

# **SEMINOLE NATION GAMING COMMISSION**

## **Commission Memorandum on Regulation No. 2**

This Memorandum reflects that on this 18<sup>th</sup> day of March 2013, the Seminole Nation Gaming Commission in regular session enacted Regulation No. 2 for the purpose of setting forth the division of authority between the Gaming Commission and the Chief Gaming Regulator as provided by law.

Title 15, *the Seminole Nation Public Gaming Act*, provides the framework for the operation and function of the Seminole Nation Gaming Agency. The Act provides authorities specifically enumerated between the Commission and the Chief Gaming Regulator.

The Commissioners in performing their official duties and carrying out their responsibilities as enumerated in the act determined it was their responsibility to enact an official Commission Regulation (Regulation No. 2) that delineates the division of responsibilities between the Commission and Regulator, because there are many responsibilities that are shared or where the Commission has direct oversight; however, the delineation of these functions require official action from the Commission by majority vote, in the promulgation of rules, regulations, and appeal functions.

The Commission has determined without the enactment of an official regulation covering the above issues the Chief Gaming Regulator is left without direction to chart a proper course of action with the real possibility of infringing upon the Commissioners jurisdiction of legal responsibility.

The Regulation and the Act defines the Chief Gaming Regulator as the official who directs the SNGA on a daily basis and performs the duties of the Chief Gaming Regulator established by the Act, including implementing this Act which governs the actions of any gaming operation under this Act.<sup>1</sup>

The Gaming Commissioners are the appointed tribal officials who direct the SNGA, and the Chief Gaming Regulator, and hear appeals and perform the duties of the Commissioners established by this Act, including authoring regulations implementing this Act which govern the actions of any gaming operations licensed under this Act.<sup>2</sup>

This memorandum is issued for the purpose of clarification of Regulation No. 2 officially enacted by the Commissioners which requires the Chief Gaming Regulator to obtain direction and approval from the Commissioners before consummating an official act which includes among other things, employment of agency personnel, or conducting certain investigations not covered by the MICS or TICS.

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<sup>1</sup> *Seminole Nation Public Gaming Act, Title 15 §5(b).*

<sup>2</sup> *Title 15 at §5(jj).*

The organizational structure of the SNGA includes separate divisions for Licensing, Compliance, Audit, and Surveillance, and such other units as necessary, which report to the Chief Gaming Regulator, and have the responsibilities set out in this subsection and such other responsibilities as may be assigned to them **“by the Chief Gaming Regulator or the Seminole Nation Gaming Agency Gaming Commissioners.”**<sup>3</sup> The Act requires that these divisions all are required to report irregularities to **both** the Regulator and the Commissioners.<sup>4</sup>

The Chief Gaming Regulator is responsible for the “day-to-day direction and management of the SNGA **at the direction of the SNGA Gaming Commissioners.**”<sup>5</sup> However, the Gaming Commission’s actions are only valid by majority vote of the Commissioners.<sup>6</sup> This means that the Commission’s actions need to be taken during a validly called meeting where official actions can be taken and recorded. Without an official record of these votes, the action of the Commission will be difficult to enforce in the future.

Thus upon the enactment of Regulation No. 2 and its recording in the official records of SNGA, the responsibility of the Chief Gaming Regulator to the Gaming Commission will be fully implemented. The Regulation leaves intact the responsibility of the CGR as to the day-to-day direction and management but requires at the same time, seeking direction from the SNGA Gaming Commissioners on many other issues.

The Chief Gaming Regulator is an employee of the SNGA **and is subject to hiring and firing by the Commission.**<sup>7</sup> Almost all actions, decisions, and responsibilities of the Chief Gaming Regulator are subject to being appealed to the Commission as a quasi-judiciary entity.<sup>8</sup> The Chief Gaming Regulator’s responsibilities are clearly defined by the Act and as highlighted below, are almost always **“subject to the approval”** or at **“the direction of the SNGA Commissioners”** as required pursuant to Section 105 listed as follows:

