

National Indian Gaming Commission

NOTICE OF VIOLATION

NOV-10-01

To: Mitchell Cypress, Chairman
Seminole Tribe of Florida
6300 Stirling Road
Hollywood, Florida 33024
Fax: (954) 967-3463

Alan Huff, Chairman
Seminole Gaming Commission
6300 Stirling Road
Hollywood, Florida 33024
Fax: (954) 967-3464

1. Notification of Violation

The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that the Seminole Tribe of Florida (Respondent or Tribe), headquartered in Hollywood, Florida, is in violation of the Indian Gaming Regulatory Act (IGRA), NIGC regulations, and its tribal gaming ordinance, because the Tribe used net gaming revenue for purposes other than those permitted by IGRA, NIGC regulations, and the Tribe's gaming ordinance.

2. Authority

- A. The Chairman of the NIGC (Chairman) may issue a Notice of Violation (NOV) to any person for violation of any provision of the Indian Gaming Regulatory Act (IGRA), NIGC regulations, or any provision of a tribal gaming ordinance or resolution approved by the Chairman. 25 U.S.C. § 2713; 25 C.F.R. § 573.3.
- B. The Chairman shall have authority to levy and collect appropriate civil fines, not to exceed \$ 25,000 per violation, against the tribal operator of an Indian game or a management contractor engaged in gaming for any violation of any provision of this Act, any regulation prescribed by the Commission pursuant to this Act, or tribal regulations, ordinances, or resolutions approved under the Act. 25 U.S.C. § 2713(a)(1).

3. Applicable Federal and Tribal Laws

- A. 25 U.S.C. § 2710(b)(2)(B); 25 C.F.R. § 522.4(b)(2); Section 1-1.09(a) of the Seminole Tribal Gaming Code (Code) – Net revenues from any tribal gaming are not to be used for purposes other than (1) to fund tribal government operations and programs; (2) to provide for the general welfare of the Indian tribe and its members; (3) to promote the tribal economic development; (4) to donate to charitable organizations; (5) to help fund operations of local government agencies.
- B. 25 U.S.C. § 2710(b)(3); 25 C.F.R. § 290.6 – Net revenues from gaming activities conducted or licensed by any Indian tribe may be used to make per capita payments to members of the Indian tribe only if the tribe has prepared a plan to allocate revenues to the five permitted uses found in 25 U.S.C. § 2710(b)(2)(B). That plan must be approved by the Secretary of the Interior as adequate, particularly with respect to the uses described in clause (i) or (iii) of § 2710(b)(2)(B).
- C. Section 1 of the Seminole Tribe Revenue Allocation & Per Capita Distribution Plan (Seminole RAP) – The Tribal Council of the Seminole Tribe of Florida adopted the RAP to govern the allocation of its net gaming revenues for per capita distribution payments and governmental programs consistent with the requirements of IGRA and the purposes of the Seminole Tribe of Florida.
- D. Section 6(a) of the Seminole RAP- In order to provide for the health, education and welfare of Qualified Enrolled Tribal Members, the portion of the net gaming revenues allocated to per capita distribution payments shall be paid in equal shares to all Qualified Enrolled Tribal members . . .

4. Circumstances

The purpose of IGRA is, in part, to provide a statutory basis for the operation of gaming by tribes as a means to promote tribal economic development, self sufficiency, and strong tribal governments. It is also to ensure that Indian tribes *as a whole* are the primary beneficiary of gaming revenue. To achieve that purpose, IGRA permits a Tribe to use its net gaming revenue for the five purposes listed above in paragraph 3(A). Tribes typically allocate a substantial portion of their gaming revenues to the “general welfare” of the tribe and its members; to “tribal economic development”; and/or to “government operations or programs.”

