

Headline News:

1/18/14: Catawba Indians: Casino Project for KM Moving Forward
(gastongazette.com)

1/17/14: Penn National Partners with Jamul Indian Village for California Casino
(casino.org)

1/13/14: Tribe Doubles Down: Plans Call for \$10M Renovation Plus Second \$25-30M Casino
(indiancountrytoday.com)

1/7/14: Ojibwe to Redevelop Mille Lacs Lake Resort
(bizjournals.com)

1/3/14: Federal Agency OK's Mashpee Wampanoag Casino Compact
(bostoglobe.com)

It's Your Decision—Take Control

by Kristi Jackson

We've run across a few situations recently where in the course of working with a tribe on a refinancing, the decision-making process is led by others versus the tribe itself. Clearly, the finance team is in place to handle day-to-day financial controls, reporting and communication, and the legal team in place to protect the tribal interests and ensure the tribe's business operations are compliant and acting within the law. Often, these teams work together to orchestrate the elements of a financing on behalf of the tribe. This arrangement works well when the communication flows clearly and regularly upward to the tribal leadership who typically sign the borrowing agreements and are ultimately responsible to their membership. Where we see issues arise

are in situations where tribal leadership is not kept in the loop – and at the 11th hour a set of documents are placed before them for signature.

While not the norm, we are aware of many tribal financings, both large and small, where tribal council learns of the real details of their financing after the deal has closed. If controls (“covenants” within the borrowing agreements) are too tight, for example, funding of tribal programs could be impacted – explaining to constituents why, without warning, a program budget has been affected because of a financing agreement is not exactly the situation that tribal leaders want to find themselves in!

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\$2 Billion+
Financing Raised
~
\$250 Million+
Saved
~
All for Native
American Tribes
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TFA will be attending the Western Indian Gaming Conference -
February 11-13



Please let us know if you will also be in attendance and would like to set up a meeting with TFA.

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For a non-finance oriented person, financing discussions can be really boring and in some cases, intimidating. The legal-ese that many of these documents contain can be difficult to navigate and understand if one is not used to reading them regularly. While attorneys can often explain what it means legally, the important understanding comes from the practical business and financial intent of these documents. While we understand the urge to “shut down” during these difficult discussions, the importance of taking the time to ask questions and understand the deal being offered cannot be overstated.

Plenty of corporate examples of this “shutting down” phenomenon exist too – in the extreme case, remember Enron? Literally hundreds of smart finance -types – staff, management, members of the board and even their outside audit firm, Arthur Anderson, didn't say "hold on a minute, this doesn't make sense to me – please re-explain this until I get it!" Instead, they allowed very risky investments and activities that they signed off on without fully comprehending to go on until it sent the company into a dramatic fall from

grace and bankruptcy.

We have found that the best approach is to delegate to the professionals involved, but at regular junctures ask for a meeting and an update on the process. Have your staff and advisors – financial and legal – there to answer and explain. If they can't explain matters in a fashion that is understandable, instead of thinking "it's just me that doesn't get it" - it's they who aren't doing their job.

We worked with several tribes recently where the casino management team, the financial advisors and the lawyers did a "page-turn" explanation of the legal documents that tribal council was being asked to comment on and, eventually, to sign. Each covenant was described, questions were answered and alternative explanations offered where there was a difficult concept. While this may not be necessary in all circumstances, it certainly allows council members a chance to ask questions and fully understand the elements of what they are being asked to sign. Don't be afraid to ask questions – think of it as taking control.

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