



June 21, 2017

By Certified U.S. Mail

Jeremiah Hobia, Town King
Kialegee Tribal Town
100 Kialegee Drive
Wetumka, Oklahoma 74883

Re: Notification of New Facility near Broken Arrow, OK

Mekko Hobia:

By letter dated January 23, 2017, you advised the National Indian Gaming Commission that you anticipated issuing a license to a new gaming facility located on a 7.2 acre parcel near Broken Arrow, Oklahoma currently owned by Bim Stephen Bruner ("Bruner Parcel"). NIGC staff has been in contact with your attorneys regarding the Bruner Parcel.

The Bruner Parcel was part of an original allotment to Tyler Burgess in 1903, the same allottee and allotment subject to an Indian lands opinion issued by Chairwoman Tracie Stevens on May 24, 2012. That Indian lands opinion has been commonly referred to as the Broken Arrow Memorandum. The Broken Arrow Memorandum concluded that the subject parcel was not Indian lands eligible for gaming for the Kialegee Tribal Town because the Town lacked legal jurisdiction over the parcel.

Please be advised that at this time I am of the opinion that the Bruner Parcel is not Indian lands eligible for gaming for the Town. I form this opinion for the reasons stated in the Broken Arrow Memorandum and also based on recent federal case law regarding the United Keetoowah Band of Cherokee Indians,¹ a case on which you rely in your January 23, 2017 letter and other materials submitted to the NIGC.² Similarly, treaties,³ federal law,⁴ courts,⁵ administrative tribunals,⁶

¹ *Cherokee Nation v. S.M.R. Jewell, et al.*, No. CIV-14-428-RAW, 2017 WL 2352011 (E.D. Okla. May 31 2017).

² See Brief on Effect of Subsequent Authority on the NIGC Kialegee Memoranda (April 29, 2015) and Memorandum in Support of Kialegee Tribal Town Notification of a New Facility Pursuant to 25 CFR § 559.2(a) (January 12, 2017).

³ See Treaty of 1832, 7 Stat. 366 (Mar. 24, 1832); Treaty of 1833, 7 Stat. 417 (Feb. 14, 1833); Treaty of 1856, 11 Stat. 699 (Aug. 7, 1856); Treaty of 1866, 14 Stat. 785 (June 14, 1866)

⁴ See Act of March 3, 1893, 27 Stat. 612; Act of June 28, 1898, 30 Stat. 495 (Curtis Act); Act March 1, 1901, 31 Stat. 861.

⁵ *Buster v. Wright*, 135 F. 947 (8th Cir. 1905); *Indian Country. U.S.A. v. Oklahoma*, 829 F.2d 967, 971, 974 (10th Cir. 1987); and *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439, 1440 (D.C. Cir. 1988); see also *Oklahoma v. Hobia*, No. 12-CV-54-GKF-TLW, 2012 WL 2995044, *rev'd on other grounds Oklahoma v. Hobia*, 775 F.3d 1204 (10th Cir. 2014).

Letter to Town King Hobia

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and the BIA⁷ have recognized that the Bruner Parcel is within the former reservation of the Muscogee (Creek) Nation and the Muscogee (Creek) Nation exercises exclusive jurisdiction over the Bruner Parcel. Accordingly, while the parcel may be Indian lands for the Muscogee (Creek) Nation, the Bruner Parcel is not eligible for gaming by the Kialegee Tribal Town.

The NIGC is aware that construction has commenced and is ongoing as of the date of this letter, as confirmed by your attorney and by NIGC field staff. I highly recommend that the Town not commence gaming under IGRA on the Bruner Parcel. Operating on Indian lands ineligible for gaming by the Town is a substantial violation of IGRA and NIGC regulations.⁸ If gaming occurs on the Bruner Parcel pursuant to a license issued by the Kialegee Tribal Town, I may recommend the Chairman exercise his enforcement authority to issue a notice of violation, issue a temporary closure order, and/or assess civil fines.⁹

The NIGC remains available to consider any new information and further arguments from the Kialegee Tribal Town, if you believe this letter to be in error. Should you have any questions, please contact NIGC Staff Attorney Steve Iverson at steven_iverson@nigc.gov or 202.632.7003.

Sincerely,



Michael Hoenig
General Counsel

cc: Peggy Coleman, Tribal Counsel

Derril Jordan, Tribal Counsel

Buddy York, Gaming Commissioner, Office of Public Gaming
Muscogee Creek Gaming Commission

⁶ *Kialegee Tribal Town of Oklahoma v. Muskogee Area Director, Bureau of Indian Affairs*, 19 IBIA 296 (April 17, 1991)

⁷ Letter from BIA Acting Regional Director, Eastern Oklahoma Region to NIGC Staff Attorney (May 25, 2011) (addressing the same Tyler Burgess allotment in Tulsa County, Oklahoma).

⁸ See 25 U.S.C. §§ 2703(4)(B), 2710(b)(2), 2710(d)(1)(A)(i), 2710(d)(2)(A), 2713; 25 C.F.R. §§ 573.3(a), 573.6(a)(13).

⁹ See 25 U.S.C. § 2713; 25 C.F.R. §§ 573.3(a), 573.4, 575.4.