NATIONAL
INDIAN
GAMING
COMMISSION

July 22, 1994

Joseph Anderson
Gail Decker
Joanie Smith
Morely Clause, III
Richard Kilgour
Dower Davis
d/b/a Tuscarora Tribal Business Council
P.O. Box 1082
Lewistown, New York 14092

Dear Petitioners:

This letter constitutes the decision of the National Indian Gaming Commission (NIGC) concerning your appeal, pursuant to 25 C.F.R. Part 524, of the Chairman's April 13, 1994, disapproval of a gaming ordinance, submitted under 25 C.F.R. Part 522. The NIGC affirms the Chairman's decision to disapprove the ordinance submitted by the petitioners. We find that the Chairman properly deferred to the Department of the Interior (DOI)'s determination that the Tuscarora Tribal Business Council (TTBC) is not the authorized representative of the Nation, nor are any of the petitioners "authorized tribal officials," within the meaning of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et seq., and the NIGC definition of an Indian tribe, 25 C.F.R. § 502.13. Because NIGC regulations state that only a federally recognized tribe may appeal a disapproved ordinance, 25 C.F.R. § 524.1, in affirming the Chairman's decision, we find that you lack standing to make this appeal.

BACKGROUND

Our understanding of the Tuscarora Nation of Indians (Nation) is that it is a traditional Indian tribe of the Iroquois Confederacy. The Nation is recognized by the Secretary of the Interior as a tribe. 58 Fed. Reg. 54364 (Oct. 21, 1993). The Nation has long maintained its traditions without a written constitution, code or laws, or other written documents. The Nation government is composed of several chiefs, each of whom heads one of the respective clans of the Nation. They are collectively known as the Council of Chiefs (Council). See, Notice of Appeal, Ref. No. CO-94-03, Affidavit, Joan Smith, pp. 1-2 (April 25, 1994); letter from Joseph E. Zdarsky, Esq. to John Duffy, Esq., Counsel to the Secretary of the Interior (July 27, 1993). Governmental decisions are made by the Council. The

Council is currently recognized by the DOI as the governing body of the Nation. See, letter from B. D. Ott, Eastern Area Director, Bureau of Indian Affairs (BIA), to Chief Leo Henry (April 2, 1993); letter from Ada Deer, Assistant Secretary - Indian Affairs, to Joseph E. Zdarsky, TTBC counsel, (October 18, 1993); letter from Ada Deer, Assistant Secretary - Indian Affairs, to Michael D. Cox, General Counsel, NIGC, (July 12, 1994); letter from B. D. Ott, Eastern Area Director, BIA, to the Honorable Francis J. Sanzillo, Secretary to the Minority, New York State Senate (May 17, 1994).

According to petitioners, in late 1992 or early 1993, the Tuscarora Tribal Business Council (TTBC) was established "to help develop and make available employment and economic opportunities for the Tuscarora people." Affidavit of Joan Smith, Notice of Appeal, Ref. No. CO-94-03, Appendix, p. 3 (April 25, 1994). The TTBC provides educational and recreational opportunities on the Reservation. Id. On March 14, 1994, the TTBC convened a meeting, at which time the TTBC alleges it was elected the new Nation government by those persons in attendance. On March 16, 1994, the election results were communicated to Ada Deer, Assistant Secretary of the Interior for Indian Affairs, with a request that she meet with the TTBC.

On March 16, 1994, the TTBC also submitted a gaming ordinance to the NIGC for the Chairman's approval. On March 25, 1994, the Chairman declined to approve the gaming ordinance based on the fact that the TTBC is not authorized to submit an ordinance for approval pursuant to 25 C.F.R. § 522.1, nor are any of the individual petitioners authorized under 25 C.F.R. § 522.2(a). The Chairman also issued a Closure Order for the bingo facility being run by the TTBC at that time. By letter from Joseph E. Zdarsky, the TTBC sought an expedited review of those decisions. On April 5, 1994, the Chairman met with the TTBC and its counsel to further discuss the Closure Order. By letter on April 8, 1994, the Chairman reaffirmed his prior decision on the Closure Order. On April 25, 1994, the TTBC appealed the Chairman's decision. However, by a joint motion of the parties, the appeal of the Closure Order has been stayed. See, Joint Motion to Stay Proceedings (June 14, 1994).

