

No. A09-684

STATE OF MINNESOTA  
IN COURT OF APPEALS

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Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise,

Appellant,

vs.

Leonard Prescott, individually, and as current and former officer and/or director of Little  
Six, Inc.,

Respondent.

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REPLY BRIEF OF APPELLANT  
SHAKOPEE MDEWAKANTON SIOUX GAMING ENTERPRISE

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## **REPLY STATEMENT OF THE FACTS**

To begin, Respondent Leonard Prescott's Statement of the Facts contains numerous inaccuracies that should be corrected so that the Court is not misled about the context of the tribal court proceedings that led ultimately to the judgment dated October 27, 2005 ("Tribal Court Judgment") that the Appellant Shakopee Mdewakanton Sioux Gaming Enterprise ("Enterprise") seeks to enforce in Scott County District Court.

### **A. The Parties And The Context For The Litigation**

To engage in Indian gaming, the Shakopee Mdewakanton Sioux Community (the "Tribe") must comply with the requirements of the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* ("IGRA"). For example, IGRA requires tribes that engage in gaming to adopt a gaming ordinance that includes, among other things, standards that prohibit the employment of "any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming . . . ." <sup>1</sup> IGRA also requires that a tribe have its gaming ordinance approved by the National Indian Gaming Commission and have an ordinance governing any per capita distribution of gaming proceeds approved by the Secretary of the Interior through the Bureau of Indian Affairs. <sup>2</sup>

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<sup>1</sup> 25 U.S.C. § 2710(b)(2)(F)(ii)(II); *see also* 25 C.F.R. § 558.2.

<sup>2</sup> 25 U.S.C. § 2710(b)(1)(B) (requiring that the tribe adopt an ordinance or resolution that is approved by the Chairman); *id.* § 2710(b)(3) (requiring per capita distribution plan to be approved by Secretary of the Interior).

In April 1993, following the 1992 election of Stanley Crooks as Chairman, the General Council of the Tribe, which consists of all adult members, adopted a Gaming Ordinance that meets the requirements of federal law.<sup>3</sup>

Later that year, in September 1993, the Tribe elected members to serve on the Gaming Commission, a tribal governmental agency tasked with overseeing gaming on the Tribal reservation.<sup>4</sup> The members of the General Council were previously notified to submit their names if they wanted to be a candidate for the Gaming Commission.<sup>5</sup> Six members identified themselves and were offered as candidates.<sup>6</sup> Of these six candidates, Cherie Crooks-Bathel, Stanley Crooks's daughter, received the most votes<sup>7</sup> and, as such, she became the Chair of the newly formed Gaming Commission. Respondent's statement that the new Chairman, Stanley Crooks, simply "presented" the General Council with the Gaming Ordinance and his daughter as Gaming Commission Chair is false.<sup>8</sup>

The Gaming Commission's involvement in conducting background checks on key casino employees such as Prescott was also mandated by federal law. In November

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<sup>3</sup> Reply App. at RA-1 (Resolution 04-19-93-001).

<sup>4</sup> Reply App. at RA-5 (Letter from Secretary/Treasurer Darlene Matta dated Sept. 8, 1993).

<sup>5</sup> Reply App. at RA-7 (Letter from Secretary/Treasurer Darlene Matta dated July 8, 1993).

<sup>6</sup> Reply App. at RA-8 to RA-14 (SMSC Document Imaging System, SMSC General Council 1993 Binder, pages 273-279); Reply App. at RA-6 (Certification of Regular General Council Meeting Sept. 14, 1993).

<sup>7</sup> Reply App. at RA-6 (Certification of Regular General Council Meeting Sept. 14, 1993).

<sup>8</sup> Respondent's Brief at 4.



1993, the National Indian Gaming Commission (“NIGC”) approved the Tribe’s Gaming Ordinance.<sup>9</sup> In a letter to Chairman Crooks, the Chairman of the National Indian Gaming Commission explained that the Tribe must now conduct background investigations on its key employees involved in gaming:

[T]he Community is now required to conduct background investigations on its key employees and primary management officials. The NIGC expects to receive a completed application for each key employee and primary management official pursuant to 25 C.F.R. § 556.5(a) and an investigative report on each background investigation before issuing a license to a key employee or primary management official pursuant to 25 C.F.R. § 556.5(b).<sup>10</sup>

At the time, Respondent Prescott was Chief Executive Officer and Chairman of the Board of Directors of Little Six, Inc., which was the Tribally chartered corporate organization that owned Mystic Lake Casino before ownership was transferred to the Enterprise on January 1, 2005.<sup>11</sup> As CEO and Chairman, Prescott was a key employee and federal law required him to submit to a background investigation.<sup>12</sup> Given these requirements of federal law, Prescott is incorrect to suggest that the Gaming Commission unfairly targeted him for investigation.

The Gaming Commission issued Prescott a temporary license pending the processing of his gaming license application.<sup>13</sup> Respondent asserts that “the first act” of

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<sup>9</sup> Reply App. at RA-15 (Letter from National Indian Gaming Commission dated Nov. 2, 1993).

<sup>10</sup> *Id.*

<sup>11</sup> Opinion, Addendum at 5.

<sup>12</sup> 25 C.F.R. § 556.5.

<sup>13</sup> *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 015-97, 1 Shak. A.C. 146, 147 (SMSC Ct. App. July 30, 1999), App. at A-207.

the Gaming Commission was to deny him his gaming license.<sup>14</sup> To the contrary, the Gaming Commission revoked Prescott's temporary license in July 1994, nearly one year after the Tribe elected the Gaming Commission and after the Gaming Commission had taken several actions authorized under the Gaming Ordinance, including hiring a compliance officer, creating applications for employment, setting up a fingerprinting process for all employees, and hiring an auditor.<sup>15</sup>

**B. The First Proceeding: Prescott's Gaming License Revocation**

After holding several hearings on the gaming license of Prescott, the Gaming Commission issued Findings of Fact on July 1, 1994, in which it found that Prescott had engaged in negligence, fraud, and misconduct.<sup>16</sup> Specifically, the Gaming Commission found that in 1990 and 1991 Prescott submitted two sworn applications for gaming-related licenses in which he falsely averred that he had no criminal history,<sup>17</sup> even though Prescott was convicted in Minnesota state court of a felony in 1971 for burglary.<sup>18</sup> After Prescott completed his probation in 1972, the charge was reduced to a misdemeanor by

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<sup>14</sup> Respondent's Brief at 4.

<sup>15</sup> Gaming Commission Finding of Fact, File No. 94-0024 (July 1, 1994), App. at A-207; Reply App. at RA-30, RA-32 to RA-39 (Gaming Ordinance).

<sup>16</sup> Opinion, Addendum at 5; *see* Gaming Commission Finding of Fact, File No. 94-0024 (July 1, 1994), App. at A-186, A-204 to A-205.

<sup>17</sup> Shakopee Mdewakanton Sioux Community Gaming Commission Findings of Fact, File No. 94-0024 (July 1, 1994), App. at A-193 to A-195, A-203.

<sup>18</sup> *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 165 (SMSC Ct. App. Feb. 1, 2000), App. at A-32.

operation of Minnesota law.<sup>19</sup> It was not until 1992 – after he submitted the gaming license applications at issue – that the conviction was expunged.<sup>20</sup>

Prescott appealed the revocation of his gaming license to the tribal court. The tribal court rejected Prescott's argument that he was denied procedural due process.<sup>21</sup> But the tribal court found that two Gaming Commission members should have recused themselves to avoid the appearance of bias.<sup>22</sup> The tribal court remanded to the Gaming Commission for further proceedings.<sup>23</sup> While Respondent stresses this trial court decision in his favor, the tribal appellate court reversed it.<sup>24</sup> The tribal appellate court upheld the Gaming Commission's decision to revoke Prescott's gaming license.<sup>25</sup>

**C. The Second Proceeding: Little Six's 1994 Misconduct Action Against Prescott (Court File No. 048-94)**

In the second relevant proceeding, which was brought by Little Six in 1994, the tribal appellate court found that Prescott did not breach his fiduciary duty to the Tribe.<sup>26</sup> The tribal appellate court found that it was undisputed that Prescott asserted in his gaming license application that he had no previous felony convictions even though he

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<sup>19</sup> *Id.* at A-32 to A-33.

<sup>20</sup> *Id.* at A-33.

<sup>21</sup> *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 041-94 (SMSC Tr. Ct. Feb. 20, 1997), Respondent's App. at 108.

<sup>22</sup> *Id.* at 110.

<sup>23</sup> *Id.* at 111.

<sup>24</sup> *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 015-97, 1 Shak. A.C. 146, 148 (SMSC Ct. App. July 30, 1999), App. at A-208.

<sup>25</sup> *Id.* at A-216.

<sup>26</sup> *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 165-66 (SMSC Ct. App. Feb. 1, 2000), App. at A-32 to A-33.

was convicted of a felony in 1971.<sup>27</sup> The tribal appellate court held that this misrepresentation did not prove that Prescott breached his fiduciary duty to the Tribe.<sup>28</sup>

Prescott omits from his Statement of Facts the important point that the tribal appellate court made clear: nothing in its opinion in the 1994 misconduct action should be construed as expressing disapproval of its previous conclusion that the Gaming Commission's decision to revoke Prescott's gaming license was not erroneous.<sup>29</sup> The tribal appellate court explained that the two cases "involve completely different legal standards and different factual records."<sup>30</sup>

**D. The Third Proceeding: The 2000 Indemnification Action That Led To The Tribal Court Judgment (Court File No. 436-00)**

Prescott asserts in his Statement of Facts that Little Six improperly relitigated the issue of Prescott's duty to indemnify Little Six for the legal fees expended on his behalf by bringing a second complaint against him in 2000.<sup>31</sup> Prescott has already made this very argument to the tribal appellate court and the tribal appellate court has rejected it.<sup>32</sup> The tribal appellate court explicitly found that the 2000 indemnification action (the proceeding that ultimately led to the Tribal Court Judgment at issue in this appeal) was

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at A-33.

<sup>29</sup> *Id.* at A-33 n.6.

<sup>30</sup> *Id.*

<sup>31</sup> Respondent's Brief at 5.

<sup>32</sup> *Prescott v. Little Six*, No. 027-01, 1 Shak. A.C. 190, 191 (SMSC Ct. App. Oct. 26, 2001), App. at A-218.

not barred by *res judicata* because Little Six could not have brought its claim based on the indemnification agreement earlier.<sup>33</sup>

In the 2000 indemnification action, the tribal court held that Prescott owed legal fees to Little Six pursuant to the indemnification letter that Prescott signed on May 9, 1994.<sup>34</sup> After a trial to determine the dollar amounts paid by Little Six for work done to defend Prescott's gaming license, the tribal court decided the amount that Prescott should reimburse Little Six pursuant to his agreement.<sup>35</sup> There is no further justiciable controversy over the amount of fees due, contrary to Prescott's suggestion to this Court.<sup>36</sup> The Tribal Court Judgment was entered on October 27, 2005,<sup>37</sup> and the amount of damages was affirmed on appeal.<sup>38</sup> The Tribal Court Judgment provides that the Enterprise is entitled to \$516,871.46 in damages (i.e., reimbursed fees paid on Prescott's behalf) and \$185,810.08 for the Enterprise's legal fees and costs, plus pre-judgment and post-judgment interest.<sup>39</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> *Little Six, Inc. v. Prescott*, No. 436-00 (SMSC Tr. Ct. Feb. 17, 2004), App. at A-45, A-47.

<sup>35</sup> *See Shakopee Mdewakanton Sioux Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-51, A-74.

<sup>36</sup> Respondent's Brief at 3, 11.

<sup>37</sup> *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. Oct. 27, 2005), App. at A-75.

<sup>38</sup> *Shakopee Mdewakanton Sioux Gaming Enterprise v. Prescott*, No. 032-05 (SMSC Ct. App. Aug. 9, 2006), App. at A-231.

<sup>39</sup> *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. Oct. 27, 2005), App. at A-75.

**E. The Fourth, And Instant, Proceeding: Recognition And Enforcement Of The Tribal Court Judgment In Scott County**

On December 5, 2005, the Enterprise docketed the Tribal Court Judgment in Scott County District Court.<sup>40</sup> Prescott asserts in his Statement of Facts that the Enterprise violated Rule 34 by failing to provide notice to him.<sup>41</sup> Rule 34 is a rule of the Shakopee Mdewakanton Sioux Community Court that governs enforcement of foreign judgments in tribal court.<sup>42</sup> It has no relevance for the docketing of judgments in Minnesota state court, and there is no analog in the Minnesota Rules of Civil Procedure. Moreover, Prescott did receive notice of the docketing of the judgment, as reflected by the Notice of Docketing of Judgment issued by Scott County District Court.<sup>43</sup>

The Enterprise sought and received a writ of execution in the amount of \$1,120,510.42 (inclusive of interest and fees) upon Prescott's property and assets located in Scott County.<sup>44</sup> In his Statement of the Case, Respondent makes the point that there is no judgment of record for \$1,120,510.42.<sup>45</sup> This is a consequence of the fact that the Tribal Court Judgment provides for an award of post-judgment interest, which continues to accrue.

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<sup>40</sup> Reply App. at RA-16 (Amended Notice of Docketing of Judgment).

