



OFFICE OF THE GOVERNOR

The Chickasaw Nation
Post Office Box 1548 • Ada, Oklahoma 74821
(580) 436-2603 • Fax (580) 436-4287
<http://www.chickasaw.net>

BILL ANOATUBBY
GOVERNOR

December 3, 2019

The Honorable Tara Katuk MacLean Sweeney
Assistant Secretary, Bureau of Indian Affairs
U.S. Department of the Interior
1849 C Street N.W.
MS-4660-MIB
Washington, DC 20240

Dear Assistant Secretary Sweeney:

This letter provides notice to the Department of the Interior of certain matters relating to the Chickasaw Nation's operation of Tribal government gaming within its jurisdiction. We provide this notice mindful of the Department's capacity as our Federal trustee as well as its role and responsibilities relating to Tribal government gaming operations, but we do not at this time request any action by the Department.

The Chickasaw Nation operates Tribal government gaming facilities within our jurisdiction. Each gaming facility within our jurisdiction is licensed by the Chickasaw Nation Gaming Commission in accord with Tribal and Federal law, and we conduct all gaming operations in accord with the Chickasaw Nation Public Gaming Act¹ and the Indian Gaming Regulatory Act.² With respect to Class III gaming, our operations also comply with our compact with the State of Oklahoma, which the Department of the Interior approved in 2005³ and which we supplemented as recently as last year.⁴

¹ CHICKASAW NATION CODE § 3-3101, *et seq.* (1994).

² 25 U.S.C. § 2701, *et seq.* (1988).

³ 70 FED. REG. 6725 (Feb. 8, 2005). A copy of our compact is available at <https://www.sos.ok.gov/documents/filelog/63568.pdf>.

⁴ 83 FED. REG. 41,101 (Aug. 17, 2018). A copy of this supplement is available at <https://www.sos.ok.gov/documents/filelog/92595.pdf>.

Our compact's first term will expire January 1, 2020, but pursuant to the plain terms of Part 15.B., it "shall automatically renew" on that date for a second term. Notwithstanding the plain language of Part 15.B., the State has contested our compact's renewal and has indicated an apparent intent to repudiate our compact rights (and to abandon its own) at the expiration of the first term. The State announced its position in a letter dated July 5⁵ and an opinion piece published July 8.⁶ It recently reaffirmed its position on November 14.⁷

We have reminded the State of our compact's "shall automatically renew" clause. We have also made clear that we do not contest each party has the express right to request renegotiation of the revenue-share provisions, i.e., subsections A and E of Part 11.⁸ On October 15, we joined twenty-nine other Tribes in invoking our compacts' informal dispute resolution mechanism.⁹ In doing so, we provided the State a summary statement of our construction of the "shall automatically renew" clause and requested it to provide a statement of its own position so we could engage in efforts to voluntarily and amicably resolve any differences we may have. The State accepted our invitation to meet on October 28 for such purposes.¹⁰ However, given the lack of substance to the State's position, as it was presented to us orally in that meeting, we declined the State's proposal for arbitration at this time.¹¹

Following the meeting, Oklahoma Governor J. Kevin Stitt held a press conference and warned of "extreme uncertainty" hanging over the future of Tribal gaming in Oklahoma unless the compacting Tribes abandoned their considered and unified position on the "shall automatically renew" clause.¹² He further intimated the State and Federal government would have "options" if the Tribes did not agree to new compacts before the end of the year.¹³

Based on these circumstances, it appears a formal dispute may be imminent. We therefore thought it prudent to send this letter to provide the Department a summary of the legal basis for our position and, based thereon, our intentions going forward.

⁵ Letter from Governor J. Kevin Stitt to Governor Bill Anoatubby (Jul. 5, 2019). A copy of this letter is enclosed for your reference.

⁶ Governor J. Kevin Stitt, "New gaming compacts must protect the interests of the tribes and the state," *TULSA WORLD* (Jul. 8, 2019), available at https://www.tulsaworld.com/opinion/columnists/gov-kevin-stitt-new-gaming-compacts-must-protect-the-interests/article_ae5596f7-e9e5-5613-9bbb-c6341af9259f.html.

