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OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

Question Submitted by: Shawn Slaton, CEO, Cherokee Nation Businesses

Opinion Number: 2015-CNAG-06

Date decided: October 13, 2015

This Office has received your request for an official Attorney General Opinion in which you ask, in effect, the following question:

QUESTION

Does the Cherokee Nation Gaming Commission have the authority to promulgate and enforce regulations to license non-gaming vendors engaged in business with Cherokee Nation Entertainment or non-gaming employees employed by Cherokee Nation Entertainment?

SHORT ANSWER

No, regulations for licensing non-gaming vendors and non-gaming employees are specifically prohibited by LA-07-14 and LA-17-14, codified as 4 CNCA 22 § (C) because said regulations exceed or conflict with the requirements of the Cherokee Nation - State of Oklahoma Gaming Compact and National Indian Gaming Commission regulations and federal statutes. The promulgation and enforcement of non-gaming vendor and non-gaming employee licensing exceeds the authority granted to the Gaming Commission by the Tribal Council.

ANSWER

AG Opinion
Per the Cherokee Nation Attorney General Act, it is the duty of the Attorney General "to give an official opinion upon all questions of law submitted to the Attorney General by any member of the Tribal Council, the Principal Chief, the Deputy Principal Chief, or by the Group Leader or equivalent of any Cherokee Nation board, commission, or executive branch department, and only upon matters in which the requesting party is officially interested. Said opinions shall have the force of law in the Cherokee Nation until a differing opinion or order is entered by a Cherokee Nation court." 51 C.N.C.A § 105(B)(4).

Background
On November 16, 2004 the Cherokee Nation signed the "Tribal Gaming Compact between the Cherokee Nation and the State of Oklahoma" ("Compact"). The Compact specified that it was entered "with respect to the

operation of covered games." The Compact governs Class III games within Oklahoma, prescribes how the tribe shall revenue share gaming funds and distributes gaming oversight responsibilities between the Cherokee Nation and Oklahoma.

As a result of the Compact, Cherokee Nation amended its gaming statutes to comply with the Compact. Following the signing of the Compact, there were no significant changes made to the Cherokee Nation Gaming Act until 2010. Those changes were drafted by the Gaming Commission and its Director in an attempt to comply with their interpretation of the Compact and the regulations set forth by the National Indian Gaming Commission ("NIGC"). The most recent amendment to the Cherokee Nation Gaming Act was approved by the Tribal Council on July 14, 2014 and signed into law by the Principal Chief on July 18, 2014. The applicable gaming laws are the Compact, NIGC regulations and Cherokee Nation statute. Part I of this Opinion will discuss the requirements under the Compact and NIGC regulations. Part II will discuss Cherokee Nation law and resolve any inconsistency within the law and any conflict with the Compact or NIGC regulations.

PART I

Compact

The Indian Gaming Regulatory Act of 1988 states "[a]ny Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact." 25 U.S.C. § 2710(d)(3)(A). The "Tribal Gaming Compact Between the Cherokee Nation and the State of Oklahoma" is a result of such negotiation and was approved by the Department of Interior on December 28, 2004 and published in the Federal Register on January 27, 2005, pursuant to 25 U.S.C. § 2710(d)(3)(B). The Compact was meant to provide for the regulation of "covered-games" or Class III games. This analysis will discuss whether the Compact also covers "non-gaming" areas. The plain language of the Compact, as well as correspondence from the state regarding the interpretation of said language is important in determining whether the Compact was intended to cover non-gaming vendors and employees.

Vendor licensing requirements

The Compact does not apply to Class II or Class I games or any activities not related to gaming. The Compact contains specific vendor licensing requirements which include:

> any person or entity who, directly or indirectly, provides or is likely to provide at least Twenty-five Thousand Dollars ($25,000.00) in goods or services to the enterprise in any twelve-month period, or who has received at least Twenty-five Thousand Dollars ($25,000.00) for goods or services provided to the enterprise in any consecutive twelve-month period within the immediately preceding twenty-four month period, or any person or entity who provides through sale, lease, rental or otherwise covered games, or parts, maintenance or service in connection therewith to the tribe or the enterprise at any time and in any amount, shall be licensed by the TCA prior to the provision thereof. Provided, that attorneys or certified public accountants and their firms shall be exempt from the licensing requirement herein to the extent that they are providing services covered by their professional licenses. Part 10(B)(1).

