



May 24, 2005

Mr. Zachariah Pahmahmie, Chairman
Prairie Band Potawatomi Nation
Tribal Government Center
16281 "Q" Rd.
Mayetta KS 66509

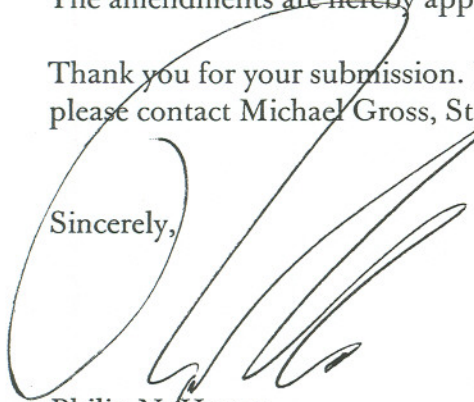
Re: Approval of amendments to PBP Code Title 12, Law and Order.

Dear Chairman Pahmahmie,

This is in response to your March 16, 2005, letter seeking review and approval of the various amendments to the Prairie Band Potawatomi Nation's gaming ordinance, PBP Code Title 12, adopted under Tribal Council Resolution No. 2005-023, March 3, 2005. The amendments are hereby approved.

Thank you for your submission. If you have questions or require further assistance, please contact Michael Gross, Staff Attorney, at 202-632-7003.

Sincerely,



Philip N. Hogen
Chairman

PRAIRIE BAND POTAWATOMI NATION
TRIBAL COUNCIL RESOLUTION PBP No. 2005-023
Amending PBP Code Title 12

- Whereas:** The Prairie Band Potawatomi Nation (the "Nation") is a duly organized Indian Tribe, with a Constitution and By-Laws approved by the Secretary of the Interior and last amended on May 13, 2000.
- Whereas:** Pursuant to the Prairie Band Potawatomi Constitution, the Tribal Council is charged with the duty of protecting the health, security and general welfare of the Nation and of regulating law and order on the reservation.
- Whereas:** It is appropriate to amend Title 12 to improve the regulation of gaming by the Nation using the December 16, 2004 draft revisions and the January 12, 2005 draft revisions to Sec. 12-3-18.

NOW, THEREFORE BE IT RESOLVED that the Tribal Council does hereby amend Title 12 of the PBP Law and Order Code as follows:

Section 12-1-8. Purposes of Title.

- (A) The purposes of this Title are:
- (1) To regulate, control and license the operation of all gaming within the Reservation and on all other Potawatomi Indian lands as defined by 25 U.S.C. § 2703(4).
 - (2) To promote and strengthen tribal economic development, independence and self-determination.
 - (3) To generate revenue to strengthen and improve tribal self-government and the provision of governmental services.
 - (4) To enhance employment opportunities for tribal members.
- (B) *In all of its regulatory decisions, policies and actions, the Tribal Commission shall consider and balance the purposes and benefits of the specific regulatory activity involved with the burdens and costs of complying with such regulation. The purpose of this Title and the Commission is not to maximize regulatory activity, but instead to provide for the reasonable regulation of gaming in a way that considers and balances these interests. The Commission shall request, consider and discuss with the gaming enterprise comments concerning the purposes and benefits of its regulatory activity and the burdens and costs of complying with such regulation.*

(C) *The Tribal Gaming Commission shall focus upon the regulation of gaming activity at the gaming enterprise. It shall not involve itself with operational matters, business decisions, ancillary facilities, non-gaming activities or non-gaming employees except as may be clearly necessary to perform a specific regulatory function over gaming activity.*

Section 12-2-1. Definitions.

In this Title, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings.

(A) **Applicable Law.** "Applicable law" means the Tribal Constitution, this Potawatomi Revised Law and Order Code, ~~approved by the General Council on July 20, 1991, comprising Titles 1 through 14,~~ applicable federal law and the "Compact".

Section 12-3-18. Removal of Members; Vacancies.

(A) **Removal.** The following are causes for removal from the Commission:

- (1) Malfeasance in the handling of gaming regulations and controls.
- (2) Neglect of duty.
- (3) Unexcused absence from three consecutive scheduled Commission meetings.
- (4) Conviction of a gaming related offense.
- (5) Noncompliance with this Title.
- (6) Acceptance of a bribe.
- (7) *Conviction of a felony. Any member of the Gaming Commission who, during the term for which he or she is elected, is convicted of any felony shall automatically forfeit his or her office effective on the date of the initial court conviction.*

(B) **Procedure for Removal.** Any Commission members who, during the term for which he is elected, is charged with any of the offenses listed in this Section may be removed from office for cause by a majority vote of the eligible tribal members attending any General Council meeting duly called for the removal of a Commissioner, provided that a quorum is present.

