

# Oneida Tribe of Indians of Wisconsin

Post Office Box 365

Phone: 869-2214

Oneida, WI 54155



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently



UGWA DEMOLUM YATEHE  
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the Colony of Pennsylvania, a new nation, the United States, was made possible

RESOLUTION # 12-8-93-B

- WHEREAS, the Oneida Tribe of Indians of Wisconsin is a federally recognized Indian government and a Treaty Tribe recognized by the laws of the United States; and
- WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Tribe of Indians of Wisconsin; and
- WHEREAS, the Oneida Business Committee has been delegated authority under Article IV, Section 1 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
- WHEREAS, it is the mission of the Oneida Nation of Wisconsin to protect and improve the resources, the standards of living, and the environment in which the Oneida people live while maintaining, enforcing, and exercising the sovereign rights of the Oneida Nation; and
- WHEREAS, the Oneida Tribe has demonstrated success in operating grants and contracts under Public Law 93-638 and numerous other grants and contracts under various federal and state agencies over the last two decades which provide for the care and well-being of its constituents; and
- WHEREAS, the Oneida Tribe of Indians of Wisconsin has negotiated a Compact of Self-Governance and an Annual Funding Agreement with the U.S. Government's Department of the Interior for Fiscal Year 1994; and
- WHEREAS, the Oneida Business Committee has determined from the planning activities conducted prior to negotiating the Compact and Annual Funding Agreement with the Department of the Interior that entering into a Self-Governance Compact and Annual Funding Agreement with the Indian Health Service (IHS) of the U.S. Government's Department of Health and Human Services pursuant to Title III of P.L. 100-472 would further support and enhance the Oneida Nation's sovereignty; and

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## MEMORANDUM OF INTERPRETATION

### Issue

**ISSUE:** What, if any, is the time after which point a criminal conviction may be no longer be held against an individual as an Oneida Bingo & Casino employee?

### Introduction

This Memorandum of Interpretation reviews the Oneida Gaming Compact of 1991, the Oneida Comprehensive Gaming Ordinance, and the Oneida Bonding Policy. All of these documents were in existence at the time of the creation of the Oneida Comprehensive Gaming Ordinance and were relevant in the creation of that ordinance. In addition, the minutes from the Oneida Business Committee and the Oneida General Tribal Council have been extensively researched.

### Laws, Policies, Minutes

Gaming Compact of 1991 (Compact):

"Section IX(A)(1)(a-d). The Tribe agrees that no person may be employed in the operation or conduct of gaming under this Compact, and the Tribe shall not permit a gaming related contractor to employ any person in the course of performance under the contract, that person:

1. Has been convicted of, or entered a plea of guilty or no contest to, any of the following, unless the person has been pardoned:
  - a. A felony, other than a felony conviction for an offense under subdiv. b., c., or d., during the immediately preceding 10 years.
  - b. Any gambling-related offense.
  - c. Fraud or misrepresentation in any connection.
  - d. A violation of any provision of chs. 562 or 565, Wis. Stats., a rule promulgated by the Lottery Board or Wisconsin Racing Board, or a Tribal ordinance regulating or prohibiting gaming.
2. Has been determined by the Tribe to be a person whose prior activities, criminal record if any, or reputation, habits, and 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."

Oneida Comprehensive Gaming Ordinance (Ordinance):

"Article VII(F)(2). No person who has been convicted of a felony or a violation of any provision of the Personnel Policies and Procedures manual resulting in dismissal or any misdemeanor crime of fraud or theft of any kind may be employed in the conduct of any game defined in this Ordinance unless such person has been formally pardoned by the Oneida Business Committee upon recommendation of the Gaming Commission. Provided however that V.A.4. requirements of this Ordinance are adhered to. (*bonding*)."

Oneida Bonding Policy (Chubb Executive Protection Policy)

§7 Coverage under insuring Clause 1 of this coverage section does not apply to:

(C) loss caused by an Employee if an elected or appointed officer of the Insured possessed at any time knowledge of any acts or acts or Theft, fraud or dishonesty committed by such Employee: (1) in the service of the Insured or otherwise during the term of employment by the Insured, or (2) prior to employment by the Insured provided that such conduct involved Money, Securities or other services valued at \$25,000 or more.<sup>1</sup>

Gaming Bonding Policy

Bonding Level I: (Management, Vault employees)

A. No felony offense, fraud, or misrepresentation.

B. No dishonest acts for the past ten (10) years involving theft in excess of \$500.00 or misdemeanor assault convictions for the past ten (10) years.

Bonding Level II: (Casino employees involved with games and change)

A. No felony gaming offense, fraud or misrepresentation within the last ten (10) years.

B. No dishonest acts for the past five (5) years involving theft in excess of \$500.00 or misdemeanor assault convictions for the past five (5) years.

