



JAN 15 2003

Charles Enyart, Chief
Eastern Shawnee Tribe of Oklahoma
P.O. Box 350
Seneca, MO 64865

RE: Blackjack in Oklahoma

Dear Chief Enyart:

In an opinion letter dated July 9, 1999, the NIGC General Counsel advised that the tribes in Oklahoma could offer pitch and blackjack tournaments as a class II gaming activity under the Indian Gaming Regulatory Act (IGRA) if the tournaments were played in a manner consistent with Oklahoma law. A number of tribes in Oklahoma have now introduced "Tournament Blackjack" into their gaming facilities. However, in many gaming facilities, actual play is substantially different from the proposal for tournament play set forth in the letter requesting the advisory opinion.¹ Many tribal gaming facilities are offering blackjack without apparent regard for whether all play is, in fact, confined to a tournament format.

I provide this opinion letter to emphasize the importance of restricting blackjack play to an actual tournament format. I remind tribes that to qualify as Class II, all play including play in preliminary rounds must be conducted as a tournament. Play not in a tournament format is a Class III gaming activity requiring a tribal-state compact. Conducting a non-tournament blackjack game in Indian country could also subject the operator to criminal prosecution under 18 U.S.C. § 1166.

¹The tournament format proposed by the Tribes was summarized in the opinion letter:

The proposed card game tournaments will involve the play of pitch, gin and blackjack at tribal gaming facilities. The proposal calls for patrons to pay an entry fee and receive tokens for use in card play. The tokens do not represent money. They are a means for keeping score and are not "cashed out," that is, redeemed for money, as would be the case with chips at a casino. Prize winners will be determined in tournament play by elimination. The gaming operation will collect an administrative fee to cover the expense of operating the tournaments.

The house will not compete or participate in any way as a player which might win or lose; although, the gaming operation will be awarding the advertised prizes to successful tournament participants.

See Classification Opinion Letter from Barry W. Brandon, General Counsel, NIGC to Richard J. Grellner (July 9, 1999).

Tournament qualifying play presents a particular problem. As an example, in a legitimate tournament, play can encompass a number of rounds for which a player pays a fixed tournament entry fee to play. Through the process of elimination during qualifying rounds, the number of players is reduced until a tournament winner is determined based on most points accumulated. In many tribal gaming facilities, however, play of blackjack during the qualifying period for the tournament involves placing a "bet" or a "wager" in what is a "banked" card game. Players win or lose amounts according to the bets they have placed.² The chips or "tokens" used during the day-to-day operation of the game represent actual money, as with chips at a casino. This daily play is not focused on achieving points in an actual tournament but only on winning money at the particular ongoing blackjack game. In these circumstances, the gaming operation earns revenue from commissions on bets and from its own participation in the game, not primarily from the tournament enrollment fee. Merely because the house's winnings are kept in an "escrow" account separate from other revenues and used for a specific purposes including the payment of player prizes does not change the fact that the house is a participant in the game and can and does "win." Play in this manner during the qualifying rounds means that the blackjack game can no longer be considered a legitimate tournament.

IGRA lists "blackjack" and "21" as specific examples of banking card games that are not included within Class II and are therefore Class III.³ Moreover, a card game may be classified as Class II only if it is either explicitly authorized by the state, or it is not explicitly prohibited and played legally somewhere in the state. Section 941 of Title 21 of the Oklahoma Statutes expressly prohibits "poker, roulette, craps or any banking or percentage, or any gambling game played with dice, cards or any device for money, checks, credits or any representation of value." Thus, as a general matter, banked blackjack games are prohibited under Oklahoma law and can therefore not be a Class II gaming activity.

The July 1999 classification opinion letter regarding Tournament Blackjack was based principally on Section 981 of Title 21 of the Oklahoma Statutes that provides an exemption from the general prohibition against gambling by excluding from the definition of the term "bet," the participation in "public or semipublic events" such as "tournaments and other

²The rules of this blackjack game are fundamentally the same as traditional blackjack: the object of the game is to beat the dealer's hand without exceeding twenty-one; a hand of "Blackjack," which is an initial deal of an ace and a card valued at ten, is an automatic winner; the house deals; players play against the house and not each other; the house has the potential to win or lose; and the bank is used to pay winners. See Richard L. Frey, *According to Hoyle*, 205-206 (1970)(setting forth rules for blackjack or "21").

