



## ***Learning From the Past, NIGC and Tribes Continue to Move Towards a Better Future***

by Tracie Stevens

In the twenty-five years since the passage of the Indian Gaming Regulatory Act (IGRA), tribes have experienced exponential growth in their casino operations as well as tribal regulatory bodies. The National Indian Gaming Commission (NIGC) has seen its share of growth as well. By 1993, the NIGC was up and running with a handful of employees and no regulations, overseeing an industry in its infancy that was a fraction of today's almost \$28 billion gross gaming revenue. Tribes and the NIGC together have evolved in collaboration with the other as co-regulators for the betterment of tribal self-governance and the integrity of Indian gaming; a collaboration that the Obama Administration implemented as part of its efforts to affect change in Indian Country. As the most recent former Chairperson of the NIGC, I am honored and proud to have been part of this innovative approach that resulted in a collaborative tribal-federal relationship. This renewed relationship with NIGC should be one which tribes strive to maintain with this and all future Commissions moving forward.

In the years prior to this Administration's NIGC, tribes were mired in a combative relationship with the Commission, often opposing NIGC efforts to over-reach statutory authority, rulemaking without advance discussion with tribes, and a general prosecutorial mindset and heavy hand to force compliance. This punitive, "gotcha" approach led to almost 70% of NIGC enforcement actions from 2006-2010 cited for late fees or late audits while the actions for substantial and major violations like managing without an approved contract or violations of the sole proprietary interest requirement lessened. Recent simple changes made by this Administration's NIGC, like those made to the fee regulation and subsequent assistance from NIGC staff, late fees decreased substantially thus allowing the NIGC to focus on not only substantial and major violations but also provided much needed technical assistance and training, and regulatory revisions that make compliance more achievable.

Revamping the Commission's consultation policy was critical to repairing the broken co-regulatory relationship with tribes. Rather than surprising tribes with notices of proposed rulemaking (NPRM), pre-consultation discussions were enacted wherein working drafts were created with both tribal and NIGC input. This allowed tribes a preview and involvement from the very beginning of the rulemaking process. In doing so, final rules came as no surprise to tribes. Further, the Commission brought consultation to tribes, knowing that

tribal travel budgets were strapped. Transparency has also been introduced in the consultation process. Transcripts and all comment submissions are now available on the NIGC website for review by the public. This is particularly helpful to tribes unable to attend the consultations, so comments may be reviewed and considered by others who wish to make submissions in lieu of attendance.

It is vital that tribes participate and stay engaged now and into the future. This means reading all informal and formal rulemaking notices and policy changes. While most federal agencies are now consulting at historical levels, it can be a challenge for tribes to keep up. Therefore, assigning or delegating a tribal representative to participate and attend consultation is beneficial. If a tribe is unable to send a representative, submitting written comments is another option to participate. Reading the transcripts and comments on the NIGC website can help inform those submissions. If tribal representatives are not clear or have questions, they can call the NIGC to ask questions. Both the field and D.C. staff are available to discuss NIGC activities. Moreover, whether participating in person or providing written comment, it is important to be prepared. This means providing not just objections or opposition but solutions as well, especially if there are competing or conflicting interests among tribes. Offering solutions with common interest will help the NIGC make better informed decisions. Keep in mind that NIGC oversees all tribes operating under IGRA across the country and work towards ensuring compliance by tribes of varying size, location and structure. Also, if tribes support proposed changes, comment submissions are just as important. Don't sit it out. Providing analysis is not only helpful for opposing comments but supportive comments as well. This establishes a more robust final rule and administrative record that confirms a thorough and deliberative process.

With all of the new regulations and consultation taking place, naturally it follows that the NIGC must provide technical assistance and training to ensure compliance with these new regulations. IGRA requires that the NIGC provide technical assistance and training. This Administration took it to a greater level of responsibility. Previously, courses were stagnant and out-dated, providing no real-time or evolving information needed by tribes. Further, many of the courses were off-the-mark and did not provide information suited to tribal needs but rather what NIGC mandated. Now, with a newly hired training manager with an extensive background in training, not only does NIGC's course

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catalog better reflect tribal needs, information to maintain compliance is more appropriate for tribal real-time gaming

activity and regulation is also available. NIGC now employs preventative efforts that encourage tribes to engage and

obtain the technical assistance for their specific operational or regulatory situation. By actively engaging and communicating with NIGC regional staff, tribes can participate in the local training, obtain assistance with new regulations, and address the needs of new tribal regulators and casino operations staff. Also, help is available for tribal gaming ordinance changes, management contracts, financing documents and compliance concerns. Meetings in D.C. with the Commission are not generally necessary, and moreover, not cheap. Keep in mind that most issues can be resolved by phone, so maintaining regular communication with NIGC regional and D.C. staff will help obtain the assistance needed.

Over the course of five years, the NIGC has systemically changed for the better. It is important that tribes remember this era of change. Meaningful consultation and regulatory collaboration is not only possible but is now a standard expected of all future Commissions. Like me, Commissioners will leave and be replaced. As the Administration changes, so will the Commissioners. When new appointees fill their seats, tribes must keep that bar set so that the NIGC is held accountable by their regulatory partners for the tribal monies that fund the NIGC statutory obligations. Tribes must continue to engage with the NIGC now and into the future in order to maintain the renewed tribal-federal relationship and protect the integrity of this vitally important tribal government revenue source. ♣

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