<sup>41</sup> Respondent's Brief at 6; *see also* Respondent's Brief at 3.

<sup>42</sup> Rule 34, App. at A-0245.

<sup>43</sup> Reply App. at RA-16 (Amended Notice of Docketing of Judgment).

<sup>44</sup> Writ of Execution (first), App. at A-76.

<sup>45</sup> Respondent's Brief at 3.

Ultimately, the district court refused to recognize and enforce the Tribal Court Judgment, and the Enterprise initiated this appeal.

### **ARGUMENT**

Respondent asks the Minnesota state courts to act as a sort of super tribal court of appeals and in effect reverse the reasoned decisions of the tribal courts that led to the judgment at issue. But in determining whether to recognize and enforce a tribal court judgment, the state court's discretion is confined to engaging in a comity analysis by applying the factors in Rule 10.02 of the Minnesota General Rules of Practice. Nothing in the Rule empowers the state court to readjudicate the merits of the tribal court decisions that resulted in the judgment at issue, and decisional law at both the federal and state level preclude such action.

The district court's decision should be reversed. The district court refused to analyze the majority of factors enumerated in Rule 10.02 and based its decision on one factor from the Uniform Foreign Country Money-Judgments Recognition Act, Minn. Stat. § 548.35. As the Enterprise explained in its opening brief, all of the factors in Rule 10.02 point toward recognition. And the one factor from the Uniform Foreign Country Money-Judgments Recognition Act upon which the district court relied does not provide a basis for non-recognition because the Tribal Court Judgment, per the explicit direction of the tribal appellate court, does not conflict with another judgment.

**I. THE DISTRICT COURT ERRED BY BASING ITS REFUSAL TO RECOGNIZE THE TRIBAL COURT JUDGMENT ON ONE FACTOR FROM A NON-BINDING ACT WHEN ALL FACTORS IN RULE 10.02 POINT TOWARD RECOGNITION**

In refusing to recognize the Tribal Court Judgment, the district court relied upon one factor in the Uniform Foreign Country Money-Judgments Recognition Act. The district court should have engaged in traditional comity analysis by applying the factors listed in Rule 10.02 of the Minnesota General Rules of Practice, all of which point toward recognition. Contrary to the Respondent's arguments, the district court does not have "total discretion" under the Rule.<sup>46</sup>

**A. The District Court Must At Least Consider Each Of The Factors Enumerated In Rule 10.02**

Respondent Prescott asserts that the district court does not need to consider all of the factors enumerated in Rule 10.02 because the Rule gives the state court "total discretion" as to whether to recognize and enforce a tribal court judgment.<sup>47</sup> The Minnesota Supreme Court adopted Rule 10.02 to facilitate the state courts' comity analysis in deciding what effect to give tribal court judgments.<sup>48</sup> There would have been no need to enumerate nine factors in the Rule if the district court had "total discretion." A well-accepted cannon of statutory interpretation provides that a statute should be

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<sup>46</sup> Respondent's Brief at 6, 7.

<sup>47</sup> *Id.*

<sup>48</sup> Minn. Gen. R. Prac. 10.02, comm. cmt. (2007).



interpreted to give effect to all of its provisions.<sup>49</sup> This cannon should apply with equal force to Rule 10.02.

Contrary to the characterization by Respondent, Appellant is not asserting that Rule 10.02 requires the district court to “write a dissertation” and base its decision on every factor listed in the Rule.<sup>50</sup> But the district court must at least consider each of the Rule 10.02 factors.<sup>51</sup> Certainly, the district court may properly determine as a result of an analysis that one or two factors do not apply to the factual scenario before it. In this case, however, the court looked first to a factor not even included in Rule 10.02, and then completely ignored seven of the nine specific Rule 10.02 factors without any explanation as to why those factors were not relevant to the analysis.

Whether the district court must consider each of the Rule 10.02 factors when it engages in the comity analysis is a purely legal issue for this Court to decide. Because how to interpret Rule 10.02 is a purely legal issue, the standard of review is *de novo* and the district court decision is entitled to no deference.<sup>52</sup> This legal issue in one of first impression; the Enterprise has identified no cases that interpret Rule 10.02. Even if the standard of review were abuse of discretion (which is what Respondent appears to be

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<sup>49</sup> *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005) (“Whenever possible, no word, phrase, or sentence should be deemed superfluous, void, or insignificant.”).

<sup>50</sup> Respondent’s Brief at 8.

<sup>51</sup> See, e.g., *Belize Telecom, Ltd. v. Gov’t of Belize*, 528 F.3d 1298, 1307-08 (11th Cir. 2008) (“[W]e find that all of the international comity factors clearly favor deference to the Belizean decision.”) (emphasis added).

<sup>52</sup> See *Goldman v. Greenwood*, 748 N.W.2d 279, 282 (Minn. 2008) (“[T]he interpretation of statutes . . . are questions of law that we review *de novo*.”).

arguing), the Enterprise has demonstrated that the district court abused its discretion by ignoring most of the Rule 10.02 factors.<sup>53</sup>

As the Enterprise explained in its opening brief, each of those seven factors are relevant and point toward recognition and enforcement of the Tribal Court Judgment.<sup>54</sup> Importantly, Prescott does not explain how seven of the nine enumerated factors, which the district court completely ignored, need not be considered. He also fails to dispute that those factors point toward recognition and enforcement.

#### **B. Prescott Was Afforded Due Process**

The only two Rule 10.02 factors that the district court considered were due process and public policy. Respondent seeks to defend the district court's application of those two factors, but that analysis fails.

The district court found that the sixth factor, which asks whether the judgment was obtained through a fair process, supported its decision to refuse to recognize and enforce the Tribal Court Judgment.<sup>55</sup> The district court concluded that Commissioner Crooks-Bathel, who presided over the Gaming Commission's hearing on Prescott's license renewal, was biased against Prescott and should have recused herself.<sup>56</sup>

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<sup>53</sup> To be clear, the issue of how to properly interpret Rule 10.02 is separate from the issue of whether the district court properly found that the Tribal Court Judgment conflicted with another tribal court judgment. The question of whether the district court erred when it found conflicting tribal court judgments, which is discussed in Section II of this Reply Brief, is reviewed for abuse of discretion.

<sup>54</sup> Brief of Appellant at 22-25.

<sup>55</sup> Opinion, Addendum at 21-23.

<sup>56</sup> *Id.*

The tribal appellate court has already squarely rejected Prescott's argument that his gaming license was improperly revoked because Commissioner Crooks-Bathel was biased.<sup>57</sup> Prescott had a full and fair opportunity to present his case for bias to the tribal courts. Although he had success at the tribal court level, the tribal appellate court reversed. Rule 10.02 does not provide a state forum for relitigating the merits of these tribal court proceedings. As this Court has explained, "[S]tate courts do not have jurisdiction to conduct even limited review of tribal court decisions." *Lemke ex rel. Teta v. Brooks*, 614 N.W.2d 242, 245 (Minn. Ct. App. 2000).

Finally, Respondent states in his Brief that members of the Community receive per capita gaming proceeds "often at the Chairman's whim."<sup>58</sup> The Tribe's allocation plan for per capita payments (the Gaming Revenue Allocation Amendments to Business Proceeds Distribution Ordinance) has received approval from the Secretary of the Interior.<sup>59</sup> Under that plan, if a tribal member's per capita payments are unlawfully withheld that tribal member may be entitled to treble damages.<sup>60</sup> Prescott has no basis for his assertion that Chairman Crooks distributes the money as he pleases. In any event, it is difficult to understand how the process for distribution of per capita payments is relevant

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<sup>57</sup> *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 015-97, 1 Shak. A.C. 120, 124 (SMSC Ct. App. Apr. 30, 1998), App. at A-239.

<sup>58</sup> Respondent's Brief at 8.

<sup>59</sup> See *Smith v. Babbitt*, 100 F.3d 556, 558 (8th Cir. 1996).

<sup>60</sup> Reply App. at RA-25 (Gaming Revenue Allocation Amendments to Business Proceeds Distribution Ordinance).

to whether Prescott received due process in the proceedings over his gaming license and his indemnification obligations that led to the Tribal Court Judgment.

**C. That Prescott's Per Capita Payments From The Tribe Cannot Be Directly Applied To Satisfy The Judgment Is Irrelevant To The Comity Analysis**

The district court and Respondent reason that, because the Tribe's current law does not allow direct collection of this kind of judgment from per capita payments from the Tribe, there is a Minnesota public policy objection to enforcing the Tribal Court Judgment.<sup>61</sup> The district court characterizes the Enterprise's desire to have the Tribal Court Judgment enforced in state court as "forum shopping,"<sup>62</sup> and Prescott argues that the Enterprise seeks to have the state "do its dirty work."<sup>63</sup> Both conclusions are meritless.

The Enterprise seeks collection of Prescott's assets in another jurisdiction because his attachable assets in the jurisdiction that issued the judgment are insufficient. All actions for enforcement of a foreign judgment are similarly motivated. If this is impermissible forum shopping, then Minnesota's courts would never be allowed to recognize and enforce a foreign judgment.

In addition, the fact that the state and tribal laws may differ does not make enforcement of the Tribal Court Judgment contrary to public policy. As the United States Court of Appeals for the Fifth Circuit explained, "[E]nforcement of a judgment of a

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<sup>61</sup> Opinion, Addendum at 24; Respondent's Brief at 9.

<sup>62</sup> Opinion, Addendum at 24.

<sup>63</sup> Respondent's Brief at 9.

foreign court based on the law of the foreign jurisdiction does not offend the public policy of the forum simply because the body of foreign law upon which the judgment is based is different from the law of the forum . . . .”<sup>64</sup> This is particularly true where, as here, the judgment is based on a routine breach of contract action.<sup>65</sup>

Finally, there is no authority for Respondent’s assertion that the proposed amendments to tribal law to permit direct collection of judgments from per capita payments have been called “get Leonard Prescott” amendments.<sup>66</sup> The Enterprise’s predecessor in interest, Little Six, lent a significant amount of money to Prescott to cover his legal fees, conditioned upon the outcome of his gaming license revocation proceeding. The Enterprise simply wants Prescott to keep his promise and repay the money. If Prescott did not want to be bound to such a promise, he could have paid his attorney out of his own pocket at the time.

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<sup>64</sup> *Soc’y of Lloyd’s v. Turner*, 303 F.3d 325, 332 (5th Cir. 2002).

<sup>65</sup> *See, e.g., Soc’y of Lloyd’s v. Reinhart*, 402 F.3d 982, 995 (10th Cir. 2005) (holding that enforcement of a foreign judgment based on a breach of contract was not contrary to public policy and explaining that “slight differences between [the] laws do not trigger the public policy exception”); *see also Arab Monetary Fund v. Hashim (In re Hashim)*, 213 F.3d 1169, 1172 (9th Cir. 2000) (“The exception should be interpreted narrowly, however, for ‘few judgments fall in the category of judgments that need not be recognized because they violate the public policy of the forum.’”).

<sup>66</sup> Respondent’s Brief at 9. Respondent points the Court to his Appendix at page 23, but nothing in his Appendix provides authority for this assertion.

## **II. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO RECOGNIZE THE TRIBAL COURT JUDGMENT BASED ON A PURPORTED CONFLICT WITH ANOTHER JUDGMENT**

Conflict with another judgment was the determinative factor in the district court's decision not to recognize the Tribal Court Judgment.<sup>67</sup> The district court found that the Tribal Court Judgment conflicts with the final judgment in the 1994 case relating to Prescott's misconduct.<sup>68</sup>

The district court abused its discretion when it concluded that these judgments conflict because the outcome of the 1994 misconduct action cannot alter the basis for the Tribal Court Judgment. The two cases presented different legal questions and were decided on different legal standards.<sup>69</sup> Respondent is incorrect in his assertion that the tribal courts found that he "did nothing wrong" and that he therefore owes nothing under the indemnification agreement.<sup>70</sup>

### **A. Prescott's Obligation To Repay The Enterprise Was Triggered When The Tribal Appellate Court Affirmed The Gaming Commission's Decision To Revoke His License**

The Tribal Court Judgment arose from the 2000 indemnification action, which was a breach of contract action based on a written agreement made by Prescott on May 9, 1994. In this letter Prescott made the following promise:

Re: Shakopee Mdewakanton Sioux Community Gaming Commission File No. 94-0024

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<sup>67</sup> Opinion, Addendum at 21.

<sup>68</sup> Opinion, Addendum at 15-21.

<sup>69</sup> *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 166 (SMSC Ct. App. Feb. 1, 2000), App. at A-33, n.6.

<sup>70</sup> Respondent's Brief at 4-5, 9, 10; *see also* Respondent's Brief at 11, 12, 13.

...

I agree to repay the Corporation all amounts advanced in connection with any part [of] the defense of the above proceeding for which I am finally adjudged to be liable for negligence, fraud or misconduct in the performance of my duties to the Corporation.<sup>71</sup>

In the 2000 indemnification action, the tribal court granted summary judgment to Little Six on the issue of liability, concluding that Prescott was obligated to repay funds expended on his behalf during appeal of his gaming license revocation.<sup>72</sup> Relying on the conclusions of the tribal appellate court in the Gaming Commission proceedings, the tribal court reasoned that Prescott owed a duty to Little Six to be licensed and to be truthful on his license applications, and that Prescott breached that duty when he misrepresented the status of his felony conviction.<sup>73</sup>

As an initial matter, Respondent asserts that his duty to repay Little Six (and now its successor, the Enterprise) was not triggered because “the conclusion of the tribal court of appeals in the gaming license case was that Prescott did nothing wrong.”<sup>74</sup> His argument is wrong for two independent reasons.

