

NATIONAL INDIAN GAMING COMMISSION BULLETIN

No. 94-4

April 20, 1994

Subject: Tribal Background Investigations, Suitability Determinations, and Licensing of Key Employees and Primary Management Officials.

INTRODUCTION/OVERVIEW

The National Indian Gaming Commission (NIGC) has received numerous inquiries regarding the licensing of key employees and primary management officials under the NIGC's regulations. Tribes have inquired, in particular, about the procedures for conducting background investigations and about the "adequacy" of background investigations.¹ In addition, the NIGC has received inquiries about the contents of the investigative reports to be submitted to the NIGC on each key employee and primary management official.

This Bulletin addresses procedures for conducting background investigations, making suitability determinations and issuing licenses to key employees and primary management officials. This Bulletin also contains some recommendations for conducting background investigations. Because background investigations will vary on a case-by-case basis, it is inappropriate to formulate a standard or "boilerplate" background investigation program. Therefore, the procedural recommendations contained in this bulletin should be tailored to the individual circumstances.

GOVERNMENTAL FUNCTIONS

Section 558.1 of the NIGC's regulations provides that the licensing authority for class II and class III gaming is a tribal authority. Effective regulatory oversight requires that there be a separation between the regulation and operation of tribal gaming activities. Because the licensing of key employees and primary management officials is a governmental responsibility, the tribal government is solely responsible for conducting background investigations, making suitability determinations and issuing licenses. Section 522.2(c) requires tribes to submit to the

¹ In June 1993, the NIGC circulated a Model Ordinance and Description of Procedures for Conducting Background Investigations. The NIGC encourages tribes to use this Description of Procedures when formulating their own procedures.

NIGC, during the ordinance review process, a description of procedures for issuing licenses to key employees and primary management officials. To meet this requirement, a tribe must identify the governmental entity responsible for issuing licenses.

Since licensing is a governmental responsibility, the person(s) responsible for reviewing and approving investigative work and making suitability determinations must be employed by the tribal government. To avoid any possible conflict of interest, such person(s) should not be employed by the gaming operation.

The FBI has authorized dissemination of the criminal history record information (CHRI) reports only to tribal governments (See FBI Policy Statement attached to NIGC Bulletin 93-1). Accordingly, before CHRI information is disseminated to a tribe, it will be necessary for that tribe to designate the governmental officials who will have access to the information for purposes of making licensing determinations. Individuals employed by or working in the gaming operation should not be designated as individuals who will receive CHRI information. Failure to limit distribution of the CHRI in this manner could jeopardize a tribe's right to receive CHRI information from the NIGC.

Tribes should provide the NIGC with a list of persons in the tribal government who will have access to criminal history information. If possible, this list should be provided during the ordinance review process. If the tribe uses the NIGC to process fingerprint cards and the tribe has an approved gaming ordinance, the tribe should send this list to the NIGC as soon as possible.

BACKGROUND INVESTIGATIONS

Section 522.4(b)(5) of the NIGC's regulations requires tribes to perform background investigations and issue licenses according to requirements at least as stringent as those in 25 C.F.R. Parts 556 and 558. Part 556 contains the minimum application requirements and the requirements for preparing and submitting investigative reports to the NIGC. Part 558 contains the requirements for making suitability determinations, procedures for forwarding reports and applications to the NIGC, and procedures for issuing and suspending licenses. If a tribal-State compact exists for class III gaming, and the tribe maintains licensing authority, the tribe is responsible for ensuring that background investigations are conducted according to requirements at least as stringent as 25 C.F.R. parts 556 and 558.

Because the scope of background investigations will vary depending upon the information gathered, the NIGC believes that it is inappropriate to formulate a "boilerplate" background investigation program which the tribes must follow in order to meet the NIGC's requirements. Instead, the NIGC believes that the adequacy of a background investigation directly depends upon an analysis of the information contained in an application.

