



# PAWNEE NATION GAMING COMMISSION

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Pawnee Business Council  
President W. Bruce Pratt  
PO Box 470  
Pawnee, Oklahoma 74058

RE: Final Report on Investigation

Dear President Pratt;

The Pawnee Nation Gaming Commission met on Monday, July 23, 2018 and reviewed an investigation from a situation involving personnel at Pawnee Tribal Development Corporation and the Tee Pee Casino facility in Yale, Oklahoma. Based on the investigation, it was determined our initial findings of the financial irregularities are complete. Our final report on these initial findings is enclosed in full.

Based on the evidence and testimony submitted, the Pawnee Nation Gaming Commission has taken action against one individual involved in this situation. The appeals procedure regarding this action has been completed and considered final and permanent. However, there are still many questions that remain regarding this individual's influence within the assigned area of responsibility over the past several years. This investigation is complete only in regard to the situation that was discovered and not any subsequent finding.

The findings enclosed within are concerns regarding current law, rules, and regulations. The findings contained within the final report are, at this time, unresolved. We look forward to working with Pawnee Tribal Development Corporation and Pawnee Business Council to resolving these findings.

Please feel free to contact myself, or our Chairman, Chris McCray, at the number listed above if you have any questions regarding this action.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur L. Attocknie".

Arthur L. Attocknie  
Director

Pawnee Nation Gaming Commission

In May 2018, in an effort to retrieve required reports, an e-mail request was made to Roger Smith and his accounting team. These reports were continually being made late. An effort was made to impress upon Pawnee Tribal Development Corporation (PTDC) Leadership that these reports were required to be submitted by the 15<sup>th</sup> of the next month. On May 16, the reports for March were submitted. An anomaly was noticed about the Vendor Aging Summary report. This report was compared to previous reports received. The report showed a monthly underpayment of \$8,000 to one vendor, Robert White, for several years. The total at that time showed a balance of \$412,000. Upon initial consideration, the assumption was made that this report showed an accounting mistake. Inquiries were made to various individuals, including Accounting Department personnel at PTDC, Joseph Eve representatives, SmithHarrison LLP representatives, and the vendor himself. All of the information gathered confirmed that a single payment was not made to the vendor for over four (4) years. Information obtained also revealed that this was a known arrangement between the CEO Roger Smith and the vendor. Information obtained also revealed that this arrangement was implemented as a result of possible unethical and/or criminal activity.

It was revealed through official Pawnee Nation Gaming Commission (PNGC) hearings and interviews that the arrangement was implemented to benefit the vendor because of a tax situation the vendor was experiencing. This information was obtained from former and current PTDC Board of Directors (Board) Members, Accounting and PTDC personnel through the course of an official investigation. There were findings of violations and through these hearings, Notices of Violations have been communicated with the recipients, responses have been received, and a conclusion has been reached in each Violation. A Notice of Violation is just the beginning of the resolution. Violations, or findings of violations, can be resolved a number of different ways. Continued or repeat violations are unacceptable. If resolution is not achievable, PNGC must take measures to bar the licensee from casino operations. Exclusion and removal from gaming activities can also be achieved in a number of different methods. This can result in bans from gaming facilities and exclusion from the responsibility and authority of the decisions regarding gaming facilities and activities.

The actions that have resulted were revocations and suspensions from Gaming Activities. Revocation is a denial of participation in gaming activities indefinitely. Suspensions are activities that separate or remove a licensee's ability to participate in Gaming Activities for a definite period of time. Some suspensions last longer than others, but most suspensions are implemented or imposed to keep the integrity of the Gaming Activities and allow them to continue to operate. This allows for an investigation to collect evidence and information without completely disrupting normal business. It does affect one's ability to fulfill their job duties so there is a process by which the licensee can utilize to address the allegations. This process is regulated by the Gaming Commission and Tribal Law. Because the Gaming Commission does not regulate criminal activity, all information regarding Criminal activity has been referred to the Pawnee Nation Attorney General's office. The following information was made known in official hearings:

- Pawnee Tribal Development Corporation is currently in default on the Lease Agreement at the Tee Pee Casino Facility.

