

# Judge can't stop blackjack

By John Holland  
South Florida Sun-Sentinel

MIAMI — A federal judge said he's powerless to block the Seminole Tribe from offering blackjack at its casinos, rejecting a Pompano racetrack's lawsuit while emphasizing the legal hurdles facing anyone tangling with the tribe.

Lawyers for The Isle Casino & Racing at Pompano Park and its parent company, PPI Inc., attempted to sidestep the tribe's sovereign nation status by suing only Gov. Charlie Crist and the federal government over a gambling compact approved in January and invalidated last week by the Florida Supreme Court.

But U.S. District Judge Stephan P. Mickle ruled the Seminoles must be included in the suit because any action taken would directly affect the tribe and its 3,200 members. And there's the rub, the judge indicated, because the tribe can't be sued for any reason in any court in the country.

"Although there is no alternative forum for PPI to litigate its claim, in equity and good conscience this case cannot proceed without the Seminole Tribe," Mickle wrote in the ruling released in Tallahassee on Wednesday.

Jill Haynes, spokeswoman for the Isle of Capri Casinos and PPI, said track executives are weighing their options.

"We are evaluating the judge's ruling and will decide what steps to take," Haynes said.

The ruling comes less than a week after the state Supreme Court invalidated the gambling compact between Crist and the tribe that allowed the Seminoles to offer blackjack, baccarat and Las Vegas-style slot machines at their seven casinos. The Supreme Court said that because those games are illegal everywhere else in the state, only the Legislature could approve such a deal and make the necessary changes in Florida law.

Despite the ruling, the Seminoles continue to operate as normal. Tribe attorney Barry Richard said unless the federal government, which approved the compact, reverses its decision, the tribe won't stop.

The compact became official in January, 45 days after Crist signed it when the U.S. secretary of the interior refused to block the deal.

In its motion to block Crist and Interior Secretary Dirk Kempthorne from carrying out the compact, PPI said blackjack and baccarat are illegal in Florida, and therefore the tribe is conducting an illegal gambling operation.

Mickle's decision rejected that argument and outlined the federal protections granted to Indian tribes against interference from the courts.

"The Indian Gaming Regulatory Act provides clear and convincing evidence that Congress intended to preclude judicial review," Mickle wrote.

The federal government does have the right to prosecute and fine Seminole leaders if they operate illegal gambling on their reservations, according to Mickle, but a judge can't make that finding or issue an injunction independently.

The question of how the Supreme Court's ruling against the compact would be enforced was at the center of a meeting of executives from Broward County's three racetrack casinos Wednesday.

The racetrack casinos — Gulfstream Park Casino and Racing and The Mardi Gras Racetrack & Gaming Center, both in Hallandale Beach, and the Isle Casino at Pompano Park — say they are frustrated that the Seminoles are allowed to operate blackjack and baccarat while they are prohibited from offering the games.

"We know that the Seminole Tribe is probably going to ignore the court order, so we're wondering just who is going to enforce Florida law," said Dan Adkins, chief gaming executive at Mardi Gras. "Is it going to be the U.S. Attorney, will sheriff's deputies go in and shut them down?"

# National Gaming doubts on Cherokee project

By Roger McKinney  
Joplin Globe

COLUMBUS, Kan. — A senior vice president with Penn National Gaming on Tuesday said if the company doesn't receive a final contract approval for a state-owned casino in Sumner County, the company may walk away from its proposed casino in Cherokee County.

Steve Snyder, Penn National's senior vice president for corporate development, made the statement Tuesday during a meeting of the Kansas Lottery Gaming Facility Review Board. The statement appeared to strike the room like a bombshell.

Board Chairman Matt All asked Snyder if Penn National would rethink its commitment to the Cherokee County project if it didn't receive the contract for Sumner County.

"I can't answer that in the affirmative today," Snyder said.

Responding to a follow-up question by All, Snyder said it was possible that Penn National would abandon its plan in Cherokee County. Penn National has one of three competing proposals in Sumner County.

Snyder cited competition from the \$301 million Downstream Casino Resort, on land adjacent to Penn National's proposed site. The Quapaw Tribe of Oklahoma opened the casino on Saturday just on the Oklahoma side of the state

line, with a hotel scheduled to open in fall.

