

NATIONAL
INDIAN
GAMING
COMMISSION

Luis A. Gonzales
Executive Director
Tribal Gaming Office
Pascua Yaqui Tribe
7406 South Camino De Oeste
Tucson, Arizona 85746

MAR 28 1996

Dear Mr. Gonzales:

This is in response to your letter of October 11, 1995, requesting the National Indian Gaming Commission (NIGC) to review the card game, Maverick 21, and to determine its classification under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et. seq. (1988).

Pursuant to the IGRA, class II gaming includes non-banking card games if such card games:

(I) are explicitly authorized by the laws of the State,
or

(II) are not explicitly prohibited by the laws of the State, and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

25 U.S.C. § 2703(7)(A)(ii). This opinion is confined to determining whether Maverick 21 meets the non-banking requirement for class II status.

Maverick 21 is played like blackjack but in a non-banking format. Each player pays an ante to the house and places a wager on one, two or three circles. The wager amount for the first circle is mandatory but the wager amounts for the second and third circles are optional with predetermined limits set by the casino. Each player is initially dealt two cards. The objective is to get a "Natural" (an ace and a card valued at ten (10)) or to have the highest point total not exceeding twenty-one (21). The best hand in each circle wins and collects the pot for that circle. If two or more players have a "Natural" or the highest point total, the winners share the pot.

The betting format and how a player wins differentiates Maverick

21 from traditional blackjack. In Maverick 21 there is no bank or banker taking on all players, collecting all losses, and paying all winners. Instead, players play against each other. In blackjack, "[e]ach player bets only with the dealer" or the house which is the banker. Richard L. Frey, *According to Hoyle* 205-206 (1970). Thus, a player's cards must beat only the dealer's cards in traditional blackjack. In Maverick 21, however, a player must beat all of the other players' cards in order to win as in poker. The amount a player can win is also different. In blackjack, a player's potential winnings is based on the amount he or she wagers while in Maverick 21, a player's winnings is based on the number of players in the game and whether there is another winner. Also, the strategies that a player uses change when he or she is playing against other players and not against a bank. These variations in the game are sufficient to conclude Maverick 21 is not traditional blackjack by another name.

The IGRA excludes from class II gaming "any banking card games, including baccarat, chemin de fer, or blackjack (21)..." 25 U.S.C. § 2703(7)(B)(i). Although blackjack is specifically excluded from class II gaming, the wording of this provision seemingly prohibits only banking games. Blackjack may be played a class II game if played in a non-banking format. The legislative history of the IGRA supports this interpretation. The Senate Report on the IGRA describes the distinction between banking and non-banking card games as follows:

Sections (4)(8)(A)(ii) provides that certain card games are regulated as class II games, with the rest being set apart and defined as class III games under section 4(9) and regulated pursuant to section 11(d). The distinction is between those games where players play against each other rather than the house and those games where players play against the house and the house acts as banker...

S. Rep. No. 100-446, 100th Cong., 2nd Sess. 9-10 (1988).

Because the players in Maverick 21 play against each other rather than against the house and the house has no stake in the outcome of the game, Maverick 21 is not a banking game. We therefore conclude that Maverick 21 meets the non-banking requirement for class II status.

As stated above, in order to qualify as a class II game, Maverick 21 must also: (1) be explicitly authorized by the laws of the State or (2) not be explicitly prohibited, be played at any location in the State, and conform to any state law or regulation

limiting the hours or periods of operation of the card games or wagers or pot sizes.

If you have any questions, please call this office at 202-632-7003.

Sincerely,

Michael D. Cox

Michael D. Cox
General Counsel