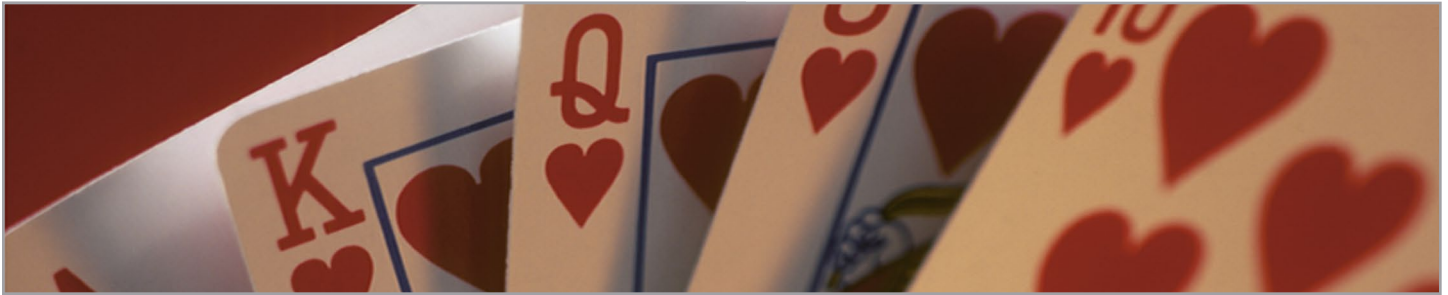


# GAMING LEGAL NEWS



April 27, 2011 • Volume 4, Number 14

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## THE CATSKILLS TRIBAL CASINO SCAM

by Dennis J. Whittlesey

Any attorney practicing Indian Gaming Law has either received or knows a colleague who has received "The Phone Call." It usually goes something like this: "Let's find some Indians, create a tribe, and build a casino."

Those proposals are easy to walk away from because that's not how it works. Still those kinds of proposals surface on a regular basis, and some of them even gain some traction before falling apart.

A variation of this theme is shown in the recent notion of a Georgia developer proposing to move a small Oklahoma tribe to the Georgia Coast and establish a reservation (and casino, of course) on the lands occupied by the tribe's ancestors prior to the forced removal of tribes from the East Coast during the Andrew Jackson Administration. Apart from the absurdity of proposing to move an entire tribe across several states and assuming that the Department of the Interior will bless the entire deal, the proposed reservation area is nowhere near the lands adjudicated as having been historically occupied by that tribe's ancestors.

There are lots of somewhat nutty ideas out there, and most are relegated to the trash bins of federal agencies. And now we have what may be the wildest of all, only this time it involves a group claiming to constitute an Indian tribe convincing an entire town that it had sovereignty and the right to develop a casino on a crumbling resort property within the town.

The tribe is not recognized and was never even close to attaining that status. Moreover, it had no sovereign immunity from the local taxation of the resort property it purchased (with developers involved) but persuaded the town that it was not liable for those taxes. And its leader was a blond-headed, blue-eyed fellow who created a tribe after having been denied enrollment in several legitimate tribes. And the Middletown (NY) *Times Herald-Record* is reporting that in 2004, he pled guilty to filing falsified altered documents in an effort to validate his claims to Indian ancestry, citing both federal court pleadings and confirmation from the Bureau of Indian Affairs.

Yet, this fellow and his so-called “Western Mohegan Tribe” showed up in the Catskills of New York and purchased the formerly grand Tamarack Lodge in Ulster County near Ellenville with promises of restoration of the property and development of a casino operation that would generate an enormous economic boon to the whole area. They completely deceived the County as to the tax status of this “Indian-owned land” which of course was neither in trust nor reservation status. Over the past three years, the Western Mohegan group avoided paying some \$240,000 in county real estate taxes, and the number goes up another \$40,000 next month.

The property now will be sold at an Ulster sheriff’s sale because of a \$600,000 judgment against the group, bringing an end to the extraordinary fiction perpetrated for so many years by a fictional tribe and its leader who twice had pleaded guilty to fraud: once for using his son’s credits cards and once for filing altered documents to prove that the Western Mohegan group was a legitimate Indian tribe.

This saga may not be over, for the tribal group has been quite litigious in the past. However, their legal claims to land and tribal status have been rejected, and they are running out of options. The Tamarack Resort will be sold and that proposal forever gone. Still, there are many in the local area who reportedly still believe that the Western Mohegans will prevail on all fronts and build the long-promised casino. They believe because they really, really, really want to think that the whole thing is real.

