STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Catawba Indian Tribe of South Carolina,	)	Civil Action No. 05-CP-40-3717
	)	
Plaintiff,	)	
	)	**MOTION TO ALTER OR AMEND JUDGMENT AND/OR FOR RECONSIDERATION PURSUANT TO SCRCP § 59(e)**
-vs-	)	
	)	
The State of South Carolina and Henry D. McMaster, in his official capacity as Attorney General of the State of South Carolina,	)	
	)	
Defendants.	)	
	)	

Pursuant to SCRCP 59(e), Defendants respectfully move this Court to Alter or Amend Judgment and/or for Reconsideration of its December 13, 2005 Order granting summary judgment in favor of Plaintiff and denying summary judgment in favor of Defendants. See, *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004) ["There is nothing inherently unfair in allowing a party one final chance not only to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity."] As our Supreme Court recognized in *Elam*, Rule 59(e) serves to give the trial court "'the opportunity promptly to correct [its] own alleged errors.'" *Id.* at 22. Defendants thus seek to correct the Court's errors and expressly request a hearing before the Court regarding this Motion.

It will be shown below, as well as in a Memorandum to be subsequently submitted, that this Court's Order is, with all due respect to the Court, clearly erroneous. We are not asking the Court to rewrite the Settlement Agreement and Settlement Act, but to uphold these, as written. Indeed, as the affidavits of Congressman Spratt (Attachment A), Mr. Elam (Attachment B), and Senator Hayes

(earlier submitted) readily attest, any conclusion that the Tribe retained a right to video poker even if state law subsequently banned video poker statewide, is a rewriting of that Agreement and Act. Moreover, the Affidavits of these three individuals, each of whom is an attorney, and, who was intimately involved in the Settlement negotiations, fully refute the Court's conclusion that Mr. Clarkson was in the "best" position to know the intent of that Agreement and Act. In other words, the Court's interpretation, as reflected in its Order, misreads not only the plain language of the Settlement Agreement and Settlement Act, but misconstrues the intent of those who drafted these documents. It is especially ironic here that the Governor of the State – Governor Campbell – worked hard to insure as part of the Agreement that the Tribe would have no gambling casinos; yet, by virtue of the Court's ruling, the Tribe is bestowed with what Mr. Bender has publicly claimed is a virtual *carte blanche* for the Tribe to conduct large-scale, big time casino gambling, completely outside of any state regulation. *See*, Attachment B and C.

With all due respect, the Order overlooked or disregarded numerous arguments offered by Defendants. These arguments overwhelmingly demonstrate that the Catawba Tribe possesses no right to operate video poker or other gaming devices on its Reservation.

It is well recognized that on a motion for reconsideration, pursuant to Rule 59(e), the Court possesses broad discretion to consider additional affidavits, particularly where, as here, such affidavits relate to an error of law committed by the Court. *See e.g., Fields v. City of South Houston, Texas*, 922 F.2d 1183 (5th Cir. 1991); *In the Matter of the Estate of Keeney*, 121 N.M. 58, 908 P.2d 751. As the Court recognized in *Keeney*, "[t]here is no abuse of discretion for the trial court to consider new material as part of a motion for reconsideration under Rule 59 as long as the delay in presenting the new material is not just for strategic reasons, and its relevance outweighs any

prejudice." 908 P.2d at 754.

In this instance Plaintiff, in its arguments before this Court, took Congressman Spratt's remarks before Congress concerning the Settlement Agreement out of context. Employing a strained interpretation to say the least, Plaintiff attempted to use the Congressman's comments regarding a change in the language of the Settlement Agreement and Act – changes which had been made simply in anticipation of modifying the State's gambling laws to allow local option – to support its argument of a permanent right to video poker. The Court incorrectly relied upon this inserted language to find for the Tribe a permanent right to video poker on the Reservation.

