



Wind Creek Casino
and Hotel Wetumpka



Wind Creek Casino and Hotel Montgomery



Wind Creek Casino and Hotel Atmore

The Poarch Band of Creek Indians: HOW ONE ISOLATED TRIBE BEAT THE ODDS

BY VENUS PRINCE

Not many people know that one tribe remains in Alabama. My Tribe is descended from the original Creek confederacy, which occupied most of Alabama and Georgia. My ancestors lived along the Alabama River and migrated south during the 1700s to serve as guides, interpreters, and river pilots for the federal government. As many people know, however, this dynamic changed dramatically during the early 1800s, and the federal government began to forcibly relocate most tribes throughout the Southeast to Oklahoma. A few Creek families, my ancestors who had provided these services to the federal government, were allowed to keep their lands and stay in their homeland.

But my ancestors and our tribal community lived in poverty and isolation in rural Alabama about fifty miles north of Mobile, Alabama over the next 150 years. They lived as a distinct community discriminated against by locals and with limited access to education, health-care, and other critical services. My great-grandfather told my father stories of being able to go into town only one day a week. My now 87-year-old grandmother could attend only the one-room Indian school in the community and witnessed tribal elders standing in the way of the public school buses driving through our community to try to give the tribal member children an opportunity to attend the

local public schools. To gain any education beyond the sixth grade, she had to be sponsored by the local Episcopal church to attend an Episcopal boarding school in Tennessee. My father attended a slightly expanded, three-room Poarch Consolidated Indian School for elementary school and local public schools for middle and high school during the 1950s and 60s desegregation era. There was no immediate health care available in the community. Fortunately, the vision and courage of our Tribal leaders carved a new path for my generation and our future generations.

During my father's childhood in the 1950s and 1960s, Chief Calvin McGhee formally organized the Tribe and began a movement to lift the Tribe out of poverty. When Chief McGhee passed in 1970, Chairman Eddie L. Tullis took up his mantle and spearheaded the Tribe's efforts to establish a government-to-government relationship with the federal government and be eligible to receive federal benefits and programs. Those efforts culminated in the Poarch Band of Creek Indians becoming the only federally recognized tribe in the State of Alabama in 1984 and the declaration of its reservation in 1985.

As an eleven-year-old at the time of our federal recognition, my father had instilled in me a deep love and sense of my tribal identity as Poarch Creek, but I was only vaguely aware of the significance of



Shortly after federal recognition in 1985, our Tribe opened the Creek Bingo Palace on its reservation near Atmore, Alabama.



Venus Prince

this monumental achievement for our Tribe. Nor did I as a fifteen-year-old realize how much Congress' passage of a law called the Indian Gaming Regulatory Act ("IGRA") in 1988 would dramatically change the face and daily lives of our Tribe.

Shortly after federal recognition in 1985, our Tribe opened the Creek Bingo Palace on its reservation near Atmore, Alabama. This economic development venture was intended to supplement the existing federal benefits and programs, particularly health care, and to allow the Tribe to promote education through scholarships for its tribal members. Although the Tribe received federal support for its health benefits, there was a shortfall every year, which required that the health clinic refuse treatment to tribal members when the money ran out. Even with the Creek Bingo Palace revenues, the Tribe could not support more than a few \$150 scholarships each year to encourage its tribal member children to pursue higher education.

When IGRA passed in 1988, Indian gaming became subject to a new regulatory scheme with two significant categories of gaming: Class II gaming, which covers traditional games such as bingo and does not require a compact with a state as long as the type of gaming is allowed within the state; and Class III gaming, which covers Vegas-style gaming and requires that a tribe have a compact with the state. Poarch Creek's traditional bingo operation suddenly fell within the legally significant category of "Class II gaming" because the State of Alabama allowed many charitable bingo operations within its borders. Nevertheless, at that time, Class III gaming was much more profitable than Class II. The Tribe approached several governors over the next few years regarding the potential negotiation of a tribal-state Class III gaming compact, but to no avail. So, the Creek Bingo Palace continued to provide its modest revenues to support the Tribe during the 1990s with no significant growth.