"We are committed in a southern Kansas strategy," Snyder said. "To do Cherokee County alone, I can't make that same commitment to you."

Tim Wilmott, Penn National's president and chief operating officer, also made a statement during the meeting that may cause some to doubt the company's commitment to Cherokee County.

"The market has changed dramatically since we first arrived," Wilmott said. "This project is difficult to justify financially."

Snyder said the decision is based on the market.

"I've heard terms like 'bait-and-switch,'" Snyder said. "I've heard terms like 'misrepresentation.' It's simply a response to market conditions."

The board is considering a contract with Penn National with a scaled-back and phased-in investment. Under the contract, the company proposes to start by building the casino with an initial \$125 million investment, then phase-in projects costing \$100 million over 12 years. Company officials cited competition from Downstream Casino Resort as the reason the company needed to phase-in the minimum \$225 million investment required in the state law.

The state board will make final decisions on the casino contracts in four areas of the

state when it meets Aug. 20 and 21.

"Our desire is to be in Cherokee County and to be a good corporate citizen," Eric Schippers, public affairs vice president for Penn National, said in April when the idea for the phased-in plan was announced.

Schippers was asked during a break in the meeting why the company has changed its plan yet again.

"The reality is entirely different" with the opening of Downstream Casino Resort, Schippers said. "The landscape has completely changed for us."

He was asked about statements company officials have made to reporters and government officials committing to the Cherokee County project.

"We can't make a commitment," Schippers said. "We're going to have to weigh all of our options and take a look at the operation. We take this decision very, very seriously. This is not a decision we take lightly."

He said the company's new approach is the southern Kansas strategy of investing \$600 million in casino projects in Cherokee and Sumner counties.

"What has changed is now the reality that we have a \$300 million competitor without a level playing field," Schippers said, noting that Penn National will have to give 27 percent of its revenue to the state, while Downstream's taxes

amount to about 6 percent.

The statement also surprised at least one Cherokee County commissioner.

"That was troubling," said Commissioner Rodney Edmondson, adding that company officials have repeated their commitment to the project many times. "It does concern me."

Cherokee County has a contract with Penn National Gaming, and David Cooper, the county's attorney on gambling issues, said legal action could result if Penn National were to abandon its project in Cherokee County. He said Penn National will either build a casino or pay damages to the county if the company is awarded the state contract.

Penn National repays the county for Cooper's legal fees.

Commissioner Pat Collins said he was unconcerned about the statement.

"As far as I'm concerned, they're still committed to Cherokee County," Collins said. "I don't see any problems. This is the best place in Kansas for the casino. Anything they do is a plus for this county."

The tentative state contract with Penn National in Cherokee County requires the company to invest a certain amount during specified years and it lists things the company will consider, but it doesn't specify what items the company would build during which years.

"They're not committed to

building a hotel," All said. "They're not committed to building an entertainment facility."

"What we will build will depend on market conditions," Snyder said when addressing the question later. "We will react to the marketplace."

Snyder said he realized that wasn't a direct answer, adding that a 150- to 200-room hotel may be built within six months of the casino opening.

Among those speaking in favor of the project during the public comment period were Mark Goehring, with the Baxter Springs Chamber of Commerce; Bert Kellum with the Baxter Springs Economic Development Committee; Larry Delmont, Galena police chief; and state Rep. Doug Gatewood, D-Columbus.

State Sen. Jim Barone, D-Frontenac, said the \$225 million minimum investment scared off some developers who otherwise would have submitted proposals.

Steve Langerot, a Scammon resident, said he was "an avid gamer."

"I've already been to Downstream Casino twice," Langerot said.

He said Cherokee County residents were promised a destination casino.

"I believe we're being shortchanged," Langerot said.

The board chairman thanked those attending.

"This, if it goes well, will benefit the whole state," All said.

# Dim future for projects under governor's budget

By Vincent Armenta  
Capitol Weekly

SACRAMENTO, Calif. — When the tribal-state gaming compacts were first negotiated back in 1999 with then-Governor Gray Davis, a special fund was created in the State Treasury called "the Indian Gaming Special Distribution Fund" (SDF). The SDF was established to receive payments from tribes that had gaming devices prior to the signed compacts.

