NATIONAL
INDIAN
GAMING
COMMISSION

MAR 28 1996

Philip Demarest, President
The desMarets Corporation
P.O. Box 36273
Denver, Colorado 80236

Dear Mr. Demarest:

This is in response to your letter of August 28, 1995, requesting the National Indian Gaming Commission (NIGC) to review the card game, Jack Attack, and to determine its classification under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et. seq. (1988).

Pursuant to the IGRA, class II gaming includes non-banking card games if such card games:

> (I) are explicitly authorized by the laws of the State, or
>
> (II) are not explicitly prohibited by the laws of the State, and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

25 U.S.C. § 2703(7)(A)(ii). This opinion is confined to determining whether Jack Attack meets the non-banking requirement for class II status.

Jack Attack is played like blackjack but in a non-banking format. Each player pays an ante to the house and places a wager which is placed in the "pot". All players at the table must place the same posted wager. Each player is initially dealt two cards. The objective is to get blackjack (an ace and a card valued at ten (10)) or to have the highest point total not exceeding twenty-one (21). The player with blackjack or, if no one has blackjack, with the highest point total not exceeding twenty-one wins the pot. If two or more players have blackjack or the highest point total, the game is a "tie" or a "push", and no one wins the pot. All players who did not tie must place new wagers and pay an ante and those who did tie only pay an ante. The wagers from the tie game roll over to the new game and become

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part of the pot. Thus, there can only be one winner in the game.

The betting format and how a player wins differentiates Jack Attack from traditional blackjack. In Jack Attack there is no bank or banker taking on all players, collecting all losses, and paying all winners. Players play against each other in Jack Attack. In blackjack, "[e]ach player bets *only* with the dealer" or the house which is the banker. Richard L. Frey, *According to Hoyle* 205-206 (1970). Thus, a player's cards must beat only the dealer's cards in traditional blackjack. In Jack Attack, however, a player must beat all of the other players' cards in order to win as in poker. The amount a player can win is also different. In blackjack, a player's potential winnings is based on the amount he or she wagers while in Jack Attack, a player's winnings is based on the number of players in the game. These variations in the game are sufficient to conclude Jack Attack is not traditional blackjack by another name.

The IGRA excludes from class II gaming "any banking card games, including baccarat, chemin de fer, or blackjack (21)..." 25 U.S.C.A. § 2703(7)(B)(i). Although blackjack is specifically excluded from class II gaming, the wording of this provision seemingly prohibits only banking games. Thus, blackjack may be played as a class II game if played in a non-banking format. The legislative history of the IGRA supports this interpretation. The Senate Report on the IGRA describes the distinction between banking and non-banking card games as follows:

> Sections (4)(8)(A)(ii) provides that certain card games are regulated as class II games, with the rest being set apart and defined as class III games under section 4(9) and regulated pursuant to section 11(d). The distinction is between those games where players play against each other rather that the house and those games where players play against the house and the house acts as banker...

S. Rep. No. 100-446, 100th Cong., 2nd Sess. 9-10 (1988).

Because the players play against each other rather than against the house or bank and the house has no stake in the outcome of the game, Jack Attack is not a banking game. We therefore conclude that Jack Attack meets the non-banking requirement for class II status.

As stated above, in order to qualify as a class II game, Jack Attack must also: (1) be explicitly authorized by the laws of the state or (2) not be explicitly prohibited, be played at any location in the state, and conform to any state law or regulation

limiting the hours or periods of operation of the card games or wagers or pot sizes.

If you have any questions, please call this office at 202-632-7003.

Sincerely,

Michael D. Cox

Michael D. Cox
General Counsel