

NATIONAL INDIAN GAMING COMMISSION

In the Matter of

Sac and Fox Tribe of the Mississippi in Iowa

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NOV/TCO CO-03-02

Docket No. NIGC 2003-1

September 10, 2003

DECISION AND ORDER

Appeal to the National Indian Gaming Commission ("NIGC" or "Commission") from a Temporary Closure Order ("TCO"), issued by the NIGC Chairman ("Chairman") and directed at the Meskwaki Casino Bingo Hotel ("Casino"), owned and operated by the Sac and Fox Tribe of the Mississippi in Iowa ("Tribe"), a federally recognized Indian Tribe with tribal headquarters in Tama, Iowa.

Appearances:

Cynthia Shaw, Esq., and John Hay, Esq., for the Chairman, NIGC
Christopher Karns, Esq., for the Elected Walker Council ("Walker Council")

Presiding Official:

Andrew Pearlstein, Office of Hearings and Appeals, U.S. Department of the Interior

ORDER

After careful and complete review of the agency record (consisting of 25 documents), pleadings filed by the Walker Council and the Chairman, the Chairman's Decision Upon Expedited Review, the Presiding Official's Recommended Decision, and the July 22, 2003 letter from Steven Olson ("Olson letter"), attorney for the Bear Faction to the Presiding Official ("PO"), with attached July 16, 2003, letter from the Bear Faction to Alex Walker, Jr. ("Bear letter"), the Commission finds that:

1. The Chairman bears the burden of proof in administrative appeals of enforcement actions. The proper standard of review is a preponderance of the evidence.
2. The Olson letter and the Bear letter constituted an improper ex parte communication.

3. The improper ex parte communication did not so taint the decision-making process so as to make the ultimate decision of the agency unfair.
4. The Commission rejects in its entirety the PO's Recommended Decision because the PO exceeded the scope of review when he addressed issues not raised on appeal. The appropriateness of the sanction imposed by the Chairman was the sole issue raised by the parties for review on appeal.
5. To determine whether closure of the Casino is the appropriate sanction, or whether a civil fine assessment is appropriate, we must first decide who is the recognized tribal leadership, legally authorized to govern the Tribe.
6. We defer to the Secretary of the Interior's determination as to the recognized tribal leadership. The Secretary recognizes the Walker Council. The Walker Council is not currently in control of the tribal government or the Tribe's gaming operation.
7. Because the federally recognized tribal leadership is not in control of either the tribal government or the Tribe's gaming operation, the gaming is, in effect, unregulated, and closure of the Casino is the only appropriate remedy.
8. We find that closure of the Casino is based on substantial, uncontested violations and is the only appropriate remedy, and, therefore, make permanent the Order of Temporary Closure.
9. Gaming may resume if, upon a petition by the Tribe to rescind the Closure Order, the Commission is convinced, following a visit by a designated NIGC employee(s), that the Tribe, acting through a duly elected, federally recognized Tribal Council, is in control of the Tribe and Casino, and that no violations of the IGRA, NIGC regulations or the Tribe's Gaming Ordinance exist.

PROCEDURAL AND FACTUAL BACKGROUND

The Sac & Fox Tribe of Mississippi in Iowa is a federally recognized Indian Tribe with headquarters in Tama, Iowa. The NIGC Chairman approved the Tribe's Gaming Ordinance on February 9, 1995. (AR#24). The Tribe then built and opened the Meskwaki Bingo Hotel and Casino.

The federally recognized governing body of the Tribe is a seven-member Tribal Council. Its elected Chairman is Alexander Walker, Jr., whose term began in November 1999 and runs through November 2003. In September 2002, members of the dissident faction, led by Homer Bear ("Bear Faction"), circulated and presented recall petitions seeking to remove Chairman Walker and the rest of his Council from their positions before expiration of their terms under the Tribe's Constitution. The Walker Council disputed the

