In re:	)	
	)	
The March 26, 2008 disapproval	)	**Final decision and order**
of a management contract between	)	
New Gaming Systems Inc. and the	)	**May 22, 2008**
Sac & Fox Nation of Oklahoma	)	
	)	

On appeal to the National Indian Gaming Commission (NIGC or Commission) from a disapproval of a management contract between New Gaming Systems Inc. (NGS) and the Sac & Fox Nation of Oklahoma (Nation), 25 U.S.C. § 2711.

Appearances

D. Michael McBride, Esq., for the Sac & Fox Nation of Oklahoma and Sac & Fox Nation Business Enterprise
Steven Bugg, Esq., for New Gaming Systems, Inc.

DECISION AND ORDER

After full review of the agency record and pleadings filed, the Commission finds and orders that:

1. The Nation's request to file an "objection" or response to NGS's statement on appeal is denied. The applicable regulations, 25 C.F.R. part 539, contemplate a summary proceeding. The regulations do not provide for such additional briefing, and the parties' positions are amply stated in the record.

2. 25 U.S.C. § 2711 requires the NIGC Chairman's approval for a management contract between an Indian tribe and a manager.

3. On October 4, 2007, the Nation submitted a gaming machine equipment lease and promissory note, both dated August 8, 2003, for the Chairman's review.

4. On March 26, 2008, the Chairman determined that these agreements constitute a management contract within the meaning of 25 U.S.C. § 2711 and disapproved them.

5. The Chairman properly determined that the equipment lease and promissory note constitute a management contract for the reasons stated in his March 26, 2008 disapproval letter.

6. The Chairman properly disapproved the agreements because they do not include all of the provisions required of management contracts by 25 U.S.C. § 2711(b) or 25 C.F.R. § 531.1.

7. The Chairman properly disapproved the agreements acting in his capacity as a trustee under 25 U.S.C. § 2711(e)(4) because he would not impose upon the Nation any agreements that it no longer wanted and that were not in its best interests.

8. The Chairman's March 26, 2008 disapproval is affirmed.

PROCEDURAL AND FACTUAL BACKGROUND

In 2003, the Nation sought to build a new casino and chose NGS to provide equipment and financing for the venture. On August 8, 2003, the Principle Chief and Secretary of the Nation signed a gaming machine equipment lease and promissory note. (*See Administrative Record*, Tab 49, Equipment Lease, August 8, 2003 (Lease); and Promissory Note, August 8, 2003; *See* also Tribal Resolution SF/GC-03-06.)[1] The Nation signed a second promissory note with NGS on April 28, 2004. Excepting the amount and date, this note was identical to the first. This note is not at issue here.

On August 14, 2003, the Nation submitted the Lease and the 2003 note (collectively, the Agreements) to the NIGC Office of General Counsel (OGC) for an

[1] "Administrative Record" refers to the record of documents considered by the NIGC Chairman and supporting his March 26, 2008 decision disapproving the management contracts for its deficiencies and in accordance with his duties as a trustee.

opinion on whether the Agreements constituted management within the meaning of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2711, and therefore required the NIGC Chairman's approval. The Nation's casino opened for business on July 31, 2004, while the OGC's review was pending. On August 11, 2004, the OGC opined that, however denominated, the Agreements provided NGS with management responsibility and therefore constituted a management contract. (*See Administrative Record*, Tab 17, Letter from Penny J. Coleman, NIGC Acting General Counsel, to Kay Rhoads, Principal Chief of the Sac & Fox Nation (August 11, 2004)).

As a result of the OGC's opinion, the Nation asked NGS to remove its gaming machines from the casino. *(See Administrative Record*, Tab 17, Letter from Kay Rhoads, Principal Chief Sac and Fox Nation to Kevin Freels, President New Gaming Systems Re: Sac and Fox Nation Casino Equipment Lease and Promissory Note, Separation of Relationship with the Sac and Fox Nation (August 23, 2004)).

