

NATIONAL
INDIAN
GAMING
COMMISSION

DEC 15 1994

Bill G. Follis, Chief
Modoc Tribe of Oklahoma
515 G Southeast
Miami, Oklahoma 74354

Dear Chief Follis:

This letter responds to your request to review and approve the tribal gaming ordinance adopted by Resolution No. 94-20 by the Modoc Tribe of Oklahoma (the Tribe) on September 14, 1994. This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

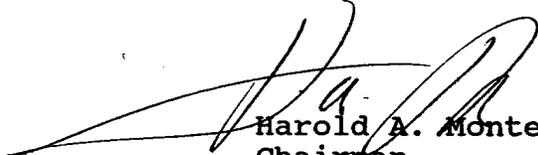
Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review ordinances with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the IGRA and the NIGC regulations. Provisions other than those required under the IGRA or the NIGC regulations that may be included in a tribal ordinance are not subject to review and approval. Such approval does not constitute approval of specific games. Also, the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA.

With the Chairman's approval of the Tribe's gaming ordinance, the Tribe is now required to conduct background investigations on its key employees and primary management officials. The NIGC expects to receive a completed application for each key employee and primary management official pursuant to 25 C.F.R. § 556.5(a) and an investigative report on each background investigation before issuing a license to a key employee or primary management official pursuant to 25 C.F.R. § 556.5(b).

It is important to note that although this letter constitutes approval of the Modoc Tribe of Oklahoma's ordinance, the Tribe must still enter into a tribal-state compact with the state in order to engage in class III gaming. The Tribe is also required to submit a statement to the NIGC showing the person(s) responsible for obtaining and processing fingerprints. Although the ordinance states on p. 10 that this will be done by a local law enforcement agency, NIGC requests the specific name of such agency.

Thank you for submitting the ordinance of the Modoc Tribe of Oklahoma for review and approval. The NIGC staff and I look forward to working with you and the Tribe in implementing the IGRA.

Sincerely yours,



Harold A. Monteau
Chairman



MODOC TRIBE OF OKLAHOMA

515 G Southeast
Miami, Oklahoma 74354
918-542-1190 • FAX 918-542-5415

RESOLUTION NO: 94-20

RESOLUTION TO ADOPT AN ACT RELATING TO
MODOC TRIBE OF OKLAHOMA
REGARDING TERMS OF CLASS III GAMING OPERATIONS ON TRIBAL LANDS

WHEREAS, the Modoc Tribe of Oklahoma is a federally recognized Indian Tribe, organized under the Oklahoma Indian Welfare Act of 1936, with a Constitution and By-Laws approved by the United States Secretary of the Interior on July 27, 1990, and

WHEREAS, the Elected Council of the Modoc Tribe of Oklahoma is empowered to act on behalf of the tribe under the Constitution and By-Laws, and

WHEREAS, in certain treaties entered into between the Modoc Tribe and the United States, the Modoc Tribe undertook to provide protection to businesses which were located within its jurisdiction and retained all of its inherent rights of self government, and

WHEREAS, the Modoc Tribe of Oklahoma is desirous of defining and setting forth the terms of Class III gaming operations on Modoc Tribe Indian lands as defined by the Indian Gaming Regulatory Act of 1988, and

WHEREAS, the Modoc Tribe desires to approve the attached "CLASS III GAMING ORDINANCE" in order to set the terms for Class III gaming on the Indian lands of the Modoc Tribe as defined by the Indian Gaming Regulatory Act of 1988, and

WHEREAS, the Constitution and By-laws of the Modoc Tribe provides that enactments are to be passed by a majority of the Business Committee members present, and

NOW THEREFORE BE IT ENACTED BY THE MODOC TRIBE OF OKLAHOMA:

RESOLUTION NO: 94-20

MODOC TRIBE OF OKLAHOMA
CLASS III GAMING ORDINANCE

AN ACT RELATING TO MODOC TRIBE OF OKLAHOMA
REGARDING TERMS OF CLASS III GAMING OPERATIONS ON TRIBAL LANDS

I. Purpose

The Modoc Elected Council of the Modoc Tribe of Oklahoma (hereinafter referred to as the "Tribe"), empowered by the Constitution and By-laws of the Modoc Tribe of Oklahoma to enact ordinances, hereby enacts this ordinance in order to set the terms for class III gaming operations on tribal lands.

II. Gaming Authorized

Class III gaming as defined in the Indian Gaming Regulatory Act, P.L. 100-497, 25 U.S.C. Section 2703(8) ("IGRA") and by the regulations promulgated by the National Indian Gaming Commission at 25 C.F.R. § 502.4 (as published in the Federal Register at 57 FR 12382-12393, April 9, 1992) is hereby authorized.

III. Ownership of Gaming

The tribe shall have the sole propriety interest in and responsibility for the conduct of any gaming operation authorized by this ordinance.