In general, the appropriate scope of a background investigation will vary depending upon several factors including, the type of position an applicant is seeking within an operation, the extent of an applicant's employment within the gaming industry, and the relationship of the applicant to the tribe. The NIGC recommends that the major areas of focus in a background investigation generally include criminal history information, personal character information, financial history information, and gaming experience. Such information is critically important to making a suitability determination.

Investigative procedures

As an initial step, information on each applicant should be obtained through the application process. An application for employment must include, at a minimum, the information contained in 25 C.F.R. §§ 556.1, 556.2, 556.3, and 556.4. Each background investigation should begin with an initial verification of the information contained in the application.

To relieve some of the burden from the tribe, the NIGC recommends that applicants be required to provide as much documentation as possible to verify the information contained in their application. For example, to aid in an investigation, an applicant may be required to provide copies of certain documents such as his/her birth certificate, social security card, drivers license. Information may also be verified by letter, telephone call or personal visit. Also, to ensure easier access to information, the NIGC recommends that tribes gather as much information as possible through the use of public records.

For access to information that is not generally available through the public record, tribes should consider using a Release Form signed by an applicant. A copy of the form being used by the NIGC is included as Attachment 1. A properly executed Release Form will usually allow access to personal files and information not readily available to the general public. This Release Form, if worded correctly, may also provide protection from legal repercussions to the requestor and the entity from which the information is requested.

The following identifies the information in an application that should be verified or subjected to additional investigative procedures. This list also includes some recommendations for verifying the information:

(i) Verify the applicant's name, place of birth, date of birth, and citizenship by requiring the applicant to provide items such as a birth certificate, social security card, or passport.

(ii) Confirm the applicant's business and employment positions held and ownership interests in those businesses currently and for the past 5 years by attempting to contact through written letter, telephone calls or personal visits to past employers listed in the application and through ownership documentation such as copies of partnership agreements, stock certificates, or IRS tax returns.

(iii) Obtain the applicant's driving record by using the applicant's driver's license number to contact the Department of Motor Vehicle in the state where the license is issued.

(iv) Ascertain character information about the applicant by contacting the personal references identified in the application.

(v) Inquire into any existing or previous business relationships the applicant has had with Indian tribes, including the scope of those relationships, by contacting those tribes identified in the application. Also, the investigator should contact other state and federal entities that have contact with Indian tribes to obtain other information available.

(vi) Gather information about any existing or previous business relationships the applicant has had in the gaming industry, including the scope of those relationships, by contacting those entities identified in the application. Also, when appropriate, the investigator should contact other state gaming agencies or the NIGC to obtain other information available.

(vii) Verify the applicant's history and status with any licensing agency identified by the applicant with which the applicant has applied for an occupational license or permit by contacting those agencies.

(viii) Obtain information regarding any past felonies, misdemeanor convictions, or criminal charges within the last 10 years by contacting state, city, county and tribal courts, and state, local, and tribal police departments in the applicant's areas of residence. The NIGC recommends obtaining as much information as possible through public court records. Also, a tribe may require an applicant to submit any court documents pertaining to the applicant's civil or criminal history.

(ix) Obtain and verify any other information the tribe deems relevant to complete a thorough background investigation. This may include the use of a credit reporting agency.

Once a tribe has satisfied itself as to the accuracy of the information contained in the application, the information should be analyzed. If questions arise (i.e., information is obtained about an applicant's criminal activities, financial problems, character deficiencies), the investigator should probe further into the applicants' background and either broaden the scope of the investigation or focus in more detail on a potential problem area. It is during this analysis phase that the depth of background investigations will vary considerably. The adequacy of each background investigation will depend on the detailed analysis of the information obtained through the investigative process.

Fingerprint checks

Section 522.2(h) of the NIGC's regulations also requires tribes to identify the entity responsible for processing fingerprint cards through the Federal Bureau of Investigation (FBI).