On February 24, 2005, NGS sued the Nation in tribal court for breach of contract. (*See Administrative Record*, Tab 27, *New Gaming Systems, Inc. v. Sac & Fox Nation and Sac & Fox Nation Business Enterprise, Complaint*, CIV-05-01 (SFN D.Ct. Feb. 24, 2005)). The court found that the lease constituted a management contract under IGRA and was therefore void. (*See Administrative Record*, Tab 26, *New Gaming Systems, Inc. v. Sac & Fox Nation and Sac & Fox Nation Business Enterprise, Order*, CIV-05-01 (SFN D.Ct. Aug. 22, 2005)). The Supreme Court of the Nation reversed and remanded the case back to the lower court for additional factual findings necessary to support its conclusions. (*See Administrative Record*, Tab 26, *New Gaming Systems, Inc. v. Sac & Fox Nation and Sac & Fox*

Nation Business Enterprise, Order, APL-05-02 (SFN S.Ct. June 9, 2006)). The trial court is apparently awaiting this decision before making a final ruling. (*See Administrative Record,* Tab 18, *New Gaming Systems, Inc. v. Sac and Fox Nation*, Order, CIV-05-01 (Nov. 21, 2007)).

Therefore, on October 4, 2007, the Nation submitted to the Chairman the Agreements, the OGC's opinion letter, the tribal constitution, and meeting minutes. The Nation clarified in its submission that it wanted the Chairman to decide the Agreements' status as a management contract but did not want the Chairman to approve the contract because the Nation no longer wished to conduct any business with NGS. Specifically, the Nation stated:

> Please note, however, that while this response is fowarded to comply with your request, the Sac and Fox Nation is *not* requesting that you approve such Contracts as a management contract -- under no circumstances would the Sac and Fox Nation desire or voluntarily permit Mr. Freels and his company, New Gaming Systems, Inc., to provide gaming devices or gaming services within the Sac and Fox Nation jurisdiction.

(*See Administrative Record,* Tab 22, Letter to Philip N. Hogen, NIGC Chairman *et. al*, from George Thurman, Principal Chief of the Sac and Fox Nation, Re: Equipment Lease and Promissory Notes between the Sac and Fox Nation Nation/Sac and Fox Nation Business Enterprise and New Gaming Systems, Inc. (October 4, 2007)). NGS responded on October 30, 2007, and argued that the Agreements do not constitute a management contract and requested a hearing so that it could clarify the meaning of some provisions. (*See Administrative Record*, Tab 17, Letter to Penny J. Coleman and Maria Getoff, National Indian Gaming Commission, from Steven Bugg, McAfee & Taft PC, Re:

Sac and Fox Nation and New Gaming Systems, Inc.; with attachment of Response of New Gaming Systems, Inc. (October 30, 2007)).

On March 26, 2008, the Chairman adopted the OGC opinion and disapproved the Agreements. (*See Administrative Record*, Tab 1, Letter from NIGC Chairman Hogen, to Sac & Fox Nation Principal Chief Thurman, Re: Equipment Lease and Promissory Note between the Sac & Fox Nation/Sac & Fox Business Enterprise and New Gaming Systems, Inc. (March 26, 2008)). He found that the Agreements did not contain all of the provisions IGRA requires for management contracts, and he determined that a trustee exercising the skill and diligence that a trustee is commonly held to would not approve the contract. (*See Administrative Record*, Tab 1).

On April 25, 2008, NGS filed the present appeal. NGS contends:

1) The Chairman's Decision erroneously finds that the Equipment Lease is a management contract and must be approved by the NIGC.
2) The Chairman erroneously refused to provide NGS with a hearing or other opportunity to explain the terms of the Equipment Lease to demonstrate that such terms do not constitute management of all or a part of a gaming operation.
3) To the extent that any particular provision of the Equipment Lease was overly broad and deemed to constitute management of part of a gaming operation, the Chairman's Decision was erroneous by failing to modify that particular provision as required by the severability clause contained in the Equipment Lease.
4) The Chairman's Decision is erroneous by failing to address or find that the regulations defining management are void for vagueness and have been arbitrarily enforced.

NGS Appeal, pp. 1-2.

None of NGS's arguments is persuasive. The Chairman's determination was correct and supported amply by the record. We affirm.