The Compact plainly states "any person or entity" that exceeds the $25,000 threshold shall be licensed. However, the State of Oklahoma has officially communicated to Cherokee Nation that the Compact can only legally regulate gaming activities so the phrase: "any person or entity," is only applicable to those persons or entities that are *related to gaming*.

In 2008, the Director of the State of Oklahoma Office of Finance,[1] sent a letter to Cherokee Nation Gaming Commission Director, Jamie Hummingbird. The letter indicated the State's official position was that the Compact did not require the licensing of any non-gaming vendors and the State did not believe it had the authority to compact for such requirements. Specifically the State said:

> The [Compact] was negotiated under IGRA. To authorize Class III gaming on Indian lands, the IGRA requires that tribes and states must enter into gaming compacts. It appears that the IGRA only authorizes compacts to address those issues expressly listed in the IGRA and those "directly related to the operation of gaming activities." None of those issues encompass the licensing of non-gaming vendors. (citations omitted).
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> ...
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> The Compact covers the operation of covered games, gaming and gaming-related activities. Statements of individuals involved suggest that neither the Tribes nor the State intended that the Compact require licensing of non-gaming vendors. These circumstances could lead a person to conclude that the Oklahoma Compact may not cover activities unless they are directly related to gaming, as the Compact may have been intended to regulate gaming and gaming-related activities only.
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> The Oklahoma Compact did not address whether the Tribes could or should license vendors of goods or services that have no relation to gaming activities. Any licensing requirements of the Oklahoma Compact were intended to cover the suppliers of goods or services related to gaming activities, to the suppliers of covered games and to those vendors providing maintenance services for covered games. Likewise, vendors of bill counters and security equipment would be covered, as would consultants providing services such as internal control for casino staff.
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> Non-gaming vendors do not appear to have any connection to the activities regulated by the Oklahoma Compact and are, therefore, beyond the scope of the Oklahoma Compact, the IGRA, and the OSF's authority. Examples of non-gaming vendors would include advertising agencies, suppliers of food, beverages and office supplies and similar such vendors of goods and services. The Office of State Finance will, therefore, not review, audit, monitor or advise TCAs on the licensing or background investigations of such non-gaming vendors.

In a response letter, the then Chair of the Cherokee Nation Gaming Commission, Dennis Springwater, wrote that he disagreed with the interpretation by the State. He insisted that the Compact covered all vendors over the $25,000 threshold regardless of whether they were gaming related:

> The intent and language of the Compact seem clear – Tribes are expected and, by virtue of executing the Compact, have agreed to license both non-gaming and gaming vendors

The Commissioner based his interpretation[2] on the fact that two of the categories mentioned a dollar threshold and the other "speaks specifically to gaming related vendors regardless without the additional dollar threshold or timeframe requirements." The Commissioner further opined that

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[1]At the time, the Office of Finance was the "State Compliance Agency" under the Compact. The State Compliance Agency has since been reorganized as a separate department under the Office of the Governor.

[2] It is unknown whether the Chairman of the Gaming Commission had the assistance of legal counsel in his analysis and response.

> Even absent a Compact requirement for non-gaming vendor licensure, the practice [of licensing non-gaming vendors] is advisable in the fulfillment of another tribal law that requires the Commission to protect the Tribe's gaming operations from corrupting influences. Federal law also supports this activity which allows compacts to address "subjects that are directly related to the operation of gaming activities (citations omitted).
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> It can hardly be argued that the gaming operations do not rely on the goods and services supplied by many non-gaming vendors for their continued gaming activities.

However, inexplicably, even after the Chair of the Commission communicated this disagreement on the interpretation of the Compact, the Commission continued an inconsistent pattern of selectively requiring licenses for non-gaming vendors.[3]

It is clear that the State of Oklahoma believes the compact only covers those vendors and employees that are related to gaming.[4] The Gaming Commission believes that the Compact covers any vendor who receives more than $25,000 in any 12 month period.