- Roger Smith, on several occasions, admitted to having knowledge of this situation since December of 2013. Roger Smith was unaware of JR's knowledge of the entire situation.
- Roger Smith informed the Board, in an official meeting, in 2014 and again in 2015. At the time, several Board members no longer serving were present but Andrea Bowen, Linda Jestes, and Laura Melton were named as being present during this notification.
- Roger Smith admitted, during a license revocation hearing on July 9, 2018, that he had no intention of notifying the PNGC, or PBC, of this situation. He admitted to seeking JR's assistance early in 2018 to rectify a situation with Jeff White.
- Richard Spears admitted, during a license suspension hearing on June 27, 2018, to having knowledge of this situation since January 2014. Richard Spears admitted he did not disclose this situation to anyone.
- Arthur "JR" Thompson admitted, on several occasions, to having knowledge of this situation prior to his appointment to the PTDC Board of Directors. He admitted he did not disclose any conflicts of interest or his prior knowledge of this situation to the Board or Council. JR testified that Roger Smith sought his assistance early in 2018 with a situation with Jeff White.
- Accounting Department knew of this situation since 2014, but were told multiple times that Roger Smith was in charge of the arrangement.
- Nik Wong of Joseph Eve knew of this arrangement in 2014. Joseph Eve started issuing supplemental reports regarding the unusual amount of Accounts Payable at Tee Pee beginning August 2017. These reports were not disclosed to the PTDC Board.
- Joe Smith and Adam Smith of SmithHarrisonLLP knew of this arrangement in 2015. SmithHarrison advised Roger Smith the situation is not ordinary and should be resolved.
- Jeff White admitted he is currently under audit by the IRS. Jeff admitted to not wanting to claim the payments in 2013 and 2014 as income, because of tax implications.

The information the PNGC has obtained in this situation has resulted in many areas of deficiency or instances of violations. To enumerate specifically, the PNGC acknowledges the finding of the following deficiencies and violations:

1. As excerpted from Pawnee Nation Gaming Ordinance "Section 10.1.6 "No person shall violate any provision of this Ordinance, nor any rule, regulation or order that the Commission may adopt or issue, nor any provision of the Act, or regulation adopted by the Commission."  
As excerpted from Pawnee Nation Gaming Commission Tribal Internal Control Standards: "4a. Casino Compliance (b)(1)(i) "Negligently failing to take reasonable precautions or action to prevent incidents which reflect on the repute of the Pawnee Nation and act as a detriment to the development of the Gaming Operation" & (viii) "Failing to comply with or make provision for compliance with all Tribal, Federal and State laws and regulations pertaining to the operation of Gaming Activities;"

PTDC has violated Tribal Law by violating the Tribal Internal Control Standards (TICS). TICS are required by National Indian Gaming Commission's (NIGC) Minimum Internal Control Standards (MICS). The PTDC Board has failed in its charge to exercise adequate and appropriate control over Management Personnel. This is made known by the fact that PTDC

has failed to uphold its responsibilities within contracts and lease agreements. To this date, PTDC has not fulfilled its responsibilities pursuant to the Lease Agreement at the Tee Pee Casino Facility. Adequate control would include reporting on actions taken by management and, if necessary, intervene or adopt those actions. It was discovered on multiple occasions that PTDC Board Members did not question or review the actions by Roger Smith, Chief Executive Officer of PTDC. Furthermore, it was discovered through hearings and interviews that PTDC Boards Members had current and prior knowledge of this arrangement between the CEO and Owner/Vendor Jeff White. Appropriate control would be implementing risk management practices within the System of Internal Control and Policies of the PTDC Management and the entire company. Appropriate control would include a definite segregation of duties and wholesome reporting about the PTDC's Actions and Financial Health. Neither was being accomplished according to numerous interviews and hearings. In fact, Accounting Departments inquiries and reporting was suppressed and financial reporting was manipulated to cater to different styles or types of reports which included or excluded important data. Negligence is clear; the opportunity to present data was there but never executed by any at the Management or Board levels. Opportunity existed for full disclosure by Management and Board Personnel, but the opportunity to perform their fiduciary duty was never seized or occurred.

