National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-08-06

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1. Notification of Violation

The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Cheyenne and Arapaho Tribes of Oklahoma (Respondent or Tribes), located in Concho, Oklahoma, are in violation of the Indian Gaming Regulatory Act (IGRA) and NIGC regulations for: Failure to submit license applications to the NIGC for all key employees and primary management officials; failure to submit background investigations on key employees and primary management officials; and failure to submit eligibility determinations of suitability for employment in a gaming operation. Finally, Respondent violated NIGC regulations by employing 142 key employees and primary management officials without a license after 90 days of their initial date of employment.

2. Authority

The Chairman of the NIGC (Chairman) may issue a Notice of Violation (NOV) to any person for violation of any provision of the Indian Gaming Regulatory Act (IGRA),

NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the Chairman. 27 U.S.C. § 2713; 25 C.F.R. § 573.3.

3. Applicable Federal and Tribal Laws

A. 25 U.S.C. § 2710(b)(2)(F)(i) – IGRA requires that a tribe have in place an adequate system to ensure that background investigations are conducted on key employees and primary management officials of a gaming operation.

B. 25 U.S.C. § 2710(b)(2)(F)(ii)(I) – IGRA requires that tribal gaming operations issue tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses.

C. 25 U.S.C. § 2710(b)(2)(F)(ii)(II) – IGRA requires that a tribal gaming operation shall maintain a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment.

D. 25 U.S.C. § 2710(b)(2)(F)(ii)(III) – IGRA requires that a tribal gaming operation notify the Commission of the background investigation results before issuing a license to key employees or primary management officials.

E. 25 C.F.R. § 502.14 –NIGC regulations provide define key employee to mean: (a) A person who performs one or more of the following functions: (1) Bingo caller; (2) Counting room supervisor; (3) Chief of security; (4) Custodian of gaming supplies or cash; (5) Floor manager; (6) Pit boss; (7) Dealer; (8) Croupier; (9) Approver of credit; (10) Custodian of gambling devices including persons with access to cash and accounting records within such devices; (b) If not otherwise included, any other person whose total cash compensation is in excess of $50,000 per year; or, (c) If not otherwise included, the four most highly compensated persons in the gaming operation.

F. 23 C.F.R. § 502.19 – NIGC regulations define primary management official to mean: (a) The person having management responsibility for a management contract; (b) Any person who has authority: (1) To hire or fire employees; or (2) To set up working policy for the gaming operation; or (c) The chief financial officer or other person who has financial management responsibility.

G. 25 C.F.R. § 556.4 – NIGC regulations require that a tribe shall perform a background investigation for each primary management official and for each key employee of a gaming operation.

H. 25 C.F.R. § 522.2(h) and 25 C.F.R. § 556.4(a)(14) – NIGC regulations require that a tribe shall collect fingerprints from an applicant for a primary management official or key employee position and conduct a criminal history check including a check of the criminal history record information maintained by the FBI.

I. 25 C.F.R. § 556.4(b) - NIGC regulations require that a tribe shall conduct an investigation sufficient to make a suitability determination regarding the licensing of the person pursuant to 25 C.F.R. § 558.2.

J. 25 C.F.R. § 556.5(a) - NIGC regulations require that when a tribe employs a primary management official or a key employee, the tribe shall forward to the Commission a completed employment application.

K. 25 C.F.R. § 556.5(b) – NIGC regulations require that, before issuing a license to an employee, a tribe shall forward to the Commission an investigative report on each background investigation including the following: (1) Steps taken in conducting a background investigation; (2) Results obtained; (3) Conclusions reached; and (4) The basis for those conclusions.

L. 25 C.F.R. § 556.5(c) – NIGC regulations require that a tribe shall include a copy of the eligibility determination made by the tribe pursuant to 25 C.F.R. § 558.2 with the investigative report forwarded to the Commission.

M. 25 C.F.R. § 558.2 – NIGC regulations require that an authorized tribal official shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or a primary management official for employment in a gaming operation. If the authorized tribal official, in applying the standards adopted in a tribal ordinance, determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a management contractor or a tribal gaming operation shall not employ that person in a key employee or primary management official position.