Moreover, of all those who negotiated the Agreement, Mr. Clarkson was erroneously portrayed by the Court as the one person in the "best" position to reflect the intent of the Agreement and Settlement Act. Even though Senator Hayes, who was also intimately involved in the process, challenged the substance of Mr. Clarkson's recollection, the Court focused upon Mr. Clarkson's Affidavit. Therefore, we now submit the Affidavits of Congressman Spratt and Mr. Elam in order to offer the Court *a far more complete picture* of the remembrances of those who negotiated the Agreement with the Tribe in 1993. See, *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) ["The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to 'reconsider matters properly encompassed in a decision on the merits.'"] If the purpose of the Court's decision in this case is to fully glean the intent of those who drafted the Settlement Agreement and Settlement Act – as it surely is – then, the reflections and recollections of all those who were most intimately involved in that process, not just those of Mr. Clarkson, should be heard. While we submit that the language of § 27-16-110(G) is, in itself, entirely clear to demonstrate that the Tribe is not entitled to video poker if state law bans these machines statewide, the Affidavits of

Congressman Spratt, Mr. Elam and Senator Hayes fully confirm this reading. All are in complete accord that those who framed the Settlement Agreement and Settlement Act had no intention whatever to allow the Tribe to operate video poker on the Reservation if state law banned such activity statewide.

Defendants' arguments were set forth in detail in its 43 page Memorandum (with numerous Attachments) offered to the Court on November 29, 2005. In addition, Defendants presented extensive oral arguments to the Court on December 2, 2005. Additional materials reinforcing Defendants' arguments were presented to the Court by supplemental letter on December 7, 2005. These arguments, which this Court either overlooked or erroneously rejected, may be summarized as follows:

1. The Court overlooked 25 U.S.C.A. § 941 *ℓ*(b) (the Congressional Act ratifying the Settlement Agreement and state Settlement Act) which expressly provides that "[t]he Tribe shall have the rights and responsibilities set forth in the Settlement Agreement and the State Act with respect to the conduct of games of chance. Except as specifically set forth in the Settlement Agreement and the State Act, all laws, ordinances and regulations of the State, and its political subdivisions shall govern the regulation of gambling devices and the conduct of gambling or wagering by the Tribe on and off the Reservation." The Congressional Act is thus clear that state law – even if prohibitory with respect to video poker – controls the regulation of gambling devices operated by the Tribe. Congress deemed South Carolina law to be exclusively controlling, and nothing in the Settlement Agreement or Settlement Act suggests that the Tribe possesses any right to operate video poker on its Reservation

in perpetuity notwithstanding a statewide prohibition of video poker pursuant to state law.

2. The Court overlooked the case law interpreting 25 U.S.C.A. § 941. It is clear in the Orders of Judge Currie in *Catawba Indian Tribe v. City of North Myrtle Beach* and *Catawba Indian Tribe v. Pope et al.* (Submitted earlier by Defendants) that state law is controlling in the regulation of gambling by the Tribe. In addition, the Court failed to heed the decision of *Narragansett Ind. Tribe v. Natl. Indian Gaming Comm.*, 158 F.3d 1335, 1341 (D.C. Cir. 1998), which concluded that "the Catawba Indians' ... Settlement Act specifically provide[s] for exclusive state control of gambling." The Court thus gave little credence to the argument that "exclusive state control" encompasses future changes in state law, including a statewide ban upon video poker. The Court failed to take into consideration that the entire tenor and tone of the Settlement Agreement, the Settlement Act and the Congressional Act ratifying these was to defer to state law as applicable to the Tribe and to treat the Tribe as all other South Carolinians.

3. The Court gave undue weight to the second sentence of § 27-16-110(G) of the state Settlement Act, and failed to recognize that § 27-16-110(G) is ultimately governed by the first sentence thereof: "[t]he Tribe may permit on its Reservation video poker or similar electronic play devices to the same extent the devices are authorized by state law." No words could be plainer. The Court wrongly focused upon the second sentence to the exclusion of this clear language contained in the first sentence.

Further, even though this Court acknowledged in its Order that the first sentence of § 27-16-110(G), standing alone, would now ban video poker devices on the Tribe's Reservation because such devices are prohibited statewide by state law, the Court erroneously failed to apply this clear language to this case. Instead, the Court erroneously concluded that the part of § 27-16-110(G), which we contend relates to the local option referendum, is controlling to bestow the Tribe a permanent right to video poker.