This is a sad story for a lot of people, but it is another example of bad behavior associated with unrealistic dreams of sharing in casino riches. The tragedy here is that the local citizens and government officials accepted representations they should have questioned, and both their hopes and local government treasuries have been devastated in the process. Sometimes, it really is cheaper to call a lawyer.

## THE ALABAMA CAMPAIGN AGAINST INDIAN GAMING CONTINUES

by Dennis J. Whittlesey

And now comes the battle of federal legal and technical experts against a state-retained “expert” who apparently has technical but not legal qualifications.

Alabama’s top two elected officials continue to wage open warfare on the state’s tribal casinos operated by the Poarch Band of Creek Indians which they claim feature illegal Class III gaming in violation of both state law and the federal Indian Gaming Regulatory Act. Their rationale seems to spring from their own simple conclusion that Class II bingo machines are actually Class III slot machines. They keep losing, so now they are trying something new.

Governor Robert Bentley and Attorney General Luther Strange took office last November in place of predecessors who had waged

aggressive and ugly fights with gaming operators, including the Poarch Creek. There has been a change in personnel, but certainly no change in outraged indignation against gaming operations in the state.

With the Attorney General leading the charge, the state has closed non-tribal casinos across the state, rendering hundreds and hundreds of employees without jobs. Paper bingo is legal in Alabama, and all of the casinos had adopted Class II machines which essentially are classified as electronic bingo. Governor Bentley and AG Strange take the position that these machines are not “bingo” machines, but rather Class III machines which are illegal under state law. Moreover, they have pressed their case by closing all Class II facilities on non-Indian lands within Alabama and bullied equipment manufacturers to remove their equipment upon threat of confiscation and destruction.

The Poarch Creek operates three casinos in the towns of Wetumpka, Tallapoosa, and Atmore, and they all feature electronic bingo machines. The state officials have repeatedly demanded that the National Indian Gaming Commission shut down the tribal operations on the grounds that the machines are Class III and, thus, illegal. Only a month ago in a letter to the Governor, NIGC Chairwoman Tracie Stevens once again affirmed the legality of the electronic bingo machines as offering Class II gaming as defined by federal law.

Upon receipt of the NIGC letter, Bentley and Strange pulled an old rabbit out of their hat in the form of a New Jersey consultant who has worked for various states – most notably Alabama and Florida – on an occasional basis. Despite the apparent lack of a law degree or knowledge or work with the federal gaming law, this expert only a week ago rendered his opinion that the FBI and Department of Justice have independent authority to immediately raid and shutter the tribal casinos in Alabama and no duty to recognize the opinions of the NIGC despite its statutory role as the regulatory body for all Indian gaming.

Robert Sertell, Chairman of a New Jersey company named Casino Horizons Corp., has worked for the state intermittently over the past several years. In 2004, he visited the Poarch Creek properties and declared that they were operating illegal Class III machines. In his latest engagement by the state, he questioned the competence and integrity of the NIGC, stating that the Chairwoman’s letter “ignores federal law so hard, it’s almost laughable.” He further denigrated the NIGC by asserting that tribal gaming enforcement is nothing but “Indians regulating Indians” with the observation that “NIGC’s executives are all members of Indian tribes.”

Sertell’s direct attack on the NIGC is admittedly part of his new effort to prod the federal government into taking action through the FBI and Department of Justice. His “Indians can’t fairly regulate Indians” takes on an ugly patina, however. It certainly has never been matched by his challenging the regulatory schemes in Nevada and New Jersey, where non-Indian regulators are regulating non-Indian operators.

Indian Country knows what it is like when people like Governor Bentley, Attorney General Strange, and “Gaming Expert” Sertell start creating new issues and arguments to reduce and even eliminate rights which tribes were unable to claim for years and years. The right of tribes to conduct gaming on their own lands had to be articulated by the Supreme Court, and the NIGC has demonstrated time and time again that the system works and that enforcement is both real and pursuant to law.

Finally, the Casino Horizons Corp. company website identifies Mr. Sertell as a “licensed electronics, vending, amusement and slot machine instructor” but identifies no seminar presentations for more than two years. The website says nothing about Sertell having certification as an expert on gaming in general or Indian Gaming in particular.