



FEB 20 2008

Marvin Thin Elk Jr.
Licensing Agent
RST Gaming Commission
HC 14, Box 136
Valentine, NE 69201

RE: Employment Agreement between Rosebud Sioux Tribe and [REDACTED] b6

Dear Mr. Thin Elk:

On October 4, 2007, the Director of the National Indian Gaming Commission (NIGC) Region IV sent an agreement between the Rosebud Sioux Tribe and [REDACTED] to the NIGC's Office of General Counsel (OGC) for review. The purpose of this review is to determine whether the agreement is a management contract or collateral agreement to a management contract and therefore subject to approval of the NIGC Chairman under the Indian Gaming Regulatory Act ("IGRA"). It is my opinion that the agreement with [REDACTED] is a contract of employment, not a management contract, and therefore does not require the approval of the Chairman. However, [REDACTED] is a primary management official subject to all requirements for such positions under IGRA, the NIGC regulations, and the Rosebud Sioux Tribal gaming ordinance. b6

Authority

The authority of the NIGC to review and approve gaming-related contracts is limited by IGRA to management contracts and collateral agreements to management contracts to the extent that they implicate management. 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).

Management Contracts

The NIGC has defined the term "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. The NIGC has defined "collateral agreement" to mean "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.

Analysis

The agreement, without question, gives [redacted] management responsibilities. He is responsible, generally, for the operations at Rosebud Casino. He is also tasked, specifically, to [redacted]

[redacted] See [redacted] contract § 3. This would make the agreement a management contract, except for the fact that the agreement makes [redacted] a Rosebud Sioux Tribe employee.

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One of the ways IGRA attempts to ensure that tribes are the primary beneficiaries of gaming as Congress required, 25 U.S.C. § 2702(2), is to set certain requirements for management contracts and to require the Chairman's approval. Thus, IGRA requires a monthly reporting to the tribal governing body, caps on fees paid by tribes from net revenues, etc. These concerns and requirements, however, do not apply to a tribe's relationships with its own employees.

That this contract is an employment contract is undisputed. It expresses a clear intent to create an employment relationship, provide [redacted]

[redacted] See [redacted] contract §§ 1, 2, 9. In employment relationships such as this, IGRA protects tribes from undesirable elements through its primary management and key employee requirements, to which [redacted] is subject.

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Determination

The contract is, by its terms, an employment contract. After careful review, it is my opinion that [redacted] will be functioning as an employee of the tribe and that his employment contract does not qualify as a management contract as that term is used in the Indian Gaming Regulatory Act, 25 U.S.C. § 2711. The provision in IGRA requiring the Chairman's review and approval of management contracts (25 U.S.C. § 2711) applies

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only to contracts with third parties. The agreement, therefore, 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 call Staff Attorney Jennifer Ward at (202) 418-9814.

Sincerely,



Penny J. Coleman
General Counsel (Acting)

cc: George Skibine, Office of Indian Gaming Management, Department of the Interior (w/ contracts)
John Peterson, Director, NIGC Region IV

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J bb