August 10, 2007

Chairman John C. Houle
Chippewa Cree Tribe
RR1 Box 544
Box Elder, MT 59521
Fax: (406) 395-4497

Via Facsimile and First Class Mail

Re: Player Pool Blackjack at Northern Winz Casino

Dear Chairman Houle:

As you know, the regional office of the National Indian Gaming Commission (NIGC) contacted the management of Northern Winz Casino regarding its new player pool blackjack game. On June 22, 2007, casino management provided rules and procedures for Northern Winz 21. Thank you for this information and for the cooperation we received from the casino management and staff.

The information was referred to the Office of General Counsel for a classification opinion on the card game. Based upon the information management provided, the Northern Winz 21 game conforms in all respects to the standard rules of a banked blackjack card game. The Montana Constitution and several state statutes specifically prohibit the game of blackjack. Therefore, although I appreciate the difficulty this may cause, Northern Winz 21 is not an authorized game under the Indian Gaming Regulatory Act (IGRA), despite its player-pooled format.

IGRA prohibits Northern Winz 21 (i.e. player-pooled blackjack) for two reasons. First, the Constitution and laws of Montana prohibit blackjack. Second, Northern Winz 21 is a banked game in which the player pool serves as a generic bank. The banked nature of this game makes it Class III. Class III games require a compact between the Tribe and the state, and may only include those games which are legal in the state.

In Montana, "[a]ll forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of legislature or by the people through initiative or referendum." Mont. Const. art. III, § 9. This mandate is reiterated in state law: "Except as specifically authorized by statute, all forms of public gambling, lotteries, and gift enterprises are prohibited." Mont. Code Anno. § 23-5-151 (2005). The state does allow some card games, but blackjack is not among them:

> (1) The card games authorized by this part are and are limited to the card games known as bridge, cribbage, hearts, panguingue, pitch, poker, rummy, solo, and whist. (2) A person may conduct or participate in a live card game . . . only if it is specifically authorized by this part . . ..

Mont. Code Anno. § 23-5-311 (2005). Further, in Palmer v. State, the Supreme Court of Montana specifically held that blackjack was not included among the card games authorized by statute and was, therefore, illegal. 191 Mont. 534 (1981). Subsequent to the Palmer case, the state legislature explicitly prohibited the game by statute:

> Illegal gambling enterprises . . . includes . . . a card game, by whatever name known, involving a bank or fund from which participant may win money . . . and that receives money . . . lost by the participant and includes the card games of blackjack . . ..

Mont. Code Anno. § 23-5-112(17)(a) (2005).

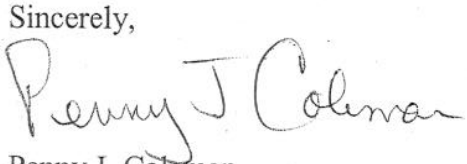
Further, Northern Winz 21 is, by definition, banked, despite its player-pooled format. Players play against a dealer, which plays a hand, takes on all players, collects from all losers, pays all winners, and can itself win. 25 C.F.R. § 502.11. That the games are not banked by the house or by any particular player does not make them banking games any less. NIGC *Bulletin 95*-1 explained:

> In player-banked blackjack, the players are not playing against each other. They are playing against a banker who happens to be another player [i.e. the dealer]. The [dealer] has a percentage or odds advantage over all other players. This advantage is a fundamental characteristic of a banking game.

See NIGC Bulletin 95-1 (April 10, 1995).

I urge you in the strongest possible terms to stop offering these games for play. If you do not, the NIGC Chairman may issue a notice of violation, levy fines of up to $25,000 per day or even close the casino. Please let the NIGC Region IV Director, John Peterson, know how you intend to proceed by the close of business on August 17, 2007. You may reach him at 651-290-3017, by fax at 651-290-4006, or by email at johne_peterson@nigc.gov.

Sincerely,



Penny J. Coleman
General Counsel (Acting)

cc: Nathaniel St. Pierre, Chairman Chippewa Cree Tribal Gaming Commission
Attorney General, State of Montana