

NOV - 2 1999

Geoffrey M. Standing Bear, Esq.
Kane Law Bldg., 120 East Sixth Street
P.O. Box 1049
Pawhuska, Oklahoma 74056

Dear Mr. Standing Bear:

This letter provides our opinion of the version of the "Play Pull-Tab" game which was demonstrated at the NIGC offices on September 29, 1999. This is a game which has previously been reviewed and determined to be a class III game, and you have asked that we take a look at the newer version. We have concluded that the machine remains a class III game.

In its current incarnation, "Play Pull-Tab" is a video machine which looks like most electronic or electromechanical gaming devices. That is, it is a free standing cabinet with a bill acceptor, a video display and a light on top. The machine contains portions of pull-tab "deals"¹ in six columns (pull-tabs from these same deals may also be purchased from employees of the gaming facility). The customer inserts money, pushes a button to choose the column from which a pull-tab is desired, and receives a pull-tab containing a number of plays. In the demonstration, the player inserted five dollars and received ten plays worth fifty cents apiece. As the pull-tab passes through the machine, the machine reads a bar code, revealing for the machine the contents of the pull-tab. If the customer wishes to have the contents shown on the video display, he or she may do so by pushing a "verify" button. The "verify" function then displays in spinning reel graphics, one screen at a time, the ten lines on the pull-tab, so that the visual affect is the same as having made ten plays on a traditional video slot machine. For example, a line on a pull-tab might be three 7's, a winning pattern which, when it comes up on the video screen, would be accompanied by electronic bells and flashing lights. The customer may choose not to use the "verify" button and may determine whether he or she has won in the traditional fashion, i.e. by opening the pull-tab and reading it. All players must collect winnings from a cashier and must read their pull-tabs to determine whether or not a bonus has been won.

Our review of the earlier version of this game led us to conclude that, based upon the rationale of the court in Diamond Game Enterprises, Inc. v. Reno, 9 F. Supp. 2d 13 (D.D.C. 1998), the earlier version of "Play Pull-tab" was a class III game. Notwithstanding the very thorough legal presentation you have made and the changes which the company has made to the

¹ A pull-tab deal is a factory-assembled group of pull-tabs (the group can be any size, e.g. 20,000 or 50,000) which contains a pre-determined number of winners. For example, a deal of 50,000 pull-tabs might contain payoffs ranging from three \$2400 prizes to fifty thousand \$.25 prizes.

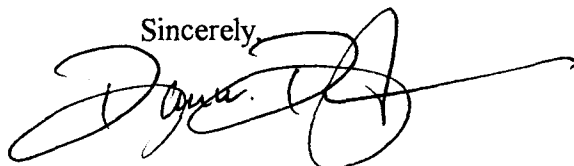
game, in our view the machine is still a gambling device within the meaning of the Johnson Act² and still cannot be played on Indian lands without a tribal-state compact.

We are in the process of issuing regulations which will establish a formal mechanism for classifying games, but until that time classification opinions such as this are advisory in nature only and do not constitute a final decision of the Commission. This opinion will, though, guide the Commission in deciding whether or not to pursue enforcement action against a particular Indian gaming operation that may be playing "Play Pull-Tab."

By issuing this opinion, we do not speak on behalf of the Department of Justice or the United States Attorneys who share enforcement responsibilities with the Commission over gambling devices.

If you have any questions, please contact Richard Schiff at (202) 632-7003.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry Brandon", with a long horizontal flourish extending to the right.

Barry Brandon
General Counsel

cc: Cory Consultants
2439 North Balboa Avenue
Tucson, AZ 85705

United States Attorney, Western District of Oklahoma
United States Attorney, Eastern District of Oklahoma
United States Attorney, Northern District of Oklahoma
Kevin DiGregory, Department of Justice

² The Johnson Act, 15 U.S.C. § 1171(a) defines a gambling device to be a machine designed and manufactured primarily for use in gambling, by the operation of which a person may become entitled to receive money, as the result of the application of an element of chance. Notwithstanding that the deal at the factory determines which pull-tabs will be winners, the Johnson Act clearly covers "Play Pull-Tab." The machine is indisputably designed for gambling, and in its operation the player pays consideration, obtains a chance and determines whether or not a prize has been earned.