



SEP 7 2001

Mr. Thomas F. Fricke  
Attorney at Law  
4557 Laclede Avenue  
St. Louis, MO 63108

Dear Mr. Fricke:

This letter responds to your request to the National Indian Gaming Commission (NIGC) for review and approval of the amendment to the Kiowa Indian Tribe of Oklahoma's (Tribe) amendment to their Gaming Ordinance of 1995, pursuant to Resolution No. CY-2001-045, that was received by the NIGC on August 6, 2001.

The submission amends a gaming ordinance that the Chairman of the NIGC approved on August 25, 1995. We have reviewed this amendment. This letter constitutes approval of your submission under the Indian Gaming Regulatory Act (IGRA). It is important to note that the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA, over which the Tribe exercises jurisdiction.

Thank you for submitting this amendment for review. If you have any questions or require further assistance, please contact our office at (202) 632-7003.

Sincerely yours,

*15/ Montie R. Deer*

Montie R. Deer  
Chairman



AUG - 6 2001

RESOLUTION NO. CY -2001- 045

x.

## RESOLUTION

### RESOLUTION OF THE KIOWA BUSINESS COMMITTEE AMENDING THE GAMING ORDINANCE OF 1995 TO COMPLY WITH NATIONAL INDIAN GAMING COMMISSION BULLETIN NO. 99-3, AND FOR OTHER PURPOSES.

**WHEREAS,** the Kiowa Indian Tribe of Oklahoma (the “Tribe”) is a sovereign nation and from time immemorial has been a sovereign nation; and

**WHEREAS,** the Tribe is federally recognized by the Secretary of Interior of the United States as having powers of self government and as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, and its sovereignty is thereby recognized by the United States, all as evidenced by order of the Associate Commissioner of Indian Affairs, dated March 13, 1970, approving the constitution and bylaws of the Tribe; and

**WHEREAS,** pursuant to that constitution and bylaws, specifically Article V, section 2, the Kiowa People have delegated to their elected representatives, the Business Committee, the responsibility and authority to take all necessary action to (i) promulgate and enforce ordinances and codes to protect the general welfare of the Tribe and its members and (ii) develop, negotiate and approve, economic, industrial and commercial enterprises on Tribal land; and

**WHEREAS,** by resolutions no. CY-95-39 and CY-95-40, both dated June 26, 1995, the Business Committee, acting pursuant to the aforesaid power, enacted a resolution to approve and adopt the Kiowa Indian Tribe of Oklahoma Gaming Ordinance of 1995 and the Kiowa Indian Tribe of Oklahoma Gaming Facility Bonding Ordinance of 1995 (together, the “Gaming Ordinance”) and to repeal all prior gaming ordinances; and

**WHEREAS,** by separate resolution, the Business Committee has repealed and revoked the amendment to the Gaming Ordinance set out in Resolution No. CY-2001-025; and

**WHEREAS,** as is required under federal law, the Gaming ordinance was subsequently approved by the Chairman of the National Indian Gaming Commission; and

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**WHEREAS,** the enactment of the Gaming Ordinance was pursuant to a requirement of the Indian Gaming Regulatory Act of 1988 and regulations of the National Indian Gaming Commission, including but not limited to those regulations set out in Title 25, Code of Federal Regulations, section 522.1 through 522.12 inclusive; and

**WHEREAS,** as stated in the Gaming Ordinance it is the declared policy of the Tribe that: (1) all gaming conducted on Tribal lands of the Tribe shall be regulated by the Kiowa Gaming Commission to protect the public health, welfare and morals of residents, employees and patrons from the adverse effects which may derive from unregulated gambling; (2) [it is the objective of the Tribe] to achieve and sustain the maximum Tribal revenue from gaming; and (3) the conduct of gaming activities provided for by this Ordinance on Tribal lands shall conform with the Indian Gaming Regulatory Act, 102 Statutes 2467, 25 United States Code, section 2701 et sequitur, and the regulations promulgated by the National Indian Gaming Commission; and

**WHEREAS,** the Business Committee acting as the elected representatives of the Kiowa People, now ratifies and confirms that declared policy; and

**WHEREAS,** the Gaming Ordinance provides that the Business Committee serve as the Tribal Gaming Commission; and

**WHEREAS,** the Tribe is now prohibited from the business of gaming by a closure order issued by the Chairman of the National Indian Gaming Commission on June 16, 2000; and

