

Date: April 9, 2020

To: The Arkansas Racing Commission

Re: Pope County casino license applications and consideration

DELIVERED BY EMAIL to:

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Mr. Chairman and Commissioners of the Arkansas Racing Commission:

We write as citizens of Pope County who have worked to ensure that the voices of Pope County voters are heard throughout the casino license application process.

On March 25, County Judge Ben Cross submitted a letter to you purporting to "clarify" the situation in our county. Far from elucidating the situation here, Judge Cross' letter is a masterpiece of spin and self-serving framing, which we wish to address.

Repeatedly emphasizing that he's upholding the will of the people, Mr. Cross in fact appears to have done everything in his power to press for the Quorum Court to ignore the local control ordinance passed by our citizens. He worked with a hired attorney at taxpayer expense to urge the Quorum Court to repeal it. Then he used that repeal as cover to do what he repeatedly promised he wouldn't do: write a letter of support without clear voter approval.

Cross pleads with the commission to allow him "local control," but if you look closely at the reality of what's happened in Pope County, it's the opposite of representing the will of the people, and is simply about doing what the judge and some members of the Quorum Court want.

Pope County voters have demonstrated with the utmost clarity at the ballot box that they **do not want a casino in Pope County**. The JPs who ran on their record of supporting the Cherokee lost their seats in what the Arkansas Times' Max Brantley termed "a bloodbath."

To further detail Mr. Cross's mischaracterization of the situation in Pope County:

1] "CIRCLE OF SUPPORT"

There is no meaningful circle of support in Pope County that has any hint of connection to the community. The "circle of support" that Mr. Cross refers to is quite misleading. For example,

the Russellville City Council has never voted to support the presence of a casino here, they have simply “welcomed” them as a business potentially operating here.

2] WILL OF THE VOTERS

While claiming to be all about representing the will of Pope County citizens, unfortunately both the previous mayor (Randy Horton) and the current County Judge and Quorum Court have turned their backs on their constituents and supported casino applicants (Gulfside and CNB, respectively), against the desire of voters. Voters have responded by voting casino proponents out of office.

Former mayor Horton was defeated by a challenger (Richard Harris) who vowed that he wouldn’t back a casino without the express support of the voters. And in the recent primary election, voters overwhelmingly expressed their dissatisfaction with the Quorum Court: 4 of 5 JPs that voted for the Cherokee proposal were defeated by their challengers, while both JPs that voted against the casino support won their races.

Our voters want a voice: allow time for the state Supreme Court to rule on the constitutionality of the local option ordinance (2018-O-42).

3] RC HAS DISCRETION TO NOT ISSUE A LICENSE

It’s evident that Mr. Cross believes that you must issue a license when he asks that you follow the language of Amendment 100. But be assured that you are not compelled to act: Judge Fox in his recent district court order noted that Amendment 100 does **not** compel the commission to issue a license:

*“3. It is clear from reading Amendment 100 as a whole ... that the Racing Commission is invested by Amendment 100 with both the privilege and the responsibility of utilizing its **discretion as to whether a casino license should be issued to any applicant, regardless of whether such applicant is the only applicant during an application submission period** [our emphasis]”*

- Judge Fox order - 3/24/20

4] WRONGDOING BY COUNTY OFFICIALS

Ethics Investigation: Mr. Cross asserts in his letter that the Ethics Commission found allegations against JPs Enchelmayer and Moore as “unfounded and without merit.” In actual fact, the commission simply voted to **dismiss** the two complaints, and in no way characterized them as without basis or merit:

In Mr. Enchelmayer's case, the Ethics Commission found:

"you [Mr. Enchelmayer] did vote in favor of the resolution supporting the Cherokee Nation Businesses plan that included giving \$10,000 to the River Valley Arts Center, an entity for which your wife serves as a board member"

And in Mr. Moore's case:

"evidence gathered... reflected that Mr. William Wetzel, an agent for Moore & Company [a real estate company owned by Mr. Moore's father, and for which Mr. Moore himself is an agent] represents 4 of the 5 casino operators that applied to the Arkansas Racing Commission for a license to operate a casino in Pope County... it is likely that Mr. Wetzel will earn a commission from a sale in the future."