(C) **Calling a Removal Meeting.** Action to initiate removal of a Commission members shall be taken by the Council in the form of a resolution, stating the charges against the accused, the date of the duly called General Council meeting for the removal procedure, and the rights of the accused. A separate notice, stating only "Removal of Gaming Commissioner" shall constitute notice of the General Council removal meeting to the tribal membership and shall be posted at least thirty days prior to the General Council removal meeting.

(D) **Notification to the Accused.** A copy of the call for a removal resolution shall be provided to the accused by certified mail at least 30 days prior to any General Council removal meeting.

(E) **Petition for General Council Removal Meeting.**

(1) A request for a General Council removal meeting to consider removal of a Commissioner shall be by petition which shall contain at least 300 signatures of eligible tribal members.

(2) A clear statement of the purpose of the petition and the cause for removal shall be provided on each sheet of the petition.

(3) Any person circulating the petition shall be an enrolled tribal member.

(4) After validation of sufficient signatures on the petition by the Election Board, the Tribal Secretary shall certify the petition to the Council which shall act upon the petition as provided in Subsection 12-3-18(C).

(F) Rights of the Accused.

(1) **Answering Charges.** Before the vote of the tribal membership at a duly called General Council removal meeting, the accused shall be afforded the opportunity to hear and answer all charges of cause for removal included in the petition.

(2) **Documentation of Charges.** All charges of cause for removal must be documented at the General Council removal meeting. In the absence thereof, the accused shall be allowed to continue his term of office as a Commissioner.

(3) **Evidence.** The accused shall be permitted to have any witness testify on his behalf and may present affidavits, statements and pertinent documents as he deems necessary to refute the charges of cause for removal.

(4) **Confrontation of Accusers.** The accused shall be afforded the opportunity to confront and question witnesses who speak against him at the General Council removal meeting.

(5) **Failure of the Accused to Appear.** Failure of the accused to appear at the duly called General Council removal meeting shall be deemed a waiver of his right to a hearing unless an excuse satisfactory to the General Council for such failure is furnished to the Council not less than five days prior to the meeting. In the event no petitioners appear at such meeting, the removal action shall be considered null and void. The vote of the General Council upon the matter shall be conclusive.

(G) Gaming Commissioner Removal by the Commission.

(1) *The Gaming Commission shall have the power to propose by resolution the removal of any of its members by the affirmative vote of the majority of a quorum at a meeting called for that purpose if such member is found to be guilty of any of the following: Moral turpitude, nonfeasance or malfeasance in office, gross neglect of duty, misconduct reflecting on the dignity and integrity of the tribal government, embezzlement of tribal property or assets or any other cause listed in this Section in Subsection (A). The member charged with any of these offenses shall be given a written statement detailing the charges at least ten days before the meeting at which the Commission is to consider the charges. He or she shall be given an opportunity to appear and answer the charges. In no case shall the individual who is subject to the charges preside at the meeting at which the decision is made on the charges. The removal of only one Gaming Commission member may be considered at any meeting.*

(2) *If the Gaming Commission votes to remove a member, its resolution proposing removal shall be delivered to the Chair and all other members of the Tribal Council. The Tribal Council shall by resolution within 10 days of the date of receipt of the Commission resolution concur or non-concur in the proposed removal. If the Tribal Council concurs in the removal or it fails to respond by resolution within 10 days, the Commission member shall be considered removed from office. If the Tribal Council by resolution votes for non-concurrence within 10 days, the Commission member shall not be removed at that time.*

(G) (H) Vacancies. If any Commissioner shall be removed from the Commission at the General Council removal meeting, the General Council shall ~~be~~ by majority vote at the same meeting appoint another person to fill such position. If any Commissioner shall die, resign, or for any reason other than removal *by the General Council* be unable to serve as a Commissioner, the Council shall declare his position vacant and shall appoint another person to fill such position. The term of office of each person appointed to fill a vacancy by the General Council or the Tribal Council shall be for the balance of any unexpired term for such position, provided that any such appointee must meet the qualifications established by this Title. *Any member of the Gaming Commission removed from office pursuant to this Section shall not be eligible to be elected or appointed to serve on the Commission until after the end of the term in which he or she was serving at the time of the removal.*

Section 12-3-24. Investigations.