In the mid to late 1990s, however, technology and entrepreneurial vision, however, started changing the playing field. Electronic bingo began to evolve, and soon innovative vendors were offering electronic bingo machines that were extremely appealing to gaming patrons. As revenues slowly increased, the Tribe seized the opportunity to reach a new market and opened two new facilities on its trust lands near Montgomery, Alabama. The Riverside Casino was opened in Wetumpka, Alabama in 2001, and the Tallapoosa Casino was opened outside of Montgomery, Alabama in 2002. Both were so successful that the facilities were expanded within the next few years. The advent of technology and this rapid expansion had the Tribe poised for an incredible roll at the gaming table, despite the State of Alabama's continued unwillingness to acknowledge the Tribe's sovereign right to a seat at that table and the arrival of several commercial electronic bingo operations.

The State of Alabama's continued refusal to negotiate was puzzling. A tribal-state gaming compact with the Poarch Creeks would have allowed it to control the expansion of the gaming within the State—an oft-stated goal of the Governor and state legislators—and to provide much needed revenues for the State's coffers. Instead, it systematically attempted to dismantle the Tribe's and other commercial gaming operations. In 2007, in response to the Tribe's request for Secretarial procedures from the Department of Interior to protect its bingo operations precisely because the State steadfastly refused to negotiate a compact, the State brought a lawsuit challenging the Department of Interior's authority to provide that remedy to the Tribe. When its approach failed and the complaint was dismissed, the State Governor launched a task force against gaming meant to shut down all electronic bingo operations in the State—commercial and Indian gaming—in 2010. The State then began to shutter commercial gaming operations throughout the State and threatened the Tribe's operations, even though the State has absolutely no jurisdiction over the Tribe's trust lands or its ability to conduct Class II gaming under IGRA. Little did the State know that it was playing into the Tribe's hands by essentially providing the Tribe with a *de facto* monopoly of gaming within the State.

In the midst of this staunch opposition, the Tribe expanded the original Creek Bingo Palace into its first Wind Creek Casino and Hotel on its reservation in Atmore, Alabama in December 2008. (It amazingly paid off this \$250 million dollar financing in only eighteen months.) In 2010, it expanded and converted the two northern properties—Riverside Casino and Tallapoosa Casino—into Creek Casino Wetumpka and Creek Casino Montgomery with more amenities and an upscale feel. By 2013, the Tribe launched a \$250 million development that turned its Creek Casino Wetumpka into a Wind Creek Casino and Hotel Wetumpka. By 2015, Creek Casino Montgomery was also subject to a \$65 million expansion and branding as a Wind Creek Casino and Hotel Montgomery.

In short, the Tribe's gaming business has boomed, and the Tribe has diligently channeled its revenues into expanding its education and health benefits and introducing new programs and benefits. The original \$150 a year scholarship has incrementally transformed into a full-fledged educational benefit for each tribal member, which can be used to pay for private education starting at K-4, college, and/or graduate school. The Tribe's health clinic no longer needs to worry about federal dollars running out halfway during the fiscal year because the Tribe's gaming revenues can make up the difference. Tribal elders also may now move to a state-of-the-art Assisted Living facility in the heart of the reservation.

Continued on next page



“Even after federal recognition and the passage of IGRA, the Tribe has been operating in a state that refused and continues to refuse to treat it as a sovereign entity with a unique federal right to use gaming as an economic development tool not only for its people, but also the surrounding local communities.”

Continued from previous page

The Tribe's remarkable success has also changed the face of the surrounding communities and provided much needed jobs and revenues. The Tribe is one of the largest employers in the state. Wind Creek Atmore employs over 800 people, Wind Creek Wetumpka employs almost 1,000 people, and Wind Creek Montgomery employs over 400 people. Of course, the gaming operations not only provide direct employment, but indirect employment and significant income taxes to the state. The Tribe has also generously shared its success with its neighbors, local schools, hospitals, non-profit associations, and others through as much as millions in annual charitable donations.

Despite this extremely positive impact on everything surrounding the Tribe from 2008 (arguably much earlier) until now, the State of Alabama actually continued its legal battle to shut down these gaming operations, while the local county tax assessor sought to impose county taxes on the Tribe's federal trust lands after recognizing that these trust lands were exempt from taxation for almost 30 years. In early 2013, the Alabama Attorney General filed a lawsuit against the Tribe claiming that the gaming operations were not located on trust lands and were a public nuisance. The Attorney General did not give up this fight until the Eleventh Circuit affirmed a ruling in the Tribe's favor in fall 2015. In the meantime, in early 2014, the local county tax assessor decided to seek an audit in order to impose tax assessments on all of the Tribe's trust lands. The Tribe was forced to seek an injunction against the tax assessor in spring 2015 and is still embroiled in litigation with the tax assessor today. The current Governor Bentley also publicly acknowledges the continued refusal to negotiate a compact with the Tribe, despite his efforts to push a state lottery in the legislature to address the State's budget woes.¹

