

POKAGON BAND OF POTAWATOMI INDIANS

TRIBAL COURT

58620 Sink Road, P.O. Box 355, Dowagiac, MI 49047

POKAGON BAND OF  
POTAWATOMI INDIANS,  
Plaintiff

-vs-

Case No. 10-1093-CO  
10-1094-CO

MARK ADAMSKI and DANI  
SIMON,  
Defendants

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**OPINION AND ORDER ON MOTION TO RECONSIDER  
AND FOR FURTHER CLARIFICATION**

The Defendants, Mark Adamski and Dani Simon, previously moved to dismiss the above actions or declare PBCrimO 14A unconstitutional. This Court issued its Opinion and Order denying the motion (see Opinion and Order dated July 21, 2011, filed by the Clerk on July 22, 2011).

The Defendants have now filed a Motion to Reconsider and for Further Clarification to which the Plaintiff filed a response. The Court heard extensive and eloquent arguments from each side on September 1, 2011.

The Motion to Reconsider and for Further Clarification is denied for the reasons more particularly stated below.

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The facts previously stipulated to remain the same and in addition thereto both sides agreed in Open Court an actual trial was not necessary and this Court was to issue its final ruling on responsibility based on the pleadings and argument. It was further agreed this Court would not rule on the disposition of the money seized from the Defendants. That matter would be decided by the Pokagon Gaming Commission.

### **The Court Rule**

Current Tribal Court Rules do not address a motion for reconsideration. Therefore, the Court must look to rules of practice in effect in the courts of Michigan, Pokagon Band Tribal Court Code Section 7B.

Accordingly, the Court has reviewed MCR 2.119(F) which provides in pertinent part as follows:

- (1) ...a motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than 21 days after entry of an order deciding the motion.
- (2) No response to the motion may be filed, and there is no oral argument, unless the court otherwise directs.
- (3) Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

### **Analysis**

In connection with subsection (1) above, the Motion for Reconsideration was filed August 18, 2011, which was 27 days after entry of the Order denying the original motion. This Court deems the matter of sufficient importance and public interest to hear this motion

despite the 21 day requirement was not met. Further, the 21 day requirement was not argued by opposing counsel.

In connection with subsection (2) above, this Court (through the Court Administrator) requested that a response to the motion be filed and felt it appropriate to give each side an additional opportunity to present oral argument.

The Defendants argue (again) that PBCrimO 14A, the definition of cheating, is unconstitutionally vague and the complaints against the Defendants should be dismissed.

The Defendants further argue that Plaintiffs have a right to rely on the ruling of *Sheriff, Clark County, Nevada v Einbinder No. 15797* and to do otherwise would violate the Fair Warning Doctrine as argued in Defendants' original brief supporting their Motion to Dismiss (see bottom of page 5).

The people argue that the Defendants are again presenting the same issues previously decided by the Court and that the statute in question gives sufficient notice of the actions that are prohibited and that a person of ordinary intelligence has sufficient notice of what activities constitute cheating.

### **Discussion**

The *Einbinder* case is not precedent that this Court is required to follow. It is commonly understood that courts are free to rule based on the entire text of the statute and gives the statute's words their ordinary meanings, *People v Piper*, 223 Mich App 642, 646; 567 NW 2d 483 (1997).

This case is governed by the rule that "general statements of the law are capable of giving clear and fair warning to officers even where the very action in question has not

been previously been held unlawful”, *Smith v Cupp*, 430 Fed 3d 766, 776-77 (6<sup>th</sup> Cir 2005). If the Defendants felt they were entitled to rely on *Einbinder*, why signal the discovery of a hole card to another? As claimed in Defendants’ original brief, the discussion of the way Blackjack is played, is a common occurrence at the Blackjack tables between players. That being said, why did the Defendants resort to signaling instead of openly discussing the value of the dealer’s hole card. The Court believes the Defendants were cheating and they knew it, *Einbinder* notwithstanding and they didn’t want to be caught.

The Defendants in this case were on fair warning that their activity was cheating for the reason that they used secret hand signals by one Defendant to communicate the exposed value of the dealer’s hole card to the other Defendant. This was done to alter the elements of chance and the method of selection or criteria to determine the result of the game.

As stated in Open Court, if a player knows the dealer’s hole card is a 10 along with a face card that was dealt up and the player has 18, he then knows he must take an additional card (which he normally would not do) to even have a chance to win. Therefore, the knowledge of the dealer’s hole card alters the element of chance and the method of selection (of another card) or criteria.

The Defendants in this case are arguing the same issues which were ruled on by this Court in the prior motion. Although the Defendants have made a strong argument there has been no demonstration of a palpable error by which the Court or the parties have been misled.

**Conclusion**

This Court finds no error which was committed to show a different disposition of the motion. Accordingly, this Court finds the Defendants' conduct of signaling the value of a hole card inadvertently exposed by the Blackjack dealer to be cheating so as to alter the element of chance, method of selection or criteria which determine the result of the game.

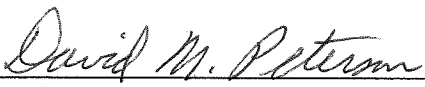
**Findings**

Based upon the above, this Court is convinced by a preponderance of the evidence that the Defendants are both responsible for cheating as set forth in the Complaint and that they were clearly on notice their conduct violated PBCrimO Section 14E of the Pokagon Band of Potawatomi Indians Code of Offenses.

**Order**

This Court enters a finding of responsibility for violation of PBCrimO Section 14E of the Pokagon Band of Potawatomi Indians Code of Offenses.

Dated: September 14, 2011

  
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David M. Peterson  
Judge, Pokagon Band Tribal Court