



May 3, 2019

*Via First Class Mail and Email*

Mr. Kevin C. Quigley  
Foley & Quigley PLC  
213 East Fourth Street, Suite 404  
Saint Paul, Minnesota 55101  
kevinquigley@foleyquigleylaw.com

**Re: Review of Loan Transaction Documents for Pawnee Tribal Development Corporation**

Dear Mr. Quigley:

This letter responds to your February 25, 2019 request for the National Indian Gaming Commission's Office of General Counsel to review agreements between the Pawnee Tribal Development Corporation, the Pawnee Nation of Oklahoma, and First Secure Community Bank. Specifically, you have asked for my opinion whether the agreements are management contracts or collateral agreements requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act (IGRA). You also asked for my opinion whether the agreements violate IGRA's requirement that the Tribe have the sole proprietary interest in its gaming activity.

In my review, I considered the following submissions (collectively, "the Loan Transaction Documents") all of which are unexecuted, but were represented to be in substantially final form:

- the Loan Agreement ("Working draft #4 – 05/03/2019" in upper right corner);
- the Loan Agreement Exhibits ("working draft #3 – 12/20/2018" in upper right corner);
  - Exhibit A – Form of Promissory Note;
  - Exhibit B – Transactional Cost Payments;
  - Exhibit F – Compliance Certificate, with attachment;
    - Attachment A - Ratio Computation form;
- the Promissory Note (marked "Working draft #3 – 12/20/2018" in upper right corner);
- the Deposit Account Security, Pledge and Control Agreement ("working draft #3 – 12/20/2018" in upper right corner);
- the Security Agreement ("working draft #3 – 12/20/2018" in upper right corner);
- the Consent to Enter Trust Lands and Premises ("Working draft #3 – 12/20/2018" in upper right corner);
- the Environmental Certificate ("Working draft #3 – 12/20/2018" in upper right corner);
- and
- the [Tribal] Guaranty Agreement ("Working draft #3 – 12/20/2018" in upper right corner).

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The Loan Transaction Documents contain terms similar to other agreements the Office of General Counsel has already reviewed and analyzed, which are available on the NIGC's website. Applying the same analysis here, it is my opinion that the Loan Transaction Documents are not management contracts and do not require the approval of the NIGC Chair. It is also my opinion that they do not violate IGRA's sole proprietary interest requirement.

It is my understanding that the drafts are represented to be in substantially final form, and if the Loan Transaction Documents change in any material way prior to closing or are inconsistent with assumptions made herein, this opinion shall not apply. Further, this opinion is limited to the Loan Transaction Documents listed above. This opinion does not include or extend to any other agreements not submitted for review.

Please note that it is my intent that this letter be released to the public through the NIGC's website. If you have any objection to this disclosure, please provide a written statement explaining the grounds for the objection and highlighting the information that you believe should be withheld.<sup>1</sup> If you object on the grounds that the information qualifies as confidential commercial information subject to withholding under Exemption Four of the Freedom of Information Act (FOIA),<sup>2</sup> please be advised that the information was voluntarily submitted and, as such, that any withholding should be analyzed in accordance with the standard set forth in *Critical Mass Energy Project v. NRC*.<sup>3</sup> Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."<sup>4</sup> Please submit any written objection to FOIASubmitterReply@nigc.gov **within thirty (30) days of the date of this letter**. After this time elapses, the letter will be made public and objections will no longer be considered.<sup>5</sup> If you need any additional guidance regarding potential grounds for withholding, please see the United States Department of Justice's Guide to the Freedom of Information Act at <http://www.justice.gov/oip/dojguide-freedom-information-act-0>.

If you have any questions, please contact Melissa Thevenot at (202) 336-9103.

Sincerely,



Michael Hoenig  
General Counsel

cc: J. Scott Sypolt, [scott.sypolt@akerman.com](mailto:scott.sypolt@akerman.com)

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<sup>1</sup> 25 C.F.R. § 517.7(c).

<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> 975 F.2d 871 (D.C. Cir. 1992).

<sup>4</sup> 25 C.F.R. § 517.7(c).

<sup>5</sup> *Id.*