Government programs are set up to serve one or more needs or requirements of the tribal community. A fundamental part of any government program is the criteria established to determine which tribal members are eligible to participate in a program. The criteria are tied to the needs and requirements of the tribal membership, and are often tied to income levels and the financial needs of a group of members. Criteria can be based on needs other than financial ones, however, such as educational, medical, or housing needs. *See* NIGC Bulletin No. 05-01.

When tribes establish government programs to benefit individual members, those programs should: 1) be created in response to a recognized need within the tribal community; 2) have written eligibility criteria to determine which members qualify to participate in the program; and 3) not discriminate by including some members and excluding others without reasonable justification. Payments made and services offered should be made equally available to all those who meet program standards. *Id.*

Although direct distributions of net revenue to tribal members do not typically fall into any of the five permitted uses, per capita payments are permitted by IGRA. Section 2710(b)(3) of IGRA states that net gaming revenue may be used to make per capita payments to tribal members only if the tribe has adopted a revenue allocation plan (RAP) approved by the Secretary of the Interior. The RAP is designed to protect IGRA's policy of promoting *tribal* economic development, self sufficiency, and government by ensuring that any per capita payment leaves a significant share of net gaming revenues for economic development and governmental purposes. *See* 25 U.S.C. 2710(b)(3)(B) (requires that "the [Revenue Allocation] plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of [25 U.S.C. 2710(b)(2)(B)]. It also ensures that per capita payments are made equally to all tribal members or a particular group of members. *See* 25 C.F.R. part 290 (defining *per capita payment* as "the distribution of money or other thing of value to all members of the tribe, or to identified groups of members").

Per capita payments made to individual tribal members on an ad-hoc basis, outside the scope of a RAP, or payments to individual members not made pursuant to a government program divert money from the tribe as a whole and thereby frustrate IGRA's policy of ensuring that the entire tribe benefit from tribal gaming, rather than individual tribal members. More to the point here, though, such payments are an impermissible use of net revenue and a violation of IGRA.

The Seminole Tribe of Florida's RAP was approved by the Department of the Interior on August 25, 2005. As required by IGRA, the Tribe's RAP specifies the percentage of net revenue to be used for per capita payments and reserves the rest for government operations, general welfare, and economic development. Seminole RAP § 4. While the tribe makes authorized per capita payments pursuant to the RAP, it has also made several per capita payments outside the scope of the RAP and, therefore, in violation of IGRA.

As described below, these additional per capita payments were made under the pretense of delivering services pursuant to a tribal program or, in some cases, without any pretense at all. Many of the "programs" used to justify the distributions had no written criteria or guiding procedures and, as a consequence, are not bona-fide programs. For example, the Tribe engages in event sponsorship via a "program" with no written criteria and on an impromptu basis, choosing to sponsor events without any discernible standard and without requiring any proof that the event actually took place.

In other instances, the tribe simply decided to give cash or valuable goods to a tribal member with complete disregard for IGRA's net revenue requirements. Regardless of how the disbursements were made or labeled, though, they are per capita payments made outside the scope of the RAP and are a violation of IGRA.

