



MAR 12 2009

Dennis Fitzpatrick, CEO
Siyeh Corporation
P.O. Box 1989
Browning, MT 59417
Fax: (406) 338-5393

Via Facsimile and First Class Mail

Re: Jack Attack at Glacier Peaks Casino

Dear Mr. Fitzpatrick:

I am responding to your June 21, 2007 notification that the Glacier Peaks Casino intends to offer "Jack Attack." Thank you for the detailed information you have provided. I have reviewed the game description, the March 28, 1996 NIGC decision on this game as it is played in Colorado, and relevant Montana statutes and regulations. In several respects I agree with your analysis: the game is not banked, and it is not blackjack. However, it is also my considered opinion that Jack Attack in Montana does not meet the elements of IGRA's definition of a Class II card game. While the game is not banked, it is explicitly prohibited by the laws of Montana. It is my opinion, therefore, that Jack Attack is not Class II in Montana.

For Jack Attack to be played as a Class II game in Montana, it must meet the definition of a Class II game within the Indian Gaming Regulatory Act (IGRA). Under IGRA, a Class II card game must meet two criteria: first, it may not be banked, 25 U.S.C. 2703(7)(B)); and second, it must be "explicitly authorized by the laws of the State, or . . . not explicitly prohibited by the laws of the State and [be] played at any location in the State" 25 U.S.C. § 2703(7)(A)(ii).

On March 28, 1996, the NIGC opined that an identical version of Jack Attack was a Class II game as it was played in Colorado. That opinion, however, addressed only the first part of the Class II game analysis by concluding that Jack Attack is not a banked game. In this case its classification depends upon the latter part of the definition, 2703(7)(A)(ii), i.e. whether Jack Attack is permitted or

prohibited in Montana. Depending on the laws of the state, a game may be Class II in one state and not in another. Therefore, although this game has the same title and description as one we opined was Class II in Colorado, the laws of Montana prohibit Jack Attack.

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 prohibition is reiterated in state statute: “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 legislature has authorized several card games, but Jack Attack is not among them: “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.” Mont. Code Anno. § 23-5-311 (2005). The legislature then reiterated that if the game is not specifically allowed, it is prohibited, “A person may conduct or participate in a live card game . . . only if it is specifically authorized by this part” *Id.*

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). In other words, the court in *Palmer* did not declare the game illegal because it was blackjack but because it was not “bridge, cribbage, hearts, panguingue, pitch, poker, rummy, solo, [or] whist.” 191 Mont. 534 (1981), *citing* Mont. Code Anno. § 23-5-311 (2005). In short, because Jack Attack is specifically prohibited in Montana, it is not a Class II game there.

Although you have not suggested the possibility that Jack Attack is a version of any of the specifically authorized games, I believe it bears enough similarity to poker to warrant discussion. It is my opinion, however, that Jack Attack is not poker, and thus the discussion here does not alter my opinion.

According to the game description you submitted, Jack Attack is played as follows:

- The players put up an ante that the dealer collects for the casino.
- The players then make bets of a posted size with all players wagering the same amount.

- The player bets are pooled into a common pot, which will be paid to the winner of the hand.
- There is no dealer hand.
- Each player is dealt two initial cards.
- The highest score is 21 (Ace and Jack is the highest hand possible).
- There is no splitting pairs, doubling down or insurance.
- Players may hit or stand as they wish.
- Any score over 21 is a “bust.” The bet for that hand is collected and goes into the pot. The player is out for that hand.
- Suits do not count in scoring hands.
- Ace counts as 1 or 11.
- The player with the highest hand will win the pot.
- There are four possible outcomes:
 - To have the highest score and be awarded the pot;
 - To tie scores with another player (a tie will roll the pot over to the next hand);
 - To bust;
 - To stand on a hand and be beaten by another player with a higher hand score.

In contrast, Montana Administrative Rule 23.16.1201(15) defines poker generally:

“Poker” means a card game played by at least two players who bet against each other and settle with each other and not against the house. Poker is dealt by one dealer on a card table. A player bets on the card (hand) the player holds. There may be an initial ante round and/or blind bet by the players. After the players receive their starting cards, there are one or more betting rounds. After all the dealing of cards and betting has occurred for a pot and there are two or more players still in contention, there is a showdown based on a maximum of five cards. The object of the game is for a player to win the pot either by making a bet no other player is willing to match or by having the best hand as described in these rules.

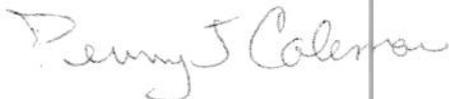
Certainly, Jack Attack shares some of the qualities of poker in that players are playing against each other rather than the house. In the objective and betting, however, Jack Attack is very different from poker. In poker, betting plays a key

role in the game: players win either because they had the best hand overall and stayed in the game, or because they bet in such a way that caused those with better hands to drop out. In Jack Attack, the player who is dealt the best hand always wins and the bet has no role in determining the outcome of the game. Furthermore, there are two other important differences between Jack Attack and poker. Poker hands are customarily reduced to five cards, and they follow a standard hierarchy of hands (i.e. royal flush, straight flush, four of a kind, full house, flush, straight, etc.). Albert H. Morehead, Richard L. Frey, and Geoffrey Mott-Smith, *The New Complete Hoyle, revised 5, 6* (Doubleday 1991) (1947). In contrast, Jack Attack can be played with as few as two cards per hand and the winner is determined not on a hierarchy of hands but on simple addition. For further clarification on the rules of poker, Montana Administrative Rule 23.16.1201(2) refers to the Montana Poker Rulebook (1990 edition) and Scarne's Encyclopedia of Card Games, copyright 1983, by John Scarne, pages 18-276. Lacking the betting, bluffing, and ranking of hands that are the hallmarks of poker, Jack Attack is not poker.

Because Jack Attack does not fall within any of the permissible categories of card games, and because Montana law explicitly prohibits all other card games played for money, Jack Attack cannot be classified as a Class II game within the definition of IGRA, despite its non-banked nature.

Therefore, it is my opinion that under the description provided, Jack Attack is not a Class II game within the state of Montana, and without legalization by the State, its play is a violation of IGRA. The NIGC Chairman may levy fines of up to \$25,000 per day or even close a casino for games played in violation of IGRA. If Glacier Peaks already offers this game for play, I urge you to stop. Please send a letter to the NIGC Region IV Director, John Guerber, letting him know how you intend to proceed by the close of business on March 25, 2008. You may reach him at 651-290-4004, by fax at 651-290-4006, or 190 East 5th Street, Suite 170, St. Paul, MN 55101.

Sincerely,



Penny J. Coleman
General Counsel (Acting)

cc: Attorney General, State of Montana
John Guerber, NIGC Region IV Director of Enforcement