



SEP 3 2002

Fred LeRoy, Chairman  
Ponca Tribe of Nebraska  
P.O. Box 288  
Niobrara, Nebraska 68760

RE: Ponca Tribal of Nebraska Class II Gaming Ordinance

Dear Chairman LeRoy:

This letter responds to your request to the National Indian Gaming Commission (NIGC) for the review and approval of the amendment to the Ponca Tribe of Nebraska (Tribe) tribal gaming ordinance submitted on July 17, 2002. The amendment to the ordinance was adopted by the Tribe by Resolution 02-36 on July 8, 2002. This letter constitutes approval of your submission under the Indian Gaming Regulatory Act (IGRA). Such approval does not constitute approval of specific games. It is important to note that the gaming ordinance is approved for gaming only on Indian lands, as defined in the IGRA, over which the Tribe exercises jurisdiction.

Thank you for submitting the amendment to the tribal gaming ordinance of the Ponca Tribe of Nebraska for review and approval. The NIGC staff and I look forward to working with you and the Community in implementing the IGRA. If you have questions or require further assistance, please contact Ms. Frances Fragua at 202/632-7003.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Montie R. Deer".

Montie R. Deer  
Chairman

PONCA TRIBE OF NEBRASKA  
TRIBAL COUNCIL

RESOLUTION 02-36

JUL 22 2002

WHEREAS, the Ponca Tribe of Nebraska is a federally recognized Indian tribe (P.L. 101-484) whose business affairs are conducted by the Ponca Tribal Council as defined in the Constitution approved July 22, 1994, by the Acting Deputy Commissioner of Indian Affairs; and

WHEREAS, Pursuant to the Constitution of the Ponca Tribe of Nebraska, Article V, the Ponca Tribal Council exercises legislative powers to enact and promulgate resolutions and ordinances subject to all express restrictions upon such powers contained in the Constitution; and

WHEREAS, the Tribal Council submitted a proposed Class I and Class II Gaming Ordinance to the National Indian Gaming Commission for approval on April 11, 2002, in order to operate a bingo hall in Crofton, Nebraska; and

WHEREAS, the National Indian Gaming Commission has failed to approve the proposed Ponca Tribe of Nebraska Class I and Class II Gaming Ordinance on technical grounds; and

WHEREAS, the Tribal Council is willing to amend the proposed Ordinance to include retention of applications and background investigation reports for key employees and primary management officials for inspection by the NIGC for at least three years, which is consistent with Tribal policy and to add "pit boss" to the definition of key employee; and

WHEREAS, the Tribal Council agrees, at NIGC insistence, to include approvers of credit and croupiers as key employees despite the Ordinance's ban on extending credit and not allowing Class III gaming and to make a technical change to the definition of primary management official; and

WHEREAS, these changes are minor ones to an ordinance that is not yet in effect due to lack of NIGC approval and do not require the amendment process for existing ordinances.

THEREFORE, BE IT RESOLVED that the Ponca Tribal Council adopts the Ponca Tribe of Nebraska Class I and Class II Gaming Ordinance with the three-year retention of applications and reports and additions to definitions of "key employee" and "PMO" as required by the National Indian Gaming Commission; and

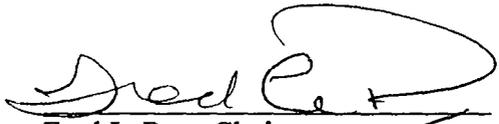
BE IT FURTHER RESOLVED that the Tribal Council requests prompt approval of the revised Gaming Ordinance and directs Counsel Michael Mason to take necessary steps to secure said approval.

Ponca Tribe of Nebraska  
Resolution 02-36

CERTIFICATION

THIS IS TO CERTIFY AND AFFIRM that the above and foregoing Resolution was duly authorized and passed by the Tribal Council of the Ponca Tribe of Nebraska on the 8th day of July 2002, at a duly called meeting held in Norfolk, Nebraska by a vote of 8 Ayes; 0 Nays; 0 Abstained; 0 Absent. Chairperson        voting  not voting. A Quorum of 9 was present.

ATTEST



Fred LeRoy, Chairman  
Ponca Tribe of Nebraska



Alex Taylor, Secretary  
Ponca Tribe of Nebraska

PONCA TRIBE OF NEBRASKA

CLASS I AND CLASS II GAMING ORDINANCE

I. Authority & Purpose

The Ponca Tribal Council has the authority to adopt this Gaming Ordinance under the Constitution of the Ponca Tribe of Nebraska Article V, Section 1, and Article XII, effective as to Class II gaming upon approval of the National Indian Gaming Commission under the Indian Gaming Regulatory Act ("IGRA"), retroactive to the date of enactment of the Ordinance.