**WHEREAS,** by letter dated August 8, 2000, the National Indian Gaming Commission Chairman has advised the Tribe of his intent to assess against the Tribe a civil fine in the amount of \$100,000.00; and

**WHEREAS,** prior to June 16, 2000, the National Indian Gaming Commission had issued to the Tribe several notices of violation including but not limited to those dated July 8, 1999 for operation of allegedly illegal gaming equipment, January 19, 2000 for allegedly failing to submit to the NIGC several years worth of audits, annual fee payments and employee background investigation reports; and

**WHEREAS,** the Tribe has appealed the closure order, notice of violation and proposed civil fine assessment, to the Department of Interior, Office of Hearings and Appeals, and the Tribe's appeals are now pending; and



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**WHEREAS,** by counsel, on October 2, 2000, the Chairman of the National Indian Gaming Commission has informed the Tribe that, “the Chairman will not rescind the closure order until he is satisfied that the Kiowa Tribe can manage a gaming operation that fully complies with all federal requirements”; and

**WHEREAS,** the Business Committee finds that a strong, competent, independent and secure Gaming Commission is essential to assuring both the Tribe and the NIGC Chairman that the Tribe’s gaming operation will upon resumption and thereafter at all times comply with federal law; and

**WHEREAS,** in NIGC Bulletin No. 99-3, dated October 12, 1999, (“Independence of Tribal Gaming Commissions”) the NIGC has reiterated its strong recommendation concerning tribal gaming commissions including the recommendation that, “effective regulatory oversight requires a functional separation between the *operation* of Tribal gaming and the *regulation* of that Tribal gaming; and

**WHEREAS,** the Business Committee finds that presently, there is *no* separation of the operation of Tribal gaming in the Kiowa Tribe, from the regulation of that gaming, and further finds it to be consistent with and essential to the stated policy of the Tribe as set out above, to amend the Gaming Ordinance to provide for such a functional separation; and

**WHEREAS,** NIGC Bulletin No. 99-3 also reiterates the recommendation of the NIGC that, “a well-run tribal gaming commission, free to regulate without undue interference from tribal leadership, is the best vehicle for achieving this functional separation”; and

**WHEREAS,** the Business Committee finds that for this additional reason, it is essential to now amend the Gaming Ordinance to provide such a functional separation; and

**WHEREAS,** by NIGC Bulletin 99-3, the NIGC also recommends that, “a tribal government helps insure the independence of a tribal gaming commission by creating for it a permanent and stable source of funding and that the independence and integrity of the Tribal Gaming Commission is seriously threatened if the tribal council is able to withhold funding from it or if the level of funding is not sufficient for the Gaming Commission to perform its role”; and

**WHEREAS,** the Business Committee finds this to be a sound recommendation, consistent with the declared policies of the Tribe; and



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**WHEREAS,** NIGC Bulletin No. 99-3 further recommends that, “the length of term in office and assurance of an opportunity to perform the required duties are important to the independence of tribal gaming commissions and the term of office should be a fixed length and long enough to insure stability, with continuity fostered by staggering the terms of commission members thus avoiding wholesale changes in membership” and the Business Committee finds that as presently constituted the Gaming Commission does not provide for either sufficient terms, staggered terms or freedom from wholesale changes in the membership, and that reconstituting the Gaming Commission so as to provide for this stability is in the best interest of the Tribe and in accordance with the declared policy of the Tribe regarding gaming, as above stated; and

**WHEREAS,** NIGC Bulletin No. 99-3 also provides that, “removal should not be permitted for simple disagreement with tribal leadership over matters that involve a gaming commissioner’s exercise of discretion in the performance of duty” and the Business Committee finds that amending the Gaming Ordinance in accordance with the foregoing recommendation is in the best interest of the Tribe; and

**WHEREAS,** the Business Committee finds to be in the best interest of the Tribe and consistent with the Tribe’s public policy with respect to gaming, that the administration of the comprehensive scheme of regulation of gaming, as required under the IGRA, under the regulations of the NIGC and under the Gaming Ordinance, requires extensive specialized knowledge, familiarity with all of the applicable laws and regulations, and substantial time and attention; and

