



BEN D. CROSS
POPE COUNTY JUDGE

100 West Main Street Russellville, AR 72801
(479) 968-7487 Fax (479) 967-6874
pcjudge@suddenlinkmail.com



March 25, 2020

Chairman Alex Lieblong

Commissioner Mark Lamberth

Commissioner Butch Rice

Commissioner Denny East

Commissioner Michael Post

Commissioner Bo Hunter

Commissioner Steve Landers

Mr. Smokey Campbell

Arkansas Racing Commission

1515 West 7th, Suite 505

Little Rock, AR 72203

RE: Legends Resort and Casino Application

Dear Mr. Chairman and Honorable Commissioners:

I submit this letter as clarification and observation as it relates to the acceptance of the Legends Resort and Casino gaming application. On Tuesday, November 6, 2018, the citizens of Arkansas chose to adopt an amendment to the Arkansas Constitution ("Amendment 100") which, among other things, called for placement of a casino in Pope County, Arkansas. Some Pope County residents were happy, some were not, nevertheless a constitutional change carries significant precedence and implementation. As a county judge, not only do I have to accept and uphold the entire constitution, I also am charged with the specific fiduciary responsibility to ensure a healthy and secure financial future for my county and its' communities.

First, let me thank each of you for your service on the Commission and taking the time to consider my request; which is to accept the CNB/Legends application pursuant to "*good cause shown*" and let Pope County have some direction over our future. Wherever litigation may continue is really irrelevant when

following the explicit language of Amendment 100. In recognition of the recent Pulaski County Circuit Court ruling, and in acceptance of the fact the Gulfside application may ultimately have to be considered by the Commission, I would implore you to expediently accept the CNB/Legends application, so that the Commission may have the benefit of a side-by-side comparison based on the merits of each. When you have that opportunity, I do not believe there is any likelihood that you would reasonably grant Gulfside Casino Partnership a license. In light of the looming economic outlook, please do not hesitate to act and subject our county to any further potential loss of revenue.

Throughout 2019, my interactions with the Commission and counsel have been most pleasant and enjoyable, and in conversations between all parties, I was left with the impression that, if and when, Pope County chose to move forward with the selection of a casino vendor, then we would be afforded such opportunity at that time. Therefore, when the May 2019 casino application period came and went, I was under no perceived rush to act, because I felt assured the Commission would act when the appropriate time came, and I believe that was what was intended by the "second application period." Now that the second application period is a mute issue, please reopen the first application period.

From a historical perspective, and just to share the intensity with which Pope County has had to endure the past two years; that same November day in 2018, Pope County voters overwhelmingly passed a citizen's driven local initiative in an attempt to achieve local control over the fate of such a facility in our county. Then, on December 21, 2018, lame duck county judge Jim Ed Gibson penned a one sentence purported letter of support for Gulfside Casino Partnership, long before this body, (*the Commission*), was complete with even establishing the casino gaming rules. To further confuse the issue, Mr. Gibson on his last day in office, granted a media interview with the news outlet "*River Valley Now*" in which he responded to a direct question as to whether or not his purported letter of support was in fact intended to be "the" letter of support asked for. His response: "*No, the letter I sent was one sentence long. And that's why I put "if a casino license is granted" in the letter*".

Subsequently, Mr. Gibson felt compelled to come back five months later, on May 15, 2019 and complete a sworn affidavit to now assure his letter was intended to be construed as a letter of support. Uniquely enough, in that sworn affidavit he refers to Gulfside's commitment of \$150 million dollars in development costs, and I will supplement that issue later in this document.

When I inherited this issue on January 1, 2019, many wheels were already in motion; including litigation on the county level and the question of validity of the "Local Option" (*Pope County Ordinance 2018-042*), passed the same day as Amendment 100. From a personal perspective, I would like to inform you, I have never taken a "pro" nor "anti" casino stance. In fact, I was elected by the May 2018 Republican preferential primary with no November opponent. As the primary occurred before Issue 4, (*Amendment 100*), was even approved to appear on the ballot, it really had no bearing or influence on the primary election race. All you will ever find in news reports is my commitment to uphold the will of the voters to the extent possible, until litigation takes us otherwise. This same stance has not changed and can be seen in a nine-page op-ed I authored in March 2019 to the citizens of Pope County, which was published

over several venues of social and print media at the time. On page 8 of that editorial I state, "My pledge to you was to uphold the will of the voters of Pope County until such time as the courts may direct me otherwise." My position has always been to remain neutral, but prepare for what I view as an eventuality. In doing so, I immersed myself into selecting the best possible casino vendor for Pope County.

