

NATIONAL  
INDIAN  
GAMING  
COMMISSION

AUG 10 1994

Duane Bonge, Chairman  
Tribal Gaming Commission  
Ponca Tribe of Nebraska  
P.O. Box 288  
Niobrara, Nebraska 68760

Dear Chairman Bonge:

This letter responds to your request to review and approve the class II and class III tribal gaming ordinances adopted by the Ponca Tribe of Nebraska (the Tribe) on July 6, 1993. This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review ordinances with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the IGRA and the NIGC regulations. Provisions other than those required under the IGRA or the NIGC regulations that may be included in a tribal ordinance are not subject to review and approval. Also, such approval does not constitute approval of specific games.

It is important to note that the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA.

With the Chairman's approval of the Tribe's gaming ordinance, the Tribe is now required to conduct background investigations on its key employees and primary management officials. The NIGC expects to receive a completed application for each key employee and primary management official pursuant to 25 C.F.R. § 556.5(a) and an investigative report on each background investigation before issuing a license to a key employee or primary management official pursuant to 25 C.F.R. § 556.5(b).

Thank you for submitting the ordinance of the Ponca Tribe of Nebraska for review and approval. The NIGC staff and I look forward to working with you and the Tribe in implementing the IGRA.

Sincerely yours,

Anthony J. Hope

Anthony J. Hope  
Chairman

cc: Brian R. Watkins, Esq.  
Watkins and Scott  
1115 K Street, Suite 104  
Lincoln, Nebraska 68508

INTERIM COUNCIL  
PONCA TRIBE OF NEBRASKA

RESOLUTION 51-93

WHEREAS: The Ponca Tribe of Nebraska is a federally recognized Indian Nation whose business affairs until restoration of the Tribe is completed shall be conducted by the Interim Council as defined in Public Law 101-484 of October 31, 1990; and

WHEREAS: Pursuant to Public Law 101-484 and the adopted Bylaws of the Interim Council they have the authority, power and duty to enter into the understandings and agreements set forth in this Resolution; and

WHEREAS: The Ponca Tribe of Nebraska is authorized and entitled to provide for its citizens and to fund Tribal government operations provide for the general welfare of the Tribe; promote Tribal economic development; donate to charitable organizations; or help fund operations of local government agencies. Said actions may be taken by the conduct of approved gaming operations on Indian land as established by the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et. seq.

THEREFORE BE IT RESOLVED that upon approval of this Resolution by the Interim Council the Class II and Class III Gaming Ordinances attached hereto shall be submitted to the Bureau of Indian Affairs and National Indian Gaming Commission for their review and approval. The Class II and Class III Gaming Ordinances shall become effective upon approval by the Chairman of the National Indian Gaming Commission or its designee.

THIS IS TO CERTIFY AND AFFIRM that the above and foregoing Resolution was duly authorized and passed by the Interim Council of the Ponca Tribe of Nebraska on the 6 day of July, 1993 at a meeting held at Niobrara, Nebraska by a vote of 6 Ayes; 1 Nays; 1 Abstained; Chairperson          voting ✓ not voting. A Quorum of 4 was present.

ATTEST

Deborah Wright  
Deborah Wright, Chairperson  
Ponca Tribe of Nebraska

Duane Bonge  
Duane Bonge, Secretary  
Ponca Tribe of Nebraska

\*Amendment to Resolution 51-93 made and passed on 11/23/93 amending Section II of the Class III Gaming Ordinance (See attached Class III Gaming Ordinance)

\*\* Amendment made and passed on 07/18/94 amending Class II and Class III Gaming Ordinances as attached hereto by a vote of 3 Ayes; 1 Nay; 1 Absent; Chair not voting.

**PONCA TRIBE OF NEBRASKA  
(NORTHERN PONCA NATION)**

**CLASS III GAMING ORDINANCE**

**I. Purpose**

The Interim Tribal Council of The Ponca Tribe of Nebraska (Northern Ponca Nation) (hereinafter "Tribe"), empowered by The Act of Congress known as The "Ponca Restoration Act" Public Law 101-484, hereby enacts this ordinance in order to set the terms for class III gaming operations on tribal lands.

