

THE BUFFALO NEWS

FOCUS: CASINO GAMBLING
High-stakes ruling

Court's denial of Cheektowaga casino doesn't guarantee one in Buffalo, not by a long shot

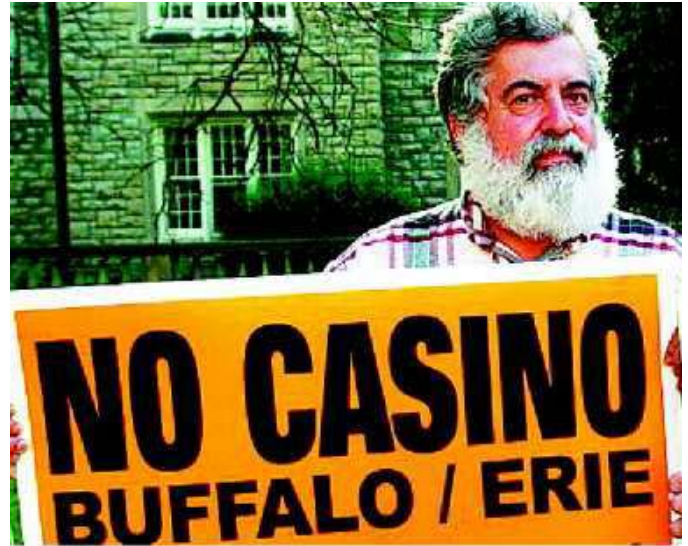
By MICHAEL BEEBE
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PLAINTIFF CARL PALADINO: *"Hopefully, logic, good judgment and doing the right thing for the Senecas and Western New York will all come together."*



Elizabeth A. Mundschenk/Buffalo News Developer Carl Paladino smiles last week after learning of a judge's ruling that the Seneca Nation's Erie County casino had to be located in Buffalo.



"Anything that throws a monkey wrench into this runaway train has to be considered a good thing."
Joel Rose, anti-casino leader

A judge's decision last week barring a Seneca Indian casino in Cheektowaga angered the Senecas and town officials, pleased those on both sides of the gambling dispute in Buffalo, and raised the possibility that no Seneca casino will be built in Erie County.

And Mayor Anthony M. Masiello, who prevailed in the lawsuit along with downtown property owner Carl Paladino and others, said if the Senecas don't meet an August 2005 deadline to start casino construction, Buffalo could start negotiating with other Indian tribes.

"I would prefer to do it with the Senecas," he added. "If they're not interested, we'll find someone else who is."

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Masiello's comments came after Seneca President Rickey L. Armstrong Sr. suggested the Senecas might build no Erie County casino if forced to build in Buffalo. "He can do whatever he wants," tribal council member Michael John said of Masiello, "but the state will never allow that, nor will the (U.S.) Department of the Interior."

An Interior spokesman did not return calls to comment, but only the Tonawanda Band of Senecas and the Tuscarora Nation are mentioned as possible casino operators in the Seneca compact with the state. Both are traditional tribes opposed to gambling.

Gov. George E. Pataki, John said, would never allow another tribe to open a casino in Buffalo because of an exclusive agreement over slot machines and the slot revenue the Senecas send the state from their casinos in Niagara Falls and Salamanca.

"Governor Pataki is not going to give up his two cash cows to give Masiello what he wants," John said.

Indeed, a lot of money is at stake for the state and the community that hosts an Indian casino. Last year, the state got

Casino's opponents

are heartened by ruling

\$39 million as its share of the slot machine profits with the Senecas, and Niagara Falls received \$9.5 million.

Pataki said last week, following the court's ruling, that he still favors Buffalo as the site of the Erie County casino.

Asked if the agreement requires the casino to be in Buffalo, Pataki responded: "I don't know that the law requires it to be, but I haven't seen the judge's decision. One of the goals is to revitalize areas like downtown Niagara Falls, like downtown Buffalo and like the Catskills."

The casino ruling Wednesday came from Justice Joseph P. Makowski in a State Supreme Court suit brought by Masiello and the others after the Senecas chose Cheektowaga instead of the city.

