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*House of Representatives
Office of the Speaker
State of Oklahoma*

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The Honorable Kevin J. Stitt
Governor, State of Oklahoma
2300 N. Lincoln Blvd., Room 212
Oklahoma City, OK 73105

Governor Stitt,

Regarding your assertion yesterday of a gaming agreement with two sovereign tribal nations, we feel it prudent to inform you of the legislative branch's position on actions taken by you in negotiating and signing these purported "compacts." In short, we find these actions unauthorized by law and void without action by the Oklahoma Legislature.

During a meeting with you yesterday when we learned of this for the first-time (moments before your public announcement), we were not provided with key details or the documents themselves. Now that we have been able to review the documents and details within them, we are better prepared to provide you the feedback you may have been seeking yesterday via this letter.

First, we agree with the assessment of Oklahoma Attorney General Mike Hunter, who stated yesterday:

"The agreements signed today between the governor, the Otoe-Missouria Tribe and the Comanche Nation are not authorized by the state Tribal Gaming Act, Title 3A, Section 261 et. sec. The governor has the authority to negotiate with tribes on behalf of the state. However, only gaming activities authorized by the act may be the subject of a tribal gaming compact. Sports betting is not a prescribed 'covered game' under the act."

Regarding state-tribal gaming law, the records of the Legislature and the law itself clearly show state-tribal gaming was always intended to be handled jointly, by both the legislative and executive branches of the State of Oklahoma. On this matter and many

others, the legislative branch sets the policy and the executive branch executes the policy. The policy the Legislature has set at this time does not grant the executive the authority to unilaterally enter into the type of agreements signed yesterday.

For some historical context, there is a reason gaming policy was set up in this manner. That reason is separation of powers. Article 4, Section 1 of the Oklahoma Constitution is the most authoritative state law pronouncement on the subject which the Oklahoma Attorney General has interpreted in this very context. Attorney General Opinion 2004-27 addressed whether “[i]n light of the Oklahoma Constitution's Separation of Powers provision at Article IV, Section 1, . . . the Governor [can] compact with Indian tribes or other governmental entities and in doing so bind the State, without the approval of each compact by the Legislature.” *Oklahoma Attorney General Op. No. 2004 OK AG 27* (Aug. 26, 2004). The Attorney General concluded:

- a. The executive powers of the Governor under the Oklahoma Constitution are more limited than those exercised by the President under the United States Constitution; and
- b. While the Oklahoma Constitution vests the Governor with power to “conduct intercourse and business with the other states and the United States,” the Governor’s authority to enter into cooperative agreements with Tribes arises from statute, *not* the Oklahoma Constitution. *See id.* (“Under the above-quoted constitutional and statutory provisions, the Governor is *constitutionally* vested with the power to enter into agreements with other states and the United States Government, and is *statutorily* vested with the power to enter into agreements with federally recognized Indian Tribes.”).

Even so, the Attorney General’s opinion observed the Governor’s authority remains limited by the Oklahoma Constitution: “Of course, any agreement negotiated by the Governor must conform to the public policy enacted into law by the Legislature, as the role of the Legislative Branch is to establish public policy, and the role of the Executive Branch is to execute that policy.” *Id.* (citing *Tweedy v. Oklahoma Bar Ass’n*, 624 P.2d 1049, 1054 (Okla. 1981)).¹

¹ As *Attorney General Op. No. 2004 OK AG 27* explains, “the distinction among the three branches,” i.e., the precise delineation of Executive, Legislative, and Judicial powers, cannot be carried out with ‘mathematical precision,’ nor is it possible to divide the branches into ‘watertight compartments,’” quoting *Bailey v. State Bd. of Pub. Affairs*, 153 P.2d 235, 239 (Okla. 1944). While particular exercises of those powers may appropriately blend, *Attorney General Op. No. 2004 OK AG 27 n.3* explicitly provides the Oklahoma Governor may not lawfully disregard Oklahoma law when entering a cooperative agreement. Cf. also Oklahoma Attorney General Op. No. 93-685 (informal) (concluding “[a]s the Cherokee Law Enforcement Agreement does not alter or change the Bureau’s existing powers and duties, the Governor, in entering into the compact, did not violate the Legislature’s prerogative of establishing the duties and responsibilities of the Bureau, in violation of the Oklahoma Constitution’s separation of powers provision, article IV, section 1 of the State Constitution”). Accordingly, Oklahoma law can place matters or certain details out of the Governor’s reach with respect to forming cooperative agreements. An Oklahoma Governor cannot make legal that which a statute makes illegal.

In light of the above, please be advised the Legislature has not yet authorized sports betting in Oklahoma. As such, your unilateral attempt in yesterday's documents to make legal that which is not legal attempts to exercise power that belongs solely to the legislative branch of Oklahoma government. The covered games authorized by the Legislature under the State-Tribal Gaming Act are clearly listed in 3A O.S. Section 281. Legislation authorizing sports betting that was filed in the 2018 session (HB 3375 and SB 1195) did not advance, and no active legislation exists on sports betting this session. As a result, sports betting remains unauthorized in Oklahoma, even following the U.S. Supreme Court's ruling in Murphy v. NCAA, 138 S. Ct. 1461 (2018) that granted states the ability to set their own policies on sports betting, which the Oklahoma Legislature has not yet done.

The inclusion of sports betting is one of a number of flaws found in our preliminary review of the documents signed yesterday. While we appreciate you making us aware of your intention to sign these documents just moments before your public announcement, had you consulted us earlier we could have provided this information to you earlier.

The Otoe-Missouria Tribe and the Comanche Nation are essential parts of the fabric of the State of Oklahoma, each vested with their own sovereignty. In collaborating on this matter with you, they were looking out for each of their best interests, and we respect their right and ability to do so. We are disappointed Oklahoma's executive branch made a promise it could not legally keep under current law. Sovereign nations deserve promises Oklahoma can keep.

The Legislature is interested in gaming agreements that truly unite the State of Oklahoma with all tribal nations. Sadly, the documents signed yesterday are legally flawed and sow more division than unity. For those reasons, we do not see a path forward for the legislative action necessary to finalize them and ask that you respect the Oklahoma Constitution and the Oklahoma Legislature's law-making power by refraining from submitting or allowing these documents to be submitted to the Department of the Interior for review. Any submittal at this time would be untimely, inappropriate, and a waste of resources.

As always, we share our perspective with you in a spirit of cooperation, with hopes you find it helpful in your decision making. Thank you, as always, for your consideration of our perspective.

Respectfully,



Charles A. McCall
Speaker of the House



Greg Treat
President Pro Tempore