



December 21, 2017

Via First Class Mail

John R. Shotton
Tribal Chairman and President of OMDA
Otoe-Missouria Tribe of Indians
923 North Robinson, Suite 500
Oklahoma City, Oklahoma 73112

Re: Review of loan documents for the Otoe-Missouria Tribe of Indians

Dear Chairman Shotton:

This letter responds to your November 1, 2017 request for the National Indian Gaming Commission's (NIGC) Office of General Counsel to review loan agreements between the Otoe-Missouria Development Authority (Borrower) and the Bank of Oklahoma, N.A. (Administrative Agent). Specifically, you have asked for my opinion on whether the documents are management contracts requiring the NIGC Chair's approval under the Indian Gaming Regulatory Act. You also asked for my opinion whether the loan documents 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 Documents") all of which are unexecuted, but were represented to be in substantially final form:


- Loan Agreement among Otoe-Missouria Development Authority, the Lenders Hereto, and BOFK, NA dba Bank of Oklahoma, as Administrative Agent, C&W DRAFT12-7-2017, 6071385.7;
- Exhibits to Loan Agreement:
 - Exhibit A - Form of Term Note;
 - Exhibit B - Form of Revolving Note;
 - Exhibit C - Form of Water Treatment Advancing Term Note;
 - Exhibit D - Form of Water Park Advancing Term Note;
 - Exhibit F - Form of Security Agreement;
 - Exhibit G - Form of Non-Interference Agreement;
- Fee Letter dated October 5, 2017.

The Loan 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 Documents are not management contracts and do not require the approval of the NIGC Chair. It is also my opinion that the Loan Documents 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 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 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.¹ 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),² 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*.³ Any claim of confidentiality should also be supported with "a statement or certification by an officer or authorized representative of the submitter."⁴ 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.⁵ 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 <https://www.justice.gov/oip/doj-guide-freedom-information-act-0>.

If you have any questions, please contact NIGC Staff Attorney Tana Fitzpatrick at (202) 632-1009 or by email at tana_fitpatrick@nigc.gov.

Sincerely,

Michael Hoenig
General Counsel

cc: Rebecca Bartlett (rebecca.bartlett@omdevelopment.org)
Stuart D. Campbell (scampbell@dsla.com)

¹ 25 C.F.R. § 517.7(c).

² 5 U.S.C. § 552(b)(4).

³ 975 F.2d 871 (D.C. Cir. 1992).

⁴ 25 C.F.R. § 517(c).

⁵ *Id.*