NOV binder

National Indian Gaming Commission

NOTICE OF VIOLATION

No. NOV-03-02

Notice of Violation

To: Alexander Walker
Sac and Fox Tribe of the Mississippi in Iowa
2982 F Avenue
Montour, IA 50173

Homer Bear, Jr.
Sac and Fox Tribe of the Mississippi in Iowa
349 Meskawki Road
Tama, IA 52339-9629

Sac and Fox Tribe of the Mississippi in Iowa
349 Meskawki Road
Tama, IA 52339-9629

Respondents

1. The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that Respondents are in violation of the Indian Gaming Regulatory Act (IGRA), NIGC regulations, and the Gaming Ordinance of the Sac and Fox Tribe of the Mississippi in Iowa (Tribe).

2. The Sac and Fox Tribe of the Mississippi in Iowa is a federally recognized Indian Tribe with tribal headquarters in Tama, Iowa.

3. NIGC defers to the Secretary of the Interior in areas in which the Secretary has expertise. The Secretary, through the Bureau of Indian Affairs, has expertise in recognizing whether a group should be recognized as a tribe and, when there are competing factions, which faction should be recognized as the tribal government. IGRA acknowledges the Secretary's expertise by defining, for the purposes of Indian gaming, an "Indian tribe" as an organized group that "is recognized as eligible by the Secretary [of the Interior] for the special programs and services provided by the United States...." 25 U.S.C. 2703(5)(A). Gaming conducted by an entity other than an Indian tribe or an

entity licensed by the tribe is not Indian gaming under IGRA and may not, therefore, be conducted on Indian lands.

4. The circumstances of the violations are:

A. The Tribe has engaged in gaming under the Indian Gaming Regulatory Act (IGRA or the Act) on tribal lands located in Iowa pursuant to the Tribe's Gaming Ordinance first approved in 1995 (Exhibit 1).
B. IGRA, NIGC's regulations, and the Tribe's gaming ordinance require that the Tribe have the sole proprietary interest in and the sole responsibility for the conduct of gaming on the Tribe's lands. 25 U.S.C. 2710(b)(2)(A); 25 C.F.R. §522.4(b)(1); Gaming Ordinance, Section 1.04.
C. IGRA and NIGC's regulations require that tribes operate their gaming facilities in a manner that adequately protects public health and safety. 25 U.S.C. 2710(b)(2)(E); 25 C.F.R. §522.4(b)(7). The Tribe's gaming ordinance provides that "maintenance of any gaming facility, as well as the operation of any gaming, by the Tribe shall be conducted in a manner which adequately protects...the public health and safety." Gaming Ordinance, Section 1.06.
D. NIGC's regulations require that authorized tribal officials be allowed to enter and inspect gaming facilities. 25 C.F.R. §573.6(a)(9).
E. On March 26, 2003, a council appointed by the hereditary chief physically assumed control over the Tribe's gaming operation and excluded from the facility Respondent Walker and persons acting under the direction of Mr. Walker and the elected Tribal Council (Exhibit 2).
F. On April 1, 2003, Acting Assistant Secretary for Indian Affairs, Aurene Martin, stated that the U.S. Department of the Interior recognizes the elected Tribal Council, led by Alex Walker, Jr., as the Tribe's leadership (Exhibit 3). Acting Assistant Secretary Martin speaks for the Secretary of the Interior on matters involving tribal governments.
G. The tribal government recognized by the Secretary of the Interior is not in control of the Tribe's gaming operation and remains excluded from the premises by the occupying group (Exhibit 2).

5. The gaming at Meskawaki is not being conducted by the Tribe--that is, by the governmental authority recognized by the Secretary of the Interior--or by an entity licensed by the tribal government pursuant to the NIGC's regulations. As a result, the following violations are occurring:

A. The federally recognized tribal government is being deprived of the sole proprietary interest in and responsibility for the gaming operation;
B. The forcible occupation of the gaming operation and tribal offices by Respondent Bear's appointees leaves the federally recognized government unable to regain control without the use of force, thereby creating a threat to public safety, thus violating IGRA, NIGC's regulations, and the Tribe's ordinance which require that a gaming

facility be operated in a manner that does not threaten public safety; and

C. The forcible occupation of the gaming operation by Respondent Bear's appointees makes impossible the entrance and inspection of the operation by a tribal official who is authorized by the federally recognized tribal government.

6. To correct the violations, Respondents shall:

No later than 5:00 p.m., May 2, 2003, allow the federally recognized tribal government access to and control of the Tribe's gaming facility.

7. Appeal. a. 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.

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.

9. 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: April 30, 2003.

Philip N. Hogen
Chairman
National Indian Gaming Commission