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United States Senate

COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510-6480

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December 15, 2004

The Honorable Philip Hogen
Chairman
National Indian Gaming Commission
1441 L Street N.W.
Suite 9100
Washington, D.C. 20005

Dear Chairman Hogen:

We write on behalf of a number of Indian tribal governments that have contacted us expressing their concern over the Commission's review of non-management gaming contracts and, particularly, the Commission's conclusion that certain non-management contracts violate the sole proprietary interest requirement of the Indian Gaming Regulatory Act.

We are advised that the scope of the Commission's review of non-management gaming contracts now includes lending, development, and equipment lease agreements which provide for a percentage of net revenues for a specified period of time in exchange for services rendered. We know of no notice that has been published to inform tribal governments that the Commission is expanding its review to include such agreements.

As you well know, for many tribes entering the gaming arena, their only means of providing compensation to those who are involved in the start-up and development of a gaming enterprise, but who will not have an ongoing management role in the enterprise, is to commit a percentage of

future net revenues to pay for these non-management agreements. Apparently, the sole proprietary interest standard is being applied with no notice or guidance having been published that would inform tribal governments and the public that seeks to do business with the tribes of this new standard.

We are also advised that applying the sole proprietary interest standard to non-management agreements is having a chilling effect on those who do not have and will not have a management role in the gaming operation, but who would otherwise come forward to assist tribes in the development of their gaming operations. Compounding these problems is the Commission's apparent practice of issuing its decisions on non-management agreements through informal advisory opinion letters that are not subject to administrative or judicial review.

We have every reason to believe that these complaints are accurate and also pose serious considerations of due process that are inconsistent with the protections of the Administrative Procedures Act and Constitutional guarantees.

We would be most grateful to have your views on the Commission's authority to apply the sole proprietary interest standard to non-management agreements and the rationale for extending the standard to such agreements, as well as a time frame for when public notice will be issued on this new policy.

Sincerely,


BEN NIGHTHORSE CAMPBELL
Chairman


DANIEL K. ROUYE
Vice Chairman