First, the tribal appellate court did not conclude in the gaming license case that Prescott “did nothing wrong.”<sup>75</sup> In affirming the revocation of his gaming license, the tribal appellate court explained:

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<sup>71</sup> See *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-54.

<sup>72</sup> *Little Six, Inc. v. Prescott*, No. 436-00 (SMSC Tr. Ct. Feb. 17, 2004), App. at A-47.

<sup>73</sup> *Id.* at A-45.

<sup>74</sup> Respondent’s Brief at 10.

<sup>75</sup> Respondent’s Brief at 4-5, 9, 10; see also Respondent’s Brief at 11, 12, 13.

Before the Gaming Commission and the Court, Prescott argued that these documents [his gaming license applications] were prepared by others and simply signed by him, and that he had no intent to deceive. But clearly it is the responsibility of a person who signs a document prepared by others, particularly a document like an affidavit, sworn to under oath, to ensure that the statements made therein are accurate.<sup>76</sup>

The tribal court went on to find that there was sufficient evidence in the record to demonstrate “that Prescott stood in conviction of a felony at the time of his application for three gaming distributor licenses in Minnesota” and that “Prescott misrepresented the evidence of such a conviction in applying for Minnesota gaming licenses.”<sup>77</sup>

Based on these findings, the tribal appellate court affirmed the decision of the Gaming Commission to revoke Prescott’s license. The tribal appellate court explained,

From our review of the case law of other gaming jurisdictions in the United States, it is clear, first, that a felony conviction is a common ground for revocation of a gaming license. And misrepresenting or not revealing the existence of such a conviction brings into question the character of the licensee sufficiently to permit a denial or revocation of the license on the grounds of misrepresentation, as considered separately from the underlying conviction. . . . Thus, we believe that the Commission reasonably could base a revocation decision on the fact that the licensee misrepresented to other licensing bodies the existence of a felony conviction.<sup>78</sup>

In short, the tribal appellate court affirmed the finding of the Gaming Commission that Prescott misrepresented his felony conviction. Given this final order of the tribal appellate court, Prescott has no basis for his continued assertion that the tribal appellate court in the gaming license case found that he did nothing wrong.

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<sup>76</sup> *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 015-97, 1 Shak. A.C. 146, 154 (SMSC Ct. App. July 30, 1999), App. at A-214.

<sup>77</sup> *Id.* at A-215 (emphasis added).

<sup>78</sup> *Id.* at A-214 to A-215 (emphasis added).



Second, Minnesota state courts have no ability to readjudicate the tribal court decision that led to the Tribal Court Judgment. The tribal court concluded that Prescott's duty to indemnify the Enterprise was triggered by the outcome of the gaming license case.<sup>79</sup> If Prescott wished to dispute this conclusion, he should have appealed this finding of liability to the tribal court of appeals.

Respondent suggests that there was something improper about the Enterprise's timing in bringing the 2000 indemnification action.<sup>80</sup> But there was nothing improper. Prescott's promise to repay the legal fees advanced to him was dependant on the outcome of the gaming license proceedings. Indeed, the letter signed by Prescott explicitly refers to "Shakopee Mdewakanton Sioux Community Gaming Commission File No. 94-0024."<sup>81</sup> Prescott appealed the decision of the Gaming Commission, and the case continued on for several years. It was not until July 30, 1999, that the tribal appellate court issued its final order affirming the Gaming Commission's decision to revoke Prescott's license.<sup>82</sup> It would not have made sense for Little Six to bring the 2000 indemnification action back in 1994 because Prescott's duty to repay the attorneys' fees

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<sup>79</sup> *Little Six, Inc. v. Prescott*, No. 436-00 (SMSC Tr. Ct. Feb. 17, 2004), App. at A-45.

<sup>80</sup> Respondent's Brief at 11-12.

<sup>81</sup> See *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-53.

<sup>82</sup> *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 015-97, 1 Shak. A.C. 146 (SMSC Ct. App. July 30, 1999), App. at A-206.

advanced to him required that Prescott be “finally adjudged” with wrongdoing,<sup>83</sup> which did not happen until the appeal was concluded in 1999.

Respondent emphasizes his position that the 2000 indemnification action should have been barred under the doctrine of *res judicata* because it has some overlap with the 1994 misconduct action. The problem with this argument is that Prescott has already made it before the tribal court and lost, and he cannot collaterally relitigate that claim in state court. The tribal appellate court explicitly found that the 2000 indemnification action was not barred by *res judicata* because Little Six could not have brought its claims earlier.<sup>84</sup>

**B. The Judgment In The 1994 Misconduct Action Did Not Alter Prescott’s Obligation To Indemnify The Enterprise**

The district court concluded that the judgment in the 1994 misconduct action qualified as a conflicting judgment sufficient to justify its refusal to recognize and enforce the Tribal Court Judgment. Prescott attempts to defend that decision by arguing that the tribal appellate court in the 1994 misconduct action ultimately held that he did not do anything wrong. But again, Prescott mischaracterizes the outcome of the proceedings.

The tribal appellate court in the 1994 misconduct action did not absolve Prescott of wrongdoing. Rather, the tribal appellate court found that it was undisputed that

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<sup>83</sup> See *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-54.

<sup>84</sup> *Prescott v. Little Six*, No. 027-01, 1 Shak. A.C. 190, 191 (SMSC Ct. App. Oct. 26, 2001), App. at A-218.

Prescott asserted in his gaming application that he had no previous felony convictions even though he was convicted of a felony in 1971.<sup>85</sup> This fact, however, was insufficient, according to the tribal appellate court, to prove that Prescott breached his fiduciary duty to the Tribe, as defined by § 36 of the Corporation Ordinance.<sup>86</sup>

Again, there is nothing inconsistent about the tribal appellate court deciding in one case (the gaming license case decided on July 30, 1999) that the Gaming Commission's decision to revoke his license was based on substantial evidence in part because he misstated his criminal record on his gaming license application,<sup>87</sup> and in a different case (the 1994 misconduct action decided on February 1, 2000), deciding that this misrepresentation alone was insufficient to prove that Prescott breached his fiduciary duty to the Tribe.<sup>88</sup> The tribal appellate court made this distinction explicit by stating, "Nothing in this opinion should be construed as expressing disapproval of any of our conclusions in *In re Leonard Prescott [Gaming License] Appeal*, No. 015-97 (SMS(D)C Ct. App. July 30, 1999)."<sup>89</sup>

The district court abused its discretion by refusing to defer to this explicit direction from the tribal appellate court. The district court should have respected the outcomes of

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<sup>85</sup> *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 165 (SMSC Ct. App. Feb. 1, 2000), App. at A-32.

<sup>86</sup> *Id.* at A-33.

<sup>87</sup> *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 015-97, 1 Shak. A.C. 146, 153-54 (SMSC Ct. App. July 30, 1999), App. at A-213 to A-214.

<sup>88</sup> *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 166 (SMSC Ct. App. Feb. 1, 2000), App. at A-33, n.6.

<sup>89</sup> *Id.*

the tribal court proceedings instead of attempting to readjudicate them. Indeed, the United States Supreme Court has explained that “proper deference to the tribal court system precludes relitigation of issues . . . resolved in the Tribal Courts.” *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 19 (1987).

To find a conflict between the two tribal court judgments, the district court interpreted the Uniform Foreign Country Money-Judgments Recognition Act in a way that no other court has done. Appellant searched for all cases interpreting the “conflict” factor in the Uniform Foreign Country Money-Judgments Recognition Act and found just two cases that refused to recognize a foreign judgment on this basis. These cases involved judgments that reached opposite outcomes based on the same set of facts and legal claims.

In *Byblos Bank Europe, S.A. v. Sekerbank Turk Anonym Syrketi*, 2008 NY Slip Op. 2501, 4 (N.Y. 2008), the appellate court affirmed a lower court’s refusal to recognize a judgment from a Belgian court that confirmed an attachment of assets based on a breach of loan agreements because a Turkish court had already dismissed on its merits an action based on the same breach. The conflicting judgments were based on the same cause of action: a breach of loan agreements. And the courts reached opposite outcomes: one court dismissed the action and another court confirmed an attachment of assets based on the breach. This is a true conflict. Similarly, in *Brosseau v. Ranzau*, 81 S.W.3d 381, 390 (Tex. Ct. App. 2002), the appellate court affirmed the lower court’s refusal to recognize a Mexican judgment holding that the defendant did not own the stock in question because the trial court had already found that he did own the stock. The court

properly identified a conflict because two courts reached opposite conclusions as to the same factual question.

The conflicts in *Byblos Bank Europe, S.A.* and *Brosseau* are distinguishable from the situation here, where the two tribal court decisions at issue are based on different causes of action with different standards of review. The gaming license case was an appeal of the decision of the tribal Gaming Commission under a deferential administrative law standard of review that required affirmance of the Gaming Commission's decision to revoke Prescott's license if there was substantial evidence in the record to support the Gaming Commission's administrative decision.<sup>90</sup> The 1994 misconduct action related to the duties of loyalty Prescott owed to the Tribe, and Little Six bore the burden of proof of any breach of those duties under a tort law standard.<sup>91</sup> There is no conflict in the judgments.<sup>92</sup>

Moreover, the district court erred by looking to the outcome of the 1994 misconduct action as a basis for questioning the judgment in the 2000 indemnification action. Prescott's obligation to repay his legal costs was in no way dependant on the

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<sup>90</sup> *In re Leonard Prescott Appeal from 7/1/94 Gaming Commission Final Order*, No. 015-97, 1 Shak. A.C. 146, 155 (SMSC Ct. App. July 30, 1999), App. at A-215.

<sup>91</sup> *Little Six v. Prescott*, No. 020-99, 021-99, 022-99, 1 Shak. A.C. 157, 165-66 (SMSC Ct. App. Feb. 1, 2000), App. at A-32 to A-33.

<sup>92</sup> An analogous situation would be presented if a corporate board indemnified a corporate officer for attorneys' fees incurred to defend a civil securities law action, subject to repayment if the officer was found civilly liable, but the corporate officer herself had to pay for the defense of a criminal fraud action based in part on the same conduct. If civil liability in the securities action were established, but no conviction obtained in the criminal action, the outcome in that latter action, determined under the

(footnote continued)

outcome in the 1994 misconduct action. The indemnification letter signed by Prescott provides that he will repay the money spent on his legal fees for “the defense of the above proceeding for which I am finally adjudged to be liable for negligence, fraud, or misconduct in the performance of my duties to the Corporation.”<sup>93</sup> The “above proceeding” refers to the proceeding described in the subject line of the letter: “Shakopee Mdewakanton Sioux Community Gaming Commission File No. 94-0024.”<sup>94</sup> Appellant cannot understand Respondent’s argument that the trigger to repay was based on something other than the outcome of the Gaming Commission proceedings. Appellant agrees with Respondent that “saying it repeatedly doesn’t make it true.”<sup>95</sup> But it is nevertheless true. It is what the written agreement says in black and white.

In the 2000 indemnification action, the tribal court simply asked whether Prescott’s obligation to repay had been triggered.<sup>96</sup> The tribal court looked to the final adjudication of the Gaming Commission proceedings, which is the July 30, 1999 decision of the tribal appellate court. Based on the tribal appellate court’s conclusion in the Gaming Commission proceedings, the tribal court in the 2000 indemnification action reasoned, “I think it is clear that Prescott was found by the Court of Appeals to have been

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(footnote continued from previous page)

criminal law standard of proof, would not be a defense to the corporate officer’s obligation to repay fees advanced to defend the civil action in which liability was found.

<sup>93</sup> See *Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise v. Prescott*, No. 436-00 (SMSC Tr. Ct. May 11, 2005), App. at A-54.

<sup>94</sup> *Id.* at A-53.

<sup>95</sup> Respondent’s Brief at 13.

<sup>96</sup> *Little Six, Inc. v. Prescott*, No. 436-00 (SMSC Tr. Ct. Feb. 17, 2004), App. at A-45.

guilty of negligence with respect to his duties to both the State of Minnesota and LSI.

And I think his negligence to LSI triggers his promise to repay the funds he was given for his legal costs.”<sup>97</sup> This finding of liability led to the Tribal Court Judgment. Prescott did not appeal that tribal court conclusion to the tribal appellate court and cannot collaterally relitigate it here.

There is no judgment that conflicts with the Tribal Court Judgment. If there were another tribal court judgment holding that Prescott’s obligation to repay was not triggered, or that he was obligated to pay a different amount, then there would be conflicting judgments. But there are no such judgments, and as such, there is no conflict.

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<sup>97</sup> *Id.*

## CONCLUSION

For all the reasons explained above, this Court should vacate the district court's memorandum opinion and order and remand for proper analysis under Rule 10.02.

