



Benefiting Idaho Public Schools and the Permanent Building Fund.

February 13, 2015

The Honorable Bob Nonini
Senator, District 3
Idaho Senate
State Capitol
P.O. Box 83720
Boise, Idaho 83720-0081

Re: Coeur d'Alene Tribe

Dear Senator Nonini:

Thank you for your letter of February 9, co-signed by Representatives Mendive, Dixon, and Barbieri requesting clarification of the Coeur d'Alene Tribe's use of Tribal Video Gaming Machines at the Coeur d'Alene Casino Resort Hotel.

You are correct that Idaho Code § 67-7409(6) Idaho Code assigns responsibility for monitoring of gaming compacts with Idaho Tribes and gaming on Indian reservations to the Lottery Director. This entails monitoring: the Tribe's compliance with Idaho Code § 67-429B Idaho Code relating to the types of devices allowable; the Tribe's compliance with Idaho Code § 67-429C(b) Idaho Code relating to the number of machines allowed; and the Tribe's compliance with Idaho Code § 67-429C(c) Idaho Code relating to the 5% of annual net gaming revenues set aside for the benefit of local communities. The Coeur d'Alene Tribe has been cooperative in providing evidence of their compliance with the Compact terms and Idaho law on these three issues.

Regarding Article 6.1(a) of the Compact that you mention in your letter, I refer you to the 2002 Amendment to the Compact. A new Article 6.8 in that amendment incorporated changes to the Compact as a result of Proposition One which was approved by Idaho voters in 2002. Those changes are embodied in §§ 67-429(B) and 67-429(C) Idaho Code enacted by the Idaho Legislature in 2003. The amendment was approved as required under the Indian Gaming Regulatory Act by the Assistant Secretary of the Interior—Indian Affairs in December 2002 and became effective upon publication in the Federal Register in January 2003.

Section 67-429(B)(1) defines Authorized Tribal Video Gaming Machines. Section 67-429(B)(2) Idaho Code states that, when in compliance with subsection (1), the devices are not considered a slot machine or an electronic or electromechanical simulation of any form of casino gambling. Consequently, the machines are allowable under currently effective Idaho statutes. As Lottery Director, I have an obligation to uphold Idaho law.

Furthermore, the courts have weighed in on the matter. In *Idaho v. Shoshone Bannock Tribes*, 465 F.3d 1095 (9th Cir. 2006), the Ninth Circuit Court of Appeals upheld the Shoshone-Bannock Tribes' entitlement under its compact with the State to offer tribal

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video machine gaming. In the decision, the circuit court noted that the State did not challenge the constitutionality of any portion of Proposition One. Subsequently, the Idaho Supreme Court in *Knox v. State ex rel. Otter*, 148 Idaho 324, 223 P.3d 266 (2009), ruled that *res judicata* arising from the Ninth Circuit judgment barred further litigation between the State and Indian tribes regarding whether tribes' conducting tribal video gaming violates the Idaho Constitution. These decisions underscore the present validity of the statutes incorporating Proposition One. Once again, I am constrained to follow those statutes in my capacity as Lottery Director.

Finally, I assure you the Lottery takes its responsibility to monitor tribal gaming compacts seriously.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Anderson', followed by a horizontal line extending to the right.

Jeffrey R. Anderson
Director, Idaho Lottery

C: The Honorable Ron Mendive, Representative – District 3
The Honorable Sage Dixon, Representative – District 1
The Honorable Vito Barbieri, Representative – District 2
The Honorable C.L. "Butch" Otter, Governor of Idaho
Colonel Ralph Powell, Director – Idaho State Police
Wendy J. Olson, United States Attorney – Idaho
Idaho State Lottery Commission
Mike Gilmore, Idaho Deputy Attorney General
Clay Smith, Idaho Deputy Attorney General
Tim Davis, Idaho Deputy Attorney General