

Little River Band of Ottawa Indians

375 River Street
Manistee, MI 49660
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Resolution # 05-0216-80

*Providing a Limited Waiver of Sovereign Immunity to Consent to Litigate the State's
Claims Under the Tribal-State Gaming Compact
Involving the State's Initiation of "Club Keno"*

WHEREAS, the status of the *Gaá Čhíng Ziibi Daáwaa Aniřhinaábek* (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 to engage legal counsel; and

WHEREAS, the Tribal Council has a Constitutional duty to take action as may be necessary to enhance and preserve tribal financial resources by the affirmative exercise of governmental powers within the Tribe's territory and defending the Tribe from intrusions upon the Tribe's right of self-government; and

WHEREAS, to foster and enhance Tribal governmental operations and programs and the general welfare of the Tribe and its members, the Tribe operates a class III gaming operation under the Indian Gaming Regulatory Act and the Tribal/State Compact executed by Michigan Governor Engler on December 2, 1998, ratified by the Michigan Legislature on December 11, 1998 and made effective by Department of Interior Federal Register notification on February 18, 1999, 64 FR 8111 (“Compact”).

WHEREAS, Section 17 of the Compact, entitled “Tribal Payments to State for Economic Benefits of Exclusivity” provides that the Tribe will pay the State of Michigan (“State”) an amount equal to 8% of the Tribe’s net revenue from electronic games of chance so long as “. . .no other person (except a federally-recognized Indian Tribe operating pursuant to a valid Compact under IGRA or a person operating in the City of Detroit pursuant to the Initiated Law of 1996, MCL 432.201) within the State lawfully operates electronic games of chance or commercial casino games. . .”; and

WHEREAS, on October 27, 2003, the State began operating a casino-style keno game called “Club Keno” in as many as 3,000 establishments holding Class C liquor licenses with the stated intention of competing with casinos; and

WHEREAS, the Tribe obtained an independent legal opinion which concluded that the State’s introduction of “Club Keno” terminated the Tribe’s obligation to make payments to the State under Section 17 of the Compact; and

WHEREAS, the State has expressed its position that its operation of “Club Keno” does not terminate the Tribe’s 8% payment obligation under the Compact; and

WHEREAS, the State of Michigan has indicated that it intends to file certain claims in the United States District Court for the Western District of Michigan requesting declaratory and other relief with respect the existence and scope of the Tribe’s continuing obligation to make 8% payments to the State under Section 17 of the Compact; and

WHEREAS, pursuant to Article XI, Section 1 of the Constitution provides that the Tribal Council shall not waive or limit the right of the Little River Band to be immune from suit, except as authorized by tribal ordinance or resolution”; and

WHEREAS, the Tribal Council finds that it is in the interest of the Tribe to resolve any ambiguity concerning the jurisdiction conferred under 25 U.S.C. §2710 by agreeing to a limited waiver of sovereign immunity and consenting to litigate claims brought by the State in United States District Court for the Western District of Michigan in which the State will request a declaratory ruling as to whether the Tribe continues to have an obligation to make 8% payments to the State under the Compact in light of the State’s initiation of “Club Keno” and agreeing to be bound by such determination in such proceeding, subject to the Tribe’s right to appeal any adverse determination.

NOW THEREFORE BE IT RESOLVED that the Tribal Council of the Little River Band of Ottawa Indians hereby waives the Tribe's common law immunity from suit for the sole purpose of allowing it to be sued by the State of Michigan in the Federal District Court for Western District of Michigan in connection with a declaratory judgment action brought by the State to determine whether Tribe's 8% payment obligation under Section 17 of the Compact terminated upon the State's introduction of "Club Keno".

IT IS FURTHER RESOLVED that the Tribe consents to the jurisdiction of the Sixth Circuit Court of Appeals and the U.S. Supreme Court in connection with any appeals filed from the United States District Court for the Western District of Michigan and, agrees to be bound by any final judgment of such courts after exhaustion or waiver of appeals;

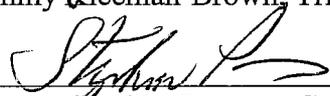
IT IS FINALLY RESOLVED that in the event a final judgment of the above-referenced Courts, after exhaustion of all appeals, determines that the State's operation of "Club Keno" does not terminate the Tribe's 8% payment under the Compact, then the Tribe will remit all amounts due the State which accrued on since October 27, 2003, along with any interest earned on the funds while held by the Tribe since that date.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 7 FOR, 1 AGAINST, 0 ABSTAINING, and 1 ABSENT, at a Regular Closed Session of the Little River Band of Ottawa Indians Tribal Council held on February 16, 2005, at the Little River Band's Conference Room in Manistee, Michigan, with a quorum being present for such vote.



Tammy Kleeman-Brown, Tribal Councilor



Stephen Parsons, Council Speaker

Attest:

Distribution: Council Records
Legal Department
Tribal Ogema
State of Michigan