In addition, by letter of April 13, 1994, the Chairman reaffirmed that he could not approve the TTBC gaming ordinance submitted on March 16, 1994. On April 25, 1994, the TTBC filed a Notice of Appeal regarding the Chairman's decision not to approve the TTBC gaming ordinance. The TTBC claimed that the Chairman erred by deferring to the BIA rather than conducting an independent investigation of which body constituted the Nation government. See, Notice of Appeal, Ref. CO-94-03, pp. 3-4 (April 25, 1994).

The Chairman had informally requested information from the BIA as to the status of the TTBC. The Chairman was provided information to the effect that the Council of Chiefs was still recognized by the BIA as the governing body of the Nation. As a result of a written request to the Assistant Secretary required for another gaming ordinance submitted by Webster Cusick, the Assistant Secretary confirmed in the enclosed July 12, 1994, letter, that the Council of Chiefs is the governing body of the Nation and that the TTBC does not represent the Nation.

While the March 25, 1994, Closure Order and the April 13, 1994, disapproval of the gaming ordinance are linked, they constitute separate actions by the Chairman. Therefore, the NIGC shall review those actions separately. This opinion deals only with the April 13, 1994, gaming ordinance disapproval.

ANALYSIS

We conclude that the Chairman properly deferred to the decision of the Assistant Secretary - Indian Affairs on the make up of the Nation's tribal governing body and that the TTBC consequently does not have standing to appeal this decision. The Secretary's designee, the Assistant Secretary - Indian Affairs, has the necessary expertise on which the Chairman can reasonably rely. IGRA, in mandating deference to the Secretary on recognition of tribes, implied that the Chairman should also defer to the Secretary's recognition of a tribe's governing body. Furthermore, following the decision of the lead agency on such issues promotes consistency in our government-to-government relationships with tribes. Therefore, the Chairman's decision to defer to the Assistant Secretary is reasonable. Regardless, the TTBC made no showing that it should be recognized as the Nation's representative. Consequently, because the TTBC does not represent a tribe and only a tribe can appeal an ordinance disapproval, the TTBC does not have standing to appeal the Chairman's decision.

I. The Chairman should defer to the BIA in areas in which the BIA has expertise.

Traditionally, courts defer to the executive branch agency expert in the field of the dispute at bar. Indian affairs is no exception. For more than 100 years the courts have deferred to the expertise of the executive branch with respect to recognition of tribal bodies. In United States v. Holliday, 70 U.S. (3 Wall.) 407 (1866), the Court stated: "it is the rule of this court to follow the action of the executive and other political departments of government, whose more special duty it is to determine such affairs." Id. at 419. Recent decisions reflect that the courts have continued to defer to the BIA in Indian

affairs matters in which the BIA has developed expertise. James v. United States Department of Health and Human Services, 824 F.2d 1132, 1137 (D.C. Cir. 1987), Golden Hill Paugussett Tribe of Indians v. Weicker, Jr., 839 F. Supp. 130, 135 (D. Conn. 1993).

The BIA's expertise in Indian affairs covers a wide range of activities. Congress delegated general Federal authority over Indian affairs to the Secretary of the Interior. 25 U.S.C. §§ 1(a) and 2, 43 U.S.C. § 1457. The Secretary delegated his authority to act on Indian affairs to the Assistant Secretary-Indian Affairs, the administrative head of the BIA. 209 DM 8.1. Under that authority the Assistant Secretary has promulgated regulations on a wide variety of Indian affairs issues and programs including tribal recognition, 25 C.F.R. Part 83; tribal reorganization under a statute, 25 C.F.R. Part 81; and petitioning procedures for tribes reorganized under federal statute and other organized tribes, 25 C.F.R. Part 82.

