



January 4, 2013

The Honorable George Blanchard
Governor
Absentee Shawnee Tribe of Oklahoma
2025 S. Gordon Cooper Drive
Shawnee, OK 74801

Re: Review of Loan Agreement and related documents between the Absentee Shawnee Tribe of Oklahoma and Firststar Bank, National Association, and response to request for declination letter

Dear Governor Blanchard:

This letter responds to your October 25, 2012 request, on behalf of the Absentee Shawnee Tribe of Oklahoma ("Tribe") and Firststar Bank, National Association ("Firststar Bank"), for the Office of General Counsel of the National Indian Gaming Commission ("NIGC") to review a Loan Agreement and related documents between the Tribe, Thunderbird Entertainment Center and Firststar Bank. Specifically, you asked for an opinion from the Office of General Counsel as to whether the documents are management contracts requiring the NIGC Chairwoman's approval under the Indian Gaming Regulatory Act ("IGRA"). You also asked for an opinion as to whether the documents violate IGRA's requirement that a tribe have the sole proprietary interest in its gaming operation.

In response to your request, I reviewed and considered the following submissions (collectively, the "Loan Agreement documents"), which were represented to be in substantially final form:

- (1) Loan Agreement (#1021378;8, received 1/3/2013);
- (2) Note (Revolving Note) (#1037648;2, received 10/25/2012);
- (3) Note (Term Note) (#1037685;2, received 10/25/2012);
- (4) Limited Recourse Guaranty Agreement (#1022125;4, received 1/3/2013);
- (5) Security Agreement (#1021411;4, received 1/3/2013);
 - A. Exhibit A -- Patents, Trademark and Service Mark Registrations, Copyright Registrations, Mask Work Registrations, and All Applications Therefor;

- (6) Secretary's Certificate, Thunderbird Entertainment Center, Inc., (#103769;2, received 10/25/2012);
 - A. Exhibit A -- Articles of Incorporation (not attached);
 - B. Exhibit B -- By laws (not attached); and
 - C. Exhibit C -- Authorizing Resolution (not attached);

- (7) Draft Resolution by Board of Directors of Thunderbird Entertainment Center, Inc. (#1037946;2, received 10/25/2012), Relating to Loan Agreement and Loan Documents among Tribe, Thunderbird Entertainment Center, Inc., and Firststar Bank, National Association;

- (8) Draft Resolution No. E-AS-2012-____ (#1037945;2, received 10/25/2012), by the Executive Committee of the Tribe Relating to a Loan Agreement and Loan Documents among the Tribe, Thunderbird Entertainment Center, Inc., and Firststar Bank, National Association;

- (9) Draft Certificate of the Governor of the Tribe (#1037700;4, received 10/25/2012);
 - A. Exhibit A -- Constitution of the Tribe (not attached);
 - B. Exhibit B -- Gaming Ordinance (not attached);
 - C. Exhibit C -- Gaming Compact (not attached); and
 - D. Authorizing Resolution (not attached);

- (10) Draft Letter from Counsel to the Tribe to Firststar Bank, National Association, undated (#1037738;3, received 10/25/2012);
 - A. Exhibit A -- Specified Tribal Laws (To be provided by counsel);
 - B. Exhibit B -- Material Contracts (To be provided by counsel); and
 - C. Exhibit C -- Client certificates relied upon by Counsel; and

The Loan Agreement documents contain terms similar to other agreements the Office of General Counsel has reviewed and analyzed in the past.¹ Applying the same analysis here, it is my opinion that the Loan Agreement 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. However, I note that the Loan Agreement documents have been submitted to us as unexecuted, unsigned drafts in substantially final form. To the extent that the documents change in any material way prior to the signing of the documents by the parties, this opinion shall not apply. Additionally, this opinion applies only to the existing Loan Agreement documents, not to any future documents incorporating extensions, modifications, supplements or other changes to the Loan Agreement documents.

I anticipate that this letter will be posted to the NIGC's website. Prior to the letter's posting, the NIGC Freedom of Information Act ("FOIA") Officer will notify you and give you an opportunity to identify and request that any information, which may be exempted under FOIA, be redacted or withheld. A list of the FOIA exemptions may be found at 25 U.S.C. § 552(b).

¹ See www.nigc.gov/Reading_Room/Management_Review_Letters.aspx.

If you have any questions, please contact NIGC Senior Attorney Katharine Zebell at (202) 632-7003.

Sincerely,



Eric Shepard
Associate General Counsel

cc: (1) Jeff Raley, Attorney for Absentee
Shawnee Tribe/Thunderbird
Entertainment Center
(2) Tom Dunlap, Managing Director,
Jones-Dunlap, LLC