5. First Violation

- A. On August 10, 2007, the Tribe issued check no. 229018 to Tribal member Carl Baxley for \$19,800.00. The check request was made by the Business Manager of the Tribe's Housing Department and the funds were accounted for on the General Ledger as *Home Owner Assistance*.
- B. An August 6, 2007 e-mail from the Director of the Tribe's Housing Department to the Department's Housing Services Manager indicates that Mr. Baxley requested the money for "relocation reimbursement."
- C. In an August 8, 2007 memorandum from the Business Manager of the Tribal Housing Department to Accounts Payable, the Business Manager disclosed that Mr. Baxley was unable to stay at his primary residence because it was being replaced as part of the Tribe's "project board for replacement home."
- D. The August 6, 2007 email also reveals, though, that while Mr. Baxley was unable to stay at his primary place of residence, he stayed in another one of his homes.
- E. According to the August 6, 2007 e-mail, Mr Baxley requested the money because "it is only fair since others receive such assistance."
- F. The August 6, 2007 e-mail also reveals that the grant amount was proposed by Mr. Baxley, rather than based on any written guidelines or procedures established by the Department of Housing, and was "calculated at \$1,100 per month, which is what his mortgage used to be on the unit."
- G. The Tribe did not require Mr. Baxley to repay the \$19,800.
- H. While the Tribe had a *Relocation Assistance Program* and an *Emergency Rental Assistance Program* in place at the time of the payment, those programs do not provide for this type of payment.
- I. The Seminole Tribe of Florida Emergency Rental Assistance Program is designed to provide Tribal members with assistance to secure adequate housing that is essential as the result of emergency circumstances, education, employment or health-related issues or eviction related situations. There was no such emergency here. Even if there were, the maximum grant permitted under the program is \$3,000.
- J. The Seminole Tribe of Florida Relocation Assistance Program is designed to provide Tribal members with assistance in costs associated with relocation to

improve lifestyle and living location for personal, health, or professional advancement. The program only covers actual moving expenses, though, such as hiring movers or renting a moving van. Further, the maximum grant permitted under the program is \$2,500.

- K. A grant of \$19,800 to a tribal member, made outside the scope of a legitimate Tribal government program, is not a permissible use of net gaming revenue.
- L. The payment does not comply with any of the uses of net gaming revenue permitted by IGRA, NIGC regulations, or the Tribe's gaming ordinance and is an improper use of net revenue.
- M. The payment to Mr. Baxley constitutes a per capita payment made in addition to that permitted by the Tribe's RAP, and is therefore a violation of IGRA.

6. Second Violation

- A. On August 20, 2007, Seminole Tribe of Florida Accounts Payable Department issued check number 231211 in the amount of \$5,000 to Marty Johns.
- B. The check was authorized by Chairman Mitchell Cypress in an August 20, 2007 memorandum to Teresa Colaluca, Accounts Payable for Representatives.
- C. According to the August memorandum, the \$5,000 was "to be used towards a property that is being leased by Mr. Johns together with a few other Tribal members to be used for hunting and other recreational activities."
- D. In the memorandum, Chairman Cypress ordered the money to be taken from the Fitness Department's budget.
- E. The payment was accounted for in the Tribe's General Ledger as *Event Sponsorship*.
- F. At the time of the payment, there was no *Event Sponsorship* program.
- G. The Tribe did not require and did not produce a copy of the property lease or any other evidence that the money was used to lease property.
- H. The Tribe did not require Mr. Johns to repay the \$5,000.
- I. A grant of \$5,000 to a tribal member, made outside the scope of a legitimate Tribal government program, is not a permissible use of net gaming revenue.
- J. The payment does not comply with any of the uses of net gaming revenue permitted by IGRA, NIGC regulations, or the Tribe's gaming ordinance and is an improper use of the revenue.

K. The payment to Mr. Johns constitutes a per capita payment made in addition to that permitted by the Tribe's RAP and is therefore a violation of IGRA.

7. Third Violation

- A. On June 11, 2007, the Tribe issued check number 219386 for \$10,000 to Francine Marie Osceola.
- B. Ms. Osceola requested the money via an undated, hand-written note to Chairman Mitchell Cypress.
- C. According to the note, the money was requested from "money allotted for memorial events" to pay for "a Christmas Gathering in Big Cypress" in December of 2006, at which Ms. Osceola served dinner and distributed gifts.
- D. The check was issued more than six months after the party was held, and no receipts or invoices were provided to the Tribe to substantiate the costs.
- E. The expense was accounted for in the Tribe's General Ledger as a *Community Activity*.
- F. The payment was made outside the scope of a legitimate program.
- G. Paying for an individual tribal member's Christmas party does not comply with any of the uses of net gaming revenue permitted by IGRA, NIGC regulations, or the Tribe's gaming ordinance and is an improper use of net revenue.
- H. The payment to Ms. Osceola constitutes a per capita payment made in addition to that permitted by the Tribe's RAP and is therefore a violation of IGRA.

