June 27, 2008

Mr. Jeffrey Nelson
Senior Attorney
National Indian Gaming Commission
1441 L Street, N.W.
Suite 9100
Washington, DC 20005

Dear Mr. Nelson:

This letter is in response to your invitation to submit a response as to whether or not the existence of an intergovernmental agreement between the County of DeKalb and the Prairie Band Potawatomi Nation should affect your pending opinion concerning whether or not the Tribe may conduct gaming activities on its property in DeKalb County pursuant to the Indian Gaming Regulatory Act.

The County of DeKalb, by entering into the Intergovernmental Agreement with the Tribe, did not intend to positively or negatively influence the question pending before the NIGC. Furthermore, the existence of the Intergovernmental Agreement was not intended as an endorsement of gaming activities on the property. Instead, the County of DeKalb proactively entered into the Intergovernmental Agreement to provide a responsible and comprehensive framework to address the myriad of issues that would result should the NIGC determine that gaming activities could occur on the site pursuant to IGRA. The County of DeKalb strongly believed it was important to address those issues in advance of a decision by the NIGC rather than wait until after such a decision was made when the negotiating positions of the parties may have been significantly altered.

Section 4(4) of the Indian Gaming Regulatory Act of October 17, 1988, 25 U.S.C. § 2701, et seq., provides that gaming may be conducted on "lands within the limits of any Indian reservation," as the reservation existed as of 1988. The Prairie Band Potawatomie Nation claims

the Shab-ehnay Reserve is its "reservation" as that word is used in IGRA, and that and its fee land within the former Reserve qualifies for gaming under Section 20(a).

The question for the NIGC is whether the Treaty of Prairie du Chien of 1829 created a legal reservation. This requires a legal determination based solely on the Treaty language and federal law. The County IGA is a modern document and cannot be considered in this determination. Moreover, the County intended, and the IGA provides, that the IGA is not effective until and unless the federal government approves the site for gaming.

If the NIGC determines that the Reserve is a reservation, the process is far from complete. First, there must be a further assessment of whether the land can be used for gaming in light of the Supreme Court ruling in the Town of Sherrill case since it was not in tribal ownership for a long period of time, and a positive decision in favor of the Nation is far from certain in light of the decision. Second, there must be resolution of the current dispute between the NIGC and Interior as to which is the proper decision-maker for this determination before any of these decisions can be made.

Please advise if you should desire any additional information.

Sincerely,

Ronald G. Matekaitis
DeKalb County State's Attorney

c: Christine Johnson
Larry Anderson