

Gaming Commission Regulation

Chapter 15 – Certificate of Rehabilitation Regulation

Regulation # R400-4:GC-15

Section 1. Purpose; Authority

1-1. *Purpose.* It is the purpose of this Chapter to:

- a. Define the standards and processes to those Tribal Members seeking licensure and employment with a gaming enterprise who have a Specific Disqualifying Circumstances that would otherwise disqualify them for licensure.
- b. Define standards and processes for the Gaming Commission in making determinations on the granting of a Certificate of Rehabilitation to the prospective Tribal Members in accordance with applicable Federal, State, and Tribal laws and regulations; and
- c. Assist the gaming enterprise and recipients of a Certificate of Rehabilitation to understand the process that Tribal law and regulations imposes upon persons granted a Certificate of Rehabilitation in order to obtain a license to be employed by a gaming enterprise.

1-2. *Authority.* These rules and regulations are issued under and pursuant to the authority of the Gaming Ordinance #10-400-01, the Rehabilitation for Licensure Ordinance #11-400-10, the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), the Tribal-State Gaming Compact (73 Fed. Reg. 21361, April 21, 2008), the Gaming Commission Ordinance #04-400-04, and the Commissions Ordinance #04-105-01.

Section 2. Definitions

- 2-1. *General.* For purposes of this Regulation, certain terms are defined in this Section. The word “shall” is always mandatory and not merely advisory. Unless defined elsewhere, terms defined in this Chapter, the Gaming Ordinance, the Rehabilitation for Licensure Ordinance and Gaming Commission Ordinance are defined for the purposes of all Gaming Commission regulations.
- 2-2. *Applicant* for the purposes of this regulation, means a Tribal Member requesting to receive a Certificate of Rehabilitation for licensure from the Gaming Commission which will enable the person to be employed with or contracted by a gaming enterprise. “Applicant” also encompasses re-applicants.
- 2-3. *Compact (Tribal-State Compact)* means an agreement between the State of Michigan and the Little River Band of Ottawa Indians concerning Class III gaming approved or deemed approved by the Secretary of the Interior and published in the Federal Register pursuant to 25 U.S.C. §2710(d).

- 2-4. *Gaming Commission Agents* means officials (Gaming Commissioners) or employees of the Gaming Commission, including the Executive Director, Compliance personnel, Surveillance personnel, Internal Audit personnel, the Background Investigator and administrative staff.
- 2-5. *Gaming Enterprise* means any commercial enterprise of the Tribe authorized to engage in gaming, and all ancillary commercial activities within the gaming facility(ies) and other improvements constructed for the conduct of gaming
- 2-6. *License* means any official and revocable authorization granted for a limited period of time by the regulatory agency pursuant to the Gaming Ordinance to an applicant to conduct business or gain employment in any gaming facility.
- 2-7. *National Indian Gaming Commission* shall mean the Commission established pursuant to IGRA.
- 2-8. *Regulatory Agency* means the Little River Band of Ottawa Indians Gaming Commission, created by Gaming Commission Ordinance #04-400-04, or such other regulatory body created by Ordinance.
- 2-9. *Rehabilitation* means the exclusion of the effect of a specific set of facts and circumstances that form the basis of a Specific Disqualifying Circumstance.
- 2-10. *Specific Disqualifying Circumstance* means those circumstances, as defined in the Tribal-State Compact, Gaming Ordinance, and any regulation promulgated by the Gaming Commission, which determine that an applicant is ineligible for licensure as an employee of a gaming enterprise.
- 2-11. *Tribal Court* means the Tribal Court and Tribal Court of Appeals of the Little River Band of Ottawa Indians and all other tribal judicial forums now or hereinafter established by the Tribe.
- 2-12. *Tribe* means the Little River Band of Ottawa Indians.
- 2-13. *Tribal Member* means an individual enrolled as a member of the Little River Band of Ottawa Indians.

Section 3. Construction and Application of the Rules

- 3-1. *Construction and Amendments.*
- a. These rules shall be liberally construed to permit the Gaming Commission to effectively carry out its statutory functions and secure a just and expeditious determination of issues properly presented to the Gaming Commission.
 - b. These rules may be amended by the Gaming Commission from time to time in accordance with the provisions of the Gaming Ordinance, the Gaming Commission Ordinance, the Rehabilitation for Licensure Ordinance and any regulation promulgated by the Gaming Commission.

3-2. *Severability, Preemption, Adoption and Repeal.*

- a. If any clause, sentence, subparagraph, paragraph, subsection, section, chapter or other portion of these rules or the application thereof to any person or circumstance shall be held to be invalid, such holding shall not affect, impair or invalidate the remainder of these rules or the application of such portion held invalid to any other person or circumstances, but shall be confined in its operation to the clause, sentence, subparagraph, paragraph, subsection, section, chapter or other portion thereof directly involved in such holding or to the person or circumstances therein involved.
- b. The Gaming Commission shall have jurisdiction over all matters delegated to it or within the scope of its powers under the provisions of the Gaming Ordinance, Gaming Commission Ordinance, Rehabilitation for Licensure Ordinance and these rules.

