion, but submitters should expect the review to take weeks, not days.

In our experience, a conversation often takes place early in the review process to address any questions regarding the information submitted. Your cooperation is appreciated throughout the review process.

### **Other Considerations:**

The legal opinion of the General Counsel is not agency action and the issuance of a legal opinion is a voluntary process, both for the party making the request and the OGC.

Declination letters will be posted to the NIGC's website and may be the subject of Freedom of Information Act (FOIA) requests. To that end, submitters are encouraged to mark the specific financial and confidential terms found in the declination letter in accordance with FOIA Exemption Four. FOIA further imposes a "segregability requirement" that requires the NIGC to release all reasonably segregable nonexempt material. As such, OGC strongly recommends submitters do not request NIGC withhold or entirely redact a declination letter, but identify only the specific material that comes within the scope of the exemption. Failure to identify exempt information and designations that appear obviously frivolous may, pursuant to NIGC regulation, be subject to disclosure without future opportunities to object. Declination letters will serve as a submitter notice. To the extent the submission contains exempted information, parties must submit their proposed redactions within 30 days.