Little did I know at the time, the direction this issue would ultimately take. The Quorum Court, County Clerk and myself, in consult with various constitutional attorneys, the Arkansas Secretary of State's Office, and the State Election Commission looked for any available option to honor the spirit of the local ordinance. Finding no lawful mechanism to initiate such action, and coming to the realization the county was going to be sued by either the proponents or opponents of the issue, *or both sides for that matter*, a consensus of a need to act was considered.

In the interim, I had been meeting with five perspective casino operators, some on virtually a weekly basis. This is all to say, I participated in a continual vetting and interview process from April 2018, (*before I was even elected*), through August 2019, before coming to a clear selection of a vendor. Amendment 100 provides no vetting, nor criteria for selection of a casino vendor. Lacking any such direction from the law or state government, I took the business model, financial backing, economic development opportunities, and locally established relationships, as the criteria to make a selection. In doing so, it created a spirit of competition between the vendors, and the \$150 million dollar commitment agreed to by my predecessor, was ultimately surpassed by at least another \$100 million dollars, including a specific economic development agreement which directly benefits the local community and economy by the payment of \$38.8 million dollars in up-front cash distributions. Also included in the EDA, is the establishment of a \$2 million dollar annual payment to non-profit entities in our county and \$100,000 annually to the River Valley Alliance for Economic Development for the life of the casino operation. Additionally, physical structures such as a convention center, concert venue, and many other added amenities not negotiated by my predecessor were added to the agreement. Our choice, Cherokee Nation Business, took the added measure of establishing a professional respectful relationship, and while other vendors chose various marketing approaches, from seeking the public's support to pressure government officials, to as rash as threatening to sue the county by others, CNB chose to remain professional and respectful. From three decades in law enforcement, trust and confidence have to be earned by someone like me, and I want you to know, I did my homework in selecting CNB.

As fate would have it, that impending litigation became a reality after the Quorum Court sought to approve a resolution of support for CNB in August 2019. Additionally, there were allegations of criminal violations of the Arkansas Freedom of Information Act, civil allegations of the same, and alleged ethics violations by members of the Quorum Court. All of which, were ultimately shown to be without merit or validity. A circuit judge in a court of law found the local ordinance unconstitutional and all alleged F.O.I.A. violations without merit, dismissing all counts on October 29, 2019. A special prosecutor appointed to review the alleged criminal violations of F.O.I.A., while certainly providing much personal

inuendo and personal opinion, likewise found no evidence for a prosecutable offense. The State Ethics Commission conducted their own thorough investigation, finding all alleged ethics violations "*unfounded and without merit.*" Hopefully, the picture of these actions being political posturing without valid backing is becoming acutely clear.

Now, after having to expend over \$40,000 of taxpayer money to defend a constitutional issue that should have occurred on the state level, I find myself extremely concerned as to the fate of not only \$38.8 million dollars in actual economic cash incentives, but the overall Legends development and future business model which is considerably more attractive than the Gulfside proposal. Our selection of CNB/Legends as the appropriate vendor for Pope County is our final option at having a local say in the matter. Essentially, the state of Arkansas placed this upon us, please let us have some say in who we are partnered with for decades. Amendment 100 doesn't have any stipulations for litigation or alternatives for selections; it simply states the Commission shall issue a license to a qualified applicant. The CNB/Legends application contains a **resolution of support by the Pope County Quorum Court, a letter of support from the County Judge pursuant to the rules and regulations of the Commission, two Mayoral letters of support from the cities of Dover and Pottsville, a signed Interlocal Agreement between the County and the city of Dover, and a welcoming resolution from the Russellville City Council.** So, to all those who would allege back door dealings, pay off's, and switching their position, that is simply untrue. Circumstances surrounding this issue have dramatically changed and evolved over the past 18 months, and is evident by the circle of support listed above. Again, thank you for your consideration.

Respectfully,



Ben D. Cross

Pope County Judge