8. Fourth Violation

- A. On February 1, 2007, Immokalee Liaison Rafael Sanchez submitted Purchase Order Requisition No. 122927 for a 2002 GMC Yukon Denali with a 5 year warranty at a cost of \$55,074.50.
- B. On February 2, 2007, the requisition was approved by Tribal Council Representative David Cypress.
- C. Check No. 202410, in the amount of \$55,074.50, was issued to Pines Pontiac GMC Buick on February 5, 2007. The purchase of the vehicle was accounted for on the Tribe's General Ledger as *Miscellaneous Expense*.
- D. On September 6, 2007, the Tribe sold the GMC Yukon XL to Mr. Sanchez for ten dollars (\$10.00). The Bill of Sale is signed by Pricilla D. Sayen, Secretary of Seminole Tribe of Florida.

- E. The Vehicle Sale Procedure form, establishing the terms of the sale of the GMC Yukon Denali, was signed by Suresh Geer, Director of Finance, per David Cypress.
- F. The Tribe does not have a program that addresses car sales, but each sale is made according to a *Vehicle Sale Procedure*. The *Vehicle Sale Procedure* describes the automobile and sets the bidding procedure and minimum price.
- G. The Vehicle Sale Procedure for the GMC Yukon sold to Mr. Sanchez requires that the Kelley Blue Book *private party value* shall be the beginning sales price and the Kelley Blue Book *trade in value* shall be the lowest sales price.
- H. The Vehicle Sale Procedure form asserts that the on September 6, 2007, the “Book Value” of the car was \$47,121.25. It is not specified if this is the Kelley Blue Book private party value, trade in value, or a based on a different value calculation.
- I. The Tribe failed to follow its own procedures in selling the car to Mr. Sanchez for less than the Kelley Blue Book trade in value.
- J. NIGC investigators were told that traditionally, when an individual loses their liaison position, they are allowed to keep their official government vehicle.
- K. The sale of the car to Mr. Sanchez at a substantially reduced rate was a fictitious transaction to conceal the purchase of the car for Mr. Sanchez.
- L. The purchase of a car for an individual member or Tribal employee is not a permissible use of net revenues under IGRA, NIGC regulations, or the Tribe’s gaming ordinance.
- M. The purchase of the car for Mr. Sanchez constitutes a per capita payment made in addition to that permitted by the Tribe’s RAP and is therefore a violation of IGRA.

9. Fifth Violation

- A. In a June 5, 2007 note to Tribal Council Member David Cypress, Tribal member Annie Jumper requested \$15,500 for “housing expenses.”
- B. The note did not further describe what expenses were incurred or how the \$15,500 was to be used. The NIGC investigative team requested any documents supporting the expenses claimed by Ms. Jumper, but none were provided.
- C. The request was forwarded to the Accounts Payable Department, who issued check number 219130 in the amount of \$15,500 to Ms. Jumper on June 7, 2007.

- D. The Payment was accounted for as a *Relocation Expense* on the Tribe's General Ledger but there is no evidence that the request was made for "relocation expenses" or that the money was used for any of the eligible services encompassed by the *Relocation Assistance Program*.
- E. The Seminole Tribe of Florida Relocation Assistance Program is designed to provide Tribal member with assistance in costs associated with relocation to improve lifestyle and living location for personal, health, or professional advancement. The program only covers actual moving expenses, though, such as hiring movers or renting a moving van.
- F. The Tribe's *Relocation Assistance Program* permits grants for moving services up to a cost of \$2,500. The grant to Ms. Jumper greatly exceeds that amount.
- G. The Tribe's *Relocation Assistance Program* at the time of the grant to Ms. Jumper permits the Tribal Council to make exceptions to the grant amount, but the Tribe was not able to produce any documents demonstrating that the Tribal Council considered the request.
- H. The *Relocation Assistance Program* does not permit the Tribal Council to grant money for services not covered by the program.
- I. An unsubstantiated \$15,500 distribution to an individual Tribal member is not a permissible use of net gaming revenue pursuant to IGRA, NIGC regulations, or the Tribe's gaming ordinance.
- J. The payment to Ms. Jumper constitutes a per capita payment made in addition to that permitted by the Tribe's RAP and is therefore a violation of IGRA.