DISCUSSION

I. PROCEDURAL MATTERS

As a preliminary matter, on May 12, 2008, the Nation sought leave to file an "objection" or response to NGS's statement on appeal. We deny the request. Appeals to the full Commission from the Chairman's approval or denial of a management contract are governed by the Commission's regulations at 25 C.F.R. part 539. Any party to the contract may appeal within 30 days of the Chairman's determination, and the appeal "shall specify the reasons why the person believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any." 25 C.F.R. § 539.2. Part 539 provides for no other pleadings and requires the Commission to render its decision on appeal within 30 days, or 60 if the appellant consents to the additional time. *Id.*

As we have recently had occasion to observe, part 539 deliberately provides for a summary determination by the Commission on a written record and on an accelerated schedule. *In Re: The May 18, 2007, Approval of the Gaming Management Contract between the Cheyenne & Arapaho Tribes of Oklahoma and Southwest Casino and Hotel Corporation* (August 17, 2007) (contrasting 25 C.F.R. part 539 with 25 C.F.R. part 577, which provides for full evidentiary hearings on appeal). This format, we determined, is best "suited to the review of the narrow question of whether the Chairman properly observed IGRA's requirements for approving or disapproving management contracts, 25 U.S.C. § 2711(b), (e)." *Id.* at 9.

We see no reason here to deviate from the procedure set out in 25 C.F.R. part 539.

More often than not, requests by one party for leave to file additional pleadings are met by the other party with a request to reply. This kind of full briefing is inconsistent with the summary process part 539 contemplates. Moreover, we fail to see how either party here is prejudiced by this summary process as both parties have already stated in detail their positions concerning the Agreements. (*See Administrative Record*, Tab 22, Letter to Philip Hogen, Chairman, Cloyce Choney, Commissioner, Norman DesRosiers, Commissioner, and Penny Coleman, Acting General Counsel, from George Thurman, Principal Chief of the Sac and Fox Nation, Re: Equipment lease and promissory notes between the Sac and Fox Nation/Sac and Fox Business Enterprise and New Gaming Systems, Inc. (October 4, 2007); *see also Administrative Record*, Tab 17, Letter to Penny J. Coleman and Maria Getoff, National Indian Gaming Commission, from Steven Bugg, McAfee & Taft PC)).

The Nation's request to file a response to NGS's statement on appeal is therefore denied.

II. LEGAL FRAMEWORK

That said, IGRA deems the establishment of federal standards for gaming on Indian lands "necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue." 25 U.S.C. § 2702(3). One such concern is that each tribe must be the primary beneficiary of its gaming operation. 25 U.S.C. § 2702(2). In order to address such concerns, Congress created the NIGC and gave it oversight regulatory authority for gaming on Indian lands. 25 U.S.C. §§ 2702(3), 2704(a). As part of that oversight authority, Congress

granted the NIGC Chairman the power and authority to approve gaming management contracts, 25 U.S.C. §§ 2705(4), 2710(d)(9), and set out various statutory criteria for approving and disapproving contracts. 25 U.S.C. § 2711(b), (e).

The Chairman has the authority to approve management contracts for Indian gaming operations. 25 U.S.C. § 2705(a). Whether an agreement constitutes a management contract under IGRA is a matter of federal law, and the NIGC necessarily has the authority to make such a determination. *United States ex rel Saint Regis Mohawk Tribe v. President R.C. – St. Regis Management Company*, 451 F. 3d 44, 51 (2nd Cir. 2006) (Commission has broad power to determine what does and does not require approval).

Further, the Chairman may approve a management contract only if the contract meets all requirements listed in 25 U.S.C. § 2711(b) and (c). Likewise, the Chairman must disapprove any management contracts when he has evidence of misdeeds listed in 25 U.S.C. § 2711(e) or when "a trustee, exercising the skill and diligence a trustee is commonly held to, would not approve the contract." 25 U.S.C. § 2711(e)(4). Management contracts that have not been approved by the Chairman are void. 25 C.F.R. § 533.7; *First American Kickapoo Operations, LLC v. Multimedia Games, Inc.*, 412 F.3d 1166 (10th Cir. 2006).

NIGC regulations define a "management" contract as: "any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation." 25 C.F.R. § 502.15. Further, a "collateral agreement" is defined as:

> Any contract, whether or not in writing, that is related either directly or indirectly, to a management contract, or to any rights, duties or obligations created between a tribe (or any of its members, entities, organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor).