4. The Court overlooked Defendants' argument that there would have been no need to insert the second sentence of § 27-16-110(G) had there been an intent to grant the Tribe a right to operate video poker on the Reservation in perpetuity. The Court gave no consideration, as it should have, to reading the first and second sentences of this Section together as one, rather than in isolation of each other. The proper interpretation is, therefore, that the Tribe continued to have the right to video poker on the Reservation if York and/or Lancaster Counties voted to ban video poker in the 1994 local option referendum, as they did, but the Tribe would be banned from the operation of video poker – just as are all other South Carolinians – if video poker was subsequently banned statewide by state law.

5. The Court overlooked Defendants' argument that the second sentence of § 27-16-110(G) referred to the county-by-county "local option" referendum regarding the legality of video poker held in the general election in 1994. Such second sentence thus could not reasonably be interpreted as bestowing upon the Tribe a right to

operate video poker in perpetuity notwithstanding changes in state law banning video poker statewide. The Court's reading of the second sentence of § 27-16-110(G) – that such provision does not concern the local option referendum, but instead gives the Tribe a permanent right to video poker even if state law prohibits these devices – is, therefore, erroneous. The Affidavits of Congressman Spratt, Mr. Elam and Senator Hayes demonstrate the Court's erroneous interpretation.

6. The Court overlooked the history surrounding the Settlement Agreement and the evolution of § 27-16-110(G). Such history clearly reinforces the Defendants' interpretation of the plain language of the statute, an interpretation which mandates that the Tribe possesses no right to operate video poker or other gaming devices on its Reservation. More specifically, the State provided the Court with clear documentation that the concern on the part of the Tribe concerning the anticipated legislation authorizing a county-by-county referendum on video poker provided the impetus for the second sentence of § 27-16-110(G) being inserted. This documentation demonstrates that it was contemplated that state law banning video poker statewide would supersede any right of the Tribe to continue to have video poker as a result of the county-by-county referendum. The Affidavits of Congressman Spratt, Mr. Elam and Senator Hayes demonstrate the Court's erroneous interpretation.

7. The Court overlooked the clear language of Act No. 125 of 2000 banning "any" video poker device. If the Court had read Act No. 125 correctly, it would have

concluded that such Act bans everyone, including the Tribe, from the operation of video poker.

8. The Court erroneously refused to give any weight to the Affidavit of Senator Hayes, submitted by the Defendants. Contrary to Plaintiff's arguments otherwise, Senator Hayes' knowledge concerning this matter is not confined to his knowledge as a legislator, but includes his understanding as a principal negotiator in the Settlement negotiations. The Court's conclusion that Mr. Clarkson's Affidavit was "uncontroverted" is apparently the result of the Court's consideration of Senator Hayes' Affidavit only as that of a legislator and not as that of a negotiator of the Settlement Agreement. This was error. Senator Hayes' Affidavit traces the evolution of § 27-16-110(G) and makes clear that it was the intent of the parties to the Settlement Agreement that the Tribe would be prohibited from operating video poker if such were banned statewide by state law. Moreover, the Court gave undue weight to the Affidavit of Mr. Clarkson. This was clear error because it is beyond dispute that Senator Hayes was a closely involved participant in the Settlement negotiations and was particularly involved in the negotiations with the Tribe concerning finalization of the language of § 27-16-110(G) and the parallel provision in the Settlement Agreement (16.8). Senator Hayes is thus at the very least in a comparable, if not the best, position to comment upon the purpose of § 16.8 of the Settlement Agreement and § 27-16-110(G) of the Settlement Act. The Affidavits of Congressman Spratt and Mr. Elam, also key participants in the Settlement negotiations, fully support Senator Hayes' recollection and serve to refute the Court's

reliance completely upon the remembrance of Mr. Clarkson.

9. The Court overlooked Defendants' argument that § 27-16-110(G) states that the Tribe is "subject to all taxes, license requirements, regulations and fees governing electronic play devices provided by state law." Inasmuch as provisions of law governing such regulations and fees, taxes and license requirements have been repealed pursuant to Act No. 125 of 2000, it is illogical to conclude that it was the intent to allow video poker on the Tribe's Reservation, notwithstanding a ban upon video poker pursuant to state law.

