

NATIONAL
INDIAN
GAMING
COMMISSION

AUG 11 1999

Mr. Larry I. DeRycke
Research, Development, Acquisitions and Marketing Co.
PO Box E
599 State Route 34
Hannibal, NY 13074

Re: Request for Game Opinion -- Seven Suns Poker

Dear Mr. DeRycke:

This responds to your request of August 25, 1998, for a game classification opinion for the card game entitled "Seven Suns Poker." Based on the materials submitted with your letter, we conclude that the game is Class III if played with the optional bonus-payment feature as described. If this feature is not utilized, then an examination of state law for the location where the game is to be played would be required before a classification decision could be made. Because you have not specified a location, we are unable to reach an exact classification decision. Instead, we offer discussion of the concepts.

Gaming on Indian lands in the United States is subject to regulation under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701, *et. seq.*, and regulations of the National Indian Gaming Commission, 25 C.F.R. § 501, *et. seq.* The Act and regulatory scheme establish three broad types of gaming. Class I games are social games or traditional forms of Indian gaming played in connection with tribal celebrations. Class II and Class III games represent games which enjoy broad public play. Class II gaming includes bingo, games similar to bingo if played in the same location as bingo, and certain card games which are either expressly permitted in the state or are not explicitly prohibited by the laws of the state and are played in any location within the state. Specifically excluded by statute and regulation from Class II games are banked card games such as blackjack. If a particular game cannot come within the definition of Class I or Class II, then the game is considered Class III. See, generally, 25 U.S.C. § 2703 and 25 C.F.R. § 502. Class III gaming is lawful only if played in conformance with a valid tribal-state compact.

"Seven Suns Poker" appears to be a variant of the common seven-card stud poker game. As you describe the game, after an ante, each player is dealt two cards face-up. Following a betting round for all players who wish to continue, the dealer next deals three community cards which each player uses to fill out that players hand. Further betting ensues and the fourth and fifth community cards are dealt. The player with the high hand among the participants remaining at the end of game takes the pot, less any commission the house might extract. The house is not a participant in this version except to the extent that it provides the facility and the dealer, for which it accepts a commission.

The materials also describe an optional feature by which either a portion of the ante or a separate ante would be used to fund a "progressive" pot. You propose that payment in an amount certain would be made to players having a specific ranked hand, such as a straight flush, from this pot. Although labeled as a "progressive" pot, this option is not a true progressive because the amount of reward does not vary and is not dependent on player contributions. Rather, the option presents a bonus reward for achieving a fixed combination of cards. If utilized in the manner you recommend, because the reward payments would be guaranteed, the house would necessarily bank this feature and payment of the prize would not be a function of the separate monies collected. A variation to be played at the discretion of the house would make this feature a true progressive, but the numerous combinations which will permit reward may make this difficult.

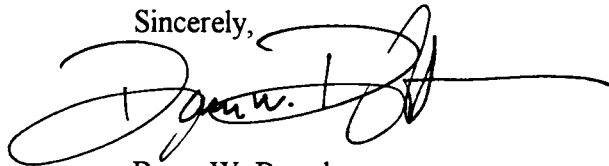
Under IGRA and pertinent NIGC regulations, the play of the game with the bonus, house-banked feature, as recommended, makes the game Class III.

A card game which is not house-banked may be considered Class II only if the game is permitted by the laws of the state or if the game is not specifically prohibited by the laws of the state and is played somewhere in that state. For example, non-banked poker has been held to be a Class II game when played on Indian lands within the geographic boundaries of a particular state which did not prohibit the play of poker and for which the evidence established that the game was actually played within the state. The determination would not be applicable, however, if the game were played in another state which had established criminal penalties for the play of poker or if it could not be determined that the game was played somewhere in the state. In such a case the game would be Class III and lawful only if played under a valid tribal-state compact.

In general, the NIGC prefers to render game classification opinions or advisory letters only when a tribe sponsors a request for such an opinion. This obviously allows us to focus on the specific state-law questions when that is appropriate. If your marketing efforts yield a tribal gaming operation that seriously considers the play of "Seven Suns Poker," and that tribal gaming operation believes that a more definitive classification opinion is necessary, we would be pleased to provide a further response.

If you have questions regarding this matter please contact Bill Grant from our staff at (202) 632-7003.

Sincerely,

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

Barry W. Brandon
General Counsel