N. 25 C.F.R. § 558.3(a)(1) NIGC regulations require that a tribal gaming operation forward the Commission a completed application for employment when a key employee or primary management official begins work at a tribal gaming operation.

O. 25 C.F.R. § 558.3(a)(2) NIGC regulations require that a tribe conduct a background investigation pursuant to 25 C.F.R. Part 556 to determine the eligibility of key employee or primary management official for continued employment in a gaming operation.

P. 25 C.F.R. § 558.3(b) NIGC regulations require that, upon completion of a background investigation and a determination of eligibility for employment in a gaming operation, a tribe shall forward a report to the Commission within sixty (60) days after an employee begins work or within sixty (60) days of the Chairman's approval of an ordinance under 25 C.F.R. Part 523.

Q. 25 C.F.R. § 558.3(b) NIGC regulations require that a gaming operation shall not employ a key employee or primary management official who does not have a license after ninety (90) days.

R. Section 102(j) of the Cheyenne-Arapaho Tribes of Oklahoma Gaming Ordinance[1], approved by the NIGC Chairman on February 22, 1994, provides a definition for key employee. Under the Ordinance, key employee means:

(1) a person who performs one or more of the following functions:

(i) Bingo caller;
(ii) Counting room supervisor;
(iii) Chief of security;
(iv) Custodian of Gaming supplies or cash;
(v) Floor manager;
(vi) Pit boss;
(vii) Dealer;
(viii) Croupier;
(ix) Approver of credit; or
(x) Custodians of gambling devices including persons with access to cash and accounting records within such devices.

(2) If not otherwise included, any other Person whose total cash compensation is in excess of $50,000 per year; or

(3) If not otherwise included, the four most highly compensated persons in the gaming operation.

S. Section 102(m) of the Ordinance provides a definition for primary management official. Under the Ordinance, primary management official means:

(1) The person having management responsibility for a management contract;

(2) Any person who has authority:

[1] The Ordinance was amended on April 4, 1998 to remove the requirement that the tribal gaming commission chairman be an attorney. The Amendment was approved by the Chairman on February 28, 2008.

(i) to hire and fire employees; or

(ii) To set up working policy for the Gaming Operation; or

(3) The chief financial officer or other person who has financial management responsibility.

T. Section 300 of the Ordinance requires that each key employee and primary management official have a current and valid license issued pursuant to the provisions of the Ordinance.

U. Section 303.A of the Ordinance states that fingerprints of key employees and primary management officials shall be taken by the Cheyenne and Arapaho Tribes of Oklahoma Police Department, who shall immediately submit such fingerprint cards to the NIGC for processing.

V. Section 303.B of the Ordinance requires the Tribes to perform a background investigation and make an eligibility determination on each applicant. Section 303.B requires the Tribes to review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in the gaming operation. Where it is determined that the applicant is unsuitable for work in a gaming facility that the tribal gaming operation shall not employ the applicant in a key employee or primary management official position.

W. Section 303.C of the Ordinance requires the Tribes to transmit a key employee's or primary management official's application file to the NIGC and conduct the background investigation and conduct an eligibility determination as required by § 303.B. Section 303.C also requires the Tribes to submit the report described in § 303.D (background investigation report) to the NIGC within sixty (60) days of an employee beginning work.

X. Section 303.D of the Ordinance requires the Tribes to prepare and forward to the NIGC an investigative report on each background investigation including: the steps taken in conducting a background investigation; results obtained; conclusions reached; and the bases for those conclusions.

Y. Section 303.C(c) of the Ordinance prohibits a tribal gaming operation from employing as a key employee or primary management official a person who does not have a license after ninety (90) days.

Z. Exhibit A to the Ordinance, as approved in 1994, provides that upon completion of the necessary background investigation, and after the Tribes

have complied with the 30-day NIGC review requirements found in 25 C.F.R. § 558.3 and §558.4, the Tribes may issue a license.

AA. Section 306 of the Ordinance states that any key employee or primary management official employee license shall be valid for a period of one (1) year.

