Class III

March 13, 2001

Joseph M. Speck
Nic-A-Bob Productions
5025 Southern Eastern Avenue, #439
Las Vegas, NV 89119

Re: WIN Sports Betting Game

Dear Mr. Speck:

This letter responds to your inquiry as to whether the National Indian Gaming Commission regards the game "WIN" as a Class II or Class III game under the Indian Gaming Regulatory Act (IGRA) for play in Arizona and California. We reviewed the information you provided and conclude that the game, as discussed below, does not meet any of the Class II gaming definitions, and consequently is a Class III game. Furthermore, because sports betting is unlawful in Arizona and California, (as well as most other states), and because the use of the Internet is not authorized by IGRA, tribes in Arizona and California may not lawfully operate WIN pursuant to the IGRA.

As described in the materials you submitted, WIN is a sports betting game. The game may be played via the Internet in the future, but is currently available for play only in a casino sports book facility. In playing the game, players compete against other players in different slots. A slot consists of a certain set number of players and has a wager limit. For instance, Slot-A contains 10 players, Slot-B contains 20 players, etc. The maximum wager for Slot -A is $10.00, for Slot-B $20.00, and so on. When a slot reaches capacity, players who choose that slot are offered the next available slot. Players may wager on all manner of sporting events, including NFL Football, Baseball, Golf and the Olympics.

The Indian Gaming Regulatory Act (IGRA) governs gambling on Indian lands. The IGRA identifies certain specific forms of gambling as Class II, and therefore subject to regulation by tribes and the NIGC. Those forms of gambling are as follows:

(i) The game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) –

(I) Which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) In which the holder of the card governs such numbers or

designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) In which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and

(ii) Card games that –

(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 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).

All other forms of gambling (except Class I gaming which consists of social games for prizes of minimal value and gaming by individuals in connection with tribal ceremonies, *See* 25 U.S.C. § 2703(6) are considered Class III games and may be lawfully played only pursuant to a Tribal-State compact. 25 U.S.C. §§ 2703(8) and 2710(d).

Because sports betting does not fit into any of the specifically defined categories of Class II gaming set forth above, it is a Class III form of gaming. Therefore, it may be played only pursuant to a Tribal-State compact.

Moreover, specific forms of gaming, including sports betting, are subject to compact only if located in a state that permits such gaming for any purpose by any person, organization or entity. 25 U.S.C. § 2710(d)(1)(B). If sports betting is unlawful in a state, it is unlawful for tribes in that state to engage in it. Sports betting is unlawful in most states, including Arizona and California. Statutes in both Arizona and California specifically prohibit this form of gambling. *See* ARIZ. REV. STAT. § 13-3305(1989); CA. PENAL CODE § 337a(1978).

In addition to state statutes prohibiting sports betting, federal law makes it a crime to engage in the interstate transmission of information assisting in the placing of bets on a sporting event unless the transmission is between states or foreign countries where

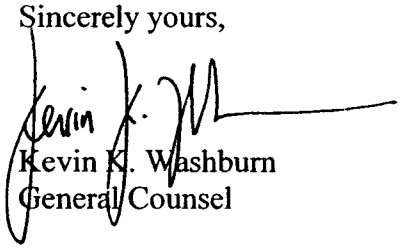
betting on that sporting event is lawful. 18 U.S.C. § 1084(2000). Those states that we are aware sports betting is lawful are Delaware, Montana, Nevada and Oregon. *See* DEL. CODE ANN. tit. 28 § 1101(1953); OR. REV. STAT. § 1462.020(1999); MONT. CODE ANN. § 23-5-405(1999); NEV. REV. STAT.§ 463.010(1999).

Furthermore, the IGRA does not authorize off-reservation gaming as contemplated in your submission. The use of the Internet, even though the computer server may be located on Indian lands, would constitute off-reservation gaming to the extent any of the players were located off of Indian lands. The Chairman of the NIGC stated this position in the enclosed letter dated June 22, 1999, to the Chairman of the Coeur d'Alene Tribe of Idaho. Moreover, the United States asserted this position as *amicus curiae* in related litigation in the United States Court of Appeals for the Ninth Circuit. A decision in that case is pending. Finally, WIN accessed via the Internet may run afoul of other laws outside the area of NIGC's expertise.

Both because sports betting is unlawful in Arizona and California, and because the use of the Internet for gambling purposes is not authorized by IGRA, we conclude that tribes in Arizona and California may not lawfully operate WIN. Furthermore, tribes in any state where sports betting is illegal may not operate WIN.

If you have any questions please contact Staff Attorney Maria Getoff at (202) 632-7003.

Sincerely yours,



Kevin K. Washburn
General Counsel

Enclosure

NATIONAL
INDIAN
GAMING
COMMISSION

JUN 22 1999

Ernest L. Stensgar, Chairman
Coeur d'Alene Tribe
Route 1
Plummer, Idaho 83851

Re: National Indian Lottery

Dear Chairman Stensgar:

The Coeur d'Alene Tribe (Tribe) is presently involved in litigation in the 9th Circuit Court of Appeals with respect to whether the National Indian Lottery (NIL), an internet gambling enterprise of the Tribe's, is legal. It has come to our attention that, in the course of this litigation, the Tribe has argued that the National Indian Gaming Commission (NIGC), by approval of the Tribe's management contract and a subsequent amendment, implicitly authorized the off-reservation features of the NIL. It is the view of the NIGC that the Indian Gaming Regulatory Act (IGRA) does not authorize off-reservation gaming and, moreover, that the NIGC did not authorize such gaming when it approved the Tribe's management contract and amendment.

In a press release issued in March of 1995, less than two months after our approval of the management contract, we stated:

> The National Indian Gaming Commission did not approve a nationwide Indian lottery. The Commission did approve a management contract between the Coeur d'Alene Indian Tribe and Unistar. The Tribe is well aware that there may be legal obstacles to its proposed lottery and that it must deal with other tribes and states on an individual basis."

Accordingly, we did not intend by our approval of the contract to expressly or implicitly state that the off-reservation gambling contemplated by the NIL was authorized by IGRA or legal under other applicable federal or state laws. The NIGC's review of the management contract simply found that the contract complied with the management contract requirements of the IGRA and NIGC regulations.

It is the position of the NIGC that the tribal gaming actions of the NIL to the extent they involve off reservation gaming are not authorized by IGRA. Further, such actions may be subject to other federal or state laws.

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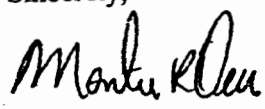
Finally, we concur in the opinion of the United States as more fully articulated in its amicus curiae brief filed today in the 9th Circuit.

Sincerely,



Montie R. Deer
Chairman