



NIGC Announces Extension on Comments

Washington, DC August 19, 2008 — National Indian Gaming Commission (NIGC) Chairman Philip N. Hogen announced yesterday that the agency is extending the time period for comments on what constitutes “the sole proprietary interest” under the Indian Gaming Regulatory Act (IGRA). In a June 13, 2008, letter to tribal leaders, Chairman Hogen had asked for input on the issue by August 18, 2008. That timeframe has now been extended to September 30, 2008.

Questions to be addressed by interested commenters include:

In light of Congress’s directive that tribes have the “sole proprietary interest” in their gaming activity, at what point is money received by an individual or entity for his/her or its involvement with the tribe’s gaming activity no longer a payment for services but an ownership interest in the profits of the gaming activity?

In what circumstances can substantial monetary payments be justified by the goods and/or services provided or the risk taken by the individual or entity?

Is there a level of control over the gaming activity which correlates to an individual or entity having a proprietary interest in the activity? If so, please suggest how this factor should best be evaluated.

What factors should the NIGC consider in implementing and ensuring that this provision of the Act is abided by? Are there special circumstances for different types of contracts? (e.g., development, consulting, equipment, loan, security, etc.).

How does this provision of the Act coincide with the policy goals of the Act articulated by Congress, such as promoting tribal economic development and self-sufficiency as well as ensuring that tribes are the primary beneficiary of their gaming operations? See 25 U.S.C. § 2702 (1) and (2).

Chairman Hogen went on to explain that when NIGC reviews management contracts and other proposals for the development of tribal gaming facilities, the agency is often looked to for guidance so that tribes and developers don't structure arrangements which may violate the dictates of the Indian Gaming Regulatory Act (IGRA) that tribes maintain the "sole proprietary Interest" in their gaming facilities. "It is important that NIGC give clear, consistent advice in this important area," Hogen stated, "and it will be useful to fully consider tribal points of view as we better formulate this guidance."

Comments can be sent to Chairman Hogen at NIGC, 1441 L Street, NW, Washington, DC 20005 or faxed to (202) 632-7066.

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