**WHEREAS,** notwithstanding that it is presently barred from gaming by order of the NIGC Chairman, the Tribe possesses valuable land under its jurisdiction that is ideally located to be developed as the site of a destination Indian gaming facility, and the Tribe has received serious inquiries from one or more businessmen who have expressed the desire to negotiate the investment of capital to develop that land for such a purpose; and

**WHEREAS,** the Business Committee finds that if so developed, a Tribal gaming operation, managed by a competent and professional management contractor approved by the National Indian Gaming Commission, could yield to the Tribe, economic benefits from gaming; and

**WHEREAS,** the Business Committee further finds that the Kiowa People will be better served to staff the Gaming Commission with members of the Tribe who are qualified by training or experience to manage and conduct the details of tribal gaming development and regulation; and



**WHEREAS,** for all of the above reasons, the Business Committee finds it to be in the best interest of the Kiowa People and consistent with the Tribe's declared policy with respect to gaming, to amend the Gaming Ordinance as hereinbelow provided,

**NOW THEREFORE BE IT AND IT HEREBY IS**

**RESOLVED,** that subsection 1.4 (33) (Definitions), section 3.1 (Tribal Gaming Commission), section 3.3 (Voting), section 3.4 (Appointment of Members) and section 3.5 (Appointment of Officers), (all) of the Gaming Ordinance as heretofore enacted and in force, are hereby amended to read as follows:

*Subsection 1.4 (33) Definitions*

- (33) "Tribal Court" means the court of Indian Offenses sitting in Anadarko, Oklahoma.

*Section 3.1 Tribal Gaming Commission*

- (a) Establishment of Tribal Gaming Commission: Sovereign Immunity

There is hereby established a Tribal Gaming Commission which shall be called the Kiowa Tribal Gaming Commission. The Kiowa Tribal Gaming Commission shall be a department, body corporate and politic of the Tribe, and shall as the department of the Tribe, enjoy and exercise the Tribe's sovereign powers and immunities, subject however to the restrictions upon delegated powers set out in the Tribal Constitution and in this Ordinance.

- (b) Membership

The Kiowa Tribal Gaming Commission shall be composed of four (4) members, they being the tribal chairman and three (3) other commissioners.

- (c) Appointment of Commissioners

The three (3) commissioners (other than the Tribal Chairman) shall be appointed by the Kiowa Business Committee, upon duly-enacted resolution of the Kiowa Business Committee, following a meeting duly called, at which it examines the appointee's eligibility and qualifications. The three commissioners (other than the Tribal Chairman) shall serve for terms of office of five (5) years and thereafter until their respective successors are duly appointed and confirmed. The

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tribal chairman shall be *ex officio* the chairman of the Kiowa Tribal Gaming Commission. With respect to the commissioners other than the Tribal Chairman, there shall be no limitation upon the successive terms that a commissioner may serve. The office of chairman of the Kiowa Tribal Gaming Commission shall be subject to such term limitations and recalls as may from time to time apply to the tribal chairman.

(d) Initial Appointment of Commissioners upon Amendment of the Tribal Gaming Commission

Upon the effective date of the ordinance hereby amending the Tribal Gaming Ordinance, the first appointments of commissioners shall not withstanding subsection 3.1 (c) of this Ordinance, be for terms as follows: one (1) commissioner as designated by the tribal chairman, for a term of approximately seven (7) years, to expire on May 31, 2008; the second commissioner as designated by the tribal chairman for a term of approximately six (6) years, to expire on May 31, 2007; and the third commissioner as designated by the tribal chairman, for a term of approximately five (5) years, to expire on May 31, 2006.

(e) Oath of Office

Each member of the Kiowa Tribal Gaming Commission shall prior to assuming the duties of her or his office, give an oath to be administered by the Chairman of the General Election Board of the Tribe, to uphold, support and defend the Constitution, Bylaws and ordinances of the Kiowa Indian Tribe of Oklahoma, the Indian Gaming Regulatory Act of 1988 and the regulations of the National Indian Gaming Commission duly promulgated thereunder, and to diligently and impartially discharge the duties of her or his office. The following form of oath shall be given:

I \_\_\_\_\_ do hereby solemnly affirm that I will support and defend the Constitution, Bylaws and ordinances of the Kiowa Indian Tribe of Oklahoma, the Indian Gaming Regulatory Act of 1988 and the regulations of the National Indian Gaming Commission duly promulgated thereunder, and will carry out faithfully and impartially the duties of my office to the best of my ability and will promote and protect the best interests of the Kiowa Indian Tribe in accordance with the tribal constitution and bylaws.

