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NATIONAL
INDIAN
GAMING
COMMISSION

NOV 14 1994

Darrell Wadena, Chairman
White Earth Tribe
P.O. Box 418
White Earth, Mn. 56591

Dear Mr. Wadena:

You sought our views on the sale of pulltabs in the fifteen facilities described in your September 15, 1994, letter. We conclude that pulltabs may be sold as Class II games during all hours of operation of the VFW and American Legion under the circumstances described in your August 5 and September 14 letters. Under the present circumstances, the remaining thirteen facilities, however, may only sell pulltabs during the hours that bingo is being played in the operation unless the pulltab sales are authorized under a Class III gaming compact.

BACKGROUND

According to the information provided by you and your representatives, pulltabs were being played on the White Earth Reservation at 15 facilities other than the Tribe's bingo hall. The facilities vary widely to include five gas station convenience stores, a small grocery store, a liquor store, two small resorts, a bar, two restaurants, the VFW, American Legion and the tribal administrative office.

To eliminate questions by the United States Attorney about the legality of stand alone pulltab operations, the Tribe instituted bingo games which are played approximately weekly at each of the facilities. Tribal employees travel to each location to conduct the bingo games. The number of games played ranges from one to 24 and the number of patrons playing ranges from one to 49. Some of the locations have substantial seating capacity. The vast majority of the facilities have limited seating capacity and on average, only two games are played with two players. The five convenience stores, have limited space with room for bingo primarily limited to counter space. One hour is scheduled for the play of bingo (and, in some instances, the transportation of the bingo team to the next facility) at 13 of the facilities. The VFW and the American Legion have weekly evenings of bingo with a substantial number of games played, 17 - 24, with a substantial number of players, 13 - 28.

For the sale of pulltabs, the employees of the business act as agents of the Tribe. Such employees are investigated and licensed under the Tribe's Class II gaming ordinance. The businesses are paid for their services and use of the space through separate bingo and pulltab leases based on square footage. The Tribe receives 100% of the revenue which it distributes to tribal government programs and charities.

In an October 13, 1994, meeting with the NIGC, the Tribe suggested a standard for pulltab operations under the Indian Gaming Regulatory Act (IGRA or Act) that precludes the Class II pulltab operation at 11 of the 15 facilities. The Tribe believes that the emphasis should be on the ownership of the games and that only a minimum number of players should be required. Therefore, the Tribe suggested that IGRA should be interpreted to require that the facilities be tribally owned and operated and that the bingo operation should have a minimum of five players to be legitimate. However, in the statement of facts provided in Mr. August 5, 1994, letter, five of the facilities have never had five players and six facilities have had five or more players only once or twice. Consequently, under the Tribe's proposed interpretation, with a minimum of five players, only four facilities would qualify as Class II pulltab operations.

DISCUSSION

Implicit in IGRA and its legislative history is the requirement that bingo must be played regularly in a facility which can accommodate a sufficiently substantial number of players and games to establish that pulltabs remains a subgame of the bingo enterprise. IGRA defines Class II gaming as "the game of chance commonly known as bingo . . . including (if played at the same location) pull-tabs . . ." 25 U.S.C. § 2703(7)(A)(i). While it is clear from this language that bingo and pulltabs must be played in the same facility, nothing in the Act establishes an explicit standard by which we can determine whether bingo is being played regularly in a facility sufficient to accommodate the players.

Although the legislative history on this provision is limited, it provides a general standard for determining whether a pulltab operation and bingo operation are being played at the same location. The Senate Report states that:

Section (4)(8)(A) also makes clear the Committee's intent that pull-tabs, punch boards, tip jars, instant bingo and similar subgames may be played as integral parts of bingo enterprises regulated by the act and, as opposed to free standing enterprises of these subgames, state regulatory laws are not applicable to such subgames, just as they are not applicable to Indian bingo.

S. Rep. No. 446, 100th Cong., 2d Sess. 9 (Aug. 3, 1988).
Therefore, to be a Class II game, the pulltab operations must remain subgames which are integral to the bingo operation and not free standing operations.

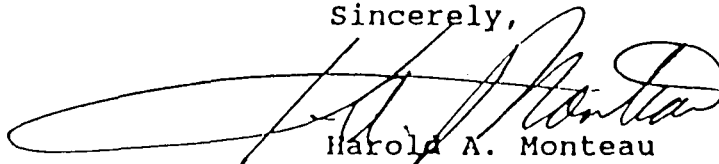
To be integral, the gaming operation must be primarily a bingo operation with pulltabs as a subgame of the bingo operation. Thus, a full evening or afternoon of bingo must be conducted on a regular basis. The facility must be configured so that it may seat a substantial number of persons for bingo. Sufficient numbers of people must attend regularly so that the operation can be both a money making operation and entertainment for the bingo patrons. Without such minimal prerequisites, pulltabs become the primary operation with bingo as the subgame.

Only two of the Tribe's 15 facilities meet this minimal standard. The VFW and the American Legion both provide a weekly evening of bingo in a facility which can and does handle a small group of bingo patrons. Other facilities now engaging in limited bingo operations may be able to meet this standard with some changes in the Tribe's operation. Several, however, such as the liquor store and gas and convenience stores will never be able to establish a bingo operation with a pulltab subgame. Such facilities are simply not designed to accommodate groups of players and therefore can not even meet the common sense definition of a bingo location.

Our conclusion does not prohibit the play of pulltabs at these 13 facilities. The Tribe can still sell pulltabs while bingo is in play which will assure that the pulltabs are subgame of the bingo operation. The Tribe can expand its bingo operation at some of the bigger facilities and can also negotiate with the State of Minnesota over a gaming compact provision which authorizes sale of pulltabs. Thus, the Tribe has remaining options which will allow it to sell pulltabs without operating outside the scope of IGRA.

I hope that this guidance will prove useful to you.

Sincerely,



Harold A. Monteau
Chairman

cc: Robert Small, AUSA
Harry Baltzer, Exec. Dir., Mn. Gambling Control Board
Peter W. Cannon for the Tribe
James M. Schoessler for the Tribe