Bonding Level III: (Secretarial and Custodial/Maintenance)

A. No felony gaming offense, fraud, or misrepresentation within the last the (10) years.

B. No dishonest acts for the past three (3) years involving theft in excess of \$500.00 or misdemeanor assault convictions for the past three (3) years.

Oneida Business Committee and Oneida General Tribal Council Minutes: There were no minutes related to this issue discovered.

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<sup>1</sup> Note, the amount of \$25,000 is directly related to the deductible paid by the Oneida Tribe. It was recently raised from \$10,000. However, it bears no relation to any criminal penalties or levels of penalties created by the federal, state, municipal, or other government.

### Analysis

The Compact restricts hiring persons who have been convicted of a felony for gambling, fraud, or violation of the Racing or Lottery chapters for any length of time. Further, it restricts hiring persons who have been convicted of any other type of felony committed within the past ten (10) years. It makes no reference to misdemeanors of any kind.

The Ordinance restricts hiring of any employee that has a felony of any kind, or misdemeanors that relate to fraud or theft, for the entire lifetime of the individual. This appears to be a greater restriction than that in the Compact.

The Bonding Policy of the Tribe restricts bonding to persons who have no criminal acts relating to monies or services over \$25,000. There are no time limits or levels of criminal action such as felony or misdemeanor. The Oneida Gaming Commission has exercised its discretion to interpret the Ordinance to restrict employment regarding bonding issues to those who have not had criminal actions ranging from ten years for management, five years for game related employees, and three years for secretarial and custodial staff.

As a general rule, a law should be read, "...so that it makes sense, it must be read in light of some assumed purpose. A statute merely declaring a rule, with no purpose or objective, is nonsense."<sup>2</sup> Further, laws on the same subject, "...are to be interpreted together even though they may have been passed at different times."<sup>3</sup> The Oneida Comprehensive Gaming Ordinance was made for the purposes of: 1. Implementing the allowed gaming under the Gaming Compact and 2. Regulating the gaming enterprise for the protection of Tribal interests. Both of these purposes must be read with the Compact and the Bonding Policy in mind. First, the Compact limits what the Tribe may do, and who may participate in gaming. Second, the Bonding Policy limits the Tribe on who it may employ in areas requiring protection through the Tribal Bond.

The Compact limits employable persons to those who have not been convicted of felonies. These felonies are further broken down into two types:

1. Those felonies in violation of Wis. Stats. Chs. 562 and 565 (Lottery Board or Racing Board), those felonies involving fraud or misrepresentation, or those felonies related to any gambling related offense. These shall be held against a potential employee for the duration of that persons life.

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<sup>2</sup> K. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes are to be Construed*, 3 Vand. L. Rev. 395, 400 (1950)

<sup>3</sup> Stasky, William P., *Legislative Analysis and Drafting*, 2 ed., West Publishing Company (1984)

2. Those felonies that do not involve any of the actions in the first category. These shall be held against a potential employee for ten (10) years after conviction.<sup>4</sup>

Since the Gaming Ordinance should be read with the Compact in mind, as it is implementing the terms Compact, the limitation should also be read into the Gaming Ordinance. There is nowhere in the words of the Gaming Ordinance the intent to create a longer life span to any or all felonies that may be held against a potential employee. The general purpose of the Ordinance is to, "...regulate the conduct of all gaming operations of the Oneida Tribe of Indians of Wisconsin."<sup>5</sup> In the Preamble, the ordinance states that it is, "...the intent of the Ordinance to clearly set forth the laws and requirements of promulgation of regulations of the Oneida Reservation."<sup>6</sup> The purpose of the Ordinance is not to increase the meaning of the Compact, but to put the Compact into action, therefore, felonies as used in the Ordinance should be read with the Compact in mind.

In similar fashion, the Tribal Bonding Policy was in effect at the time of the Compact and the Ordinance. If the Tribe wished to protect the gaming operations through bondability of its employees, then it would have looked at the Bonding Policy. This policy states that to be bondable, an employee cannot have had a criminal act or act committed that involved monies or services of \$25,000. In this bond, there is no mention of how long a person's criminal acts will be held against them. The Gaming Ordinance merely increases the types of criminal actions listed in the Compact that will be looked at to protect the enterprise in the gaming operations. Since looking at a misdemeanor more than three years past grants no more protections under its bonding policy, it cannot be said that the Ordinance increases the time a misdemeanor is held against a potential employee for longer than three years. Further, since the Gaming Bonding policy will look at a minimum of three years, it cannot be said that a greater amount creates greater protections.

In addition, the Gaming Bonding Policies were a discretionary act by the Gaming Commission. In September of 1992, the Oneida Gaming Commission revised the bonding policy to attempt to meet the Ordinance. However, a recent letter from Steve Hill states that this policy is no longer used. The Oneida Gaming Commission has a duty to, "...insure the integrity of all games authorized by this ordinance."<sup>7</sup> In addition, they were also given the power to, "...promulgate such rules, regulations, procedures, and guidelines as it deems appropriate to implement and

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<sup>4</sup> Each of these may be pardoned, allowing that person to obtain employment in Oneida gaming. Cf. Gaming Compact of 1991 Section IX(A)(1), "...shall not permit...employ[ment of] any person...unless the person has been pardoned[.]"