25 C.F.R. § 502.5. Additionally, the Commission long ago emphasized a plain-meaning understanding of "management," which it describes as including activities such as "planning, organizing, directing, coordinating, and controlling." *NIGC Bulletin 94-5.* The performance of any one of these activities with respect to all or part of a gaming operation constitutes management and causes a contract to become a management contract requiring the Chairman's approval. *Id.*

Further, managers "formulate and effectuate management policies by expressing and making operative the decision of their employer." *N.L.R.B. v. Bell Aerospace Co.,* 416 U.S. 267, 288 (1974). Additionally, an employee's specific job title or the position does not provide conclusive evidence of management. *Waldo v. M.S.P.B.,* 19 F.3d 1395 (Fed.Cir. 1994). Rather, management must be found in the employee's actual job responsibilities, authority, and relationship to actual management. *Id.* at 1399.

III. ANALYSIS

A. The Chairman properly determined that the Agreements are a management contract within the meaning of IGRA.

To begin with, we recognize the somewhat peculiar posture of this appeal. This is not the usual circumstance where the parties are aggrieved by the Chairman's disapproval of a management contract reached only after long negotiations. Rather, the issue is whether the Agreements, styled as a gaming machine equipment lease and a

note, are really a management contract at all. NGS contends that the Chairman erred in determining that they are. Though the Chairman found management in numerous provisions in the Agreements, it is not necessary to enumerate all of them here. Three specific provisions in the Lease allow NGS to exert management control over the Nation's gaming operation. Therefore, the Chairman's determination was correct.

First, the Agreements state that NGS will provide 80% of the Nation's gaming machines. (*See Administrative Record,* Tab 17, Equipment Lease § 1.1). Approximately 20% of the gaming machines will be provided by other manufacturers mutually agreed upon by the Nation and NGS. *Id.* Choosing the mix of machines on the casino floor is an essential management function. The Agreements allow NGS to control that choice and thus manage this part of the Nation's gaming operation.

NGS contends that no management occurs under this provision because the real management decisions of floor placement, theme choice, par percentage, displays, and promotions are still left to the Nation. (*See Administrative Record*, Tab 17, Letter to Penny J. Coleman and Maria Getoff, from Steven Bugg, Re: Sac and Fox Nation and New Gaming Systems, Inc.; with attachment of Response). The language of the Agreements, however, fails to support this proposition. Every gaming machine in the casino must come from either from NGS directly or from an NGS-approved supplier, and the Nation's ability to make decisions regarding theme, placement, displays, and promotions is limited when the Nation cannot freely choose *any* of the games on its floor.

Additionally, not only do the Agreements give NGS a veto power over the Nation's choice of other vendors, but the record also shows that NGS actually chose those vendors for the Nation. (*See Administrative Record*, Tab 45, Email from Muriel Wheeler, Sac & Fox Gaming Commission to Marci Pate, NIGC Region V Field Investigator and forwarded to Maria Getoff (June 12, 2004)). As such, NGS assumed control beyond even that contemplated in the Agreements.

Second, the Lease states that the Tribe and NGS will together select an independent certified public accountant to perform the annual audit for the gaming operation. (*See Administrative Record*, Tab 17, Equipment Lease § 16.4). NGS claims that permitting it a voice in the choice of an independent certified public accountant is not management but merely a protection of its investment. We disagree.

IGRA requires each tribe to provide an annual audit of its gaming operation by an independent certified public accountant. 25 U.S.C. § 2710(b)(2)(C). This is a management function. NGS cannot claim a voice in the choice of auditor without accepting the mantle of responsibility and management.

Third, the Lease gives NGS veto authority over the Nation's choice of slot accounting system. (*See Administrative Record*, Tab 17, Equipment Lease § 6). Like the choice of machine mix, the choice of slot accounting system is an essential management function because such systems enable player reward programs and, in some instances, ticket redemption. By this provision, NGS has again taken on management decisions.

Further, other provisions strengthen the finding of management because they mirror the types of terms common in management contracts. For example, the

Agreements require the Tribe to pay NGS rent for its machines in the amount of 30% net win for the first year, 25% net win for the next two years, and 25% net win for each year after. (*See Administrative Record*, Tab 17, Equipment Lease § 15). Net win is defined as daily receipts minus prizes paid and actually indicates gross revenues as opposed to net revenues as defined under IGRA. 25 U.S.C. § 502.16. Thus, NGS stands to receive 25-30% gross revenues from 80% of the machines at the gaming operation, a figure that closely resembles the kinds of fees paid to casino managers.

The Chairman correctly found that the provisions of the Agreements vest managerial control in a party other than the Nation. Therefore, for the reasons stated in his letter of disapproval, the Chairman was correct in determining that the Agreements together constitute a management contract.