They sued New York State, the Town of Cheektowaga and Uniland Partnership, which is selling a 57-acre site in Cheektowaga to the Senecas and helping in the development.

The Senecas themselves are not named in the suit. Makowski agreed with Paladino's lawyer, Michael B. Powers, that the case involved state constitutional questions that did not directly involve the Senecas.

Makowski ruled that Pataki went beyond the mandate of the State Legislature by negotiating a Seneca casino agreement, or compact, that allowed the Senecas to choose Cheektowaga over Buffalo for their third casino.

The compact came from a memorandum of understanding approved by the State Legislature that called for Seneca casinos in Niagara Falls, Buffalo and a third on the Seneca reservation. If the Senecas could not agree on a Buffalo site, the memorandum said, they could propose another.

That new proposal, the judge ruled under the memorandum of agreement, would have to be agreed to by the State Legislature. He ruled that part of the compact unconstitutional.

Lawyers for the state, the town and the developer are expected to appeal to the Appellate Division, and either side would then likely take that decision to the state's highest court, the Court of Appeals.

Victory called "hollow"

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Armstrong, who called the court ruling a "hollow victory" for Buffalo, suggested the Senecas might build no Erie County casino if only given the choice of Buffalo.

"I think that's just emotion," Paladino said late last week. "Hopefully, logic, good judgment and doing the right thing for the Senecas and Western New York will all come together. The mayor has extended his hand to meet and talk with him, and our hope is that will happen and they'll keep the promise of a stand-alone casino in downtown."

Cheektowaga Town Attorney Michael Stachowski doesn't see it coming to that.

"I don't see this decision standing," said Stachowski, who represented the town in the lawsuit.

He also wondered about the practical effect of trying to force the Senecas, a sovereign nation, to go to Buffalo after they decided against the city.

Cheektowaga Supervisor Dennis H. Gabryszak had similar concerns. "How do you try to make someone go someplace they don't want to go?" he asked. "The Senecas made their decision. They want to go to Cheektowaga. We want them in our town."

Gabryszak said he called Armstrong after the court decision to tell him the town would fight to keep the Seneca casino.

"He gave me every indication, not once, but twice," the town supervisor said. "They've made their decision. They want to locate in Cheektowaga."

Masiello argues that Buffalo was always a part of the Seneca plan for three casinos and said there would be no casinos in Niagara Falls or in Salamanca today if not for this plan that he lobbied the state to approve.

"This gaming opportunity was not just for the Senecas," Masiello said, "it was to benefit the City of Buffalo with new jobs and new revenues, the City of Niagara Falls

with new jobs and new revenues, and the Senecas with new jobs and new revenues."

Mayor to renew efforts

Masiello said he would also call Armstrong and renew his efforts to have the Senecas build a stand-alone casino downtown that would benefit existing hotels, restaurants and other businesses.

Masiello said the Seneca vision changed when President Cyrus M. Schindler Jr. left office and Armstrong took over.

"I believe the new leadership wanted more land," the mayor said. "They wanted hundreds of acres of land to build their own casino, convention center, their own entertainment venues and their own hotels. None of them pay any taxes. All of them generate revenue that goes directly to the Senecas."

Gabryszak said he doesn't buy that argument, adding that the Seneca casino, even with developments like those mentioned by Masiello, would spur further development in Cheektowaga and bring needed jobs.

Casino opponents were also heartened by Makowski's decision but not for the same reasons as Masiello.

"I guess my reaction is that anything that throws a monkey wrench into this runaway train has to be considered a good thing," said Joel Rose, co-chairman of Citizens Against Casino Gambling in Erie County.

"It may well be, if the initial reaction expressed by Rickey Armstrong is the considered judgment of the Senecas, then the conclusion they'll reach is exactly what we want, no casino in Erie County," Rose said.

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And lurking in the background is another expected court ruling, this one involving the constitutionality of Indian gambling in New York State.

Attorney Neil Murray has been waiting six months for the Appellate Division in Albany to rule on a case that he said would end all commercial gambling by the Senecas and other tribes in New York unless the State Constitution is changed.

"We came in at the outset, before those (casinos) were built," Murray said, "and we put people on notice saying, you do this, you do so at your peril."

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