NATIONAL
INDIAN
GAMING
COMMISSION

JUL 14 1995

David McCullough
Michael Minnis & Associates, P.C.
Liberty Tower, Suite 3160
100 North Broadway
Oklahoma City, Oklahoma 73102-8606

Dear Mr. McCullough:

By letter dated April 26, 1995, and received by the National Indian Gaming Commission (NIGC) on May 1, 1995, the Iowa appealed the decision of the Chairman disapproving the Iowa Tribe of Oklahoma Gaming Ordinance. The appeal is dismissed because the letter was filed after the thirty day period provided for in 25 C.F.R. § 524.1. Two other problems remain unresolved. A substantive change needs to be made concerning fingerprint procedures, and the authority of the Business Committee must be clarified and documented.

The regulations provide that "[a]n appeal shall be filed with the Commission within 30 days after the Chairman serves his or her determination." 25 C.F.R. § 524.1. The Chairman's determination was served upon Chairman Murray when the disapproval letter was mailed on March 23, 1995. 25 C.F.R § 519.3(4). Therefore, April 22, 1995, was the last day to file an appeal with our office. Your letter was not received until May 1, 1995. As a result, you waived your opportunity for an appeal pursuant to 25 C.F.R. § 524.1.

We also note that your letter of April 26, 1995, fails to respond to the first deficiency listed in the Chairman's, March 23, 1995, disapproval letter. Section 15(c)(xiv), of the Iowa Tribe of Oklahoma, Tribal Gaming Ordinance, amended January 24, 1995, permits private individuals to take fingerprints. Under 25 C.F.R. § 522.2(h), only a member of a law enforcement agency may take fingerprints. Additionally, the submission fails to identify a law enforcement agency that will take the fingerprints pursuant to 25 C.F.R. § 522.2(h).

Further, your letter of April 26, 1995, inadequately addresses the Chairman's concerns about the Business Committee's authority to adopt an ordinance. According to the Iowa Tribe of Oklahoma, Constitution and Bylaws, the Iowa Council has sole authority to adopt ordinances under Article XIV. While the Iowa Council delegated such power to the Business Committee in Ordinance No. 93-03, that ordinance was disapproved by the Chairman and subsequently withdrawn by Chairman Murray in his

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letter of November 11, 1994. The Indian Gaming Regulatory Act gives the Chairman of the NIGC the power to approve tribal ordinances or resolutions that regulate class II and III gaming. 25 U.S.C. § 2705. Without such approval, an ordinance and the authority delegated within it is ineffective.

Two options to clarify the authority of the Business Committee seem apparent. One, the Iowa Council could delegate the power to the Business Committee in a separate document and the Business Committee can adopt and resubmit the ordinance. Two, the Council could re-enact the entire ordinance, including a delegation of authority to the Business Committee.

The NIGC looks forward to approving the Iowa's ordinance and working with you and the Tribe in the future. If you have any questions please call Matthew Ryen at 202/632-7003.

Sincerely yours,

Harold A. Monteau
Chairman

Jana McKeag
Commissioner

cc: Wallace Murray
Chairman