The purpose of this Ordinance is to set forth the terms for Class I and Class II gaming operations on tribal lands.

II. Gaming Authorized

Class I and Class II gaming as defined in IGRA, P.L. No. 100-447, 25 U.S.C. §2703, and by the regulations promulgated by the National Indian Gaming Commission at 25 C.F.R. Part 502 is hereby authorized.

III. Ownership of Gaming

The Ponca Tribe shall have the sole proprietary interest in and responsibility for conduct of any gaming operation authorized by this Ordinance.

IV. Definitions

The following definitions shall apply to gaming and other activities conducted under this Ordinance:

- (1) "Bylaws" means the operating document of the Ponca Gaming Commission.
- (2) "Class I Gaming" means social games played solely for prizes of minimal value, or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.
- (3) "Class II Gaming" means
  - (A) "Bingo" or lotto (whether or not electronic, computer or other technologic aids are used) when players:

1. Play for prizes with cards bearing numbers or other designations;
  2. Cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and
  3. Win the game by being the first person to cover a designated pattern on such cards.
- (B) If played in the same location as bingo or lotto, pull-tabs or pickles, punch boards, tip jars, instant bingo, and other games similar to bingo;
- (C) Nonbanking card games that State law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the State, and that players play in conformity with state laws and regulations concerning hours, periods of operation, and limits on wagers and pot sizes.
- (4) “Commission” means the Ponca Gaming Commission.
- (5) “Director” means the director of the Ponca Gaming Commission.
- (6) “Gaming Operation” means each economic entity licensed by the Tribe that operates games, receives gaming revenues, issues gaming prizes and pays the expenses of operation. Said operation may be operated by the Tribe directly or by a management contractor.
- (7) “Gross Revenue” means the total monetary value due any operator of gaming activity for any chance taken, for any table fees for card playing, or other fee for participation or admittance, as evidenced by required records. The value shall be stated in U.S. currency, before any deductions or allowances for prizes, payout winnings, cost of operation, taxes, labor expenses, equipment or materials used, or any other expenses.
- (8) “Key Employee” means the four most highly compensated persons in the gaming operation and a person who performs one or more of the following functions:
- (A) Bingo caller;
  - (B) Counting room supervisor;
  - (C) Chief of security;
  - (D) Custodian of gaming supplies or cash;
  - (E) Floor manager;
  - (F) Dealer; or
  - (G) Custodian of gambling devices including persons with access to cash and accounting records within such devices; If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year;
  - (H) Pit boss;

- (I) Croupier;
- (J) Approver of credit.

Notwithstanding their designation as key employees, croupiers and approvers of credit shall not be hired by any gaming facility nor given a gaming license by the Ponca Gaming Commission.

- (9) "Licensee" means any person who holds a valid and current license pursuant to the provisions of this Gaming Ordinance.
- (10) "Management Contract" means any contract, subcontract, or collateral agreement between the Tribe and a contractor or between a contractor and subcontractor if such contract or agreement provides for the management of all or part of a gaming operation.
- (11) "Net Revenue" means gross gaming revenues of the gaming operation less amounts paid out as, or paid for, prizes; and total gaming-related operating expenses, excluding management fees.
- (12) "NIGC" means the National Indian Gaming Commission.
- (13) "Ponca Indian Land" or "Indian Land" means land over which the Tribe exercises governmental power and that is either:
  - (A) held in trust by the United States of America for the benefit of the Tribe or any Indian individual; or
  - (B) held by the Tribe or a member of the Tribe subject to restriction by the United States against alienation.
- (14) "Primary Management Official" or "PMO" means
  - (A) The person having management responsibility for a management contract;
  - (B) Any person who has authority:
    - (1) to hire and fire employees;
    - (2) to set up working policy for the gaming operation; or
  - (C) The chief financial officer or other person who has financial management responsibility.
- (15) "Secretary" means the Secretary of the Interior.
- (16) "Tribal Council" or "Council" means the governing body of the Ponca Tribe of Nebraska.
- (17) "Tribe" or "Ponca Tribe" means the Ponca Tribe of Nebraska.

