

Gah-Yah-Tont

(It Is Written)



State of the Nation
Chief William Fisher

February 2016



Greetings fellow tribal members!

I hope this newsletter finds you and your family well. As many of you know, my life has changed immensely since I last wrote to you. My wife, Anja, and I recently added a new addition to our family. We welcomed a new baby boy named Nicholas Roy Fisher. He is the joy of our lives and, although I'm a rather old "new parent," we have never been happier. I thank you for the many kind words and blessings you have bestowed upon us in our time of joy.

On the tribal gaming front, the Business Committee has devoted a substantial amount of time to resolving unsettling matters remaining from the previous administration. These matters are a heavy burden on the Tribe's financial resources and threaten the Nation's gaming operation. One example of this resolution of old matters occurred when the Business Committee successfully ended a casino vendor contract late in the fall 2015. The casino vendor contract was signed by the former Chief in May of 2013, and it violated several provisions of the Indian Gaming Regulatory Act. The National Indian Gaming Commission, the federal agency which has regulatory oversight over tribal gaming, sent our Nation a letter describing all the violations. I am attaching a copy hereto for your information. In addition to the violations set forth in the letter, the contract also contained terms that are very unfavorable to the Nation. Most problematic was that the contract was perpetual – meaning that it automatically renewed itself no matter if the tribe wanted it or not – and further demanded nearly one third of our gaming floor. After working with our Gaming Commissioner, Danielle Brashear, and our attorneys, we were successful in removing the vendor contract and 255 of their illegal gaming machines. The contract is no longer in force and effect, and the former vendor's 255 machines have now all been removed from our facility, saving us in excess of \$10 million dollars. Although this created a vacancy on our gaming floor, we negotiated with other vendors to place new machines at our casino. We are extremely fortunate that our new Gaming Commissioner and attorneys worked so judiciously to remove the vendor from our casino. Unfortunately however, the NIGC is still investigating the matter and may assess penalties for the period of time the contract was in place. The Business Committee is working to mitigate any assessed penalties. We will keep you updated as that matter progresses.

Next in tribal business, the \$8 million dollar Royal Bay property promissory note and contract executed by the former Chief is currently being disputed in court. Among other issues, the former owners Larry and Carla Steckline are seeking to enforce the contract payment provisions and allege that the former Chief and a majority of the former Business Committee waived the Seneca-Cayuga Nation's sovereign immunity. If successful, the waiver would allow the Stecklines to receive seven percent of the **gross** revenue per month or one hundred thousand dollars, whichever is greater, from **any** business that operates from the land that is now held in trust for the tribe by the federal government. This provision of the agreement, in addition to others, would prohibit the development of a gaming operation at that location since such provisions would likely be determined to also violate the Indian Gaming Regulatory Act and immediately incur fines and or penalties from the NIGC, in addition to an order of closure. Because gaming development is not possible at this time, and because the businesses that were operating on the property have never generated a profit, the Nation cannot make the scheduled payments and has ceased business operations at that location. In addition to the payment issues, the property is also located in a flood plain and has suffered severe water damage twice this year. Until we get this litigation and the other issues resolved, the Nation cannot move forward with business development of the property. The Business Committee's goal is to ultimately reach a resolution that will allow the Nation to utilize the property for the benefit of the Nation and our members.

In tribal treasury news, our accounting firm, Finley & Cook, continues to find new ways for the Nation to save money and become accountable to federal agencies. We hope to have a clean audit for the first time in decades. We have worked hard to meet the needs of our people while also providing agencies like the IRS with the documentation that it requires. Our financial reports from Finley & Cook have provided our Business Committee the tools it needs to project and evaluate each department that we oversee. They also provide a well-organized and accurate financial report for our members at the monthly Business Committee meeting. The Nation's budgets are now in order, and our federal program directors have the ability to view expenditures online. Finley & Cook has also provided training on budget preparation which has been very helpful to our directors.

Also, Finley & Cook was recently engaged to provide the Nation with an assessment of the accounting and daily functions of Grand Lake Casino. At this point in the assessment, it is evident that the Nation's gaming operation must implement more effective accounting procedures and personnel. With Finley & Cook's assistance, the Business Committee is making great strides toward establishing an accounting department that has the requisite knowledge and training to provide accurate accounting in accordance with industry standards for casino accounting.

