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Tax case has high stakes

Supreme Court to rule on Oneidas.

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SHERRILL — The tallest building between Albany and Syracuse is the Oneida Nation of New York's new luxury hotel at its casino, in the middle of farmland where Oneida and Madison counties come together near the Thruway.

The new skyscraper, scheduled to open this month, is a testament to the financial success of the Oneidas' Turning Stone Casino, five golf courses, four hotels, three marinas, two campgrounds and 12 gasoline stations.

Armed with casino profits and a federal court ruling that said the nation could buy back its former land and turn it into sovereign territory, the Oneidas have reclaimed about 16,000 acres.

While they make hefty contributions to local municipalities and school districts, and their more than 4,000 employees pay taxes on their salaries, the nation itself doesn't pay any local property, school or sales taxes.

That has riled many in the area for years, but none so much as the tiny city of Sherrill, population 3,100.

Refusing to accept two court defeats and saying the Oneida Nation owes the city about \$40,000 in taxes, Sherrill is challenging Oneida sovereignty in the U.S. Supreme Court this fall.

If Sherrill wins, American Indian land rights around the country could be curtailed, legal experts say.

"It's literally pulling the rug out from every treaty and every sovereign land title," said Robert O. Porter, an attorney, Syracuse University law professor and member of the Seneca Nation of Indians.

If the Oneidas win, lawyers and historians say the effect probably would be limited to New York state and the other American Indian nations that have land claims here — but with potentially devastating impact on the tax bases of those areas. In Verona alone — the town that surrounds the Turning Stone casino and resort — nearly one-fifth of all the property is now non-taxable Oneida land.

Using the precedent set so far in the Sherrill case, the Cayuga Nation of New York and the Seneca-Cayuga Tribe of Oklahoma have bought properties in their historical land claim area at the north end of Cayuga Lake. The New York Cayugas have opened three businesses, which they say are free of local and state regulation.

David Vickers, president of Upstate Citizens for Equality, a group opposed to Oneida sovereignty, predicted "creative lawyers would take a look at it all across the country."

"It can be a huge disaster" if the court makes broad changes, said Robert Venables, a Native American history expert at Cornell University. "If they choose to rule narrowly, it will be a small disaster."

In a surprise to some, the Supreme Court agreed to hear the case against the advice of the U.S. solicitor general, the government's top lawyer before the court.

"That rarely happens," said Doug George-Kanentiio, a Mohawk journalist who is often at odds philosophically and politically with the Oneida Nation. "The Supreme Court saw something here that was of great interest to them. They are going to make a fairly decisive (ruling). This is not going to be ambiguous."

Buying back the land

The Oneidas, who once ranged over 6 million acres in central New York, possessed only a 32-acre reservation in Madison County when they launched their land claim in 1977. Their target was 700 acres, and the U.S. Supreme Court decided in a 5-4 ruling that they had a right to the land. The court also urged a negotiated settlement. But after the failure of on-again, off-again talks, the Oneidas in 1998 filed a new claim, this time seeking more than 250,000 acres. The basis of this and other land claims by the tribes of the Iroquois confederation is that by making its own treaties with Indian nations, New York state violated a 1790 federal law that required congressional approval of any state-initiated treaties.

Since 1999, the land claim has been in the hands of federal mediators, who so far have been unable to forge a deal.

"The problem comes in what's the remedy," said Joseph Heath, a Syracuse attorney who represents the Onondaga Nation, another Iroquois tribe. "You can't get your land back" because most of it is privately owned. Instead, "we'll give you damages with the theory that (you use the money to) grow the territory."

When the Oneidas acted on that legal theory, Sherrill objected. But both a federal district court judge and a federal appeals court held that the prior cases and treaties meant that the Oneidas could re-establish their sovereign territory — at least within the land claim area — by simply buying it back.

