

National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-17-03

To: A. J. Not Afraid Jr., Chairman
Crow Tribe
129 Butchetché Ave
P.O. Box 340
Crow Agency, MT 59022

LaVerne Old Elk, Chairperson
Crow Tribe Gaming Commission
P.O. Box 580
Crow Agency, MT 59022

1. Notification of Violation

The Chairman of the National Indian Gaming Commission hereby gives notice that the Crow Tribe, located in Crow Agency Montana, and operating the Apsaalooke Nights Casino and Center Lodge Bingo (aka Edison Real Bird Racing Complex) has violated NIGC regulations by failing to submit timely annual audits.

2. Authority

Under the Indian Gaming Regulatory Act (IGRA) and NIGC regulations, the Chairman of the NIGC (Chairman) may issue a Notice of Violation (NOV) to any person for violation of any provision of the IGRA, NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the Chairman. 25 U.S.C. § 2713; 25 C.F.R. § 573.3.

3. Applicable Federal Laws and Tribal Ordinance Provisions

- A. IGRA requires that tribes submit annual audits of each gaming operation. 25 U.S.C. § 2710(b)(2)(C).
- B. NIGC regulations define "gaming operation" as each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes and pays the expenses. 25 C.F.R. § 502.10.
- C. NIGC regulations require that a tribe engage an independent certified public accountant to provide annual independent audits of the financial statements of each gaming operation located on Indian lands for each fiscal year. 25 C.F.R. § 571.12(b).

- D. The NIGC regulations further require a tribe submit a copy of the financial statements and audits, with any management letter(s) and other documents/reports setting forth the results of the annual audit(s) to the NIGC within 120 days after the end of each gaming operation's fiscal year. 25 C.F.R. § 571.13.
- E. NIGC regulations also require tribes to submit within 120 days after the end of the fiscal year an Agreed Upon Procedures report for each Class II operation. 25 C.F.R. § 543.23(d). The Agreed Upon Procedures report details the state of compliance with Class II Minimum Internal Control Standards.
- F. Crow Tribal Gaming Ordinance of 2015, Section 17(B), approved by the NIGC Chair on November 10, 2015(Ordinance), requires that “The Gaming Commission shall order an annual audit on all Class II and Class III gaming activities on Crow Indian land. All such audits shall be conducted by an independent, licensed auditing firm selected by the Gaming Commission” and “A verified copy of all such audits commissioned under this subsection shall be furnished to the National Indian Gaming Commission.”

4. Role of Independent Audit Report

Submission of the annual independent audit report by a firm of certified public accountants is critical to the NIGC's mission to protect the integrity of Indian gaming. A firm's ability to conduct an audit in accordance with generally accepted auditing standards and render an opinion on the financial statements prepared in conformity with generally accepted accounting principles provides a certain level of assurance as to the security of tribal gaming revenues. The audit report prepared and submitted on a timely basis is evidence of, among other things, the integrity of the gaming operation and, more specifically, of the adequacy of the books and records, the functioning of the internal financial controls, and the disclosure of information having a bearing on the financial statements.

5. Circumstances of the Violation

- A. The Crow Tribe is a federally recognized Indian tribe with tribal headquarters in Crow Agency, Montana.
- B. The Tribe operated its gaming operation, Apsaalooke Nights, during all or part of fiscal year 2016.
- C. During all or part of fiscal year 2016, Apsaalooke Nights offered Class II gaming.
- D. The Tribe operated its gaming operation, Center Lodge Bingo (aka Edison Real Bird Racing Complex), during all or part of fiscal year 2016.
- E. During all or part of fiscal year 2016, Center Lodge Bingo (aka Edison Real Bird Racing Complex) offered Class II gaming.

