



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 2024-0

JAN 17 1992

Honorable Hubert Williams
Chairman, Nooksack Indian Tribe
of Washington
P.O. Box 157
Deming, Washington 98244

Dear Chairman Williams:

Thank you for your letter of November 14, 1991, with which you submitted the original of the Tribal-State Compact for Class III Gaming between the Nooksack Indian Tribe of Washington and the State of Washington.

The compact was received by the Assistant Secretary - Indian Affairs on November 26, 1991. Upon initial review of the compact documents, it was noted that the tribal resolution authorizing the Class III gaming on the Nooksack Indian Reservation was not included. This resolution was telefaxed to this office on December 5, 1991. During a more thorough review, we determined that Appendix C references another appendix which has not been included. Appendix C, Section 59.09, TRANSFER OF ASSETS, p. C-10. We are unable to make a complete review until the complete compact is before us. Therefore, the 45 day statutory period for Secretarial review has not yet begun to run.

Regardless of the completeness of the compact as submitted, we are unable to approve this compact with Appendix C as it is now written. The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 et seq., regulates gaming engaged in by Indian tribes and their approved contractors. The function of the corporation whose charter is Appendix C is unclear. The corporation is apparently not intended to function as an arm of the Tribe, since the compact provides for a gaming agency to exercise the Tribe's governmental responsibilities for oversight and establishes the corporation as a separate entity. Compact, Section 2(r), p. 4 and Sections 4(a) and (c), pp. 9-10. As written, the corporate charter contained in Appendix C appears to establish a tribal corporation to serve as its management contractor. However, Appendix C does not meet the IGRA requirements for management contractors.

The compact clearly attempts to establish an entity which is separate from the Tribe but fails to meet the requirements of the Act for gaming by entities which are not the Tribe. It anticipates that gaming can be conducted through management companies. Compact, p. 10. From the very clear efforts of the Tribe to establish an entity separate and distinct from the Tribe, the Tribe apparently was attempting to establish a management

company in Appendix C, Ordinance of the Nooksack Tribe Incorporating the Nooksack Economic Development Corporation (NEDC). See e.g., Section 59.04.020, SEPARATE ENTITY, Appendix C, p. C-2. See also, Section 59.11, TAXES AND DISTRIBUTION OF REVENUE, p. C-11 (NEDC must pay gross revenue and net income taxes to the Tribe.) and Section 11(d), Sanctions/Civil Fines, p.e 31 (Section establishes schedule of fines to be imposed on the NEDC ore subsequent operators.). However, the corporate charter in Appendix C fails to meet the basic requirements for such contractors as established under the IGRA. For instance, the charter provides for a tax of 50 percent of the net income and two percent of the gross revenue, while the IGRA requires that the Tribe must receive a minimum of 60-70 percent of the net profits. 25 U.S.C. § 2711(c)(2).

In summary, Appendix C does not meet the requirements of the IGRA. We are returning your compact as disapproved.

We also note that the compact contains a Class II game, poker, which would not usually be included in a Class III gaming compact. Class II gaming is within the jurisdiction of the National Indian Gaming Commission and the Tribe, rather than the State and the Tribe. Therefore, if the Gaming Commission issues regulations which conflict with this compact, the compact may not be consistent with Federal law.

If we can be of any assistance, please contact the Division of Tribal Government Services at (202) 208-5224.

Sincerely,

William D. Bettenberg

Acting Assistant Secretary - Indian Affairs