Respectfully submitted,

*Collette L. Adkins Giese*

Dated: July 28, 2009

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No. A09-684

STATE OF MINNESOTA  
IN COURT OF APPEALS

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Shakopee Mdewakanton Sioux (Dakota) Gaming Enterprise,

Appellant,

vs.

Leonard Prescott, individually, and as current and former officer and/or director of Little Six, Inc.,

Respondent.

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CERTIFICATION OF BRIEF LENGTH

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I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 6,634 words. This brief was prepared using Microsoft Word 2003 software.

Dated: July 28, 2009

*Collette L. Adkins Giese*

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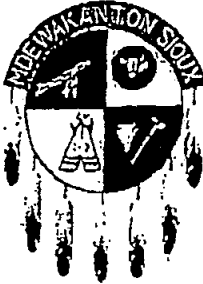
**Attorneys for Appellant Shakopee Mdewakanton  
Sioux Gaming Enterprise**

## INDEX TO REPLY APPENDIX

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## SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

2330 Sioux Trail NW, Prior Lake, Minnesota 55372  
Tribal Office (612) 445-8900  
FAX: (612) 445-8906

RESOLUTION 04-1<sup>9</sup>93-001

## RATIFICATION OF

THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

GAMING ORDINANCE RESOLUTION 03-31-93-001

## OFFICERS

STANLEY R. CROOKS  
ChairpersonKENNETH ANDERSON  
Vice ChairpersonDARLENE MATTIA  
Secretary/Treasurer

- WHEREAS, the General Council of the Shakopee Mdewakanton Sioux (Dakota) Community is the governing body of the Community empowered by the Constitution and By-Laws of the Community with the authority and the responsibility for enacting legislation beneficial to the Community; and
- WHEREAS, the General Council is empowered through Article V, Section 1(g) to promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which provide for taxes, assessments, of license fees upon non-members doing business within the reservation, or obtaining special rights or privileges; and
- WHEREAS, the General Council is empowered through Article V, Section 1(h) of the amended Constitution of the Shakopee Mdewakanton Sioux Community to promulgate and enforce ordinances intended to safeguard and promote the peace, safety, and general welfare of the Community by regulating the conduct of trade and the use and disposition of property upon the reservation, providing that any regulation directly affecting non-members be subject to review by the Secretary of the Interior; and
- WHEREAS, the General Council is empowered by Article V, Section 1(i) to adopt resolutions regarding the operation and procedures of the council itself and of other Community committees, agencies, and officials; and
- WHEREAS, the Shakopee Mdewakanton Sioux (Dakota) Community is presently engaged in gaming through a Community owned gaming enterprise, Little Six, Inc., which gaming enterprise, together with all gaming activities conducted on the Shakopee Mdewakanton Sioux (Dakota) Reservation, is subject to the provisions of the Indian Gaming Regulatory Act (IGRA); and
- WHEREAS, due to certain changes in IGRA, and in the regulations promulgated pursuant thereto, the Community gaming enterprise, and the gaming activities which it conducts, are no longer in compliance with the applicable federal regulations of IGRA; and

WHEREAS, the General Council has determined it to be in the best interests of the Community to address the deficiencies in Shakopee Ordinance Regulating Bingo and Other Forms of Gaming, which Ordinance was enacted by Resolution No. 8-12-88-001;and

WHEREAS, the General Council has determined that amendment of Shakopee Ordinance Regulating Bingo and Other Forms of Gaming, adopted by Resolution No. 8-12-88-001, is not possible in light of the substantial changes in the laws and regulations applicable to gaming which have been enacted since the adoption of that Ordinance, and the General Council finds it necessary to address the deficiencies through adoption of legislation which will meet the requirements of all applicable statutes and regulations;and

WHEREAS, the General Council finds that the proposed Shakopee Mdewakanton Sioux Community Gaming Ordinance meets all the requirements of the applicable laws and regulations and is necessary to protect the integrity of gaming on the Shakopee Mdewakanton Sioux (Dakota) Reservation.

NOW THEREFORE BE IT RESOLVED, that the General Council hereby approves, adopts, enacts, and ratifies the legislation entitled the Shakopee Mdewakanton Sioux (Dakota) Gaming Ordinance; and

BE IT FURTHER RESOLVED, that this Ordinance shall become effective immediately, as of May 3, 1993, in accordance with the terms and provisions herein, and shall govern all gaming activities, conducted on the Shakopee Mdewakanton Sioux (Dakota) Reservation; and

BE IT FURTHER RESOLVED, that the Shakopee Ordinance Regulating Bingo and Other Forms of Gaming, enacted by Resolution No. 8-12-88-1 is hereby repealed, together with any other law relating to gaming which conflicts with or is inconsistent with this Ordinance, and in all cases of conflict, this Ordinance shall be controlling, and such other laws, ordinances, or regulations are also repealed; and

BE IT FURTHER RESOLVED, that the Community submits this Ordinance to the Secretary of the Interior or his designated representative and requests review and approval of this Ordinance; and

BE IT FURTHER RESOLVED, that the Community submits this ordinance to the National Indian Gaming Commission and requests immediate review and approval of this Ordinance.

## CERTIFICATION

This Resolution, and the Ordinance which it adopts, is presented to the General Council for Referendum Ballot, having been properly moved and seconded under the procedure specified by the Referendum Ordinance, Ordinance No. 11-8-88-04.

Betty Blue  
Moved by

Chris Roldan  
Seconded by

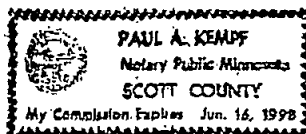
Stanley R. Crooks  
Stanley R. Crooks,  
Chairman

Darlene Matta  
Darlene Matta,  
Secretary-Treasurer

COUNTY OF SCOTT )  
SS )  
STATE OF MINNESOTA )

The foregoing instrument was acknowledged before me this 19  
day of April, 1993.

Paul A. Kempf  
Notary Public



CERTIFICATION

Approval of Resolution No. 04-19-93-001, Adoption of Shakopee Mdewakanton Sioux (Dakota) Community Gaming Ordinance, as presented to the General Council of the Shakopee Mdewakanton Sioux Community for vote by referendum under the provisions of the Ordinance passed on January 13, 1987 and approved by the Bureau of Indian Affairs.

Under the authority vested in me by the General Council and that Ordinance, I hereby certify that, to the best of my knowledge and belief, the procedures specified in that Ordinance were duly followed, and that the results reported here accurately reflect the vote of the General Council.

75 Eligible members had requested a ballot as of 4-19-93.

On 4-19-93, ballots were sent via First Class mail to all members entitled to vote. The balloting was closed on 4-29-93 and the ballots were counted on 5-3-93.

The Vote on this resolution was:

35 for, 8 against, 0 abstentions, 1 spoiled

This Resolution X passed \_\_\_ failed.

  
Stanley R. Crooks, Tribal Chairman

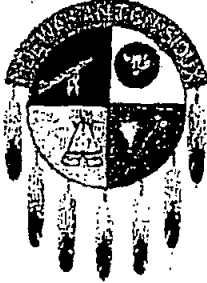
  
Kenneth Anderson, Vice-Chairperson

  
Darlene Matta, Secretary/Treasurer

  
Randolph J. Schacht,  
Election Commissioner

## SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

2330 Sioux Trail N.W., Prior Lake, Minnesota 55372  
Tribal Office (612) 445-8900  
FAX: (612) 445-8906



September 8, 1993

## OFFICERS

STANLEY R. CROOKS  
Chairperson

KENNETH ANDERSON  
Vice Chairperson

DARLENE MATTA  
Secretary/Treasurer

TO: All Voting Members of the Shakopee Mdewakanton Sioux  
Community

FROM: Darlene Matta, Secretary/Treasurer *Dm*

RE: Regular General Council Meeting

Date: Tuesday, September 14, 1993  
Time: 7:00 pm.  
Place: New Shakopee Mdewakanton Sioux Community Center,  
Tribal Court/ General Council Meeting Room.

AGENDA

1. Election of Gaming Commissioners.
2. FmHA Loan Resolution 9-14-93-001
3. Approval 1994 Budget

THIS IS NOT A 24 HOUR MEETING VOTING WILL TAKE PLACE THE  
NIGHT OF THE MEETING.

There will be an informal meeting immediately following  
adjournment of the Regular General Council meeting to discuss  
the following items:

1. Amendment to the Business Proceeds Ordinance
2. Adoption Ordinance.

The BIA has been invited to attend to answer any questions  
you may have for them.

## CERTIFICATION

Regular General Council Meeting September 14, 1993.  
page 1

There are 78 eligible voters pursuant to the voting list certified and posted by the Secretary/Treasurer on July 16, 1993.

To the best of my knowledge and belief, the results reported herein accurately reflect the vote of the General Council at a Regular Council meeting on September 14, 1993.

Anita Barrientez Elected as Gaming Commissioner:

30 For, \_\_\_\_\_ Against, \_\_\_\_\_ Abstentions, \_\_\_\_\_ Chair Not  
Voting

Connie Borchert Elected as Gaming Commissioner:

18 For, \_\_\_\_\_ Against, \_\_\_\_\_ Abstentions, \_\_\_\_\_ Chair Not  
Voting

Scott Campbell Elected as Gaming Commissioner:

21 For, \_\_\_\_\_ Against, \_\_\_\_\_ Abstentions, \_\_\_\_\_ Chair Not  
Voting

Cherie Crooks-Bathel Elected as Gaming Commissioner:

37 For, \_\_\_\_\_ Against, \_\_\_\_\_ Abstentions, \_\_\_\_\_ Chair Not  
Voting

Patricia Prescott Elected as Gaming Commissioner:

31 For, \_\_\_\_\_ Against, \_\_\_\_\_ Abstentions, \_\_\_\_\_ Chair Not  
Voting

Lanny Ross Elected as Gaming Commissioner:

15 For, \_\_\_\_\_ Against, \_\_\_\_\_ Abstentions, \_\_\_\_\_ Chair Not  
Voting



July 8, 1993

To All Members of the General Council,

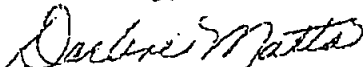
This notice is to advise any General Council member who desires to have their name submitted for consideration of becoming a member of the Gaming Commission, to please submit your names in writing to the Business Council no later than July 15, 1993.

The members of the Gaming Commission will be appointed by the General Council at a special General Council meeting called for that purpose.

Please be aware of the following criteria:

1. If you submit your name for consideration, you must sign an authorized release of information that will permit a full criminal history and background check that follows the criteria that is mandated by the National Indian Gaming Commission. Background checks will be conducted on any who submit their names, and failure to pass the background will result in your name not being placed before the General Council for consideration.
2. You must be a voting member of the Shakopee Mdewakanton Sioux Community.
3. You must be at least 18 years of age.
4. Gaming Commissioners are forbidden to engage in any gambling activities in any of the Shakopee Mdewakanton Sioux Community facilities. By submitting your name you are agreeing that you will not engage in any type of gambling activity in our facilities at any time.
5. Business Council elected members and any member of the Board of Directors of Little Six, Inc. or any employee of Little Six, Inc. are forbidden by ordinance from serving as a member of the Gaming Commission.

Sincerely,



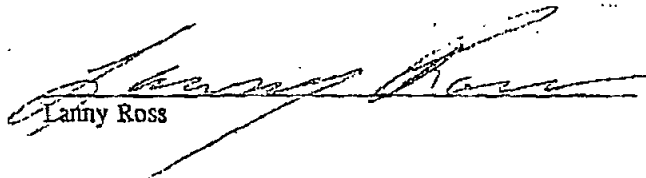
July 13, 1993

TO: General Council  
Shakopee Mdewakanton Sioux Community

FROM: Lanny Ross, Enrolled Voting Member  
Shakopee Mdewakanton Sioux Community

RE: Consideration for Gaming Commissioner and/or Member of the  
Gaming Commission

I am hereby submitting my name to be considered at the General Council meeting on July 13, 1993 for the Gaming Commission. I would like to also be considered as the Commissioner.

  
Lanny Ross

**RECEIVED**  
TRIBAL OFFICE

JUL 13 1993

SHAKOPEE MDEWAKANTON  
SIOUX COMMUNITY

K.A.

July 8, 1993

RECEIVED  
TRIBAL OFFICE

JUL 12 1993

SHAKOPEE MDEWAKANTON  
SIOUX COMMUNITY

To All Members of the General Council,

This notice is to advise any General Council member who desires to have their name submitted for consideration of becoming a member of the Gaming Commission, to please submit your names in writing to the Business Council no later than July 15, 1993.

The members of the Gaming Commission will be appointed by the General Council at a special General Council meeting called for that purpose.

Please be aware of the following criteria:

1. If you submit your name for consideration, you must sign an authorized release of information that will permit a full criminal history and background check that follows the criteria that is mandated by the National Indian Gaming Commission. Background checks will be conducted on any who submit their names, and failure to pass the background will result in your name not being placed before the General Council for consideration.
2. You must be a voting member of the Shakopee Mdewakanton Sioux Community.
3. You must be at least 18 years of age.
4. Gaming Commissioners are forbidden to engage in any gambling activities in any of the Shakopee Mdewakanton Sioux Community facilities. By submitting your name you are agreeing that you will not engage in any type of gambling activity in our facilities at any time.
5. Business Council elected members and any member of the Board of Directors of Little Six, Inc. or any employee of Little Six, Inc. are forbidden by ordinance from serving as a member of the Gaming Commission.

