



April 23, 2003

Bessie Hernandez  
Treasurer/Secretary  
Kickapoo Tribe of Oklahoma Gaming Commission  
PO Box 406  
McCloud, OK 74851

Re: Tournament Blackjack

Dear Ms. Hernandez:

Thank you for your letter of March 11, 2003, which enclosed a proposed format for a blackjack tournament. We appreciate the Tribe's willingness to work with NIGC on this issue.

As your letter suggested, members of our staff contacted Stephanie Ramsey with questions about the proposed tournament format. She provided a revised description of the format and clarifying comments. Based on the revised description, our view is that the proposed tournament format can meet the requirements for Class II gaming under the Indian Gaming Regulatory Act and NIGC regulations.

#### Description

The Tribe's proposal calls for "weekly" tournaments at three different tiers. Each tier has a different entry fee. Each tier is independent of the other tiers. A minimum of four players is required for a tournament to begin at any tier level. The tournaments are not held weekly, as the name implies, but are regularly scheduled during the week. After paying the entry fee, a player receives tournament point-value chips. The chips do not have redeemable cash value. All players start with an equal number of chips. Each tournament consists of 10, 15, or 21 hands of blackjack, depending on the tier or entry-fee level, using traditional blackjack rules. At the end of each tournament, the player with the most point-value chips wins the tournament and is awarded a "jackpot," a prize of money or merchandise. This prize is pre-determined and does not vary based on the number of players in the tournament. After the prize is awarded to the winner, all player chips for that tournament lose their value, cannot be redeemed, and cannot be carried forward into a later tournament. Players who do not win may receive a chance to spend time in a "money booth" as a consolation. They compete in drawings with other patrons at the gaming facility for this opportunity.

Intermediate tournaments are also planned that will feature larger prizes. These multi-round elimination tournaments are held monthly, also at three different tiers or entry fee levels, as with the weekly tournaments. Qualification for the intermediate tournament will be based on success in the weekly tournaments. The first and second place winners of each weekly tournament will receive "tournament points" that will determine eligibility for the intermediate tournament at that tier level. These points are only for use in determining eligibility to participate in the next intermediate tournament. The points have no other value and cannot be carried forward to qualify for a future intermediate tournament. A minimum number of weekly "tournament points" will be established by the gaming operation to determine eligibility for the intermediate tournament.

There is also an opportunity for a player's name to be drawn for participation in the intermediate tournament if the player is present on the day of the intermediate tournament and has played in at least one weekly tournament. Under the proposal, six players are able to reenter tournament play as wild card players every half hour based on this drawing. They will play against each other using the tournament format with the eventual winner of this consolation bracket advancing into the championship round along with players who won during the regular elimination rounds of the tournament.

Players participating in the intermediate tournament will each start with a specified number of point-value chips after paying an entry fee. As in the weekly tournament, these point-value chips will be used only in playing that particular tournament and will not have residual value. Rules for the intermediate tournament are the same as for the weekly tournament. The top seven players in the intermediate tournament, based on the point-value chip held at the end of tournament will win jackpot monies on a graduated scale.

The final level of play is the advanced tournament. Players who meet the minimum requirement by successfully participating in intermediate tournaments are invited to play in the next advanced tournament at that entry fee level. These multi-round elimination tournaments are held every three months, also at three different tiers or entry fee levels, as with the weekly and intermediate tournaments. A minimum number of tournament points will be established by the gaming operation to determine eligibility for the advanced tournament.

As with the intermediate tournament, there is also an opportunity for a player's name to be drawn for participation in the advanced tournament if the player is present on the day of the tournament and has played in at least one intermediate tournament. Under the proposal, six players are able to reenter tournament play as wild card players every half hour based on this drawing. They will play against each other using the tournament format with the eventual winner of this consolation bracket advancing into the championship round along with players who won their seats at the championship table by playing through the regular elimination rounds of the tournament.

Eligible players also pay an entry fee to participate in the advanced tournament. Rules for the advanced tournament are the same as for the weekly and intermediate tournaments. The top seven players in the advanced tournament, based on the point-value chip held at the end of tournament, will win jackpot monies on a graduated scale.

#### Requirements for Blackjack Tournament Play

The legal basis for concluding that tournament blackjack play constitutes Class II gaming in Oklahoma was set forth in advisory opinions from the NIGC's Office of General Counsel in letters dated July 9, 1999, and January 15, 2003. Each letter stressed the importance of bona fide tournament play as a condition to invoking an exception, founded in Oklahoma law, to the general rule that blackjack and other banking card games are a Class III gaming activity under the Indian Gaming Regulatory Act. See 25 U.S.C. § 2703(7)(B) and (8). Class III gaming may only be conducted under a tribal-state compact.

#### Discussion

There are three important factors in the Tribe's proposed format that lead to our conclusion that the tournament can be a Class II gaming activity.


- The minimum number of hands that are established for each tier. Because "tournament" is not defined in IGRA, in regulations of the NIGC, or in statutes of the State of Oklahoma, we rely on a common usage definition of the term. A tournament may be defined as a "a contest involving a number of competitors who vie against each other in a series of elimination games or trials." (Webster's II New College Dictionary, 1995.) Until such time as the Commission establishes a different number by formal rule, we are taking the position that the play of 10 hands is the minimum number to make a single round of tournament play a "series" that would allow a demonstration of player abilities envisioned by tournament play.
- The design of the prize structure. Fixed prizes are awarded based on which player accumulates the most point-value chips during the tournament. The prize does not vary based either directly or indirectly on the number of point-value chips in the player's possession at the end of the tournament. The house is not paying the bet made by a player in the play of the hand and there is not otherwise direct compensation for success in a particular hand, or a limited number of hands, which disguise the payment of a bet.
- Winning in competition with other players as a condition to advancement. The format features an equalized starting point for tournament play. Each player at each tournament starts play by paying a fixed entry fee and begins with the same

Bessie Hernandez  
April 23, 2003  
Page 4 of 4

number of point-value chips. A player cannot gain eligibility for the intermediate and advanced tournaments by simply "buying in" or by mere participation in the weekly tournament. A player must win or finish second in these weekly tournaments to receive the points that qualify that player for the later intermediate and advanced play. Allowing a limited number of players who played in a "weekly tournament" to enter the intermediate and advanced tournaments by a drawing for a "consolation bracket" does not detract from the basic feature of entry by competition.

The advice in this letter that the tournament format would meet the requirements for a Class II gaming activity is limited to the description set forth in the enclosure provided with your letter dated March 11, 2003, as later modified, which is summarized above (copy enclosed). A significant change to the format may result in a different conclusion.

Thank you, again, for providing the tournament description for our review.

Sincerely yours,  
  
Penny J. Coleman  
Acting General Counsel

Enclosure