

**WRITTEN TESTIMONY OF THE
NATIONAL TRIBAL GAMING COMMISSIONERS
& REGULATORS**

**NATIONAL GAMBLING IMPACT STUDY
COMMISSION
UNITED STATES HOUSE OF REPRESENTATIVES
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Submitted by:

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I. Introduction

The Purpose of the National Tribal Gaming Commissioners & Regulators (NTGC&R) will be to promote a cooperative relationship among the commissioners/regulators of Tribal gaming enterprises and other organizations and also to promote regulatory standards, methods of operation, educational seminars and other activities. NTGC&R will promote consistent regulatory practices among NTGC&R members through the exchange of thoughts, information, and ideas for the mutual benefit of all concerned. The NTGC&R may act as gaming regulatory, advisory group to tribal gaming organizations and others. The NTGC&R is organized for nonprofit purposes.

We divide membership of the NTGC&R into Voting and Associate Members. The Voting members of the NTGC&R represent the tribal gaming regulatory entities of Tribal gaming enterprises. Any tribal gaming regulatory entity may become an NTGC&R voting member, with approval of their application by the NTGC&R Board of Directors. The Board of Directors consists of the twelve (12) Regional Representatives of the NTGC&R. Associate memberships will be available. There are currently 93 members in the NTGC&R representing tribal Gaming Regulatory entities and organizations.

II. Testimony

Good morning, my name is Jeff Metoxen and I am the Chairperson for the National Tribal Gaming Commissioners and Regulators (NTGC&R) and I am also the Chairperson of the Oneida Tribal Gaming Commission. Some common questions tribal gaming has faced since the Indian Gaming Regulatory Act (IGRA) was passed in 1988. Is tribal gaming adequately regulated, is it regulated as much as private and commercial gaming, is it regulated as well as governmental gaming? One idea that needs to be recognized and confirmed from the on set of these questions, is that tribal gaming is governmental gaming. The revenue from tribal gaming has very specific requirements attached to it. Tribal law establishes where the proceeds may go, including IGRA that requires tribal gaming net revenue to be used in very specific purposes.

The Indian Gaming Regulatory Act (IGRA) was passed in 1988, which was established to regulate gaming provided by the federally recognized tribes of the Unties States. Games that were authorized fall into one of the three categories of Class I, II, III.

IGRA, Sec. 2710, (2), (B).

- (i) to fund tribal government operations or programs;
- (ii) to provide for the general welfare of the Indian tribe and its members;
- (iii) to promote tribal economic development;
- (iv) to donate to charitable organizations; or
- (v) to help fund operations of local government agencies;

These controls are not applied to private or commercial gaming, yet these and more are required within tribal gaming operations. As governmental gaming and as gaming overall, tribal gaming is the most regulated industry in the world (find documents put together by Sharon on regulation applied to tribal gaming tribal, federal, state requirements). Tribal and federal requirements of background investigations on all defined primary management officials and key employees, include reporting the findings to the National Indian Gaming Commission. Audit reports are due to tribal requirements and the NIGC for compliance. The reports can consist of regulatory audits, security audits, operational audits and financial audits. The state may get the reports if they are part of the gaming regulatory entity through the Compact process established in IGRA.

Gaming facilities have to meet tribal, federal, and state codes to ensure the health and safety of the gaming patrons and employees. Federal reporting requirements include the recent action toward money transactions regarding Title 31 reporting. Compliance checks are routinely done through the tribal gaming regulatory entity and the NIGC, through their field investigators. The state may complete them through the compact process. Tribes have established a cooperative working agreement with federal and state officials in completing these requirements. These are some areas that apply to Indian gaming. To comply with these regulations and laws, tribes have been establishing tribal gaming regulatory entities with this responsibility. Tribes involved in gaming before the passing of IGRA were already regulating the games, through a gaming regulatory entity or assigned duties.

Although I am here on behalf of the NTGC&R, I am also here on behalf of the Oneida Tribal Gaming Commission and I would like to mention last Friday's decision from the Ninth Circuit. That decision gives the green light to proceed with Class III gaming without a state compact when the state refuses to negotiate under IGRA. We are very happy with the result, but we also recognize the importance that such non-compact tribes be in a position for strong self-regulation.

The National Tribal Gaming Commissioners & Regulators (NTGC&R) have been in existence for about three (3) years. We are a non-profit organization, funded solely by registration and membership fees. The purpose of creating this organization is for the sharing of information on Indian gaming regulations. This organization had the foresight to anticipate that one day Indian Gaming Regulators would be a primary focus by both pro and anti-Indian gaming interests.

Indian gaming has been around for many years and depending on what type of gaming we are talking about we could go back for generations and discuss traditional Indian gaming. As for tribes throughout the entire country and here in the Mid-west, we have been involved in different types of traditional gaming whether it be peachstone games or stick games. These types of traditional gaming have been passed on down from one generation to another.