- public letters to Enchelmayer and Moore from the Arkansas Ethics Commission, Nov. 22, 2019

Circuit Court FOIA ruling: Similarly, the circuit court ruling issued by Judge Pearson did **not** find that FOIA allegations were without merit. In fact, the allegations were dismissed without prejudice, and can be reconsidered by the court at any time.

Special Prosecutor: Ultimately, the actions of the Quorum Court came under the scrutiny of state special prosecutor Jason Barrett. While Barrett determined not to pursue the case, he also stated in a letter to Judge Pearson unequivocally that "I have concluded that the FOIA has been violated."

Barrett further noted:

*"In the course of this investigation, there have been numerous accounts of some justices of the peace being left out or excluded from the discussions about the casino selection. There is certainly some belief that some of the justices have not received all of the information about the casino applicants. **This should make everyone question if the best decision has been made for Pope County** [our emphasis added]. Additionally, it seems apparent from this investigation that not all of the potential casino vendors were considered to the same extent."*

"The FOIA is in place to allow the public to be aware of the process that is used by those who govern. Here, that purpose was thwarted with back door meetings and deals and, at least a portion of the citizens of Pope County, are now rightfully concerned about the process."

We urge you to read the full investigative report – including all of the interview summaries – into the dealings of the Quorum Court and the County Judge, before making any decision. It should be clear that there was no good faith effort to openly and fairly review the casino license applicants, or to involve or inform the public in **any way**. Even members of the Quorum Court were kept in the dark. And there was certainly no effort extended by our

County Judge or the Quorum Court as a body to represent and defend the position of the citizens who are opposed to any casino at all in Pope County.

The commission has the authority to not grant a license to any applicant. It would be a travesty to reward the behavior of our officials by granting a license to any applicant under these circumstances.

5] INADEQUACY OF VETTING

In his letter Mr. Cross claims a comprehensive vetting process, and yet Mr. Cross and the Quorum Court made no pretense of presenting any vetting to the public in any way at all, just as the former county judge Jim Ed Gibson and former mayor Horton shared nothing about their “vetting” of the Gulfside or any other proposal.

Mr. Cross spends a great deal of time reviewing the history of the “vetting” process, none of which was done in any publicly responsive manner. In fact, the CNB Economic Development Agreement (EDA) that he repeatedly refers to, was only revealed to the public moments before the QC discussed and approved it in their Aug. 13, 2019 meeting. Prior to that meeting, there had been **no** public discussion of **any** casino proposals by the Quorum Court.

Mr. Cross also devotes much attention to the economic benefits of the EDA. Yet a close examination of the EDA reveals many faults, including no local hiring provisions and no protections for the local businesses like hotels and restaurants that are often destroyed by the predatory marketing and pricing practices of many casino facilities.

CONCLUSION

In summary, as you decide whether to accept the Gulfside, CNB, or any other casino’s application for a license to operate in Pope County, please consider:

1] The so-called county support of the CNB proposal has been tainted by a process riddled by secret negotiation. We submit that these allegations deserve a full investigation in the service of the public interest.

2] The position of the citizens of Pope County is clear and unchanged. They rejected Issue 4/Amendment 100 in 2018, and last month they rejected the Quorum Court incumbents that supported the CNB proposal. When Pope County residents vote, they express that they don’t want a casino.

We appreciate the commission’s clearly stated intent to be responsive to public concerns. We respectfully ask that you hold firm to your resolution to allow the various pieces of litigation to play out fully in court **before** taking any further action to accept or consider any applications. Our local ordinance, and the commission’s rules, deserve to have their constitutionality evaluated by an appellate court.

We hold that by virtue of the surreptitious nature of the county endorsements of both of the potential applicants - CNB and Gulfside - that the Racing Commission would be justified in ultimately denying a license to either party. At the least, justice would be served by delaying action until all court remedies have been exhausted to the level of the state supreme court, and until Pope County voters have had the opportunity to exercise remedies to correct the outrageous injustice of a state action imposed on a local jurisdiction.

Thank you for your thoughtful consideration of the information presented here.

Hans Stiritz
Anna Stiritz
Residents of Pope County, Arkansas
On behalf of United For a Better Pope County