NIGC RF

National Indian Gaming Commission

NOTICE OF VIOLATION AND CLOSURE ORDER

Ref: NOV No. 02-03
CO No. 02-03

To: Chairman Bennett Arkeketa
Ponca Tribe of Oklahoma
20 White Eagle Drive
Ponca City, OK 74601

1. The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Ponca Tribe of Oklahoma (Respondent), located in Ponca City, Oklahoma, is in substantial violation of the Indian Gaming Regulatory Act (IGRA) and NIGC regulations.[1]

2. Respondent is a federally recognized Indian Tribe with tribal headquarters in Ponca City, Oklahoma. Respondent has engaged in gaming operations on tribal lands in Oklahoma since approximately 1992. Following implementation of IGRA, the Chairman of the NIGC approved Respondent's Gaming Ordinance on May 3, 1995.

3. Under the authority of IGRA and the NIGC regulations, the NIGC issued a Potential Notice of Violation (PNOV) to Respondent on November 3, 2000, for not submitting required fingerprints, applications, investigative reports, and suitability determinations to the NIGC for Key Employees and Primary Management Officials employed at Respondent's gaming facility, Blue Star Casino. The PNOV gave Respondent thirty (30) days to submit fingerprints, gaming employee applications, and investigative reports.

4. Several NIGC representatives met with Respondent's governmental and gaming officials during the next year, but little progress was made by Respondent to provide the required employee documentation. In addition, on January 8, 2002, Respondent requested an extension of the deadline of its Minimum Internal Control Standards (MICS) audit.

5. By letter to Respondent dated February 20, 2002, the NIGC General Counsel urged Respondent to close voluntarily its gaming facility, citing its failure to submit background investigations, noncompliance with the MICS, and failure to submit its 2001 audit.

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[1] The NIGC regulations are set forth in Chapter III, Title 25, Parts 500-599 of the Code of Federal Regulations. All sections of NIGC regulations cited in this Notice refer to the pertinent parts of Title 25. The NIGC regulations implement provisions of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. §§ 2701-2721, signed into law on October 17, 1988.

6. Respondent notified the NIGC by letter dated February 27, 2002, that it would voluntarily close its gaming facility on March 3, 2002. Although Respondent closed its facility as it agreed on March 3, 2002, and continued to work with NIGC staff to address numerous concerns, Respondent reopened the facility on April 12, 2002, without correcting the conditions that precipitated the closing.

7. The circumstances of the substantial violation are the following:

A. Failure to Conduct Background Investigations and Submit Reports to NIGC

Pursuant to 25 U.S.C. § 2710(F), 25 C.F.R. § 556.4, and Section 303.I.A of Respondent's 1995 Gaming Ordinance, the Tribe is responsible for performing a background investigation for each Primary Management Official and Key Employee of a gaming operation. Under 25 C.F.R. § 556.5(b), and Section 303.I.B of the Tribe's Gaming Ordinance, the Tribe must forward a report to the NIGC on each background investigation before issuing a license to a Primary Management Official or to a Key Employee. This report must be submitted to the NIGC within sixty (60) days after an employee begins work, pursuant to 25 C.F.R. § 558.3 (b) and 303.I.B (3). Despite repeated requests from the NIGC, the Tribe has failed to conduct background investigations or to submit adequate reports on background investigations for the approximately ten (10) Key Employees or Primary Management Officials who have worked at Respondent's gaming facility for a period of longer than ninety (90) days.

B. Failure to Submit Applications to NIGC

Under 25 U.S.C. § 2710(F) and 25 C.F.R. § 556.5(a), a tribe that employs Primary Management Officials or Key Employees in its gaming operation must forward to the NIGC a completed application for each such employee. Submission of completed applications for Key Employees and Primary Management Officials is also required under Sections 303.I.A and 303.I.B of the Tribe's Gaming Ordinance. No applications have been submitted for approximately ten (10) Key Employees or Primary Management Officials who currently work in Respondent's gaming facility.

C. Failure to Maintain Records

Under 25 C.F.R. § 558.1 (c), a tribe must retain applications for employment and reports of background investigations of Key Employees and Primary Management Officials for at least three (3) years from the date of termination of employment. The oldest record maintained by Respondent was dated March 10, 2001. Respondent was unable to produce any such records created prior to March 10, 2001, despite having operated the facility since approximately 1992.

8. The process of submission of applications, background investigations, and licensure of Key Employees and Primary Management Officials is crucial to maintaining the integrity of Indian gaming. 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. Because the lack of compliance with background investigations and licensure requirements at Respondent's gaming facility is pervasive and involves a majority of the gaming employees, closure of only a portion of the operation would not adequately address the serious risks to the integrity of Indian gaming posed by the Respondent's non-compliant gaming facility. Under these circumstances, closure of all gaming activities is the only means of assuring the integrity of Indian gaming until Respondent institutes an adequate system for background investigations and licensure.

9. Closure Order. To correct the violations, Respondent shall comply with the following closure order:

Under the authority of 25 U.S.C. §§ 2701 et seq. and 25 C.F.R. § 573.6(a) and (b), the Chairman of the National Indian Gaming Commission hereby gives notice that the Ponca Tribe of Oklahoma is ordered to cease operation of all gaming activities in its gaming facility. This order shall be effective within twenty-four hours of receipt of this Notice of Violation and Closure Order.

10. The Chairman may rescind the Closure Order for good cause shown.

11. Expedited Review. Under 25 C.F.R. § 573.6(c), within seven (7) days after service of this Order, Respondent may request, orally or in writing, informal expedited review by the Chairman. The Chairman must complete such review within two (2) days after receipt of a timely request. Within two (2) days after the expedited review provided by 25 C.F.R. § 573.6(c), the Chairman must decide whether to continue the Order and must provide Respondent with an explanation of the basis for the decision.

12. Appeal.

A. Whether or not Respondent seeks the informal expedited review described in paragraph ten (10) above, within thirty (30) days after service of this Notice of Violation and Order of Temporary Closure, Respondent may appeal to the full Commission under 25 C.F.R. Part 577 by submitting a notice of appeal and, if desired, a request 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 refer to this Notice of Violation and Order.

B. 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 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.

13. Fine--Submission of Information. The violations cited above may additionally result in the assessment of civil fines 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 1st day of May 2002.

Montie R. Deer

Montie R. Deer, Chairman
National Indian Gaming Commission

Sandra J. Ashton
Staff Attorney

CERTIFICATE OF SERVICE

I certify that this **NOTICE OF VIOLATION AND CLOSURE ORDER** has been sent by facsimile and FedEx this 1st day of May 2002, to:

Chairman Bennett Arkeketa
Ponca Tribe of Oklahoma
20 White Eagle Drive
Ponca City, OK 74601

Frances Fragua
Paralegal