Resolution # 09-0805-220

Expressing the Will of the Tribal Council Regarding the Application of Credit History Information for Gaming Licensee Eligibility Criteria

WHEREAS, the status of the Gaá Čhíng Ziibi Daáwaa Aníshnáádábe (Little River Band of Ottawa Indians) as a sovereign and Treaty-making power is confirmed in numerous treaties, from agreements with the initial colonial powers on this land, to various treaties with the United States; and

WHEREAS, the Little River Band of Ottawa Indians (Tribe) is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of the 1836 Treaty of Washington (7 Stat. 491) with the United States, as reaffirmed by federal law in P.L. 103-324, enacted in 1994; and

WHEREAS, the Tribe adopted a new Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which became effective upon approval by the Assistant Secretary-Indian Affairs on May 13, 2004; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(a) to provide for the public health, peace, morals, education and general welfare of the Little River Band and its members; and

WHEREAS, the Tribal Council has adopted the Gaming Ordinance # 02-400-01, that sets forth the delegation of authority to the Gaming Commission; grants authority to the Gaming Commission to determine license suitability and issue gaming licenses to applicants meeting eligibility criteria as specified by Article X; and

WHEREAS, the Gaming Ordinance at Article X. Section 10.03 allows the Gaming Commission to obtain credit histories of persons applying for a gaming license; and such gaming license is required as a condition of employment at Little River Casino Resort; and
WHEREAS, the Gaming Ordinance at Article X. Section 10.03 defines eligibility criteria that applicants must meet in order to be granted a gaming license by the Commission, but said Article does not define the credit score or specify what a sufficient credit history consists of to be considered required as an eligibility criteria for licensure; and

WHEREAS, the Gaming Ordinance at Article X. Section 10.03 as enacted by the Tribal Council does not require that applicants maintain a minimum credit score, nor does the Ordinance require that an applicant provide disclosure regarding any identified deficiencies contained in a credit report, such as how items that appear on the credit history as collection items will be rectified by the applicant, as a condition of licensure; and

WHEREAS, the Tribal Council has adopted the Gaming Commission Ordinance #04-400-04, which provides that the Gaming Commission is established to “ensure the integrity, honesty and fairness of all gaming activities conducted on the Tribe’s Reservation and that such gaming activities be conducted in conformance with [the] Tribe-State Gaming Compact, Gaming Ordinance, [Gaming Commission] Ordinance, federal, applicable state and Tribal laws, and any regulations promulgated by the Gaming Commission...”; and

WHEREAS, Section 6.01 of the Gaming Commission Ordinance provides that the powers of the Gaming Commission are subject to restrictions contained in that Ordinance, “or other applicable law;” and

WHEREAS, the Tribal Council has reviewed both the Indian Gaming Regulatory Act and the Fair Credit Reporting Act in consideration of how credit information obtained by a licensing agency must be reviewed, protected, and utilized by an agency when carrying out their delegated authorities and obligations; and

WHEREAS, the Tribal Council finds that under federal laws, applicants have the right to be notified that they have the opportunity to correct any errors that may be contained within said credit reports obtained; and that obtaining credit reports subjects the licensing agency to other obligations owed to the applicant regarding disclosure that are currently not provided for under the current Gaming Ordinance; and

WHEREAS, the Tribal Council finds that in exercising its delegated power to license individuals for the Gaming enterprise, the Gaming Commission is not empowered to require that credit deficiencies be explained or that applicants must answer to the Commission, with the exclusion of Primary Management Officials, regarding any collection activity prior to making a determination for licensure; and
WHEREAS, the Tribal Council finds that where the Ordinance is silent on the application of any credit history information, the receipt of a credit report is sufficient to satisfy the eligibility requirements for licensure defined within the Gaming Ordinance, and that requests for additional information, including how an applicant will correct any collection activity is beyond the scope of the current delegation of authority for this licensing agency; and

WHEREAS, the Tribal Council finds that the current practices of the Gaming Commission relating to use of applicant’s credit history reports is not consistent with federal law, and is therefore void and invalid.

NOW THEREFORE IT IS RESOLVED THAT the Tribal Council affirms the Gaming Commission’s authority to obtain credit history information as currently stated in Article X. of the Gaming Ordinance and its application for Primary Management Officials;

NOW THEREFORE IT IS FURTHER RESOLVED THAT the Tribal Council hereby clarifies that the delegation of authority to the Gaming Commission does not include the authority to require, as part of the eligibility and suitability determination, that applicants must disclose the corrective measures that they will take to resolve indebtedness, as the Gaming Commission is not a credit reporting agency or collection agency of the Tribe.

NOW THEREFORE IT IS FURTHER RESOLVED THAT when the Tribal Council adopted the Gaming Ordinance and the Ordinance itself is silent regarding any matter of law, the Tribal Council does not delegate to the Gaming Commission the ability to, by practice, institute procedures that in any manner inconsistent with federal or applicable Tribal laws.

IT IS FURTHER RESOLVED THAT this Resolution shall not be considered as an amendment to the Gaming Ordinance; rather this Resolution clarifies the powers of the Gaming Commission, which are limited by applicable Tribal or federal laws.

IT IS FINALLY RESOLVED THAT the practices of the Gaming Commission regarding use of applicants’ credit history reports does not include the power to request disclosure regarding the corrective measures that applicants will take to resolve indebtedness, and is hereby invalid and void due to the conflict with applicable Tribal and federal laws.
CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 8 FOR, 0 AGAINST, 0 ABSTAINING, and 1 ABSENT, at a Regular Session of the Little River Band of Ottawa Indians Tribal Council held on August 5, 2009, at the Little River Band’s Dome Room in Manistee, Michigan, with a quorum being present for such vote.

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James M. Sam, Council Recorder

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Stephen Parsons, Council Speaker

Attest:

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