B. Because IGRA does not require the Chairman to conduct a hearing before rendering an initial decision on a management contract, he committed no error.

NGS contends that a hearing was necessary for the Chairman to understand the meaning of certain provisions within the contract and that he erred in a making his decision without a hearing. We disagree.

NGS's argument ignores a fundamental rule of contract interpretation:

> There is no need to resort to extrinsic evidence to ascertain a contract's meaning where its language is clear and explicit. When a contract is reduced to writing, the parties' intent is to be ascertained from the writing alone whenever possible.

Otis Elevator Co. v. Midland Red Oak Realty, Inc., 483 F.3d 1095, 1101-1102 (10th Cir. 2007). When confronted with unambiguous contract language, the Chairman must look to the

contractual documents themselves for meaning and not to extrinsic evidence presented in a hearing. Because the Chairman concluded that the Agreements by their terms provided for management, a hearing was unnecessary.

Furthermore, NGS mistakenly assumes that IGRA requires the Chairman to conduct a hearing prior to issuing his decision during the initial contract review and approval process. NGS points to 25 U.S.C. § 2711(f), which provides:

> The Chairman, *after notice and hearing*, shall have the authority to require appropriate contract modifications or may void any contract if he *subsequently* determines that any of the provisions of this section have been violated.

(Emphasis added.) NGS emphasizes "after notice and hearing," urging the Commission to reach the conclusion that the Chairman may not take *any* action on a contract without notice and a hearing. Such an interpretation is inconsistent with both agency regulations and IGRA itself.

By its terms, 25 U.S.C. § 2711(f) applies only in those situations where the Chairman reaches out and voids or modifies a contract he already approved. IGRA requires a notice and hearing before he does so. Mirroring this, 25 C.F.R. part 577 provides for an appeal to the full Commission from the specific actions of the Chairman, and it includes a hearing before a neutral official. 25 C.F.R. § 577.3. In all other management contract processes, however, neither IGRA nor the NIGC regulations provide for a hearing because none is necessary.

Again, appeals from the Chairman's approval or disapproval of a management contract are governed by 25 C.F.R. part 539, which contemplates a summary

determination by the Commission based upon a written record. The provisions for submitting a management contract to the Chairman for review, 25 C.F.R. part 533, do not provide for a hearing either. None is necessary for the Chairman to review the narrow question of whether a submission does or does not comply with IGRA's requirements for approval. Further, parties to management contracts are not prejudiced by the absence of a hearing in the submission process because an appeal to the full Commission and judicial review is available following approval or disapproval. 25 U.S.C. § 2714; 25 C.F.R. part 539.

The Chairman thus did not err in denying NGS's hearing request.

C. Because the Chairman properly disapproved the Agreements, they were void, and their provisions could not be modified or severed.

NGS argues that the Chairman rewarded the bad faith of the Nation by failing to enforce the severability clause of the Lease and modify the Agreements rather than void them. However, as a matter of law, this choice was not available to him. Absent the Chairman's approval, the Agreements were void, 25 U.S.C. § 2711(a)(1) and (3); 25 C.F.R. § 533(7), and thus the severability clause contained in the lease that NGS would have the Chairman rely on is in itself void and without effect.

In a similar case, the Ninth Circuit examined a pre-IGRA management contract that had not been approved by the BIA. Like IGRA, the relevant statute at that time provided that management contracts that had not received BIA approval were 'null and void.' A.K. *Management Co. v. San Manuel Band of Mission Indians*, 789 F.2d 785, 786 n.1 (9th Cir. Cal. 1986). The court explained:

> [a]n agreement without BIA approval must be null and void in its entirety. No part of it may be enforced or relied upon unless and until BIA approval is given. BIA approval is an absolute prerequisite to the enforceability of the contract. To give piecemeal effect to a contract . . . would hobble the statute. The plain words of section 81 simply render this contract void in the absence of BIA approval. Since it is void, it cannot be relied upon to give rise to any obligation by the Band, including an obligation of good faith and fair dealing.

Id. at 789. The reasoning is equally applicable here. Of course, this presumes that the Chairman properly disapproved the Agreements in the first place, and we have no difficulty in finding that he did.

As explained above, we affirm the Chairman's determination that the Agreements are a management contract, and as it is uncontested that the Agreements do not include all of the provisions required of a management contract under 25 U.S.C. § 2711(b) or 25 C.F.R. § 531.1, the Chairman could not have approved them.

