

**SAC AND FOX NATION OF MISSOURI IN KANSAS AND NEBRASKA TESTIMONY AND COMMENTS IN
REGARD TO THE NOTICE OF INQUIRY ISSUED BY THE NATIONAL INDIAN GAMING COMMISSION
RIVERWIND CASINO, NORMAN OK, JANUARY 18, 2011**

The Sac and Fox Nation would like to express our thanks for being provided the opportunity to offer our Tribes comments in regard to the issues identified in the NOTICE OF INQUIRY. The Sac and Fox Nation would also like to express our thanks for the approach that the NIGC has undertaken in relationship to seeking comment and input from the Tribes.

Many of the issues that were specified in the Federal Register are of concern to Sac and Fox , but the following comments are based upon our Tribe's experiences and its familiarity with said issues. In addition the Sac and Fox would like to preface our comments with a citation from the **Indian Gaming Regulatory Act at 25 USC 2701** which states:

"The Congress Finds That - (5) **Indian tribes have the exclusive right to regulate gaming activity on Indian lands** if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity."

Hopefully Sac and Fox's experiences will assist with the formulation of revised and/or amendment to the NIGC's Regulations and will encourage an enhanced review of the Regulations from a day to day regulatory perspective:

PART 502.16 – DEFINITION OF NET REVENUES

The Sac and Fox is of the opinion that the definition of "net revenues" be revised to be consistent with GAAP and or conform calculations to GAAP. This would provide more uniformity in determining how "net revenues" are calculated. The **Indian Gaming Regulatory Act at Section 2703(9)** defines "net revenues" and any revision to "net revenues" in the Regulations must maintain conformity to the above language in IGRA,

PART 559 – FACILITY LICENSE NOTIFICATIONS, RENEWALS, AND SUBMISSIONS

The Sac and Fox recommend that this entire section be reviewed and that the following be considered in regard to said regulatory review:

1 The Tribes are already subject to various EPA requirements and Indian Health requirements in relation to Federal programs that they participate in. The Gaming Facility Licensing requirements allow Federal agencies to subject the Tribes to additional intrusive monitoring;

2 The Gaming Facility License Requirements seem to have overstepped its boundaries in regard to requiring Tribal Governments to adopt specific ordinances and regulations that may impact areas outside of gaming. For Example: Sac and Fox has a wetlands which is in close proximity to our Casino which is subject to the jurisdiction of Tribe and subject to EPA requirements. As a result of flooding, the area was found to be in non-compliance with an EPA requirement concerning inappropriate discharge into a wetlands area. This finding, if proved to be accurate, would also result in the Tribe being in non-compliance with the Gaming Facility Licensing requirements. The Tribe found that EPA was in error in its findings, and the Tribe now has the burden of proving that it is in compliance with both the EPA regulations and the Gaming Facility Licensing requirements.

This type of situation could occur more often than not with other Federal Agency regulations. Said Gaming Facility Licensing Regulations are proving to be duplicative and burdensome, as well as costly to the Tribes.

Regulatory review of the above regulation is being recommended as a priority. The Tribe has prioritized it as one of the top four to be reviewed. A Tribal Advisory Group should review this and it is recommended that many of the requirements of the present Regulation be placed into a bulletin.

MICS & TECHNICAL STANDARDS

(1) Part 542 – Class III Minimum Internal Control Standards

This particular area is a primary concern to Sac and Fox. The Sac and Fox recognize that Internal Control Standards are extremely important to the Indian Gaming Industry and more particularly to our Tribe, due to its intent to provide the protection of Tribal assets as well as providing for the integrity of

the Tribe's Gaming Operations. In addition, Sac and Fox also recognizes and supports the need for consistency in the auditing process of Internal Control Standards in Indian Gaming.