10. The Court erroneously concluded that negotiations led to the Tribe's giving up IGRA in exchange for 2 high stakes bingo licenses and the right to video poker on the Reservation. As demonstrated to this Court, Judge Currie had earlier concluded, after extensive discovery including the deposition of Mr. Clarkson, that the ceding of IGRA was only in exchange for 2 special bingo licenses. The Affidavits of Congressman Spratt and Mr. Elam reinforce the Court's error in this regard.

11. The Court erroneously concluded that the Tribe's right to operate video poker on its Reservation is the result of its "sovereign" capacity, much akin to the position of the State in conducting the State Lottery. The Court's decision now gives Plaintiff *carte blanche* to argue that the Tribe's right to operate video gambling is unregulated, uncontrolled and unlimited. See, Attachment C, (Mr. Bender's remarks). The Court now places the Tribe on the same level as the State of South Carolina itself, an unprecedented bestowal of power to a private group. Such abdication of the State's

police power was never conceded by the State in the negotiations and is utterly inconsistent with Governor Campbell's statement at the time of the ratification of the Settlement Agreement that it was the intent of the Agreement that the Tribe "come under the same laws as South Carolina." The Affidavit of Mr. Elam demonstrates the Court's error in this regard.

12. The Court ignored the rules of statutory construction in interpreting the Agreement and Settlement Act, refusing to adhere to the literal language of § 27-16-110(G) that "[t]he Tribe may permit on its Reservation video poker or similar electronic play devices to the same extent that the devices are authorized by state law." Instead, the Court adopted as a rule of construction the principle that all doubt is resolved in favor of the Tribe. This was erroneous.

13. The Court ignored the documents submitted by the Defendants which confirm that the Tribe was to be subject to future state law regarding video poker – namely the Memorandum of Mr. Quarles concerning the evolution of § 27-16-110(G) and the statement of Mr. Miller, lead attorney for the Tribe. Mr. Miller, as the lead negotiator for the Tribe, was asked by then Congressman Richardson as part of the subcommittee hearings before Congress to ratify the Settlement, "what about gaming?" He testified that "[w]e have agreed that state law generally would be applicable to any gaming activities with the exception that the tribe would be entitled to a special bingo license, which nobody else in the State had." Obviously, Mr. Miller would have informed Congress of a right to operate video poker on the

Reservation in perpetuity if such right had been agreed to as part of the Settlement. Yet, Mr. Miller made no such statement. Instead, Mr. Miller correctly stated that "state law would be applicable to any gaming activities" except for bingo. This statement to Congress by the lead attorney for the Tribe and made contemporaneously with the consummation of the Settlement should be controlling.

14. The Court misread § 27-16-110(G)'s second sentence which expressly states that "if the Reservation is located in a county or counties *which prohibit* the devices pursuant to state law ...," the Tribe must be permitted to operate the devices on the Reservation if the Tribe so approves. (emphasis added). This second sentence's applicability is clearly dependent upon prohibitory action by the "county or counties," not the State as a whole. Such action by a "county or counties" could thus only relate to the local option referendum of 1994. Thus, the second sentence of § 27-16-110(G) does not relate to a subsequent statewide ban on video poker as held by this Court.

However, an ultimate statewide ban upon video poker is encompassed in § 27-16-110(G)'s first sentence which gives the Tribe the right to video poker devices "to the same extent the devices are authorized by *state law*." (emphasis added). The Affidavits of Congressman Spratt and Mr. Elam demonstrate the Court's error in this regard. *Compare, Martin v. Condon*, 324 S.C. 183, 478 S.E.2d 272 (1996) [1994 county-by-county referendum was an "opting out" by some counties of then existing State law which made video poker legal in South Carolina and was thus unconstitutional "special legislation."]

Thus, this Court's interpretation of § 27-16-110(G) renders the first sentence

of that provision meaningless. If given its proper effect, the Tribe's right to video poker ended with the statewide ban of video poker in 2000. The Affidavits of Congressman Spratt, Mr. Elam and Senator Hayes reflect this intent.