Employee licensing requirements

The Compact defines a "covered game employee" as

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[3] For example, it has recently been brought to the attention of the Office of the Attorney General that the Gaming Commission has never required major construction companies (who most assuredly passed the $25,000 threshold) to be licensed based on a "gentlemen's agreement" between the former Chief and the former Commission Chairs.

[4] This interpretation is clearly supported by looking at other Tribal/State Compacts. It appears that even as interpreted by the State of Oklahoma, the Oklahoma Tribal/State Compact is the most demanding when it comes to licensing non-gaming activities. In fact, six state Compacts do not require any type of vendor licensing. *See* Tribal/State Compacts of Florida, Mississippi, Montana, Nevada, New York and Wyoming. Of those that require some type of vendor licensing, thirteen states limit vendor license requirements to those who directly manufacture, supply, or service covered games. *See* Compacts of Arizona, Colorado, Kansas, Idaho, Louisiana, Massachusetts, Michigan, Nebraska, New Mexico, North Carolina, Oregon, South Dakota and Washington. Interestingly, California, South Dakota and Washington also use a $25,000 threshold. The California Compact contains the exact same language as the Oklahoma Compact but it only applies to a "Gaming Resource Provider" whereas the Oklahoma Compact covers "any person or entity." Under the California Compact, a "Gaming Resource Provider" is defined as "any person or entity who directly, or indirectly manufactures, distributes, supplies vends, leases or otherwise purveys Gaming Resources." Gaming Resources are in turn defined as "goods or services provided or used in connection with Class III Gaming Activities, whether used exclusively or otherwise, including but not limited to, equipment, furniture, gambling devices and ancillary equipment, implements of gaming activities such as playing cards and dice, furniture designed primarily for Class III gaming activities, maintenance or security equipment and services, and Class III gaming consulting services." South Dakota and Washington Compacts also use the threshold but allow for exemption from licensing *any* vendor that does not meet the $25,000 requirement. Additionally, there are several states that only require "registration" of or background checks for *gaming* vendors. *See* Connecticut, Minnesota, Rhode Island and Wisconsin. The Iowa Compact simply requires "occupational licenses" from individuals who will be physically present in the gaming facility. Even the limited interpretation of Cherokee Nation/Oklahoma Compact far exceeds the requirements of most other Tribal/State Compacts.

> Any individual employed by the enterprise or a third party providing management services to the enterprise, whose responsibilities include rendering services with respect to the operation, maintenance or management of covered games. The term "covered game employee" includes, but is not limited to, the following: managers and assistant managers; accounting personnel; cage personnel; and any other person whose employment duties require or authorize access to areas of the facility related to the conduct of covered games or the maintenance or storage of covered game components. This shall not include upper level tribal employees or tribe's elected officials so long as such individuals are not directly involved in the operation, maintenance, or management of covered game components. The enterprise may, at its discretion, include other persons employed at or in connection with the enterprise within the definition of covered game employee.

In addition, the Compact refers to NIGC regulations regarding "key employees" and "primary management officials" discussed below. These are the only classes of employees required to be licensed under the Compact.[5] Although the Commission currently licenses non-gaming employees, the Commission has never purported to require these licenses pursuant to any Compact provisions.

Interpretation of Compact

The plain language of the Compact requires licensing of "any person or entity" who meets certain requirements. It is the position of the State that "any person or entity" only means those persons or entities who are involved in gaming or gaming related activities.

Vendor licensing requirements

Based on the communication between the State and the former Chair of the Commission, it is clear that reasonable minds differ on whether the Compact requires Cherokee Nation to license non-gaming vendors who exceeded the $25,000 threshold. This Office interprets the Compact consistent with the position of the State, adopting their rationale, in addition to the following analysis.

The clear language of the Compact requires vendor licensing of "any person or entity who provides through sale, lease, rental or otherwise covered games, or parts, maintenance or service in connection therewith to the tribe or the enterprise at any time and in any amount." This definition only covers those vendors who directly supply games or game parts and those who directly maintain or service covered games.