In several recent cases, courts have explicitly noted the BIA's expertise in determining whether or not a group should be recognized as a tribe. See, Runs After v. United States, 766 F.2d 347 (8th Cir. 1987), James v. United States Department of Health and Human Services, 824 F.2d 1132, 1137 (D.C. Cir. 1987), Golden Hill Paugussett Tribe of Indians v. Weicker, Jr., 839 F. Supp. 130 (D. Conn. 1993). In Runs After, the court stated that "it cannot be denied that the BIA has special expertise and extensive experience in dealing with Indian affairs." Runs After at 352. In a case last year the court noted that the BIA "employs historians, anthropologists, and genealogists, James, 824 F.2d at 1138, and has evaluated at least 143 petitions for recognition." Golden Hill Paugussett at 134-135. The court also noted that the BIA has a regulatory scheme "to determine which Indian groups warrant recognition," and that the "inquiry is extremely intricate and technical." Id. at 135. The court went on to hold that:

> These factors and BIA's administrative superiority in gathering the relevant facts and in marshalling them into a meaningful pattern, [citation omitted], obligate deferral of the question of plaintiff's recognition as a tribe to the BIA for determination. Congress' delegation of authority, the regulations adopted in implementation thereof, and BIA's development of expertise appropriate thereto, amply demonstrate a scheme for determination of tribal status intended and best left at first blush to the BIA. Id.

Thus, the BIA has achieved considerable knowledge and expertise in dealing with problems of tribal recognition.

When the BIA has recognized a tribe it must then, as the lead Federal agency in Indian affairs, determine how it will

maintain government-to-government relations with the tribe. This generally means interacting with the recognized tribal government. However, when there are two competing factions claiming to represent the tribe, the BIA is forced to chose one.

In Thompson v. Eastern Area Director, 17 IBIA 39 (1989), a situation similar to the TTBC issue arose, that is two factions of a tribe claimed to be the legitimate representative of the tribe. The Board quoted at length from a United States district court case regarding the BIA's responsibility in such matters:

> Under the circumstances, the court finds that the BIA was obligated under its trust responsibility to determine who, for the purpose of relations with the BIA, was to be the tribal representative. . . . The simple fact is that the BIA was forced to recognize someone as the legitimate tribal representative and that to do so the Secretary was forced to review the procedures followed at and prior to the meeting to determine whether such procedures were in compliance with the Indian constitution. . . . However, the BIA sought only to determine, for the purpose of administering BIA affairs, the legitimate Indian representative. The BIA's review of the actions taken by the dissident faction was not primarily concerned with the actions of the tribal government. Rather the BIA was concerned with its own responsibility to administer its trust duties to the Indian people. Id. (quoting Milam v. Department of the Interior, 10 Indian L. Rep. 3013, 3015 (D.D.C. 1982)).

See also, Naranjo v. Albuquerque Area Director, IBIA 92-203-A (1993); Rhatigan v. Muskogee Area Director, IBIA 91-50-A (1992); Smalley v. Eastern Area Director, IBIA 90-79-A (1990); Pueblo of Zuni Concerned Community Citizens Committee v. Acting Deputy Assistant Secretary--Indian Affairs (Operations) IBIA 85-47-A (1986).

With this expertise in Indian affairs and specifically in the recognition of tribal governing bodies, the Chairman's decision to defer to the Assistant Secretary on recognition of the Council of Chiefs is reasonable. The Chairman is simply following the precedent established by the Federal courts which have historically deferred to the BIA as the lead Federal agency in Indian affairs with the expertise to make such decisions.

II. That the Chairman should rely on the Secretary, or his designee, for guidance on what group constitutes the governing body of the Nation is implicit in IGRA.

Recognition of the Secretary's expertise in determining the tribal governing body is implicit in the Act's reliance on the

Secretary to establish which groups are tribes that can conduct gaming. IGRA states that the Chairman is required to deal only with tribes recognized by the Secretary. 25 U.S.C. §§ 2703(5), 2710(b)(1). The IGRA's definition of a tribe was codified in the NIGC regulations without change. Section 502.13 of 25 C.F.R. provides that "Indian tribes mean any Indian tribe . . . that the Secretary recognizes . . . ." The IGRA further states that: "An Indian tribe may engage in . . . class II gaming on Indian lands within such tribe's jurisdiction if . . . the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman." Thus, the plain meaning of the Act establishes that only tribes recognized by the Secretary, acting through their designated representatives, may engage in Indian gaming.

