



HO-CHUNK NATION LEGISLATURE

Governing Body of the Ho-Chunk Nation

HO-CHUNK NATION LEGISLATURE DENIAL OF PETITION FOR REVIEW OF GAMING COMMISSION DECISION AND ORDER IN CASE NO. WV09-013 RESOLUTION 1-19-10 F

- WHEREAS,** on November 1, 1994, the United States Secretary of the Interior approved a new Constitution for the Ho-Chunk Nation, formerly known as the Wisconsin Winnebago Tribe; and
- WHEREAS,** the Ho-Chunk Nation ("Nation") is a federally recognized Indian Tribe, pursuant to the Indian Reorganization Act of 1934; and
- WHEREAS,** Article V, Section 2(a) of the Ho-Chunk Nation Constitution ("Constitution") gives the Ho-Chunk Nation Legislature ("Legislature") the power to make laws, including codes, ordinances, resolutions, and statutes; and
- WHEREAS,** Article V, Section 2(f) of the Constitution grants the Legislature the power to set the salaries, terms and conditions of employment for all governmental personnel; and
- WHEREAS,** Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation; and
- WHEREAS,** Article V, Section 2(i) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals; and
- WHEREAS,** Article V, Section 2(x) of the Constitution grants the Legislature the power to enact any other laws, ordinances, resolutions, and statutes necessary to exercise its legislative powers delegated by the General Council pursuant to Article III including but not limited to the foregoing list of powers; and
- WHEREAS,** the Legislature adopted the *Amended and Restated Gaming Ordinance* (5 HCC § 1), which was last amended by the Legislature by Resolution 1 – 28 – 08 D and subsequently approved by the National Indian Gaming Commission on February 7, 2008; and
- WHEREAS,** Section 13, subparagraph a. of the *Amended and Restated Gaming Ordinance* (hereinafter "Ordinance") establishes the Ho-Chunk Nation Gaming Commission as "an independent regulatory authority responsible for oversight, training, and enforcement of gaming regulatory matters under Ho-Chunk Nation law."; and
- WHEREAS,** Section 14 of the Ordinance provides the Commission the power and responsibility to enforce the Ordinance, and to ensure compliance with the Ordinance, IGRA, the Compact, any licenses issued, and any orders of the Commission or Legislature; and
- WHEREAS,** in accordance with section 17, subsection b (1)(c), of the Ordinance, key employees, as designated by the Ho-Chunk Nation Legislature, are required to obtain a gaming license, and to maintain the standards required by the Ordinance in obtaining such license, as a condition to employment in any gaming operations on the Nation's lands; and

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- WHEREAS,** in accordance with section 17, subsection c (1), of the Ordinance, no license will be issued except upon sworn application file with the Commission, in such form as may be prescribed by the Commission, containing a full and complete showing of the applicant's good character and reputation and financial responsibility; and
- WHEREAS,** in accordance with section 17, subsection c (2), of the Ordinance, no person will be employed in the operation or conduct of gaming, nor will the Nation permit a gaming-related contractor to employ any person in the course of performance under the contract, if that person has been convicted of, or entered a plea of guilty or no contest to, any of the following offenses, unless the person has been pardoned: (a) Any felony conviction within the ten (10) years prior to the application; (b) Any conviction for any gaming-related offenses; (c) Any conviction for fraud misrepresentation, theft, or deception in any form; or (d) A violation of any provision of Chs 562 or 565, Wis. Stats., a rule promulgated by the Wisconsin Division of Gaming, this Ordinance or any other tribal law regulating or prohibiting gaming; and
- WHEREAS,** in accordance with section 17, subsection c (3), of the Ordinance, no person will be employed in the operation or conduct of gaming, and the Nation will not permit a gaming-related contractor to employ any person in the course of performance under the contract, if that person has been determined by the Legislature or the Commission to be a person whose prior activities, criminal record, if any, or reputation, habits or associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of gaming or the carrying on of the business and financial arrangements incidental thereto; and
- WHEREAS,** Section 17, subsection c (4), of the Ordinance grants the Legislature the authority to waive by Legislative Resolution any requirements set forth in section 17, subparagraph c (2) for any applicant when the applicant has demonstrated on the record before the Ho-Chunk Nation Gaming Commission evidence of sufficient rehabilitation and present fitness to hold a license; and
- WHEREAS,** on August 18, 2009 the Gaming Commission convened Preliminary Waiver Hearing Case No. WV09-013, for Daniel G. Topping, Jr. and found that:
- 1) Dispositions for charges/convictions, along with proof of compliance with court ordered conditions or judgments, as applicable, were provided; and
 - 2) Letters of reference/recommendations attesting to Mr. Topping's good character and financial responsibility were provided; however,
 - 3) Based on the testimony offered in Preliminary Waiver Hearing, Case No. WV09-013, Mr. Topping did not establish evidence of sufficient rehabilitation and present fitness to hold a gaming license. Specifically, Mr. Topping's testimony contained numerous unsubstantiated and non-credible statements inconsistent with accepted hearing exhibits regarding the events that took place in Milwaukee County Court Case No's. 2002CF006351 and 2003CM001607. The Gaming Commission cannot recommend to the Legislature that a waiver be granted; and
- WHEREAS,** based on these findings the Commission concluded that Mr. Topping failed to demonstrate proof of sufficient rehabilitation and present fitness to hold a gaming license; therefore, a recommendation to grant a waiver could not be submitted by the Commission to the Ho-Chunk Nation Legislature for their consideration.
- WHEREAS,** Section 12, subparagraph e. of the *Amended and Restated Gaming Ordinance* provides "[t]he Ho-Chunk Nation Legislature will have the jurisdiction to review all decisions of the Commission denying a License under Section 17, subparagraph c (2) where an applicant has petitioned for such review in accordance with the provision set forth in Section 12, subparagraph (f)."; and

WHEREAS, consistent with the requirements of the Ordinance, Mr. Topping filed a petition for review with the Legislature and the Gaming Commission responded to his petition and transmitted a record of its decision; and

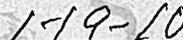
WHEREAS, pursuant to section 12, subparagraph f. (3) of the *Ordinance*, the Legislature within 30 days of receipt of Commission's record must consider the petition and either grant or deny the petition for review.

NOW THEREFORE BE IT RESOLVED, that the Legislature, pursuant to its Constitutional authority, denies the petition for review.

CERTIFICATION

I, the undersigned, as Tribal Secretary of Ho-Chunk Nation, hereby certifies that the Legislature of the Ho-Chunk Nation, composed of 13 members of whom 13 constituting a quorum were present at a meeting duly called and convened and held that on the 19th day of January, 2010, that the foregoing resolution was adopted at said meeting by an affirmative vote of 8 members, 3 opposed, and 2 abstaining, pursuant to the Article V, Section 2(a) and (x) of the Constitution of the Ho-Chunk Nation approved by the Secretary of the Interior on November 1, 1994, and that the foregoing resolution has not been rescinded or amended in any way. I further certify that this is a verified copy of said resolution.


Hope B. Smith, Tribal Secretary


Date