Section 4. General Rights and Duties of Applicants

- 4-1. *No Promise of Employment.* The granting of a Certificate of Rehabilitation by the Gaming Commission does not constitute a commitment on behalf of the Gaming Commission or any other party to hire or continue to employ the licensee.
- 4-2. *Reservation of Rights.* No provisions of the Rehabilitation for Licensure Ordinance shall abrogate any right to appeal a licensure decision of the Gaming Ordinance, nor subrogate any proceedings under the licensing provisions of the Gaming Ordinance.
- 4-3. *Limitations of Rehabilitation.* The Gaming Commission shall grant rehabilitation only for the purpose of licensure and the Tribal Member remains subject to all provisions of the Gaming Ordinance, Tribal regulations, and applicable Tribal and Federal laws.
- 4-4. *Rehabilitation Barred.* The Gaming Commission shall not grant a Certificate of Rehabilitation where the underlying basis for the Specific Disqualifying Circumstance(s) is based on conduct demonstrating habitual offender status or where the Gaming Commission has determined that the Tribal Member is likely again to engage in any offensive or criminal course of conduct or where the individual may pose a threat to the public good.
- 4-5. *Denial of Rehabilitation.* If the Gaming Commission fails to grant a Certificate of Rehabilitation it shall set forth, in writing, its findings and reasoning in determining against the rehabilitation for the Specific Disqualifying Circumstance(s) in a Notice of Denial of Rehabilitation that shall be delivered to the Tribal Member in writing, with notice of the right to a Rehabilitation Hearing, no later than seven (7) calendar days after the date of its determination.
- 4-6. *Effect of Rehabilitation.* Rehabilitation shall have the effect of exempting a finding of a Specific Disqualifying Circumstance from consideration by the Gaming Commission in the course of its normal licensing procedures pursuant to the provisions of the Gaming Ordinance and any regulations promulgated by the Gaming Commission.

Section 5. Standards for Certificate of Rehabilitation Eligibility

5-1. An applicant for a Non-Gaming Employee License with a Specific Disqualifying Circumstance may be approved for licensure upon the issuance of a Certificate of Rehabilitation by the Gaming Commission.

a. *Specific Disqualifying Circumstances.* An applicant seeking licensure for a Non-Gaming position is not eligible for a Certificate of Rehabilitation if the application or background investigation confirms that the applicant:

1. Is under the age of 16; or
2. Has been convicted of participating in organized crime or unlawful gambling; or
3. Has knowingly and willfully provided materially false and misleading statements or information to the Gaming Commission or has refused to respond to questions and/or requests for information asked by the Gaming Commission specifically related to the person's eligibility to obtain or retain a license; or
4. Has been convicted of any offense related to criminal sexual conduct where the perpetrator was convicted as an adult at the time the crime was committed, and/or is registered in any jurisdiction's list of sexual offenders; or
5. Has been convicted of any offense related to criminal sexual conduct where the perpetrator was convicted as an adult at the time the crime was committed, and/or is registered in any jurisdiction's list of sexual offenders.

5-2. An applicant for a Gaming Employee License with a Specific Disqualifying Circumstance may be approved for licensure upon the issuance of a Certificate of Rehabilitation by the Gaming Commission.

a. *Specific Disqualifying Circumstances.* An applicant seeking licensure for a Gaming (Key or Primary Management Official) position is not eligible for a Certificate of Rehabilitation if the application or background investigation confirms that the applicant:

1. Is member of the Tribal Council, the Ogema, a Judge or Appellate Judge on the Tribal Court, the Tribal Prosecutor or a Law Enforcement Officer of the Tribe. This subsection shall not apply to members of the Tribal Council or the Tribal Ogema sitting on an oversight body established by Tribal law to provide oversight to a gaming enterprise; or
2. Is under the age of 18; or

3. Has been convicted of or entered a plea of guilty or no contest to a gambling-related offense, fraud, or misrepresentation. The terms “fraud or misrepresentation” shall mean a criminal offense committed in Michigan or any other jurisdiction, involving theft, fraud or misrepresentation, which is a felony or would be a felony if committed in Michigan, and which was committed as an adult or prosecuted as an adult offense, and which has not been effectively removed from the applicant's/licensee's criminal record by executive pardon, state court order, or operation of law; or
4. Is determined by the Gaming Commission to have participated in organized crime or unlawful gambling or whose prior activities, criminal records, reputation, habits, and/or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or to the carrying on of the business and financial arrangements incidental to the conduct of gaming; or
5. Has knowingly and willfully provided materially false and misleading statements or information to the Gaming Commission or has refused to respond to questions and/or requests for information asked by the Gaming Commission specifically related to the person's eligibility to obtain or retain a license; or
6. Has been convicted of any offense related to sexual crimes or criminal sexual conduct where the perpetrator was convicted as an adult at the time the crime was committed, and/or is registered in any jurisdiction's list of sexual offenders.

