

National Indian Gaming Commission

NOTICE OF DECISION AND ORDER

In The Matter of the Seminole Nation of Oklahoma CFA 00-06, CFA 00-10

Introduction

The primary question before the National Indian Gaming Commission (NIGC) is whether the presiding official erred in staying the Civil Fine Assessment hearings pending a decision by the federal district court in the underlying actions.

Background

On August 13, 2002, the Chairman of the National Indian Gaming Commission issued Notice of Proposed Civil Fine Assessment 00-10 against the Seminole Nation of Oklahoma (the "Nation") for alleged violations of the Indian Gaming Regulatory Act as set forth in Notice of Violation No. NOV-00-10 and Closure Order No. CO-00-10 issued on September 12, 2000. On August 17, 2002, the Chairman issued a second CFA 00-06 for alleged violations as set forth in Notice of Violation No. NOV-0-06 and Closure Order No. CO-00-06. On September 5, 2002, the Nation submitted its Notice of Appeal of the CFAs with the NIGC.

On December 5, 2002, the Presiding Official issued an order finding that it would be premature to hold a hearing on the CFAs because a district court ruling in the underlying cases could ultimately invalidate it. The Presiding Official ordered that the proceedings be stayed pending a resolution of the district court action.

On December 13, 2002, counsel for the Chairman filed an objection to and appeal of the December 5, 2002, order. On December 23, 2002, the Nation filed a response to the objection and appeal of the December 5, 2002, order.

Notice and Order

After reviewing the submissions the National Indian Gaming Commission hereby overturns, by unanimous vote, the December 5, 2002, order staying proceedings in CFA 00-06 and CFA 00-10, and hereby requires that the hearing on the matter proceed forthwith for the following reasons:

1. The December 5, 2002, order was not a recommended decision by the presiding official as contemplated by 25 C.F.R. § 577.14 but rather a procedural ruling on an interlocutory matter. The Commission, through its statutory authority to regulate tribal gaming under IGRA and its consequent

authority to regulate the hearing process, reluctantly intervenes in this matter to ensure that the goals of IGRA are met. The regulations establishing the hearing process were not intended primarily to confer procedural benefits on individuals but were instead intended strictly as a procedural aid to facilitate agency decision-making. Nothing in the regulations limits the Commission's power to take an interlocutory appeal nor does the IGRA prohibit such action.

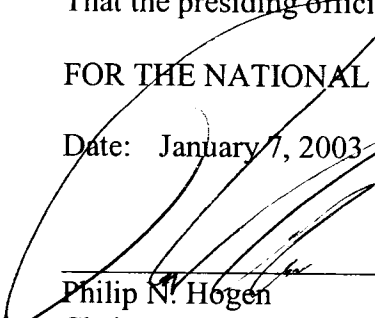
2. It is the policy of the National Indian Gaming Commission that Temporary Closure and related Civil Fine Assessment actions proceed quickly to ensure that their deterrent effect is not diminished. If the Civil Fine Assessment proceedings were to be stayed until the underlying actions were concluded in federal court, any resulting fine would have little or no effect over wrongful conduct. This result would be contrary to the goals, policies, and purposes of IGRA and the Commission
3. Fines assessed as a result of a CFA hearing would not immediately be imposed, as the Tribe would have the right to challenge any such action in federal court. Since the decision of a Presiding Official can be appealed, there would be no prejudice or denial of due process to the Nation.
4. We share the Nation's concern that this unusual departure from the traditional process of delaying Commission action until receipt of a recommended decision might invite further objections and appeals. However, in this specific instance, such action is required to prevent unnecessary delay and ensure future compliance with IGRA. We conclude that such departure imposes no prejudice against Respondent Seminole Nation and practically promotes and facilitates accomplishment of the policies and purposes of IGRA.

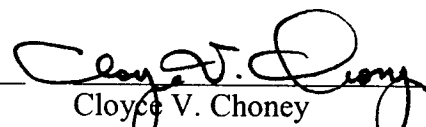
Now, therefore, the National Indian Gaming Commission Orders:

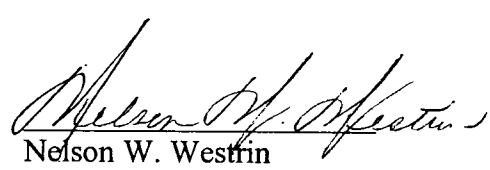
That the presiding official proceed with the Civil Fine Assessment hearing.

FOR THE NATIONAL INDIAN GAMING COMMISSION

Date: January 7, 2003


Philip N. Hogen
Chairman


Cloyce V. Choney
Commissioner


Nelson W. Westrin
Commissioner