There are other vendors that are related to gaming that would not fall under this strict definition, for example, those who provide surveillance to gaming areas; provide cash handling equipment, storage, and transportation; service or access cash handling equipment or areas; train gaming employees on gaming related matters or

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[5] Again, this is consistent with other Tribal/State Compacts. Of the 26 states that have Tribal/State Gaming Compacts (available at www.nigc.gov). Eighteen state Compacts, including Oklahoma, do not mention non-gaming employees. *See* the Tribal/State Compacts of Arizona, California, Colorado, Florida, Idaho, Louisiana, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Carolina, South Dakota, Washington, Wisconsin, and Wyoming. Of the remaining states, six allow some form of regulation of non-gaming employees that is considerably less stringent than the requirements applied to Key Employees or Primary Management Officials. *See* Compacts of Kansas (investigations allowed), Connecticut (state investigations allowed), Massachusetts (tribe may but is not required to license), Mississippi ("work permits" required), New York (investigations allowed), and Rhode Island (state investigations allowed). Only two state compacts require some form of non-gaming employee licensing. *See* Compacts of Iowa (requires licensing of every employee who will be present in the facility) and Oregon (requires licensing of non-gaming employees, but does not require fingerprint checks).

procedure; sell player reward programs, etc. All of these types of vendors would be considered "gaming related" but none of them "provide[] through sale, lease, rental or otherwise covered games, or parts, maintenance or service in connection therewith." Therefore, these types of vendors, who are related to gaming, but do not directly supply, maintain or service covered games would then only require licenses if they met the $25,000 threshold.[6]

This Office interprets the Compact to require the licensing of 1) all vendors who directly supply, maintain or service covered games, which Cherokee Nation has defined as "gaming vendors;" 2) those vendors that have ancillary connections to gaming if the vendor exceeds the $25,000 threshold; and 3) requires no licensing of vendors who are not related to gaming regardless of the amount of income they receive. This interpretation is consistent with the purpose of the Compact to control the "operation of covered games." Supporting this position, when it approved the Compact in 2004, the Department of Interior wrote in its letter that "[i]t is our view that Class III gaming compacts can only regulate Class III games, and cannot regulate Class II games under the IGRA."[7] If the Compact can only regulate Class III games, it cannot be interpreted to extend to non-gaming areas of vendors and employees.

Employee licensing requirements

The Compact does not mention the licensing of non-gaming employees. Based on the State's opinion of its inability to require the licensing of non-gaming vendors, it is likely the State would take the same position on non-gaming employees.

It is the Opinion of the Office of the Attorney General that the Compact only requires licensing of the following

1) any person or entity who provides through sale, lease, rental or otherwise covered games, or parts, maintenance or service in connection therewith to the tribe or the enterprise at any time and in any amount; and
2) those vendors who are "gaming related" and meet the $25,000 threshold; and
3) Covered Game employees

NIGC Regulations

In addition to the Compact, Cherokee Nation is required to comply with federal statute and NIGC regulations regarding all gaming on Indian lands. Any minimum standards required by NICG regulations must be included in the Gaming Commission's licensing requirements. NIGC regulations do not require any type of vendor licensing. NIGC regulations do require the licensing of "key employees" and "primary management officials." A "key employee" is defined by 25 CFR §502.14 as

(a) A person who performs one or more of the following functions:
(1) Bingo caller;
(2) Counting room supervisor;
(3) Chief of security;
(4) Custodian of gaming supplies or cash;
(5) Floor manager;
(6) Pit boss;
(7) Dealer;

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[6] Under the interpretation of the Compact per the former Cherokee Nation Commissioners, a vendor who sold $26,000 worth of food to CNB would be subject to the same scrutiny as a vendor who sold $26,000 worth of cash handling equipment to CNB. This result was not the intent of the Compact, evidenced by the communication from the state.

[7] *See* December 28, 2004 letter from Department of Interior to Cherokee Nation, approving the Compact.

(8) Croupier;
(9) Approver of credit; or
(10) Custodian of gambling devices including persons with access to cash and accounting records within such devices;

(b) If not otherwise included, any other person whose total cash compensation is in excess of $50,000 per year; or,
(c) If not otherwise included, the four most highly compensated persons in the gaming operation.
(d) Any other person designated by the tribe as a key employee.