Section 6. Process after the Finding of a Specific Disqualifying Circumstance

- 6-1. *Verification of Specific Disqualifying Circumstance.* Upon receipt of a completed application for licensure where a Specific Disqualifying Circumstance surfaces during the background investigation process (initial or renewal), verification of all relevant dates and factual data sufficient to identify the character and nature of the underlying facts and circumstances which formed the basis of the Specific Disqualifying Circumstance shall be gathered.
 - a. Where the Specific Disqualifying Circumstance is not barred from rehabilitation, the Background Investigator or designee shall recommend to the Gaming Commission that a Certificate of Rehabilitation be granted for that Specific Disqualifying Circumstance.
 1. The Background Investigator or designee shall complete the appropriate forms and prepare the file for Gaming Commission review and consideration.
 - b. Where the Specific Disqualifying Circumstance is barred from rehabilitation, the Background Investigator or designee shall recommend to the Gaming Commission

that rehabilitation for that Specific Disqualifying Circumstance be denied.

1. The Background Investigator or designee shall complete forms and prepare the file for Gaming Commission review and consideration.

Section 7. Grant of Certificate of Rehabilitation

7-1. Where the Gaming Commission grants a Certificate of Rehabilitation for a Specific Disqualifying Circumstance to a Tribal Member, a Certificate of Rehabilitation will be issued to the Tribal Member and the Background Investigator or designee shall issue the applicable license for employment at the gaming enterprise. The following information shall be included on the Certificate of Rehabilitation:

- a. The Tribal Member's name and Tribal Identification Number; and
- b. The license category and employment position for which licensure was sought and for which rehabilitation was granted; and
- c. The relevant dates and factual data which identifies the character and nature of the underlying facts and circumstances which formed the basis of the Specific Disqualifying Circumstance; and
- d. A disclaimer that the Certificate of Rehabilitation is valid only for the purpose of licensure for employment with a gaming enterprise of the Little River Band of Ottawa Indians; and
- e. The signature of the Gaming Commissioners granting the Certificate of Rehabilitation; and
- f. The Tribal member shall sign an Acknowledgement and Understanding of Rehabilitation form upon issuance of the Certificate of Rehabilitation and the license for employment at the gaming enterprise; and
- g. A Declaration of Rehabilitation shall be prepared signed by the Background Investigator or designee.

Section 8. Denial of Certificate of Rehabilitation

8-1. Where the Gaming Commission has failed to grant a Certificate of Rehabilitation to a Tribal Member with a Specific Disqualifying Circumstance causing the Tribal Member to be denied licensure, the Tribal Member shall immediately receive a Notice of Denial of Rehabilitation and have a right to a separate Rehabilitation Hearing (in lieu of a licensing hearing pursuant to the Gaming Ordinance or Gaming Commission Regulation) before the Gaming Commission no later than seven (7) calendar days of its determination.

- a. At the Rehabilitation Hearing, the Gaming Commission shall provide the Tribal Member with competent, material, and substantial evidence that demonstrates that the denial of the Certificate of Rehabilitation is substantiated.

- b. The Gaming Commission shall accept all evidence presented by the Tribal Member to rebut the denial of the Certificate of Rehabilitation based on the Specific Disqualifying Circumstance(s).
- c. After hearing evidence and testimony, the Gaming Commission shall within seven (7) calendar days set forth in writing a Notice of Disposition advising the Tribal Member its determination, supported by facts supporting the determination. The Notice of Disposition shall also provide the Tribal Member with notice that they have the right to appeal the Gaming Commission's adverse decision to the Tribal Court within fourteen (14) calendar days of the Rehabilitation Hearing.

8-2. Appeals to Tribal Court.

- a. The Tribal Court shall hear appeals from adverse decisions of the Gaming Commission made at a Rehabilitation Hearing.
- b. Upon receipt of notice of appeal by the Tribal Court Clerk the Gaming Commission or designee shall immediately cause to be copied and forwarded the following documents to the Tribal Court:
 - 1. The application for licensure, including all evidence and documents contained therein; and
 - 2. A record of the Rehabilitation Hearing; and
 - 3. The Notice of Denial of Rehabilitation; and
 - 4. The Notice of Disposition of Rehabilitation Hearing.
- c. Upon notice by the Tribal Court that the court determined that the Gaming Commission incorrectly interpreted or applied the Gaming Ordinance, the Tribal-State Compact, the Indian Gaming Regulatory Act, the Rehabilitation for Licensure Ordinance or any other Tribal law and/or regulation governing licensure, the Gaming Commission shall immediately cause to issue the Tribal Member the appropriate Certificate of Rehabilitation and the Background Investigator shall issue the Tribal Member the applicable license for employment at the gaming enterprise.