The Tribal Commission upon complaint or upon its own initiative or whenever it may deem it necessary in the performance of its duties or the exercise of its powers, may investigate and examine the operation and premises of any person who is subject to the provisions of this Title. In conducting such investigation, the Tribal Commission may proceed either with or without a hearing as it may deem best, but it shall make no order without affording any affected party notice and an opportunity for a hearing pursuant to Tribal Commission regulations.

During any investigation prior to the issuance of formal written notice concerning an apparent violation, no employee or agent of the Tribal Commission shall orally discuss with or suggest to a gaming enterprise or licensee the suspension or revocation of the license or other possible adverse action by the Tribal Commission.

Section 12-3-25. Hearings; Examiner.

Pursuant to regulations, the Tribal Commission may hold any hearing it deems to be reasonably required in administration of its powers and duties under this Title. Whenever it shall appear to the satisfaction of the Tribal Commission that all of the interested parties involved in any proposed hearing have agreed concerning the matter at hand, the Tribal Commission may issue its order without a hearing.

The Tribal Commission may designate one of its members to act as examiner for the purpose of holding any such hearing or the Tribal Commission may appoint another person to act as examiner under Section 12-3-26. The Tribal Commission shall provide reasonable notice and the right to present oral or written testimony to all people interested therein as determined by the Tribal Commission.

An employee or agent of the Tribal Commission who prior to hearing is directly involved in the investigation of factual issues in a case may not, in that or a factually related case, participate or advise in the decision or recommended decision except as witness or counsel in public proceedings or in determining applications for initial licenses.

Section 12-7-12. Denial or Revocation of Series B or C Gaming License.

(A) Grounds for Denial or Revocation. The Tribal Commission may deny any Series B or C gaming license without a hearing *if notice and an opportunity for a hearing is provided for after the denial* or it may revoke any Series B or C gaming license after notice and an opportunity for a hearing, for any of the following reasons:

- (1) The licensee has withheld pertinent information on the gaming license application;
- (2) The licensee has made false statements on the gaming license application;
- (3) The licensee has participated in gaming activity which was not authorized by the gaming license;
- (4) The licensee has attempted to bribe a Council member, Tribal Commission members or any other person in an attempt to avoid or circumvent this Title or any other applicable law;
- (5) The licensee has offered something of value or accepted a loan, financing or other thing of value from a Tribal Commission member, a subordinate employee or any person participating in any gaming activity;
- (6) The licensee has knowingly promoted, played or participated in any gaming activity operated in violation of this Title or any other applicable law;
- (7) The licensee has been knowingly involved in the falsification of books or records which relate to a transaction connected with the operation of gaming activity;
- (8) The licensee has violated any provision of this Title or any other applicable law;
- (9) The licensee has been convicted of, or has entered a plea of *nolo contendere* to, any crime involving gaming, fraud, theft, embezzlement or other activity which, if perpetrated at any facility on the Reservation, would injure or pose a threat to the public interest, or the integrity of the gaming activity, or the effective regulation of gaming or enhance the dangers of unfair, unsuitable or illegal practices in the conduct of gaming;
- (10) The licensee has refused to comply with any order, inquiry or directive of the Tribal Commission, the Council, the federal government, the State or any court of competent jurisdiction;
- (11) The licensee has been convicted of, or entered a plea of *nolo contendere* to, a crime involving the sale of illegal narcotics or controlled substances; or
- (12) The licensee has been determined to have present or prior activities, criminal record, if any, or reputation, habits and associations which pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices in the conduct of gaming.

(B) Procedure for Revocation of Series B or C Gaming License. Whenever it is brought to the attention of the Tribal Commission that any person has failed to comply with any condition of his tribal gaming license or has failed to obtain a license, the Tribal Commission may either undertake an investigation of the gaming enterprise, or serve upon such person or any agent of such person an order to show cause why such person's license should not be revoked or why such person should not be enjoined from conducting gaming activities within the jurisdiction of the Tribe. Such notice shall state the reason for the order, the time and place for the show cause hearing before the Tribal Commission, and that the person shall have an opportunity to present testimony and cross examine opposing witnesses, and to present any other evidence as to why a revocation order or injunction should not be issued. The hearing shall be set for not less than 30

days nor more than 45 days from the date of the notice or receipt by the Tribal Commission of any appeal filed pursuant to Subsection 12-7-11(B). The hearing shall be governed in all respects in accordance with tribal law and Tribal Commission regulations.

