



Forest County Potawatomi Gaming Commission
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August 10, 2011

VIA EMAIL ONLY (reg.review@nigc.gov)

Lael Echo-Hawk
Counselor to the Chair
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, DC 20005

**Re: Tribal Comment to NIGC Draft Regulations 25 C.F.R.
Part 556 and Part 558**

Dear Ms. Echo-Hawk:

I write on behalf of and at the direction of the Forest County Potawatomi Community of Wisconsin Gaming Commission ("Potawatomi") in response to the NIGC Draft Regulations regarding 25 C.F.R. Part 556 (Background Investigations) and Part 558 (Gaming Licenses).

The Potawatomi have reviewed the Draft Regulations and provide the following comment:

I. 25 C.F.R. PART 556 – BACKGROUND INVESTIGATIONS FOR PRIMARY MANAGEMENT OFFICIALS AND KEY EMPLOYEES.

➤ The Potawatomi have reviewed the Draft Regulations for Part 556 and have no comment, except as to § 556.4(b), which states as follows:

(b) If a tribe has submitted a notification of results for an individual seeking to be employed by another tribe as a primary management official or key employee, and the second tribe (1) has access to the investigative materials held by the first tribe; or (2) obtained the investigative materials from the NIGC, the second tribe may update the investigation and investigative report under § 556.6(b)(1) of this part.

This paragraph is confusing, unclear and should be re-written. To the extent that the paragraph attempts to encourage Tribes to share information as part of the background investigation process, the Potawatomi support that intention. However, the language is so unclear that it is difficult to determine what the purpose of the section is.

II. 25 C.F.R. PART 558 – GAMING LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS.

➤ SECTION 558.2(A) NOTIFICATION TO NIGC OF LICENSE ISSUANCE AND RETENTION OBLIGATIONS states as follows:

- (a) After a tribe has provided a notification of results of the background check to the Commission, a tribe may license a primary management official or key employee.

The Potawatomi disagree with this section to the extent that it requires the Tribe to withhold granting a license until after a Tribe has provided a notification to the NIGC of the results of the Tribal background investigation. This effectively prevents a Tribe from licensing an individual, even after the Tribe has completed its background investigation, until after the NIGC has considered and responded to the Notification of Results of the Tribal background investigation. Such delay is prejudicial to the Tribe and delays the employing of key personnel. The Draft Regulations provide that the NIGC has thirty (30) days within which to respond to the Tribe following receipt of the Notification of Results. (See Draft Regulation § 558.3(a) and (b)). Requiring the Tribe to delay taking important action violates the Tribe's sovereignty, is contrary to sound business interests and is inconsistent with NIGC Regulations. (See Draft Regulation § 558.3(c), "The tribe shall make the final decision whether to issue a license to such applicant.")

The Draft Regulation § 558.2(a) should properly state that after a Tribe has licensed a primary management official or key employee, the Tribe shall promptly provide the NIGC with notification of the results of the background check. Allowing the Tribe to move forward with the licensing of primary management officials and key employees and then requiring that the Tribe promptly notify the NIGC of the results of the background investigations is consistent with other Draft Regulations. (See § 558.4, which provides that the Tribe shall take action upon receipt of a notice of objection after the license has already been issued; see also § 558.3(c).) As a result, §§ 558.2, 558.3 and 558.4 are inconsistent with each other.

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➤ SECTION 558.4 NOTICE OF INFORMATION IMPACTING ELIGIBILITY AND LICENSEE'S RIGHT TO A HEARING.

This section provides that when the NIGC receives reliable information that a key employee or management official who has already been licensed by the Tribe may not be eligible for licensing, the NIGC shall notify the Tribe. The section further requires the Tribe, upon receipt of such notification, to suspend the licensee and provide written notice and the opportunity for a hearing.

The Potawatomi disagree and object to this Draft Regulation to the extent that it requires the Tribe to take action upon receipt of a Notice of Information from the NIGC without re-opening the investigation of the individual's background and making an independent determination of eligibility. Section 558.4 is inconsistent with § 558.3, which addresses the Tribe's obligations upon receipt and Notice of Objection from the NIGC. In the context of the Notice of Objection, the Tribe is merely required to "reconsider the application taking into account the objections" of the NIGC. In other words, § 558.3 requires the Tribe to re-open its background investigation, reconsider the new information and take such action as it believes appropriate (the Tribe shall make the final decision). The Potawatomi see no reason why the procedures set forth in the Draft Regulations should be different in a situation involving a Notice of Objection (§ 558.3) from that required following receipt of a Notice of Information impacting eligibility (§ 558.4). In both cases, the regulations should require the Tribe to reconsider, based on the new information obtained from the NIGC or the Notice of Objection obtained from the NIGC, and provide due process in the form of notice and a hearing only when the Tribe elects to suspend and revoke the licensee's license.

Thank you for your consideration in this matter. If you have any questions, please contact either the Forest County Potawatomi Gaming Commission Chair Kenneth George, Jr., or the undersigned, as follows:

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Very truly yours,



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TBH:jmt

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