- F. Based on the most recent financial statements and audit submitted to the NIGC, for fiscal year 2015, the fiscal year for Apsaalooke Nights runs from January 1 to December 31.
- G. IGRA requires that tribes submit annual audits of each gaming operation. 25 U.S.C. § 2710(b)(2)(C). NIGC regulations require that a tribe engage an independent certified public accountant to provide annual independent audits of the financial statements of each gaming operation located on Indian lands for each fiscal year and submit. 25 C.F.R. § 571.12(b). The NIGC regulations further require a tribe submit a copy of the financial statements and audits, with any management letter(s) and other documents/reports setting forth the results of the annual audit(s) to the NIGC within 120 days after the end of each gaming operation's fiscal year. 25 C.F.R. §§ 571.13.
- H. Similarly, NIGC regulations require that tribes submit Agreed Upon Procedures reports to the NIGC for all operations offering Class II gaming within 120 days after the end of each gaming operation's fiscal year. 25 C.F.R. § 543.23(d)(2).
- I. Therefore, the Agreed Upon Procedures reports, financial statements and audits for the Tribe's gaming operations' for fiscal year 2016 were due to the NIGC on or before April 30, 2017.
- J. The Tribe did not submit the 2016 Agreed Upon Procedures reports, financial statements and audits to the NIGC by April 30, 2017, and has yet to submit the documents.
- K. On June 15, 2017, NIGC issued a Letter of Concern with a required response date of June 26, 2017, to Chairman A.J. Not Afraid, Jr. for failure to submit the required Agreed Upon Procedures reports, financial statements, and audits for fiscal year 2016.
- L. The Tribe failed to respond to the June 26, 2017 Letter of Concern or submit the required Agreed Upon Procedures reports, financial statements, and audits.
- M. To date, no Agreed Upon Procedures reports, financial statements, or audits have been received from the Tribe since on or about April 29, 2016.

6. Measures Required to Correct the Violation

No remedial action can correct the violation of failing to submit AUP, Financial statements, and audits within 120 days of the end of the fiscal year. 25 C.F.R. §§ 542.3(f), 543.23(d), and 571.13(a). Submission of the documents will cure the on-going violations, and in any event, the documents must be submitted to the NIGC within 90 calendar days of service of this NOV.

7. Appeal

Within 30 days after service of this Notice of Violation, the Tribe may appeal under 25 C.F.R. Parts 584 and 585 by submitting a notice of appeal, and, if desired, request for hearing to the National Indian Gaming Commission:

NIGC Attn: Office of General Counsel
1849 C Street NW
Mail Stop #1621
Washington, DC 20240

The Tribe has a right to assistance of counsel in such an appeal. A notice of appeal must reference this Notice of Violation.

Within ten days after filing a notice of appeal, the Tribe must file with the Commission a brief that states with particularity the relief desired and the grounds in support and includes, when available, supporting evidence in the form of affidavits. If the Tribe wishes for a closed hearing, it must include, with the brief, a request to do so and why. If the Tribe wishes to present oral testimony or witnesses at the hearing, the Tribe must include a request to do so with the brief. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony. The Tribe may waive its right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

8. Fine-Submission of Information

The violation cited above may result in the assessment of a civil fine against the Tribe in an amount not to exceed \$50,276 per violation per day. The violation is of an on-going nature because the Tribe has not submitted its Agreed Upon Procedures reports, financial statements and audits. Under 25 C.F.R. § 575.5(a), the Tribe may submit written information about the violation to the Chairman within fifteen (15) days after service of this notice of violation (or such longer period as the Chairman may grant for good cause). The Chairman shall consider any information submitted in determining the facts surrounding the violation and the amount of the civil fine, if any.

Dated this 3rd of August, 2017.



Jonodev O. Chaudhuri
Chairman

Certificate of Service

I certify that this **NOV-17-03** was sent by facsimile, email and certified U.S. mail, return receipt requested, on this 3rd day of August, 2017 to:

LaVerne Old Elk, (Agent for Service of Process)
Chairperson
Crow Tribe Gaming Commission
P.O. Box 580
Crow Agency, MT 59022
Fax No. (406)638-4280

and

A. J. Not Afraid Jr., Chairman
Crow Tribe
129 Butchetcher Ave
P.O. Box 340
Crow Agency, MT 59022



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