**II. Gaming Authorized**

Class III gaming as defined in the Indian Gaming Regulatory Act, P.L. 100-447, 25 U.S.C. Section 2703 (8) ("IGRA") and by the regulations promulgated by the National Indian Gaming Commission at 25 C.F.R. SS 502.3 (as published in the Federal Register at 57 FR 12382-12393, April 9, 1992) is hereby authorized. The Class III Gaming hereby authorized shall be only to the extent permitted in a Tribal - State Compact that is executed and approved by the Secretary of the Interior.

**III. Ownership of Gaming**

The Tribe shall have the sole propriety interest in and responsibility for conduct of any gaming operation authorized by this ordinance.

**IV. Use of Gaming Revenue**

A. Net revenues from class III gaming shall be used only for the following purposes: to fund tribal government operations and programs; provide for the general welfare of the Tribe and its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government agencies.

B. In order to provide and protect the citizens of the Tribe and our Future Generations the following specific purposes shall receive the net revenues from Class III Gaming:

Reference Resolution 51-93; as amended 7/18/94

- (1) 50% of Net Revenue to
  - (a) Land Acquisition and Development
  - (b) Cultural Affairs and Events
  - (c) Provide Services to all of our Citizens
  - (d) Education
  - (e) Health Programs
  
- (2) 15% of Net Revenue
  - (a) Long Term Trust Fund For the betterment of the General Welfare of the Tribe.
  
- (3) 35% of Net Revenue
  - (a) Non-Dedicated funds to be utilized for the purposes of Section IV A. or C. infra.

C. If the Tribe elects to make per capita payments to tribal members, it shall authorize such payments only upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. S 2710 (b) (3).

V. Audit

A. The Tribe shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission.

B. All gaming related contracts that results in the purchase of supplies, services, or concessions in excess of \$10,000.00 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit that is described in subsection A. above.

VI. Protection of the Environment and Public Health and Safety

Class III gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

VII. Licenses for Key Employees and Primary Management Officials

The Tribe shall ensure that the policies and procedures set out in this section are implemented with respect to key employees and primary management officials employed at any class III gaming enterprise operated on Indian lands:

**A. Definitions**

For the purposes of this section, the following definitions apply:

**1. Key employee means**

(a) A person who performs one or more of the following functions:

- (1) Bingo caller;
- (2) Counting room supervisor
- (3) Chief of security;
- (4) Custodian of gaming supplies or cash;
- (5) Floor manager;
- (6) Pit boss;
- (7) Dealer;
- (8) Croupier;
- (9) Approver of credit; or
- (10) Custodian of gambling devices including persons with access to cash and accounting records within such devices;

(b) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or

(c) If not otherwise included, the four most highly compensated persons in the gaming operation.

**2. Primary management official means**

(a) The person having management responsibility for a management contract;

(b) Any person who has authority:

- (1) To hire and fire employees; or
- (2) To set up working policy for the gaming operation; or

- (c) The chief financial officer or other person who has financial management responsibility.

**B. Application Forms**

1. The following notice shall be placed on the application form for a key employee or a primary management official before that form is filled out by an applicant:

" In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application."

2. Existing key employees and primary management officials shall be notified in writing that they shall either:

- a. Complete a new application form that contains a Privacy Act notice; or
- b. Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

3. The following notice shall be placed on the application form for a key employee or a primary official before that form is filled out by an applicant.

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment.

(U.S. Code, title 18, section 1001.)

4. The Tribe shall notify in writing existing key employees and primary management officials that they shall either:

- a. Complete a new application form that contains a notice regarding false statements; or
- b. Sign a statement that contains the notice regarding false statements.

**C. Background Investigations**

1. The Tribe shall request from each primary management official and from each key employee all of the following information:

a. Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

b. Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

c. The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (1) (b) of this section;

d. Current business and residence telephone numbers;

e. A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;



f. A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

g. The name and address of any licensing or regulatory agency with which the person had filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

h. For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;

i. For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within 10 years of the date of the application, the name and address of the court involved and the date and disposition;

j. For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (1) (h) or (1) (i) of this section, the criminal charge, the name and address of the court involved and the date and disposition;

k. The name and address of any licensing or regulatory agency with which the person had filed an application for an occupational license or permit, whether or not such license or permit was granted;

l. A current photograph;

m. Any other information the Tribe deems relevant; and

n. Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. S 522.2 (h).