Experience has shown that many Tribes that offer Class III Gaming have used the NIGC's Bulletins as guidelines and have used said Bulletin's as primary guidelines for purposes of regulating Indian Gaming. Sac and Fox believes that Tribes that offer gaming are as technically knowledgeable and professional as commercial gaming operations, and are aware that if they did not implement their own Tribal Internal Control Standards that they would be opening up their gaming operations to illegal activity. Sac and Fox looks to industry standards in the gaming area and if it does not have the expertise or technical ability in key gaming areas, it retains someone or some entity to carry out what is needed to protect its gaming operation for the benefit of its Tribal Members. It is my Tribe's belief that it performs the due diligence required in relation to following industry standards, whether or not a Regulation requires it. Should Part – 542 Class III MICS be eliminated and replaced with Guidelines, it is Sac and Fox's opinion that the Tribes will continue to institute industry standard internal controls in the area of Class III. As to those Tribes who have incorporated 542 Class III MICS in their Ordinance or it is a part of their Compact, there may be resulting challenges, but we believe that most Tribes have appropriate internal controls in place and that the Internal Control Guidelines, would be used to supplant what is in previously adopted Ordinances.

Sac and Fox believes that the Class III MICS should be developed by a Tribal Advisory Group process because of the ongoing changes in the Gaming Industry and the differences in Tribal gaming operations, and the importance of considering Tribal experiences in Internal Control Guidelines developed. More importantly Sac and Fox would recommend that said Internal Control standards be issued as Guidelines and that they would be provided to the Tribes in a Bulletin format and be updated on regular basis. Technology is changing so quickly that a governmental notice and the rulemaking process is not only too slow to keep up with said changes. Possibly "internal control standards" could be referred to in recommended changes to Gaming Ordinances. For instance, revised Ordinances may include a statement that identifies the requirement, "that internal control standards be implemented by the Tribal Gaming Regulatory Agency that meet or exceed industry standards."

Therefore, Sac and Fox recommends that the Class III MICS issue should be considered one of the top four areas to have NIGC Regulatory Review, and that said review include the use of a Tribal Advisory Group, with the resulting document issued as a Bulletin.

PART 522 – SUBMISSION OF GAMING ORDINANCES OR RESOLUTION

Sac and Fox believes that this section does not need revision, but that perhaps a Bulletin could be issued that addresses recommended changes in an Ordinance if a Tribe chooses to update their Ordinance, for instance the issue of internal control standards could be identified.

PART 514 FEES

The Sac and Fox Nation is of the opinion that the past practice by the NIGC to issue an NOV if fees are paid late was an extreme measure to impose upon Tribes unless there is negligence by the Tribes that can be shown as a pattern. It would seem more reasonable to develop some type of schedule of fines or penalties, either based upon passage of time and/or number of times of being late to pay.

This is a priority issue to be reviewed (one of the top four issues) that could be revised by the regular notice and rulemaking process.

KANSAS COMPACT – SAC AND FOX

A situation in Kansas has become visible within the past three to four years which is causing concern to the Sac and Fox Nation. This is being brought to your attention because it could develop into more than an exchange of memos between the NIGC, the State of Kansas and the Tribe.

The NIGC Regulations require tribes to submit investigative reports with each licensing determination made by the tribes for primary management officials and key employees, 25 C.F.R. Section 558.3(b). Sac and Fox is a part of the NIGC's pilot program therefore, based upon its MOU with the NIGC it would ordinarily only submit a synopsis and the results of the background investigation for a primary management official and key employee. The Kansas Compacts however place the responsibility to conduct background investigations for Class III employees on the State and the **Kansas State Oversight Act** prohibits Tribes from disclosing most of the information contained in an investigative report, including to the NIGC (This is the view point of the Kansas Officials).

As a result of the above, there is a conflict in laws and the Sac and Fox are caught in the middle of potential enforcement action by possibly the State as well as the NIGC. The NIGC General Counsel has disagreed with the State's belief that the information cannot be shared. In an opinion letter dated June 18, 2008 from the former NIGC Acting General Counsel, Penny Coleman, to the Deputy Attorney

General, Mike Leitch, she stated "...that under the supremacy clause, where such a conflict exists, state law must give way to federal law." This issue has not yet been resolved. The Sac and Fox would like to thank the NIGC Director of Enforcement, John Peterson for attempting to rectify the situation in an amicable manner but it appears, that Kansas is unwilling to change its opinion. There may be no resolution short of litigation, but the fact remains, the Sac and Fox Nation remains in the middle of a conflict of laws that could result in enforcement action against our Nation.

In conclusion Sac and Fox would like to thank you for this opportunity to provide input into the regulatory review process. Thank you for listening and if you have questions, please feel free to ask now or contact myself and/or the Sac and Fox Gaming Commission