

National Indian Gaming Commission

TEMPORARY CLOSURE ORDER

No. CO-03-02
Order of Temporary Closure

To: Alexander Walker, Jr.
Sac and Fox Tribe of the Mississippi in Iowa
2982 F Avenue
Montour, IA 50173
Fax: (641) 484-5424

Homer Bear, Jr.
Sac and Fox Tribe of the Mississippi in Iowa
349 Meskwaki Road
Tama, IA 52339-9629
Fax: (641) 484-5424

Sac and Fox Tribe of the Mississippi in Iowa
349 Meskwaki Road
Tama, IA 52339-9629
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Rennetta Plander
Gaming Manager
Meskwaki Bingo Casino Hotel
1504 305th St.
Tama, IA 52339-9697
Fax: (641) 484-1618

Respondents

1. The Chairman of the National Indian Gaming Commission (NIGC) hereby gives notice that Respondents are in substantial violation of the Indian Gaming Regulatory Act (IGRA), NIGC regulations, and the Gaming Ordinance of the Sac and Fox Tribe of the Mississippi in Iowa (Tribe).

2. The Sac and Fox Tribe of the Mississippi in Iowa is a federally recognized Indian Tribe with tribal headquarters in Tama, Iowa.

3. NIGC defers to the Secretary of the Interior in areas in which the Secretary has expertise. The Secretary, through the Bureau of Indian Affairs, has expertise in recognizing whether a group should be recognized as a tribe and, when there are competing factions, which faction should be recognized as the tribal government. IGRA acknowledges the Secretary's expertise by defining, for the purposes of Indian gaming, an "Indian tribe" as an organized group that "is recognized as eligible by the Secretary [of the Interior] for the special programs and services provided by the United States..." 25 U.S.C. 2703(5)(A). Gaming conducted by an entity other than an Indian tribe or an entity licensed by the tribe is not Indian gaming under IGRA and may not, therefore, be conducted on Indian lands.

4. The circumstances of the violations are:

- A. The Tribe has engaged in gaming under the Indian Gaming Regulatory Act (IGRA or the Act) on tribal lands located in Iowa pursuant to the Tribe's Gaming Ordinance first approved in 1995.
- B. On March 26, 2003, a council appointed by the hereditary chief and led by Homer Bear, Jr., physically assumed control over the Tribe's gaming operation, the Meskwaki Bingo Casino Hotel in Tama, Iowa, and physically excluded from the facility Respondent Walker and persons acting under the direction of Mr. Walker and the elected Tribal Council.
- C. On April 1, 2003, Acting Assistant Secretary for Indian Affairs, Aurene Martin, stated that the U.S. Department of the Interior recognizes the elected Tribal Council, led by Alex Walker, Jr., as the Tribe's leadership. Acting Assistant Secretary Martin speaks for the Secretary of the Interior on matters involving tribal governments.
- D. On April 30, 2003, NIGC issued a Notice of Violation, NOV-03-02, Attachment 1, for: depriving the tribe—represented by its federally recognized tribal leadership—of sole proprietary interest in and responsibility for the gaming operation in violation of 25 U.S.C. 2710(b)(2)(A), 25 C.F.R. §522.4(b)(1), and Gaming Ordinance, Section 1.04; threatening public safety by forcible occupation of the gaming operation and tribal offices by a dissident faction in violation of 25 U.S.C. 2710(b)(2)(E), 25 C.F.R. §522.4(b)(7), and Gaming Ordinance, Section 1.06; and denying the recognized tribal government of access to the gaming operation in violation of 25 C.F.R. §573.6(a)(9). NOV-03-02 directed the Respondents to turn over the operation of the casino to the recognized government by 5:00 p.m., May 2, 2003.
- E. As of today, the violations cited in NOV-03-02 have not been cured and are ongoing.

5. Under 25 C.F.R. §573.6(a), the Chairman of NIGC may issue an order of temporary closure if one of twelve (12) enumerated substantial violations is present. Under 25

C.F.R. §573.6(b), the operator of an Indian gaming operation must close the operation upon service of an order of temporary closure unless the order provides otherwise. Respondents have committed the following substantial violations:

- A. Respondents have failed within the time permitted in NOV 03-02 to correct the violations cited (25 C.F.R. §573.6(a)(1)(i));
- B. The gaming operation has refused to allow an authorized tribal official of the federally recognized government to enter the gaming operation (25 C.F.R. §573.6(a)(9)); and
- C. By their forcible occupation of the gaming operation and tribal offices, Respondent Bear's appointees have failed to operate the gaming facility in a manner that does not threaten public safety (25 C.F.R. §573.6(a)(12)).

6. To correct the violations, Respondents shall comply with the following closure order.

Closure Order

Under the authority of 25 U.S.C. §§ 2701 – 2721 and 25 C.F.R. § 573.6(a) and (b), the Chairman of the National Indian Gaming Commission hereby gives notice that Respondents are ordered to cease and desist from all gaming activity in the Meskwaki gaming facility. This order is effective immediately. The Chairman may rescind the Closure Order for good cause shown.

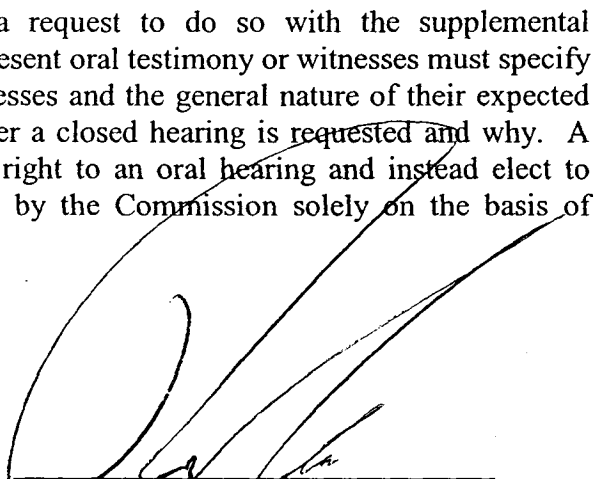
7. Expedited Review. Under 25 C.F.R. § 573.6(c), within seven (7) days after service of this Order, a Respondent may request, orally or in writing, informal expedited review by the Chairman. The Chairman must complete such review within two (2) days after receipt of a timely request. Within two (2) days after the expedited review provided by 25 C.F.R. § 573.6(c), the Chairman must decide whether to continue the Order and must provide a Respondent with an explanation of the basis for the decision.

8. Appeal.

- A. Whether or not a Respondent seeks the informal expedited review described above, a Respondent may appeal within 30 (thirty) days after service of this Notice of Violation and Order of Temporary Closure to the full Commission under 25 C.F.R. Part 577 by submitting a notice of appeal and, if desired, request for hearing to the National Indian Gaming Commission, 1441 L Street, NW, Ninth Floor, Washington, DC 20005. A Respondent has a right to assistance of counsel in such an appeal. A notice of appeal must refer to this Notice of Violation and Order.
- B. Within ten (10) days after filing a notice of appeal, a 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 a Respondent wishes to present oral testimony or witnesses at the hearing, a

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, as well as whether a closed hearing is requested and why. A Respondent may waive the right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

Dated: May 12, 2003.



Philip N. Hogen
Chairman
National Indian Gaming Commission

Cynthia K. Shaw
Staff Attorney
National Indian Gaming Commission