

Citizens for Our Community, Inc.

Casinos And Sovereignty

Frequently Asked Questions

(With Sources for Information Underlined)

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***Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passion, they cannot alter the state of facts and evidence.
(John Adams: December, 1770)***

On August 24, 2004 in the Village of Lynwood, Illinois the Mayor, Clerk and Board of Trustees approved, made available and distributed a document entitled, *The Ho-Chunk Nation Family Entertainment Complex: Frequently Asked Questions*. These officials state quite clearly in a preceding cover letter attached to the document, that the information was created "to dispel some of the myths and lies about what is actually planned and what impact it will have on the Village of Lynwood and its neighbors."

In this document that you are currently reading, Citizens for Our Community, Inc. will continue to do what we were created to do, provide South Suburban residents in general and Lynwood residents in particular with the facts. Our goal is to educate and heighten the awareness of the Southland residents/taxpayers to the negative impacts a reservation casino, or any type of casino for that matter, would have on the entire area.

While Citizens for Our Community, Inc. is well aware of the need for increased employment opportunities in the South Suburban Region, we stand in unanimous opposition to having a reservation casino, or any other type of casino, placed here to attempt to fill that need. The types of jobs this area always needs are the kind that stimulates personal and social strength and stability, where the means always justifies the end. It is certainly not Citizens for Our Community, Inc.'s indirect or direct intention to frighten or scare anyone who wishes to enlighten him or herself through factual information we distribute or articulate.

As for Citizens for Our Community, Inc., we "prefer to be true to ourselves, even at the hazard of incurring the ridicule of others, rather than to be false and to incur our own abhorrence," (Douglass, 1857). As such, the document that you now hold is a complete, robust and substantiated rebuttal to the Lynwood Village Board document distributed on August 24, 2004.

Native American/Ho-Chunk Nation Business Operations
Frequently Asked Questions

1. *Is it true that as a sovereign nation the Ho-Chunk Indians would be exempt from state laws; federal taxes; all state income, sales, and excise taxes?*

As a sovereign nation, the Nation itself is exempt or immune from any lawsuits from the state or local governments (**Felix Cohen's Handbook of Federal Indian Law, Ch 6 Sec. A 4c**). This means that should there be any law broken, the State of Illinois would not be able to sue the Ho-Chunk Nation or do anything about it. State governments have no role with regards to Indian tribes and have no authority over tribes or Indians within Indian Country (**Holland & Hart-Indian law attorneys**). The only exception to this is the extent to which the tribe agrees to give up part of its sovereignty in the Tribal-State Compact.

As a federally recognized tribe, the Ho-Chunk Nation as an entity and any unincorporated business owned by the tribe does not pay any federal income taxes (**IRC section 1**). From **Felix Cohen's Handbook of Federal Indian Law (Ch 7 Sec B2)**, "Indian tribes are not taxable entities under the income tax provisions of the Internal Revenue Code". Under the **Indian Reorganization Act of 1934**, a corporation formed under Section 17 of the Act is not subject to federal income tax. Whether a tribe operates its business on or off reservation, it is not subject to federal income tax regardless of the location of the activities that produced the income (**IRS Publication**).

As individuals and U.S. citizens, the Ho-Chunk Indians are required to pay state income taxes (**Holland & Hart-Indian law attorneys**.) Indian businesses, however, do not pay state income tax. This should also never be confused with the exemption of the tribe or nation from paying any federal income taxes. Companies owning non-Indian casinos pay federal income taxes. Indian tribes and nations do not.

As individuals, the Ho-Chunk Indians are not required to pay sales tax on items purchased outside the reservation which are used within a reservation (**Holland & Hart-Indian law attorneys**). Under the **Bradley -Burns Uniform Local Tax Law 7204**, all local sales or use taxes collected within the boundaries of an Indian reservation are given back to the reservation, NOT to the state.

Finally, and most importantly, the Ho-Chunk Nation does not pay tax on their gaming revenue. A licensed casino of this size with this projected gross income would pay over \$177 million in gaming revenue tax; in lieu of the tax, the Ho-Chunk Nation is offering \$87 million in revenue sharing. **Illinois Gaming Act**.

2. *Does the Ho-Chunk Nation pay property taxes?*

The Ho-Chunk Nation does pay property tax on those lands owned by the Ho-Chunk Nation which are not in trust; this is called "fee-simple". One of the many taxes the Nation **DOES NOT** pay is property taxes on land owned by the Nation which is held in trust by the federal government for the Ho-Chunk Nation. The United States government and the State of Illinois are not permitted to collect property tax on this land-in-trust under **Title 25 Chapter 6 of the United States Code**. This is the same as the United States government not being allowed to collect property tax from England or France on land in the U.S. on which they have their embassies and consulates, which are also held in trust. All Indian casinos **must** be located on trust land, so the **casinos will not pay property tax**.