V. Use of Gaming Revenue

Net revenues from Class II 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.

VI. 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 \$10,000. annually, except contracts for professional legal and accounting services, shall be specifically included in the audit.

VII. Protection of the Environment and Public Health and Safety

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

VIII. License Location

The Tribe shall issue a separate license to each place, facility, or location on Indian land where Class II gaming is conducted under this Ordinance.

IX. Gaming Commission

A. In order to regulate gaming on Ponca Indian Lands, the Ponca Gaming Commission is hereby established. The Commission is vested with all necessary powers to enforce this Ordinance.

B. **Members, Qualifications.** The Commission shall have three members, one of whom shall not be a Tribal member, appointed by the Council. Commissioners must be at least 25 years of age. The Member from outside the Tribe must have at least two years of gaming management or regulatory experience or law enforcement experience. Any appointment will be temporary, pending completion of a background investigation. No Commissioner may have committed a gambling or bribery offense or have a felony conviction, any financial interest in, or management responsibility for, any gaming activity governed by this Ordinance, including a Management Contract.

C. **Director.** The Commission may hire a director to be responsible for day-to-day monitoring of gaming activities. The director must have at least two years

of gaming regulatory experience and have qualifications at least as strict as the Commissioners. In all decisions and actions, the Director shall act to ensure the honesty, integrity, fairness, and security of the Commission and gaming activity.

- D. Terms. Commissioners shall serve two-year terms, except for the first Commissioners, one of whom shall serve a one-year term to assure some continuity.
- E. Powers. The Tribal Council delegates the following powers to the Commission, not to be removed except by amendment of this Ordinance:
1. To implement this Ordinance and secure and protect the honesty, integrity, fairness, and security of the Commission and gaming activity.
  2. To adopt and submit to the Tribal Council an annual operating budget.
  3. To adopt Bylaws, rules and regulations consistent with its delegated powers.
  4. To develop licensing procedures for all employees of the gaming operation.
  5. To issue, suspend, revoke, and renew licenses of PMO's and key employees upon completion of background investigations and after following Commission procedures for same.
  6. Conduct background investigations on PMO's and key employees according to requirements that are at least as stringent as those in 25 CFR Parts 556 and 558.
  7. To revoke for cause any gaming license.
  8. To forward complete employment applications for PMO's and key employees to the NIGC. Said applications should include the notices in § I below.
  9. To forward completed investigative reports on each background investigation for each PMO and key employee to the NIGC prior to issuing a license.
  10. To review PMO and key employee applicants' activities, criminal record, if any, and reputation, habits and associations to make a finding of their eligibility to be a PMO or key employee in the gaming operation.
  11. To ensure that gaming facilities of the Tribe are constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.
  12. To obtain annual independent outside audits and submit these to the NIGC.
  13. To ensure that net revenues from gaming activities are used for the purposes set forth in § V above.
  14. To monitor gaming activities to ensure compliance with tribal laws.

15. To work with other law enforcement and regulatory agencies and act as a peace officer of the Tribe as needed to carry out Commission powers.
16. To conduct investigations of possible violations of this Ordinance and gaming rules and regulations, issue subpoenas, and take enforcement action, including seizing evidence and impounding winnings.
17. To provide a quarterly report to the Tribal Council on status of the Tribe's gaming activities.
18. To issue subpoenas, take testimony, and conduct hearings on regulatory matters, including licensure.
19. To ensure establishment and to approve minimum internal control standards and procedures for the gaming operation(s).
20. To license or permit persons supplying the gaming operation(s).
21. To develop procedures for resolving patron disputes and to resolve those disputes not resolved by the gaming operation(s).
22. To implement and enforce all rights and obligations of the Tribe established by any Management Agreement

F. **Bylaws.** The Commission shall adopt bylaws for the conduct of business, which shall include the following provisions:

1. The Commission shall select a Chair from its membership annually, who shall have the power to convene special meetings with not less than 48 hours notice to the Commissioners.
2. General meetings of the Commission shall be open to the public.
3. The Commission may go into executive session, but may only take official action while in executive session on Commission personnel and licensing matters.

G. **Compensation.** Commissioners shall be compensated at a rate set biennially by the Commission and approved by the Council. Commissioners shall be reimbursed for all actual expenses incurred on Commission business, including necessary travel expenses.