Still, the Tribe thrives. So much so that the Tribe is diversifying its gaming ventures while assisting its fellow tribes in getting their gaming operations off the ground. By negotiating rather unique business arrangements by which the Tribe is serving as a management company or financing alternative or a combination of both, gaming has enabled the Tribe to reach well beyond its borders to both secure its future and help other tribes to build theirs. Most recently, the Tribe and the Washoe Tribe of Nevada and California partnered to open the Washoe Tribe's first gaming facility in rural Nevada in May of this year.²

Today, no one driving down I-65 in southern Alabama can miss that one tribe remains. A high-rise casino lights up the sky at night,

and an official green "Poarch Band of Creek Indians Reservation" sign greets you as you near the exit for the Tribal headquarters. No matter how gaming might be viewed in the deep south, no one in the surrounding area can deny that it has benefited not only one isolated tribe, but the many neighbors, employees, and friends whose lives have improved over the past thirty years since our Tribe's federal recognition. Even other tribes across the country and their surrounding communities are reaping those benefits.

The odds certainly have been stacked against this Tribe from the beginning. Although allowed to remain when other southeastern tribes were removed to Oklahoma in the 1800s, the community had no means of supporting itself other than through backbreaking labor and the generosity of the local Episcopal church for many, many years. Not until the federal government finally acknowledged its obligations in 1984 did it have a stream of any type of revenue to exercise its sovereign rights and to support its people. Even after federal recognition and the passage of IGRA, the Tribe has been operating in a state that refused and continues to refuse to treat it as a sovereign entity with a unique federal right to use gaming as an economic development tool not only for its people, but also the surrounding local communities. The State government could also share in this success, if the State would take a seat at the table. Despite the unrelenting opposition, this virtually unknown Tribe has used its own ingenuity, fierce determination for survival, and an unexpected trump card—gaming—to produce quite a winning hand. ♣

Venus Prince is a member of the Poarch Band of Creek Indians and is Counsel in the Native American Affairs Practice Group at Kilpatrick Townsend & Stockton LLP in Washington, D.C. Prior to joining her law firm, Ms. Prince was Deputy Solicitor for Indian Affairs at the United States Department of Interior in Washington, D.C. where she provided legal counsel and representation to the Interior Secretary and Assistant Secretary of the Interior for Indian Affairs regarding the United States' trust responsibility to tribes and the administration of federal benefits and services to tribes. She also managed the Division of Indian Affairs within the Office of the Solicitor and coordinated with other federal agencies, including the National Indian Gaming Commission and the Department of Justice, regarding litigation, regulatory matters, and policies that impact the interests of the United States and tribes. Prior to joining the Department of the Interior, Ms. Prince served for over seven years as the Attorney General for the Poarch Band of Creek Indians in Atmore, Alabama, where she managed legal services and representation for all Poarch Creek Tribal entities. During that period, she co-founded and served as President of the Tribal In-House Counsel Association. Before serving as Attorney General for the Poarch Band of Creek Indians, Ms. Prince worked as an associate for law firms in Chicago, Illinois and Washington, D.C. where she gained experience in insurance coverage law, commercial litigation, and Native American legal matters. She received her Bachelor of Arts, cum laude, in sociology from Harvard University and her Juris Doctor from the University of California at Berkeley. While attending law school, Ms. Prince was a member of the California Law Review and served as a law clerk for the Hopi Appellate Court. After graduation, she served as a judicial clerk to Justice Dana Fabe in the Alaska Supreme Court. In 2013, she was elected to the American Law Institute and currently serves as an Adviser to the ALI Project on the Restatement of the Law of the American Indians. In 2014, she was a recipient of the Native American Bar Association—DC Chapter Award for "Excellence in Government Service".

¹ See "No gambling deal with Poarch Creek Indians, Gov. Robert Bentley says ahead of lottery vote," Leada Gore, al.com (August 26, 2016), http://www.al.com/news/index.ssf/2016/08/no_gambling_deal_in_works_with.html

² See "Opening of Wa She Shu Casino Marks Landmark Tribal Gaming Partnership: Washoe Partners with Poarch Creek Indians to Offer Entertainment; Create Jobs," PR Newswire (May 26, 2016), <http://www.prnewswire.com/news-releases/opening-of-wa-she-shu-casino-marks-landmark-tribal-gaming-partnership-300273635.html>