



January 23, 2009

Kent E. Richey
Faegre & Benson LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

Re: Opinion regarding pledge of gross revenue from gaming operations

Dear Mr. Richey:

This responds to your letters dated January 21, 2009 and January 23, 2009. You informed me that the Muscogee (Creek) Nation intends to close shortly on a large loan with a number of lenders, and that the parties intend to secure the loan obligations in part by a pledge of gross revenues from certain gaming operations of the Nation.

From past opinions issued by this office, you are aware of our legal position that an agreement containing a security interest in a gaming facility's future gross revenues, without further limitation, authorizes management of the gaming facility. We take this position because in the event of default, a party with a security interest in a gaming facility's gross revenues has the authority to decide how and when operating expenses at the gaming facility are paid, which is itself a management function. Furthermore, a party that controls gross revenue potentially can control everything about the gaming facility by allocating or putting conditions on the payment of operating expenses. Therefore, agreements with such a security interest constitute management contracts that are void unless and until they are approved by the Chairman of the National Indian Gaming Commission (NIGC).

You have suggested that our concern could be addressed by including certain limitations in the agreement that would prevent the secured party or parties from exercising management control over the gaming facility, even if the secured party took control over gross revenues in the event of default. To that end, you have proposed to include language in the loan documents substantially in the following form:

Notwithstanding any provision in any Loan Document, none of the Lending Parties shall engage in any of the following: planning, organizing, directing, coordinating, or controlling all or any portion of the Borrower's gaming operations (collectively, "Management Activities"), including, but not limited to:

1. the training, supervision, direction, hiring, firing, retention, compensation (including benefits) of any employee (whether or not a management employee) or contractor;

2. any employment policies or practices;
3. the hours or days of operation;
4. any accounting systems or procedures;
5. any advertising, promotions or other marketing activities;
6. the purchase, lease, or substitution of any gaming device or related equipment or software, including player tracking equipment;
7. the vendor, type, theme, percentage of pay-out, display or placement of any gaming device or equipment; or
8. budgeting, allocating, or conditioning payments of the Borrower's operating expenses;

provided, however, that a Lending Party will not be in violation of the foregoing restriction solely because a Lending Party:

- A. enforces compliance with any term in any Loan Document that does not require the gaming operation to be subject to any third-party decision-making as to any Management Activities; or
- B. requires that all or any portion of the revenues securing the Loan be applied to satisfy valid terms of the Loan Documents; or
- C. otherwise forecloses on all or any portion of the property securing the Loan.

My opinion is that this negative covenant adequately addresses the concern. The language prohibits a lender from exercising management control or discretion, but permits it, in the event of default, to put a borrower on a revised schedule of payments, provide the borrower with a sum certain to pay operating expenses, or demand payment in full and cause the bankruptcy or insolvency of the gaming operation. It would not allow a lender to decide whether and to what extent the monies the Tribe retains would be used for operating expenses. As such, the pledge of gross revenues no longer authorizes management. Assuming that there are no other management provisions, the contract would not have to be approved by the Chairman of the NIGC.

If you have any questions or require any additional assistance, Senior Attorney Jeffrey Nelson is assigned to this matter.

Sincerely,



Penny J. Coleman
Acting General Counsel