

# Pope County Casino – Fact from Fiction

*By Pope County Judge Ben Cross*

In my travels around our county, I am often inundated with questions about a casino coming to Pope County, and I am continually surprised by what is out there on social media in regards to the same. In an effort to educate our citizens on the effects of the passage of Amendment 100, I think it would help to outline how this all began, what has transpired, and where we are now.

## **How did this all start?**

The concept of full casino gaming in Arkansas began over five years ago with the Downstream Development Authority of the Quapaw Nation and their desire to locate a casino in Pine Bluff in Jefferson County. This led to negotiations with other gaming institutions (*Oaklawn* and *Southland Greyhound Park*) to avoid opposition to their intent. The Quapaw subsequently retained the services of a Little Rock law firm to draft language which would stand the scrutiny of the office of Attorney General, as well as, independent legal challenges. In addition to this, the Department of Finance and Administration and legislative groups had to scrutinize the taxing structure and economic viability of casino gaming. The resulting analysis suggested a fourth casino was needed to generate the “cash flow” needed for the state’s general fund.

As time progressed and draft ballot titles began circulating, a mechanism of promoting the idea was needed, hence “Driving Arkansas Forward” was formed with the goal of promoting the passage of what would become Issue 4. As various versions of specified language were developed, one must remember, this was a “citizens initiated act,” not a legislatively initiated act. The initial ballot title was submitted for review on January 5, 2018, by the law firm of Steel, Wright, Gray, and Hutchinson. The ballot title and language of the measure were initially rejected by the Attorney General’s Office, (*see A.G. Opinion 2018-001, Page 8 Response, and Page 15 Conclusion*), and a subsequent submission was also met with rejection. Proponents of Issue 4 then petitioned the Arkansas Supreme Court to direct the Attorney General to certify their redefined measure in a pleading filed April 20, 2018, (*Supreme Court Case # CV-18-342*), and the Supreme Court sided with the proponents, ensuring Issue 4 would be on the ballot if the required amount of signatures were obtained. In a response dated May 23, 2018, (*A.G. Opinion 2018-068*), the Attorney General’s Office certified the ballot title, (*see Page 7 Response*). In addition to opposition from the Attorney General’s Office, two private groups also filed suit to block Issue 4 in August 2018. Ensuring Arkansas’ Future, representing many faith based groups, and Citizens for Local Choice, based out of Pope County, both filed legal challenges before the Arkansas Supreme Court. Both of these suits were summarily dismissed by the court on September 10, 2018, in a 6-1 ruling against Ensuring Arkansas’ Future and a 7-0 ruling against Citizens for Local Choice. The certification of ballot title was the final obstacle to be cleared to allow proponents of Issue 4 to begin gathering the required signatures needed to be placed on the November 2018 statewide ballot.

Since the passage of Issue 4 would change the Arkansas constitution, it became a statewide measure and not a local decision. As we all know, the state of Arkansas passed Issue 4 by a 54%

to 46% margin, while Pope County voters voted Issue 4 down by a 60.58% to 39.42% margin. Thus, Issue 4 became Amendment 100, despite the wishes of Pope County voters.

### **How did Pope County get chosen as a casino location?**

Initial versions of Issue 4 had verbiage with casino locations being placed according to certain population counties as identified by the Arkansas Economic Development Commission pursuant to the Consolidated Incentive Act of 2003. This simply means the first version of the amendment stated the casino was to be located in one of the following counties: Crawford, Crittenden, Jefferson, Miller, Mississippi, Pope, Union, or White. Once this version was struck down by the Attorney General, subsequent versions became much more specific. The version ultimately accepted had Pope County as the selection. While keeping in consideration there has to be “space” between markets, so as to not infringe on another gaming entities business, the needle stopped on Pope County.

To support this decision, a market analysis was paid for by the proponents and conducted by an out of state marketing firm from Minnesota. A conclusion was reached with a basis that not one Pope County citizen would ever come through the door. Essentially, would a casino succeed and produce the needed state tax revenues to justify its’ existence without Pope County patronage. The answer was yes. In the gaming industry, the Pope County market fits a niche based on location that doesn’t lend itself to the smallest of markets, nor the “whale” markets, such as Las Vegas and Atlantic City. To further support the marketing decision, an analysis of data collected showed that while Pope County is 13th in population amongst Arkansas’ 75 counties, we are number 3 in the state in online gaming as evidenced by the tracking of I.P. addresses. Additionally, Pope County consistently ranks in the top ten in lottery sales, averaging a million dollars a month in ticket sales. So, “on paper,” Pope County would appear to be a “friendly” market to the gaming industry.

### **Where is the casino to be located?**

Of the vendors who have contacted me, the majority want a location outside the city limits of Russellville. Remember, the amendment only requires it to be within two miles of the Russellville city limits, thus opening up a large segment of potential unincorporated sites, and potentially within three other cities, (*London, Pottsville, or Dover*).

