



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

SEP 22 2006



Honorable J. Dennis Hastert  
Speaker of the House of Representatives  
Washington, D.C. 20515

Dear Mr. Speaker:

Thank you for your letter of August 22, 2006, to Secretary Kempthorne forwarding correspondence you had received from two members of the state legislature. The legislators were concerned about recent actions by the Prairie Band of Potawatomi Nation. The Secretary referred your letter to my office for response.

Most of the questions raised in the correspondence from the legislators concern issues addressed by former Solicitor John Lesly, in his January 21, 2001, letter to you concerning the Prairie Band's claim to land located near Shabbona, Illinois. In his letter, Mr. Lesly indicated that, after considerable review of the relevant facts, the Department of the Interior determined the Prairie Band, a federally recognized Indian tribe, had a credible claim for the unextinguished title to the land at issue. Mr. Lesly noted also: "[t]he success of any litigation to vindicate this claim is necessarily uncertain."

The issues in any litigation would center on the fundamental issue of the extent to which this recently purchased land is subject to state and local jurisdiction. State jurisdiction over Indian owned lands is a complex area of the law dominated by the unique history of each parcel of land but recent case law provides guidance. For example, in *Cass County v. Leech Lake Band of Chippewa Indians*, 524 U.S. 1031 (1998), the Supreme Court held that once Congress authorized the alienability of that tribe's land within the boundaries of its clearly established reservation, the tribe's repurchase of the land did not reinstate its non-taxability. More recently in the *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197 (2005), the Court held that the Oneida Indian Nation could not unilaterally revive Indian sovereign control over lands it had purchased within the exterior boundaries of its reservation. The Court relied on several factors, including for example, the justifiable expectations of the non-Indian community based on long, uncontested occupancy in good faith belief that their titles were good and lawful, impossibility and acquiescence. The *Sherrill* decision is of fundamental importance and any assertion of rights over land would require an analysis under these and other relevant cases.

In addition, the status of the land must be determined prior to gaming occurring on this land. The Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. 2701 et seq., states that for class II gaming to occur on the land it must be "Indian Lands", which are

“all lands within the limits of any Indian reservation; and any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.” 25 U.S.C. 2703 (4)(A)-(B). The Department has not yet reviewed this land to determine if it would be considered Indian land within the definition of IGRA, and we do not know if the National Indian Gaming Commission has approved “any tribal ordinance or resolution concerning the conduct of or regulation of class II gaming on the Indian lands.” 25 U.S.C. 2710 (B)(2).

Any claim to jurisdiction over Indian owned land within a tribe’s former territory, and conversely any claim to immunity from such jurisdiction, will have to deal with the complex application of all the factors referenced by the treaties, courts, and statutes in the context of the specific claim.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Olsen", with a long horizontal flourish extending to the right.

Michael D. Olsen  
Principal Deputy Assistant Secretary –  
Indian Affairs



Prairie Band Potawatomi Nation  
Government Center

March 21, 2007

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DeKalb County Board

200 North Main Street

Sycamore, IL 60178

Dear Members of the County Board:

As you know, early in 2006 the Prairie Band Potawatomi Nation purchased 128 acres of land within its historic Shab-eh-nay reservation in DeKalb County, near the Town of Shabbona. And, as has been discussed openly by the Nation, we propose to build a government center and a modest bingo parlor on our historic land. Our willingness to have public discussions about our plans is based upon our interest generally in openness with our neighbors. For this reason, we want to thank you for the opportunity to discuss our reservation and our plans with the Executive Board on March 13, 2007. We thought the discussion was fruitful and positive, and we hope that our government-to-government dialogue will result in inter-governmental agreement on issues of mutual concern.