And 25 CFR §502.19 defines Primary management official as:

(a) The person having management responsibility for a management contract;
(b) Any person who has authority:
(1) To hire and fire employees; or
(2) To set up working policy for the gaming operation; or
(c) The chief financial officer or other person who has financial management responsibility.
(d) Any other person designated by the tribe as a primary management official.

These are the only two classes of employees that are required to be licensed per NIGC. Employees who do not fall into the category of "key employee," or "primary management official" are not required by federal law or regulation to be licensed by the tribal gaming commission.

Therefore NIGC regulations do not impose any additional licensing requirements and do not require the licensing of non-gaming vendors or non-gaming employees.

PART II

This section will discuss Cherokee Nation law and resolve any inconsistency within the law and any conflict with the Compact or NIGC regulations.

Cherokee Nation Statute[8]

Cherokee Nation law, which has been amended multiple times to comply with the Compact and NIGC regulations, currently specifically requires licensing of non-gaming vendors who meet the $25,000 threshold and allows the Commission to license non-gaming employees if not inconsistent with the powers granted to the Commission.

Vendor licensing requirements

The Cherokee Nation Gaming Act was first introduced in 1989 as LA-30-89. It has been amended multiple times. Language regarding the $25,000 threshold first appeared in 1994 when the statute was amended to

[8] Although not binding, it should be noted that the NIGC's 2014 Revised Model Tribal Gaming Ordinance contains no licensing requirements for any employees other than Key Employees and Primary Management Officials and only provides that "vendors of gaming services or supplies, with a value of $25,000 or more annually, must have a vendor license from the Tribal Gaming Commission in order to transact business with the Tribal gaming operation." The Model Ordinance specifically notes the section on vendors "is recommended, but not required by IGRA or NIGC regulations." *See* Revised Model Gaming Ordinance available at www.nigc.gov

include the requirement that all non-gaming contracts over $25,000 be included in the annual audits provided to NIGC.[9] *See* LA-1-94. There was no licensing requirement of non-gaming vendors at the time.

The statutory amendment that added the language requiring a gaming license for all vendors who had provided or would likely provide at least $25,000 in goods or services to the gaming entity occurred in 2010. *See* LA-26-10. However, the Gaming Commission reports that it has licensed non-gaming vendors that exceeded the $25,000 threshold since 2005 according to their interpretation of the Compact even though it was not required by the Gaming Act until 2010. It is clear that in 2010 Tribal Council believed (probably at the insistence of the Gaming Commission) that the Compact required licensing of all vendors over the $25,000 threshold, whether or not they were related to gaming. The Cherokee Nation Gaming Act currently requires gaming licenses for the following:

> All gaming and non-gaming vendors as defined in Section 4 are required to apply for and obtain a vendor license from the Gaming Commission prior to conducting business with any gaming facility, unless exempted under sub-section B of this section. § 37(A)

Non-gaming vendors[10] are defined as:

> "Non-Gaming Vendor" means any person or entity who, directly or indirectly, provides or is likely to provide at least twenty-five thousand dollars ($25,000.00) in goods or services to an Officially Licensed Agent within the gaming facility's fiscal year. Provided, that attorneys or certified public accountants and their firms shall be exempt from this definition to the extent that they are providing services covered by their respective professional licenses. § 4(X)

Finally, the definition of "gaming vendor," which uses language from the Compact is defined as:

> any person or entity who provides, through the sale, lease, rental or otherwise, any games, parts, maintenance or service in connection therewith to the Officially Licensed Agent in any amount. § 4(O)

Employee licensing requirements

The Cherokee Nation Gaming Act specifically provides licensing requirements for Key Employees and Primary Management Officials as required by NIGC regulations and the compact. The Act further defines a "non-gaming employee" as:

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[9] It appears that the $25,000 language in both Cherokee Nation law and the Compact was borrowed from the NIGC regulations regarding gaming enterprise audits that stated "All gaming related contracts that result in purchases of supplies, services, or concessions for more than $25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of the audit conducted under paragraph (b)(3) of this section." 25 C.F.R. 522.4(b)(4) and 25 C.F.R. 522.6(B).

