



BULLETIN

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Subject: Independence of Tribal Gaming Commissions and their Functions

Introduction

Tribal governments of federally recognized Indian tribes possess the right to engage in gaming. The Indian Gaming Regulatory Act (IGRA) confirms this authority. Under the IGRA and National Indian Gaming Commission (NIGC) regulations, tribal governments are responsible for regulating gaming on their Indian lands. While tribal governments may game either through tribally run operations or management contractor run operations,¹ establishing a governmental regulatory framework for the conduct of the gaming is essential. Comprehensive regulation ensures the integrity of the games and protects the interests of the tribe.

This bulletin addresses the establishment and functions of tribal gaming commissions.² While neither IGRA nor NIGC regulations require tribes to establish tribal gaming commissions, tribes must undertake specific governmental responsibilities to game under IGRA. Tribal gaming commissions are an appropriate type of governmental agency to implement these regulatory responsibilities. Most governments that sanction gaming do so within a comprehensive regulatory environment, including actively regulating via independent gaming commissions. Aside from fulfilling the requirements of IGRA, tribal gaming commissions may perform many other regulatory duties.

This bulletin explains the benefits and attributes of independent gaming commissions; contains recommendations for establishing independent gaming commissions; details some of the regulatory responsibilities required by IGRA and NIGC regulations; and lists other regulatory responsibilities that gaming commissions may perform. Other requirements may be applicable to

¹ Tribes may also permit individually-owned gaming on their Indian lands.

² This bulletin updates the following bulletins: [Functions of a Tribal Gaming Commission](#) (No. 1994-3) and [Independence of Tribal Gaming Commissions](#) (No. 1999-3).

tribes who petition the NIGC for a certification of self-regulation or for those tribes who hold a certification of self-regulation from NIGC.³ Tribes may also look to other tribes' gaming commissions to pattern their own commission.

Establishing an Independent Tribal Gaming Commission

A. Independence

Effective regulatory oversight requires functional separation between regulating and operating the gaming operation. A well-run tribal gaming commission – free to regulate without undue interference from the tribe's leadership or from the gaming operation's management – is the best vehicle for achieving this functional separation. For example, if a tribe owns and operates its own gaming operation, the gaming commission must be structured so that its regulation of the gaming is separate from the tribe's operation of the gaming. If a tribe has an approved management contract to operate its gaming, the management entity must comply with all tribal gaming ordinances and regulations, including those for background investigations, suitability determinations, and licensing of key employees and primary management officials. Also, the gaming commission should not be involved in operational or managerial decisions of a gaming operation, except to the extent that these issues involve tribal law or regulations.

The authority to establish a regulatory structure or tribal gaming commission comes from the sovereign powers of tribal governments. The tribal gaming commission should be an arm of the tribal government, established for the exclusive purpose of regulating and monitoring the gaming operation on behalf of the tribe.⁴ Most importantly, a tribal gaming commission should be established by ordinance or tribal law. To create an independent gaming commission, the ordinance or law establishing and governing the commission should:

1. State that the gaming commission is an independent body.
2. Declare the gaming commission's purpose is regulatory, not managerial, meaning the gaming commission conducts oversight of the gaming operation to ensure compliance with federal, tribal, and, if applicable via the tribal-state compact, state laws and regulations.
3. Delegate to the gaming commission the duty to adopt, modify, and oversee rules and standards for the operation of the gaming, as this authority is strong evidence that the gaming commission functions independently of the tribe's governing body.
4. Task the gaming commission as the licensing authority for individuals employed in the gaming operation. As such, the gaming commission should administer an effective program for background investigations as part of the licensing process.

³ 25 C.F.R. § 518

⁴ Importantly, if a tribe fails to establish a tribal gaming commission, some other office or agency of the tribal government must fulfill these governmental obligations.