H. **Vacancy and Removal.**

1. **Vacancy.** A Commissioner's seat shall be immediately vacant upon conviction of any gambling offense or of bribery, or of any felony, or upon the third consecutive unexcused absence from Commission meetings. The Commission shall advise the Council of recommended replacements as soon as possible and the Council shall appoint a replacement to complete the term of the vacancy within 30 days.
2. **Removal.** Commissioners may only be removed for cause, including excessive use of intoxicants, use of position for personal gain, failure to perform Commission duties, violation of this Ordinance or other law of the Tribe, and bringing discredit or disgrace to the Commission or the Tribe. Removal may be done by vote of the other Commissioners or, in the event of their failure to remove, by a 2/3 vote of the Tribal Council at a meeting duly called to consider said

removal. The Director shall give written notice of the alleged cause for removal and date for the removal meeting to the accused Commissioner at least 21 days before said meeting.

3. Suspension. The Commission shall suspend any Commissioner who is charged with any felony or any gambling or bribery offense until charges are dismissed or the Commissioner is acquitted or convicted.

I. Licenses for Key Employees and PMO's.

1. The Commission shall develop license application forms for Key Employees and PMO's which shall include requests for all information listed in this section and the following notices:

"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 NIGC in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or 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. The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application."

"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."

(U.S. Code, Title 18, section 1001.)

2. Each applicant for Commission membership, PMO or Key Employee shall provide all of the following information:
  - a. Full name, other names used (nicknames, oral, or written), SSN(s), birth date, place of birth, citizenship(s), 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;
  - c. 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 b;
- d. Current business and residence telephone numbers and email addresses;
  - e. Description of any existing and previous business relationships with Indian tribes, including ownership interests in same.
  - f. A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;
  - g. The name and address of any licensing or regulatory agency with which the person had 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 ongoing 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 ongoing 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 violations) within 10 years of the date of application and not listed pursuant to paragraphs h and i, whether or not there was a conviction; the charge, the name and address of the court involved and the date and disposition;
  - k. Name and address of any licensing or regulatory agency with which the person had filed an application for an occupational license or permit, whether or not such license permit was granted;
  - l. A current photograph;
  - m. Any other information the Commission deems relevant; and
  - n. Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R §522.2(h).
3. The Commission shall conduct an investigation sufficient to make an eligibility determination of each applicant. This includes review of the applicant's prior activities, criminal record, if any, reputation, habits and associations to make said determination for employment in a gaming operation. If the Commission determines that employment of the applicant poses a threat to the tribal interest or to the effective regulation of gaming, or creates danger of unfair or illegal practices, methods, or activities in the conduct of gaming, a gaming operation shall not employ that person in a key employee or PMO position.
  4. The Commission shall retain applications for each PMO and key employee and background investigation reports for inspection by the

NIGC for at least three years from the date of termination of employment of the PMO or employee.

X. Forwarding Applications and Reports on Key Employees/PMO's to the NIGC

1. When a key employee or PMO begins work at a gaming operation authorized by this Ordinance, the Commission shall forward to the NIGC a completed application for employment and a statement of the status of the person's background investigation.
2. Within 60 days of a key employee/PMO beginning work at a gaming operation, the Commission shall forward to the NIGC an investigative report on their background investigation, including:
  - a. Steps taken in conducting the investigation;
  - b. Results obtained and conclusions reached; and
  - c. Bases for conclusions.
3. With the report, the Commission shall submit a copy of the eligibility determination made under §IX.

XI. License Suspension and Appeals

1. If the Commission receives reliable information that a licensed PMO or Key Employee is ineligible for employment or has violated this Ordinance or the Tribe's health or safety laws, the Director shall either suspend the license or notify the licensee of imminent suspension, and notify the Commission and the licensee in writing of proposed penalties for the violations.
2. The notice shall include the alleged ineligibility or violation, the time and place for hearing on the proposed penalties, and the statement that the licensee may bring witnesses and present other evidence on his/her behalf.
3. After the hearing, the Commission shall issue findings of fact and the decision whether to revoke, suspend, or condition the license, or lift the suspension. The Commission shall notify the gaming operation, the licensee, and the NIGC of the decision.
4. Any licensee aggrieved by a decision of the Commission has the right to appeal the determination to the Tribal Court but only on grounds of violation of Tribal Constitutional rights. Such appeal must be filed with the Court on or before the 14<sup>th</sup> day following receipt of the determination of the Commission. Review shall be on the record, final, and no further appeal may be had.

