



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

May 17, 2011

Secretary Ken Salazar
United States Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Tracie L. Stevens, Chair
National Indian Gaming Commission
1441 L St. N.W., Suite 9100
Washington, D.C. 20005

Re: Long delay in "Indian lands" determination pending before the National Indian Gaming Commission regarding the United Keetoowah Band Gaming Operation.

Dear Secretary Salazar and Chairman Stevens:

As the State of Oklahoma's recently elected Attorney General, I am writing to express the State of Oklahoma's official concern that the National Indian Gaming Commission (NIGC) has taken an inordinate amount of time to make a determination upon an issue that it had previously visited. Pursuant to a 2006 federal court order, NIGC must determine once again whether the tract of fee land in Tahlequah, OK, upon which the United Keetoowah Band of Cherokee Indians (UKB) is conducting a substantial gaming operation, is "Indian lands" within the meaning of section 4 of the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2703(4).

Since the establishment of the facility in 1991, the State of Oklahoma and the federal government have lost hundreds of thousands of dollars in fees owed to our taxpayers for this operation. This has been particularly costly to the State, whose Class III gaming compacts with tribes provide that a percentage of tribal gaming revenue from Class III gaming be turned over to the State to fund education. Currently, the UKB casino generates up to \$13 million annually and none of the operation's Class III gaming revenue helps our children reach their potential.

The records of the Commission will show that on September 29, 2000, the NIGC's General Counsel advised UKB by letter that the NIGC had concluded that the property upon which it was conducting gaming is **not** "Indian lands" as that term is defined by the IGRA, and that, accordingly, that Act does not authorize UKB's gaming.

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In subsequent litigation, the United States District Court determined that the General Counsel's letter constituted "final agency action" and then remanded the case to the NIGC for further consideration of the "Indian land" question. That action occurred on January 26, 2006 – over five years ago.

At the invitation of the NIGC, the State of Oklahoma, the UKB and the Cherokee Nation, as interested parties, have long since submitted documentary evidence and extensively briefed the UKB "Indian land" question. Given the fee simple status of the property and the fact that the NIGC long ago considered the same issue, a prompt decision ordinarily might be expected. The State cannot understand why that has not occurred here.

The extraordinary delay in the NIGC's decision-making process is not without serious consequences. In his January 26, 2006 Opinion, the District Court Judge also ratified a prior Restraining Order providing that, until a final decision is rendered, "state and local law enforcement are prohibited from enforcing any state laws on the property as set forth and described in [UKB's] petition." The State, therefore, for over five years, has been precluded either (1) from shutting down or otherwise protecting its citizens from what it considers an illegal gaming operation; or (2) in the unlikely event the operation is deemed on "Indian land," from obtaining substantial revenues from Class III gaming operations to be used for the education of our children.

Accordingly, please give this pressing matter your prompt attention and let the undersigned know when a decision can be expected.

I further request on behalf of the State of Oklahoma that should the Department of Interior favorably consider any requests by the United Keetoowah Tribe to take the land in question into trust, that the taking of land into trust be conditioned upon the Tribe making the State whole by paying all taxes that would have been due and any Class III revenue payments that would have been due under the Class III Gaming Compact with the State during the entire history of the Tribe's operation on the property. This request, however, should **not** be taken as the State's acquiescence to the taking of the land into trust.

Sincerely,



E. SCOTT PRUITT
Attorney General of Oklahoma

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