10. Sixth Violation

- A. The Seminole Tribe of Florida issued an American Express card to Tribal Council member Max B. Osceola, Jr.
- B. The card balance is paid by the Tribe with net gaming revenues through the "Gov Fund."
- C. The American Express card, which is paid for by the Tribe, was used by Mr. Osceola to make several personal purchases, including:
 - 1. October 27, 2006: \$13,184 purchase at Platinum Jewelry Exchange, a jewelry store in Hollywood Florida.
 - 2. November 1, 2006: \$1,636 purchase at Pure Triumph Fort Lauderdale, a motorcycle dealer.

3. November 3, 2006: \$136.75 purchase at the Palm Restaurant in Las Vegas, Nevada.
 4. November 14, 2006: \$9,953.41 purchase at Americrown Service, an event services company.
 5. November 20, 2006: \$5,077.16 purchase at Broward Motorsports, a motorcycle dealer.
 6. November 27, 2006: Two purchases for \$616.90 and \$1,327.47 at Portofino Bay Resort, a hotel in Orlando, Florida.
 7. November 30, 2006: \$222.60 purchase at California Custom Sport Trucks, an automobile accessories store in Fort Lauderdale, Florida.
 8. December 5, 2006: \$13,949 purchase at Platinum Jewelry Exchange.
 9. December 5, 2006: \$2,159.80 purchase at Sound Advice, an electronics store in Hollywood, Florida.
 10. December 6, 2006: \$3,356.87 purchase from Protection One, a home security company.
 11. December 7, 2006: \$551.20 purchase from Protection One.
 12. December 9, 2006: Two purchases for \$1,097.16 and \$470.16 at Bruce Rossmeyer's Harley Davidson, a motorcycle dealer.
 13. December 14, 2006: \$30,500 purchase at Platinum Jewelry Exchange.
 14. December 14, 2006: \$1,272.84 purchase from Harley Davidson of Miami, a motorcycle dealer.
- D. The Tribe was unable to produce any documentation justifying the purchases as a business expense and, during a September 9, 2009 meeting with the NIGC, Mr. Osceola affirmed that the charges to the card were for personal expenses.
- E. On February 17, 2010, the Tribe sent to the NIGC a list of "personal credit card charges" made by Max Osceola. All of the charges listed above in part 10(c) are on that list.
- F. Payment of a Tribal member's personal credit card expenses is not a permissible use of net gaming revenue pursuant to IGRA, NIGC regulations, or the Tribe's gaming ordinance.

- G. Payment of the Mr. Osceola's personal credit card expenses with Tribal net gaming revenue constitutes a per capita payment made in addition to the Tribe's RAP and is therefore a violation of IGRA.