³The term "class II gaming" explicitly does not include "any banking card games, including baccarat, chemin de fer, or blackjack (21)[.]" 25 U.S.C. § 2703(7)(B)(i). NIGC regulations define a banking game as, "any game of chance that is played with the house as a participant in the game, where the house takes on all players, collects from all losers, and pays all winners, and the house can win." 25 C.F.R. § 502.11.

shows and contests where the participants qualify for a monetary prize or other recognition.”⁴ In the opinion, the NIGC General Counsel was careful to distinguish between conducting actual “tournaments” and casino-style blackjack play.⁵ Only legitimate tournament play is lawful in Oklahoma.

Another problem area is the use of a “player prize pool” fund to award prizes. In a legitimate tournament format, a participant pays an entry fee and competes with others for a prize that may be, or may include, a specific sum of money. The prize is established before entry fees are accepted. Entry fees are revenue to the tournament sponsor who has no particular interest or stake in who wins. A portion of the total entry fees paid does not become the prize although, from an accounting standpoint, the net revenue of the sponsor from entry fees may be reduced by the value of the prize. In the blackjack tournament play found in many tribal gaming facilities, however, a “player prize pool” fund is established from tournament entry fees and from the house “win” during qualifying rounds. Winning players are paid from this fund. The use of a blackjack player prize fund in these circumstances also serves to remove the blackjack game from the tournament exemption established in Section 981 of Title 21 of the Oklahoma Statutes because the activity is now a “bet.”⁶

These player prize pool funds are often maintained outside the normal accounting for gaming revenue thereby creating a further difficulty. Our understanding is that some tribes have accumulated substantial sums of money in player prize pools and that some tribes may use the player prize pool to fund gaming facility expenses such as a marketing and entertainment. Because these funds are not typically subject to internal controls or strict accountability procedures, they become a target for misuse or theft.

⁴ 21 OS 981 provides in pertinent part: “A bet does not include...offers of purses, prizes, or premiums to the actual participants in public and semipublic events, as follows, to wit: Rodeos, animal shows, expositions, fairs, athletic events, tournaments and other shows and contests where the participants qualify for a monetary prize or other recognition. This subparagraph further excepts an entry fee from the definition of a “bet” as applied to enumerated public and semipublic events.” As discussed in the earlier letter, this statutory exception forms the underlying basis for concluding that tournament blackjack play is permitted as a class II gaming activity for tribes in Oklahoma.

⁵ We cautioned in the July 1999 opinion letter: “In operating such class II card games, care must be taken to ensure that the tournament format does not become a sham and that the games are in fact being played as tournaments within the meaning of 21 OS § 981.”

⁶ See Oklahoma Attorney General Opinion 99-5 dated March 29, 1999 [Participants’ entry fees held as a pool to be paid to the winner as a prize caused “money hunts” to be considered gambling. However, as a general matter, when a person or association sponsors or conducts contests for “purses, prizes, or premiums,” and the moneys paid to such person or association for the right of participation become part of the person or association’s general assets, and the “purses, prizes, or premiums” are paid out to contestants without regard to such contributions, such activities will not be considered a “bet.”]

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I ask that you review the manner in which "Tournament Blackjack" is played in your tribal gaming facilities and ensure that it is being played as a legitimate card tournament. Merely labeling the play of blackjack as a "tournament" does not make it so. The key question is how the game play actually functions. A fundamental point is that all play—every hand—must be played as part of the tournament and in a tournament format. Further, the revenue from tournament entry fees, the only revenue to the gaming establishment from these events, should be treated as gaming revenue in the normal course and accounted for as such, and not placed into a separate player pool account.

Sincerely yours,

A handwritten signature in black ink that reads "Penny Coleman". The signature is written in a cursive, flowing style.

Penny J. Coleman
Acting General Counsel

Identical letter to: Tribal Gaming Commissioner