



April 29, 2003

Jamie Hummingbird, Director  
Cherokee Nation Gaming Commission  
P.P Box 627  
Tahlequah, Oklahoma 74465-0627

RE: Tournament Blackjack

Dear Mr. Hummingbird:

By letter dated March 27, 2003, received at the National Indian Gaming Commission (NIGC) on April 1, 2003, you provided a proposed format for tournament blackjack for our review and comment. Your subsequent letter of April 3, 2003, indicated that the Cherokee Nation Gaming Commission authorized the play of the format, referred to as "Break the Bank 21," and that implementation would begin effective April 5, 2003, provided that Cherokee Nation Gaming Commission had not received a written directive from the NIGC to the contrary. On April 4, 2003, we requested that the Nation not commence tournament blackjack in the proposed format pending further review. We made this request because we had serious concerns about whether "Break the Bank 21" was a bona fide tournament format.

We have now completed our review of the proposed format. We conclude that the proposed blackjack tournament format known as "Break the Bank 21," as described in your letter, should not be considered a Class II gaming activity. Accordingly, we request the Nation's gaming facilities not offer blackjack play in this format.

#### Description of "Break the Bank 21"

The proposal calls for "qualifying" tournaments at five different tiers. Each tier has different entry fee ranging from \$5 to \$200. Each tier is independent of the other tiers. Each qualifying tournament will be played with four to seven players. A minimum of four players is required for a tournament to begin at any tier level. After paying the entry fee, a player receives tournament point-value chips. The chips do not have redeemable cash value. All players start with an equal number of chips. Each tournament consists of three hands of blackjack using traditional blackjack rules. Players also pay a small "administrative fee," equivalent to an "ante," which the house retains.

At the end of each three-hand tournament, the player with the most point-value chips wins the tournament and is awarded a prize of money. Cash prizes are also awarded to the second and third place finishers. Although styled as "pre-determined," the prize will vary in any particular tournament based on the number of players in that tournament. There is a pay-table for the first, second, and third place finishers in the tournament showing the prizes based on the entry fee and

the number of players at the table. After the cash prizes are awarded, all player chips for that tournament lose their value, cannot be redeemed, and cannot be carried forward into a later tournament.

There is an alternative prize award approach for the tournament known as "Break the Bank" that is the focus of the game and which overrides the regular prize schedule. The "Break the Bank" prize is achieved by obtaining a certain level of point-value chips. The first player to achieve those points wins the entire pool of entry fees accumulated for that tournament. In order to obtain the point-value chips necessary for the prize, the player must place a maximum bet on the first two hands, win the first two hands, bet a amount in the third hand necessary to achieve the necessary point value, and win that hand as well. The player can also reach the necessary point level by obtaining blackjack after a maximum bet on the first two hands and by winning in other combinations that involve doubling down.

In addition to a monetary prize, the first and second place finisher each receive "tournament points" that are used for qualification in the Championship Tournament that is held periodically. As understood, play in the Championship Tournament may involve several elimination rounds until a winner is determined. The description as to how players qualify for the Championship Tournament is not complete and it is not clear if the players from the various entry fee tiers will compete in the same Championship Tournament or in different championship tournaments, assuming eligibility is obtained based on the "tournament points" obtained.

#### Requirements for Blackjack Tournament Play

The legal basis for concluding that tournament blackjack play constitutes Class II gaming in Oklahoma was set forth in advisory opinions from the NIGC's Office of General Counsel in letters dated July 9, 1999, and January 15, 2003. Each letter stressed the importance of bona fide tournament play as a condition to invoking an exception, established in Oklahoma law, to the general prohibition of gambling card games.

#### Discussion

Two concerns prompt our conclusion that the tournament format for the "qualifying" tournament in "Break the Bank 21" will not be a Class II gaming activity: (1) the insufficient number of hands that are played, and (2) the design of the prize structure.

##### A. Insufficient number of hands

Because "tournament" is not defined in IGRA, in regulations of the NIGC, or in statutes of the State of Oklahoma, we rely on a common usage definition of the term. A "tournament" is defined as a "a contest involving a number of competitors who vie against each other in a series of elimination games or trials." (Webster's II New College Dictionary, 1995.)