A concomitant responsibility to tribal recognition is the recognition of the tribal government. Whenever the Secretary determines that a group is a tribe, he must decide what group represents that tribe for purposes of their government-to-government relationship. It follows that Congress would assume that a Secretarial recognition of a tribe includes a Secretarial recognition of the tribe's government. Therefore, we conclude that because Congress intended the NIGC to rely on the Secretary for tribal recognition, it likewise intended reliance on the Secretary for recognition of the tribal governing body.

III. The Chairman's deference to BIA prevents the chaos which would result if different Federal government agencies recognized different governing bodies for the same tribe.

The Chairman's decision to defer to BIA promotes consistency among federal agencies that deal with Indian tribes. To do otherwise open the Federal government and the tribes to a potentially chaotic situation. For example, the Chairman could recognize a faction of a tribe that opposed gaming while the BIA recognized a faction that favored gaming. The BIA recognized faction would therefore not receive approval of a gaming management contract or tribal ordinance from the Chairman even though the BIA recognized the group as the legitimate tribal representative. The BIA recognized group could, however, submit a gaming compact for Secretarial review and approval in an effort to conduct gaming without outside management. The Department of Justice, which represents the BIA and the Commission in Federal court, would have to be the final arbiter as to which group the United States would recognize for purposes of any legal actions arising out of this two-part recognition. Deference to the BIA prevents such chaos from occurring within the Federal government.

IV. The Chairman would have reached the same decision as the BIA based on the record.

Lastly, even if the Chairman had conducted an independent investigation, as requested by the TTBC, the Chairman would have reached the exact same decision as the BIA. The TTBC has simply provided no documentation to support its claim or cause a change in the status quo. The BIA has a long-standing relationship with the Council. The Council has been continuously recognized as the Nation's governing body. In the BIA's dealings with the Nation on treaty cloth, trust funds and education funding, it has dealt with the Council of Chiefs. The TTBC claims it was elected the new government on March 14, 1994. However, despite claims that written evidence of this change were forthcoming, none has ever been produced for either the Secretary or Chairman to review. Clearly the burden of proof is on the petitioner, and it has failed to meet that burden. Without more, neither the BIA nor the Chairman could recognize a major change in the Nation's leadership.

V. Standing.

Finally, we conclude that the TTBC does not have standing to appeal the disapproval of the gaming ordinance. This appeal is made pursuant to 25 C.F.R. § 524.1 which states that only a federally recognized tribe may appeal the disapproval of an ordinance. Necessarily a tribe's appeal may be submitted only by a person or entity authorized by the tribe to file the appeal. Since we have concluded above that the TTBC cannot be recognized as the governing body of the Nation and the Nation has provided no other delegation of authority for the TTBC, the TTBC does not have standing to appeal the ordinance disapproval.

CONCLUSION

The Chairman's decision to defer to BIA's determination of which body to engage in government-to-government relations, when two competing factions of the Nation claim to be the legitimate representative, was not in error. The BIA has a relationship with one of the two groups that far predates the existence of the NIGC. BIA is the recognized expert in this area of Indian affairs. The Chairman, in order to fulfill his statutory and regulatory obligations while at the same time not interfering in the Nation's internal election dispute, deferred to the BIA's assessment that the Council remains the Nation governing body. Based on the record, we find no compelling evidence that would obligate the Chairman to be required, contrary to the BIA's assessment and the implicit language of the IGRA, to deal with a body other than the Council. Therefore, for the reasons given above, we affirm the Chairman's decision. Furthermore, we conclude that the TTBC lacks standing to bring this appeal under

25 C.F.R. § 524.1 because it is not a tribe, nor are petitioners tribal officials, under the IGRA and the NIGC regulations.

If you have any questions regarding this determination, please feel free to contact us at (202) 632-7003.

Sincerely,

Anthony J. Hope
Chairman

Jana McKeag
Associate Commissioner

cc: Indian Law Resource Center for the Council of Chiefs
601 E Street, SE
Washington, D. C. 20003

Enclosure

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

JUL 12 1994

RECEIVED
NATIONAL INDIAN
GAMING COMMISSION
94 JUL 14 PM 12:39

Mr. Michael Cox
General Counsel
National Indian Gaming Commission
1850 M Street, N.W., Suite 250
Washington, D.C. 20036

Dear Mr. Cox:

Thank you for your letter of June 7, 1994, regarding gaming ordinances submitted to the National Indian Gaming Commission (NIGC) by persons claiming to represent the Tuscarora Nation of New York. We apologize for the delay in responding.

