



May 24, 2007

Via electronic mail

Ms. Christy Long
longshot@bresnan.net

Re: Shake-a-day pools and sports boards, game classifications

Dear Ms. Long:

Our webmaster has forwarded to me your December 3, 2006, e-mail (below) asking about the classification of shake-a-day pools and sports boards. I apologize for the delay in my reply. While I understand that these games need not be banked by the house – and I certainly understand the loss of business caused by the recent expiration of the Class III tribal-state gaming compact for the Flathead Reservation – it is nevertheless the opinion of this office that shake-a-day and sports boards are Class III games under the Indian Gaming Regulatory Act (IGRA). The National Indian Gaming Commission's (NIGC's) regulations identify them as such, as did the now-expired Class III compact between the Confederated Salish and Kootenai Tribes (CSKT) and the state of Montana. Further, neither game meets the definition of a Class I or Class II game, and IGRA defines all games that are not Class I or Class II as Class III. Accordingly, whether or not they are house banked, shake-a-day and sports boards are Class III games that may not be played in the absence of a tribal-state gaming compact approved by the Secretary of the Interior.

Background – shake-a-day and sports boards

Shake-a-day is a dice game. Rolling – “shaking” – a winning combination on poker dice entitles a player to all or part of a pool of wagers. The Montana statutes, for example, define shake-a-day as a game:

in which a customer may once each day pay an amount of money predetermined by the establishment, but not more than 50 cents, and shake a number of dice predetermined by the establishment in an attempt to roll certain combinations simulating poker hands predetermined by the establishment. If one of the combinations is rolled, the customer may win merchandise or a portion or all of the money paid to play the game since the last winning combination was rolled. The

establishment may, before a game begins, limit the amount that will be won and use the remaining money played on that game to start the pot for the next game, thus enhancing the incentive to play the next game in the early stages of the next game. All money paid to play games must be paid out as winnings. An establishment may offer to the public more than one Shake-a-day game at any given time.

Mont. Code Ann., § 23-5-160(b).

Sports boards is, reduced to its essence, a form of sports betting. In a typical game, players pay to enter a pool, and they pick, or are assigned, a square on a grid. Each square contains a unique pair of single-digit numbers. A player wins all or part of the pool if his or her numbers match the last digits of the score for a given sporting event at a given time, say at halftime or at the end of the game. The now-expired CSKT-Montana compact described the game as follows:

a “traditional sports pool” involving a single sports event with two competitors that is conducted on a sports pool card containing a master square with 25, 50, or 100 spaces. Each space is randomly assigned a unique pair of numbers from the vertical and horizontal axis of the master square. A winner is determined by matching the numbers assigned to a space with the only or last digit of the score of each competitor in the sports event at predetermined intervals during the event or at the end of the event.

CKST-Montana compact, Appendix I, § VII, ¶ 3(a). There are a number of variations on this theme, such as assigning multiple pairs of numbers to a square or using the same grid for multiple games, but the essence of each variation is the same: players are wagering on the outcome of sporting events. *CKST-Montana compact*, Appendix I, § VII.

Analysis

Both shake-a-day and sports boards are Class III games. NIGC’s regulations identify them as such. Craps or other casino dice games are specifically named as examples of Class III games, 25 C.F.R. § 502.4(a)(2), as is sports betting, 25 C.F.R. § 502.4(c). The games are also specifically identified as Class III in the recently expired compact. *CKST-Montana Compact*, § III and § V, ¶¶ G, I. The terms of IGRA also lead to the same conclusion.

As you know, IGRA divides the world of Indian gaming into three classes. It defines Class I games as “social games” played “solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations.” 25 U.S.C. § 2703(6). By definition, Class I games are not at issue here.

IGRA defines as Class II only a narrow band of games: bingo; pull tabs, punch boards, tip jars, instant bingo, and other games similar to bingo, but only if they are played in the

same location as bingo; and certain non-banked card games. 25 U.S.C. § 703(7)(A)(i)-(ii). All other games are Class III. 25 U.S.C. § 2703(8).

Dice games and sports betting – shake-a-day and sports boards – are not, by definition, bingo, nor are they pull tabs, punch boards, etc. They are, therefore, neither Class I nor Class II games and thus must be Class III.

This result does not change even if shake-a-day and sports boards are not house banked games, which I will assume is true for the purposes of this letter. Under IGRA and the NIGC's regulations, house banking only distinguishes Class II from Class III in two specific situations.

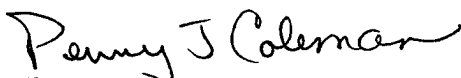
One is the classification of card games. IGRA defines non-house banked card games as Class II, if they meet certain other conditions having to do with state card-game laws. 25 U.S.C. § 2703(7)(A)(ii). If a card game is house banked, however, it is always Class III. 25 U.S.C. § 2703(7)(B)(i) (“The term ‘class II gaming’ does not include ... any banking card games, including baccarat, chemin de fer, or blackjack (21)...”).

The other situation is the classification of games similar to bingo. Such games, variants of bingo, are Class III if they are house banked and Class II if they are not. 25 C.F.R. § 502.9 (“Other games similar to bingo means any game played in the same location as bingo ... constituting a variant on the game of bingo, provided that such game is not house banked ...”).

Outside of these two situations, house banking does not determine whether a game is Class II or Class III. That classification, ultimately, must follow the definitions given in IGRA. Here, again, it is the opinion of this office that shake-a-day and sports boards are not Class I or Class II. They are, therefore, Class III and are properly identified as such in NIGC's regulations.

If you have any further questions, please feel free to contact Michael Gross, Associate General Counsel, at 202-632-7003.

Sincerely,



Penny J. Coleman
Acting General Counsel

cc: John Peterson, Region IV Director
Michael Gross, Associate General Counsel
Jennifer Ward, Staff Attorney.