If those Sherrill rulings are overturned, land claims that have already been ruled on — Oneida and Cayuga — might have to be revisited to consider a different remedy, Heath said. And future land claims, such as one the Onondagas are preparing that would cover much of Syracuse, and a potential Seneca land claim in the Genesee River valley, might seek actual return of their lands.

"If someone steals your car, you ought to get your car back, not a hub cap," Heath said, explaining the legal logic.

Among the properties the Oneidas bought were a total of 10 parcels comprising two blocks of

land in Sherrill. The nation used one for a gas station and smoke shop and the other for a textile printing plant and smoke shop.

"We think they are taxable," said Sherrill City Manager David O. Barker. "What we're hearing is a self-proclamation that they're not. We disagree with that self-proclamation."

The Oneida Nation declined a request for an interview with tribal leader Ray Halbritter and issued only this statement regarding the case: "Two federal courts have already ruled in favor of the Nation, and the Nation is hopeful the Supreme Court will find similarly."

Good treaty, bad treaty

Sherrill's Manhattan attorney, Ira S. Sacks, argues that the land can't be considered Indian territory because the title was extinguished when the Oneidas signed a federal treaty in 1788 saying they could sell their lands to the United States and later did sell to the state.

Further, any remaining Oneida connection to the land was ended by the 1838 Treaty of Buffalo Creek, he said, a treaty that came out of federal policy of the time: Move the Indians westward to what are now Oklahoma and Kansas to make room for white settlers.

"This is a bad treaty," Heath said of the Buffalo Creek treaty, which took two years to get congressional ratification and then passed by a single vote because of questions over whether it was a corrupt deal. "I'm surprised that people aren't ashamed to argue from it."

David M. Schraver, an attorney with the Rochester firm of Nixon Peabody, represents Madison and Oneida counties and filed a friend-of-the-court brief in support of Sherrill's case. He argues that the federal law that required congressional ratification of states' treaties was amended several times, becoming inapplicable in the Oneida case.

While some dismiss the legitimacy of those arguments, they are concerned about what the Supreme Court might do.

"I think both those claims are bogus and patently wrong," said historian Michael Oberg, a professor at the State University College at Geneseo. But "I think we're on the eve of a potentially major rewriting of Indian history here."

Sacks said that, at the least, the case "will have a big impact on the Six Nations of the Iroquois. A watershed impact on Indian law? Perhaps not." But then he added that the Supreme Court sometimes takes up cases to make watershed changes.

Because the Oneida Nation buys land as it goes on the market, it owns a patchwork of properties in Madison and Oneida counties. There are no visible boundaries, for the most part, so no one knows which laws apply where, Schraver said. "It's a very complicated and difficult situation."

But town officials, who are used to dealing with federal lands and state Power Authority property within their boundaries, said that isn't the main issue.

"A lot of people say, 'I don't care what they (the Oneidas) do as long as they pay their taxes,'" said Maurice Warner, town of Verona assessor.

Taxes for some, not others

Mary and Ken Patrick are moving out of their house, which sits in a group of parcels surrounded by Oneida land on Sarenski Road in Verona. They have bought a new home in the town of Vernon because they are tired of living on what has become a shortcut from points east. .

"When we moved here, it was a quiet little district, and that's changed," Mary Patrick said. Their new home will still be surrounded by Oneida land — but it's undeveloped.

Though they'll be escaping the proximity to the casino, the Patricks are clearly bothered that they are governed by a different set of tax laws than their neighbors.

Both retired from Oneida Ltd., the silverware manufacturer in Sherrill that recently announced it will suspend all domestic production. Mary Patrick ticks off all the taxes she and her husband have paid over the years. "When we went to work, we paid taxes on everything we earned. We paid taxes on our house, we pay property taxes every year," she said. "We either pay it or we can't be here."

She said she realizes that things change, and, like many people who have seen the local economy stagger, the Patricks acknowledge the positive impact the casino has made. But they also worry about its unchecked growth and trying to make amends for illegal treaties 200 years ago.

"We shouldn't pay for what our forefathers did," Mary Patrick said, "or what their forefathers did."

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