You requested a written determination of who the Bureau of Indian Affairs recognizes as the governing body of the Tuscarora Nation and who may act for that body in its dealings with the Federal Government.

Currently, the Department of the Interior recognizes the traditional Council of Chiefs as the governing body of the Tuscarora Nation. To our knowledge, the Council of Chiefs has been recognized as the governing body of the Tuscarora Nation since the early 1700's. Our recognition of the Council of Chiefs was affirmed as recently as July 24, 1987, in a letter from the Assistant Secretary - Indian Affairs to the Tuscarora Nation. This letter specifically recognized the Council of Chiefs as the governing body of the Tuscarora Nation and affirmed an April 1, 1986, resolution of the Council of Chiefs prohibiting all forms of commercial gaming in the Tuscarora Nation territory. A copy of this letter is enclosed for your reference. To date, we have no indication that the Council of Chiefs has changed its position regarding commercial gaming on the Tuscarora Nation territory.

We conclude that neither the "Tuscarora Tribal Business Council" nor Chief Webster Cusick have been authorized to speak on behalf of the Tuscarora Nation. While the Tuscarora Nation does not utilize a written constitution, it is common knowledge in the New York Indian community and to this office that decisions for the Tuscarora Nation are made based on a concensus of the Council of Chiefs reached in an official meeting of the Council of Chiefs. Chief Cusick himself, in a May 20, 1994, letter, indicated that actions by the Tuscarora Nation, including enacting ordinances, must be done by the Council of Chiefs. This letter is enclosed for your reference. Chief Cusick also indicated that, in his opinion, the Council of Chiefs had not officially met to conduct tribal business since 1987. This

indicates that any gaming ordinance submitted by Chief Cusick to the NIGC was not enacted in a Council of Chiefs meeting. Additionally, we are in receipt of two letters, dated March 12, 1994, and June 5, 1994, signed by six of the eight Chiefs of the Tuscarora Nation, indicating that neither the "Tuscarora Tribal Business Council" nor Chief Webster Cusick are authorized on behalf of the Tuscarora Nation to enact and submit a gaming ordinance to the NIGC. These letters are enclosed for your reference. Based on this information, we conclude that the Council of Chiefs did not enact the ordinance submitted by Chief Webster Cusick. As such, Chief Cusick is not authorized to speak on behalf of the Tuscarora Nation.

Regarding the "Tuscarora Tribal Business Council," we received a letter, dated March 16, 1994, from the Tuscarora Tribal Business Council indicating that the Tuscarora Nation had selected the Business Council to replace the Council of Chiefs as the Nation's governing body. While this letter indicated that written evidence was being prepared to document this significant change, such evidence has not been submitted officially to the Department for consideration. We understand that certain Tuscarora Nation members may be collecting petitions in support of a reorganization of the Tuscarora Nation government. However, absent clear and conclusive evidence that the Tuscarora people desire a form of government other than the traditional Council of Chiefs, the Department will continue to recognize the Council of Chiefs as the governing body for the Tuscarora Nation.

We will keep the NIGC informed in case of any further developments.

Sincerely,

Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

Enclosures

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

JUL 24 1987

Chief Leo R. Henry
Clerk, Council of Chiefs
Tuscarora Nation
2006 Mt. Hope Road
Lewiston, New York 14092

Dear Mr. Henry:

I enjoyed the opportunity to meet with you on July 23 to discuss the issues raised in your May 31 letter to President Reagan. The President has asked me to respond to your letter.

We appreciate the notice you have provided in accordance with the Treaty of Canandaigua regarding the April 1, 1986, resolution of the Tuscarora Nation Chiefs in Council prohibiting all forms of commercial gambling in the territory of the Tuscarora Nation. We recognize and support the authority of the Council of Chiefs, as the governing body of the Tuscarora Nation, to enforce the laws of the Nation on Tribal lands. Accordingly, it is our view that commercial gambling activities operated on Tribal lands of the Tuscarora Nation are unlawful.