IV. Use of Gaming Revenue

A. Net revenues from class III gaming shall be used only for the following purposes: to fund tribal government operations and programs; provide for the general welfare of the Tribe and its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government agencies.

B. If the Tribe elects to make per capita payments to tribal members, it shall authorize such payments only upon approval of a plan submitted to the Secretary of the Interior Under 25 U.S.C. § 2710(b)(3).

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V. Audit

A. The Tribe shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission.

B. All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit that is described in subsection A. above.

VI. Protection of the Environment and Public Health and Safety

Class III gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

VII. Licenses for Key Employees and Primary Management Officials

The Tribe shall ensure that the policies and procedures set out in this section are implemented with respect to key employees and primary management officials employed at any class III gaming enterprise operated on Indian lands:

A. Definitions

For the purposes of this section, the following definitions apply:

1. Key employee means

- (a) A person who performs one or more of the following functions:
- (1) Bingo caller;
 - (2) Counting room supervisor
 - (3) Chief of security;
 - (4) Custodian or gaming supplies or cash;
 - (5) Floor manager;
 - (6) Pit boss;
 - (7) Dealer;
 - (8) Croupier;
 - (9) Approver of credit; or
 - (10) Custodian of gambling devices including persons with access to cash and accounting records within such devices;

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- (b) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or
- (c) If not otherwise included, the four most highly compensated persons in the gaming operation.

2. Primary management official means

- (a) The person having management responsibility for a management contract;
- (b) Any person who has authority:
 - (i) To hire and fire employees; or
 - (ii) To set up working policy for the gaming operation; or
- (c) The chief financial officer or other person who has financial management responsibility.

B. Application Forms

1. The following notice shall be placed on the application form for a key employee or a primary management official before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

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The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

2. Existing key employees and primary management officials shall be notified in writing that they shall either:

- a. Complete a new application form that contains a Privacy Act notice; or
- b. Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

3. The following notice shall be placed on the application form for a key employee or a primary official before that form is filled out by an applicant.

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment.

4. The Tribe shall notify in writing existing key employees and primary management officials that they shall either:

- a. Complete a new application form that contains a notice regarding false statements; or
- b. Sign a statement that contains the notice regarding false statements.

C. Background Investigations

1. The Tribe shall request from each primary management official and from each key employee all of the following information:

- a. Full name, other names used (oral and written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);
- b. Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

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- c. The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (1) (b) of this section;
- d. Current business and residence telephone numbers;
- e. A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;
- f. A description of any existing and previous business relationships with the gaming industry generally Indian tribes, including ownership interests in those businesses;
- g. The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- h. For each felony for which there is an on-going prosecution or a conviction, the charge, the name, and address of the court involved, and the date and disposition if any;
- i. For each misdemeanor conviction or on-going misdemeanor prosecution (excluding minor traffic violations), within 10 years of the date of the application, the name and address of the court involved and the date and disposition;
- j. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (1) (h) or (1) (i) of this section, the criminal charge, the name and address of the court involved and the date and disposition;
- k. The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;
- l. A current photograph;

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- m. Any other information the Tribe deems relevant;
and
- n. Fingerprints consistent with procedures adopted by
the Tribe according to 25 C.F.R. § 522.2(h).

2. The Tribe shall conduct an investigation sufficient to make a determination under subsection D, below. In conducting a background investigation, the Tribe or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

D. Eligibility Determination

The Tribe shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Tribe determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a key employee or primary management official position.

E. Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission

1. When a key employee or primary management official begins work at a gaming operation authorized by this ordinance, the Tribe shall forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation and make the determination referred to in subsection D of this section.

2. The Tribe shall forward the report referred to in subsection F of this section to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission.

3. The gaming operation shall not employ as a key employee or primary management official a person who does not have a license after 90 days.

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F. Report to the National Indian Gaming Commission

1. Pursuant to the procedures set out in subsection E of this section, the Tribe shall prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation. An investigative report shall include all of the following:

- a. Steps taken in conducting a background investigation;
- b. Results obtained;
- c. Conclusions reached; and
- d. The bases for those conclusions.

2. The Tribe shall submit, with the report, a copy of the eligibility determination made under subsection D of this section.

3. If a license is not issued to an applicant, the Tribe:

- a. Shall notify the National Indian Gaming Commission; and
- b. May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.

4. With respect to key employees and primary management officials, the Tribe shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman of the National Indian Gaming Commission or his or her designee for no less than three (3) years from the date of termination of employment.

G. Granting a Gaming License

1. If, within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the tribe that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe may issue a license to such applicant.

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2. The Tribe shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the 30-day period under paragraph G.1. of this section until the Chairman of the National Indian Gaming Commission receives the additional information.

3. If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission. The Tribe shall make the final decision whether to issue a license to such applicant.