Comprehensive Gaming Ordinance, Article II(A)(GTC 7/6/92)

Comprehensive Gaming Ordinance, Preamble (GTC 7/6/92)

Oneida Comprehensive gaming Ordinance, Article IV(A (GTC 7/6/92)

enforce the provisions of this Ordinance to be approved by the Business Committee."<sup>8</sup> However, the interpretation of the Ordinance itself, regarding the intent of that Ordinance is solely within the purview of the Oneida Business Committee. The Business Committee has the duty of the ultimate protection of the Nation. Therefore, three years seems to be a basic requirement for any type of employment, and still allows the Bond Policy to protect the interests of the Tribe and the gaming enterprise.

Finally, any discretionary actions taken by the Oneida Business Committee, or any board, committee or commission, must also be made with the overall *benefit of all Oneida Members* kept in mind. It cannot be said that holding actions taken in the youth of any person, whether a tribal member, the spouse of a tribal member, or a non member, against them is in their best interests. It would be to the Oneida Member's benefit that they be given the benefit of wisdom through maturing to limit the period of time a criminal action is held against them.

The Gaming Ordinance may seem clear on its face, looking at the plain meaning of the words. However, "...[i]t has long been recognized that the literal meaning of a statute will not be followed when it produces absurd results."<sup>9</sup> Reading the Gaming Ordinance without reference to the documents and policies in existence at the time would produce 'absurd results'. It was not found in any existing minutes or notes an intention to increase the amount of time a criminal conviction would be held against a person. Merely, the type of conviction that would be looked for was increased.

### Conclusion

It is the opinion of the Oneida Business Committee, with the analysis and research assistance from the Oneida Tribal Attorney's Offices, that the Oneida Comprehensive Gaming Ordinance should be interpreted in relation to other ordinances and policies in existence at the time of the Gaming Ordinance's creation. To that end, the following time limitations will be placed on criminal convictions:

1. Felonies of fraud or misrepresentation, any offense relating to Chs. 562 or 565, Wis. Stats., or any gambling related offense - no time limit on being barred from Oneida Gaming employment.
2. Felonies other than of those listed in number 1 (fraud or misrepresentation, any offense relating to Chs. 562 or 565, Wis. Stats., or any gambling related offense) - only those potential employees with convictions within the past ten (10) years from date of completion of the sentence shall be barred from Oneida Gaming employment.

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<sup>8</sup> *Id* at Article IV(C)(2). In addition to these, it also has a duty to complete background checks and licensing of the Gaming Manager, approve contracts, and monitor and review all gaming plans. Article IV(C)(3-12).

<sup>9</sup> District of Columbia National Bank v. District of Columbia, 348 F. 2d 808, 810 (D.C. Cir. 1965)

3. Misdemeanors of fraud or theft - only those potential employees with convictions within the past three (3) years from the date of completion of the sentence shall be barred from Oneida Gaming employment.

It is further the opinion of the Oneida Business Committee, with the analysis and research assistance of the Oneida Tribal Attorney's Offices, that this interpretation is not an amendment to the Oneida Comprehensive Gaming Ordinance and thus does not require approval from the Oneida General Tribal Council.

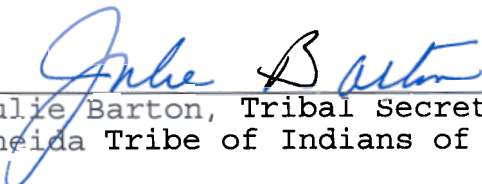
Attachment to Resolution # 12-8-93-C adopted by the Oneida Business Committee

WHEREAS, a prerequisite for negotiating a FY 1995 Compact and Annual Funding Agreement with the Department of the Interior is the completion of a set of planning activities to be conducted under a cooperative agreement with the Indian Health Service.

NOW, THEREFORE, BE IT RESOLVED: that the Oneida Tribe of Indians of Wisconsin hereby specifically requests a planning cooperative agreement with the U.S. Department of Health and Human Services' Indian Health Service for Fiscal Year 1995 for the purpose of conducting activities pursuant to negotiating a Compact and Annual Funding Agreement under Title III of P.L. 100-472 for FY 1995.

C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Oneida Business Committee, hereby certify that the Oneida Business Committee is composed of 9 members of whom 5 members constitute a quorum. 8 members were present at a meeting duly called, noticed, and held on the 8<sup>th</sup> day of December, 1993; that the foregoing resolution was duly adopted at such meeting by a vote of 7 members for, 0 members against, 0 members not voting; and that said resolution has not been rescinded or amended in any way.

  
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Julie Barton, Tribal Secretary  
Oneida Tribe of Indians of Wisconsin