

**NATIONAL
INDIAN
GAMING
COMMISSION**

SEP - 4 1996

Hai Bang Trinh
General Manager
Pioneer Gaming
Gambling Research and Development
7105 Brentwood Lane
Westminster, California 92683

Dear Mr. Trinh:

This is in response to your letter of July 9, 1996, requesting the National Indian Gaming Commission (NIGC) to review the card game, Action Jack, and to determine its classification under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et. seq. (1988).

Pursuant to the IGRA, class II gaming includes non-banking card games if such card games:

(I) are explicitly authorized by the laws of the State,
or

(II) are not explicitly prohibited by the laws of the State, and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.

25 U.S.C. § 2703(7)(A)(ii). This opinion is confined to determining whether Action Jack meets the non-banking requirement for class II status.

Action Jack is played like blackjack but in a non-banking format. According to the materials submitted, the gaming operation generates revenue by charging the players an hourly rate, by collecting an ante per hand, or by collecting a percentage of each pot. Play begins with each player placing a bet. The bet can be any amount but cannot be lower than the house minimum nor greater than the house maximum. The roll of dice determines which player is dealt the first cards. Each player is initially dealt two cards. The objective is to get "Action Jack", an ace and a card valued at ten, or to have the highest point total not exceeding twenty-one (21).

The winning player collects from each losing player the amount of the losing player's wager not to exceed the winning player's wager. For example, if the player with the best hand bets \$10 and the other players bet varying amounts greater than \$10, then the winning player would collect \$10 from each losing player and the losing players would be refunded their initial bet less \$10. If the player with the best hand had bet the maximum amount allowed, that player would collect from each losing player the entire amount wagered by each losing player. If two or more players have an "Action Jack" or the highest point total, the winners share the pot. The division of the pot is based on each of the winning players' wager. If one winning player bets \$10 and the other bets \$20, \$10 would be collected from each losing player and that amount would be split by the two players. Because the winning player with the \$20 bet still has \$10 in action with the other losing players, he or she would collect an additional sum not to exceed \$10 from each losing player.

The betting format and how a player wins differentiates Action Jack from traditional blackjack. In Action Jack there is no bank or banker taking on all players, collecting all losses, and paying all winners. Instead, players play against each other. In blackjack, "[e]ach player bets only with the dealer" or the house which is the banker. Richard L. Frey, *According to Hoyle* 205-206 (1970). Thus, a player's cards must beat only the dealer's cards in traditional blackjack. In Action Jack, however, a player must beat all of the other players' cards in order to win as in poker. The amount a player can win is also different. In blackjack, a player's potential winnings is based on the amount he or she wagers while in Action Jack, a player's winnings is based on the amount the player wagers as well as the number of players in the game, the amount those players have wagered, and whether there is another winner. Also, the strategies that a player uses change when he or she is playing against other players and not against a bank. These variations in the game are sufficient to conclude that Action Jack is not traditional blackjack by another name.

The IGRA excludes from class II gaming "any banking card games, including baccarat, chemin de fer, or blackjack (21)..." 25 U.S.C. § 2703(7)(B)(i). Although blackjack is specifically excluded from class II gaming, the wording of this provision seemingly prohibits only banking games. Blackjack may be played as a class II game if played in a non-banking format. The legislative history of the IGRA supports this interpretation. The Senate Report on the IGRA describes the distinction between banking and non-banking card games as follows:

Sections (4)(8)(A)(ii) provides that certain card games are regulated as class II games, with the rest being set apart and defined as

class III games under section 4(9) and regulated pursuant to section 11(d). The distinction is between those games where players play against each other rather than the house and those games where players play against the house and the house acts as banker...

S. Rep. No. 100-446, 100th Cong., 2nd Sess. 9-10 (1988).

Because the players in Action Jack play against each other rather than against the house and the house has no stake in the outcome of the game, Action Jack is not a banking game. We therefore conclude that Action Jack meets the non-banking requirement for class II status.

As stated above, in order to qualify as a class II game, Action Jack must also: (1) be explicitly authorized by the laws of the State or (2) not be explicitly prohibited, be played at any location in the State, and conform to any state law or regulation limiting the hours or periods of operation of the card games or wagers or pot sizes.

If you have any questions, please call this office at 202-632-7003.

Sincerely,



Michael D. Cox
General Counsel