

THE CASINO SHUFFLE: TWO-STEP, THREE-STEP, SIDE-STEP

Background

Until quite recently, the Seneca Nation Settlement Act of 1990 (SNSA), which settled lease disputes in Salamanca, languished in relative obscurity. Then came the terrorist attacks on September 11, 2001 in Manhattan.

For Buffalo, some of the fallout from the terrorism down state has come in an unexpected form: the threat of a downtown gambling casino because Albany--panicked by possible budget problems from 9/11--reversed longstanding policy and embraced off-reservation gambling to get a cut of slot machine revenue to help balance its books.

The vehicle for this "policy by panic" was the SNSA, which it turns out has been the source of a number of questioned practices.

Abuses of the SNSA

Several abuses of the SNSA have been reported, including:

- The first to be exposed has become known in the media as the "two-step:" a Seneca Nation of Indians (SNI) corporation buys off-reservation land, paying millions of dollars for it but then "reselling" it to the SNI for a nominal sum (e.g., it paid \$4.6 million for the Buffalo land in 2005 and "sold" to the SNI for \$4.00). Depending on how these 'sales' are accounted for, the "two-step" could stretch the SNI's very limited SNSA land-purchase funds beyond what Congress intended when it appropriated them;
- Then there is the tax-avoidance process called the "three-step." SNI members have avoided paying taxes on millions of dollars of gambling income claiming it is tax-exempt income from SNSA funds investments. The IRS has questioned this practice.²

The Federal Lawsuit: Summary Judgment Motion Filed This Week

But the seminal abusive maneuver is the "side step."

- The SNI have by-passed the comprehensive review processes usually applicable to tribal off-reservation casinos by claiming their Buffalo land is 'sovereign' under SNSA land-purchase provisions. This claim is unfounded. The SNSA is clear on its face on this point.

The practical legal effect: Indians cannot run gambling on non-sovereign land; the Buffalo land is not sovereign; it cannot be used for a casino. Period. This is the lead argument in the federal summary judgment motion.

The second argument seeks judgment under the Indian Gaming Regulatory Act (IGRA), which with very few exceptions prohibits gambling on Indian-owned land acquired after 1988. The SNI again have cited the SNSA to bring them within an exception. The SNSA simply does not qualify for an exception.

The two Congressional sponsors of the SNSA, former Congressmen Houghton and LaFalce, both agree that the SNSA was never intended to permit the creation of off-reservation venues for casino gambling.

¹ *The Buffalo News*, February 12, 2006, "Vast land purchases possible for tribe," by Jerry Z remski.

² *The Buffalo News*, July 16, 2006, "Senecas dodge federal taxes on casino payments," by Michael Beebe.