3. Can you explain sovereign nation status as it applies to Native Americans?

Sovereign nation status refers to the recognition by the United States government of Native American tribes as "distinct, independent political communities" qualified to exercise powers of self-government, not by virtue of any delegation of powers, but rather by reason of their tribal sovereignty" (**Felix Cohen's Handbook of Federal Indian Law Ch 4, Sec A1**). This means that the U.S. government does not grant Indian tribes power, but instead simply recognizes their tribal sovereignty. In matters of self-governance within tribal territory, tribal powers are exclusive, and federal and state powers do not apply, unless such tribal powers have been limited by federal treaties, agreements, or statutes. Without a limiting treaty or federal law, tribal powers may be exercised without any federal or state authority (**Cohen Chap 4 Sec A2**). It is crucial to note that in its compact with the State of Wisconsin, the Ho-Chunk Nation (Winnebago Tribe) did not give up their right to sovereignty. **Compact Between Winnebago Tribe and The State of Wisconsin.**

4. Is it true that Native American casinos cannot be regulated by the State and there is no way to control or monitor them?

In 1988, Congress passed the Indian Gaming Regulatory Act (IGRA), which established three classes of gaming, each with its own type of regulation.

Class I gaming consists of "social games" with prizes of nominal value and is regulated **by the tribe itself.** (**IGRA**)

Class II gaming consists of bingo, lotto, and all manual card games allowed by the state and not played against the house, and is regulated **by the tribe and the National Indian Gaming Commission.** (**IGRA**)

Class III gaming consists of all card games played against the house, slot machines, dog and horse racing, and all other types of casino gaming and is regulated by **compacts** negotiated between the state governor and the tribe. (**IGRA**)

If a Tribal-State Compact is violated, the only remedy the State has is to try to block all Class III gaming through the jurisdiction of the Federal District Courts until the compact is satisfied. (**IGRA Section 2710(d)(7)**). Even this remedy only applies if it is not negotiated out of the compact. In addition, any payment to the state or any other unit of government must also be approved by the Bureau of Indian Affairs (BIA) to become effective. If the BIA finds the state's percentage is too high, the tribe need not pay the higher amount. Nothing is as simple or straight forward as the tribe would like the public to believe.

The state does not have jurisdiction over a tribe or over Native Americans in Indian Country. Sovereign immunity prohibits a lawsuit against a tribe or tribal business organization (**Cohen, Wisconsin Legislator Briefing Book 2003-2004**). Should a problem arise, there is very little a state can do about it.

5. Is it true that a casino will overwhelm local law and social services and ultimately cost us \$3.00 for every \$1.00 that it brings in?

Although a tribe may hold the local governments harmless and they may contract with the local fire departments for service, not every town where there is a Ho-Chunk casino benefits from the casino's presence. According to **Sauk County, Wisconsin Chief Deputy Joe Pratner**, and **Wood County, Wisconsin Chief Deputy Randy Rapp**, neither Sheriff's office receives anything for law enforcement from the Ho-Chunk Nation, even though there has been an increase in theft, traffic accidents and policing services due to the casinos. In Wood County they have had to take on the extra burden without hiring more personnel. Neither County has ever received any police cars (\$80,000 each). Neither County's fire departments has received any fire trucks (\$200,000 to \$700,000 each) or fire retardant uniforms (\$1,500 each) from the Ho-Chunk Nation. **Delton, Wisconsin Fire & Ambulance Commission, Nekoosa, Wisconsin Clerk's Office, Black River Falls, Wisconsin Fire Department.**

As far as social costs are concerned, the figure of \$3.00 of social costs for every \$1.00 generated, is a conservative number backed up by **University of Illinois Professor John Warren Kindt, The Anderson Economic Group, The University of Nevada at Las Vegas**, and many others. A 2003 report by the University of Illinois economist Earl L. Grinols calculates the social cost at \$289 for every \$46 of revenue. That is over \$6.00 in social cost for every \$1.00 generated! (**LANS News**)

6. Is it true that the Ho-Chunk Nation owes the state of Wisconsin \$30 million in taxes?

Since the Ho-Chunk Nation is exempt from paying tax on its gaming revenue, it does not owe \$30 million in **taxes**; however under that Compact that the Ho-Chunk Nation signed with the State of Wisconsin the Nation does owe the state over \$30 million in **revenue sharing**. To date the Ho-Chunk Nation **has not** paid what it owes (over \$30 million) to the state of Wisconsin. It is also the only tribe in Wisconsin **NOT** to pay what it owes (**Hocak Worak, August 4, 2004**).

