By TIMBERLY ROSS

LINCOLN, Neb.

A federal court must order the National Indian Gaming Commission to reconsider whether the Ponca Tribe of Nebraska can build a casino in Iowa, taking into account a 2003 agreement that the land would be used for non-gaming purposes, an appeals court ruled

Tuesday.

The 8th U.S. Circuit Court of Appeals ruled that a federal judge was wrong to throw out the commission's December 2007 decision that would have allowed the casino.

Instead, the appeals court said, the judge should have ordered the commission to revisit the issue, taking into consideration a 2003 agreement between Iowa and the Bureau of Indian Affairs that said the land would not be used for gambling.

Wyn Hornbuckle, a U.S. Department of Justice spokesman, applauded the decision.

"We believe the court reached the right result," Hornbuckle said. "The matter will now go back to the National Indian Gaming Commission for it to reconsider whether gaming can occur on the Carter Lake parcel."

Messages left Tuesday for attorneys for the Ponca tribe weren't immediately returned.

The Ponca Tribe bought the 5-acre Carter Lake site in Iowa in 1999, and the tribe deeded it to the Bureau of Indian Affairs in trust for non-gaming purposes in February 2003. The tribe originally told Iowa officials that the land would be used for a health center.

The commission said in court filings that it didn't consider the 2003 agreement when it approved development of the site.

The Bureau of Indian Affairs and the commission appealed the federal judge's 2008 decision, saying consideration of the agreement wouldn't automatically preclude the tribe from building a casino in Iowa. In a separate federal case, the tribe is challenging the validity of the agreement.

Nebraska does not permit gambling, but Iowa does, and under federal law American Indian tribes may offer gambling on land that it owns, as long as gambling is legal in that state. The commission said it's unclear whether the Ponca tribe can apply the federal law to its Iowa property, even if the Iowa agreement is thrown out.

The Ponca tribe lost its status as a federally recognized tribe in 1962 and its Nebraska reservation was sold off. But the recognition was restored in 1990, and the tribe was allowed to place up to 1,500 acres in Knox and Boyd counties in Nebraska in federal trust as "restored lands."

The commission said it must evaluate whether the Iowa site can be considered "restored lands," which it didn't address when it believed the land would be used for a health center. If the site is deemed "restored lands" and the Iowa agreement is thrown out, then the commission could approve a casino.

Carter Lake originally sat on the east side of the Missouri River, which separates Iowa and Nebraska. But shifting and flooding in the late 1800s left the city on the west side of the river, northeast of Omaha. The U.S. Supreme Court ruled in 1892 that the city still belonged to Iowa.

According to the Ponca Tribe, the Carter Lake casino would have featured 2,000 slot machines, 50 table games and a 150-room hotel and meeting space. The tribe said 1,800 jobs would have been created.

Attorney generals for Nebraska and Iowa, joined by the city council of Council Bluffs, Iowa, oppose the casino plan. The states said the tribe shouldn't be allowed to build the casino,

because it deceived the federal government to get land in Carter Lake placed in trust.

Messages left Tuesday for the states' attorneys weren't immediately returned.

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