2. The Tribe shall conduct an investigation sufficient to make a determination under subsection D. below. In conducting a background investigation, the Tribe or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

**D. Eligibility Determination**

The Tribe shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the tribe determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a key employee or primary management official position.

**E. Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission**

1. When a key employee or primary management official begins work at a gaming operation authorized by this ordinance, the Tribe shall forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation and make the determination referred to in subsection D of this section.

2. The Tribe shall forward the report referred to in subsection F of this section to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission.

3. The gaming operation shall not employ as a key employee or primary management official a person who does not have a license after 90 days.

**F. Report to the National Indian Gaming Commission**

1. Pursuant to the procedures set out in subsection E of this section, the Tribe shall prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation. An investigative report shall include all of the following:

- a. Steps taken in conducting a background investigation;
- b. Results obtained;
- c. Conclusions reached; and

- d. The bases for those conclusions.
2. The Tribe shall submit, with the report, a copy of the eligibility determination made under subsection D of this section.
3. If a license is not issued to an applicant, the Tribe:
  - a. Shall notify the National Indian Gaming Commission; and
  - b. May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.
4. With respect to key employees and primary management officials, the Tribe shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman of the National Indian Gaming Commission or his or her designee for no less than three (3) years from the date of termination of employment.

**G. Granting a Gaming License**

1. If, within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the tribe that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe may issue a license to such applicant.
2. The Tribe shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the 30-day period under paragraph G. 1. of this section until the Chairman of the National Indian Gaming Commission receives the additional information.
3. After a revocation hearing, the Tribe shall decide to revoke or to reinstate a gaming license. The Tribe shall notify the National Indian Gaming Commission of its decision.

VIII. License Locations

The Tribe shall issue a separate license to each place, facility, or location on Indian lands where class III gaming is conducted under this ordinance.

IX. Gaming Commission

In order to assist the Tribe in the regulation and conduct of its gaming operation an independent Gaming Commission is hereby created.

A. Members. The Commission shall consist of three citizens at large of the Ponca Tribe of Nebraska all of which shall be selected by the Tribal Council. Members of the Commission shall select a Chairperson, Secretary and Treasurer. The Commission shall also select two full-time individuals to serve as Executive Secretary and Assistant Executive Secretary. A person who is a Chairperson or the Secretary and Treasurer may also be the Executive Secretary or Assistant Executive Secretary.

B. Standards for Commissioners. Each proposed member of the Commission shall be required to agree that their name may be submitted by the Tribal Council to background investigators or to law enforcement officials in order to determine that the proposed member;

1. Has not been convicted of a gaming related offense, (misdemeanor or felony);
2. Has any financial interest in, or management responsibility for, any gaming activity, or
3. Has a financial interest in, or management responsibility for any management contract;

Should the background check on any proposed appointee be determined negative, then that appointee shall not be eligible to serve on the Commission.

C. Removal of Commissioners. The following are cause for removal from the Gaming Commission.

1. Malfeasance in the handling of gaming regulations and controls.
2. Neglect of duty.

3. Unexcused absence from three (3) consecutive scheduled Commission meetings.
4. Conviction of a gaming related offense, (misdemeanor or felony).
5. Noncompliance with the Ponca Tribe of Nebraska Gaming Ordinances.
6. Acceptance of bribes.

D. Procedure for Removal. Any commission member who during the term for which he/she is elected is charged with committing any of the offenses listed in Section C may be removed from office by a 2/3 vote of the members Tribal Council at a meeting duly called for the removal of a Commissioner. Provided a quorum of the Tribal Council is present at such meeting.

E. Notification to the alleged. Upon notice of a alleged violation by a Commission Member of any provision in Section C the Tribal Council by motion may commence to fix the time and place for meeting on removal. A copy of the call for removal shall be provided to the alleged commissioner via certified mail at least thirty (30) days before any meeting to consider his/her removal. The call for removal shall set forth the specific act that is an alleged violation of Section C.