The money in the SDF was available for appropriation by the Legislature for a number of purposes including grants for programs designed to address gaming addiction and grants for the support of state and local government agencies impacted by tribal government gaming.

Impacted communities formed "Indian Gaming Benefit Committees" consisting of local government and tribal government representatives. In our community in Santa Barbara County, our Indian Gaming Benefit Committee is made up of representatives from Santa Barbara County as well as Solvang city government and two representatives from our tribe, the Santa Ynez Band of Chumash Indians. Over the past few years we have worked diligently as a team to fund various programs locally — to the tune of approximately \$1.3 million annually.

Unfortunately, Governor Schwarzenegger's proposed budget plan strips all SDF monies from the local Indian Gaming Benefit Committees, taking away the casino impact mitigation grants. And he can do this since the compact allows for the reappropriation of funds for a number of purposes, including "any other purpose specified by law."

The potential threat of the loss of SDF monies for much-

needed funding for important projects that affect the entire community has us all worried. Communities throughout the state have come to depend on the funds for critical projects and services that may not be funded otherwise.

Taking away the SDF from the local Indian Gaming Benefit Committee here in Santa Barbara County places the tribal funding of a deputy at the Santa Barbara County Sheriff's Department's Solvang substation at risk and could potentially impact the community.

Also at risk with the loss of the SDF monies locally is the tribal funding of a firefighter/EMT at the local Santa Barbara County Fire Department station. Again, potentially a negative impact on the entire community.

Our tribe and the Santa Barbara County Board of Supervisors are working together to get the SDF monies reappropriated. The Board sent a letter to Governor Schwarzenegger outlining the significant negative impact we would experience in our community with the removal of SDF casino mitigation grants.

We are also closely watching the movement of Assembly Bill 1389, authored by Assembly member Alberto Torrico (D-Fremont), which enacts several recommendations proposed by the State Auditor relative to the allocation and use of proceeds from the Special Distribution Fund. This bill was passed as "amended" by the Senate Governmental Organization Committee and has been referred to Senate Committee on Appropriations.

We hope that the Governor rethinks his proposed budget plan or that AB 1389 is passed by the Legislature so that the Special Distribution Fund can once again work to benefit the local communities.

## Fancy dancing



Jeff Jones/ Independent

Richelle Donaghey demonstrates a women's fancy dance while she and other members of the Callin' Eagle dance group, from Window Rock, perform at the McKinley County Courthouse Square in downtown Gallup as part of the summer nightly Indian Dances continuing through Labor Day.

# Cherokee ex-worker sentenced

By David Harper  
Tulsa World

TULSA — A former Cherokee Nation Enterprises official was sentenced Wednesday to 18 months in prison after he pleaded guilty to a money-laundering charge.

Kevin James Poe said in a plea agreement that he spent more than \$10,000 of what he

received in gratuities while with the tribe on a Harley-Davidson motorcycle.

Poe, 34, pleaded guilty March 26 in federal court in Tulsa. He stated in his plea agreement that he received from Jeremy Don Carlos Babbitt two cashier's checks totaling more than \$24,000 in the spring of 2004.

He admitted helping Babbitt

obtain a contract to provide services for Cherokee Nation Enterprises and receiving checks, cash and gifts from Babbitt from Aug. 1, 2001, through May 28, 2004.

Babbitt, also 34, was sentenced in October to five years of probation, with the first six months on home detention, after he pleaded guilty in May 2007 to three counts of tax eva-

sion.

Assistant U.S. Attorney Edward Snow said Wednesday that Babbitt helped Cherokee Nation Enterprises set up information technology systems.

Mike Miller, the tribe's communications officer, said Poe became Cherokee Nation Enterprises' chief information officer in June 2000 and became its director of informa-

tion systems in February 2003.

Poe resigned in January 2005 after the tribe detected the gifts, Miller said.

Poe's attorney Allen Smallwood said the amount of money involved was slightly more than \$30,000.

U.S. District Judge James Payne fined Poe \$5,000 and ordered him to report to prison by Aug. 20.