4. Role of Background Investigations and Employee Licensing

The background investigation and licensing process for key employees and primary management officials is crucial to maintaining the integrity of Indian gaming. Submission of the completed application, background investigation report, and licensing determination to the NIGC so that it may object to the issuance of a license is an integral part of this process as set forth in the IGRA. Gaming is a cash intensive business that requires a carefully screened employee base and careful implementation of internal controls. The background investigation and licensure process helps insure that employees who have access to cash and other gaming resources are worthy of positions of trust. Accordingly, under IGRA, the licensure of key employees and primary management officials is a key tribal governmental responsibility.

5. Circumstances of the Violation

A. Respondent is a federally recognized Indian Tribe with tribal headquarters in Concho, Oklahoma.

B. Respondent operates three (3) gaming facilities: Lucky Star-Concho, located at 7777 North Highway 81, Concho, Oklahoma; Lucky Star-Clinton, located at 101 North Indian Hospital Road, Clinton, Oklahoma; and Feather Warrior Casino, at 1407 South Clarence Nash Boulevard, Watonga, Oklahoma.

C. As of March 1, 2008, at least two (2) licensing files were complete and the employees licensed with NIGC concurrence, but not within the required timeframe. The submission of the investigative report and eligibility determination was not submitted to the NIGC within the sixty (60) days of date of employment. Both of these employees had been employed for over ninety (90) days without being properly licensed. One employee had been employed over six (6) years without a license.

D. As of March 1, 2008, at least one hundred and forty (140) licensing files for current key employees and primary management officials were identified where the NIGC received an incomplete gaming license application or did not receive a copy of the gaming license application, background investigation report, suitability determination, or fingerprint

cards despite the fact that each employee had been employed in excess of ninety (90) days.

E. Of the one hundred and forty (140) key employees or primary management officials employed beyond ninety (90) days, ninety-two (92) have been employed over one year without a permanent gaming license.

F. The Tribes are in violation of the IGRA, NIGC regulations, and the Tribal gaming ordinance as follows:

1. The NIGC regulations and the Tribes' gaming ordinance require the Tribes to submit to the NIGC a completed application for employment for key employees and primary management officials. 25 C.F.R. §§ 556.5(a) and 558.3 (a)(1); Ordinance § 303.C(a). The application must contain a privacy notice, notice regarding false statements, and a request for information required for a background investigation. 25 C.F.R. §§ 558.3(a)(1); 556.2; 556.3; and 556.4. The Tribes have failed to submit license applications for one hundred and thirty-five (135) of its employees within sixty (60) days after each employee began work.

2. The IGRA, NIGC regulations and the Tribe's gaming ordinance require the Tribes to conduct background investigations of applicants for key employee or primary management official positions 25 U.S.C § 2710(b)(2)(F)(i); 25 C.F.R. §§ 556.4, 558.3(a)(2). That background investigation shall be sufficient to enable the Tribes to make an eligibility determination of an individual's suitability to work in the Tribe's gaming operation. 25 C.F.R. § 556.4(b); Ordinance § 303.B. The Tribes' gaming ordinance further requires the Tribe to review the information provided in the license application of each key employee and primary management official, including criminal record, if any. Ordinance § 303.B.

3. NIGC regulations require the Tribes to create and forward to the NIGC background investigation reports including: (1) Steps taken in conducting a background investigation; (2) Results obtained; (3) Conclusions reached; and (4) The bases for those conclusions. 25 C.F.R. §556.5(b). The report must be forwarded to the Commission within sixty (60) days after an employee begins work. 25 C.F.R. § 558.3(b). The Tribes have failed to submit to the NIGC background investigation reports for one hundred and thirty-six (136) of its key employees and primary management officials within sixty (60) days after an employee has begun work.

4. NIGC regulations and the Ordinance require the Tribes to collect fingerprint cards from each applicant, and to submit the fingerprints to the NIGC for processing. 25 C.F.R. § 556.4(a)(14); Ordinance §§ 303; 303.A. The Tribes have failed to forward fingerprints to the NIGC for processing of FBI criminal history checks for ninety-one (91) of its key employees and primary management officials.