It is recommended that PTDC fulfill its existing responsibilities within the Tee Pee Casino Facility Lease Agreement immediately. By not fulfilling the lease agreement, PTDC is violating TICS by "Negligently failing to take reasonable precautions or action to prevent incidents which reflect on the repute of the Pawnee Nation and act as a detriment to the development of the Gaming Operation".

It is also recommended that PTDC overhaul its policy and procedure concerning management reporting and decision-making capability. A clear line of authority and responsibilities needs to be published and implemented with respect to those areas within Management and Board. A periodic review of these policies and procedures needs to be published and enforced by the Pawnee Business Council (PBC) and PNGC. Mandatory full disclosure to both the PNGC and the PBC about updates and revisions needs to be implemented immediately. A plan of action concerning the next year and planned updates and revisions needs to be submitted for review immediately.

2. As excerpted from the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq.: "(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that—
  - (A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;
  - (B) net revenues from any tribal gaming are not to be used for purposes other than—
    - (i) to fund tribal government operations or programs;
    - (ii) to provide for the general welfare of the Indian tribe and its members;
    - (iii) to promote tribal economic development;
    - (iv) to donate to charitable organizations; or
    - (v) to help fund operations of local government agencies;"

For years the PTDC leadership has dodged reporting its true financial status and health. The PNGC was created to keep the casino facilities accountable for their profits and losses. The PNGC created rules and regulations to help facilitate integrity and transparency. Over the past several years, the PNGC, PBC, and the PTDC Board have continually struggled with each other to find a mutually beneficial balance of authority and respect. The PNGC continually reviewed its rules and regulations to combat this perceived threat of instability. In 2014, the PNGC published the first of its revised rules and regulations. While not comprehensive, it was the first attempt by any of the entities to resolve several disputes, including allegations of over-regulation and abuse of authority. Several more rules have since been adopted, addressing concerns of both the Casino Facilities and the PNGC. Not all revisions have been negative or punitive in nature; the PNGC, on its own accord, took on the task of revising and updating the Gaming Ordinance, the Law which governs Gaming Activities within the Pawnee Nation Jurisdiction.

It has been discovered throughout this situation that there was inadequate financial reporting about the true financial health of the Gaming Activities within the Pawnee Nation. This has been allowed because the Gaming Activities have customarily been contained within the Economic Development arm of the Pawnee Nation. Gaming Activities and the associated casino facilities within Pawnee Nation are not in a developing stage. The Pawnee Nation is very familiar with Gaming and its own activities. Because there is no leadership or guidance within the Pawnee Nation on how to spend its Gaming Revenue, there has been a long, complex, and burdensome battle over these coveted dollars. A RAP will finally give what the Pawnee Nation what it has sought for years; control over it's Gaming Revenue.

A joint meeting was held, of which the agenda stated, Financial Reporting. A discussion took place that surrounded a clearer picture of the financials of all three gaming facilities. The PNGC was increasingly agitated that the concerns were unheard. An agreement was made, but the PNGC left the meeting unsure of how to complete the objective. The PNGC had more internal discussions and proposed to create and implement a financial reporting rule. They had hoped to reach a more amicable resolution instead of imposing their will, however, the atmosphere had become more unstable due to economic strain. PTDC had reduced their projections, had reduced their expansion goals, but still kept spending money and keeping their operations normal. PNGC proposed and published their rule, and now was the time to enforce it.

In the beginning of 2018, the new financial reporting rule was active. The first attempt to receive reports with the new rule was made in February and included the past six months of 2017. These new reports included some specific reporting requirements but also excluded large amounts of data which was sent over anyway. The financial packet still includes unnecessary data, however, relevant data was being sent. The first time a clear financial picture was being presented to the Gaming Commission was in March of 2018. These reports were very similar to the Annual Audit in terms of relevant data. Finally, the Gaming Commission could retrieve and provide insight on the Gaming Activities within the Pawnee Nation. The Gaming Commission could finally feel confident in providing information to the PBC, or any of its required reporting entities.