Under certain circumstances, tribes may elect to use the state rather than the NIGC to process fingerprint cards through the FBI. If a tribe wishes to use the state to process fingerprint cards for non-law enforcement purposes, the tribe must first contact their respective state identification bureaus to determine whether the state has the authority to process fingerprint cards for such purposes.

Unless a state has authority to process fingerprint cards through the FBI for non-law enforcement purposes, tribes must use the NIGC to process fingerprint cards. To do this, tribes must execute a memorandum of understanding with the NIGC (See NIGC Bulletin 93-2). Tribes should also send a letter to the NIGC requesting the number of fingerprint cards needed by the tribe. Fingerprints processed through the NIGC must be taken on fingerprint cards bearing NIGC's ORI number. If a tribe has already taken fingerprints for numerous applicants on another agency's cards, the tribe must cover the existing ORI number and put the NIGC's ORI number on the card. If the NIGC is responsible for processing the fingerprints, printed cards must be sent directly from the law enforcement agency that takes the fingerprints to the NIGC.

Investigative sources

The following is a list of agencies that may have information regarding applicants. Some may require that a tribe enter into a memorandum of understanding or have law enforcement status before certain information not otherwise available is shared.

FEDERAL AGENCIES

Department of the Interior (BIA, Inspector General)
National Indian Gaming Commission
U.S. District and Appellate Courts-civil/criminal/bankruptcy
U.S. Attorneys

STATE AGENCIES AND ORGANIZATIONS

State Gaming Boards and Commissions
Department of Public Safety
Department of Motor Vehicles
Secretary of State - Corporations Divisions
State Bar Associations/Accountancy Boards/Contractor Boards/Other state
licensing agencies
State Crime Commissions
State Courts-civil and criminal

COUNTY/CITY AGENCIES AND ORGANIZATIONS

County Courts - civil/criminal

County Licensing Departments

Recorder of the Deeds/Assessor's Office/Treasurer's Office

County Sheriff's Office

County Police Department

Chamber of Commerce

Better Business Bureau

Investigative reports

Before issuing a license to a primary management official or a key employee, tribes are required to forward to the NIGC investigative reports on each background investigation conducted. Each investigative report must include the following:

(1) A description of the steps taken in conducting the background investigation. This steps may, for example, be provided by:

- (a) a step by step recitation of the work done; or
- (b) a checklist or program with indication of procedures completed.

(2) An explanation of the results obtained. This may be supplied by listing any exceptions, areas of concern, or negative information obtained in the course of the investigation.

(3) A statement as to the conclusions reached. Where no exception, area of concern or negative information was obtained the report should so state. Where exceptions, areas of concern or negative information was obtained, the conclusions as to each should be provided.

(4) The bases or justifications for each of the conclusions.

Attachment 2 is a sample investigative report which the NIGC believes sufficiently meets the requirements of 25 C.F.R. §556.5. The report is included merely for informational purposes. Tribes are not required to use the format contained in the sample report.

SUITABILITY DETERMINATION

An authorized tribal official must review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility for employment in the gaming operation. If the authorized tribal official, in applying the standards adopted in a tribal ordinance, determines that employment poses a threat to the public interest or to the effective regulation of gaming, or enhances the dangers of unsuitable, unfair, or

illegal practices and methods in the conduct of gaming, a management contractor or a tribal gaming operation shall not employ that person in a key employee or primary management official position.

Use of Investigative Work

An authorized tribal official should use the investigative report as the basis for reviewing a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or a primary management official for employment in a gaming operation. The authorized tribal official should pay particular attention to:

- 1) The truthfulness of the applicant's answers to questions asked;
- 2) The applicants criminal record, if any;
- 3) Any conflicting or additional information; and
- 4) Mitigating circumstances cited by the investigator.

A sample suitability determination is included as Attachment 3.

