

**NATIONAL
INDIAN
GAMING
COMMISSION**

MAR 30 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 responds to your inquiry as to whether the National Indian Gaming Commission regards the game "Play Pull-Tab" as a class II or class III game under the Indian Gaming Regulatory Act (IGRA). We reviewed the information provided and conclude that the game, as discussed below, is a class III game.

Operation of "Play Pull-Tab" is described in the correspondence and documents you and the manufacturer, Cory Consultants, provided. In general, "Play Pull-Tab" is a video machine which dispenses pull-tabs. The customer inserts money and pushes a button which dispenses a pull-tab. As the pull-tab passes through the machine, the machine reads a bar code, revealing the contents of the pull-tab. The customer, by pushing "open" buttons, then obtains a video display of the pull-tab contents and the amount, if any, which has been won. In your letter of October 18, 1998, you indicate that the machine also allows the customer to receive the paper pull-tab, open it, and determine whether he or she has won in the traditional fashion, i.e. by matching the symbols on the card with the winning patterns, without having the machine provide a video display. This latter feature--an option for the customer to play the pull-tab without using the video display-- appears to have been added since the game was originally submitted to us. When first demonstrated to the NIGC, the game provided no reason for the customer to open the paper pull-tab. Thereafter a bonus win was added, which could be claimed only by persons opening the paper pull-tab. Now it appears that the bonus win feature has been dropped, but a no-video option has been provided.

"Play Pull-tab" is a device which "performs all the functions that a player of the traditional pull-tab game would have performed, including selecting a pull-tab ticket, disclosing the hidden symbols on the ticket and determining whether a particular pull-tab ticket is a "winner.""¹ For that reason, "Play Pull-Tab" is a facsimile of the traditional pull-tab game, and is, therefore, a class III game. Indian gaming activities offering this game in the absence of a tribal-state compact would be operating in violation of the Indian Gaming Regulatory Act.

Please note that this opinion is advisory in nature only and does not constitute a final decision of the Commission. It is prepared in contemplation of future regulations which will establish a formal decision-making process for classification of games under IGRA. Until the

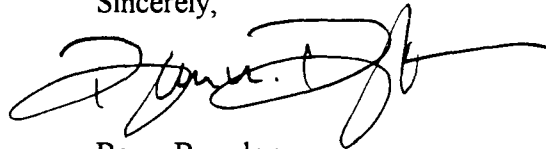
¹Diamond Game Enterprises, Inc. v. Reno, 9 F. Supp. 2d 13, 20,21 (D.D.C. 1998).

regulations are issued or this decision is reversed, revised, superseded or reconsidered, this opinion will guide the Commission in deciding whether or not to pursue enforcement action against a particular gaming operation that may be playing "Play Pull-Tab". Furthermore, if there are any changes made to the game as described or we have not been provided important information about the game as played, such changes or information might materially alter our conclusion.

Finally, 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