



NIGC GRATEFUL FOR DISCUSSION WITH NIGA AND TRIBAL LEADERS

Washington, DC July 31, 2008 — The National Indian Gaming Commission (NIGC) met July 24, 2008, with the leadership of the National Indian Gaming Association (NIGA) and a number of tribal leaders from gaming tribes, at NIGA's Legislative Summit held in Washington, D.C. The discussion, held in response to NIGC's request for a meeting on meaningful consultation procedures, was attended by elected leaders of approximately 15 tribes, as well as representatives from intertribal associations.

Government-to-Government Consultation

The primary focus of the discussion between the Commission and the tribal gaming leaders was an effort to improve the quality of the government-to-government consultation the federal regulatory agency conducts, as it considers adopting or changing policies and regulations to implement the Indian Gaming Regulatory Act (IGRA). Speaking on behalf of himself and the Chairman, Vice Chairman Norman H. DesRosiers expressed sincere hope that the group would have a productive discussion in order to mutually establish what constitutes meaningful consultation. The topic of such government-to-government consultation has been the subject of much discussion in Washington this summer. Hearings in both the Senate Indian Affairs Committee and House Natural Resources Committee have been held on the topic, and Congressman Nick Rahall of West Virginia, Chairman of the House Natural Resources Committee, introduced legislation, H.R. 5608, which would mandate that NIGC, as well as the Bureau of Indian Affairs and Indian Health Service, engage in government-to-government consultation as they formulate policy for their agencies. The July 24 meeting was the culmination of a process started in March of this year, when NIGC wrote the NIGA leadership, asking for the dialogue. Approximately 10% of the more than 230 gaming tribes were represented at the meeting by elected tribal leaders.

In the wide ranging discussion, questions were posed as to what constituted "consultation," how such consultation ought to best be documented, the process, and who should participate in such consultations.

NIGC staff set forth the procedures the Commission follows in setting up consultations. Natalie Hemlock, Special Assistant to the Commission, explained that the Commission regularly invites individual tribal governments to attend individual consultation sessions, which typically piggy-back on regional tribal gaming conferences for the cost savings and convenience of the tribes and agency. When letters of invitation are sent to tribes in those regions, the Commission lists the policies and regulations that NIGC is examining and extends an invitation to those tribes to discuss any other particular issues that are of interest or concern. To the extent that time is available, the Commission typically schedules a couple of days for such meetings. Each meeting occurs for 45 minutes to an hour. NIGC Chairman Phil Hogen explained that while tribes are often represented by the tribal President, Chair, Chief, Governor, or other members of the tribe's governing body, frequently the tribe is represented by representatives of the tribe's gaming commission and/or the gaming enterprise board only. The parties discussed whether

meetings without elected tribal leadership qualify as “consultation.” A member of the group suggested that consultation might be more worthwhile if the Commission met collectively with regional tribal leadership when discussing policy and regulatory changes that were under consideration.

NIGC and the NIGA leaders agreed that it would be useful to continue their dialogue on this important topic, and agreed that they would reconvene when NIGA holds its mid-year meeting in Albuquerque in October. The formation of a sub-committee of tribal leaders to work with the Commission was suggested as a means of bringing sharp and prompt focus to the issue.

Sole Proprietary Interest

An issue upon which NIGC is currently seeking tribal input, comment, and consultation is a more precise understanding of the limitation found in IGRA that specifies that Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity. NIGC is often called upon to identify situations where that interest may be threatened in proposals for the development, financing, consulting, construction, or operation or management of new or existing gaming facilities and operations. In June the Commission wrote tribal leaders asking for their assistance in bringing greater clarity to the statutory requirement.

Chairman Hogen observed that the “sole proprietary interest” standard is one not widely employed elsewhere, and he explained that he felt the Commission has been justly criticized for not employing a clearer, objective set of standards in its reviews of proposed Management Contracts and other arrangements. The agency believes that it may well serve tribes and developers who are considering arrangements where large investments are to be made and secured if greater, more precise guidance could be given, while maintaining consistency with the language and meaning of IGRA. Hogen said NIGC was not seeking to unduly restrict opportunities for tribes and developers, but that IGRA requires that a certain amount of caution needs to be exercised. Tribal views, Hogen explained, would help the Commission find the best and more precise place to identify standards in this important area.