This brings me next to the status of our employees. The Business Committee has taken positive steps in management to ensure our personnel are working for the best interests of the Nation. As a result, we have made a lot of changes in staff. We've combined jobs to save money and to be more efficient. We moved the Casino Human Resources Department to our Career

Resources Building, consolidating our departments and centralizing personnel and benefits management. We combined the Wellness Director and Community Health Representative positions for another positive change. These moves save money and help to retain qualified, educated employees. Our Elder Lunch Program is another huge success story. We have a great cook who keeps our elders and staff well fed. If you haven't had a chance to visit the AOA Building, stop by and have a good home cooked meal.

Another large issue facing the Nation in the coming year is tribal membership. Although, the Enrollment Committee and the Business Committee have worked to implement the Referendum vote of the Tribal membership, other issues of have been identified. A Constitutional amendment is necessary to avoid further confusion in regard to the referendum vote and to correct other tribal membership language in the Constitution. Both the Business Committee and the Enrollment Committee will be addressing the necessary changes. Additional information detailing the present concerns of the Committees will be provided in the near future.

On another positive note, the Nation was privileged to be able to provide Turkey Ford School, the only school located within our old reservation boundaries, with a new school bus. The little school has struggled with recent budget cuts and their old school bus was constantly breaking down. Needless to say, the staff and students were ecstatic. We also provided the Grove and Wyandotte Public Schools a donation of \$40,000 each to fund an after-school program for their students as part of our federal daycare grant. We feel fortunate to be able to use federal monies to assist these children.

In closing, I would like to personally thank the Business Committee members for all of their efforts in making these changes possible. We work well together and with election season upon us, I hope that tribal members will keep all of the positive changes in mind when they mark their ballots.

Respectfully,

William L. Fisher

William L. Fisher, Chief
Seneca-Cayuga Nation



Chief Bill Fisher and Business Committee Members Sallie White and Calvin Cassidy presented a \$40,000 check to Turkey Ford School Principal Tammy Larson for the school's After School Program.



*Thank You for supporting
Turkey Ford School*

Chief Fisher, Cheryl & Seneca-Cayuga Tribe,
Just wanted to let you know how much we appreciate your continued effort to provide funding and support for Turkey Ford School. Thank you for the After School Program & for approval of a brand new bus. You are such a blessing to us. May God bless your genuine compassion and generosity.

Proudly Educating Children,
Mrs. Larson



August 25, 2015

William L. Fisher, Chief
Seneca-Cayuga Nation
23701 South 655 Road
Grove, OK 74344

RE: LETTER OF CONCERN

Dear Chief Fisher:

Greetings, Chief Fisher. As provided for by National Indian Gaming Commission regulations at 25 C.F.R. § 573.2(a) and (c) this letter details concerns regarding a May 20, 2013. Amended and Restated Agreement between the Seneca-Cayuga Nation and SourcePoint, LLC, for the lease of gaming machines at the Nation's Grand Lake Casino near Grove, Oklahoma. Specifically, certain terms of the Agreement appear to indicate management control and decision-making by SourcePoint without an approved management contract in violation of the Indian Gaming Regulatory Act and NIGC regulations. Furthermore, I am concerned that the Agreement may violate the IGRA requirement that a tribe maintain the sole proprietary interest in and responsibility for the conduct of any gaming activity.

Management Activity

The IGRA and NIGC regulations require the NIGC Chairman to approve management contracts for the operation and management of Indian gaming activity. 25 U.S.C. §§ 2711, 2710(d)(9); 25 C.F.R. § 533.1. In addition, the Seneca-Cayuga Tribe of Oklahoma Gaming Ordinance requires the Nation's Business Committee (its governing body) to adopt a resolution approving a management contract, and that contract must be in compliance with IGRA and NIGC regulations. Seneca-Cayuga Tribe of Oklahoma Gaming Ordinance § 1.14.

A management contract is any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation. 25 C.F.R. § 502.15.

Though neither the IGRA nor the NIGC regulations define *management*, the term has its ordinary meaning. Management encompasses activities such as planning, organizing, directing, coordinating, and controlling. *NIGC Bulletin No. 94-5: "Approved Management Contracts v. Consulting Agreements (Unapproved Management Contracts are Void)."* Accordingly a *primary management official* is "any person who has the authority to set up working policy for the gaming operation." 25 C.F.R. § 502.19(b)(2). Further, management employees are "those who formulate and effectuate management policies by expressing and making operative the decisions of their employer." *N.L.R.B. v. Bell Aerospace Co.*, 416 U.S. 267,288 (1974). Whether particular employees are "managerial" is not controlled by an employee's job title. *Waldo v. M.S.P.B.*, 19F. 3d 1395 (Fed. Cir. 1994). Rather, the question is answered in terms of the employee's actual job responsibilities, authority, and relationship to management. *Id.* At 1399. In essence, an employee may be a manager if the employee actually has authority to take discretionary actions — a *de jure* manager — or recommends

discretionary actions that are implemented by others who possess actual authority to control employer policy - a *de facto* manager. *Id.* at 1399 citing *N.L.R.B. v. Yeshiva*, 444 U.S. 672, 683 (1980).