5. Provide the gaming commission with clear authority to take enforcement actions, including suspending and revoking individuals' gaming licenses in accordance with applicable law.
6. Empower the gaming commission to monitor the gaming operation's compliance with internal control standards⁵, including those for tracking revenues.
7. Mandate the gaming commission's autonomous authority and its unrestricted access to all areas of the gaming operation, including all of the gaming operation's books, records, databases, and computers.
8. Create a permanent and stable source of funding for the gaming commission. The funding may originate in the tribal governmental budget (which is recommended) or from license fees or assessments of the gaming revenue. If the tribal government is able to withhold funding from the gaming commission or if the level of funding is insufficient for the gaming commission to perform its role, the gaming commission's independence and integrity may be seriously threatened or compromised.
9. Ensure that the gaming commission or a staff supervisor – not an outside party - has authority to approve the gaming commission's day-to-day expenditures;
10. Provide the gaming commission with hiring authority for it to hire qualified staff.
11. Set adequate time-periods for gaming commissioner terms. The terms should be of fixed length and long enough to ensure stability.
12. Stagger gaming commissioner's terms to foster continuity. Doing so avoids wholesale changes in the gaming commission's membership.
13. Foster continuity also by making the gaming commission non-partisan and non-political.
14. Guarantee that gaming commissioners can perform their required duties.
15. Remove gaming commissioners during their terms only for good cause and follow procedures that provide due process. Removal should not be for simple disagreements with tribal leadership over matters that involve a gaming commissioner's exercise of discretion in the performance of his or her duty.
16. Avoid conflicts of interest in the exercise of the gaming commission's regulatory responsibilities as well as appearances of impropriety by prohibiting gaming commissioners from playing games in the gaming operation that they regulate.

⁵ Subsequently referred to herein as MICS, TICS, and SICS.

17. Forbid the gaming operation, management company, and consultants from employing gaming commissioners and prohibit gaming commission employees from gambling at the operations which they regulate to avoid questions about the independence of the gaming commission and compromising its and its members' integrity.
18. Disallow members of the tribe's governing bodies from serving on the gaming commission. Members of governing bodies and gaming commissioners may not always agree on matters about which the gaming commission has taken a regulatory position since they may approach these matters from different perspectives. Actual and perceived independence for the gaming commission is fostered if the roles of the governing bodies' members and the gaming commission members are separate and distinct.

B. Other Factors

Other factors beyond independence also should be considered when establishing a tribal gaming commission. Consider following organizational and operational issues when establishing a tribal gaming commission, ensuring they are included in tribal ordinance or law that establishes and governs the gaming commission:

1. Specifically set forth the gaming commission's responsibilities, powers, and enforcement authority in the ordinance. Also, specifically state any responsibility reserved to the tribe's governing body.
2. Detail the number of commissioners; the method of selecting commissioners, including qualifications needed and background requirements; their terms of office and employment status (full-time or part-time); and the methods and grounds for removal. As previously mentioned, stagger the commissioners' terms to provide continuity in the gaming commission's activities during transition of commission members.
3. Provide a funding mechanism for the gaming commission and its staff. As noted above, to ensure an independent gaming commission, funding should be appropriated from the tribal government instead of directly funded from the gaming operation.
4. Set forth basic procedures for conducting official commission business, including appeal procedures for gaming commission actions.
5. State procedures for regular reports by the gaming commission to tribal leadership and membership on the status and health of the gaming operation from a regulatory perspective. This ensures regular and open communication regarding the commission's regulations and its oversight of a vital tribal asset – the gaming operation.