11. Measures Required to Correct these Violations

- A. The Tribe shall review all Tribal Council credit card records from 2005 to the present to determine whether charges are business or personal. Within 60 days from the date of this NOV, the Tribe shall submit a report, including copies of records to the NIGC, detailing the Tribe's findings and demonstrating that every Tribal Council Member has repaid any personal expenses incurred on a Tribal credit card.
- B. The Tribe shall seek repayment of the \$15,500 grant to Annie Jumper and, within 60 days of from the date of this NOV, submit to the NIGC a fully executed repayment plan for Ms. Jumper to follow. The repayment schedule shall not last more than 3 years.
- C. The Tribe shall seek repayment of the \$19,800 "relocation reimbursement" provided to Carl Baxley and, within 60 days of from the date of this NOV, submit to the NIGC a fully executed repayment plan for Mr. Baxley to follow. The repayment schedule shall not last more than 3 years.
- D. The Tribe shall seek repayment of the \$5,000 provided to Marty Johns and, within 60 days from the date of this NOV, submit to the NIGC a fully executed repayment plan for Mr. Johns to follow. The repayment schedule shall not last more than 1 year.
- E. The Tribe shall seek repayment of the \$10,000 given to Francine Marie Osceola for a Christmas gathering and, within 60 days from the date of this NOV, submit a fully executed repayment plan for Ms. Osceola to follow. The repayment schedule shall not last more than 2 years.
- F. The Tribe shall seek the immediate repossession of the GMC Yukon XL given to Raphael Sanchez. In the alternative, Mr. Sanchez may purchase the car from the Tribe for the September 6, 2007 Kelly Blue Book value. All fully executed sales documents shall be submitted to the NIGC within 60 days.

12. Appeal

Within 30 (thirty) days after service of this Notice of Violation, Respondent may appeal to the full Commission under 25 C.F.R. Part 577 by submitting a notice of appeal and, if desired, request in writing for a hearing to the National Indian Gaming Commission, 1441 L Street, NW, Ninth Floor, Washington, DC 20005. Respondent has a right to assistance of counsel in such an appeal. A notice of appeal must reference this Notice of Violation.

Within ten (10) days after filing a notice of appeal, Respondent must file with the Commission a supplemental statement that states with particularity the relief desired and the grounds therefore and that includes, when available, supporting evidence in the form of affidavits. If Respondent wishes to present oral testimony or witnesses at the hearing, Respondent must include a request to do so with the supplemental statement. The request to present oral testimony or witnesses must specify the names of proposed witnesses and the general nature of their expected testimony, whether a closed hearing is requested and why. Respondent may, in writing, waive its right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

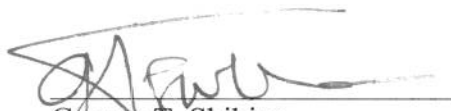
13. Fine and Submission of Information

The violations cited above may result in the assessment of a civil fine against Respondent in an amount not to exceed \$25,000 per violation per day. Under 25 C.F.R. § 575.5(a), Respondent may submit written information about the violation to the Chairman within fifteen (15) days after service of this notice of violation (or such longer period as the Chairman of the Commission may grant for good cause). The Chairman shall consider any information submitted in determining the facts surrounding the violation and the amount of the civil fine, if any.

14. Temporary Closure Order Information

The violations cited above may result in a temporary closure order if the Tribe fails to correct the violations in the time permitted in this Notice of Violation. Under 25 U.S.C. § 2713(b)(2), not later than 30 days after the order of temporary closure, the tribe may request a hearing before the Commission to determine whether such order should be made permanent or dissolved. Under 25 C.F.R. § 573.6, within seven days of the issuance of a temporary closure order, the tribe may request informal expedited review by the Chairman.

Dated this 3rd of June 2010


George T. Skibine
Acting Chairman

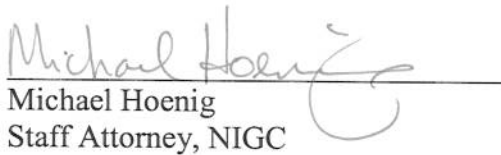
Certificate of Service

I certify that this **Notice of Violation** was sent by facsimile transmission and certified U.S. mail, return receipt requested, on June 3, 2010, to:

Seminole Tribe of Florida
Attn: Mitchell Cypress, Chairman
6300 Stirling Road
Hollywood, FL 33024
FAX: (954) 967-3463

Seminole Gaming Commission
Attn: Alan Huff, Chairman
6300 Stirling Road
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Michael Hoenig
Staff Attorney, NIGC