- (1) **Administer and Enforce This Title.** Be charged with the responsibility of administering and enforcing the provisions of this Title **at the direction of the SNGA Commissioners.**
- (2) **Direct and Manage SNGA.** Direct and manage the SNGA and its staff and administer the resources of the **SNGA as directed by the SNGA Gaming Commissioners.**
- (3) **Monitor and Enforce Compliance.** Monitor and enforce compliance with all laws and regulations applicable to the Nation’s gaming activities.
- (4) **Issue Regulations.** **Subject to approval of the SNGA Gaming Commissioners,** have the authority and responsibility for issuing regulations to implement all provisions of this Title for the purposes and in the manners

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<sup>3</sup> *Id. at §101(c).*

<sup>4</sup> *Id. at §§101(c); see generally.*

<sup>5</sup> *Id. at §102(i).*

<sup>6</sup> *Id. at §102(f).*

<sup>7</sup> *Id. at §102(g).*

<sup>8</sup> *Id. at §109; see generally.*

provided in Section 107 of this Title, which authority and responsibility may not be further delegated.

**(5) Resolve Patron Disputes.**

Investigate, determine the validity of, and order action on the part of the Enterprise or deny action to a patron dispute, other than one involving as prize claim or machine malfunction, which order or denial shall be final on behalf of the Seminole Nation and may not be appealed to the Gaming Commission.

**(6) Resolve Patron Dispute Over Prizes.**

Investigate, determine the validity of, and order action granting to a patron claimant the just and reasonable compensation for the amount of the prize not previously paid to a patron by the Enterprise in the case of a prize claim not resolved by the Enterprise within seventy-two hours of the filing of the prize claim where the prize earned was not awarded, the amount earned was not awarded, or the right to receive a refund or other compensation was infringed upon by the Gaming Operation, or order of denial of such a claim on behalf of the Enterprise. Provided further that:

- (A) Such actions by the Chief Gaming Regulator shall be in accord with the Compact(s) for any games covered by the Compact(s);
- (B) The Chief Gaming Regulator shall, **subject to the approval of the SNGA Gaming Commission**, promulgate regulations for this purpose, which regulations shall be consistent with the Compact for all games covered under the Compact.
- (C) Failure on the part of the claimant to file a timely claim or follow the procedures provided in the Compact or the regulations promulgated under this subsection shall constitute mandatory grounds for denying a prize claim; and
- (D) A decision of the Chief Gaming Regulator denying a prize claim by a patron shall be deemed a denial of the prize claim by the enterprise and **may be appealed by the denied patron to the SNGA Gaming Commission.**

**(7) Designate a Deputy Chief Gaming Regulator. Subject to the approval of the SNGA Gaming Commission**, designate an employee of the SNGA, as a collateral duty, to serve as Deputy Chief Gaming Regulator, who shall assume the duties of the Chief Gaming Regulator when the Chief Gaming Regulator is: 1) on leave or travel; 2) recused from dealing with a particular matter, or 3) otherwise unavailable. The Deputy Chief Gaming Regulator, for such time and with such authority and responsibilities as may be permissibly be delegated by the Chief Gaming Regulator, shall assume the functions and responsibilities of

the Chief Gaming Regulator.

- (8) **Make Employment Decisions.** Subject to the approval of the SNGA Gaming Commission, effective upon the enactment of Regulation No. 2, employ such persons as may be necessary and are within the approved budget of the SNGA, assign them responsibilities, and delegate them authority to act. The authority to employ such persons shall include the authority to hire, terminate, suspend, discipline and take other personnel actions commensurate with managing a staff of employees consistent with the SNGA Employment Policies, **subject to the approval of the SNGA Gaming Commission.** The Seminole Nation Gaming Regulatory Agency shall be exempted from the requirements of Title 11 of the Seminole Nation Labor Laws, the Seminole Nation Employment Systems Act; however, if the SNGA fails to adopt employment, personnel or labor guidelines, regulations or policies, title 11 requirements shall apply until such time as the SNGA employment Policies are adopted. Nothing in this section prevents the SNGA from adopting or opting into the requirement of Title 11.
- (9) **Classify and License Games.** Classify and license Class I, II, or III games **subject to the approval of the SNGA Gaming Commission.**
- (10) **Develop and Administer SNGA Budget.** Subject to the approval of the SNGA Gaming Commission and the budget provisions of Title 14, develop and recommend the budget for operations of the SNGA to the Principal Chief, the Finance Committee, and the General Council, and administer the financial affairs of the Agency in accordance with appropriate governmental accounting standards.
- (11) **Write Checks.** Have check writing authority, provided that any checks written for \$1,000.00 or more shall require the signature of either the Chief Gaming Regulator or the Deputy Chief Gaming Regulator and the signature of a SNGA Gaming Commissioner, further provided that no signatory on any check shall also prepare such check. The Chief Gaming Regulator **subject to the approval of the SNGA Gaming Commissions** shall institute a system of accounting consistent with generally accepted government accounting principles and sufficient financial controls to ensure that the total amount of expenditures by the SNGA shall not exceed the annual budget level approved by the General Council. The Seminole Nation Treasurer shall maintain SNGA bank accounts on behalf of the SNGA. Should there be a vacancy in either the Chief Gaming Regulator and/or the Deputy Chief Gaming Regulator, SNGA Gaming Commissioners shall have check signing authority.
- (12) **Secure Legal and Other Services.** Employ or contract for legal and other services by providers **subject to the approval of the SNGA Gaming Commission.** The SNGA Gaming Commission may utilize the services of the Office of Attorney General.