Regulatory Functions of a Tribal Gaming Commission

An effective gaming commission works to ensure that all gaming within a tribe's jurisdiction operates in accordance with tribal laws and regulations. If a tribe elects to use a

gaming commission, the commission may be responsible for the regulatory functions outlined below. Items 1-24 are requirements of IGRA and NIGC regulations. The remaining activities are additional and related functions a gaming commission may perform.⁶

1. Develop licensing procedures for primary management officials and key employees of the gaming operation.⁷
2. Issue, suspend, revoke, and renew licenses of primary management officials and key employees upon completion of background investigations and after following the procedures contained in 25 C.F.R. parts 556 and 558.
3. Conduct background investigations on primary management officials and key employees according to requirements that are at least as stringent as those in 25 C.F.R. parts 556 and 558.⁸
4. Keep completed licensing applications for primary management officials and key employees for no less than three years after an employee's termination date.⁹ The applications should include the Privacy Act notice and the False Statements notice contained in 25 C.F.R. §§ 556.2(a) and 556.3(a).
5. Retain investigative reports on background investigations for each primary management official and key employee for no less than three years after each employee's termination date.¹⁰
6. Review a person's prior activities, criminal record, if any, and reputation, habits, and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation.¹¹ Retain those eligibility determinations for no less than three years after each employee's termination date.¹²
7. Submit notice of results and eligibility determinations for primary management officials and key employees to the NIGC within 60 days after they begin work (but prior to issuing permanent licenses to them).¹³
8. Notify the NIGC when, after conducting a background investigation on a primary management official or a key employee, the tribe licenses the individual. This notification

⁶ NIGC Bulletin No. 2018-1, Revised Model Gaming Ordinance, also contains a detailed description of gaming commission functions. See pages 12 through 14.

⁷ 25 C.F.R. § 558.1.

⁸ 25 C.F.R. §§ 522.4(b)(5); 522.6(b).

⁹ 25 C.F.R. § 558.3(e)(1); *see also* 25 CFR § 556.6(a).

¹⁰ 25 C.F.R. § 558.3(e)(2); *see also* 25 CFR § 556.6(b)(1).

¹¹ 25 C.F.R. § 556.5.

¹² 25 C.F.R. § 558.3(e)(3).

¹³ 25 C.F.R. § 556.6(b)(2).

must occur within 30 days after the license's issuance.¹⁴ Also notify the NIGC when the tribe does not license the individual.¹⁵

9. Issue separate licenses to each place, facility, or location on Indian lands where a tribe authorizes gaming.¹⁶
10. Create policies and/or procedures to ensure that gaming facilities are constructed, maintained, and operated in a manner that adequately protects the environment and the public health and safety and maintain documentation substantiating that fact.¹⁷
11. Submit a copy of each newly issued or renewed facility license to the NIGC within 30 days of issuance.¹⁸
12. With the facility license, submit an attestation, certifying that the tribe has determined that the construction and maintenance of the gaming facility, and the operation of that gaming, is conducted in a manner which adequately protects the environment and the public health and safety.¹⁹
13. Obtain annual independent outside audits of the gaming operation and submit these audits to the NIGC within 120 days after the end of each fiscal year of the gaming operation.²⁰
14. Ensure that net revenues from any gaming activities are used for the limited purposes set forth in the gaming ordinance.²¹
15. If the tribe authorizes individually-owned gaming, issue licenses according to the requirements contained in the gaming ordinance.²²
16. Implement minimum internal control standards²³ or procedures by promulgating tribal internal control standards (TICS) for the gaming operation.²⁴

¹⁴ 25 C.F.R. § 558.3(b).

¹⁵ 25 C.F.R. § 558.3(d).

¹⁶ 25 C.F.R. §§ 559.3; 522.4(b)(6); and 522.6(b).

¹⁷ 25 C.F.R. §§ 559.4; 559.6; 522.4(b)(7); and 522.6(b).

¹⁸ 25 C.F.R. § 559.3.

¹⁹ 25 C.F.R. § 559.4.

²⁰ 25 C.F.R. § 571.13(a); 25 CFR §§ 522.4(b)(3) and 522.6(b).

²¹ 25 C.F.R. §§ 522.4(b)(2) and 522.6(b).

²² 25 C.F.R. §§ 522.10 and 522.11.

²³ Minimum internal control standards (MICS) are listed at 25 C.F.R. § 543, by tribal-state gaming compacts and Secretarial Procedures.