### **What casinos have expressed interest in locating in Pope County?**

Gulfside Casino Partnership from Gulfport, Mississippi, Warner Gaming from Las Vegas, Nevada representing the Hard Rock Café, Cherokee Nation Businesses from Catoosa, Oklahoma, The United Keetoowah Band of the Cherokee from Tahlequah, Oklahoma, and The Choctaw Casino group from Durant, Oklahoma. Additionally, there are number of groups seeking to operate through a third party interest due to the lack of experience in the gaming industry requirement as established by Amendment 100.

### **Can Pope County have another election to decide once and for all, whether a casino comes here?**

No. While the county judge could call for a special election, it could only be subject to matters of law. The simple question of “do you want a casino, YES or NO” cannot be on a ballot. Law was established with the passage of Amendment 100 on November 6th and cannot be reversed, nor amended, without going through the entire process of another constitutional amendment before the state of Arkansas. I have confirmed this through the Secretary of State’s Office and the Arkansas Election Commission.

### **What about the “Local Option”?**

Pope County voters passed Ordinance 2018-O-42 by a margin of 68.07% to 31.93% which placed a restriction on the ability of the county judge to issue a letter of support to a particular casino vendor without first putting that measure before the voters of Pope County. The language of this ordinance does not offer the question of “do you want a casino?” but rather concerns the act of issuing a support letter alone. Furthermore, in paragraph 3.1 of the ordinance, it states if such election was to be called, it would require “a majority of the registered voters of Pope County,” not simply a majority of votes cast.

To put this into perspective, there are 34,792 registered voters in Pope County, meaning 17,397 voters would have to come out to an election, and all 17,397 would have to vote one way. Taking into account only 18,051 people voted in the last general election, you can easily see this is a threshold which can never be attained.

As a side note, you should also know the authors of Amendment 100 placed the language requiring a letter of support from the county judge, and/or mayor if located within the city limits, as the “local option” mechanism to pass the scrutiny of the Attorney General’s Office. This simply means, the office of county judge as the chief executive officer of the county, represents the majority views of the county, and therefore in a representative democracy, has the discretion to act on behalf of those he was elected to represent.

### **What about the Racing Commission rules adoption?**

The Racing Commission approved 318 pages of casino rules at their February 21st meeting. Of particular note is Rule 2.13, paragraph 4, subsection (b) which makes any letters of support for a particular casino vendor come from the sitting county judge at the time of application submission. In conjunction with this, legislation mirroring Rule 2.13 was introduced and passed, becoming Act 371 on March 8, 2019. Interestingly enough, prior to the rule’s adoption process, there was a 30-day comment period advertised by all media outlets in which anyone could give their view on the casino issue to the Racing Commission. After the comment period ended, only 194 people had submitted their views, two of which, were Mayor Richard Harris and myself. In information I received from Mr. Byron Freeland, legal counsel for the Racing Commission, of the 194 letters received, 188 originated from Pope County, with 162 being characterized as “anti” casino and 26 being “pro” casino.

### **Can an individual, or Pope County as a governmental entity, run its own casino?**

No, Amendment 100 clearly states an applicant must demonstrate previous experience in the casino industry to obtain licensing. The rules recently adopted go into much more specific detail regarding and defining what that experience must entail.

### **How much taxpayer money has Pope County expended fighting the casino issue?**

None. The lawsuits filed against the former judge, and myself upon taking office, were subsequently dismissed and never even had an initial hearing. The subsequent lawsuit filed against my predecessor in his individual capacity, and also later dismissed, would have been incurred by the individual and not the county. The only parties who could have potentially been out any money, would have been the plaintiffs.

### **What happens next?**

May 1st opens the application process by which a casino operator may apply for a license in Pope County. The application process is open for 30 days. I can only speculate as to how the future develops, but I anticipate Gulfside Casino Partnership will submit their application with their previously obtained support letter from the previous county judge, during the stated application period. I again speculate, the Arkansas Racing Commission will reject the Gulfside application, triggering litigation which would begin with an appeal to Pulaski County Circuit Court. The Attorney General's Office represents state agencies and would defend the Racing Commission in such action while Gulfside attorneys argue their case. Whichever side loses at the Pulaski County Circuit Court level would then appeal to the State Supreme Court. The Supreme Court and its seven justices would then rule on the final disposition of the "rules making process."

Please keep in mind, the issue of a casino or not, was decided in November and the only items left to litigate are the procedural measures which enact the amendment. In recent days, many of the other interested parties have reached out to me seeking "conditional" letters of support which would only be "triggered" by a casino favorable ruling by the Supreme Court. This, in theory, would essentially allow all parties to compete for the casino if, and only if, Gulfside wins their case. I will not be issuing any such "triggering" letters as I believe this only further subjects Pope County to potential litigation and it circumvents what I have already told all Pope County citizens. While I believe in the concept of fair competition in the business market, the circumstances surrounding the casino measure are best left to the courts to decide.

