



FORT SILL - CHIRICAHUA - WARM SPRINGS - APACHE TRIBE

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July 26, 2009

Phillip N. Hogen
Chairman
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington DC 20005

Dear Chairman Hogen,

Upon receiving advanced notice that you may be issuing a Notice of Violation (NOV) to our tribe I requested an immediate meeting and flew to Washington to discuss our concerns. In fact when we arrived at your office we did not receive an NOV, nor did we receive any documentation, both of which arrived after our meeting.

It is our belief that the NIGC has acted out of its scope of jurisdiction and has cited us for violations that other tribes have gotten a pass on for reasons we believe are politically or financially motivated by you and or members of your staff. These stated violations have very little to do with the proper enforcement of the regulations or the law.

After reviewing the situation, I still have some serious concerns about the process that was used in issuing the NOV. I'll address them below:

First, you waited one hundred and four days after we started offering bingo to issue the NOV. The date on the legal analysis substantiating it is April 30, and you waited two and one-half months after receiving it to take action. The result of this delay is that there are several employees who will lose their jobs months after they left their previous ones. Had you taken action in a timely manner, the impact on them may have been lessened.

Since you waited this long, you could have waited a little longer and let your successor handle it. As I recall, there was an Executive Order directing all Executive Branch employees to wait until their replacements were named before taking any adverse actions. But you chose not to comply with this order, and as a result several people in an economically disadvantaged area may find themselves unemployed and unable to care for their families.

MOUNTAIN SPIRIT DANCER

Mountain Spirit Dancer represents the Mountain Spirit Ceremony which is used by the Chiricahua and Warm Springs Apache. It was given to the Apaches by the Mountain Spirits for blessing, protection, curing and warding off diseases. The Ceremony is still used today.

Secondly, I am seriously troubled that our people were contacted by a Gaming Control officer from the State of New Mexico within a few hours of the contact we received by your staff and asking the same exact questions that your staff asked. You are well aware that in the past, there has been conflict between the state and the tribe. I believe you failed to uphold your Trust Responsibility to the Tribe in not letting us know that the state was again interfering in this Tribal-Federal matter.

It is particularly troubling that this contact occurred nearly a week before you issued the NOV, a week before anybody outside of your office would ordinarily know about it, and a week before we learned of it. If you were not collaborating with the state, you certainly must have been in contact with them on some level.

Third, I do not believe that you have the authority to make Indian Lands Determinations. You may recall we discussed this in your office in March of 2008. It is unambiguous in the IGRA that this authority is reserved for the Secretary of the Interior. Last year, you stated that your enforcement authority allowed you to do this, but it just doesn't make sense to me.

Had we received an adverse Indian Lands Determination from the Secretary, it would follow that you could enforce it, but absent one, I believe you are severely overreaching in making determinations and then enforcing them. It is analogous to a police officer deciding what the speed limit is and then arresting drivers for speeding. This situation provides no check on the power of the enforcement agency, and increases the possibility of unfair prosecutions. That is what I believe has happened here.

Fourth, the NOV is inconsistent with the Memorandum of Understanding (MOU) that was agreed upon in 2007 between the United States and the Tribe. We relied upon this agreement to make significant financial investments in the property. It is only fair that we should be able to rely upon the United States to keep its agreements with us. It seems to me that you do not have the authority to unilaterally abrogate this agreement.

Fifth, the NOV is based upon a legal opinion that was withdrawn. Your office made a filing in Federal Court in Oklahoma City in 2008 stating that you had withdrawn it. As with the MOU, we relied upon this action to make investments in our property and to employ several individuals. Your action is also inconsistent with this filing.

Finally, I have no faith that anybody can conduct an impartial review of the merits of his or her own decision. But if we appeal the NOV, you will be chairing the panel that reviews it. You will also comprise 50% of that panel.

If there was a fully seated commission, there might be the possibility of an impartial review, but as it stands, there is absolutely no way for the panel to override your opinion. At best there would be a tie.

Under the current circumstances, I have no faith that our appeal, should there be one, will be heard with impartiality.

Because of these actions our Sovereign Rights are in jeopardy and I would hope that given my concerns with the process of the NOV itself that you would delay the review of our appeal until a full commission is seated.

Sincerely,



Jeff Houser
Tribal Chairman