



What's Next for the National Indian Gaming Commission?

by Penny Coleman

It's a new day for the NIGC with three new Commissioners and new executive staff. But with limited authority and the increased expertise of tribal nations' gaming commissions, where can the NIGC go from here? There are many ways for the NIGC to continue its important role in Indian Country. Four important areas the Commission should focus on are: 1) improve tribal access to background information; 2) strengthen training and technical assistance through contracts with tribes; 3) end the classification debate over bingo machines; and 4) implement a formal Indian hiring preference.

Provide Background Investigation Files

The Commission can reduce costs for tribes while expanding tribal access to background information by doing two things. First, make the NIGC's background investigation files readily accessible to tribal licensing authorities. Second, expand the availability of FBI criminal history checks to include vendors.



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In its formative years, the NIGC anticipated sharing background investigation materials with tribes and took the necessary steps to do so and remain in compliance with the federal Privacy Act. Almost twenty years later, the Commission made progress by sharing information through the Tribal Access Portal (TAPS). At this point TAPS provides minimal information and expects licensing officials to contact each individual tribe that has a file on a potential employee.

TAPS could, however, provide access to NIGC's entire background investigation database and reduce and sometimes eliminate the need to contact each individual tribe that has a background file. While the NIGC needs to ensure that it does not release such information to those who do not need it for licensing, a technical detail should not prevent ready electronic access to the database.

Over the years, tribal commissions have also continuously lobbied for access to FBI criminal history files for vendor licensing. Although some tribal-state compacts establish access to that information, many gaming commissions simply cannot obtain all of the information they need. This places the gaming operations at risk to unscrupulous contractors.

The NIGC can provide tribal access to the FBI's criminal history files by implementing a little noticed provision in the Indian Gaming Regulatory Act. Section 2706(b)(3) of 25 USC provides that the Commission "shall conduct or cause to be conducted such background investigations as may be necessary." This section does not limit the Commission's authority over background investigations to key employees and primary management officials. Rather, it suggests that Congress recognized there would be others who should be subject to background investigations. Working with the tribes and the FBI, this authority could be implemented to provide tribal access to the FBI's files.

Strengthen Training and Technical Assistance

It is time to strengthen and expand the Commission's training and technical assistance program. There are many areas that demand more emphasis including programs on the latest technology, surveillance, security, and compliance with the variety of federal laws affecting the gaming operation. Yet the NIGC has only one employee who provides training full time. Others provide such training only as a collateral duty. Furthermore, there are many areas where experienced tribal gaming commissions have developed expertise beyond NIGC's present capabilities and could serve as an important technical assistance source.

The Commission can quickly expand its training capabilities

by implementing a rarely used provision of IGRA. Section 2706(b)(7) of 25 USC provides that the Commission “may enter into contracts with federal, state, tribal and private entities for activities necessary to the discharge of the duties of the Commission....” Using this provision along with the Buy Indian Act, the NIGC can tap the expertise already developed in Indian Country. By doing so, tribal experts can share their knowledge, the NIGC will not have to develop that expertise, and the fees paid by tribes to the NIGC will be returned, in part, to the tribes through the training contracts.

End the Bingo Debate

The Commission can finally end the “one-touch” debate for bingo machines. For many years the NIGC, tribes and gaming machine manufacturers debated whether a bingo machine that requires only one touch to play constituted a Class II game or a Class III facsimile that is subject to a tribal-state compact. That distinction is important to tribal nations because a one touch game ensures negotiation leverage for tribal-state compacts. And for those who are simply unable to expand into Class III gaming machines, a one-touch game can mean millions of dollars for the tribes.

The last official word from the NIGC is Chairman Hogen’s decision to disapprove the Metlakatla ordinance which authorized a Class II one-touch bingo machine. If the new

Commissioners disagree with that decision, they need to say so definitively with a thorough and rational explanation for their conclusion. By doing so, the Commission’s decision is entitled to deference by the federal courts. Such deference would likely foreclose state attacks on the tribal nations’ Class II gaming.

Implement Indian Preference

Finally, the Commission should move quickly to implement a formal national Indian preference hiring policy and practice that assures that the NIGC continues to draw top talent. This can be done by implementing a variety of strategies. They could include a sustained recruitment effort in Indian Country; an internal educational, training and mentoring program to assure that Indian employees are able to advance within the agency; and the development of hiring standards that continue to attract top talent.

By adopting these four, the Commission will assist tribes that have yet to develop their own expertise in all aspects of Indian gaming regulation while enhancing the NIGC’s ability to ensure the integrity of Indian gaming. ♣

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