

DCTAC Statement on the Shab-eh-nay Land History May 2024

In the 1829 Treaty of Prairie du Chien, two square miles of land, south of present-day Shabbona Illinois, were “reserved for the use of” Potawatomi chief Shab-eh-nay and his band. Shab-eh-nay left his land in 1849 to visit Kansas, where most of his band had lived since departing Illinois in 1837, and returned in 1853 only to be chased off. His plight has stirred the hearts of Illinoisans for generations.

The Prairie Band has claimed for many decades that this land was taken illegally from Shab-eh-nay, and that in the interests of justice the land should be returned to the Tribe.

But this claim is false. While there was certainly a great misunderstanding when Shab-eh-nay returned to his former home in 1853,

- there was no “theft”, and
- there never was a “reservation”

The Tribe's assertions to the contrary are in large measure due to their hopes of opening an unregulated casino here. DCTAC has been involved in researching these claims since the Prairie Band's 2007 casino proposal.

The Tribe has long claimed that they were given “reservation” title to the land in question, and this reservation title was never legally extinguished by Congress. But all the federal officials of the era clearly believed that there was no reservation. Contemporaneous documents make clear that the 1829 Treaty of Prairie du Chien language, “reserved for the use of”, simply meant that the land was held back from the larger ceded acreage encompassing most of northern Illinois. Even today, a recipe might say “reserve a half cup of of sugar for the icing”, in much the same sense. Shab-eh-nay held only “native”, or “Indian” title to the land. The Tribe argued before the National Indian Gaming Commission in 2007 that the land was a reservation, but their claim did not succeed then and should not succeed now. The appropriate venue at this point for pursuing this claim is the Federal courts, but the Tribe has not pursued that.

Furthermore, every federal official reviewing the dispute in the 1850's came to the conclusion that Shab-eh-nay had tried to **sell** the land, *and that such a sale was evidence of intent to abandon the property*, and that abandonment would **properly and legally extinguish native title**. In any event, the usufructory right to the land was not inheritable, and would have ended upon Shab-eh-nay's death in 1859.

Shab-eh-nay had in fact been promised the right to sell the land in the 1833 Treaty of Chicago, but that right was removed by Congress and the evidence suggests Shab-eh-nay was never told. He had every reason to believe that he could sell the land. There are multiple documents attesting to Shab-eh-nay's attempts to sell or lease at least large portions of the land, even aside from the suspect sale to the Gates brothers. Generally these sales involved at best only a small down payment to Shab-eh-nay, with the balance to come later.

Shab-eh-nay himself seems to have acknowledged, through his attorneys Paddock and Ward in 1854, that he had sold the land:

Shab-eh-nay is here, *says he authorized the sale by the Government* — but has never received anything — he is a worthy man, is in want, has a large family to support and is therefore anxious that his application should be attended to as soon as possible.

Even if one does not read the language “authorized the sale” as acknowledging that his own sales attempts had led to this, it is striking that *Shab-eh-nay makes no attempt to claim that the land should still have been his*. By that point Shab-eh-nay had been working with lawyers for over a decade; he certainly had a basic understanding of legal procedures. If he felt he had a claim to the land, he would have said so.

Historian James Dowd has suggested that Shab-eh-nay made a deal to sell the land, but had an unwritten agreement to retain the right to continue to use 100 acres or so. There is limited evidence, but it certainly would explain the Paddock and Ward letter.

Shab-eh-nay's return from Kansas in 1853, after four years, is indeed mystifying. Did he really plan to return all along? In his 1878 book *Memories of Shaubena*, Nehemiah Matson recounts troubles Shab-eh-nay had on earlier trips. In 1837, while accompanying his band to Kansas, Shab-eh-nay and his family were attacked by Neopope, of the Black Hawk, who bore a grudge against him for his assistance to the Illinois settlers. Shab-eh-nay's son Pypegee and nephew Pyps were killed, and Shab-eh-nay fled back to Illinois. It is not unreasonable to suppose that, in 1849 also, Shab-eh-nay planned on spending the rest of his days in Kansas, only to find that he still had enemies there.

Treaties are supposed to be interpreted as the tribes understood them. But this rule does not help the Prairie Band's case: Shab-eh-nay's own understanding was that he was allowed to sell the land, and his band's understanding was that the land belonged only to Shab-eh-nay.

Detailed documents outlining all the above are available at the website of the DeKalb County Taxpayers Against the Casino, dctac.org.

We don't doubt that it was a serious injustice that Shab-eh-nay was never told that he did not have the right after all to sell his land; there are other major misunderstandings as well. But this does not rise to the level of turning over more of the land to the tribe.

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DeKalb County Taxpayers Against the Casino (dctac.org)

Documents at dctac.org:
An Ethno-historical Evaluation of Land-holdings at Shabbona's Grove, James Lynch
Analysis of Shabehnay's 1829 Title, Peter Dordal
Legal and Historical Analysis, R Flahaven and A Keane, Illinois Attorney General's Office