Additionally, the Chairman disapproved the contract because "a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract." (*See Administrative Record*, Tab 1, Chairman's Decision, p. 6, *quoting* 25 U.S.C. § 2711(e)(4) and 25 C.F.R. 533.6(b)(4)). IGRA places this trust obligation directly upon the Chairman, 25 U.S.C. § 2711(e)(4), and holds him to a high standard. *United States v Mason*, 412 US 391, 398 (1973)("A trustee is under a duty in administering a trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property."); and *NLRB v. Amax Coal Co., Div. of Amax, Inc.*, 453 US 322, 329 (1981)("Under principles of equity, a trustee bears an unwavering duty of complete

loyalty to the beneficiary of the trust to the exclusion of the interests of all other parties...").

Here, the Chairman noted the Nation's unequivocal expression of its desire to end the relationship with NGS:

> [T]he parties have been in litigation for some time over the termination of the Agreements. The Nation has expressed to the NIGC that "under no circumstances would [it] desire or voluntarily permit [NGS] to provide gaming devices or gaming services within the Sac and Fox Nation jurisdiction." In light of the ill will that now exists between the parties, it would not be in the Nation's best interests to approve an agreement allowing NGS to provide services to the Nation.

(*See Administrative Record*, Tab 1, Chairman's Decision, p. 6 (internal citations omitted)). Nothing in the record justifies an exercise of federal authority that would force upon the Nation a contractual relationship that it does not want, and nothing shows the Agreements to be in the Nation's, rather than NGS's, bests interests.

Further, we note that it is the longstanding policy of the federal government to encourage tribal self-government, and numerous statutes, including IGRA, embody this policy. *Iowa Mutual Ins. Co., v. LaPlante*, 480 U.S. 9, 14 (1987); 25 U.S.C. § 2702(1) ("The purpose of this chapter is to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments."). We do not see how forcing the Nation to accept the Agreements here is consistent with that goal.

For all these reasons, we affirm the Chairman's disapproval of the Agreements and his choice not to modify them.

D. The Commission's management contract regulations are not void for vagueness because they are sufficiently certain so that anyone subject to them can understand their meaning.

Finally, NGS argues that the Commission's management contract regulations are impermissibly vague because they do not sufficiently define "management" and "part of a gaming operation." They contend, in short, that the regulations are void for vagueness and thus that any decision based upon them is invalid. We disagree.

The U.S. Supreme Court defined the standard for such challenges as follows:

> a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.

Connally v. General Constr. Co., 269 U.S. 385, 393-392 (U.S. 1926), *citing International Harvester Co.* v. *Kentucky*, 234 U.S. 216, 221; *Collins* v. *Kentucky*, 234 U.S. 634, 638. This is an expression of fundamental fairness. It is improper to impose a penalty for failing to follow a rule when an ordinary person cannot tell what is, or is not, prohibited.

We question the application of the void for vagueness challenge because it is reserved chiefly for criminal and quasi-criminal cases and the occasional adjudication of government benefits. Tim Searchinger, The Procedural Due Process Approach to Administrative Discretion: The Courts' Inverted Analysis, 95 Yale L.J. 1017, 1026 (1986).

In any case, the regulations are not vague. The ordinary meaning of the regulations provides a sweeping but clear standard understood by the average person: any contract that provides for the "planning, organizing, directing, coordinating, or controlling" of any part of the tribal gaming operation by anyone other than a tribe is a

management contract that requires the Chairman's approval. It is not a question of how much management is permissible within a contract: IGRA prohibits any management without an approved contract. 25 U.S.C. §2711(f). It is also not a question of which parts of a gaming operation a third party may manage without an approved contract: IGRA prohibits management of any part.

We therefore find that the management contract regulations are not vague and not void.

CONCLUSION

Given all of the foregoing, the Chairman's March 26, 2008 disapproval of the Agreements, the gaming machine equipment lease and promissory note, is affirmed.

It is so ordered by the NATIONAL INDIAN GAMING COMMISSION on this 22nd day of May, 2008.

Philip N. Hogen
Chairman

Norman H. DesRosiers
Vice Chairman

Certificate of Service

I certify that this **Commission final decision and order** was sent by facsimile transmission and certified U.S. mail, return receipt requested, on this 22nd day of May, 2008 to:

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