⁷ Governor J. Kevin Stitt press conference on gaming compact negotiations (Nov. 14, 2019), available at <https://www.youtube.com/watch?v=j-QrYmS2uk>. See also Randy Ellis, "Governor voices frustration, suggests tribal gaming fees as high as 25%," *OKLAHOMAN* (Nov. 15, 2019), available at <https://oklahoman.com/article/5647067/chickasaw-attorney-says-tribes-prepared-to-renegotiate-gaming-fees>.

⁸ E.g., Letter from Governor Bill Anoatubby to Governor J. Kevin Stitt (Jul. 19, 2019); letter from Stephen Greetham to Mark Burget (Jul. 19, 2019). Copies of these letters are enclosed for your reference.

⁹ Letter from Matthew Morgan forwarding the letter of thirty Tribal leaders to Governor J. Kevin Stitt (Oct. 15, 2019). A copy of this letter is enclosed for your reference.

¹⁰ Carmen Forman, "Oklahoma Attorney General Mike Hunter discusses gaming compacts with tribal leaders," *OKLAHOMAN* (Oct. 29, 2019), available at <https://oklahoman.com/article/5645456/oklahoma-attorney-general-mike-hunter-discusses-gaming-compacts-with-tribal-leaders>.

¹¹ Letter from Matthew Morgan forwarding the letter of thirty-one Tribal leaders to Governor J. Kevin Stitt (Nov. 5, 2019). A copy of this letter is enclosed for your reference.

¹² See generally materials referenced above at n.7.

¹³ *Id.*

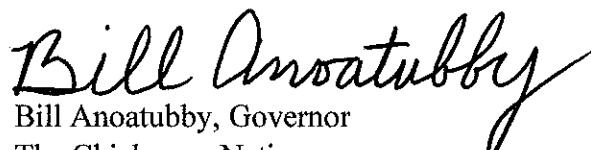
Among other actions we have taken in preparation for possible legal conflict, we have obtained a legal opinion concerning the legality of our Class III operations after the expiration of our compact's first term. As stated by former United States Solicitor Seth Waxman on behalf of the law firm of Wilmer Hale, our compact "shall automatically renew" and our Class III operations will remain lawful after January 1, 2020.¹⁴ We accordingly intend to continue to offer Class III gaming as part of our broader Tribal government gaming operations after that date and will, in doing so, continue to abide all terms of our renewing compact.

In the meantime, we have not, do not, and will not contest that a party to the compact may request renegotiation of subsections A and E of Part 11 within one-hundred and eighty days of renewal. As we have informed the State, however, we will insist that any proposal made for renegotiation purposes be based on fact and comply with requirements of Federal law.¹⁵

Finally, we must state that any attempt to disrupt our Tribal government gaming operations would present an intolerable risk of injury to the Chickasaw Nation and its citizens. Accordingly, we reserve our right to take legal action, if necessary, to protect the Chickasaw Nation's legal and sovereign rights as well as the material interests of our citizens who rely on government programs and services supported by our gaming operation revenues.

We do not ask the Department to take any action at this time but provide this letter solely as our notice of the situation, of our analysis, and of our intent. If it would be helpful to you to discuss the matter in more detail, please feel free to contact my office.

Sincerely,


Bill Anoatubby, Governor
The Chickasaw Nation

Cc: (1) John Tahsuda III, Counselor to the Secretary, U.S. Department of the Interior
(2) Paula Hart, Indian Affairs Director, U.S. Department of the Interior, Bureau of Indian Affairs, Office of Indian Gaming
(3) Eric N. Shepard, General Attorney, U.S. Department of the Interior, Office of the Solicitor
(4) Eddie Streater, Regional Director, U.S. Department of the Interior, Eastern Oklahoma Region
(5) Ashley Large, Superintendent, U.S. Department of the Interior, Chickasaw Agency
(6) Brian J. Kuester, U.S. Attorney for the Eastern District of Oklahoma
(7) Tim Downing, U.S. Attorney for the Western District of Oklahoma
(8) R. Trent Shores, U.S. Attorney for the Northern District of Oklahoma

Encl: As stated

¹⁴ Letter from Seth Waxman to Governor Bill Anoatubby, *et al.* (Nov. 26, 2019), a copy of which is enclosed for your reference.

¹⁵ See letter referenced above at n.11.