



Remarks of David J. Qualls, Chairman
Oklahoma Indian Gaming Association
before the
National Indian Gaming Commission
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The Oklahoma Indian Gaming Association's membership includes [21] tribes engaged in Indian gaming in Oklahoma. Gaming is a major part of the lives of these Tribes and the State of Oklahoma. Indian Gaming employs over 14,000 people in Oklahoma and generates gross revenues of over \$3.5 billion annually.

The OIGA congratulates the new commissioners for initiating this regulatory review. This effort creates an opportunity to rebuild trust between the NIGC and the Tribes who fund the agency. The review allows the NIGC to break with the past and demonstrate a true commitment to the regulatory structure and limitations created by Congress in IGRA. Most importantly, this activity allows the NIGC to turn the page and advance that tribal sovereignty embodied in IGRA, rather than attack sovereignty through unlawful regulations.

As the NIGC conducts its review, the OIGA suggests that the Commission evaluate each regulation under consideration in light of specific first principles. Initially, the regulatory structure of IGRA must be respected. The Tribes are the only primary regulator of Class II gaming. Each regulation must respect, rather than diminish, that congressionally mandated role. As to Class III, by allowing Tribes to define the regulatory framework in their compacts with the states, Congress effectively removed the NIGC from the vast bulk of the Class III regulation, as the Courts have confirmed. Accordingly, any NIGC regulation should have clear authorization by reciting an identified section of IGRA.

Enforcement should reflect the primary role of the Tribal Gaming Regulators. Accordingly, the OIGA encourages an NIGC enforcement process that begins with collaboration between the Tribal Gaming Regulatory Authority and the NIGC. Such an approach, founded on dialogue rather than litigation, should be both efficient and inexpensive. Only if such dialogue proves unsuccessful should a NOV be issued. In such a case, the NOV process should follow clearly defined rules designed to promote transparency and fairness resulting in a documented, reasoned decision. We are encouraged by the NOI's mention of that process, along with consideration of discontinuance of NOV's for late fees. We strongly encourage the Commission to go a one step further, and begin refraining from the use of NOV's except in cases of substantial and ongoing violations of law, or where there is an immediate threat or danger to the tribal operation or assets.

Second, because one of the primary statutory purposes of IGRA is for Tribes to develop their economies, and thereby generate funds for vitally important governmental purposes, the NIGC should consider the cost burden on Tribes of each regulation examined. This consideration is of even greater importance in light of the uncertain economic times. As Tribal

regulators know, regulatory objectives can be met through a variety of alternatives. The least costly regulation that reasonably meets the regulatory goal should be the first choice. In other words, each regulation should consider the economic cost in relation to the regulatory necessity of the rule.

This cost of regulation is of particular interest to OIGA members in the context of self-regulation as allowed by IGRA. Oklahoma Tribes spend millions of dollars in high quality, effective regulation of their gaming activities each year. In particular, the Oklahoma tribal regulators have developed the highest degree of professionalism in the regulation of Class II gaming. The success of the Tribal gaming regulators is confirmed by both the extremely low number of NOV's in Oklahoma and the market place confidence expressed by our growing player base. Many OIGA members would qualify for the certificate of self regulation authorized by IGRA. However, the cost and complicated process of obtaining self regulation status embodied in existing NIGC regulations impede Tribes from receiving that sovereignty-based benefit. We urge the NIGC to streamline its regulations so that the exemplary regulatory environment created by OIGA members will be recognized as Congress intended. We stand ready to work with the Commission to finally, fully implement this statutory provision.

Third, each regulation should be evaluated for its impact on attracting and protecting capital. Tribal gaming is capital dependent. Access to capital is presently limited for nearly all tribes, however, for many of OIGA's member Tribes it has always been a challenge to attract capital. Thus OIGA member Tribes long ago learned to be creative in how they attract capital to grow their business. Particularly when considering management contract, collateral agreement and sole propriety interest regulations, the OIGA urges the Commissioners to recognize the economic reality and analyze whether the regulation promotes or diminishes access to capital. The OIGA strongly believes that economic decisions are within the prerogative of the tribal government and, short of violations of law, the NIGC should not seek to usurp that prerogative through regulation or administrative practice.

In addition to formal capital investment, the Oklahoma Tribes, and others around the country, have created significant economic capital through technological innovation. Therefore, as part of the primary principal of attracting and protecting capital, NIGC regulations should encourage, rather than impeded technological innovation. The Tribal review of the MICS and Tech standards should avoid barriers to entry while not compelling obsolescence of existing investments. Accordingly, the OIGA supports repeal of the five year limitation on grandfather provisions in the Tech Standards.

Finally, the OIGA Tribes strongly urge the Commission to remember that the NIGC budget is funded 100 % by the Tribes. We believe that the NIGC budgets and staffing should reflect tribal needs, not bureaucratic convenience. In particular we have seen in recent years the opening of new offices in areas that did not need them, at great cost to the Commission and ultimately the Tribes. It would be of much greater benefit to Tribes, and lead to better overall regulation, if that funding supported more training for Tribal regulators and operators. We encourage the Commission to consider this idea and stand ready to collaborate in developing more training options.

When considering MIC's and Tech Standards, we encourage the NIGC to remember the primary regulatory authority of the Tribes. We encourage the NIGC to remember the difference between standards which a Tribe can meet by operating procedures reflective of particular Tribal needs and an imposed, mandatory one size fits all operating procedure as standard. Class II gaming has numerous regulatory procedures and standards that are unique to it. We strongly believe that those rules dealing with Class II gaming require dialogue focused specifically on them, and we stand ready to work with the Commission on addressing those unique standards and procedures.

In conclusion, the OIGA applauds the new approach initiated by Chairwoman Stevens, Vice Chairwoman Cochran and Commissioner Little. The OIGA values its relationship with you and stands ready to work together to strengthen tribal sovereignty, honor the rule of law, and further increase the benefits of Indian gaming for our member Tribes, their people and Oklahoma.