15. The Court overlooked Defendants' argument that it is required to construe § 27-16-110(G) in a constitutional manner. This Court's construction of this provision – giving the Tribe the right to operate video poker on its Reservation – when no one else in South Carolina may do so – is constitutionally suspect under the very same reasoning as set forth in *Martin v. Condon*. The Tribe was given the same right as every other county in South Carolina had in the 1994 county-by-county referendum and such referendum was struck down as unconstitutional. Under *Martin v. Condon*, if the Tribe is now given the right to "opt out" of a statewide ban of video poker the same constitutional infirmity as was identified by the Supreme Court in *Martin* will re-arise. The Court is thus required to give meaning to the first sentence of § 27-16-110(G) that the Tribe possesses the right to video poker only "to the same extent the devices are authorized by state law." Such provision treats the Tribe equally to other South Carolinians or in the words of Governor Campbell requires the Tribe to "come under the same laws as South Carolina."

16. The Court overlooked Defendants' arguments regarding the $18.00 per head fee for bingo in that the fee was a surcharge and not a tax. The State has the right to regulate bingo with respect to the Tribe in the same way as other citizens.

The effect of the Court's ruling will generate numerous lawsuits, alleging unequal treatment

and attempting to restore video poker to its earlier power and influence throughout South Carolina. Such a ruling is completely at odds with the Governor's statement made on October 27, 1993, following the finalization of the Agreement, that "I didn't want gambling casinos ... in this State." In short, this Court's ruling opens the door for video poker's return to proliferation throughout the State.

Rule 59(e) offers this Court an opportunity to correct its mistakes. We respectfully request a hearing on this Motion.

Respectfully submitted,

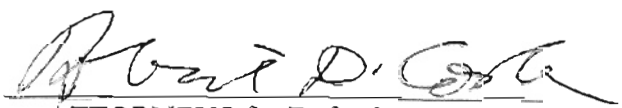
HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

ROBERT D. COOK
Assistant Deputy Attorney General

C. HAVIRD JONES, JR.
Senior Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211
(803) 734-3970

BY: 
ATTORNEYS for Defendants

December 21, 2005.

Affidavit of John M. Spratt, Jr.

Personally appeared before me, John M. Spratt, Jr., who first being duly sworn, deposes and states the following:

I, John M. Spratt, Jr., am a member of the South Carolina Bar, having been admitted to practice in 1969. Since January 3, 1983, I have served in United States House of Representatives representing the Fifth Congressional District of South Carolina, and I serve in that capacity today.

During all the time that I have served in the House of Representatives, I have represented York, Chester, and Lancaster Counties, including the area of 140,000 acres claimed by the Catawba Indian Tribe of South Carolina under the Treaty of Pine Tree Hill of 1763 and the Indian Non-Intercourse Act of 1790.

I helped initiate the negotiations that settled the land claim of the Catawba Indian Tribe of South Carolina. I participated in every negotiating session and drafted substantial parts of the "Agreement in Principle" which spelled out the terms of settlement. With the assistance of Representative Butler C. Derrick, Senator Ernest F. Hollings, and Senator J. Strom Thurmond, I secured legislative approval of the settlement agreement by the committees of jurisdiction in the House and Senate. I also helped gain approval of the settlement agreement from Secretaries Lujan and Babbitt, as Secretaries of the Department of the Interior, and through Director Leon Panetta, federal funding by the Office of Management and Budget.

Although I drafted much of the settlement agreement, I did not draft Paragraph 16 which dealt with the rights of the Catawba Indian Tribe to engage in gambling, except that I made certain that the tribe did not fall under the federal Indian Gaming Regulatory Act, and I took full part in the discussions of Paragraph 16. Since the Catawba Indian Tribe was to acquire a special bingo license issued and administered by the South Carolina Tax Commission, the chairman of the Commission, A. Crawford Clarkson, Jr., led negotiation of this paragraph, and by my recollection, his counsel, Sally Majors, was the principal draftsman. Crawford Clarkson was delegated by Governor Carroll Campbell to represent the state in the settlement negotiations, along with Mark Elam, Governor Campbell's legal counsel. All participated in the discussion and negotiation of Paragraph 16.

In the negotiation of Paragraph 16, the Catawba Indian Tribe of South Carolina conceded that it would not be covered by the Indian Gaming Regulatory Act, and bargained instead for a bingo license that would far exceed anything issued to other bingo operators in the state. Video

poker was legal at that time, and in addition to bingo, the tribe sought the right to engage in video poker to the same extent as other operators in the state. Although legal, the future of video poker was contentious and uncertain, and one alternative, local option, decided county-by-county, was possible. As Senator Robert W. Hayes, Jr. states in his affidavit, it was anticipated that the Video Games Machine Act would be enacted by the General Assembly, and if enacted, it was likely that York and Lancaster Counties would vote to prohibit non-machine cash pay-outs in these counties.

