

CONFIRMATION OF MONTIE DEER

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

TO BE CHAIRMAN OF THE NATIONAL INDIAN GAMING COMMISSION

FEBRUARY 10, 1999
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CONFIRMATION OF MONTIE R. DEER, TO BE CHAIRMAN OF THE NATIONAL INDIAN GAM- ING COMMISSION

WEDNESDAY, FEBRUARY 10, 1999

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m. in room 485, Senate Russell Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell and Inouye.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SEN- ATOR FROM COLORADO, CHAIRMAN COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The committee will be in session. We're going to go ahead and get this started; Senator Inouye is running a little late, but he will be along.

Good morning. Today we hear from Montie Deer, a member of the Muscogee Creek Indian Nation, to become Chairman of the National Indian Gaming Commission. We considered his nomination—we did this last year, as many people in the audience know, but we did run out of time in October, and the Senate was unable to approve it, so we're back at it today. It's one of our first orders of business.

Since 1988, Indian gaming has become a source of much-needed revenue for Indian tribal governments to provide jobs, services, and, frankly, hope where there is not much now. There are now some 185 tribes operating some form of gaming operations, with annual revenues of nearly \$7 billion.

The National Indian Gaming Commission was created 11 years ago. This three-member agency has the responsibility to monitor and regulate certain forms of gaming conducted on Indian lands. They have the authority to approve management contracts, conduct background investigations, approve tribal gaming ordinances, review and conduct audits of the books and records of Indian gaming operations, and much more.

They also have the authority and the responsibility to enforce violations of the Indian Gaming Regulatory Act, NIGC regulations, and approve tribal gaming ordinances. It's a very, very complete and extensive job and one that I admire you for wanting to take on, Mr. Deer.

We only have one half an hour, I might add. Unfortunately, we are going back on the floor for this trial at 10 a.m., so we are going to try to make this very brief.

So with that, I would welcome Senator Inouye for any opening statement before we proceed.

STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUE. Thank you very much, Mr. Chairman.

I have met Mr. Deer. We have had our interviews, and I am ready to vote.

The CHAIRMAN. Thank you.

Before we actually go to the vote, Mr. Deer, there are a couple of questions that have been submitted by members—if that's all right with you, Senator Inouye—we have several questions. I am going to submit several of them for the record, send them to you, and ask you to respond to them in writing for the members, because we are so short of time.

[Questions with responses appear in Mr. Deer's prepared statement in appendix.]

The CHAIRMAN. But let me ask Senator Reid's question first. He asked me to read this whole thing into the record, and he says he does support your nomination and is looking forward to working with you. But he is concerned about what he calls a "lack of cooperation" with the National Gaming Impact Study Commission; I am sure you are probably aware of that, Mr. Deer.

At its meeting at Virginia Beach on February 9, 1999, it chairman, Kay James, asked Phil Hogen, the vice chairman of the NIGC, if he would commit to providing the information requested, and Mr. Hogen indicated that he thought that they would decline to do so, but that he would seek an answer from you.

So Senator Reid's question is, since the Commission is seeking information, Senator Reid believes they are entitled to this information and, if they desired, would be able to subpoena it.

That said, the enabling legislation, which Senator Reid says he does not support, authorizes the Commission to obtain this data. He would like to ask your opinion on providing the Commission data.

STATEMENT OF MONTIE R. DEER, NOMINATED TO BE CHAIRMAN OF THE NATIONAL INDIAN GAMING COMMISSION

Mr. DEER. Thank you very much, Mr. Chairman, and good morning, Mr. Vice Chairman.

I was aware of that question. Apparently there has been some miscommunication, because I think you have been supplied, sir, with approximately three letters that went between my group, the Commission, and the Impact Study Group. We met with them. We refer to section 25, USC 2716(a). I think it's clear that we are standing on our obligation to follow the law. Also, we thought we had a compromise, Mr. Chairman; I think you will see there is a letter of December 4 which contained an enclosure with several documents, with which we tried to establish for them the information we felt we could give them.

I would point out to the Chair that information contained in those enclosures is a long way from what even the act says we're entitled to do, but we felt we could reach that compromise.

Why the question was posed to Vice Chairman Hogan I do not know, but I would stand on the record of the letters, and we will answer the question in writing as well.

[Prepared statement of Mr. Deer appears in appendix.]

The CHAIRMAN. Okay. It is my understanding that under the IGRA, it requires the tribes to provide revenue and income information but the NIGB keep it confidential. Is that your understanding, too?

Mr. DEER. That's correct.