It is recommended that PTDC, PBC, and PNGC create a Revenue Allocation Plan that addresses the five (5) approved uses of Gaming Revenue contained within IGRA. It is further recommended this Plan is approved by the Pawnee Business Council for ratification and enforced. The PNGC recommends this RAP be proposed immediately, with implementation within a year. It is imperative the Pawnee Nation receives all economic benefits derived from the Casino Facilities.

It is also recommended that PTDC and PBC develop and implement policies and procedures pursuant to the overall goal of providing transparency of the financial health of the Gaming Activities. It is further recommended that PTDC adhere to the current rules of the PNGC and provide timely reports to the Gaming Commission.

It is also recommended that PTDC develop a plan of action to create a separate division for Casino Operations and Facilities. In developing and executing the plan to separate the Casino Operations from the rest of the PTDC Businesses, it further achieves the RAP objectives by definite separation of Casino and other revenue. This helps achieve a cooperative objective between all entities; separation of PNGC regulation associated with non-gaming activities that take place within Casino Facilities and within Jurisdiction.

3. As excerpted from the Nation Indian Gaming Commission Regulations, 25 CFR part 556.: "§556.5 Tribal eligibility determination.

A tribe shall conduct an investigation sufficient to make an eligibility determination.

(a) To make a finding concerning the eligibility of a key employee or primary management official for granting of a gaming license, an authorized tribal official shall review a person's:

- (1) Prior activities;
- (2) Criminal record, if any; and
- (3) Reputation, habits, and associations.

(b) If the authorized tribal official, in applying the standards adopted in a tribal ordinance, determines that licensing of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, an authorizing tribal official shall not license that person in a key employee or primary management official position."

It has been discovered that unqualified or inexperienced individuals may be in positions of authority and responsibility and those individuals are not performing well. While performance is not something we make a point to act upon, violations and repeat violations are something we consider most critical. It has been discovered by PTDC Board Members, by their own admissions and others, are not qualified in critical areas of Gaming Activities. It was routinely discussed that PTDC Board Members do not and cannot understand the financial reports issued by Management. It was routinely offered as an excuse that PTDC Board Members are not engaged or complacent in the business and affairs of PTDC and Management. Because this is an issue that PNGC has discovered occurring routinely over the past several years, PNGC must make a notice to those charged with the duty to appoint these PTDC Board Members that this is

a deficiency and must be addressed. The PNGC does not recommend unqualified or inexperienced Board Members retain their PBC appointed positions.

It is recommended that PBC review qualifications for holding Board appointments, and to set a periodic review of those qualifications to ensure appropriate standards are being met.

It is also recommended that PBC review all PTDC Board Members and their individual qualifications to hold the appointment. It is critical that PBC periodically review the appointed individuals for satisfactory performance in their job duties. Likewise, PNGC recommends that PTDC Board Members periodically review the performance of its key employees and management team to ensure satisfactory performance.

It is also recommended that PTDC Board and Management review all gaming activity contracts and services for periodically to ensure benefits are to the Pawnee Nation and PTDC and performance is satisfactorily provided. Just as NIGC uses a hands off approach with Tribes in their Regulation, the PNGC has utilized a hands off approach when it comes to business performance. However, PNGC is remaining committed to the success of the Gaming Activities within Pawnee Nation land and will pursue its regulatory responsibilities to ensure Pawnee Nation's ultimate triumphs and victories.

#### 4. Communication

It has been discovered that PTDC, PNGC, and PBC do not communicate well with each other. In fact, this entire situation revealed the biggest deficiency within the Nation; the inability to communicate well. We respect all those involved with ensuring communication, but we do understand that such a great task can be difficult to overcome if not all team members are present. We understand there is multiple levels within each entity and that communication across all levels, vertically and horizontally, is ideal to achieve success.