[10] Specifically excluded from the gaming and non-gaming vendor licensing requirements per Cherokee Nation statute are: Tribal, local, State, or Federal governments and associated agencies; Cherokee Nation owned and/or chartered companies; Attorneys and Certified Public Accountants and their firms, to the extent that they provide services covered by their respective professional licenses; Sponsorships or charitable organizations; Public utilities; Entertainment; Insurance companies; Travel companies; Fleet service providers; Any person that qualifies for an exemption under the terms of any Tribal-State compact to which the Nation may be a party; or Any person otherwise specifically excluded by the Gaming Commission based on circumstances unique to that vendor or vendor category as determined by the Gaming Commission.

> any employee of the gaming operation who is not a Key Employee or Primary Management Official. If applicable, any Non-gaming employees licensed by the Gaming Commission shall be licensed in accordance with any limitations, restrictions, or regulatory requirements included in Section 22 of this Act. Section 4(W).

Cherokee Nation statute further states that

> The Gaming Commission shall ensure that rules and regulations are developed and implemented for the licensure of all non-gaming employees of a gaming facility that are not Key Employees or Primary Management Officials. Section 50(B).

In addition to the licensing requirements under Cherokee Nation law, the Gaming Act limits the authority of the Commission by specifically providing

> It shall be the responsibility of the Commission to promulgate regulations necessary to administer the relevant provisions of this Act, **provided that rules and regulations promulgated or created by the Cherokee Nation Gaming Commission shall not exceed or conflict with the regulations issued by the Nation Indian Gaming Commission**, including but not limited to the Nation Indian Gaming Commission Minimum Internal Control Standards or the provisions of the Indian Gaming Regulatory Act, as applicable, unless specifically outlined by law; **nor shall the regulations promulgated exceed or conflict what is required under any Cherokee Nation-State of Oklahoma Gaming Compact**. § 22(C). (emphasis added).

The issue becomes whether the "non-gaming vendor" and "non-gaming employee" licensing requirements contained in the Cherokee Nation Gaming Act "exceed or conflict" with the Compact or the NIGC regulation, and if so, does the statute otherwise authorize the Commission to regulate such vendors and employees.

Conflict Between Compact and Gaming Act

It is clear from the above interpretation that the current Gaming Act conflicts with the Compact The Gaming Act specifically requires the licensing of non-gaming vendors and includes in that definition any vendor who exceeds the $25,000 threshold (not only those who have a connection to gaming). Further, the Act allows the Commission to license non-gaming employees. The final question becomes whether the Compact or the Act controls.

There is no question that the Tribal Council has the ability to pass gaming regulations that exceed those required in the Compact. In fact, it did so in 2010 when it added the "non-gaming vendor" definition and licensing requirement. However, in its most recent amendments to the Gaming Act, the Tribal Council specifically prohibited the Commission from promulgating regulations that "exceed or conflict what is required under any Cherokee Nation-State of Oklahoma Gaming Compact."

In addition to the plain language of the law and legislative history,[11] the rules of statutory interpretation and conflict must guide the interpretation of Tribal Council's intent. Normally, a more specific section of a statue is

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[11] After reviewing several hours of debate surrounding the passage of the Act from both Rules Committee and the Tribal Council meeting where the amendments were passed, it is clear that although Tribal Council did not explicitly repeal any portion of the law that exceeded or conflicted with the Compact or NIGC regulations, the Council intended the amendments to the Act to function as an implied repeal of any conflicting provisions contained in the Act. The following comments are paraphrased from the debate:

said to control over more general sections: *Generalia specialibus non derogant* (the general does not detract from the specific). Under that cannon, the specific statutory language on licensing non-gaming vendors and employees would control over the general provision that the Commission may not promulgate regulations that exceed the Compact. That would be especially true if the different sections of the Gaming Act had been passed at the same time.