H. License Suspension

1. If, after the issuance of a gaming license, the Tribe receives from the National Indian Gaming Commission reliable information indicating that a key employee or a primary management official is not eligible for employment under subsection D. above, the Tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

2. The Tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

3. After a revocation hearing, the Tribe shall decide to revoke or to reinstate a gaming license. The Tribe shall notify the National Indian Gaming Commission of its decision.

VIII. License Locations

The Tribe shall issue a separate license to each place, facility, or location on Indian lands where class III gaming is conducted under this ordinance.

IX. Repeal

To the extent that they are inconsistent with this ordinance, all prior gaming ordinances are hereby repealed.

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X. Agent for Service

All notices and other legal service related to activities under this ordinance should be delivered by certified mail to:

PAYNE & JONES Chartered
Attn: Mr. Kip Kubin, Esq
11000 King
Overland Park, Kansas 66228

Telephone 913-469-4100

XI. Procedures for Background Investigations of Key Employees and Primary Management Officials

The Modoc Tribe Gaming Commission (sometimes referred to as the "MTGC") is responsible for conducting all background investigations and suitability determination. The members of the MTGC are appointed by the Chief of the Modoc Tribe. The MTGC will:

- A. Designate an agent to conduct the background investigations.
- B. Review and approve all investigative work done by an agent of the Commission.
- C. Report the results of the background investigations to the National Indian Gaming Commission.
- D. Make arrangements with a local law enforcement agency approved to take fingerprints and to forward these prints directly to the National Indian Gaming Commission for processing through the Federal Bureau of Investigation. All resulting reports will sent to the MTGC.
- E. Make suitability determination of background characteristics based upon the results of the background investigation.
- F. Verify by written and/or documented oral communication the following items concerning a prospective employee:
 1. Prior activities.
 2. Criminal record and reputation.
 3. Interviews of former employers, personal references and other applicable individuals in reference to the applicant.

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4. Document the disposition of all potential problem areas noted and disqualifying information obtained.
- G. Prepare an investigative report setting forth the following:
1. Steps taken in conducting the background investigation.
 2. Results obtained.
 3. Conclusions reached and the bases for those conclusions.

XII. Procedures for Dispute Resolution with the Gaming Public

The Modoc Tribe Gaming Commission is responsible for the resolution of disputes between the gaming public (the patrons) and the Tribe and/or the Tribe's management contractor. The following procedures shall apply to the various types of disputes:

- A. Refusal to Pay Winners Whenever the gaming enterprise refuses payment of alleged winnings to patron, and the enterprise and the patron are unable to resolve the dispute to the satisfaction of the patron and dispute involves:
1. At least five hundred dollars (\$500), the enterprise shall immediately notify the MTGC for investigative action; or
 2. Less than five hundred dollars (\$500), the enterprise shall inform the patron of his or her right to request that the MTGC conduct an investigation. The MTGC, through an inspector, shall conduct whatever investigation it deems necessary and shall determine whether payment should be made.
- B. Notice to Patrons The MTGC inspector shall mail written notice by certified mail, return receipt requested, to the enterprise and the patron of his or her decision resolving the dispute within thirty (30) days after the date that the MTGC first receives notification from the enterprise or a request to conduct an investigation from the patron.

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- C. Inspector Decision The decision of the inspector is effective on the date it is received by the aggrieved party as reflected on the return receipt.
- D. Review of Decision Within thirty (30) days after the date of receipt of the written decision of the inspector, the aggrieved party may file a petition with the MTGC requesting a review of the decision. The MTGC may set a hearing on the matter or may make a decision based solely upon the inspector's decision and other documentation provided to it by the patron and the enterprise. The MTGC shall then issue a written decision and mail it to the parties pursuant to the procedures et forth in Section XII.B. The decision of the MTGC shall be final and binding upon the patron and the enterprise and shall not be subject to judicial review or other legal action in the courts of the state where the enterprise is located.

XIII. Inherent sovereignty of the Modoc Tribe of Oklahoma.

With the passage of this legislative act notwithstanding any other law or ordinance, this ordinance does not limit the inherent sovereignty of the Modoc Tribe of Oklahoma.

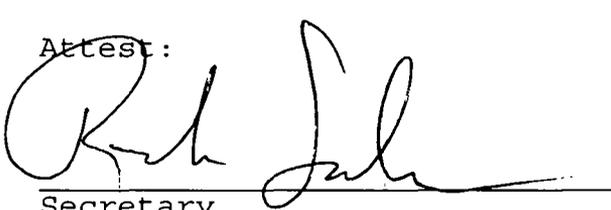
C E R T I F I C A T I O N

The foregoing resolution was passed by the Modoc Elected Council on September 14, 1994, with a vote of 4 for, 0 against, 0 abstaining.



Bill G. Follis, Chief

Attest:



Secretary

Filed with:

Bureau of Indian Affairs - Miami Agency

Chairman, National Indian Gaming Commission