This was the context in which Paragraph 16 [Section 27-16-110(g)], the language now in dispute, was drafted. The question was posed: What happens if the State of South Carolina permits video poker, but allows counties to opt out, and Lancaster and York opt out? The language of Paragraph 16 says that in these circumstances, the Catawba Indian Tribe of South Carolina can still engage in video poker gambling, to the same extent as other operators in counties where video poker is permissible. The negotiators felt that this concession (overriding county preference) conformed to general federal law allowing Indian tribes to engage in those forms of gambling permitted by the state to others within the state. On the other hand, the parties to the negotiation provided that if South Carolina prohibits video poker state-wide, and also bans county options, the Catawba Indian Tribe will not be allowed to engage in video poker.

This is my clear recollection of what the negotiators agreed to and of the meaning we intended by the language of Paragraph 16 of the settlement agreement, which was codified in state law.

Sworn and Subscribed before me,
this 21st Day of 2005, at Washington, D.C.

_____(SEAL)
Notary Public for the District of Columbia
Commission expires:

Delois J. Nuckols
Notary Public, District of Columbia
My Commission Expires 03-14-2008

_____(SEAL)
John M. Spratt, Jr.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT OF MARK R. ELAM

PERSONALLY APPEARED BEFORE me Mark R. Elam who being duly sworn, deposes and says:

1. My name is Mark R. Elam.

2. From January, 1987 to January, 1995, I held the position of Senior Counsel to Governor Carroll Campbell, Jr.

3. At the request of Governor Campbell, I was a member of the negotiating team for the State of South Carolina in the negotiation of the Settlement Agreement with the Catawba Indian Tribe.

4. I was an active participant in the negotiations relative to the gambling provisions contained in Section 16 in the Settlement Agreement. These provisions include those specific subsections relating to the video poker and which are now codified in § 27-16-110 of the South Carolina Code.

5. Governor Campbell instructed me as his personal representative on the negotiating team that the State should avoid any settlement which allows casino gambling on the Reservation. While the State would agree to allow the Tribe the ability to conduct high stakes bingo in a way no other group in South Carolina could, Governor Campbell instructed that casino gambling, under no circumstances, would be agreed to by the State. Thus, as part of the Settlement negotiations, we insisted that the Indian Gaming Regulatory Act (IGRA) would not be applicable to the Tribe and that state law would govern the Tribe in all gambling matters on the Reservation. In exchange, the Tribe would receive two special bingo licenses which would give the Catawbas rights concerning

bingo which no other South Carolinian possessed. The Tribe agreed to this exchange.

6. Late in the negotiations, the Catawbas became concerned about their right to conduct video poker which was, at that time legal in South Carolina. This became an issue because at the very same time the negotiations were ongoing, legislation to allow each county to ban video poker by way of a county-by-county referendum was moving through the General Assembly. The Tribe was concerned that if the counties in which the Reservation was located prohibited video poker as part of the referendum, the Tribe would be included in this prohibition.

7. Therefore, we reached a compromise, allowing the Tribe to continue to have video poker even if banned by a county or counties in the claim area by way of the county-by-county referendum.

8. However, we also recognized that state law concerning video poker might well change in the near future and that there was a distinct possibility that video poker would ultimately be banned statewide, by state law. Thus, we made it clear in the Agreement, by way of the language contained in what is now the first sentence of § 27-16-110(G), that the Tribe possessed no greater right to video poker than state law permitted. In other words, our compromise with the Tribe was to allow the Tribe to continue to have video poker on the Reservation as long as it remained legal anywhere in South Carolina, but if video poker was banned throughout the State, the Tribe lost any right to it, along with every other South Carolinian. The Tribe was given no right to video poker if state law banned video poker.

9. This compromise – that state law should govern the Tribe's right to video poker and that state law prohibiting video poker would apply to the Catawbas as well – was consistent with my direct instructions from Governor Campbell that the Tribe should obtain no greater rights to

video poker than any other citizen in the State would have.