(f) Eligibility



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Only members of the Kiowa Indian Tribe of Oklahoma who have reached the age of thirty (30) years and who have either (a) earned a four year degree from an accredited United States college or university, or (b) within one hundred eighty days after assuming the duties of gaming commissioner, completed at least forty (40) hours of training in gaming regulation and management of the business and operation of gaming, under a formal training program (found by the Business Committee to be acceptable) shall be eligible to serve as members of the Kiowa Tribal Gaming Commission. Those persons who hold elected office of the Tribe or are otherwise employees of the Tribe, and also any member of the Tribe who has been recalled from elected office of the Tribe or previously removed for a good cause, from the Kiowa Tribal Gaming Commission or who are under Tribal law, ineligible to hold elected or appointed office, shall be ineligible to serve as commissioners. Any person whose parent, spouse, sibling or child is at any time employed by the Tribe as the Tribal Manager or Key Employee of a Tribal Gaming Operation, shall be ineligible to serve as a commissioner.

(g) Removal of Commissioners

The chairman of the Kiowa Tribal Gaming Commission, as an *ex officio* commissioner, and the three other commissioners shall be deemed removed from that office upon recall pursuant to the Tribal Constitution.

*Section 3.4 Meetings*

The Kiowa Tribal Gaming Commission shall hold regular meetings no less frequently than monthly, on the third Saturday of each month, at the Tribal complex in Carnegie, Oklahoma, at 1:00 P.M. local time, or on such other monthly dates and daily times as the Kiowa Tribal Gaming Commission shall by resolution, establish. Special meetings of the Kiowa Tribal Gaming Commission may be called by the Tribal Chairman or jointly by any two other commissioners. Written notice of all such meetings shall be given to each commissioner, in accordance with the laws of the Tribe.

*Section 3.5 Officers*

Officers of the Kiowa Tribal Gaming Commission shall be the Chairman, a Vice Chairman, and a Secretary. The Chairman of the Kiowa Tribal Gaming Commission shall preside at all meetings of the Tribal Gaming Commission. She or he shall have general supervision of the affairs of the Tribal Gaming Commission and shall perform all duties pertaining to the office of the Chairman. The Chairman shall designate the Vice Chairman and Secretary;



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provided however that no commissioner shall hold more than one of these offices. The Chairman shall upon approval of the Tribal Gaming Commission, be the official spokesperson for the Kiowa Tribal Gaming Commission and shall enjoy the standing authorization and instructed authority of the Business Committee, (hereby granted and hereby made revocable only by consent of the National Indian Gaming Commission) to present and discuss all tribal matters related to gaming, to and/or with members of the press and officials of the National Indian Gaming Commission in Washington, D.C., either personally, by Gaming Commission General Counsel, or by such other attorneys or representatives as the Chairman may from time to time designate by writing and entered into the minutes of the Kiowa Tribal Gaming Commission by resolution. The Chairman may delegate this role only to another commissioner, only revocably and only by written instrument. In the absence of the Chairman, the Vice Chairman will serve *pro tempore* as Chairman. The Secretary shall: (a) prepare and keep the minutes of all meetings of the Commission and all resolutions and regulations enacted by the Commission, in books provided for that purpose; (b) see that all notices required by this Ordinance to be given by the Kiowa Tribal Gaming Commission are duly given in accordance with the provisions of this Ordinance and as required by Tribal law; (c) be the custodian of the Commission's records; (d) sign with the Chairman or Vice Chairman, licenses and permits issued by the Commission, the issue of which shall have been authorized by resolution of the Tribal Gaming Commission; and (e) sign with the Chairman or Vice Chairman as attesting to the authenticity of their signatures and the due authorization of their acts, contracts and written agreements between the Tribe and others, related to gaming and entered into pursuant to the powers of the Tribal Gaming Commission granted to it under this Ordinance and to authorizing resolution of the Tribal Gaming Commission; and (f) keep in orderly archives, fully-executed counterparts of all written agreements concerning gaming to which the Tribe or any gaming special-purpose tribal corporation, is a party; keep backup copies of all of the foregoing types of records of the Kiowa Tribal Gaming Commission in a secure place separate from the original records, in order to protect the Gaming Commission, the Business Committee and the Tribe from the peril of loss or destruction of such records; (g) turn over to her or his successor, in good order, all records of the Kiowa Tribal Gaming Commission of which the Secretary is custodian; and (h) in general, perform all duties incident to the office of Secretary. The Tribal Gaming Commission may designate the Director of the Kiowa Tax Commission to serve as treasurer/controller of the Tribal Gaming Commission and of all revenue of the Tribe derived from gaming, provided however that the Tribal Gaming Commission may from time to time designate or redesignate another suitable employee of the Tribe or a commissioner to serve in such capacity. The person from time to time serving as the designated treasurer/controller shall be responsible for the collection of all Gaming funds due the Tribe, including but not limited to Development Advances, application fees, license fees, lease