- (13) **Access and Collect Licensing Fees.** Assess and collect licensing fees, which shall be used by the SNGA to offset its expenses.
- (14) **Assess and Impose Fines. Subject to the approval of the SNGA Gaming Commission,** assess and impose fines for violations of this Act or non-compliance with regulations issued pursuant thereto, provided that the proceeds from an imposed fine shall be deposited into the general fund of the Seminole Nation.
- (15) **Observe Gaming Activities.** The Chief Gaming Regulator and such staff and attorneys of the SNGA, as he or she may designate or direct, shall have the authority to observe all Gaming-related activities at Licensed facilities under this Title in order to provide oversight of all gaming activities under this Title, to assure financial accountability, and to assure compliance with IGRA, this Title, and SNGA regulations. Interference with the monitoring functions of the SNGA shall be deemed a substantial violation of this Act.
- (16) **Hold Public Hearings, Take Sworn Testimony, and Take Other Legal Acts.** The Chief Gaming Regulator and such staff and attorneys of the SNGA, as may be designated by the Chief Gaming Regulator, shall have the authority to hold public hearings, take sworn testimony and do any other another legal act in furtherance of the SNGA's duties.
- (17) **Seek Comity With Other Court Jurisdictions.** The Chief Gaming Regulator is empowered to seek comity and enforcement of the orders of the SNGA by the courts or any jurisdiction whose assistance may be required to give effect to such orders. The Chief Gaming Regulator is also empowered to issue orders to enforce the lawful orders of other gaming regulatory agencies and the courts.
- (18) **Perform Other Duties.** Perform all duties and responsibilities that are deemed by the Chief Gaming Regulator **or SNGA Gaming Commissioners** as necessary to carry out the provisions of this Title, the SNGA's regulations, the IGRA, the terms of the Compact, and all other activities as are consistent with the power and authority delegated to the Chief Gaming Regulator and the SNGA under this Title.
- (19) **Exercise Authorities of the SNGA.** The Chief Gaming Regulator is empowered to exercise the authorities granted to the SNGA.
- (20) **Procurement.** The SNGA shall be exempted for Title 11 and 14 for the purposes of TERO and Procurement. The SNGA shall adopt procurement policies and contracting policies **subject to the approval of the SNGA Gaming Commissioners.**<sup>9</sup>

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<sup>9</sup> Title 15 at §105.

The responsibilities and actions of the Chief Gaming Regulator enumerated in Section 105 above, Regulation No. 2 and this Commission Memorandum that are either subject to appeal, approval or direction of the Gaming Commission, need to be acted upon by the Commission in a validly called meeting, subject to a majority vote.<sup>10</sup> The same majority vote requirements applies to all actions reserved only to the Commission on hearing appeals, issuing subpoenas, and promulgation of rules and procedures.<sup>11</sup>

The Gaming Commission in regular session and by majority vote hereby adopts this Memorandum as an addendum to Seminole Nation Gaming Agency Regulation No. 2. on this the 18<sup>th</sup> day of March 2013.

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Glenn J. Sharpe, Chairman SNGC

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Willis Deatherage, Vice Chairman SNGC

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Cynthia Yerby, Commissioner

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<sup>10</sup> *Title 15 §102(f).*

<sup>11</sup> *Id. at §§101 and 109.*