



JUN 10 2003

John A. Barrett, Jr.  
Tribal Chairman  
Citizen Potawatomi Nation  
1601 S. Gordon Cooper Dr.  
Shawnee, OK 74801

Dear Chairman Barrett:

During your visit to the NIGC on April 15, 2003, you provided copies of rules for a blackjack tournament that could be played at variable prize levels and which envisioned two hands of play with the player holding the most tournament chips following those hands declared the winner. We voiced concern about whether the variable prize structure and the limited range of play constituted a tournament. You offered to revise the proposed format.

Based on the revised description provided to us on May 14, 2003, and discussions with William Grant of the NIGC staff, our view is that the new proposed tournament format can meet the requirements for Class II gaming under the Indian Gaming Regulatory Act and NIGC regulations.

#### Description

In the new proposed format, tournaments are to be held at different prize award levels. However, these prize award levels are fixed and will not vary based on the number of players participating in a particular tournament. You advise that a minimum of fifteen players will be required to start the tournament. Players will play at several tables depending on the number of players entered. Each player will begin with five tournament chips. These chips have no value outside of play in the particular tournament and may not be redeemed at the end of the tournament. Players may wager two or more tournament chips during any hand. Players compete against each other and not against the dealer who is there only to administer the tournament and distribute cards. Players continue to play in the initial round until only one player at each table can make the two-chip minimum bet.<sup>1</sup> That player is declared the table winner and will advance to the

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<sup>1</sup>Alternatively, the "head-to-head" competition at each table continues until there is no mathematical possibility of the player with the lesser chips winning the "head-to-head" competition by betting all the

championship round. In this round, the table winners will compete against each other in one or more hands using the format describe above for the tournament prize. The players will remain at the table position with inter-table play facilitated by using closed circuit TV cameras and video screens. While the championship round is being played, a consolation game is also played by all players at the table for a minimum value prize, using the described format. You indicate that in tests of the game, the initial round averaged seven hands and the championship round averaged four hands. A copy of the format and rules you provided are attached to this letter.

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

#### Discussion

There are two important factors in the Nation's proposed format that lead to our conclusion that the tournament can be a Class II gaming activity.

- Competition among players for a fixed prize. Because "tournament" is not defined in IGRA, in regulations of the NIGC, or in statutes of the State of Oklahoma, we rely on a common usage definition of the term. A tournament may be defined as a "a contest involving a number of competitors who vie against each other in a series of elimination games or trials." (Webster's II New College Dictionary, 1995.) The proposed format features an equalized starting point for tournament play. Each player at each tournament starts by paying a fixed fee and begins play with the same number of point-value chips. The players will stay in competition until they cannot longer play under the tournament rules and one table winner emerges. The table winners will then compete against each other. While we otherwise take the position that, until such time as the Commission establishes a different number by formal rule, the play of 10 hands is the minimum number to make a single round of tournament play a "series" that would allow a demonstration of player abilities envisioned by tournament play, this proposed format provides for multiple rounds and a clear sense of competition among players. Winning in competition with other players is the condition to advancement to the final round.
- The design of the prize structure. Fixed prizes are awarded based on which player accumulates the most point-value chips during the tournament in the second

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chips he has on the next hand and the player with the most chips betting only two, including the lesser chip holder getting double pay on "Blackjack" split pairs, or double downs on 10 or 11.

round of the tournament. The prize does not vary based either directly or indirectly on the number of point-value chips in the player's possession at the end of the tournament. The house is not paying the bet made by a player in the play of the hand and there is not otherwise direct compensation for success in a particular hand, or a limited number of hands, which disguise the payment of a bet by the house. The fixed prize structure also avoids the appearance that players are betting against each other.

Distinguishing the prize structure from a "money hunt" is potentially an issue in any blackjack tournament. In a "money hunt," players place equal wagers in a pot and the pot is paid to the winner of the contest. The result may be determined entirely by chance or by some combination of skill and chance. "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.<sup>2</sup> Nonetheless, 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 are not competing against each other for the pooled entry fees, and they are not engaged in betting against one another.

The advice in this letter that the tournament format would meet the requirements for a Class II gaming activity is limited to the description set forth in the materials provided on May 14, 2003, which is summarized above. A significant change to the format may result in a different conclusion.

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<sup>2</sup> 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 "purses, prizes, or premiums" are paid out to contestants without regard to such contributions, such activities will not be considered a "bet."]

John A. Barrett, Jr.  
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Thank you, again, for providing the tournament description for our review.

Sincerely yours,

A handwritten signature in black ink that reads "Penny Coleman". The signature is written in a cursive style with a large, prominent "C" at the end.

Penny J. Coleman  
Acting General Counsel

Enclosure