The CHAIRMAN. Okay. But I would like you to make a time that you can sit down with Senator Reid personally and talk to him about this. Have you done that yet?

Mr. DEER. Yes; I met with Senator Reid on two occasions.

The CHAIRMAN. Okay.

Mr. DEER. But not on this issue, and I will do that.

The CHAIRMAN. Would you meet with him on this specific issue? I'd appreciate that.

[Whereupon, at 9:35 a.m., the committee proceeded to further business.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF MONTIE DEER

Mr. Chairman, I want to thank you and the members of the committee for conducting this hearing on my nomination as Chairman of the National Indian Gaming Commission [NIGC]. I would also like to thank the committee again for its continuing support of the NIGC.

I had the opportunity to appear before you last September and I certainly consider it my honor and privilege to appear before you again today. With your permission Mr. Chairman I would like to re-submit my previous testimony and spend my time with you today updating you on two issues that I know this committee considers to be very important.

The first issue is the expansion of the NIGC. Last year the Congress increased the budget of the NIGC by raising the cap on the amount of fees the NIGC can collect. We are now authorized to collect up to \$8 million in fees from both class II and class III gaming operations. Let me point out that the NIGC is not currently collecting \$8 million in fees. We currently assess fees at a rate that provided for a budget of \$5.3 million for 1998. As we continue with the implementation of our expansion plan we will gradually increase the fee. We expect that our expansion will be complete within 2 years. We have previously submitted to you, Mr. Chairman, our expansion plan.

Mr. Chairman you may recall when I was last before this committee you sympathized with the NIGC on its huge job and the limited resources and in particular the fact that we only had seven field investigators. Well Mr. Chairman, I am pleased to report that since I testified last year we have doubled the size of our field personnel. During the past 3 months we have hired three [3] field investigators, two [2] auditors and two [2] financial background investigators. Importantly, these individuals are not located in Washington DC but are instead located in various places throughout the United States near Indian country.

Further, I am also pleased to announce that we have opened our first NIGC field office in St. Paul, MN. Additionally, we have plans to open a field office in the near future in Tulsa, OK. After that we plan to establish NIGC offices in the Northwest, California, and the Southwest.

On the regulatory front, I am pleased to announce that in December of last year I signed off on the minimum internal control standards—commonly referred to as MICS. These regulations—which utilize the best parts of similar regulations currently in place in Nevada and New Jersey—bolster the effective operating procedures of Indian gaming facilities. These regulations will help ensure Indian gaming integrity by limiting fraud, corruption and will assist in overall gaming accountability. Our regulations require all gaming operations to have these standards in place by August 5, 1999.

It is my philosophy that once a regulatory agency establishes a new rule it should also take the additional step of making sure that the regulated community is aware of the rule and understands it. To that end, the NIGC has embarked on an ambitious 14 city training tour to explain the minimum internal controls standards regu-

lation and what we expect regarding compliance. I am pleased to report that we average between 50 and 100 tribal regulators at each training session.

Mr. Chairman and members of the committee, I believe my background as an educator, lawyer, judge and assistant U.S. attorney has equipped me to handle the enormous challenges this job presents. I want you to know that as a regulator it is my philosophy to follow the law pursuant to the directions of the U.S. Congress as mandated in the Indian Gaming Regulatory Act. Further, I sincerely believe that if gaming is to continue to be a valuable economic tool in the tribes' quest for self-sufficiency, it no doubt must be properly and thoroughly regulated by the appropriate tribal, State and Federal authorities. My pledge to you is to keep you well informed of the NIGC's activities and needs in this regard.

Again, I want to thank the committee for this opportunity to testify and will answer any questions you may have.

QUESTIONS WITH RESPONSES

Question. The committee is working to ensure the NIGC is adequately funded. How do you see the NIGC spending the funds now at its disposal?

Answer. Our first priority is to implement the recently adopted expansion plan. To that end, I have doubled the number of field staff employed by the NIGC including three field investigators, two auditors and two background investigators. In November 1998 we opened our first field office in St. Paul, Minnesota. We will soon hire several more field investigators, auditors and administrative staff to service field offices the NIGC is planning to open this year in Oklahoma, Washington, California, and Arizona.

The NIGC will continue to expend funds for training on our recently promulgated Minimum Internal Control Standards [MICS] and on other areas requiring regulatory compliance. Since November 1998, we have used substantial resources to offer training sessions to tribal gaming regulators in 14 locations across the country. Through these sessions we have trained over 800 people including tribal gaming regulators, tribal chairmen and administrative assistants. We also regularly schedule compliance seminars around the country in locations near Indian gaming operations.

