



MAY 7 2003

Camilita Edwards
General Manager
Comanche Nation Games
402 SE I-44
Lawton, OK 73502

Re: Blackjack

Dear Ms. Edwards:

Thank you for your letter of April 17, 2003, which enclosed a proposed format for a blackjack tournament. We appreciate the Tribe's willingness to work with NIGC on this issue.

Based on the description, our view is that the proposed tournament format does not meet the requirements for Class II gaming under the Indian Gaming Regulatory Act and NIGC regulations. Accordingly, we request that the Nation's gaming facilities not offer blackjack in this format.

Description

The Tribe's proposal calls for two daily tournaments one with a \$50.00 entry fee and the other with a \$100.00 entry fee. Further, there will also be an \$8,000.00 monthly tournament.

\$50 Tournament

The \$50.00 tournament requires a minimum of 14 players. An administrative fee of \$10.00 will be charged to each player. Each player will be issued 500 in "tournament chips" that have no cash value. The minimum bet per hand will be 5 with a maximum bet per hand of 100. The first round will consist of 12 hands. The player with the most number of chips at the end of the round will advance to a final round. The final round will consist of 15 hands. The top 6 participants at the final table win a predetermined cash prize based on the number of players in the tournament.

\$100 Tournament

The \$100.00 tournament also requires a minimum of 14 players. An administrative fee of \$20.00 will be charged to each player. Each player will be issued

500 in "tournament chips" that have no cash value. The minimum bet per hand will be 5 with a maximum bet per hand of 100. The first round will consist of 12 hands. The player with the most "tournament chips" at the end of the first round will advance to a second round. Additionally, there will be 7 wild cards that advance to the second round. The wild cards will be the 7 players with the most points at the end of the first round but who did not win their table. The second round will be played on three tables and consist of 15 hands with the top 2 finishers of each table advancing to the final round. There will also be one wild card advance to the final round. The final round will consist of 21 hands. The top 6 participants win a predetermined cash prize based on the number of players in the tournament.

\$8,000.00 Monthly Tournament

On the first Tuesday of every month a tournament will be held with a cumulative of \$8,000.00 in prizes awarded. To qualify for the monthly tournament, members must have participated in a least one of the \$50.00 or \$100.00 daily tournaments during the month. Members will earn 2 tournament chips with no cash value for each of the \$50.00 daily tournaments they participated in and 5 "tournament chips" for each of the \$100.00 daily tournaments that they participated in. Additional monthly "tournament Chips" can be won by placing in the daily tournaments. Further, members will also have the chance to win "tournament chips" during daily drawings. Members may purchase an additional \$250 "tournament chips" for a fee of \$50.00.

Participants in the monthly tournament will begin the first round with the number of chips that they have earned or won during the monthly session plus their additional purchase. The minimum bet per hand will be 5 with a maximum bet per hand of 100.

The monthly tournament consists of a series of "elimination" rounds with the top player(s) from each first round table advancing to the next round, until a final round of 7 players is reached. The number of participating club members will determine the number of rounds. The proposal does not state how a participant wins a round.

Elimination rounds will consist of 21 hands with the final round consisting of 30 hands. Advancing players will begin their next round of play with the same number of "tournament chips" that they ended their last round with. A predetermined fixed prize is awarded to the top 7 players.

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 to the general prohibition of gambling card games established in Oklahoma law.

Discussion

Our objection to the proposed format is based upon two elements: (1) the prize structure of the daily tournaments, and (2) the eligibility for the monthly \$8,000.00 tournament.

In the described format, prizes are awarded based on which player accumulates the most point-value chips during play and the prize does not vary based on the number of point-value chips in the player's possession at the end of play. These are favorable features to bona fide tournament play. However, the monetary prize does vary based on the number of players at the table. The winning prize is directly related to the number of players at the table and the entry fees received. This has the attributes of a "money hunt." "Money hunts" are gambling under Oklahoma law, and not considered to be within the statutory "tournament" exception discussed in our letters of July 9, 1999, and January 15, 2003.¹

As our advisory opinion of July 9, 1999, indicated, when card tournaments were first proposed, it was made clear by the tribes that the prize to be awarded would be established independently of the pool of entry fees and tournament participants would not be trying to win money from one another but would be competing instead to win the prizes offered by the tribe. The prize structure departs from this premise.

That being said, distinguishing the prize structure from a "money hunt" is potentially an issue in any blackjack tournament. The reality is that tournament sponsors routinely collect money from entry fees and, sooner or later, use a portion of money so collected to fund prizes. Money collected in this manner is income to the business, the prize an expense of the business. Thus, in some sense, the tournament participants are always competing for a prize that is the result of their entry fees. To distinguish the prize awarded in a blackjack tournament, the prize must be pre-established and fixed in the sense that it cannot vary based on the number of participants. Tournament blackjack players cannot simply pool their entry fees, with the winner taking the pot. The fixed prize creates a clear break between the payment of entry fees and the prize, avoiding the "money hunt" problem.

If, for marketing purposes, a tribe advertises tournaments in a manner that identifies that portion of the entry fee that will be expended for prizes, as opposed to the portion of an entry fee that will be retained for administration and profit by the gaming operation, the actual character of the game does not change. Thus, if a tribe decides it will use 90% of entry fees to pay for prizes and 10% for administration, it can advertise for example, "an entry fee of \$111 of which 90% will be used to fund prizes" or "an entry fee of \$100 and an administrative fee of \$11." Because the prize has been predetermined, the players

¹ See Oklahoma Attorney General Opinion 99-5 dated March 29, 1999 [Participants' entry fees held as a pool to be paid to the winner as a prize caused "money hunts" to be considered gambling. However, as a general matter, when a person or association sponsors or conducts contests for "purses, prizes, or premiums," and the moneys paid to such person or association for the right of participation become part of the person or association's general assets, and the "purse, prizes, or premiums" are paid out to contestants without regard to such contributions, such activities will not be considered a "bet."]

are not competing against each other for the pooled entry fees, and they are not engaged in betting against one another. To remove the objection, we recommend a change to the format to provide a series of fixed amount prizes rather than variable prizes dependent on the number of participants.

We also have concerns with the ability of players to join the monthly tournament by mere participation in daily tournaments rather than gaining admission through competition and in the unequal starting points.

Participants can gain entry to the monthly \$8,000.00 tournament by either playing in one daily tournament by which they would receive 2 tournament chips for the \$50 tournament or 5 tournament chips for the \$50 tournament or by simply paying \$50 and receiving 250 tournament chips. Clearly, a player who begins this tournament with 250 points has a distinct advantage over a player who begins with only 2 or 5 points. When one considers that the minimum bet for each hand is 5 points, the disparity in starting points has a dramatic effect on the level of competition between players. A player who gains entry by playing in a single \$10 daily tournament must win the first hand in the monthly tournament or else he is eliminated, whereas a player who buys in to the tournament can afford to lose several hands and still be able to compete.

It is our opinion that for a tournament to be bona fide, participants must start out on equal footing. To remove the objection, we recommend two changes. First, we recommend a pre-established entry fee that would be paid by every player in the monthly tournament with the provision that credits against the tournament entry fee may be earned by winning in daily tournaments. A player could earn the full entry fee by demonstrating success, and skill, in daily tournaments. Second, we recommend that each player in the monthly tournament start with the same 250 tournament chips as a means of achieving fairness and even competition in play.

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

Sincerely yours,



Penny J. Coleman
Acting General Counsel