Over the past few years, PNGC has attempted to work with PTDC but has had to resort to implementing Rules and Regulations to bring PTDC in compliance with satisfactory operating standards. Many of the rules which were left out had been reconsidered to bring back to implementation. A new rule however, was created that caused accountability to shift from all personnel to a structured hierarchy which was left to be defined by PTDC Leadership. This rule required that each facility maintain an organizational chart which defined supervisory personnel responsible for certain areas. Even today, each facility has a General Manager, but continually, PTDC left decisions up to the CEO for day to day activities, which included anything from purchasing bathroom supplies all the way to installment loans to finance expansion opportunities. It was never PNGC's intention to implement rules which over-step regulation, however, PTDC's implementation of the rules created ambiguity about who was supposed to operate and how in what fashion. In the cloudy and murky waters of how PTDC was operating, it was becoming increasingly clear that all of PTDC was Gaming, and yet, none of PTDC was gaming. The objective was not completed. Clear financial health and status of the Gaming Facilities was still abundantly lacking.

It is recommended that PTDC include PNGC in all communication regarding Casino Accounting and Casino Financial reporting. The PNGC requests full read only access to the accounting systems utilized in the operation of the casino facilities. This was a discussion item during a joint meeting and access was never implement for PNGC.

It is also recommended that all entities move toward and implement a communication plan that starts at the top and is grounded in our culture and environment. The leadership at each entity needs to be aware of the other's actions and pursuits. Planning is great, but only when all are involved. Further, PNGC recommends inclusion of key players in periodic meetings to accommodate the communication landscape and implement it throughout all organizations. PNGC does not recommend any entity be alone in any darkness about anything any longer.

5. As excerpted from the State of Oklahoma-Pawnee Tribe of Oklahoma Gaming Compact Part 10 Licensing B.1

"Any person or entity who, directly or indirectly, provides or is likely to provide at least Twenty-five Thousand Dollars (\$25,000.00) in goods or services to the enterprise in any twelve-month period, or who has received at least Twenty-five Thousand Dollars (\$25,000.00) for goods or services provided to the enterprise in any consecutive twelve-month period within the immediately preceding twenty-four-month period, or any person or entity who provides through sale, lease, rental or otherwise covered games, or parts, maintenance or service in connection therewith to the tribe or the enterprise at any time and in any amount, shall be licensed by the TCA prior to the provision thereof. Provided, that attorneys or certified public accountants and their firms shall be exempt from the licensing requirement herein to the extent that they are providing services covered by their professional licenses."

As excerpted from the Nation Indian Gaming Commission Regulations, 25 CFR part 543.23 "(c) Internal audit. Controls must be established and procedures implemented to ensure that: (1) Internal auditor(s) perform audits of each department of a gaming operation, at least annually, to review compliance with TICS, SICS, and these MICS, which include at least the following areas: (xi) Accounting standards, including accounting records, maintenance and preservation of financial records and relevant supporting documentation."

Internal audit has been a point of contention for quite some time, mainly between PTDC Management and PNGC Members. Internal audit has benefits, but what is needed is the implementation of controls that are required by various agencies, including the PNGC, NIGC, and the State. Internal audit compliance is not being met.

It is recommended PTDC develop a plan of action to implement an Internal Audit department. It is recommended this new department develop a line of reporting that includes the PNGC and PBC as part of its follow-up and exit interviews.

It has been a challenging time, but this time must come to a close. We must move on, and PNGC is committed to improving our relationship with PTDC and PBC. There have been some tough decisions made but these decisions were made to improve our Nation. We are not out of



the darkness yet, but better times are coming to the Pawnee Nation. With each entity on board and committed to change, we can improve what we have and go even farther. Gaming is only one part of the Pawnee Nation, but it is a critical part to ensure our survival economically. This situation is a milestone and we must remember these days to make sure we never come back here again for any reason.

The past activities of a few individuals have corrupted and misaligned Pawnee Nation assets with community goals and objectives. These activities have broken trust and jeopardized the sovereignty of the Pawnee Nation. Change in the form of policy and personnel is critical if the Pawnee Nation will survive current economic and political storms. The mission and vision of the new economic development team at Pawnee Tribal Development Corporation (PTDC) needs to be focused on loyalty to the Pawnee Nation instead of respecting only internal or personal interests. The upcoming years will be fruitful if the entire nation, including the membership and the personnel, is involved and committed to the goals of the tribe.