Sincerely,

*Darlene Matta*

*I request my name be submitted for  
consideration for the above position.*

*Connie P. Bouchet*

*7/13/93*

July 14, 1993

To Business Council

I would like to have  
my name added to  
those up for coming  
Commissioner Selection  
By The Business Council

Chace Lynn Cooke-Botkins

D.O.B. - 7-3-64

35# [REDACTED]

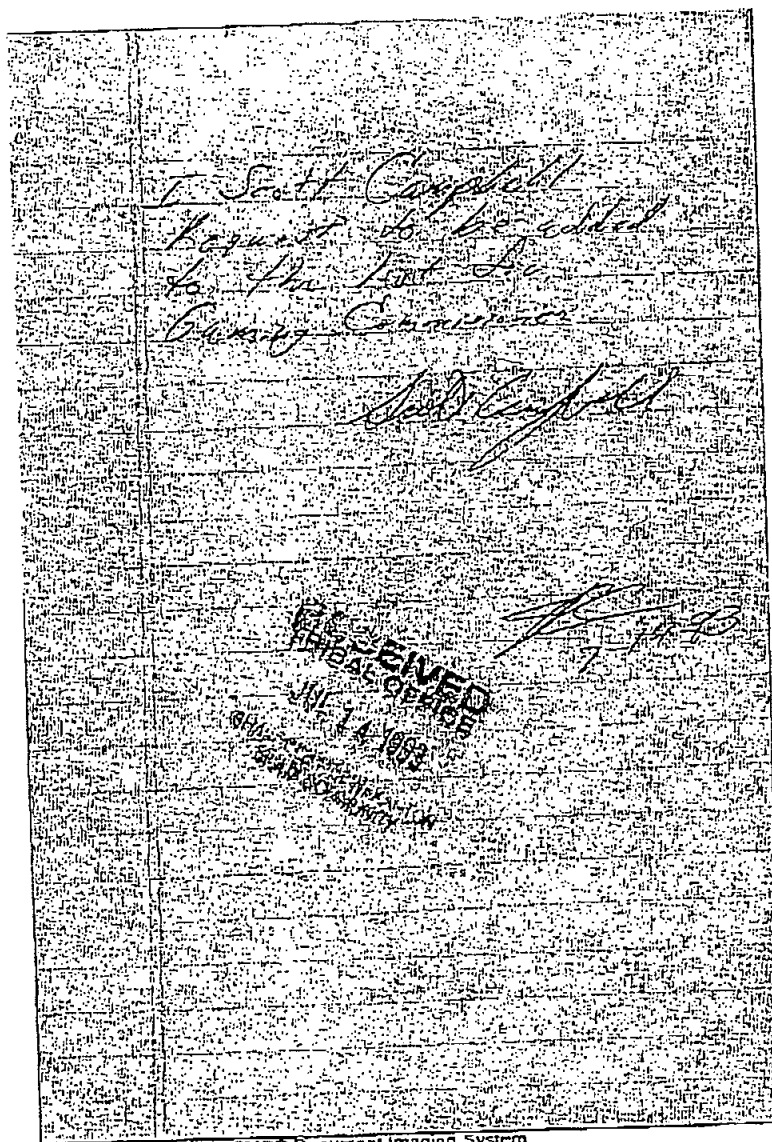
024 [REDACTED]

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TRIBAL OFFICE

JUL 14 1993

SHAKOPEE/DEWAKANTON  
SIOUX COMMUNITY

Printed from SMSC Document Imaging System  
SMSC General Council 1993 Binder Page 275 of 403



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SMSC General Council 1993 Binder Page 276 of 403

7-12-93

I, Anita Barakat  
want to apply  
for Gaming Commission

Anita Barakat

**RECEIVED**  
TRIBAL OFFICE  
JUL 12 1993

SHAKOPEE DEWAKANTON  
SIOUX COMMUNITY

Printed from SMSC Document Imaging System  
SMSC General Council 1993 Binder Page 277 of 403

7-15-93

To Business Council

2 Patricia Everett would  
 like my name to be included  
 as member of SMC Hammy  
 Commission.

RECEIVED  
 TRIBAL OFFICE

JUL 15 1993

SHAKOPEE MOHAWKANTON  
 SIOUX COMMUNITY

Thank You  
 Patricia Everett

Printed from SMCSC Document Imaging System  
 SMCSC General Council 1993 Binder Page 278 of 403

Social Security [REDACTED]  
Birth Date 3-29-4  
Place of Birth Redwood Falls MN  
D L #  
Patricia Ann Howe-Bennett

Printed from SMSC Document Imaging System  
SMSC General Council 1993 Binder Page 279 of 403



NATIONAL  
INDIAN  
GAMING  
COMMISSION

NOV - 2 1993

Stanley Crooks, Chairperson  
Shakopee Mdewakanton Sioux Community  
2330 Sioux Trail N.W.  
Prior Lake, Minnesota 55372

Dear Chairperson Crooks:

This letter responds to your request to review and approve the tribal gaming ordinance submitted on August 16, 1993, and amended by letter dated October 18, 1993, for the Shakopee Mdewakanton Sioux Community (the Community). This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA).

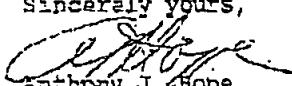
Under the IGRA and the regulations of the National Indian Gaming Commission (NIGC), the Chairman is directed to review ordinances with respect to the requirements of the IGRA and the implementing regulations. Thus, the scope of the Chairman's review and approval is limited to the requirements of the IGRA and the NIGC regulations. Provisions other than those required under the IGRA or the NIGC regulations that may be included in a tribal ordinance are not subject to review and approval. Also, such approval does not constitute approval of specific games.

It is important to note that the gaming ordinance is approved for gaming only on Indian lands as defined in the IGRA.

With the Chairman's approval of the Community's gaming ordinance, the Community is now required to conduct background investigations on its key employees and primary management officials. The NIGC expects to receive a completed application for each key employee and primary management official pursuant to 25 C.F.R. § 556.5(a) and an investigative report on each background investigation before issuing a license to a key employee or primary management official pursuant to 25 C.F.R. § 556.5(b).

Thank you for submitting the ordinance of the Shakopee Mdewakanton Sioux Community for review and approval. The NIGC staff and I look forward to working with you and the Community in implementing the IGRA.

Sincerely yours,

  
Anthony J. Hope  
Chairman

cc: Tom Guthrie

State of Minnesota  
Scott County

District Court  
First Judicial District

Court File Number: **70-CV-05-25680**

Case Type: Foreign Judgment

**AMENDED**

**Notice of Docketing of Judgment**

**SHAKOPEE MDEWAKANTON SIOUX DAKOTA GAMING ENTERPRISE  
ATTN C/O S CHLOE THOMPSON  
8200 HUMBOLDT AVE S STE 200  
BLOOMINGTON MN 55431**

**Shakopee Mdewakanton Sioux Dakota Gaming Enterprise vs LEONARD PRESCOTT**

You are hereby notified that a judgment has been docketed in the above entitled matter.

Judgment Information	
Entered Date	October 27, 2005
Docketed Date	December 05, 2005
Docketed Time	10:52 AM
Debtor(s)	LEONARD PRESCOTT.
Creditor(s)	Shakopee Mdewakanton Sioux Dakota Gaming Enterprise
Monetary Award:	
Monetary Amount:	\$1,111,940.47

A true and correct copy of this notice has been served by mail upon the parties.

Note: Costs and interest will accrue on any money judgment amounts from the date of entry until the judgment is satisfied in full.

Dated: January 5, 2006

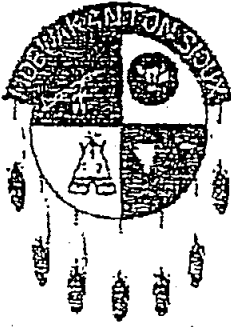
Gregory M. Ess  
Court Administrator  
Scott County District Court  
200 4th Avenue West JC 115  
Shakopee MN 55379  
952-496-8200

*Previous notice of  
judgment did not have  
interest included. This is  
now the amended amount  
with interest.*

*Audrey*

# SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

2330 Sioux Trail NW, Prior Lake, Minnesota 55372  
Tribal Office (612) 445-8900  
FAX: (612) 445-8906



## SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

### Gaming Revenue Allocation Amendments to Business Proceeds Distribution Ordinance

Ordinance No. 10-27-93-002

#### OFFICERS

STANLEY R. CROOKS  
Chairperson  
KENNETH ANDERSON  
Vice Chairperson  
DARLENE MATTA  
Secretary/Treasurer

#### Section 14. Gaming Revenue Allocation Amendments

##### Section 14.1. *Repeal of Inconsistent Legislation.*

This Section 14 shall amend Ordinance No. 12-29-88-002, the Community's Business Proceeds Distribution Ordinance in order to comply with the requirements of the Indian Gaming Regulatory Act. Notwithstanding any previously applicable or inconsistent provisions of Tribal law, which are hereby repealed and rescinded, these Amendments shall govern the allocation of available net revenues from tribally owned gaming establishments including per capita distributions to qualified enrolled members of the Shakopee Mdewakanton Sioux (Dakota) Community.

Nothing in these amendments to the Business Proceeds Distribution Ordinance, Ordinance No. 12-29-88-002, shall change the requirement under the original Business Proceeds Distribution Ordinance that eligibility can only be denied to those named on Attachments A and B by an affirmative two-thirds (2/3) vote of the entire voting membership of the General Council. Before any such action to deny eligibility can become effective, it must be ratified by an affirmative two-thirds (2/3) vote of the entire voting membership at a subsequent meeting held at least fifteen (15), but not more than thirty (30) days after the initial vote to deny eligibility. Such vote requirement shall apply to those on Attachments A and B who are enrolled in the Community and to anyone who has obtained her/his eligibility by order of the Judicial Court of the Shakopee Mdewakanton Sioux Community subsequent to Ordinance No. 12-29-88-002 or has obtained her/his eligibility pursuant to these amendments to the Business Proceeds Distribution Ordinance.

Pursuant to federal requirements and this amendment to Business Proceeds Distribution Ordinance, non-members, including those named on Attachments A and B, are not eligible to receive per capita payments and eligibility is denied.

Nothing in these amendments to the Business Proceeds Distribution Ordinance, Ordinance No. 12-29-88-002, shall change the requirement under the original Business Proceeds Distribution Ordinance, Section 10, for an affirmative two-thirds vote of the entire voting membership of the General Council and a subsequent affirmative two-thirds (2/3) vote of the entire voting membership of the General Council to amend and ratify such amendments, other than amendments to the Business Proceeds Distribution Ordinance, as amended, required by or suggested as a result of a review by the Federal Indian Gaming Commission pursuant to 25 U.S.C. §2701 *et seq* and the regulations adopted thereunder.

Section 14.2.        *Policy.*

This Ordinance shall comply with the Indian Gaming Regulatory Act of 1988 [25 U.S.C. §2701 *et seq.*] and all other applicable Federal law. The Shakopee Mdewakanton Sioux (Dakota) Community shall use revenues generated by Tribal gaming establishments primarily to strengthen the Tribal government, Tribal self-sufficiency and to support Tribal economic development. The Community shall insure that its governmental programs and its economic development efforts shall receive the necessary financial support from net gaming revenues prior to distributing such revenues for other purposes.

The Tribe retains the inherent sovereign right to determine the best interests of its qualified minor Community members and shall place monies into trust for the future and benefit of those qualified minor Community members.

Section 14.3.        *Use of Tribal Gaming Net Revenues: Government Operations and Programs.*

- A. In order to provide funding for Tribal programs and for the operation of government the General Council hereby allocates thirty-five percent (35%) of net gaming business revenues remaining after deducting 5% of net gaming revenues for Development Reserve and after deducting 5% of net gaming revenues for the Children's Trust Fund to be paid into a specially designated account called the "Programs Account."
- 1. If it deems it necessary, the General Council shall have the authority to revise and increase the allocated percentage of net gaming business revenues paid into the "Programs Account." Any

revision of the allocated percentage herein shall be documented by a General Council resolution, and a copy of such resolution shall be provided to the Secretary of the Interior.

- B. The Business Council or its appointed agent shall receive budget reports from each Tribal program and/or department in a manner authorized by the General Council to determine the budgetary needs of each program and department in order to allocate those monies in the "Programs Account" dedicated to programs.

The Business Council shall also have monies available to it from this account for such purposes as the normal operation of government requires.

