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**Subject: Independence of Tribal Gaming Commissions**

### **Introduction/Overview**

This Bulletin supplements NIGC Bulletin No. 94-3 (April 20, 1994) which discusses the role for a tribal gaming commission in helping a tribe meet its regulatory responsibilities under the Indian Gaming Regulatory Act (IGRA). Effective regulatory oversight requires a functional separation between the *operation* of tribal gaming and the *regulation* of that tribal gaming. In the NIGC's experience, a well-run tribal gaming commission, free to regulate without undue interference from tribal leadership, is the best vehicle for achieving this functional separation.

### **Discussion**

A tribal gaming commission is an arm of the tribal government established for the exclusive purpose of regulating and monitoring gaming on behalf of the tribe. The charter document for the tribal gaming commission should ensure that the commission is an independent body, separated completely from the tribe's role as owner and operator of the tribe's gaming activities. Responsibilities such as the adoption and establishment of rules and standards for the operation of gaming activity should be delegated to the tribal gaming commission. The exercise of such authority is strong evidence that the gaming commission functions in an independent capacity distinct from the tribal council.

The purpose of a tribal gaming commission is regulatory not managerial. A tribal gaming commission conducts oversight to ensure compliance with federal, tribal, and, if applicable, state laws and regulations. The commission serves as the licensing authority for individuals employed in the gaming operation, administering an effective program for background investigations as part of the licensing process. The commission also has a role in monitoring compliance with the internal control standards for the gaming operation and in tracking revenues. In order to carry out its regulatory duties, the commission should have unrestricted access to all areas of the gaming operation and to all records. A tribal gaming commission should have clear authority to take enforcement actions, including suspension or revocation of an individual gaming license, when appropriate.

A tribal government helps ensure the independence of a tribal gaming commission by creating for it a permanent and stable source of funding. This funding may originate in the tribal budget, which is recommended, or from license fees or assessments on the gaming revenue. The independence and integrity of the commission is seriously threatened if the tribal council is able to withhold funding from it or if the level of funding is not sufficient for the gaming commission to perform its role. Similarly,

approval for day-to-day expenditures for the gaming commission should be within the authority of the gaming commission or a staff supervisor and not from an outside party. The tribal gaming commission should be supported by a qualified staff.

The length of term in office and assurance of an opportunity to perform the required duties are important to the independence of tribal gaming commissions as both a matter of reality and perception. The term should be of fixed length and long enough to ensure stability. Continuity is fostered by staggering the terms of commission members thus avoiding wholesale changes in the membership. The commission should be non-partisan and non-political. Removal of commission members during term of office should be for good cause only and follow a procedure which provides for due process. Removal should not be permitted for simple disagreement with tribal leadership over matters that involve a gaming commissioner's exercise of discretion in the performance of duty.

While independence is critical, regular and open communication with tribal leadership and tribal membership is also important. The general aspects of the commission's regulations and its oversight of gaming activities are of vital interest to the tribe. Regular reports should be made to the tribal council and to the membership on the status and health of the gaming operation from a regulatory perspective.

Serious conflicts of interest in the exercise of its regulatory responsibilities as well as an appearance of impropriety are avoided if members of gaming commissions are prohibited from playing in the gaming activities they regulate. Commission members should not be employed by gaming operations or by the management company or consultant serving the gaming operation. Participation as a player or as an employee in the regulated operations will likely raise questions about the independence of the tribal gaming commission and potentially compromise its integrity or that of its members.

Ideally, no members of a tribal council would serve on the tribal gaming commission. Tribal council members and tribal gaming commission members may not always agree on matters about which the tribal gaming commission has taken a regulatory position because they may approach these matters from different perspectives. Actual and perceived independence for a tribal gaming commission is fostered if the roles of council member and gaming commissioner are separate and distinct.

### **Conclusion**

The NIGC encourages tribes to review their responsibilities and procedures in respect to gaming regulation and consider whether their tribal gaming commission operates in a sufficiently independent manner. This bulletin serve as guidance to tribes and identifies attributes of an independent tribal gaming commission but the NIGC recognizes that there may be other ways to achieve such independence. The overall goal is, of course, to ensure integrity in Indian gaming.

For additional information, a tribe may contact an NIGC field representative or the NIGC Office of General Counsel at (202) 632-7003.