Sharing information with each other is just as important today. This is the sole purpose of establishing the National Tribal Gaming Commissioners & Regulators. We tribal gaming commissioners realize in order to stay abreast of the current issues pertaining to regulations, we need to communicate with each other. By establishing this organization we are helping each other as tribal commissioners to protect the integrity on Indian gaming throughout the entire country. The National Tribal Gaming Commissioners realize there are some tribes that are on different levels of having their tribal commission's regulatory structure in place. Because of this we have expertise with tribes that have been gaming longer than some other tribes that are just getting started or have been in existence for only a short while. We have found it to be very beneficial to Indian gaming tribes throughout the country by sharing regulatory information with each other.

The NTGC&R is pleased to see the proposed regulations in regard to Class II Self-Regulation Certification and the proposal for Class III in the same regard. As you may be aware, the NTGC&R have been seeking said regulations for a very long time, along with designated Tribes that have been already self-regulating. It is very important for these regulations to be imposed in order to attain the intent of IGRA, which is identified at Section 2702. (1) "The purpose of this chapter is - (2) to provide a statutory basis for the operation of gaming by Indian tribes as a means of development, SELF-SUFFICIENCY AND STRONG GOVERNMENT;"

The following are recommendations in regard to the actual proposed regulations:

518.2 Who May Petition for Certification of Self-Regulation Certification.

"(e) The gaming operation and the tribal regulatory body have, for the three years immediately preceding the date of the petition, maintained all records required to support the petition for self-regulation."

This should be changed to:

“The TRIBE, for the three years immediately preceding ... for self-regulation.”
Some tribes have been self-regulating for many years but they may not have had an actual regulatory body or, the tribe itself may have been maintaining the appropriate records, therefore it seems only reasonable to insert Tribes in the above particular term.

518.3 What Must a Tribe Submit to the Commission as Part of the Petition?

(a) (2) (vi) “For the three (3) year period immediately preceding the date of the petition, records of all allegations of criminal or dishonest activity, and measures taken to resolve the allegations: ...”

This statement appears to be overbroad. It needs to be clarified and narrowed to specify what types of activity needs to be submitted. The manner in which it is presently stated could mean any type of allegations against a gaming facility, such as the allegations that dissatisfied patrons would allege. Resolution is usually achieved by means of some type of process that is followed by the gaming operation and the regulatory body. Frequently the alleged activity is that of a personnel nature and is corrected by the supervisor immediately. It would be more appropriate to have the type of allegations that the Gaming Commission has the resources to review, submitted, and to define the types of allegations that could impact self-regulation status. The number of allegations that a gaming facility has against it is not a true determination as to its regulatory capabilities. The true test is the manner and the process by which an operation and/or regulatory body reviews and responds to allegations.

A lesser number of allegations may mean that there is intimidation occurring so individuals will not allege dishonest practices. It could also mean that there are not adequate controls on the games. Some type of process and more defined allegations may meet the criteria that the National Indian Gaming Commission is seeking as opposed to submitting all the criminal and dishonest allegation records.

518.4 What Criteria must a Tribe Meet to be Issued a Certificate of Self-Regulation?

(b) “Adoption and implementation of minimum internal control standards which are at least as stringent as those promulgated by the Commission, or until such standards are promulgated by the Commission, minimum internal control standards at least as stringent as those required by the State of Nevada or the State of New Jersey;

This particular statement completely ignores the fact that the National Indian Gaming Association, by means of diverse tribal internal auditors, accountants, corporate gaming board members, managers, etc. who have had day to day experience in dealing with minimum internal control standards. The MICS that were introduced by the National Indian Gaming Association meets the needs of Indian gaming. There is nothing magical about Nevada MICS or New Jersey MICS, but they were used as part of the development of the NIGA MICS. Perhaps the language could refer to MICS that include input from experienced gaming tribes or experienced representatives of gaming

tribes. In addition, the language should refer to the MICS as developed in order to protect the integrity of the games and to protect the assets of the tribe. The NIGA MICS have been recognized in some areas as being more stringent than those of Nevada or New Jersey are. The stringency was instituted because of the spotlight that is always on Indian gaming. Tribes can never be as good as the next government, they must always be better. The attached charts provide a breakdown in the roles within tribal gaming of tribal governmental structures and tribal checks and balances.

The final recommendations and questions go to the term "gaming records". We will assume that it refers only to Class II records, but that should be clarified throughout the regulations. Surveillance is not referred to in detail and it needs to be referenced because of the importance of this department. It is recommended by the NTGC&R that surveillance be placed under the supervision of the tribal regulatory body but that it should be used as a tool of management. In addition and finally, the fee assessments that are being imposed need to be based upon regulation. With the proposed regulations in regard to self-regulation certification, there can, in the future be a correlation made between the regulatory authority performed by the tribal gaming commission/regulatory body and the amount of fee assessments paid to the National Indian Gaming Commission.

This concludes my testimony. I thank you for the opportunity to address tribal gaming issues on behalf of the Oneida Tribal Gaming Commission and the National Tribal Gaming Commissioners and Regulators.