- C. The Community's Programs Account includes, in addition to the funding normal government operations, funding for necessary government programs (public works, housing) and general community welfare programs (home health care, employee assistance). The following programs shall be required to submit budget reports referenced in Sub-section B:

Government Programs

- a. Insurance Program
- b. Program Subsidies
- c. Aid to Tribal Government
- d. Enrollment
- e. CHIP
- f. Public Works-Sewer/Water
- g. Housing
- h. Land Development
- i. Recreation Center
- j. Community Center
- k. Pow Wow Grounds
- l. Community Environmental Project
- m. Public Works Building
- n. Community Growth Fund

General Community Welfare

- a. Community Support
- b. NETWORK (Employee Assistance)
- c. General Education
- d. Latch Key/Tutoring

- e. Pre-School
- f. Summer Activities
- g. Day Care
- h. Nutrition
- i. Social Services

- D. The Business Council or its delegated agent may consider charitable contribution requests under this section and may make contributions from available Programs Account monies. The Business Council may show a preference to such charitable contribution requests that benefit Tribal members or Indian people generally.
- E. The Business Council shall have authority to use program account monies for local government revenue sharing to assist local city and county governments in projects or programs which directly affect the community. The Business Council shall receive or initiate proposals for projects or programs with local city or county governments, negotiate the terms of such project/program in light of available funds. It is a specific priority of the Community to expend monies pursuant to the terms of this subsection preferably when such expenditures are matched by local city or county government funding, or funding from some source other than the Community.

Section 14.4. *Use of Tribal Gaming Business Net Revenues; Tribal Economic Development.*

- A. In order to provide funding for tribal economic development, the General Council hereby allocates five percent (5%) of net gaming business revenues to be paid into a tribal account called "Development Reserve".
  - 1. If it deems it necessary, the General Council shall have the authority to revise and increase the allocated percentage of net gaming business revenues paid into the "Development Reserve". Any revision of the allocated percentage herein shall be documented by a General Council resolution, a copy of which shall be provided to the Secretary of the Interior.
- B. The Business Council shall have the authority to appropriate and expend funds from the Tribal Development Reserve to fund economic development and investment projects and Tribal land acquisition. The Business Council shall establish and maintain a process by which it considers Tribal economic development or investment proposals. Each

development or investment proposal shall determine projected revenue expenditures. The Business Council shall thereafter allocate monies from the Development Reserve as it deems necessary and feasible.

- C. The Business Council shall have the authority to appropriate and expend funds from the Development Reserve to supplement funding for on-going economic development projects. The Business Council shall establish and maintain a process by which it considers the budgetary needs of the Community's on-going businesses and enterprises.

Section 14.5. *Use of Tribal Gaming Net Revenues; Individual Per Capita Payments.*

- A. After deduction of the Development Reserve as provided in Section 14.4, and after the deduction for the Children's Trust Fund as provided in Section 14.6, the General Council allocates, in order to advance the personal health, safety and welfare of qualified tribal members, sixty-five percent (65%) of remaining net gaming revenues to be divided into equal shares and paid to all qualified enrolled members of the Shakopee Mdewakanton Sioux (Dakota) Community. For purposes of this Ordinance, "per capita payment" shall mean those payments made pursuant to the terms of this Ordinance No. 12-29-88-002 out of revenues generated from tribal gaming businesses; no other commonly accepted or used definition of the term "per capita" affects the use of the term herein. The decision as to those persons entitled to share in Community gaming profits is strictly an internal Tribal matter and an inherent right and power of the Tribe.

The Community adopts the following eligibility criteria:

1. Those enrolled members presently receiving per capita payments pursuant to the terms of Ordinance No. 12-29-88-002 shall continue to receive per capita payments.
2. All enrolled members of the Shakopee Mdewakanton Sioux Community at least eighteen (18) years of age shall be eligible to receive per capita payments.
3. Children or grandchildren of enrolled members must establish enrollment and/or eligibility pursuant to existing Tribal law, including but not limited to the Shakopee Mdewakanton Sioux Community Constitution, the Enrollment Ordinance and this Ordinance No. 12-29-88-002, as amended.

4. If a person becomes eligible to receive per capita payments after the passage of this amendment to the Business Proceeds Distribution Ordinance, such person's eligibility shall begin immediately upon eligibility certification.
  5. The Business Council is hereby authorized and directed to periodically update the listing of those eligible to receive per capita payments for accounting purposes only. Pursuant to existing Tribal law, the Business Council is specifically prohibited from changing any person's eligibility to receive per capita payments.
- B. In the event any applicant is denied eligibility to receive per capita payments, such individual may bring an action in the Judicial Court of the Shakopee Mdewakanton Sioux Community to seek review of such determination. A final decision of the Tribal Court shall be binding. The General Council hereby waives its immunity from suit for the limited purpose of allowing judicial review of any determination relating to the prospective eligibility of applicants to receive per capita payments pursuant to the terms of this section. The waiver shall not include authority for the Tribal Court to enter any order other than a declaration of eligibility and shall specifically exclude the issuance of all other relief.
- C. Upon the unanimous vote of the Business Council, the per capita payment schedule for all persons entitled to receive such payments may be adjusted to provide for a uniform monthly per capita payments. The Business Council may unanimously determine to retain up to 20% (TWENTY PERCENT) of the funds otherwise available for individual per capita distribution in any given month in a reserve account, the principal and interest of which shall be available and shall be drawn upon to supplement individual per capita payments in any month or months during which the available proceeds do not permit distribution at a previously budgeted level. In the event that the Business Council does not elect to follow this procedure as to payments to all persons, any individual may submit a written request that the payment schedule described in this section be applied to their own disbursements.
1. In no event shall the principal placed in the uniform payments per capita reserve account be held for more than 12 calendar months from the date of deposit into the reserve. Interest on the per capita reserve may be retained or distributed at the discretion of the Business Council.



2. The Business Council shall insure the notification of the application of federal tax laws to tribal per capita payments be made. The Business Council shall also implement a procedure by which qualified enrolled members who receive per capita payments can have applicable taxes automatically deducted from per capita payments. The Business Council shall include in the notice of the application of federal tax laws, a notice of the existence of the withholding procedure.
- D. The Shakopee Mdewakanton Sioux (Dakota) Community Business Council is hereby delegated the authority to place into trust into a low-risk interest bearing account in a federally insured financial institution it finds satisfactory the per capita payments, or any portion or percentage thereof, of any individual who is declared incompetent by a court of competent jurisdiction.
1. The Business Council shall consider placing into trust the per capita payment of any individual declared legally incompetent upon a Shakopee Mdewakanton Sioux (Dakota) Tribal Court Order, another Court of competent jurisdiction or the petition of at least two qualified enrolled members, one of which must be a family member. The Business Council or its appointed agent shall conduct hearings as it sees fit to gather testimony and evidence as to the reasons Petitioners feel it should place into trust the per capita payments of the individual declared incompetent. The Business Council or its appointed agent retains the authority to place into trust any per capita payment of an individual declared incompetent before holding a hearing, however, the Business Council or its appointed agent must conduct a hearing and make a decision thereafter within thirty (30) days from the date it has placed into trust the per capita payment.
  2. The Business Council or its appointed agent shall consider paying a monthly living allowance from the proceeds of any per capita payment placed into trust upon the petition of the legal guardian of any individual declared legally incompetent. Such petition shall include a detailed budget of monies necessary for the health, education and welfare of the individual declared incompetent.
  3. The Business Council or its appointed agent shall make available a monthly bank statement of any monies placed into trust for an individual declared legally incompetent to the legal guardian of such person.

4. Any qualified recipient adversely affected by this paragraph shall have the right of judicial review in the Shakopee Mdewakanton Sioux (Dakota) Tribal Court.

Section 14.6. *Use of Tribal Gaming Business Net Revenues: Children's Trust Fund*

The Community recognizes the duty and responsibility of all parents to provide for their minor children's health, welfare and security. It is in the best interests of qualified minor Community members that their parents have the primary duty and responsibility to provide for them. The establishment of a trust fund herein accomplishes that purpose.

- A. Five percent (5%) of the available monthly net proceeds of Tribal businesses shall be divided equally among individual trust funds which shall be established by the Business Council for the benefit of the minor children of persons identified in this ordinance as entitled to be listed on the Roll of Minors. Up to 100% of the eligible minor's payments may be made to the parent(s) with whom the eligible minor resides for the child's health, education or welfare. Additionally, if a minor child has only one parent eligible to receive per capita payments and that parent dies during the minority of the child, up to 100% of the eligible minor's payments may be made to the non-eligible surviving spouse or legal guardian with whom the child resides for the child's health, education or welfare. The Shakopee Mdewakanton Sioux (Dakota) Judicial Court shall determine necessary and appropriate amounts upon petition of the parent(s), non-receiving spouse or legal guardian with whom the child resides.
- B. The Business Council shall cause to be established individual trusts to receive for the benefit the persons named and those who may hereafter qualify for addition to the Roll of Minors. All such trust funds shall be placed at the best available rate in federally insured investments. In order to obtain the best possible rate, and to the extent permitted by applicable law, the trust instruments shall permit the funds of the individual trusts to be pooled. These trust instruments shall provide for distribution of 30% of the accumulated funds and other benefits at 18 years of age; at the age of 21 the individual shall receive 50% of the remainder of the accumulated funds and benefits; and at the age of 25 the remaining funds and benefits, including interest shall be paid.

Section 14.7.

*Severability.*

If any section of any part of this Ordinance or the application thereof to any party, person, or entity or, in any circumstances, shall be held invalid for any reason whatsoever by a court of competent jurisdiction, or by the Department of the Interior, the remainder of the part or Ordinance shall not be affected thereby and shall remain in full force and effect as though no part thereof has been declared to be invalid.

Section 14.8.

*No Waiver of Sovereign Immunity.*

Nothing in this Ordinance shall mean or be construed to provide a waiver of the Community's or any of its governmental officers' and or agents' sovereign immunity from suit except to the limited extent such waiver is explicitly and unequivocally expressed herein.

Section 14.9.

*Penalties.*

Any person who wrongfully receives, distributes or intentionally refuses to distribute funds or benefits as mandated by this Ordinance, shall be subject to civil penalties up to three times the amount wrongfully received, distributed or withheld. Actions pursuant to this Section may be brought before the Judicial Court of the Shakopee Mdewakanton Sioux Community by any person wrongfully denied such benefits or by any person receiving benefits who has a good faith reason to believe that benefits have been wrongfully paid or distributed to another.

Section 14.10. *Tax Liability.*

The per capita payments made pursuant to this Ordinance are subject to Federal taxation. Each qualified member receiving individual per capita payments is responsible for her or his own federal tax liability for per capita payments.

CERTIFICATION

10-27-93-002

This Ordinance was presented to the General Council of the Shakopee Mdewakanton Sioux (Dakota) Community at a meeting held on 10-27, 1993. The vote on this Ordinance was 31 for, 23 against, and 3 abstentions.

Cynthia Prescott

Moved by

Patricia Prescott

Seconded by

Stanley R. Crooks

Stanley R. Crooks, Chairman

Kenneth Anderson

Kenneth Anderson, Vice-Chairman

Darlene Matta

Darlene Matta, Secretary/Treasurer

CERTIFICATION

Special General Council Meeting October 27, 1993.

page 2

The vote on Adoption Ordinance No. 10-27-93-001 was:

26 For, 31 Against, 0 Spoiled, 0 Abstentions,  
1 Chair Not Voting

       PASSED

X FAILED

The revote on Adoption Ordinance No. 10-27-93-001 was:

30 For, 0 Against, 0 Spoiled, 28 Abstentions,  
1 Chair Not Voting

X PASSED        FAILED

The vote on approval of Amendments to Business Proceeds  
Distribution Ordinance No. 10-27-93-002, was:

31 For, 23 Against, 3 Abstentions, 1 Chair Not  
Voting

X PASSED        FAILED

The vote on approval of Non Gaming Program Allowance  
Ordinance No. 10-27-93-003, was:

28 For, 0 Against, 30 Abstentions, 1 Chair Not  
Voting

X PASSED        FAILED

Stanley R. Crooks  
Stanley R. Crooks, Tribal Chairman

Kenneth Anderson  
Kenneth Anderson, Vice-Chairman

Darlene Matta  
Darlene Matta, Secretary/Treasurer

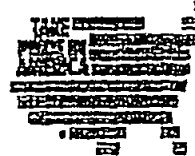
Randolph J. Schacht  
Randolph J. Schacht  
Election Commissioner



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

MINNEAPOLIS AREA OFFICE  
331 SOUTH 2ND AVENUE  
MINNEAPOLIS, MINNESOTA 55401-2241



IN REPLY REFER TO:

TRIBAL OPERATIONS/GAMING

NOV 12 1993

Stanley Crooks, Chairman  
Shakopee Mdewakanton Sioux Community  
2330 Sioux Trail NW  
Prior Lake, MN 55372

RECEIVED  
TRIBAL OFFICE

NOV 15 1993

SHAKOPEE MEDWAKANTON  
SIOUX COMMUNITY

Dear Mr. Crooks:

Pursuant to Section 2710(b)(2)(B) and (3) of the Indian Gaming Regulatory Act of October 17, 1988, the proposed Shakopee Gaming Revenue Allocation Amendments to Business Proceeds Distribution Ordinance No. 10-27-93-002 is hereby approved as submitted.

*Carol A. Bacon*

Carol A. Bacon  
Acting Area Director

## SECTION 107. AMENDMENT.

This Ordinance may be amended only upon an affirmative vote of an absolute majority of all eligible voting members of the General Council at a meeting called specifically and exclusively for the purpose of amending the Gaming Ordinance, and then such amendment shall be valid only if it complies with the terms and provisions of IGRA.

