



Oneida Nation  
Oneida Business Committee  
PO Box 365 • Oneida, WI 54155-0365  
oneida-nsn.gov



2 NOV '16 AM 10:51

October 28, 2016


President Shannon Holsey  
Mohican Nation-Stockbridge Munsee  
N8476 MoHeConNuck Rd.  
Bowler, WI 54416

Dear President Holsey,

The Oneida Business Committee has authorized the enclosed letter to be sent to the State. As a courtesy and for your awareness I am forwarding a copy to you.

If you have any questions/concerns please contact my office and speak with my Assistant, Lora Skenandore. You can reach our office by calling 920-869-4493 or via email [lskenan3@oneidanation.org](mailto:lskenan3@oneidanation.org).

Respectfully,

  
Cristina Danforth  
Oneida Nation Chairwoman



Oneida Nation  
Oneida Business Committee  
PO Box 365 • Oneida, WI 54155-0365  
oneida-nsn.gov



October 27, 2016

Hon. Scott Walker  
Office of the Governor  
115 East Capitol  
Madison, WI 53702

Dear Governor Walker,

I am writing to you on behalf of the Oneida Nation to express our concern regarding two matters involving the regulation of gaming within the State of Wisconsin. As you know, the gaming industry is a competitive market, and the Tribes within the State and the State have attempted to negotiate a competitive balance through the compacting process mandated by the Indian Gaming Regulatory Act. It is essential to maintain that competitive balance to ensure that each Tribe has the ability to generate the revenues necessary to fund vital governmental services for its citizens.

The first matter of concern involves the Ho Chunk Nation's ancillary facility located in Wittenberg, Wisconsin. Under its Compact, the Ho Chunk Nation is authorized to operate up to four gaming facilities and up to five ancillary facilities. Recently, the Ho Chunk Nation announced plans to expand its ancillary facility in Wittenberg. We are concerned that the planned expansion may not comply with the terms of the Ho Chunk Nation's Gaming Compact, which establishes limits on the Ho Chunk Nation's ancillary facilities, both in terms of the amount of space which may be devoted to gaming activities, and in terms of the revenue which may be generated by gaming activities.

Section XVI of the Ho Chunk Nation Compact, as amended in 2003, defines an "Ancillary Facility" as "a facility where fifty percent or more of the lot coverage of the trust property upon which the facility is located, is used for a Primary Business Purpose other than gaming." Section III(H) of the Compact, in turn, defines "Primary Business Purpose" as "the business generating more than 50 percent of the net revenue of the facility." These two provisions, read in conjunction, establish the following limitations on the Ho Chunk Nation's ancillary facilities: 1) fifty percent or more of the lot coverage of the trust acreage must be used for a non-gaming business purpose, and 2) the non-gaming business purpose must generate more than fifty percent of the net revenue of the facility.

A good mind. A good heart. A strong fire.

The Ho Chunk Nation's ancillary facility in Wittenberg may violate both of the limitations due to the scope of the gaming conducted there. This situation will be exacerbated by the planned expansion of the facility, which will in effect result in the operation of a full-fledged gaming facility on a property which is only authorized for operation of an ancillary facility. We urge you to investigate this matter, and take appropriate action to ensure the Ho Chunk Nation abides by the terms of its Compact.

The second matter involves the proliferation of video gambling machines in bars, taverns, and other establishments. We believe these machines are used not only for entertainment, but also for gambling in violation of state law. See Wis. Stat. § 945.02 (making it a Class B misdemeanor for any person to make a bet or to enter or remain in a gambling place with the intent to make a bet or play a gambling machine); Wis. Stat. § 945.03(1m)(e) (making it a Class I felony for any person to set up a gambling machine for use for the purpose of gambling or to collect the proceeds of a gambling machine); and Wis. Stat. § 945.03(2m) (making it a civil forfeiture for any person to possess, operate, set up, collect the proceeds, or participate in the earnings of anything of value bet on a video gambling machine on premises for which a Class B liquor license has been issued).

Although the state legislature has limited the authorization to enforce section 945.03(2m) to agents of the Wisconsin Department of Revenue, see Wis. Stat. § 178.38, courts have determined that the placement and use of video gambling machines in taverns is illegal. In *Superior Vending v. Dick's Bar of Hudson*, 2010 U.S. Dist. LEXIS 116265 (W.D. Wis. 2010), for instance, the United States District Court for the Western District of Wisconsin found that a contract for the placement of video gambling machines in a tavern was unenforceable because it contemplated illegal activity. The court determined the State's "policy with respect to video gambling is clear: it is unlawful to set up, operate and collect the proceeds from video poker machines that make payouts. Therefore, it follows that an agreement to do these acts is contrary to public policy and is illegal." *Id.* at \*25. Addressing section 175.38, the court noted that "the Wisconsin legislature has taken steps to limit the number of state agencies with the authority to enforce" the prohibitions against video gambling. *Id.* at \*16-\*17. The court determined, however, that the resulting diminishment of enforcement did not make the operation of video gambling machines legal. The court stated:

The contract in this case provides for the set up, operation, maintenance and collection of proceeds from five video poker machines in Dick's Bar. These particular activities are expressly prohibited by statute and punishable by civil fines. The legislature's decision to reduce the penalties and only minimally enforce the statutes does not change this fact.

*Id.* at \*22.

The proliferation of illegal gambling activity in bars, taverns, and other establishments has an adverse impact on the tribal gaming operations, and is contrary to the spirit if not the letter of the Gaming Compacts between the Tribes and the State, which provide for exclusivity for the Tribes in the operation of electronic games of chance and other Class III games. We urge you to ensure the laws of the state are faithfully executed in relation to illegal video gambling machines in bars, taverns and other establishments.

Sincerely,



Cristina Danforth  
Chairwoman

cc: Hon. Brad Schimel, Attorney General  
Scott Neitzel, Department of Administration Secretary

A good mind. A good heart. A strong fire.

