



January 25, 2008

David M. Ujke
Tribal Attorney
Red Cliff Band of Lake Superior Chippewa Indians
88385 Pike Rd.
Bayfield, WI 54814

Re: Consulting Services Agreement between Red Cliff Band and Calleo Entertainment

Dear Mr. Ujke:

This letter responds to your January 3, 2008, request for an advisory opinion regarding the *Consulting Services Agreement* (Agreement) with Calleo Entertainment. I understand the urgency of the Tribe's situation and thank you for submitting the Agreement for review.

Authority

The authority of the NIGC to review and approve gaming related contracts is limited by the IGRA to management contracts and collateral agreements to management contracts. 25 U.S.C. § 2711. The authority of the Secretary of the Interior to approve such agreements under 25 U.S.C. § 81 was transferred to the NIGC pursuant to the IGRA. 25 U.S.C. § 2711(h). Although this authority extends only to management contracts and agreements collateral to them, certain gaming-related agreements, such as consulting agreements or leases or sales of gaming equipment may contain provisions effectuating a management contract and should be submitted to the NIGC for review. *See NIGC Bulletin No. 93-3.*

Management Contracts Generally

The NIGC's implementing regulations define "management contract" to mean "any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation." 25 C.F.R. § 502.15. They define "gaming operation" as "each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses." 25 C.F.R. § 502.10. Finally, they define "collateral agreement" as "any contract, whether or not in writing, that is related either directly or indirectly, to a management contract, or to any

rights, duties or obligations created between a tribe (or any of its members, entities, organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor)." 25 C.F.R. § 502.5.

Neither the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701-2721, nor NIGC's regulations define "management." In 1994, the NIGC put forth its earliest guidance on this definition in *Bulletin No. 94-5*, explaining that

management encompasses activities such as planning, organizing, directing, coordinating, and controlling. In the view of the NIGC, the performance of any one of these activities with respect to all or part of a gaming operation constitutes management for the purpose of determining whether an agreement for the performance of such activities is a management contract requiring NIGC approval.

The Tenth Circuit later suggested another, more precise definition by looking to the regulations that defined "primary management official" as any person "who has authority . . . to set up working policy for the gaming operation." *First Am. Kickapoo Operations, L.L.C. v. Multimedia Games, Inc.*, 412 F.3d 1166, 1172 (10th Cir. 2005), quoting 25 C.F.R. § 502.19. By these definitions, then, management necessarily includes some degree of discretion and control over gaming activities.

Consulting Contracts Generally

One type of contract that is distinct from, but often confused with, management contracts is the consulting contract. The NIGC also identified core characteristics of consulting contracts in *Bulletin 94-5*: "[a]n agreement that identifies finite tasks or assignments to be performed, specifies the dates by which such tasks are to be completed, and provides for compensation based on an hourly or daily rate or a fixed fee, may very well be determined to be a consulting agreement."

Terms of the Agreement

This Agreement contains all of three core characteristics of a consulting contract:

- a) It defines finite tasks;
- b) It specifies the dates by which such tasks must be completed; and
- c) It provides for a flat rate of compensation.

Specifically, Exhibit A of the Agreement tasks Calleo with observing, assessing, and making recommendations regarding particular aspects of marketing, finance, and human resources. By contracting for advice and information regarding specific areas of each department (i.e. financial controls, market potential, Customer Service Training, etc.), the parties have limited Calleo's services to finite tasks. Furthermore, the parties have specified

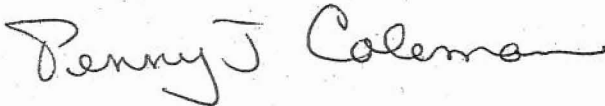
a [] for consulting relationship, and shorter periods for the completion of individual tasks. Finally, the compensation is at a flat rate of [] per month, a rate consistent with the market value for such services. b4

Not only does the agreement include the core characteristics of a consulting contract, it also lacks the discretion and control representative of a management contract.

Conclusion

After careful review, it is my opinion that the Agreement conforms in all respects to the consulting agreements described in *NIGC Bulletin 94-5* and does not require the approval of the Chairman. As a matter of practice, I am forwarding a copy of this agreement to the Office of Indian Gaming Management for its review. If you have any questions, please feel free to contact Staff Attorney Jennifer Ward at (202) 418-9814.

Sincerely,



Penny J. Coleman
General Counsel (Acting)

cc: Rose Soulier, Chairperson Red Cliff Band of Lake Superior Chippewa Indians

Calleo Entertainment, LLC
Attn: []
210 E. Main St., Ste. 222
Norman, OK 73069

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George Skibine, Office of Indian Gaming Management, Department of the Interior
(w/ Agreement)