Sincerely,

Ross O. Swimmer
Assistant Secretary - Indian Affairs

Rec'd Correspondence Ofc-BIA
MAY 25 1994

WEBSTER CUSICK
Tuscarora Nation
2429 Upper Mountain Road
via Sanborn, NY 14132

RECEIVED
6-2-94
TR/BIA

May 20, 1994

The Honorable Ada Deer
Assistant Secretary Indian Affairs
United States Department of Interior
Bureau of Indian Affairs
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Deer:

Please be advised that I am the Head Chief of the Tuscarora Nation, Snipe Clan, and have served as a member of the Council of Chiefs of the Tuscarora Nation for over 40 years. I am currently recognized by the BIA as part of the governing body of the Tuscarora Nation.

Acting in my capacity as Head Chief, it is my duty to officiate during all Grand Council meetings of the Tuscarora Nation. It is also my duty to carry messages for the other chiefs to outside governmental entities and to be on guard for any erroneous actions by any given sachem chief. Please be advised that for any agency or individual to undermine the authority of tribal leadership will be viewed as a denigration of the Tuscarora Nation's right to self-determination and self-governance.

On March 1, 1994, I met with Jerry Cordova, along with other tribal members, in your office. At that time we presented evidence, including a letter from me, of the governance issues facing our tribe. My letter, dated October 22, 1993, mentioned that certain tribal members are attempting to act for the tribe. As I stated in my letter, their actions do not constitute the official action of the Council of Chiefs of the Tuscarora Nation. In fact, the Council of Chiefs has not met since 1987. Your actions, words and conduct, to the extent they confer tribal governance power on someone else, are incorrect because they do not reflect the will of the Tuscarora people. With regard to actions by the tribe, including enacting ordinances for the tribe, it is done by the tribal council.

Therefore, at this time it is my duty to inform you that Leo R. Henry is not the head chief of the Tuscarora Nation, nor does he have any power or capacity to bind or speak on behalf of the Tuscarora Nation.

It must be further noted that all business is to be handled through the Tuscarora Nation's Head Chief unless you are so notified. Please feel free to contact me if you have any questions.

Very truly yours,

Chief Webster Cusick

Chief Webster Cusick
Tuscarora Indian Nation

RECEIVED
MAY 31 1994
BUREAU OF INDIAN AFFAIRS
OFFICE OF TRIBAL SERVICES

BACKING CALL 1-800-222-1811

To Whom it may concern:

There are Sachem Chiefs and Sub-Chiefs.The difference being a sub-chief has no official status whatsoever. Except when a Sachem Chief can no longer fulfill his duties.

The following are Condoled Sachem Chiefs:

Webster Cusick - Head Chief Tuscarora - Snipe

Leo Henry - Turtle

Hibert Chew - Beaver

David Patterson - Wolf

Arnold Hewitt - Bear

The following are Sub-Chiefs:

Kenneth Patterson - Wolf

John Hill - Deer

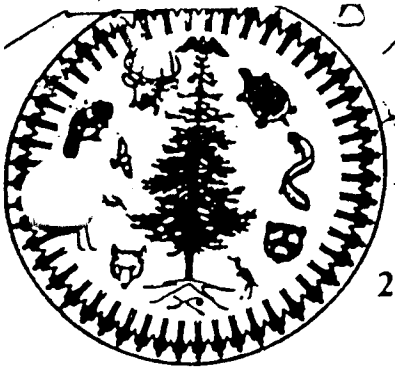
Stuart Patterson - Beaver

Chief Webster Cusick

Chief Webster Cusick
Head Chief Tuscarora

TRACKING CALL 1-800-222-1811

130



HAUDENOSAUNEE

TUSCARORA NATION
2006 MT. HOPE ROAD — VIA: LEWISTON, NEW YORK 14092

'94 MAR 21 AM 11:40

March 12, 1994

The Honorable William Clinton
President Of The United States
The White House
Washington, D.C. 20500

Dear President Clinton:

"Greetings"

It has come to our attention that certain individuals are planning to open a bingo hall within the Tuscarora Nation territory. Apparently, an ad hoc group calling itself the Tuscarora Tribal Business Council intends to construct and operate a bingo hall on our territory. This is to inform you that the Tuscarora Nation Council of Chiefs, the federally recognized government for the Tuscarora Nation, has not authorized gambling of any kind within the Nation territory. In 1987, the Council of Chiefs reaffirmed a longstanding law which prohibits all forms of gambling within the Nation boundaries.