## TITLE II. DEVELOPMENT, ADMINISTRATION, AND ENFORCEMENT

### SECTION 200. ELECTION AND COMPOSITION OF COMMUNITY GAMING COMMISSION.

- (a) Nomination of Members of the Commission. The General Council ~~(shall nominate shall nominate)~~ up to five candidates for the position of Gaming Commissioner, together with five other nominations for the positions of members of the Commission, for a total of ten nominees for purposes of selection by the General Council of one person to serve as Gaming Commissioner, one person to serve as Assistant Commissioner, together with three (3) persons to serve as members of the Commission, which will have sole authority to regulate any and all gaming activity on the Shakopee Mdewakanton Sioux (Dakota) Reservation, including but not limited to the functions of: issuing gaming licenses, whether for persons, distributors, gaming enterprises, or otherwise, as required by this Ordinance; conducting background investigations of persons requesting licenses; ensuring compliance with the provisions of this Ordinance; or ensuring compliance with the provisions of IGRA.
- (b) Nomination Process. The nomination process shall be initiated by the Business Council within fifteen (15) days of any vacancy on the Commission. The Business Council shall publish to the General Council members in written form the positions available on the Commission, together with the qualifications which the individual candidates must possess to serve on the Commission. The Business Council shall continue to receive nominations for fourteen (14) days after the notice of nomination has been received by the General Council members. At the expiration of the fourteen day period, and within fourteen days following, the Business Council shall schedule a General Council meeting for purposes of selecting the persons to serve on the Commission.
- (c) Selection Process. The persons to serve on the Gaming Commission shall be selected at a General Council meeting. The individual nominees shall appear and state their qualifications for the position for which they were nominated. Following presentation of the candidates, there shall be an election for the members of the Commission, including the Commissioner. The selection process shall be as follows:

The person with the highest vote total nominated to the position of Commissioner shall serve as the Commissioner of Gaming.

The person with the second highest vote total nominated to the position of Commissioner shall serve as the Assistant Commissioner of Gaming.

The remaining three positions on the Commission shall be filled by the three candidates with the highest vote totals, whether the individual candidate was nominated for the position of Commissioner or for general membership on the Commission.

(d) Duties of Commissioner, Assistant Commissioner, Members of the Commission.

(1) The Commissioner of Gaming shall have responsibility for calling and presiding over meetings of the Commission, presiding over rulemaking procedures, and presiding over any hearings which the Commission might conduct, as well as overseeing administration of the daily affairs of the Commission including the receipt of complaints concerning gaming or persons associated with gaming, directing activities of persons charged with conducting background investigations and investigations of complaints, keeping all records, whether relating to financial matters, licenses, investigations, or any other aspect of the Commission's duties and responsibilities, and delegating such responsibilities as the Commissioner deems necessary. Each member of the Commission shall be responsible for communicating to the General Council information related to the conduct of the Commission on a quarterly basis in the form of a written report.

(2) The Assistant Commissioner of Gaming shall have responsibility for acting as Commissioner in the Commissioner's absence or disability.

(3) The Members of the Commission shall be required to vote pursuant to Section 202 in all cases where the Commission is required to make a decision regarding licensing, rule-making, a hearing determination regarding the imposition of any sanction including but not limited to licensing suspension, revocation, restriction or limitation, civil penalties, or the exclusion or ejection of any person, as well as annual license renewal.

(e) Qualifications of the Members of the Commission. The members of the Commission shall be at least eighteen (18) years of age and eligible voting members of the Community. The members of the Commission shall in all cases be required to complete an application for licensing which complies with the provisions of the IGRA and this Ordinance, and a background check shall also be conducted for each individual nominee for a position on the Commission, which background check shall fulfill the requirements of the IGRA and this Ordinance. Any person not possessing the necessary qualifications for licensing under the provisions of the IGRA and this



Ordinance may not serve on the Commission in any capacity. The members of the board of directors of Little Six, Inc., all employees of Little Six, Inc., and any member of the Business Council shall be precluded from serving on the Commission.

- (f) Term of Office For Members of the Commission. The term of office for the Members of the Commission shall be four years, with the initial members of the Commission serving for the following terms: The Commissioner of Gaming shall serve for four years, the Assistant Commissioner shall serve for three years, and the remaining members of the Commission shall serve for two year terms. All subsequent terms for all members of the Commission, including the Commissioner of Gaming and the Assistant Commissioner of Gaming shall be four year terms.

#### SECTION 201. REMOVAL FOR CAUSE.

- (a) Removal Procedure. The Shakopee Mdewakanton Sioux (Dakota) Community may remove a Commissioner from office in a proceeding commenced by at least one third (1/3) of the eligible voting members of the Community, which members must sign a certified petition for removal which states the cause for removal, and which is brought before the General Council by the Business Council as an agenda item presented for a vote to the members of the Community at a General Council meeting, and which makes known to the members of the Community the action of the Commissioner which is asserted as the basis for removal for cause. Upon receipt of the petition for removal, the Business Council shall notify the person whose removal is sought within three days. Within fifteen (15) days the Business Council shall schedule a General Council meeting for purposes of hearing the removal action. If the Business Council shall fail to schedule a meeting in the required period of time, then any member of the General Council shall have the authority to schedule a meeting. The meeting notice must contain a recitation of the charges or cause asserted for removal. An affirmative vote of forty per cent (40%) of all the eligible voting members of the General Council is required to remove any person from their position on the Commission.
- (b) Review of Removal by Tribal Court. Upon approval of the removal action by a the required number of voters, the action shall be submitted to the Shakopee Mdewakanton Sioux (Dakota) Community Court, and the Court shall review the removal action, and issue a declaration that the Commissioner subject to the removal action did in fact violate the removal for cause provisions of this Ordinance, and shall be removed from office.
- (c) Cause For Removal. Cause for removal shall consist of fraudulent or dishonest conduct, or gross abuse of authority or discretion with respect to the duties of the Commissioner who is the subject of the removal action, unexcused failure to attend at least three consecutive meetings, or conviction of a felony while serving on the Commission. In no case shall the performance of the duties of a Commissioner in

compliance with the provisions of this Ordinance be considered a basis for removal. In all cases the burden of proof, including the burden of presenting evidence and persuading the court that the action complained of was fraudulent, dishonest, or was a gross abuse of authority or discretion, shall rest with the members of the Community seeking removal of the Commissioner or a member of the Commission.

## **SECTION 202. DECISION-MAKING BY THE COMMISSION**

In all cases where a decision is required of the Commission by the provisions of this Ordinance, the Commission shall make said decision after deliberations on the merits of the issue before it, and shall in all cases make a determination of the issue by majority vote of at least a quorum of the Commission, and the position receiving the majority of the votes shall represent the position of the Commission with regard to the matter. All votes by the Commission shall be recorded, and a written record shall be maintained which sets forth the position of the individual members of the Commission.

## **SECTION 203. GAMING COMMISSION MEETINGS.**

The Commission shall hold meetings as necessary, at the Shakopee Mdewakanton Sioux (Dakota) Community Center. A majority of the members of the Commission shall constitute a quorum, which number shall be necessary and sufficient for a meeting to be held and business to be conducted, however, all votes shall be taken in compliance with Section 202. Notice of the meeting shall be provided at least 48 hours in advance, which notice shall include the agenda and the name of any person whose License which will be considered at the meeting. Upon payment of a reasonable fee, any Interested Party shall be provided with such notice. The Gaming Commission shall in all cases determine the reasonable fee.

Regular meetings shall be closed to all non-members, with the exception of NIGC members or their authorized representative, and may be closed to enrolled members of the Community for purposes of protecting the privacy of the individual Licensee, but only after passage of a recorded motion for executive session. At regular meetings the Commissioners shall deal with the routine business and affairs of the Commission, including but not limited to:

- (a) Consideration of applications, and the accompanying background information required by this Ordinance as part of the application process;
- (b) Meeting with officials of the National Indian Gaming Commission, State of Minnesota, or any other law enforcement agency or office for purposes of ensuring compliance with or enforcement of this Ordinance, or for purposes of pursuing possible criminal violations related to gaming, which violations occurred upon or are related to gaming conducted on property under the control of the Shakopee Mdewakanton Sioux (Dakota) Community.

- (c) To receive oral reports of alleged criminal violations, which violations occurred upon or are related to Gaming conducted on property under control of the government of the Shakopee Mdewakanton Sioux (Dakota) Community.
- (c) Deliberations of matters related to licensing decisions, and the factual determinations related to those decisions;
- (d) Examination of financial or other data required to be reviewed by the Commission under the provisions of this Ordinance, and which may be of a confidential nature;
- (e) Consultation with legal counsel.

A record shall be made of all proceedings of the Commission, whether in open or executive session, which record shall reflect all factors considered by the Commission; such record shall be available to the affected party and shall be made available to enrolled members only with the consent of the affected party or by order of the Shakopee Mdewakanton Sioux (Dakota) Community Court by request of an enrolled member.

The Commission shall hold special meetings, pursuant to the notice requirements defined above, at any time the Commission deems necessary and appropriate, which may be open only to NIGC members or their authorized representative, and to enrolled members of the Community for the purposes of:

- (a) Holding a hearing prior to a final action denying a license, revoking a license, suspending a license, or placing a limitation on a license;
- (b) Holding hearings related to the promulgation of substantive and procedural regulations under the authority granted the Commission by this Ordinance; and
- (c) Holding hearings related to violations of this Ordinance which may be punishable by civil penalties or other sanctions.

Following special meetings which are open only to NIGC members or their authorized representatives and enrolled members of the Community, the Commission may hold closed special meetings for the purposes of deliberations regarding the decision to be made concerning the matters presented at the public meetings. However, the requirement that there be a record established also applies here.

#### **SECTION 204. CONFLICT OF INTEREST.**

No Member of the Commission, including the Commissioner of Gaming, employee of the Commission, or any person serving in any capacity as agent of the Commission, or any member of his/her family living with him/her, may have a financial interest, other than that financial interest resulting from Community membership, in any Gaming business or enterprise, or in any Gaming contractor, vendor, or any person providing services to Gaming, or accept any gift or thing of value from a Gaming contractor. Nothing in this section shall prohibit a member of the Commission, or other person subject to this section, from having a financial interest in any Gaming business or enterprise operating pursuant to the provisions of this Ordinance, which interest derives from their status as a Community member, including any distribution payments derived from profits made by such gaming business or enterprise.

The Commissioner of Gaming and the Members of the Commission shall be restricted from Gaming in any manner in any facility, place, enterprise, or establishment which is subject to regulation pursuant to the provisions of this Ordinance.

#### **SECTION 205. POWERS OF COMMUNITY GAMING COMMISSION.**

The Community Gaming Commission may exercise any proper power and authority necessary to perform the duties and discharge the responsibilities with which the Commission is charged. Those powers include, but are not limited to, the power to:

- (a) Receive and process all license applications, and issue licenses to all gaming operations, persons, individuals, and distributors who are required to be licensed by this Ordinance and who qualify for such licensure, and to notify the National Indian Gaming Commission of the issuance of such licenses;
- (b) To conduct or cause to be conducted background investigations of all Primary Management Officials and Key Employees of the involved Gaming Enterprise, as well as background checks of the members of the Commission and any employees of the Commission;
- (c) To deny any License application, and to limit, suspend, restrict, or revoke any License upon a finding that the provisions of this Ordinance or other applicable law have been violated
- (d) Definition of all contracts to:
  - (1) Determine whether the transaction documents are a contract;
  - (2) Determine whether the contract is or is not related to Gaming, and if related to Gaming, whether it is subject to the provisions of this

Ordinance; and

- (3) Whether the non-Tribal party to the contract must be licensed under the provisions of this Ordinance.

Nothing in this Section shall prevent a Gaming Enterprise from engaging in a transaction which might involve Gaming related contracts under the provisions of this Ordinance, or any regulations promulgated hereunder, but it shall be the duty of the Gaming Enterprise to notify the Commission of transactions which might be Gaming related, and request of the Commission a determination regarding whether the transaction is or is not a gaming related contract.

- (e) Collect license fees;
- (f) Consult with Tribal General Legal Counsel to advise the Commission as needed, but in those situations where a member of the Commission has been removed for cause by the General Council and that action is on appeal to the Tribal Court, the Commission member may be represented by independent legal counsel;
- (g) Inspect and examine, during regular business hours, all premises where Gaming is conducted or Gaming devices or equipment is sold or distributed;
- (h) Inspect, review, and photocopy all Gaming operations contracts, papers, records, books, or other pertinent documents relating to the conduct of Gaming, when deemed necessary for the purpose of determining compliance by the Licensee with the provisions of this or any related Ordinance, or to ensure compliance by the Licensee with the provisions of any contract or agreement related to Gaming, or to ensure the enforcement of this or any related Ordinance, or to determine the suitability of any Applicant for a License;
- (i) To hold hearings, and to require Licensees or License Applicants to appear and testify under oath regarding matters related to the enforcement of the provisions of this Ordinance, complaints received about matters within the purview of the Commission to address, actions by the Commission regarding licenses, or any other matters over which the Commission has authority;
- (j) To promulgate such regulations as are deemed necessary for the purpose of giving effect to the provisions of this Ordinance, including but not limited to:
  - (1) substantive rules concerning: the issuance, suspension, or revocation of Licenses; the conduct, operation, and oversight of gaming activities; the investigations and inspections into the conduct of gaming and the

actions of Licensees; the maintenance of gaming equipment; and any other matters with which the Commission must deal to fulfill its responsibilities and which are deemed necessary by the Commission to further compliance with this Ordinance; and

- (2) procedural rules concerning: the conduct of hearings; the administration of the daily affairs of the Commission; investigations and inspections of gaming, or persons involved with or licensed in connection with Gaming; the processing and disposition of complaints which may be received by the Commission from members of the Community or the general public regarding matters within the authority of the Commission; and any other rules deemed necessary by the Commission to further compliance with this Ordinance;
- (k) To impose civil penalties or other sanctions as is deemed appropriate by the Commission in compliance with the provisions of this Ordinance; and
- (l) To retain staff, and to delegate, from time to time, such powers as the Commission deems necessary to fulfill the duties of the Commission, provided that the power to vote as described in Section 203 shall not be delegated.