10. While Mr. Clarkson was appointed by Governor Campbell to assist in the Settlement negotiations on behalf of the State, I took the lead on behalf of the Governor, particularly the compromise which was reached at the close of the negotiations, discussed above, and which is reflected in the language contained in Section 27-16-110(G).

11. At the conclusion of the negotiations, there was no question by the parties, including the Tribe, that the Tribe's right to operate video poker machines and other similar electronic devices on the Reservation was dependent upon video poker remaining legal in South Carolina. Our intent was never to give the Tribe a right to video poker which no other South Carolinian possessed. Our intent was that if video poker became illegal in South Carolina, the Tribe would lose any earlier right to video poker it may have had.

FURTHER AFFIANT SAYETH NOT.

Mark R. Elam

SWORN to and subscribed before me

this 19 day of December, 2005

Notary Public for South Carolina
My Commission Expires: 8/19/08

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2005 WLNR 20174743

Herald, The (Rock Hill, SC)

December 15, 2005

Section: City

S.C. officials wait and see on Catawba video poker

Denyse C. Middleton
The Herald

It's too soon to determine licensing procedures for a possible Catawba Indian Nation video poker operation, a state Department of Revenue official said Wednesday.

But it's the tribe, not state officials, who will control video poker on the reservation, tribal attorney Jay **Bender** said.

A judge ruled Tuesday the tribe can operate video poker or similar devices on its York County reservation regardless of state law. Catawba leaders have said they'll give up video poker on the reservation if state legislators allow the tribe to open a high-stakes electronic bingo operation in Orangeburg County.

"This is still going through the judicial process," said Department of Revenue spokesman Danny Brazzell. "It's too soon for the department of revenue to speculate our role and whether the state will see any revenue from the Catawba video poker operation if it comes to pass."

The Department of Revenue collected about $60 million annually in licensing fees before South Carolina banned video poker in 2000, Brazzell said.

The gambling activity was stopped because opponents believed it was highly addictive and led to higher rates of robberies, alcoholism and personal financial problems.

Tribal member Deborah Crisco wants the possible video poker operation placed under the control of the Indian Gaming Regulatory Act. However, **Bender** said neither the Indian Gaming Regulatory Act or the state would have control over the tribe's video poker operation.

"I think what the tribe would consider is establishing it's own gaming

commission to provide supervision for any reservation gaming activity," **Bender** said.

Reservation gambling will lead to more addictions, wasted personal finances and crime, Crisco said. She's also concerned other problems will occur if video poker is set up at Green Earth, a family-oriented subdivision, where it was rumored to go about a year ago, she said.

No firm plan is in place to establish video poker on the reservation because the tribe's priority remains a bingo operation in Santee, **Bender** said. But if the tribe does offer video poker on the reservation it will be "in a place best suited for the activity," he said.

The tribe says its proposed operation in Orangeburg County would help recover bingo revenue lost due to the S.C. Education Lottery.

Denyse C. Middleton 329-4069

dmiddleton@heraldonline.com

---- INDEX REFERENCES ----

Language: EN

OTHER INDEXING: (CATAWBA; DEPARTMENT OF REVENUE; INDIAN GAMING REGULATORY; INDIAN NATION; STATE DEPARTMENT OF REVENUE) (Bender; Brazzell; Crisco; Danny Brazzell; Deborah Crisco; Denyse C. Middleton; Jay Bender)

EDITION: Final

Word Count: 466

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

CERTIFICATE OF SERVICE

I hereby certify that this 21st day of December, 2005, I served a copy of the within **Motion to Alter or Amend Judgment And/Or For Reconsideration Pursuant to SCRCP § 59(e)** on counsel of record by depositing a copy of same in the U. S. Mail and addressed as follows:

Dwight F. Drake, Esquire
B. Rush Smith, III, Esquire
Jim O. Stuckey, II, Esquire
Nelson Mullins Riley & Scarborough, L.L.P.
1320 Main Street, 17th Floor
Columbia, South Carolina 29201

Jay Bender, Esquire
Baker, Ravenel, and Bender, L.L.P.
Post Office Box 8057
Columbia, South Carolina 29202

Robert M. Jones, Esquire
Post Office Box 706
Rock Hill, South Carolina 29731

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3970