

# Judge tosses Pojoaque gambling suit, clearing way for federal action

Deborah Baker / Journal Capitol Bureau



SANTA FE – A federal judge has tossed out Pojoaque Pueblo’s lawsuit against the state over gambling compact negotiations, clearing the way for the tribe to ask the U.S. Department of the Interior to step in.

Senior U.S. District Judge James Parker dismissed the case this week, ruling that New Mexico “is protected by sovereign immunity” from the lawsuit alleging it hadn’t negotiated in good faith.

Under federal regulations written for just such circumstances, Pojoaque will now ask the interior secretary to approve a compact, which it needs to keep its casinos operating after June 2015.

“I respect state government and the process, but ... the pueblo got to the point where we’re not going to get a fair deal by negotiating and asking nicely, so we just have to take the next step,” Pojoaque Pueblo Gov. George Rivera told the **Journal** on Thursday.

The pueblo sued in December, alleging that continuing to pay a share of its gambling revenue to the state would amount to an illegal tax.

The tribe also complained that the state wouldn’t agree to changes it says it needs to be competitive with casinos in other states, such as allowing alcohol to be served in gambling areas.

“We’ve got high-end players that will go to (Las) Vegas because they can drink their beer at a slot machine,” Rivera said.

The pueblo, just north of Santa Fe, operates Buffalo Thunder Resort & Casino and Cities of Gold Casino. It also has slot machines at a separate hotel, at two gas stations, and in a sports bar, according to the governor.

Its current compact expires next year, and the pueblo has been negotiating with the administration of Gov. Susana Martinez for a new agreement.

The state says Pojoaque Pueblo hasn’t negotiated in good faith. In its response to the lawsuit, it said the pueblo “has not engaged in meaningful discussion or negotiations” during numerous meetings and has shifted its position

on revenue sharing.

And the state denies that it is trying to tax the tribe. Rather, it says, it wants to continue the arrangement under which Pojoaque shares revenue with the state in exchange for exclusivity – a limit on the number of racetrack casinos and other nontribal gambling facilities.

According to Pojoaque, the state wanted to increase the tribe's revenue sharing rate from the current 8 percent of net win to 9.5 percent and eventually 10.5 percent. Pojoaque contends the exclusivity is meaningless; it asked for a compact with no exclusivity and no revenue sharing, and Rivera said that's what the tribe will propose to the Department of the Interior.

After a judge dismisses a tribe's lawsuit because of a state's sovereign immunity, the tribe can ask the Secretary of Interior to issue a compact. The tribe submits a proposal; if the state submits an alternative proposal, a mediator selects between them. The secretary has the final say.