5. The IGRA, NIGC regulations, and the Ordinance require the Tribes to make an eligibility determination of a person's suitability to work in a gaming operation. 25 U.S.C. §2710(b)(2)(F)(ii)(II); 25 C.F.R. §§ 556.5(c), 558.2; Ordinance § 303.B. The Tribes are to forward such eligibility determination to the NIGC when forwarding the background investigation report. 25 C.F.R. § 558.2(b); Ordinance §§ 303.C(b); 303.D(b). The Tribes have failed to forward such eligibility determinations to the NIGC for one hundred and thirty-six (136) of its key employees and primary management officials within sixty (60) days after an employee has begun work.

6. NIGC regulations and the Ordinance require that a gaming operation shall not employ a primary management official or key employee who does not have a license after ninety (90) days. 25 C.F.R. § 558.3(b); Ordinance § 303.C(c). Respondent has employed one hundred and forty-two (142) people in primary management official or key employee positions without a license for longer than ninety (90) days.

6. Measures Required to Correct these Violations

In order to correct the past and ongoing violations of the IGRA, NIGC regulations, and the Tribe's gaming ordinance, Respondent must:

A. There is no way to correct the late submissions and employment beyond 90 days without a license for the two employees subsequently licensed by the Tribes. NIGC regulations and the Ordinance require the submission of the investigative report and eligibility determination to the NIGC within sixty (60) days of the date of employment and prohibit the employment of a Primary Management Official or Key Employee beyond 90 days without a license. 25 C.F.R. § 558.3(b); Ordinance § 303.C(c). Here, the Tribes failed to submit the required materials to the NIGC within sixty (60) days and employed the two employees without a license beyond the permitted 90 days.

B. Within fifteen (15) days, starting from the date of service of this Notice of Violation, collect fingerprint cards from all one hundred and forty (140) currently unlicensed key employees and primary management officials and send them to the NIGC with appropriate fees for processing;

C. Within thirty (30) days, starting from the date of service of this Notice of Violation, perform complete background investigations and obtain FBI criminal history checks on all one hundred and forty (140) unlicensed key employees and primary management officials and create background investigation reports;

D. Within forty-five (45) days, starting from the date of service of this Notice of Violation, review the completed background investigation reports, containing FBI criminal history information, for all one hundred and forty (140) unlicensed key employees and primary management officials and make eligibility determinations of suitability for employment in a gaming operation;

E. Within sixty (60) days, starting from the date of service of this Notice of Violation, submit to the NIGC a copy of the completed employment application, background investigation report, and eligibility determination;

F. Complete licensing for all new key employees and primary management officials hired after the date of service of this Notice of Violation within ninety (90) days after date of hire.

G. Not employ any persons hired as of the date of service of this Notice of Violation as key employees or primary management officials who have not been licensed by the Tribe beyond 90 days from the date of service of the Notice of Violation;

H. Notify the NIGC in fifteen (15) day intervals, starting from the date of service of this Notice of Violation, of the measures taken to correct this violation. The required information must be submitted to the Chairman, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005.

7. Appeal

Within 30 (thirty) days after service of this Notice of Violation, Respondent may appeal to the full Commission under 25 C.F.R. Part 577 by submitting a notice of appeal and, if desired, request in writing for hearing to the National Indian Gaming Commission, 1441 L Street, NW, Ninth Floor, Washington, DC 20005. Respondent has a right to assistance of counsel in such an appeal. A notice of appeal must reference this Notice of Violation.

Within ten (10) days after filing a notice of appeal, Respondent must file with the Commission a supplemental statement that states with particularity the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If Respondent wishes to present oral testimony or witnesses at the hearing, Respondent must include a request to do so with the supplemental statement. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony, whether a closed hearing is requested and why. Respondent may, in writing, waive its right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

8. Temporary Closure Order or Fine--Submission of Information

The violation cited above may result in a temporary closure order or the assessment of a civil fine against Respondent in an amount not to exceed $25,000 per violation per day. Under 25 C.F.R. § 575.5(a), Respondent may submit written information about the violation to the Chairman within fifteen (15) days after service of this notice of violation (or such longer period as the Chairman of the Commission may grant for good cause). The Chairman shall consider any information submitted in determining the facts surrounding the violation and the amount of the civil fine, if any.

Dated this 22 day of May, 2008.

PHILIP N. HOGEN
Chairman
National Indian Gaming Commission

Certificate of Service

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

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