



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP 15 2021

The Honorable E. Sequoyah Simermeyer
Chairman, National Indian Gaming Commission
1849 C Street, NW., MS 1621
Washington, DC 20240

Dear Chairman Simermeyer:

As you are aware, in 2002, the Seneca Nation of Indians (Nation) and the State of New York (State) entered into a Tribal-State Gaming Compact (Compact) that provided for an initial term of 14 years and, absent any objections from the parties, an automatic 7-year renewal period. Of note, the Compact provided for graduated revenue sharing payments from the Nation to the State. For years 1-4, the revenue sharing payment to the State was 18 percent of the “net drop” from certain gaming machines. For years 5-7, the revenue sharing payment was 22 percent. For years 8-14, the revenue sharing payment was 25 percent. The Compact does not expressly address the terms of any revenue sharing payments to the State in the seven-year renewal period. The parties submitted the Compact to the Secretary of the Interior (Secretary) for review and on November 12, 2002, the Secretary completed review and declined to approve or disapprove the Compact. Therefore, under 25 U.S.C. § 2710(d)(8)(C), the Compact was considered to have been approved but only to the extent it is consistent with IGRA.

When the Compact’s initial 14-year term expired, the parties were unable to reach agreement as to whether the revenue sharing payments should continue at the 25 percent rate for the 7-year renewal period. The State then issued a demand for binding arbitration before a three-person panel as provided in the Compact. In a split decision in the State’s favor, the arbitration panel found that the renewal provision was ambiguous as to the Nation’s obligation to make revenue sharing payments to the State and, after reviewing evidence, found that the provision should be read to require the Nation to continue to make revenue sharing payments to the State during the renewal period at the rate of 25 percent of net drop.

On June 6, 2019, the Nation filed a petition to vacate the final award under the Federal Arbitration Act with the United States District Court for the Western District of New York, arguing that the panel manifestly disregarded IGRA’s requirement that the Secretary review and approve any payments beyond the 14-year initial term. On November 8, 2019, the district court confirmed the award, and the Nation appealed to the United States Court of Appeals for the Second Circuit. On February 22, 2021, the circuit court entered its decision affirming the district court’s judgment.

On March 3, 2021, the Nation informed the Secretary of the circuit court’s decision and the nature of the revenue sharing payments associated with the Compact. The Department of the Interior (Department) responded, expressing its serious concerns about extension of the revenue sharing beyond the 14-year initial term and the lack of certainty that the extension of the revenue

sharing into the Compact's 7-year renewal period complied with IGRA. The Department noted that it had not determined whether the State has offered any meaningful concessions to the Nation nor had it determined whether the value of any concessions provide substantial economic benefits to the Nation in a manner justifying the revenue sharing payments. All references in the Secretary's 2002 letter refer to the term of the Compact as 14 years, and noted that the Compact was considered approved, "but only to the extent the compact is consistent with the provisions of [IGRA]." The Department invited the parties to submit the revenue sharing provisions for review by the Secretary. The State did not respond to the Department's invitation.

On April 23, 2021, following receipt of the Department's letter, the Nation filed a Rule 60(b) motion with the district court requesting relief from the judgment to allow the Secretary to review the disputed payment terms. It is our understanding that briefing on the Nation's motion is complete.

The Department is concerned that a final judgment against the Nation could result in a violation of IGRA. Under IGRA, the Secretary is required to publish notice in the Federal Register upon the completion of a 45-day period after submission of a compact. This requirement is directed by Congress and the Secretary has no discretion in the matter. Once the Secretary has published notice of a compact in the Federal Register, the Secretary has no enforcement role under IGRA. Rather, the legal framework as directed by Congress is already in place. Initiation of any enforcement action is within the exclusive purview of the NIGC. *See* 25 U.S.C. § 2714.

Because of NIGC's responsibility for enforcing IGRA violations, the Department refers this matter to you. Although the Department recognizes that it is within NIGC's discretion, after publication of a compact in the Federal Register, to consider whether there is a violation of IGRA, the Department shares its serious concern about the panel's extension of the revenue sharing provision beyond the Compact's initial 14-year period and whether this agreement may violate the Nation's ordinance requirement that it maintain the sole proprietary interest in its gaming operations and be the primary beneficiary of its gaming enterprise.

Sincerely,



Bryan Newland
Assistant Secretary – Indian Affairs