

Future is unclear for downtown casino

The Seneca Nation plans to move forward this week with construction of a downtown Buffalo casino, but critics say they don't believe the casino will ever be allowed to open.

Despite a federal court decision raising questions about the legality of a Buffalo casino, Seneca President Maurice A. John said he is „confident“ the National Indian Gaming Commission will determine that property the nation bought near the city's Cobblestone district can be used for a casino.

„I don't see [the federal court] decision as a major setback,“ Martin E. Seneca Jr., John's legal counsel, said Saturday. „I see it as the judge asking for a clarification of the gaming commission's work.“

Seneca said he believes the gaming commission will rule in the Seneca Nation's favor in time to open a temporary casino near HSBC Arena in April. He said he also believes any other legal challenges raised about the casino will be resolved in the nation's favor.

Richard J. Lippes, one of the attorneys for Citizens Against Casino Gambling in Erie County, disagrees.

„We don't believe the gaming commission can ever make a legal determination that these are Indian lands,“ Lippes said.

Cloyce V. Choney, commissioner of the gaming commission, said it is too soon to predict what the commission's determination will be. He added that the process is likely to take months.

„Our general counsel and staff will look at all the facts ... it's going to take awhile,“ Choney said Saturday by telephone from his home near Washington, D.C. „It's not [likely] to be

done in a matter of days or even weeks.“

The commission's timetable for evaluating the Senecas' case could possibly be expedited „under certain circumstances,“ added Choney, a former FBI agent.

Choney said he was unaware of U.S. District Judge William M. Skretny's ruling on the casino until a reporter called him to comment. Skretny ruled Friday that the gaming commission acted improperly in late 2002, when it approved a gambling ordinance the Senecas proposed.

The judge ordered the gaming commission to re-examine the Seneca ordinance and to determine whether the Buffalo property bought by the Senecas can be legally called „Indian lands“ and used for a casino.

While declining to comment on the ruling, Choney said he has a favorable opinion of the Senecas and their gambling operations. He said he visited the tribe's Niagara Falls casino during a training seminar last October and was impressed with what he saw.

„It's a nice facility, a good location,“ Choney said. „I understand they're doing very well.“

The tribe said work on the building's foundation is in its early stages and will continue this week at Michigan Avenue and Perry Street.

Ultimately, the Senecas plan to spend about \$ 200 million „developing this project in a very depressed area of Buffalo and providing 1,000 to 1,500 good jobs with amazing benefits,“ Seneca said.

Seneca said he and John are confident that the gaming commission will determine the downtown property meets the legal definition of „Indian lands.“

According to Seneca, most of Western New York – including the

casino property – was Seneca Nation land long before Christopher Columbus explored America in 1492 and „long before the first recorded history of man.“

In the 1700s and 1800s, Seneca said, lands were taken from the Seneca Nation in unfair treaties or corrupt land deals arranged by white men. Now, the Senecas believe it is only fair they should be allowed to purchase some of those properties back, and they should be considered „Indian lands“ again.

Indian nations can only operate casinos on Indian lands, Skretny said in Friday’s ruling. The judge said the gaming commission must determine that the land the Senecas bought in downtown Buffalo is Indian land before a casino can be established there.

Casino opponents who filed the federal lawsuit strongly disagree with Martin Seneca’s view, and they predict that the Buffalo casino never will be allowed to open.

„Even if the gaming commission ruled in the Senecas’ favor,“ Lippes said, „there are many other weighty legal issues we raised in our lawsuit that Judge Skretny has not ruled on yet. We’ll be raising those issues again.“

The casino opponents believe the gaming commission and former Interior Secretary Gale Norton both acted illegally and improperly in allowing the Senecas’ agreement for a Buffalo casino to move forward.

According to Lippes and co-counsel Joseph M. Finnerty, Norton took extremely unusual actions in late 2002 when she allowed the Senecas’ gambling plans to continue without formally approving or disapproving them.

Norton twisted and misapplied the Seneca Settlement Act of 1990, a settlement of a lease dispute between the Senecas and residents of their lands in Salamanca, and also the U.S.

Indian Gaming Regulatory Act, Finnerty said.

„We will go to court again over the actions of Gale Norton,“ Finnerty said.

Martin Seneca, a graduate of Harvard Law School who worked at the White House in the early 1970s, said he believes the courts will ultimately decide that Norton's actions were legal.

„We're going to be right back at it in court,“ Seneca said.

The Justice Department is reviewing Skretny's ruling and has not yet decided whether to appeal, said Mary Pat Fleming, civil chief in the U.S. attorney's office in Buffalo.

Justice Department lawyers maintain that Norton and the gaming commission acted properly within the law, Fleming noted.

Seneca said he is thankful that Skretny's ruling apparently will have no impact on the casinos the Senecas already are running in Niagara Falls and Salamanca.

„[This] litigation relates solely to the Buffalo parcel,“ and not to Niagara Falls or Salamanca, Skretny specified in the ruling. „Moreover, the Buffalo parcel is the only site for which the [gaming commission] may still determine whether proposed gaming will occur on Indian lands. On all other sites, gaming already is a reality.“

Finnerty said the lawsuit before Skretny is aimed at the Buffalo situation only.