LICENSING

Upon completion of a background investigation and a determination of eligibility (suitability) for employment in a gaming operation, tribes must forward an investigative report and suitability determination to the NIGC within 60 days after an employee begins work. The Chairman may, during the ensuing 30 days, request additional information from a tribe concerning a key employee or primary management official who is the subject of a report. Such a request suspends the 30 day period until the Chairman receives the additional information.

If the NIGC notifies a tribe that it has no objections to the issuance of a license to a particular applicant, the tribe may issue a license to such applicant. If the NIGC provides the tribe with a statement itemizing objections to the issuance of a license to a particular applicant, the tribe must reconsider the application, taking into account the objections itemized by the NIGC. The tribe, however, makes the final decision whether to issue a license to such applicant.

ATTACHMENT 1
NATIONAL INDIAN GAMING COMMISSION
AUTHORIZATION FOR RELEASE OF INFORMATION

PRESENTED TO: _____

I, _____,

(Print/type applicant's name)

hereby authorize release to the **National Indian Gaming Commission (NIGC)** any information requested in order for the NIGC to determine my suitability for involvement in Indian gaming.

This document authorizes release of requested information whether or not such information would otherwise be protected from disclosure by any constitutional, statutory or common law privilege.

I agree to accept any risk of adverse public notice, embarrassment, criticism or financial loss that may result from use of information that is obtained in connection with a background investigation for the purpose listed in the first paragraph of this document.

I authorize release of any information related to my activities including: schools, property interests (real and personal), employment, criminal justice agencies, regulatory agencies, businesses, financial institutions, lending institutions, medical institutions, hospitals, and health care professionals.

I authorize review and copying of all documents.

I relinquish any right that I may otherwise have to pursue a cause of action against any person (or his or her agent) to whom this request is presented when such cause of action arises out of a response to a request for information pursuant to the Indian Gaming Regulatory Act of 1988 (25 U.S.C. § 2701 et seq.) I further agree to indemnify and hold harmless any person to whom this request is lawfully presented. Such indemnification and holding harmless includes all claims, damages, losses and expenses, including reasonable attorneys' fees.

A reproduction of this authorization is the same as the original.

Executed at (city) _____, (state) _____

on this _____ day of _____, 19____.

Signature: _____

Subscribed and sworn to before me on this

_____ day of _____, 19____.

Notary Public

Presented by National Indian Gaming Commission representative:

Signature: _____ Date: _____

Name: _____ Title: _____

ATTACHMENT 2

INVESTIGATIVE REPORT (25 CFR 556.4)

I. APPLICANT INFORMATION

NAME: _____

DOB: _____ SSN: _____

APPLICANT STATUS: ☐ Primary Management Official

☐ Key Employee

POSITION HELD OR APPLIED FOR: _____

DATE EMPLOYED: _____

II. STEPS TAKEN IN CONDUCTING BACKGROUND INVESTIGATION:

(This section should reflect the steps taken in conducting the background investigation based upon the investigative procedures discussed in this bulletin (See pages 3 and 4 of this Bulletin). The description of steps taken can be provided in a step by step recitation, or by way of a checklist or program which indicates certain procedures have been completed (See page 6 of this Bulletin).

III. RESULTS OF THE INVESTIGATION

(This section should reflect the results of all checks completed during the investigation, and additional steps taken to examine any problem areas identified.)

IV. CONCLUSIONS

(This section should contain an explanation of the investigative findings whether positive or negative which were uncovered as a result of the background investigation and the basis for the licensing determination, including any mitigating circumstances.)

DATE

INVESTIGATOR

ATTACHMENT 3

SUITABILITY DETERMINATION
(25 CFR 558.2)

Based on the information reviewed and the investigative findings, and taking into consideration the applicant's prior activities, criminal record, if any, reputation, habits and associations, the (Tribal Gaming Commission or authorized Tribal governmental official) has determined that _____ should be:

☐ granted a license.

☐ denied a license.

DATE

AUTHORIZED TRIBAL OFFICIAL

TRIBE