**XII. Annual Assessment for the Gaming Commission**

The Commission is authorized to assess each gaming facility up to \$15,000 for cost of Commission operations. The assessment shall be deemed an operating expense of each gaming facility.

**XIII. Management Contract Execution**

1. A gaming management contract may only be executed if it provides for:
  - a. Verifiable financial reports to the Council on a monthly basis;
  - b. Access to the operations of the gaming facility by tribal officials for verifying Strict accounting procedures and verifiable financial reports that are prepared for daily gross revenues and income;
  - c. A term not to exceed five years;
  - d. Management fees not to exceed 25% of net revenue;
  - e. Grounds for and manner of terminating the Contract;
  - f. Hiring preference for qualified members of the Tribe in the gaming operation;
  - g. Payment of Commission expenses as part of net revenues of the gaming operation and payment of a fee for the background investigation of the Management Contractor.
2. No management contract shall transfer, convey, encumber, or otherwise create any interest in real property.
3. The Commission shall have authority, after notice and opportunity for hearing, to require appropriate contract modifications or to invalidate any contract if it finds the contractor has permitted the violation of any provision of Section XIV or XV.

**XIV. Prohibition Against Certain Individuals**

It shall be a violation of this Ordinance for any licensee to knowingly fail to exclude or eject from the gaming facility any individual:

- Under the influence of liquor, or narcotic or controlled substance taken illegally;
- Under the age of eighteen;
- Engaging in disorderly conduct; or
- Armed and not engaged in legitimate law enforcement activity.

**XV. Unlawful Acts**

- A. It is unlawful for any person to:
  1. Alter or misrepresent the outcome of a game or other event on which wagers have been made after the outcome is sure but before it is revealed to the player,

2. Place or change a bet or wager or determine the course of play after gaining knowledge, not available to all players, of the outcome of the game/event that is the subject of the bet or wager, including past-posting and pressing bets,
3. Aid anyone in gaining knowledge as stated in paragraph 2, for the purpose of changing a bet or wager, or for the purpose of determining the course of play contingent upon that event or outcome,
4. Claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a game with intent to defraud, without having made a wager thereon, or to claim, collect or take an amount greater than the amount won,
5. Knowingly entice or induce another to go to any place where a game is being played in violation of this Ordinance,
6. Reduce the amount wagered or cancel a bet after acquiring knowledge of the outcome of the game or other event that is the subject of the bet or wager, including pinching bets,
7. Manipulate any component of a gambling device in a manner contrary to the designed and normal purpose for the component, with knowledge that the manipulation affects the outcome of the game,
8. Except as specifically permitted by the Commission, use or possess with intent to use, at any table game any calculator, computer, or other electronic, electrical, or mechanical device to assist in projecting an outcome of any table game, to keep track of or analyze the cards having been dealt, to change probabilities of any table game or the playing strategies utilized,
9. Trespass upon any premises licensed under this Ordinance,
10. Take anything of value from a gaming facility without authorization,
11. Offer or provide credit for gaming.

**B. Any person who conducts any gaming or gaming related activity on property subject to this Ordinance without a license, or engages in any activity thereon in violation of a license or terms imposed on same, or in violation of any provision of this Ordinance or regulation thereunder, shall be in violation of this Ordinance. Said person shall be subject to loss or suspension of license and other legal action.**

**C. No fine shall be assessed nor any action taken for any violation under this section unless a charge is filed with the Commission or the Tribal Court within 18 months of the commission of the offense.**

**D. No Council member, Commissioner, Board Member licensee, or Commission employee may receive compensation, gift, or payment of more than nominal value from any person doing business or wishing to do business with the Tribe relating to gaming nor from any person wishing to obtain an advantage in any wager on gaming in the facility. Any property received in violation of this provision shall be automatically forfeited to the Tribe and the offending person(s) shall be prosecuted for accepting a bribe. The Commission shall cooperate fully with any Federal law enforcement agency to pursue prosecution under applicable Federal law.**

**XVI. Severability**

If a court of competent jurisdiction determines that any provision of this Ordinance is invalid, the remainder of the Ordinance will remain in full force and effect. The Commission will determine whether an amendment to the Ordinance is then needed to effect its purposes, and if so, present a proposed amendment to the Tribal Council as soon as practicable.

**XVII. Effective Date**

This Ordinance is enacted by the Tribal Council pursuant to Resolution 02-36. Upon approval of the Ordinance by the NIGC, the Ordinance will be effective back to the date of enactment.