As noted in the advisory opinion letter of July 9, 1999, regarding the play of tournament blackjack in Oklahoma, all card games involve both an element of chance and an element of skill. Some card games involve significant skill. The extent to which the outcome of card games is determined by the players' skill varies, but it should be greater in a tournament format where a number of hands will be played before prizes are determined. To come within the "tournament exception" to the gambling prohibitions established in Oklahoma law, and so that play will be something other than Class III, blackjack card tournaments must not only not be banked, they must also contain a skill aspect in which a winner emerges by elimination over a number of hands by demonstrating skill during play. Until such time as the Commission establishes a different number by formal rule, we are taking the position that the play of 10 hands is the minimum number to make a single round of tournament play a "series" that would allow a demonstration of player abilities envisioned by tournament play.

**B. The design of the prize structure**

In the described format, prizes are awarded based on which player accumulates the most point-value chips during play and the prize does not vary based on the number of point-value chips in the player's possession at the end of play. These are favorable features to bona fide tournament play. However, the monetary prize does vary based on the number of players at the table. The winning prize is directly related to the number of players and the entry fees received. Fixed consolation prizes are awarded to the second and third place finishers unless a player "Breaks the Bank" in which case the second and third place finishers do not receive a prize.

As an example, in the \$10 tournament the house pays out all entry fees in the pot to the first three finishers except for \$3 which the house retains. (The \$3 hold is not applied if a player wins in the "Break the Bank" method.) The amount of the winning prize increases directly in proportion to the number of players entered and on the entry fee each additional player has paid. In effect, the house is not paying a fixed prize but is paying a variable prize to the winner directly based on the total monies collected, or "bet," by the players at a table for the play of three hands. The close and direct relationship between the pot of entry fees collected and the prize awarded in any particular three-hand tournament is even more pronounced when a player achieves the points necessary to "Break the Bank" and is awarded the entire pot of entry fees paid by players. Play under either prize-award mechanism is tantamount to a "money hunt." In a "money hunt," players place equal wagers in a pot and the pot is paid to the winner of the contest. The result may be determined entirely by chance or by some combination of skill and chance. "Money hunts" are gambling under Oklahoma law, and not considered to be within the statutory "tournament" exception discussed in our letters of July 9, 1999, and January 15, 2003.<sup>1</sup>

---

<sup>1</sup> 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."]

Jamie Hummingbird  
April 29, 2003  
Page 4 of 4

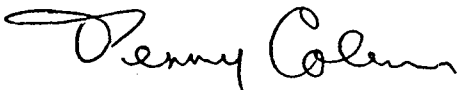
As our advisory opinion of July 9, 1999, indicated, when card tournaments were first proposed, it was made clear by the tribes that the prize to be awarded would be established independently of the pool of entry fees and tournament participants would not be trying to win money from one another but would be competing instead to win the prizes offered by the tribe. The prize structure for "Break the Bank 21" departs from this premise.

That being said, distinguishing the prize structure from a "money hunt" is potentially an issue in any blackjack tournament. The reality is that tournament sponsors routinely collect money from entry fees and, sooner or later, use a portion of money so collected to fund prizes. Money collected in this manner is income to the business, the prize an expense of the business. Thus, in some sense, the tournament participants are always competing for a prize that is the result of their entry fees. To distinguish the prize awarded in a blackjack tournament, the prize must be pre-established and fixed in the sense that it cannot vary based on the number of participants. Tournament blackjack players cannot simply pool their entry fees, with the winner taking the pot. The fixed prize creates a clear break between the payment of entry fees and the prize, avoiding the "money hunt" problem.

If, for marketing purposes, a tribe advertises tournaments in a manner that identifies that portion of the entry fee that will be expended for prizes, as opposed to the portion of an entry fee that will be retained for administration and profit by the gaming operation, the actual character of the game does not change. Thus, if a tribe decides it will use 90% of entry fees to pay for prizes and 10% for administration, it can advertise for example, "an entry fee of \$111 of which 90% will be used to fund prizes" or "an entry fee of \$100 and an administrative fee of \$11." Because the prize has been predetermined, the players are not competing against each other for the pooled entry fees, and they are not engaged in betting against one another.

Thank you for providing the proposed tournament format for our review. The Office of General Counsel remains available for further discussions on this matter at your convenience.

Sincerely yours,



Penny J. Coleman  
Acting General Counsel