²⁴ 25 C.F.R. § 543.3(b); 25 CFR § 543.15.

17. Approve a system of internal control standards²⁵ (SICS) to implement the TICS.²⁶
18. Establish and implement standards for Class II gaming machines and facilitate the testing of machines for compliance.²⁷ Establish and implement minimum technical standards for the use of electronic, computer, or technical aids.²⁸
19. Where applicable, conduct annual reviews of 2008 systems (gaming systems manufactured before November 10, 2008).²⁹
20. Maintain records on licensees and on persons denied licenses or whose licenses were revoked, including persons otherwise prohibited from engaging in gaming activities within the tribe's jurisdiction.³⁰
21. Perform audits of transactions associated with revenue to ensure compliance with regulations.³¹
22. Resolve and develop procedures for patron disputes, game malfunctions and other problems or issues, pursuant to the tribal gaming ordinance, tribal-state gaming compact, and other tribal laws.³²
23. Maintain a list of who constitutes a primary management official and a key employee under the tribal gaming ordinance, NIGC regulations, the tribal-state compact, or other tribal regulations or policies.
24. Develop methods to ensure timely submissions of NIGC quarterly fees and statements.
25. Review the gaming operation's contracts, (including financing, development, employment, and consulting agreements) to ensure they do not violate IGRA's mandates regarding sole proprietary interest, approved management contracts, or use of net gaming revenue.

²⁵ SICS are “[a]n overall operational framework for a gaming operation that incorporates principles of independence and segregation of function, and is comprised of written policies, procedures, and standard practices based on overarching regulatory standards specifically designed to create a system of checks and balances to safeguard the integrity of a gaming operation and protect its assets from unauthorized access, misappropriation, forgery, theft, or fraud.” 25 C.F.R. § 543.2.

²⁶ 25 C.F.R. § 543.3(c).

²⁷ 25 C.F.R. part 547.

²⁸ *Id.*

²⁹ 25 C.F.R. § 547.5(a)(2)(iii) (“Annually review the testing laboratory reports associated with the Class II gaming system and its current components to determine whether the Class II gaming system may be approved The TGRA shall make a finding identifying the Class II gaming systems reviewed, the Class II gaming systems subsequently approved [], and, for Class II gaming systems that cannot be approved [], the components of the Class II gaming system preventing such approval.”).

³⁰ 25 C.F.R. §§ 558.3(e) and 558.4(e).

³¹ 25 C.F.R. § 543.24.

³² *See* 25 C.F.R. § 522.2(f) (patron disputes).

26. Take testimony and conduct hearings on regulatory matters, including matters related to the revocation of primary management official and key employee licenses.³³
27. Promulgate tribal gaming regulations pursuant to tribal law.
28. Monitor and regulate all gaming operations and activities on *Indian lands*³⁴, including tribal, charitable and individually-owned, to ensure compliance with IGRA, NIGC regulations, the tribal gaming ordinance, the tribal-state compact, and other tribal regulations and policies.
29. Interact with other regulatory and law enforcement agencies regarding the regulation of gaming.
30. Conduct investigations of possible violations and take appropriate enforcement action in line with the tribal gaming ordinance and regulations.
31. Develop procedures for potential referrals of criminal activities to other law enforcement agencies, including the NIGC, FBI, state, or tribal law enforcement agencies.
32. Establish any supplementary criteria for the licensing of primary management officials, key employees, and other employees that the tribe deems necessary.
33. Establish standards for and issue licenses or permits to persons and entities who deal with the gaming operation such as consultants, vendors, and manufacturers and suppliers of machines, equipment, and supplies.

For additional information, contact the Compliance Division at (202) 632-7003 or by email at contactus@NIGC.gov.

³³ See 25 C.F.R. § 558.4. (proposed revocation of licenses for primary management officials and key employees).

³⁴ 25 U.S.C. § 2703(4); 25 C.F.R. § 502.12.