As the size of the field staff increases it will no doubt have an impact on all areas of the NIGC. I anticipate that other enforcement activities will increase. This in turn will require additional staff, both professional and administrative, to handle the work load.

Question. Would you provide this committee with annual reports on the amount of fees assessed and how they are spent?

Answer. Yes; I will make certain that annual budget reports are delivered to you on the amount of fees assessed and how they are spent. I have instructed my staff to contact your office to determine the amount of specificity you desire in our reports. Once that is determined, I expect that I can provide you with our first report within 1 month.

Question. Are you committed to enacting and enforcing Federal minimum operating standards?

Answer. Yes; as you are aware, the NIGC has promulgated Minimum Internal Control Standards. We have nearly completed numerous training sessions around the country informing tribal gaming regulators of the MICS and explaining our expectations for compliance. We are planning to offer more individualized technical assistance and training in the upcoming months. Compliance with the MICS will be investigated and enforced by NIGC field staff.

Question. Do you think that for the tribes with a compact governing class III operations, adjustments in fees paid to the NIGC are in order?

Answer. The NIGC is currently studying this issue. It would appear that there is not always a direct relationship between the amount of resources the NIGC expends on regulating an operation and the size of the operation. To date, the NIGC has been more involved with small tribal gaming operations with less sophisticated tribal gaming regulatory bodies, than with large tribal gaming operations which generally spend more substantial amounts of revenue on regulation. This fact supports the argument made by some of the tribes operating larger and more sophisticated operations that they deserve a fee reduction which is commensurate with the amount of money they are spending on regulation. However, it does not seem fair to place the entire fee burden on tribes with marginal operations and fewer resources with which to pay. Furthermore, there have been several occasions where larger gaming operations have required a substantial amount of NIGC time and resources.

Some options we have considered include, a fee structure based on the percentage of gaming revenue used to pay for tribal and state regulation. Also, we have considered reducing the fees depending on whether a particular tribe's Class III gaming operation meets identified self-regulation criteria.

The NIGC's goal, though, is to encourage tribal efforts at self-regulation, without unfairly shifting the fee burden to the less successful tribes and without having to create an elaborate structure for adjudicating tribal claims to self-regulating status.

As always, I am certainly open to working with your and your staff on addressing this issue.

PREPARED STATEMENT OF MONTIE DEER FROM SEPTEMBER 16, 1998

Mr. Chairman, I want to thank you and the members of the committee for conducting this hearing on my nomination as Chairman of the National Indian Gaming Commission.

Mr. Chairman, let me first thank the committee for all of its past support for the NIGC. As a person who has spent most of his life in law enforcement, I know how critical it is to have Government Agencies provide the necessary oversight of these activities.

For the past several years, I have been an Assistant U.S. Attorney for the district of Kansas. In this position, I was responsible for a number of cases involving Indian nations. I handled all of these cases on behalf of the United States Government and with the respect of the sovereignty of the Indian Nations. It is with this same sense of duty and respect that I will approach this position if I am confirmed.

Mr. Chairman, the Indian Regulatory Act of 1988 set about a regulatory scheme that allowed Indian nations in the United States to operate gaming on Indian lands. Over the years, the act has been responsible for lifting many Indian tribes out of complete poverty and despair and has breathed new hope and optimism on many reservations across America.

But as you know, not every Indian nation in this country engages in gaming, and not every nation that engages in gaming is making a lot of money. Gaming operations on Indian reservations are as unique and diverse as the nations themselves.

But if gaming is to continue to be a valuable tool in the economic self-sufficiency for Indian tribes, it must be properly and thoroughly regulated by the appropriate tribal, State and Federal authorities, if I am confirmed for this position, you can be assured that I will work with these regulatory officials to ensure that all Indian gaming is done in accordance with the Indian Gaming Regulatory Act and the approved State/tribal compacts.

Mr. Chairman, in the last 10 years Indian gaming has expanded beyond most people's expectations. Today Indian gaming consists of 185 tribes who operate 285 gaming facilities in 28 States. The industry generates over \$7 billion a year in gross revenues.

There is no question that the NIGC must have more resources to effectively regulate and enforce the provisions of IGRA. That is why your action last year to allow the NIGC to increase its fees and expand its operation was so valuable.

You will be pleased to know that the NIGC will open its first field office in St. Paul, Minnesota in less than 6 weeks. This office will be the first to allow greater enforcement and compliance on the part of the NIGC.

Again, I want to thank the committee for this opportunity to testify and I will answer any questions you may have.