#### SECTION 206. DUTIES OF COMMUNITY GAMING COMMISSION.

It shall be the responsibility of the Commission to ensure that all duties of the Commission are discharged in a manner which assures compliance with this Ordinance and all other applicable laws of the Shakopee Mdewakanton Sioux (Dakota) Community, the United States, and the State of Minnesota. The duties of the Commission shall include:

- (a) Processing all License applications, making determinations regarding the suitability of persons for licensing, issuing Licenses to those persons qualified for such licensure, and notifying the NIGC of the issuance of such Licenses as required by 25 U.S.C. § 2701, *et. seq*;
- (b) Denial, limitation, revocation, rescission or suspension of any License when deemed necessary under the provisions of this or any related Ordinance or Law of the Shakopee Mdewakanton Sioux (Dakota) Community, or any applicable Federal or State law;
- (c) Conducting, or causing to be conducted, background investigations on all Primary Management Officials and Key Employees of the involved Gaming Enterprise, as well as background checks of the members of the Commission and any employees of the Commission;
- (d) Printing and making available all necessary license application forms, together

with the appropriate licenses;

- (e) Collection of License fees imposed pursuant to the terms of Section 205(j)(1) of this Ordinance;
- (f) Inspection and examination of all premises where Gaming is conducted or gaming devices or equipment are sold or distributed;
- (g) Inspection, review, and oversight of all Gaming contracts to ensure compliance with the terms of this Ordinance; and inspection, review and examination of all records, books, and financial documents relating to the conduct of Gaming to determine compliance by the Licensee with the provisions of this Ordinance or any other applicable law;
- (h) Definition of all contracts to:

(1) Determine whether the transaction documents are a contract; and

(2) determine whether the contract is or is not related to gaming, and, if related to gaming, whether it is subject to the provisions of this Ordinance; and

(3) whether the non-Tribal party to the contract must be Licensed under the provisions of this Ordinance.

Nothing in this Section shall prevent a Gaming Enterprise from engaging in transactions which might involve a Gaming related contract under the provisions of this Ordinance, or the regulations promulgated hereunder, but it shall be the duty of the Gaming Enterprise to notify the Commission of such a transaction and request from the Commission a determination that the transaction is or is not a Gaming related contract.

- (i) Requiring, and causing to be conducted annually, outside independent audits of all Gaming activity as required by IGRA; requiring, and causing to be conducted annually, outside audits of all contracts related to the conduct of Gaming, with the exception of those contracts for legal and accounting services, whether those contracts be for supplies, services, concessions or other subject matter which the Commission determines to be related to Gaming, and which are for a contract amount in excess of \$25,000.

- \* (j) Promulgation of such substantive and procedural regulations as the Commission deems necessary to administer the provisions of this Ordinance, but only upon thirty (30) days notice of the proposed rulemaking action, which notice shall be published and posted at the Gaming Enterprise, mailed to all

eligible voting members of the General Council, posted at the Community Center, and provided in written form to the board of directors of any Licensed Gaming Establishment.

(1) The notice shall specify the purpose of the proposed regulation, the draft language of the proposed regulation, and the factors the Commission has considered in its determination to enact the proposed regulation, and an address at which the Commission shall receive comments pursuant to the provisions of (2), below;

(2) During the notice period the Commission shall receive comments regarding the proposed regulation at the Commission offices, or at a designated mailing address.

(3) The comments received by the Commission shall be considered by the Commission at a meeting open to the public, and the Commission shall make a final determination regarding the need for the proposed regulation, the language of the proposed regulation, and the effective date of the proposed regulation on the basis of all the information available to the Commission.

(4) Within thirty (30) days of the effective date of the proposed regulation adopted by the Commission, a General Council vote concerning the proposed regulation, as enacted by the Commission, may be requested. To initiate the review by the General Council, 1/3 of the eligible voting members of the Community shall sign a petition requesting such a vote, which petition shall be submitted to the Business Council. The Business Council shall thereafter schedule, within thirty (30) days of receipt of the petition, a vote on the regulation. The petition shall state the objections to the proposed regulation, the date of filing, and list the names, together with the signatures, of the persons requesting the General Council vote. The regulation shall thereafter become effective only upon approval by a majority of a quorum of the voting members of the General Council, however, if a quorum is not present at the General Council meeting scheduled for the vote on the contested regulation, then the regulation shall become effective without further action by the Commission.

- (k) Consultation with Tribal General Legal Counsel to advise the Commission as needed;
- (l) Imposing civil penalties or other sanctions, including seizure of property, after a hearing as provided by this Ordinance;
- (m) Defending this Ordinance in any court with proper jurisdiction or before any federal agency, however, any reference herein to legal action shall not be



deemed a waiver of the Community's sovereign immunity from suit.

- (n) Proposing an annual budget for Commission operations pursuant to the provisions of this Ordinance; remuneration to or salaries for the Commissioner and Commission members shall be set by the Business Council and such amount shall be reflected in the proposed budget. The Business Council's determination shall be subject to notice and review by the General Council.
- (o) The performance of any other duties required in the Ordinance or any amendments thereto.

**SECTION 207. PLAN OF ORGANIZATION, DELEGATION OF AUTHORITY.**

The Community Gaming Commission may organize any functional committees or divisions from among its members as may be necessary, and may from time to time alter such plan of organization as may be expedient, and may delegate all powers vested in the Commission by this Ordinance, with the exception of the power to vote, to the divisions or committees so formed.

**SECTION 208. DELETED**

**SECTION 209. HEARING.**

- (a) Opportunity for Hearing. The Community Gaming Commission shall afford an applicant for a license an opportunity for a hearing prior to a final action denying such application and shall afford a licensee or any other person(s) subject to this Ordinance, the opportunity for a hearing prior to taking final action resulting in termination, revocation, suspension, or limitation of a license, or the imposition of any sanctions which the Commission is authorized to impose under Sections 214, 215, and 216, and which the Commission deems proper.
- (b) Hearing Procedures. Such hearing shall be conducted as an adjudicatory proceeding, with an opportunity given the affected party to be represented by counsel, present testimony, exhibits, and any other evidence which the affected party feels will support the party's position. In all cases such hearings shall be held on the record, and, in cases of license denial, witnesses may be required to testify under oath. In all cases which might result in the imposition of sanctions, testimony shall be taken by the Commission under oath.
- (c) Emergency Action, Suspension Without Hearing. However, the Commission may summarily suspend temporarily or may extend suspension of a license for

up to fifteen (15) days without a hearing in those cases where such extraordinary action is essential to protect the public safety or the integrity of Gaming conducted on the Shakopee Mdewakanton Sioux (Dakota) Reservation. Such action shall be taken only in those emergency cases where there is a clear need for these extraordinary measures. In cases where a license is suspended prior to a hearing, an opportunity for a hearing shall be provided which complies with the provisions of this Ordinance.

**SECTION 210. COMMUNITY GAMING COMMISSION FINDINGS.**

Whenever upon specific factual finding the Community Gaming Commission determines that any person has failed to comply with the provisions of this Ordinance, any regulation promulgated hereunder, or other applicable law, the Commission shall make a written certification of the specific findings of fact, with a copy thereof to the subject or subjects of that determination. Unless waived in writing by the subject or subjects of that determination, the Commission shall, after notice provided within five (5) days, hold a hearing. The hearing shall be held within not less than thirty (30) days and not more than sixty (60) days thereafter, at which time the subject shall have an opportunity to be heard and present evidence.

**SECTION 211. DELETED**

**SECTION 212. COMMUNITY GAMING COMMISSION DETERMINATION.**

Following such hearing the Community Gaming Commission shall, within seven (7) days, reach a determination concerning the accuracy of the preliminary certification of facts and whether the License in question should be granted, continued, suspended, revoked, conditioned, or limited and whether any other action recommended to or by the Commission including, but not limited to, forfeitures or fines should be taken.

**SECTION 213. WRITTEN DETERMINATION PROVIDED.**

Within three (3) days following its determination the Commission shall inform the subject, in writing, of that determination.

**SECTION 214. VIOLATIONS AND SANCTIONS.**

Any person who engages in Gaming or Gaming related activities on property subject to the provisions of this Ordinance without a gaming license, or in violation of the terms imposed by a Gaming License, or in violation of the terms of a suspension imposed by the Commission on that Gaming License, or in violation of any other provision of this Ordinance and regulations promulgated hereunder, or amendments hereto, shall be in violation of the Ordinance. This provision shall apply to any person who is upon any premises licensed by this Ordinance without the consent of the licensee and/or the

Shakopee Mdewakanton Sioux (Dakota) Community Gaming Commission.

Violation of any provision of this Ordinance or any of the Gaming Commissions's Regulations by a Licensee, his or her agent, or employee:

- (a) Shall be deemed contrary to the public safety, good order, and general welfare of the Community and its members;
- (b) May be grounds for refusing to grant or renew a License, or for suspension or revocation of a License;
- (c) May be grounds for filing a complaint with the NIGC, may be grounds for filing criminal charges and/or a civil action in a court of competent jurisdiction on behalf of the Community Gaming Commission; and
- (d) In the case of a Licensee being convicted of a felony, shall be grounds for immediate revocation of the License.

Acceptance of a License or renewal thereof or condition imposed thereon by a Licensee constitutes agreement on the part of the Licensee to be bound by all the regulations and/or conditions of the Community Gaming Commission and by the provisions of this Ordinance, and the regulations promulgated hereunder, and as the same may hereafter be amended. It is the responsibility of the Licensee to keep him/herself informed of the contents of all such regulations, provisions, and conditions, and ignorance thereof will not excuse the violations.

Any person in violation of this Ordinance shall be subject to sanctions under this Ordinance. The following provisions shall govern the response of the Commission to violations:

- (a) Each day of violation may constitute a separate count or violation of this Ordinance. Separate violations shall be prosecuted as separate offenses before the Gaming Commission or a court of competent jurisdiction;
- (b) All property used in each and every separate violation of this Ordinance may become the property of the Community. All property used in each and every separate violation of this Ordinance may be subject to forfeiture following a hearing;
- (c) Violators may also be required to pay court costs, storage fees, and auction or sales fees;
- (d) Persons may be excluded or ejected from Gaming Enterprises or prohibited from trespassing on premises licensed under this Ordinance, and may be subjected to civil penalties or sanctions for violating the provisions of Section

216;

- (e) Licenses may be suspended, revoked, or limited and/or Gaming Establishments may be forcibly closed;
- (f) Winnings found to have been received in violation of this ordinance may be confiscated and may, following a hearing, be forfeit and become the property of the Community;
- (g) Civil penalties may be imposed as additional sanctions, in the amounts prescribed and in accordance with the hearing procedures set forth in this Ordinance.

Any of the above actions may be taken at the discretion of the Gaming Commission.

#### **SECTION 215. CIVIL PENALTY PROVISIONS.**

It shall be a civil violation of the laws of the Shakopee Mdewakanton Sioux (Dakota) Community to disobey the provisions of this Ordinance or any regulations promulgated by the Community Gaming Commission, or any proper order issued under the authority of this Ordinance. Any person or Licensee found to be guilty of such violation may be assessed a civil penalty. Civil penalties may be imposed pursuant to and in compliance with the provisions of this Ordinance, and any regulations promulgated by the Commission under the authority provided in this Ordinance. Civil penalties may be imposed in addition to the imposition of any other sanctions permitted under this Ordinance, including but not limited to suspension or revocation of the Gaming License for a period not to exceed one year. Civil penalties may be imposed up to the amount of \$25,000.00 for each individual violation.

#### **SECTION 216. EXCLUSION OR EJECTION OF CERTAIN PERSONS FROM GAMING ESTABLISHMENTS.**

- (a) Exclusion or Ejection of Persons Permitted. The Community hereby declares that the exclusion or ejection of certain persons from licensed gaming establishments, facilities, enterprises or places is necessary to carry out the policies of this Ordinance and to maintain the health, welfare, safety and security of the public, as well as to protect the integrity of gaming conducted on the Shakopee Mdewakanton Sioux (Dakota) Reservation.
- (b) Notice To Gaming Enterprise. In the furtherance of the policies of this section the Commission may provide for any Gaming Enterprise, facility, or place a list of persons who are not permitted to enter or be on the premises, and who may be forcibly excluded or ejected therefrom, including any person whose presence poses a threat to the Shakopee Mdewakanton Sioux (Dakota) Community, the State of Minnesota, or to the integrity of licensed gaming