United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

TAKE PRIDE IN AMERICA

APR 24 1995

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Honorable Ron D. Shutiva
Governor
Pueblo of Acoma
P.O. Box 309
Acoma, New Mexico 87034

Dear Governor Shutiva:

On March 20, 1995, we received the Compact between the Pueblo of Acoma (Tribe) and the State of New Mexico (State), dated February 15, 1995. We have completed our review of this Compact and conclude that it does not violate the Indian Gaming Regulatory Act of 1988 (IGRA), Federal law, or our trust responsibility. Therefore, pursuant to my delegated authority and Section 11 of the IGRA, we approve the Compact. The Compact shall take effect when the notice of our approval, pursuant to Section 11 (d)(3)(B) of IGRA, 25 U.S.C. § 2710(d)(3)(B), is published in the FEDERAL REGISTER.

Submitted as part of the Compact is the Revenue Sharing Agreement which provides that the Tribe agrees to pay the State for the right to participate in a tribal monopoly on commercial gaming. We believe the money paid by the Tribe to the State constitutes an operating cost and as such would be paid from "gross revenues" and not "net revenues." While IGRA restricts Indian tribes' use of net revenues from tribal gaming,[1] it does not restrict Indian tribes' use of gross revenues from gaming if those revenues are used for operating costs.[2] Because IGRA does not prohibit or restrict use of gross revenues for operating expenses, we believe that the Revenue Sharing Agreement conforms with IGRA.

In the past, we have concluded that tribal payments to states for non-regulatory purposes violated IGRA. Our conclusion that the Tribe's payments to the State do not violate IGRA is distinguishable from these opinions. Unlike other payment agreements we have considered, in this case the federally recognized Indian tribes in New Mexico are purchasing a valuable right from the State.[3] As discussed above, the tribal payment for this right is an operating cost which does not violate IGRA.

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[1] 25 U.S.C. § 2710(b)(2)(B) provides that net revenues from tribal gaming are not to be used for purposes other than (i) to fund tribal government operations or programs:(ii) to provide for the general welfare of the Indian tribe and its members; (iii) to promote tribal economic development; (iv) to donate to charitable organizations; or (v) to help fund operations of local government agencies.

[2] IGRA defines net revenues as "gross revenues of an Indian gaming activity <u>less amounts paid out as, or paid for</u>, prizes and <u>total operating expenses</u>, excluding management fees." 25 U.S.C. § 2703(9).

[3] The State has agreed that it will not allow commercial operation of any other gaming entity as long as the Tribes continue to make the agreed payments.

Even if the money the Tribe plans to pay the State were considered net revenues from tribal gaming, the payment could be considered net revenues used to promote tribal economic development, a use that is clearly sanctioned by IGRA, 25 U.S.C. § 2710(b)(2)(B)(iii), because, as discussed above, the Tribe is exchanging the revenues for an exclusive right to commercial operation of gaming within the State.

Notwithstanding our approval of the Compact, Section 11(d)(1) of the IGRA, 25 U.S.C. § 2710(d)(1), requires that tribal gaming ordinances be approved by the Chairman of the National Indian Gaming Commission (NIGC). Regulations governing approval of Class II and Class III gaming ordinances are found in 25 C.F.R. §§ 501.1-577.15 (1994). Pursuant to the IGRA and the regulations, even previously existing gaming ordinances must be submitted to the NIGC for approval when requested by the Chairman. The Tribe may want to contact the NIGC at (202) 632-7003 for further information to determine when and how to submit the ordinance for approval by the NIGC.

Furthermore, we note that the Compact includes a reference to the sale of alcoholic beverages. The possession or sale of liquor in Indian Country is a violation of Federal criminal laws (18 U.S.C. § 1154) unless it is done in accordance with an ordinance certified by the Secretary and published in the FEDERAL REGISTER (18 U.S.C. § 1161). The Tribe does not have a certified liquor ordinance. Secretarial certification of such an ordinance must be obtained and published prior to the selling of liquor in Indian Country. The Tribe may want to contact the Albuquerque Area Office for assistance and information on the requirements for certification of the ordinance.

In addition, if the Tribe enters into a management contract for the operation and management of the Tribe's gaming facility, the contract must likewise be submitted to, and approved by the Chairman of the NIGC pursuant to Section 11(d)(9) of the IGRA, 25 U.S.C. § 2710(d)(9) and the NIGC's regulations governing management contracts. The Tribe may want to contact the NIGC for information on submitting the ordinance and the management contract for approval by the NIGC.

We wish the Tribe and the State success in their economic venture.

Sincerely,

/S/ Ada E. Deer

Ada E. Deer
Assistant Secretary - Indian Affairs

Enclosures

Identical Letter Sent to: Honorable Gary Johnson
Governor of New Mexico
State Capitol
Santa Fe, New Mexico 87501

cc: Albuquerque Area Director w/copy of approved Compact
Supt., Southern Pueblos Agency w/copy of approved Compact
National Indian Gaming Commission w/copy of approved Compact
Southwest Regional Field Solicitor w/copy of approved Compact
New Mexico United States Attorney w/copy of approved Compact