If a contract requires the performance of any management activity with respect to all or part of a gaming operation, it is a management contract within the meaning of 25 U.S.C. § 2711 and requires the NIGC Chairman's approval. Unapproved management contracts are void. 25 C.F.R. § 533.7; *Wells Fargo Bank, Nat. Ass'n v. Lake of the Torches Econ. Dev. Corp.*, 658 F.3d 684, 688 (7th Cir. 2011).

Sole Proprietary Interest

One of IGRA's stated policies is that the tribe is the primary beneficiary of the gaming activity. 25 U.S.C. § 2702(2). To effectuate this policy, IGRA requires that the Indian tribe have the sole proprietary interest in and responsibility for the conduct of its gaming activity. 25 U.S.C. § 2710(b)(2)(A); 25 C.F.R. § 522.4(b)(1). Under this section, if any entity other than a tribe possesses a proprietary interest in the gaming activity, gaming may not take place. NIGC regulations and the Gaming Ordinance also mandate that the Nation maintain the sole proprietary interest in and responsibility for the conduct of any gaming activity. 25 U.S.C. §§ 2710(b)(2)(A) and (d)(1)(A)(ii); 25 C.F.R. § 522.4(b)(1); Gaming Ordinance § 1.5.

Neither the IGRA nor the NIGC regulations define *proprietary interest*. It is, however, defined in Black's Law Dictionary, 10th Edition (2014), as "the interest held by a property owner together with all appurtenant rights..." Both *Owner* and *Appurtenant* are defined as "belonging to; accessory or incident to . . ." *Id.* To determine if a third party has a proprietary interest in the gaming operation, the NIGC examines three criteria: (1) the term of the relationship; (2) the amount of revenue paid to the third party; and (3) the right of control the third party has over the gaming activity. *City of Duluth v. Nat I Indian Gaming Comm* No. 1:13-CV-246, at 11, fii 8 (D.D.C. March 31, 2015).

The Agreement

What follows is an explanation of the Agreement provisions that may indicate SourcePoint is managing the Nation's gaming activity, or that may indicate a violation of the sole proprietary interest requirement.

1. Section 1. Equipment, Lease, License

Section 1 of the Agreement requires the Nation to provide space for up to 288 SourcePoint leased machines on the casino floor. (This represents more than 50% of the Casino's gaming machines.) Decisions on types and numbers of gaming machines are a management function and thus this provision appears to grant management authority to SourcePoint.

Section 1 further provides that the selection of gaming equipment, including the denomination and hold percentage, shall be made by the Nation and SourcePoint's (the parties) mutual agreement. The Nation can neither exclusively select the games nor determine the hold percentage or denominations, but must make these decisions with SourcePoint's concurrence. This provision appears to give SourcePoint veto power over the Nation's management decisions and thus management authority over the gaming operation.

Finally, section 1 grants SourcePoint sole discretion to transfer the equipment to a new gaming facility if the Nation conducts gaming at another facility in the future. Since SourcePoint maintains sole discretion, the Nation retains no authority to decide the location of the equipment. Decisions regarding game placement are a management function and thus this provision appears to grant management authority to SourcePoint.

2. Section 4. Term; License Fee

Section 4 sets forth both the term of the Agreement and the fee to be paid by the Nation to SourcePoint. The initial term is four years. The Agreement will renew for another four year period, and then continue to renew automatically for one year extensions as long as an average of at least 90% of SourcePoint's gaming machines are operational during the course of any month. This provision allows SourcePoint to continue to lease gaming machines to the Nation indefinitely, which may grant SourcePoint an unlawful proprietary interest in the gaming operation. Moreover, under the IGRA and NIGC regulations, management contract terms are limited to 5 years, or 7 years if the capital investment and income projections so require. 25 U.S.C. § 2711(b)(5); 25 C.F.R. § 531.1(h).