The Ho-Chunk Nation says that, because the Compact with the State of Wisconsin was voided by the Wisconsin Supreme Court and would need to be renegotiated to satisfy that Court, it does not owe any money under the Compact. However, the Compact that the Nation negotiated and signed with the State of Wisconsin, and under which it conducted Class III gaming, required the \$30 million payment that has not been made.

7. Why are the groups opposing the Ho-Chunk Nation and the Economic Development Plan intentionally misrepresenting the truth?

As an organization, Citizens for our Community, Inc. is concerned about the Southland communities and the citizens who live here; we are not intentionally or unintentionally misrepresenting the truth. Other than protecting our community, our homes and our way of life, we have nothing to gain from fighting this proposed reservation casino, and are not using this as a way to oust "all elected officials". We are not in any way associated with any gambling interests in Illinois, Indiana, or anywhere else. We are based on principles of ethical conduct that are generally accepted in our society, and we expect our elected officials to act according to these principles as well. When major decisions are to be made by our elected officials, we expect them to thoroughly research the issue, obtain independent studies, seek full public input, and make educated decisions in full public view. We are not expecting our elected officials to take this document and our statements as truth; we expect them to research the underlined references

themselves and reach their own conclusions. Remember, the truth remains the truth regardless of what anyone wants to believe.

8. How has the Ho-Chunk Nation performed in the past?

The chart that the Village provided in answer to this question, **HCN at a Glance**, is not a "performance" sheet. There is no information on gross income earned at these casinos. It does not give the percentage of gross income that was negotiated as revenue sharing with the State of Wisconsin. It cannot be determined from the information given how the Ho-Chunk Nation has performed in the past. From our projection based solely on the information given by the Lynwood Village Board, the Ho-Chunk Nation is verbally offering the State of Illinois 25% of gross revenue, which would be \$87 million based on \$350 million projected gross revenue. It is significant to note that, based on that same gross revenue under the present tax structure of the **Illinois Gaming Act**, a licensed casino with the same revenue would generate over **\$177 million**, or 50% of the gross revenue! In addition, to obtain a license for a casino much smaller than this one, the owner would have to pay the state over **\$500 million** for the license. The Ho-Chunk nation will pay **NOTHING** for the right to open a casino. This is certainly a very poor deal for the State of Illinois! However, as far as Citizens for our Community, Inc. is concerned, this does not matter to us. **WE DO NOT WANT THIS OR ANY OTHER CASINO IN LYNWOOD OR ANYWHERE ELSE IN THE SOUTHLAND!**

The Lynwood Village Board, in its Frequently Asked Questions booklet, stated that "we cannot afford to be wrong." If that is the case, there should be full disclosure of all financial information. A better glimpse of the Ho-Chunk situation comes from the **Ho-Chunk Nation's own president, George R. Lewis, in a letter dated 8-18-04**. In this letter he states that the "Southland project" is an incredible opportunity for the Ho-Chunk Nation and would allow the Ho-Chunks to tap into the Chicago market. However, he believes the Ho-Chunk Nation Legislature has been very aggressive, and has ignored the Ho-Chunk Nation Executive Branch's counsel. Purchases were made when the Nation's finances were already strained. "The Executive Branch is concerned that the Legislature is running wild and blind with this project. A feasibility plan has yet to be developed; the strategic plan to put the land in trust is naïve, behind schedule and cannot be measured. The political strategy for negotiating a compact with the State of Illinois has yet to be developed and an exit strategy (if the land isn't put into trust) has not been formulated. The legislature is borrowing tens (and potentially, hundreds) of millions of dollars on a project that the Executive Branch feels is very risky. The legislature is speculating with monies the Nation does not have and ultimately the money will have to come from the tribal members pockets," says Mr. Lewis.

If this is what the Ho-Chunk Nation's own President is saying about this project, does it sound like the Ho-Chunk Nation is performing well, and that our leaders have done all the necessary research to determine all the facts that our community deserves to hear? Based on the research Citizens for our Community, Inc. has done, how can we conclude that the Ho-Chunk Nation has performed well in the past?

Citizens for our Community, Inc. is committed to educating the citizens of the Southland and giving them the truth about this proposed reservation casino in Lynwood, Illinois. We would encourage anyone who reads this to look up the underlined references, go to a library, or do research on the web. We would also encourage everyone to visit us on the web at www.citizens4community.org.