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OPINION OF THE CHEROKEE NATION ATTORNEY GENERAL

Question Submitted by: Jamie Hummingbird, Director Cherokee Nation Gaming Commission

Opinion Number: 2019-CNAG-01 Alcohol Licensing Authority

Date Issued: February 13, 2019

This office has received your request for an official Attorney General opinion in which you effectively ask the following question:

Does the Cherokee Nation Gaming Commission (“CNGC”) have the authority to license individuals, wholesalers, or retailers engaged in the sale or service of alcohol at Cherokee Nation gaming facilities?

Short Answer

No, the CNGC does not have the authority to license individuals, wholesalers, or retailers engaged in the sale or service of alcohol at gaming facilities. Under state law, the Alcoholic Beverage Laws Enforcement (“ABLE”) Commission licenses individuals, wholesalers, and retailers engaged in the sale or service of alcohol at gaming facilities. Under tribal law, the Cherokee Nation Tax Commission (“CNTC”) has the sole authority to license alcohol retailers at gaming facilities, in conjunction with relevant state law licensing requirements.

Answer

Background

Under the Cherokee Nation and State of Oklahoma Gaming Compact (“Gaming Compact”), the Nation is charged with “promulgat[ing] any rules and regulations necessary to implement [the] Compact.”¹ The Gaming Compact further directs that “[t]he sale and service of alcoholic beverages in a [gaming] facility shall be in compliance with state, federal and tribal law

¹ Part 5(A), p. 6 (2005).

in regard to the licensing and sale of such beverages.”² Moreover, the Cherokee Nation Off-Track Wagering Compact, which applies specifically to the gaming facility locations outlined therein at Appendix B, reiterates the Gaming Compact’s initial direction by stating “[a]ny alcoholic beverages sold or otherwise permitted in the Gaming Facility shall be sold in accordance with applicable tribal and federal law.”³

Federal law provides a comprehensive scheme of liquor regulation within Indian country, commonly referenced as the “Indian liquor laws”.⁴ However, the prohibitions and penalties outlined in the Indian liquor laws will not apply in Indian country if “the act or transaction” is authorized by ordinance of the governing tribe, approved by the Secretary of the Interior, and published in the Federal register and is also in conformity with the law of the state in which the activity takes place.⁵

Under Oklahoma law, the ABLE Commission is tasked to “supervise, inspect and regulate every phase of the business of manufacturing, importing, exporting, transporting, storing, selling, distributing and possessing for the purpose of sale, all alcoholic beverages which shall be necessary and proper to carry out the purposes of the Oklahoma Alcoholic Beverage Control Act.”⁶ For the purposes of this Opinion, the ABLE Commission specifically issues licenses to any individual or business engaged in the commerce of alcoholic beverages in the state of Oklahoma.

Under tribal law, the Cherokee Nation Limited Mixed Beverage Sales Act restricts the sale of liquor and alcoholic beverages to Cherokee Nation Entertainment (“CNE”) on Cherokee Nation Indian Country, under a license issued by the Cherokee Nation Tax Commission (“CNTC”).⁷ The same grants no statutory authority to the CNTC for the approval or denial of gaming promotions involving alcohol.⁸

Individual Licensing Authority:

The CNGC has no authority to license individuals for the sale or service of alcohol at gaming facilities. Under Oklahoma law, the ABLE Commission has the sole authority to license individuals engaged in the selling, mixing, or serving of alcoholic beverages at Cherokee Nation gaming facilities.⁹ No licensing authority exists under tribal law with regard to the same at gaming facilities.

² Part 5(I), p. 9 (2005).

³ Section 14(d), p. 11 (2010).

⁴ See 18 U.S.C. §§ 1154, 1156, 1161, 3055, 3113, 3488, 3669, 3670.

⁵ 18 U.S.C. § 1161.

⁶ Okla. Stat. Ann. tit. 37A, § 1-107.

⁷ 37 C.N.C.A. § 4.

⁸ It is the understanding of the Attorney General that the CNTC currently approves or disapproves gaming promotions involving alcohol due to a recommendation contained in a 2010 CNGC Memorandum. This condition was beyond the statutory authority of both the CNGC to require and the CNTC to carry out. By virtue of its business, CNE possesses the responsibility to ensure compliance with relevant state laws.

⁹ See Okla. Stat. Ann. tit. 37A, § 2-121.

Wholesaler Licensing Authority:

The CNGC has no authority to license wholesalers for the sale of alcohol at gaming facilities.¹⁰ Under Oklahoma law, the ABLE Commission has the sole authority to license wholesalers to purchase and import alcoholic beverages into the state and to offer the same for wholesale.¹¹ No licensing authority exists under tribal law with regard to the wholesale of alcohol at gaming facilities.

Retailer Licensing Authority:

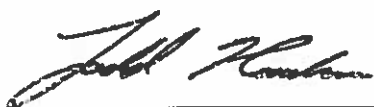
The CNGC has no authority to license retailers for the sale of alcohol at gaming facilities. Retailers of alcoholic beverages are licensed by the ABLE Commission under state law and the CNTC under tribal law. Under Oklahoma law, an establishment that purchases alcohol, spirits, beer, and/or wine with the purpose of selling and possessing these beverages for on-premises consumption must obtain and maintain a license issued by the ABLE Commission.¹² Under tribal law, the retail sale of liquor and alcoholic beverages may only be made by CNE, or other persons approved by CNE, under a license issued by the CNTC.¹³

Conclusion

When considering the full spectrum of regulatory layers at issue here, the following is clear: the ABLE Commission has the authority to license individuals, wholesalers, and retailers engaged in the sale or service of alcoholic beverages at Cherokee Nation gaming facilities and the CNTC has the authority to license retailers engaged in the same, in conjunction with the ABLE Commission.

IT IS THEREFORE, THE OFFICIAL OPINION OF THE ATTORNEY GENERAL THAT:

It is the opinion of the Attorney General that the CNGC has no authority under federal, state, or tribal law to issue licenses related to the sale or service of alcohol.



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Cherokee Nation

¹⁰ While the Oklahoma Alcoholic Beverage Control Act delineates between “wine and spirit wholesalers” and “beer distributors,” for the purposes of this Opinion, the general term “wholesaler” shall contemplate both types of license holders.

¹¹ See Okla. Stat. Ann. tit. 37A, § 2-107; see also Okla. Stat. Ann. tit. 37A, § 2-108.

¹² See Okla. Stat. Ann. tit. 37A, § 2-110.

¹³ See 37 C.N.C.A. § 4.