However, a more important cannon of statutory construction is "recency" or *Leges posteriores priores contrarias abrogant* (later laws abrogate earlier, contrary ones). This cannon of statutory construction is also sometimes called "implied repeal." It assumes that when passing a new law, the law making body, here Tribal

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Council Attorney, Diane Barker Harold: the goal of these amendments are to clearly define and separate the roles and responsibilities of the Gaming Commission and CNB; [Act] gives the Gaming Commission authority over gaming and keeps non-gaming issues with CNB; Commission should be focused on gaming, not retail and restaurants; non-gaming activities will fall under supervision and control of business

Speaker Jordan: Commission should not exceed requirements of NIGC and Compact because it puts the business arm at a competitive disadvantage in the market; Council can't tie their [CNB] arms behind their back and then tell them to increase their bottom line; by going beyond the minimum standards we are putting ourselves at a competitive disadvantage in one of the most competitive industries; we have the right to pass laws and draw a line in the sand and tell the Commission they cannot cross it

Councilor Thornton, co-sponsor of Act: We have let the Gaming Commission go for over 15 years; [regulations]are costing us four million dollars that could have been used by our people; we are not taking care of business

Councilor Fishinghawk, co-sponsor of Act: More regulation equals more cost to industry, which affects dividend, which affects services; if [regulations] are costing the business arm money, I have to step in; 95% of tribes adopt the MICS and don't go any further; regulatory authority should have no involvement in the operation or management of the business and the Commission has expanded to include non-gaming regulation [Act will prohibit]; many current Commission requirements go beyond gaming and into areas of management and non-gaming

Councilor Watts: [If passed] who will no longer have to be licensed? [If passed] the Act will lessen the regulatory role of the Commission in the gaming environment; do not support because all aspects of the business should be regulated and [if passed] would limit Commission to gaming regulation. [Will not support passage] because the Act alienates gaming from non-gaming, including business and employees, and takes authority away from the Commission to regulate those non-gaming businesses and employees

Councilor Fullbright: a dishwasher is not related to gaming and shouldn't be licensed by Commission; well protected from abuse by following [NIGC and Compact minimums]; going beyond [NIGC and Compact minimums] cost the tribe money

Councilor Buzzard: Why would we exceed minimum standards?

Councilor Hargis: Do any of the [regulations beyond Compact or NIGC minimums] generate money for the Commission?

Councilor Buzzard: was told "restaurants, hotel, retail, etc." when asked what types of non-gaming areas would no longer be under the Commission [if act passed].

Councilor Walkingstick: [proposed amendments] will allow CNB to get every penny possible and still stay in compliance with NIGC and Compact; employees such as golf course attendants, janitors and those serving hamburgers never go near the vault and should not have to be licensed. When Commission exceeds [NIGC and Compact minimums] it cuts into profits, dividends and returns to the community

Council, is aware of the current law and any conflict between old and new law is resolved in favor of the most recent.

It must be assumed that when Tribal Council made the most recent amendment to the Gaming Act, specifically including the language in Section 22 that prohibits the Commission from promulgating regulations that exceed or conflict with the Compact; that they understood there were provisions of the Act that would allow the Commission to exceed or conflict with the Compact and those provisions were impliedly repealed. Interestingly, Council chose to allow the Commission to exceed or conflict with NIGC minimum standards if "specifically outlined by law." However, the Tribal Council was explicit in their direction that the Gaming Commission has no authority to promulgate regulations that exceed the Compact, as the saving clause: "unless specifically outlined by law," was not included. Therefore, the most recent expression of Tribal Council must be interpreted as repealing the provisions of the Gaming Act that allow the Commission to promulgate regulations that exceed or conflict with the Compact or NIGC regulations, specifically including those that require the licensing of non-gaming vendors and non-gaming employees.

CONCLUSION

It is clear that the in the recent amendments to the Gaming Act, Tribal Council intended the Compact to be a constraint on the types of regulations the Gaming Commission could enact. Therefore, it is the Official Opinion of the Office of the Attorney General that the Cherokee Nation Gaming Commission does not have the authority to license non-gaming vendors or non-gaming employees because said regulations are specifically prohibited by LA-17-14, codified as 4 CNCA 22(C) since they exceed or conflict with the requirements of the Cherokee Nation - State of Oklahoma Gaming Compact and National Indian Gaming Commission statutes and regulations. The promulgation and enforcement of non-gaming vendor and non-gaming employee licensing regulations exceed the authority granted to the Gaming Commission by the Tribal Council in the most recent amendments to the Cherokee Nation Gaming Act.

Todd Hembree
Attorney General
Cherokee Nation