F. Rights of the Accused.

a. Answering charges. Before any vote of the tribal council present at a duly called removal meeting, the accused shall be afforded the opportunity to hear and answer any and all written and documented charges presented by the Council at the meeting wherein his/her removal is considered.

b. Evidence. The accused shall be permitted to have any person(s) he/she so desires to testify on his/her behalf; including notarized affidavits, statements and pertinent documents as may determine his/her innocence.

c. Confrontation of Accusers. The accused shall be afforded the opportunity to confront all charges against him/her as presented by the notice.

d. Failure to appear. Failure of the accused to appear at the scheduled time shall be deemed a waiver of his/her right to a hearing.

**G. Vacancies.**

a. Should a vacancy occur for reasons of removal, the Tribal Council by majority vote shall appoint the replacement for the remainder of the unexpired term.

b. Should a vacancy occur for reasons other than removal or expiration of term, then the Tribal Council shall have the authority to appoint a replacement for the remainder of the unexpired term.

**H. Term.**

a. After the first year of service of all (3) Gaming Commissioners, the terms of the three (3) Gaming Commission officials shall be staggered terms of three (3) years. The Tribal Council shall fix the staggered terms for each initial commissioner that is appointed.

I. Conflict of Interest. No Commissioner, attorney or tribal employee assisting the Commission, or members of his/her nuclear family of the Commissioner may have a controlling financial interest in any gaming business or in any gaming contract. In the event that a conflict of interest exists, a Commissioner, attorney or employee assisting the Commission shall be removed.

J. Gaming Commission Rule-Making Authority. The Commission may promulgate rules for the orderly transaction and conduct of the Tribe's gaming business and the substantive rules that it may determine proper concerning the issuance, revocation, and suspension of gaming licenses to implement any Tribal/State compact or Management Agreement, the conduct and operation of the gaming activities and any other things necessary to carry out the purposes of this Ordinance. The Commission may also promulgate rules necessary to administer complaints which may be received from the public and conduct such other investigations and inspections into the conduct of the games and the licensees and the maintenance of the equipment as the Commission may deem necessary and proper. To fix meeting dates of the Commission and define the responsibility and the compensation for the Executive Secretary and Assistant Executive Secretary.

**K. Gaming Commission Powers.**

1. To implement and enforce all rights and obligations of the Tribe established by any Class II or Class III Management Agreements or Tribal/State compacts.

2. Suspend or revoke for cause, any gaming license.
3. To adopt and submit to the Tribal Council a annual operating budget.
4. To adopt rules and regulations consistent with the powers delegated to the Commission.
5. Develop licensing procedures for all employees of the gaming operation pursuant to 25 CFR §558.1(b).
6. Issue, suspend, revoke, and renew licenses of primary management officials and key employees upon completion of background investigations and after following the procedures contained in 25 CFR Parts 556 and 558.
7. Conduct background investigations on primary management officials and key employees according to requirements that are at least as stringent as those in 25 CFR Parts 556 and 558 pursuant to 25 CFR §522.4(b)(5).
8. Forward completed employment applications for primary management officials and key employees to the NIGC pursuant to 25 CFR § 558.3. These applications should include the Privacy Act notice and the notice regarding false statements contained in 25 CFR § 556.2 and 556.3.
9. Forward completed investigative reports on each background investigation for each primary management official or key employee to the NIGC prior to issuing a license pursuant to 25 CFR § 556.5.
10. Review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation pursuant to 25 CFR §558.2.
11. Notify the NIGC if, after conducting a background investigation on a primary management official or a key employee, the tribe does not license the individual pursuant to 25 CFR §556.5 (d)(1).
12. Retain applications and reports of background investigations of primary management officials and key employees for no less than three years from termination of employment pursuant to 25 CFR § 558.1(c).

13. Issue separate licenses to each place, facility, or location on Indian lands where a tribe elects to allow gaming pursuant to 25 CFR §522.4(b)(6).

14. Ensure that gaming facilities are constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety pursuant to 25 CFR §522.4(b)(7).