Section 12-7-14. Denial or Revocation of Series D Gaming License.

(A) Grounds for Denial or Revocation of Series D Gaming License. The Tribal Commission may deny any Series D gaming license without a hearing *if notice and an opportunity for a hearing is provided for after the denial or it may revoke any Series D gaming license after notice and an opportunity for a hearing*, for any of the following reasons:

- (1) The licensee has withheld pertinent information on the gaming license application;
- (2) The licensee has made false statements on the gaming license application;
- (3) The licensee has participated in gaming activity which was not authorized by the gaming license;
- (4) The licensee has attempted to bribe a Council member, Tribal Commission member or any other person in an attempt to avoid or circumvent this Title or any other applicable law;
- (5) The licensee has offered something of value or accepted a loan, financing or other thing of value from a Tribal Commission member, a subordinate employee or any person participating in any gaming activity;
- (6) The licensee has knowingly promoted, played or participated in any gaming activity operated in violation of this Title or any other applicable law;
- (7) The licensee has been knowingly involved in the falsification of books or records which relate to a transaction connected with the operation of gaming activity;
- (8) The licensee has violated any provision of this Title or any other applicable law;
- (9) The licensee or any director, officer, ten percent or greater shareholder or partner thereof has been convicted of, or has entered a plea of *nolo contendere* to, any crime involving gaming, fraud, theft, embezzlement or other activity which, if perpetrated at any facility on the Reservation, would injure or pose a threat to the public interest, or the integrity of the gaming activity, or the effective regulation of gaming or enhance the dangers of unfair, unsuitable or illegal practices in the conduct of gaming;
- (10) The licensee has refused to comply with any order, inquiry or directive of the Tribal Commission, the Council, the federal government, the State or any court of competent jurisdiction.
- (11) The licensee or any director, officer, ten percent or greater shareholder or partner thereof has been convicted of, or entered a plea of *nolo contendere* to, a crime involving the sale of illegal narcotics or controlled substances; or
- (12) The licensee or any director, officer, ten percent or greater shareholder or partner thereof has been determined to have present or prior activities, criminal record, if any, or reputation, habits and associations which pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices in the conduct of gaming.

(B) Procedure for Revocation of Series D Gaming License. Whenever it is brought to the attention of the Tribal Commission that any licensee has failed to comply with any condition of his tribal gaming license or has failed to obtain a license, the Tribal Commission may either undertake an investigation of such licensee. or serve upon such licensee or any agent of such licensee an order to show cause why such licensee's license

should not be revoked or why such licensee should not be enjoined from conducting gaming activities within the jurisdiction of the Tribe. Such notice shall state the reason for the order, the time and place for the show cause hearing before the Tribal Commission, and that the licensee shall have an opportunity to present testimony and cross examine opposing witnesses, and to present any other evidence as to why a revocation order or injunction should not be issued. The hearing shall be set for not less than 30 days nor more than 45 days from the date of the notice or receipt by the Tribal Commission of any appeal filed pursuant to Subsection 12-7-13(B). The hearing shall be governed in all respects in accordance with tribal law and Tribal Commission regulations.

New Section 12-9-12. Appeal of Final Tribal Commission Decisions to Tribal Court.

The Tribal Commission's final decisions concerning the enforcement and application of this Title may be appealed to the Tribal Court. Such decisions shall be considered by the Tribal Court utilizing the arbitrary and capricious standard of review.

FINALLY, BE IT RESOLVED that the Tribal Council does hereby enact these amendments to PBP Code Title 12, which shall be submitted to the National Indian Gaming Commission for its review and approval.

CERTIFICATION

This resolution amending PBP Code Title 12 was duly adopted on 3rd day of March, 2005, at a Meeting of the Prairie Band Potawatomi Tribal Council, during which (6) members were present, constituting a quorum, by a vote of (5) for, (0) opposed, (0) abstaining, (1) absent from voting and the Acting Chairperson not voting.

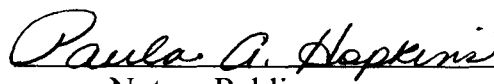
ATTEST:


Steve Ortiz, Secretary


Rey Kitchumme, Acting Chairperson

Subscribed and sworn to before me this 10th day of March, 2004.

Paula A. Hopkins
Notary Public
State Of Kansas
My Appt. Expires 11-09-2006


Notary Public