



August 29, 2007

VIA FACSIMILE & REGULAR MAIL

Mr. Jim Gray
Principal Chief
Osage Nation
P.O. Box 779
Pawsuska, OK
Fax: (918) 287-2257

Lawrence A. Supernaw
Chairman
Osage Tribal Gaming Commission
P.O. Box 779
Pawhuska, OK 74056
Fax: (918) 287-2257

Re: Agreements between the Osage Nation and K&D Gaming, LLC

Dear Chief Gray and Mr. Supernaw:

The National Indian Gaming Commission (NIGC) has been reviewing the Agreements and the relationship between the Osage Nation (Nation) and K&D Gaming (K&D) for a lengthy period of time. The agreements and the relationship between the Nation and K&D have been the subject of several Office of General Counsel (OGC) advisory legal opinion letters.

In addition, the relationship between the parties has been the subject of an investigation which sought to determine whether K&D had exerted management control over the Nation's gaming operations. Most recently, the NIGC Office of General Counsel concluded that the Development Agreement between the Nation and K&D evidenced K&D's proprietary interest in the Nation's gaming activity, contrary to IGRA, NIGC regulations, and the Tribe's gaming ordinance. *See* Letter from Jo-Ann Shyloski, Senior Attorney, to Chief Gray, Osage Tribe (October 5, 2006). The letter noted that the NIGC Office of General was not then prepared to issue an opinion on

whether the agreements constituted a management contract as the matter remained under review.

Previously, on June 23, 2006, the Nation informed the NIGC that it had suspended payment to K&D under the Development Agreement. Letter from Michael G. Rossetti, to Penny J. Coleman, NIGC Acting General Counsel (June 23, 2006). Furthermore, the Nation informed K&D that it would no longer require services under the Consulting Agreement, and thereby effectively terminated the relationship between the parties. *Id.* Thereafter, the NIGC was informed that K&D had served the Osage Nation with a Demand for Arbitration. *See* Letter from Michael Rossetti, Akin Gump Strauss Hauer & Feld LLP, to Penny Coleman, Acting General Counsel, NIGC, et al. (July 24, 2006). On June 4, 2007, the arbitrators issued an Interim Award of b4
in favor of K&D. *See* Letter from Eric Dillow, Senior Case Manager, American Arbitration Association, to John Tucker, Rhodes, Hieronymus, Jones, Tucker & Gable, et al. (June 4, 2007). The NIGC understands that this award will become a final award once the arbitration panel determines the amount of attorney fees due to K&D. Recently, the NIGC was informed that the parties have reached a tentative settlement in the matter which we understand incorporates the Interim Award.

The Nation has inquired with the Office of General Counsel regarding the consequences of its October 5, 2006, advisory opinion letter which concluded that the Development Agreement evidenced K&D's proprietary interest in the Nation's gaming activity. In light of the imminent settlement between the parties, the Vice-Chairman¹ has considered the sole proprietary interest violation and in exercising his discretion, has decided against issuing a Notice of Violation and has further directed the Enforcement Division to discontinue its investigation into violations under the K&D contract. In making this decision, the Vice-Chairman also considered the Commission's intent to issue guidance in the future which clarifies IGRA's requirement that tribes retain the sole proprietary interest in their gaming activity and the effective use of the Enforcement Division's limited resources. While the Vice-Chairman remains concerned that the Development Agreement and the actions in accordance with such agreement violated the Nation's sole proprietary interest in its gaming activity, given the settlement which significantly reduces K&D's level of compensation, the relationship between the parties, and the NIGC's limited resources, he has decided that discontinuing the investigation is the best course of action.

¹ The Chairman is recused from this matter. IGRA and NIGC regulations permit the Vice-Chairman to act in the Chairman's stead. 25 U.S.C. 2704(e) and 25 C.F.R. 502.1.

Should you have any questions or concerns regarding this letter, please contact Staff Attorney Esther Dittler at (202) 632-7003.

Sincerely,

A handwritten signature in cursive script that reads "Penny J. Coleman".

Penny J. Coleman
Acting General Counsel

cc: Vanya Hogen
K&D Gaming, LLC
Elizabeth Homer
Michael Rossetti
Todd Araujo