15. Obtain annual independent outside audits and submit these audits to the NIGC pursuant to 25 CFR §522.4(b)(3). The scope of these audits should include all gaming related contracts that result in purchases of supplies, services or concessions for more than \$10,000 in any year pursuant to 25 CFR §522.4(b)(4).

16. Ensure that net revenues from any gaming activities are used for the limited purposes set forth in the tribal gaming ordinance pursuant to 25 CFR §522.4(b)(2).

17. Promulgate tribal gaming regulations pursuant to tribal law.

18. Monitor gaming activities to ensure compliance with tribal law/regulations.

19. Interact with other regulatory and law enforcement agencies regarding the regulation of gaming.

20. Conduct investigations of possible violations and take appropriate enforcement action with respect to the tribal gaming ordinances and regulations.

21. Provide independent information monthly to the tribe on the status of the tribe's gaming activities.

22. Take testimony and conduct hearings on regulatory matters, including matters related to the revocation of primary management officials and key employee licenses.

23. Establish or approve minimum internal control standards or procedures for the gaming operation, including the operation's credit policies and procedures for acquiring supplies and equipment.

24. Establish any supplementary criteria for the licensing of primary management officials, key employees, and other employees that the tribe deems necessary.



25. Establish standards for and issue licenses or permits to persons and entities who deal with the gaming operations such as manufacturers and suppliers of machines, equipment and supplies.

26. Maintain records on licensees and on persons denied licenses including person otherwise prohibited from engaging in gaming activities within the tribe's jurisdiction.

27. Perform audits of business transactions to ensure compliance with regulations and/or policy.

28. Establish or approve rules of various games, and inspect games, tables, equipment, machines, cards, dice, and chips or tokens used in the gaming operation. Establish or approve video surveillance standards. Establish standards/criteria for gaming machines and facilitate the testing of machines for compliance.

29. Resolve patron disputes, employees grievances, and other problems, pursuant to the tribal management agreements and the Tribal/State compacts for Class III Gaming.

L. Appeal of Gaming Commission Actions. Any action of the Commission is subject to appeal to Nation's Court for the Ponca Tribe of Nebraska and if such Court is not in existence to the Tribal Council. Notice of appeal shall be filed in writing with the Commission and Clerk of Court or Secretary of the Tribal Council, as the case may be, within ten (10) days from written notice of any action of the Commission. Failure to timely file an appeal shall make the action final.

#### X. Annual Assessment for Gaming Commission

1. The Gaming Commission is authorized to assess each gaming location up to \$75,000.00 per annum for costs to pay for Commission services, salaries, fees and expenses. The first annual Gaming Commission assessment shall be made sixty (60) days after the opening of any gaming location. The assessment shall be deemed an operating expense and will be paid from the gross gaming revenue of the gaming location.

2. The Gaming Commission is authorized to levy assessments upon the management group(s) prior to the opening of a gaming facility by the Tribe. Pre-opening assessments by the Gaming Commission shall be utilized for the reasonable expenses of the Commission for conducting suitability determinations, background investigations, salaries, stipends, lodging, meals, travel expenses, support staff salaries, and any other expenses

deemed necessary by the Gaming Commission to fulfill its obligations established by these ordinances. Pre-opening assessments paid by the gaming management group(s) shall be deemed as developmental costs of gaming by the Ponca Tribe of Nebraska. Pre-opening assessments shall be non-recourse payments levied by the Gaming Commission upon the management group(s) and shall not constitute a debt or obligation of the Ponca Tribe of Nebraska or the Gaming Commission.

3. The Commission may raise the amount of annual assessment made thereafter if the costs of conducting Commission business justify an increase. Any subsequent annual increase shall not exceed 7% of the previous year's assessment.

XI. Repeal

To the extent that they are inconsistent with this ordinance, all prior gaming ordinances are hereby repealed.

XII. Effective Date

This ordinance is hereby adopted by the Ponca Tribe of Nebraska pursuant to Resolution 51-93. This ordinance constitutes the approved Class III gaming ordinance for the Tribe pursuant to amendment to Resolution 51-93 effective July 18, 1994. This ordinance shall become effective after it is approved by the National Indian Gaming Commission or such other agency delegated to grant approval of tribal gaming ordinances.