Training and Technical Assistance

NIGC’s ongoing effort to provide training and technical assistance to gaming tribes was another topic of energetic debate. David Burk, NIGC’s newly hired Director of Training, introduced himself to the tribal leaders and presented statistics on NIGC’s past efforts at meeting tribes’ training needs. Training Director Burk reported that in 2007 the Commission had provided over 1250 hours of training, which was attended by more than 3100 tribal representatives, from over 164 (of the 230) gaming tribes. In response to questioning by attendees, Burk provided a 32-page report detailing the training that was given. NIGC plans to improve and revise its training catalog, and the curriculum the Commission offers to tribes, Burk told attendees. Additionally, the NIGC is surveying tribal regulators, operators and leaders with respect to their training needs and the effectiveness of NIGC’s recent and current training.

Indian Preference Hiring Requirements

Pending litigation regarding the federal employment policy of “Indian preference” was another topic of interest. A particular concern to tribal leaders in attendance was whether NIGC is subject to this policy. Chairman Hogen explained that the agency would continue to watch the developments in the litigation, to which the agency is not currently a party,

and that notwithstanding requirements of law, to the extent possible, NIGC attempts to attract tribal member employees, as they bring great insight to the sometimes unique social, economic and cultural environments in which tribal gaming has developed, has flourished, and is sometimes challenged. Hogen assured the attendees that the agency will continue to seek out tribal employees.

NIGC's Proposed "Bright Line" Regulations

Also discussed at the meeting was the status of the Commission's ongoing efforts to draw a brighter regulatory line dividing "computers and other electronic and technologic aids" that tribes may employ when offering uncompact Class II gaming (bingo, etc.) from those "slot machines of any kind and electronic facsimiles of games of chance" that require secretarially approved tribal-state compacts, or secretarial procedures, for tribes to employ. Chairman Hogen explained that the current proposal pending before the Commission was published in the Federal Register in four parts, in October 2007 and that after commissioning economic impacts studies and extending a period for public comment several times, the Commission hoped to soon bring that effort to a conclusion. He pointed out that in June 2008, he announced at the Sovereignty Symposium held in Oklahoma City, that the Commission had determined that it would not be going forward with either the portions of the proposal that would have amended the Commission's current definition of electronic facsimiles of games of chance, or the section relating to classification of inter-connected electronic bingo equipment as Class II permissible. He explained that the Commission's focus would be on the technical standards and minimum internal control standards, which were developed with the assistance of tribal advisory committees, working with a large working group of tribal regulators, gaming device engineers, designers and manufacturers, and testing laboratories. He also stated that after the Commission receives and studies the cost benefit analysis of the proposed regulations, which will be submitted for Congress's review, the Commission will be in a position to take final action. He told the group that he anticipates the Commission's receipt of the cost benefit study at or about the end of July.

Many of those in attendance urged the Commission to independently and promptly withdraw the more controversial proposals that Hogen had earlier announced the Commission would not consider. The Chairman stated that the Commission would take that request under advisement, although acting together on all the proposals at one time in the immediate future might be a better course of action.

Discussion of the regulatory proposals relating to establishing a bright line included conversation on the Chairman's recent decision to disapprove a tribal gaming ordinance submitted by the Metlakatla Indian Community of Alaska. The ordinance presented the Commission for the first time with a "game specific" proposal that would have authorized Class II gaming in the form of inter-connected electronic bingo equipment. In this proposal players could complete play by only touching or "daubing" the button on their equipment once, thus permitting the equipment to automatically play the rest of the game – covering any bingo numbers the players' cards might have, and declaring the bingo win if the pattern the players were seeking to cover were obtained. Because he had been studying the issue closely for five years, Hogen said, he quickly disapproved that proposal on the grounds that it was inconsistent with what he found to be a statutory requirement for bingo. Hogen explained that the disapproved ordinance had now been appealed to the full Commission. Those proceedings are progressing with the following due dates:

Chairman's Counsel's response to the appeal: July 28

Tribe's Reply to the Counsel's Response: August 11

Participation by other interested parties: August 21

Commission decision: October 6

The Commission thanked the National Indian Gaming Association and those leaders from the tribes that were in attendance for their cooperation and participation. The Commission looks forward to an ongoing dialogue on these topics of great significance and importance to the Indian gaming industry.

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The NIGC is an independent regulatory agency established within the Department of the Interior pursuant to the Indian Gaming Regulatory Act of 1988.