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rentals, guaranteed monthly payments, contracted distributions of Revenue and the like (all) due to the Tribe from any Gaming Operation on Tribal Lands in accordance with the relevant provisions of this Ordinance. Payroll, expenses, disposition of all funds required by the Tribal Gaming Commission for its efficient operation and the discharge of all of its duties (including but not limited to adequate and reasonable reserves) shall be made as authorized by the Tribal Gaming Commission; provided however that the Tribal Gaming Commission may make reasonable delegation of its authority to employees of the Tribe, in respect of normal day-to-day expenditures. The commissioners shall receive per-diem payments for attending regular and special meetings of the Tribal Gaming Commission, in the amounts, hereby authorized, of \$100 per day or fraction thereof, provided however that in no event shall the attendance of one Tribal Gaming Commission meeting in a calendar day result in a person receiving more than one (1) per-diem rate for one (1) twenty-four (24) hour period.

**AND BE IT FURTHER,**

**RESOLVED,** that as herein amended, the Gaming Ordinance is hereby ratified and confirmed;

**AND BE IT FURTHER,**

**RESOLVED,** that to the extent that any ordinance, regulation, policy or practice of the Kiowa Tribe is inconsistent with the Resolution hereby enacted, such ordinance, regulation, policy and practice is hereby superceded and repealed;

**AND BE IT FURTHER,**

**RESOLVED,** that the Tribal Chairman and Tribal Secretary be and they hereby are authorized and directed to submit this resolution together with the Gaming Ordinance to the National Indian Gaming Commission for approval as required by and pursuant to Title 25, Code of Federal Regulations, sections 522.1 through 522.12, inclusive and to the Assistant Secretary For Indian Affairs or his authorized representative, pursuant to Article V, subsection 2 (g) of the Tribal Constitution;

**AND BE IT FURTHER,**

**RESOLVED,** that the foregoing become effective on the date on which it is approved by the NIGC Chairman pursuant to those regulations and by the Assistant Secretary For Indian Affairs or his authorized representative, pursuant to Article V, subsection 2 (g) of the Tribal Constitution(the "Effective Date");



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**AND BE IT FURTHER,**

**RESOLVED**, that promptly following the Effective Date the Tribal Business Committee be and it hereby is authorized and directed to make the appointments to the Gaming Commission pursuant to the Gaming Ordinance as hereby amended;

**AND BE IT FURTHER,**

**RESOLVED**, that if any part of these resolutions be found by a court of competent jurisdiction to be inconsistent with the Tribal constitution, then only that part found to be so inconsistent shall be void and of no effect (but only to the effect of such inconsistency), and all other parts of this resolution shall remain in full force and effect.

**CERTIFICATION**

The foregoing Resolution   CY  -2001-   045   was duly adopted at a Special Meeting of the Kiowa Business Committee held on   July 12  , 2001 at the Kiowa Tribal Complex, Carnegie, Oklahoma, by a majority vote of   4   for,   0   against,   0   abstentions, with quorum being present.

**ATTEST:**

**WITNESS:**

  
Emily Satepauhoodle, Secretary  
Kiowa Business Committee

  
Billy Evans Horse, Chairman  
Kiowa Business Committee

