



May 23, 2014

Via U.S. Mail

Gary Burke, Chairman
Board of Trustees
Confederated Tribes of the Umatilla Indian Reservation
46411 Timine Way
Pendleton, OR 97801

Re: Review of loan documents on behalf of the Confederated Tribes of the Umatilla Indian Reservation

Dear Chairman Burke:

This letter responds to the request on behalf of the Confederated Tribes of the Umatilla Indian Reservation ("the Tribes") for the National Indian Gaming Commission's Office of General Counsel to review a loan agreement in combination with several previously reviewed documents. Specifically, you have asked for an opinion whether the agreements are management contracts requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You 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 documents (collectively "the Financing Agreements") submitted as attachments to e-mails sent on behalf of the Tribe:

- Second Amended and Restated Loan Agreement, marked as OHSUSA:757075361.4; and
- Schedule 5.3 Gaming Insurance Requirements, marked as OHSUSA:757657146.2.

In addition, the Office of General Counsel has previously reviewed and opined upon documents collateral to the Second Amended and Restated Loan Agreement ("Collateral Documents").

In 2012, we opined upon:

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- Amended and Restated Spring Depository Agreement, marked as “OHSUSA:751084105.2”
- Amended and Restated Pledge and Security Agreement, previously and incorrectly identified as “OHSUSA: 751084463.2”, marked as “OHSUSA:751074842.2”
- Amended and Restated Remarketing Agreement, marked as “OHSUSA:751092125.2”
- Amended and Restated Unjust Enrichment and Sovereign Immunity Agreement, marked as “OHSUSA:751074883.2”
- Exhibits B-J to Loan Agreement, marked as “OHSUSA: 751081871.2”
- Amended and Restated Security Agreement, marked as “OHSUSA:751074842.2.”

In 2010, we opined upon:

- Securities Account Control- Consent Agreement between the Tribes and Wells Fargo as the secured party.

The Financing Agreements 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 Financing Agreements are not management contracts and do not require the approval of the Chair. It is also my opinion that they do not violate IGRA’s sole proprietary interest requirement. Moreover, the Financing Agreements do not affect the Office of General Counsel’s opinions as set forth in the 2010 and 2012 letters related to the Collateral Documents. Accordingly the Office of General Counsel’s opinions expressed in the August 20, 2010 and August 22, 2012 letters stand as to the Collateral Documents.

It is my understanding that the Financing Agreements 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 Financing Agreements 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).

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If you have any questions, please contact NIGC Staff Attorney Heather McMillan
Nakai at (202) 632-7003.

Sincerely,

A handwritten signature in black ink, appearing to read "ES", with a horizontal line extending to the right.

Eric Shepard
Acting General Counsel

cc:

Daniel Hester

Hester and Zehren, Attorneys at Law LLC

(via email: dhester@h-zlaw.com)