Section 4 also provides that the Nation shall pay SourcePoint 20% of the "net win" from the gaming machines, defined as "gross receipts... less the cost of prizes awarded." NIGC regulations define "net revenues" as "gross gaming revenue less amounts paid out as, or paid for prizes, and total gaming related operating expenses..." 25 C.F.R. § 502.16. Because the Agreement does not deduct operating expenses from gross gaming revenue to arrive at a net revenue figure, the 20% of "net win" under the Agreement is likely to be a much higher percentage than is allowed under a management contract (30%, or up to 40% if justified. 25 C.F.R. § 531.1 (i)(1) and (2)). We are concerned the fee may grant SourcePoint an unlawful proprietary interest in the Nation's gaming machine operation.

3. Section 5. Termination for cause

Section 5 provides that the Agreement may only be terminated upon material breach not cured within 30 days (Section 4 provides that SourcePoint may terminate at any time and for any reason with 30 days written notice). The Agreement does not grant the Nation a similar right to terminate at will; it may only terminate if SourcePoint materially breaches, which is subject to a 30 day cure period. Under the IGRA and NIGC regulations, management contract terms are limited to 5 years, or 7 years if the capital investment and income projections so require. 25 U.S.C. § 2711 (b)(5); 25 C.F.R. § 531.1 (h). This provision appears to require

The above provisions indicate both that SourcePoint may be managing, and that it may have a proprietary interest in, the Nation's gaming activity. Operating or managing any part of a gaming operation without an approved management contract is a substantial violation of IGRA and NIGC regulations, and may subject the parties to enforcement action, including fines and closure of the Casino. 25 U.S.C. § 2713; 25 C.F.R. §§ 573 and 575.4. In addition, it is a violation of the IGRA, NIGC regulations, and the Gaming Ordinance for an entity other than the Nation to have a proprietary interest in the tribal gaming operation, and such violation may result in a fine. 25 U.S.C. §§ 2710(b)(2)(A) and (d)(1)(A)(ii) and § 2713; 25 C.F.R. § 522.4 (b)(1) and § 575; Seneca-Cayuga Tribe of Oklahoma Gaming Ordinance § 1.5.

4. Other Concerns

Section 19 of the Agreement allows SourcePoint to audit the Nation's financial records. The auditing of financial records, without limitation, is an ownership function, and thus this provision may indicate a violation of the sole proprietary interest requirement. Further, it would be entirely unorthodox, and a violation of minimum internal control standards, for a vendor to have the type of access to a tribe's financial records sufficient to perform an audit.

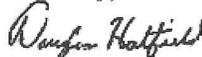
Please provide a written response no later than September 24, 2015 that details how the parties intend to address the above concerns. My preference is that you submit your response by email to: Douglas_Hatfield@nigc.gov.

You may, however, also mail your response to:

Douglas Hatfield, Compliance Director
NIGC
c/o Department of Interior
1849 C Street NW Mail
Stop #1621 Washington
D.C. 20240

Please contact me at (202) 606-7904, if I may be of any assistance.

Sincerely,



Douglas Hatfield
Compliance Director

cc: Elizabeth L. Homer, Esq.
1730 Rhode Island Ave., Suite 501 Washington D.C. 20036
Attorney for Gaming Commission

Green Corn
Camp Day August 2, 2015



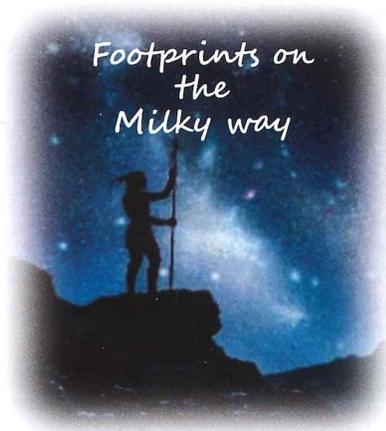
Richard Thomas
Dick
2/12/2015

James Charles
Birkes
6/20/2015

James Martin
Crowe
7/1/2015

Phyllis Colleen
Vowels
7/6/2015

Douglas Keith
Schwietert
7/8/2015



Tracy Lynn
Buck
7/9/2015

Inez Marie
Kelly
7/14/2015

Bertie Lou
Brown
7/31/2015

Patricia Susan
Works
9/3/2015

Wesley David
Smith
10/20/2015

Patricia Arlene
Fisher-Harrill
11/23/2015

Marcella Rose
Polete
12/13/2015



Christmas Party December 5, 2015



A visit from Santa



Holiday Craft Fun



Good Food and Friendly Conversation



Time for families to enjoy the staff of the