Further, The Tuscarora Tribal Business Council is not a lawful body under Tuscarora law. The Council of Chiefs has not authorized its creation and expressly disavows its activities. The proposed bingo operation plainly violates the provisions of the Indian Gaming Regulatory Act, 25 U.S.C § 2701 et seq. The Tuscarora Tribal Business Council and the persons planning to construct and operate the bingo hall are not an "Indian tribe" the only body authorized by the Act to own and operate class II gaming such as bingo. 25 U.S.C. § 2710 (b)(1)(2). Nor, has the Tuscarora Council of Chiefs, the governing body of the Tuscarora Nation adopted an ordinance authorizing any person to conduct gaming. 25 U.S.C. §2710 (a)(1)(B). In fact, the Nation law expressly prohibits all forms of gambling.

We ask that you exercise your responsibilities under the Treaty of Canandaigua of 1794 to maintain peace in our community. The Tuscarora Tribal Business Council persists in this course of illegal conduct, in open defiance of our law and the federal gaming act. Tensions on our reservation are increasing, and measures must be taken very soon to stop this unlawful conduct and restore peace and tranquility to our community.

We request a meeting with you or your delegate under Article VII of the Treaty of Canandaigua as soon as convenient to address our urgent concerns.

We look forward to your response.

Oneh!

Chief Vikert Shew (Beaver)
Chief Stuart E Patterson (Beaver)
Chief [illegible] Patterson Wolf
Chief David Patterson Wolf
Chief [illegible]
Sequaksen - Chief Leo B Henry - Turtle

cc:See Page 3

cc: Honorable Bruce Babbit
Honorable Ada Deer
Senator Alfonse D'Amato
Senator Daniel P. Moynihan
Senator Daniel K. Inouye
Congressman John J. LaFalce
Governor Mario Cuomo
Curtis G. Berkey, Esq.
Harold M. Halpern, Esq.
Mr. B. D. Ott

HAUDENOSAUNEE
TUSCARORA NATION
2006 MT. HOPE ROAD — VIA: LEWISTON, NEW YORK 14092

June 5, 1994

Mr. B.D. Ott, Area Director
Eastern Area Office
Bureau of Indian Affairs
United States Dept. of the Interior
Suite 260
3701 North Fairfax Drive
Arlington, Virginia 22203

Dear Mr. Ott:

Greetings,

In response to the recent letter which identifies an individual, herein identified as Chief Webster Cusick of the Tuscarora Nation, please be advised that under the customs, usages, and traditions of the Tuscarora Nation, there is no title of "Head Chief" or any other designation which would put a Chief or anyone else in a position to make a decision regarding Tuscarora Law.

Only the Tuscarora Chiefs in Council is authorized to make decisions concerning governance, laws, and policies of the Tuscarora Nation. The Tuscarora Nation Council of Chiefs has no legally-derived ordinance authorizing either bingo or any other form of gambling, and no chief or individual has been authorized to enter any activity which would lead to such activities.

Furthermore, the Tuscarora Chiefs Council has existed since time immemorial and has followed the laws, customs, and usages of the Tuscarora Nation and Haudenosaunee of which we are a member Nation, and we have long enjoyed recognition by the governments of the United States and New York State. The information in the present instance in the form of a letter purportedly to describe powers of governance possessed by Webster Cusick is in error.

"Pursuant to our laws, customs, and usages, we are reviewing the origins and mandate of the title of authority held by this individual and a determination will be made under our procedures."

Meanwhile, please be advised, as per previous communications, that the individual in question has no authority to create or license any kind of gambling or bingo establishment in Tuscarora Territory, and that such authority resides exclusively in the Council of Chiefs of the Tuscarora Nation.

Oneh!

Chief Kurt Patterson
Chief David Patterson
Chief Stuart Hamilton
Chief Hubert Chew
[illegible]

Sequoia Ridgeway
Chief Leo R. Henry