United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

September 2, 1992

Memorandum

To: Director, Tribal Services

From: Attorney, Tribal Government & Alaska

Subject: Red Lake Band Compact Amendments

We received your comments on the amendments to the video and black jack compacts which were entered into by the Red Lake Band and the State of Minnesota. The comments do not appear to raise any issues for my review. However, Ms. Springer of your office did ask that I determine whether a tribe can legally operate gaming on fee land within it reservation. Assuming that all other requirements of the IGRA are met, I conclude that tribes can operate Class III gaming on all lands within their reservations. Furthermore, I reviewed the information provided by Ms. Springer and the compact amendments and found no other issues which would cause the Bureau to disapprove the compact amendments.

Gaming can be conducted on "Indian lands" under the Indian Gaming Regulatory Act (IGRA). The IGRA defines Indian lands as "(A) all lands within the limits of any Indian reservation; and (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power." 25 U.S.C. § 2703(4) The question raised by the definition is whether the lands definition requires that reservations lands must be held in trust or restricted status with the exercise of tribal governmental power over the land.

I reviewed the National Indian Gaming Commission (NIGC) regulations and conferred with the NIGC on this matter. The regulations provide at 25 C.F.R. § 502.12 that "Indian lands means: (a) Land within the limits of an Indian reservation; or (b) Land over which an Indian tribe exercises governmental power and that is either- (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation." The regulations clarify by use of the term "or" rather than "and" that the term Indian lands has two separate definitions which are not dependant on each other. NIGC staff confirmed that the Indian lands definition establishes two separate definitions of Indian lands. Therefore, tribal gaming may be conducted on fee lands within the reservation.

I concur in that interpretation. Any other interpretation would be unnecessarily restrictive in other circumstances. Arguably such an interpretation could limit all gaming to lands on reservations. Restricting gaming to reservations was not contemplated by the Act as is evidenced by Section 20 of the IGRA which governs trust acquisitions for off-reservation gaming.

The comments do question whether the Office of the Solicitor reviewed the original compacts approved by the Bureau. The best evidence of such review is the surname page of the approval letter.

Penny J. Coleman

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I concur:

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