### **Will the casino issue ever just go away?**

No. Amendment 100 states there "shall" be four casino licenses issued. The "where and when" is what is still to be determined. The entire marketing and taxation model is literally banking on it. We all just saw legislation passed devoting \$35 million dollars in casino revenue to the highway fund, and the needs in state general revenue are based on all four casinos being operational.

When you look from the casino industry standpoint, and you have the opportunity to open your business with a license for life, no threat of competition, and some of the lowest gaming tax rates in the nation, then this fourth casino license becomes virtually priceless.

If you take the word “casino” out of the equation and just operate as business ”XYZ” and you’re assured of millions of dollars in profit, no one to compete against; and as long as you follow the rules, you get to keep your business for not only your life, but also your heirs and successors, then you have achieved the ultimate legal monopoly. Hence, the term “priceless.”

### **What is an EDP?**

An Economic Development Plan (EDP) is a term the gaming industry uses to encompass what benefits they pledge to a community in addition to being a corporate taxpayer. An example would be the recent offer of 20 million dollars over twenty years to area schools by Gulfside casino partnership. An EDP proposal is commonplace in the industry as a means to show community involvement and examples presented to me were mostly infrastructure related.

### **Could we get “stuck” with an “Indian” casino?**

First, there is no such thing as an “Indian” casino once they step foot into the state of Arkansas. The casinos owned by Native Americans become just another limited liability corporation (LLC) once they start a business in Arkansas. They pay the same tax rates and are afforded no special privileges in our state. The only place where Native American tribes enjoy preferential operating status is in a 15 county area in northeast Oklahoma. The notion that Native American tribes will “bus in people for construction and take all their money back to Oklahoma” is simply untrue. Likewise, is the notion, “they will just throw up a metal building and begin operating their casino.” Frankly, the Cherokee have presented the most economically beneficial and most open EDP to date. Additionally, they have provided financial stability to back up what they say and have presented architectural renderings of a facility that are quite staggering, and look nothing like what one would associate with their operations in Oklahoma; in fact, it looks nothing like a casino at all.

Amendment 100 clearly states the casino vendor must demonstrate an initial investment of 100 million dollars. The vendors so far have presented proposals far in excess of that figure and none have involved a metal building. This should not in any way be construed as any form of endorsement of the Cherokee over anyone else, or a casino in general for that matter, it should simply further clarify fact from fiction.

### **Conclusion Summary:**

The entire casino issue is far from over and, at this point, only litigation will determine the outcome. The state legislature has made it clear they do not intend to address the issue of moving the casino with the uncertainty of the effect on all other constitutional amendments. Senator Ronald Caldwell, Chair of the State Agencies and Governmental Affairs Committee, made such action explicitly clear in a letter he authored on February 11th to Johnson County.

One proposed solution being floated by the gaming industry is to put this back before Arkansas voters in 2020. This can be achieved two ways: another individual initiated act, or, as one of the three referred acts the legislature is allowed to present to the voters. Only time will tell as to the viability this option. Currently, the legislature has filed a total of 46 proposed referendums by joint resolution to the constitution, 17 in the Senate and 29 in the House. Only one is related to casinos, Senate Joint Resolution 13, which is currently by title only without content.

My intent in penning this article was to provide you with the general overview of the “casino issue,” not to take a side or interject personal feeling. As the only person in Pope County with the power to decide whether or not a casino comes here, I take the responsibility very seriously and objectively look at all sides. I meet with every casino operator who comes to town, and have developed a courteous professional relationship with each. It would be naïve and derelict on my part, to stick my head in the sand and pretend the issue will go away. Therefore, I feel I should be the most informed person in Pope County on casinos, and the only way to do that is being able to have an open dialogue with all potential operators in a mutually respectful environment. If I ran every casino vendor out of my office, I would be left uninformed, and more importantly, unprepared.

If the courts were to rule in favor of the gaming industry and come down with what amounts to a “thou shall have a casino” ruling, then is not the time to just start learning who all the players in this scenario are. Because if that were to occur, and I am forced to carry out the wishes of the court, I want the absolute best possible vendor for Pope County in such an outcome.

That being said, my position has not, and will not change. 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. The last three years of my law enforcement career put me within five miles of two casinos on a daily basis. I have seen firsthand, the effects of their presence in a community.

My position as county judge would have been as equally difficult had the vote in Pope County gone 51% in the other direction, because I would have just as stringently upheld the will of that majority, and fulfilled the will of the people in that instance as well. Our institution of a representative democracy demands it. I also recognize the potential economic benefits a casino presents, hence the reason I feel it is my due diligence to continue an open dialogue with all potential vendors should I be faced with ultimately having to select one.

I hope this has been informational and educational to everyone as we navigate through this as a community, and I would ask that as neighbors and friends, we all strive to agree to disagree on those issues that may cause concern, but to do so with mutual respect to one another.

Respectfully,

Ben D. Cross

Pope County Judge