

Approved On: _____

Minutes of the House Committee on Taxation. The meeting was called to order by Keith Roe, Vice Chairman, at 9:00 a.m. on April 28, 1988 in room 519 South at the Capitol of the State of Kansas.

The following members were absent (excused):

Representatives Adam, Crowell, Francisco, Spaniol,
Wunsch

Committee staff present:

Tom Severn, Legislative Research
Chris Courtright, Legislative Research
Don Hayward, Reviser of Statutes
Millie Foose, Committee Secretary

Representative Reardon discussed SB-725 - AN ACT concerning county health funds; authorizing tax levies. He explained that mill levies set in the past had been too low in some counties, necessitating a change in the mill levy limit. At the present time, there are no counties above the two mill limit. Representative Reardon moved, second by Representative Grotewiel, to pass SB-725 favorably. The motion carried.

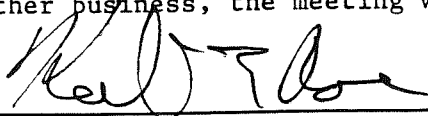
Representative Aylward explained HR-6097 -- a Resolution urging Congress to repeal the "preproductive expense" provision of the 1986 Federal Tax Reform Act. Representative Aylward moved, second by Representative Snowbarger, to pass HR-6097 favorably. The motion passed.

There was discussion on SB-720 - AN ACT relating to cigarette taxation; exempting certain sales made to Indians. Elizabeth Taylor, representing Taylor Wholesale Grocery, of Coffeyville, submitted copy of a letter from Kansas Department of Revenue and their reply. (Attachments 1 and 2) Ms. Taylor believes that jobs and income have been lost, as well as five years of building work, because the Department of Revenue has had a change of heart and handed the business to jobbers in Nebraska, Oklahoma, and Tennessee. Gary Smith, representing Joe Smith Tobacco Company, also explained the Kansas loss of jobs and income to the state of Nebraska. Fred Thomas, Tribal Chairman of the Kickapoo Tribe of Kansas, spoke as an opponent of SB-720. The Kickapoo Tribe does not consent to the state any civil regulatory powers over the Kickapoo Reservation in Kansas which is federally recognized. (Attachment 3)

There was considerable discussion and questions from committee members as well as Secretary Duncan and Tom Severn. There were questions whether the no-tax sales should be for tribal members only or for any one who wanted to buy. Representative Jim Russell questioned the intent of the bill. Frances Kastner objected to the proposed amendment to the bill, and explained her reasons. George Wahquahbshkuk, representing Prairie Band Pottawatomies, also spoke as an opponent. (Attachment 4) This testimony concluded the hearing on SB-720.

The minutes of April 6 were approved.

There being no further business, the meeting was adjourned.



Keith Roe, Vice Chairman



KANSAS DEPARTMENT OF REVENUE

DIVISION OF TAXATION

Robert B. Docking State Office Building
Topeka, Kansas 66625-0001

CERTIFIED MAIL

September 11, 1987

James O. Taylor, Partner
Taylor Wholesale Grocery
1300 Willow
Coffeyville, KS 67337

RE: Sale of cigarettes to Kansas and out-of-state
manufacturer's salesman, retail dealers and wholesalers

Dear Mr. Taylor:

The Kansas Department of Revenue has been reviewing the matter of the sale by Kansas wholesale dealers of untaxed cigarettes to unlicensed retailers in Kansas and neighboring states. We would like to call your attention to subsection (h) of K.S.A. 79-3321. This statute states that "It shall be unlawful for any person to wholesale cigarettes to any person, other than a duly licensed manufacturer's salesman, retail dealer or wholesaler." It is our opinion that the words "duly licensed" apply to all manufacturer's salesman, retail dealers and wholesalers, whether located within Kansas or some other jurisdiction.

We recognize that some retailers are exempt from licensure under applicable federal statutes and interpretations thereof by the federal courts. We also recognize that most retailers which are exempt from licensure are also able to sell untaxed cigarettes to certain classes of purchasers. Such retailers are typically either retail businesses operated by the United States Government selling to military or other select groups, or retail businesses operated or regulated by Indian tribes selling to members of those tribes on reservation land.

In order for you to avoid violation of K.S.A. 79-3321 with the resultant criminal and administrative penalties, we recommend that you require proof of current licensure from all manufacturer's salesman, retailer dealers and wholesalers to whom you sell cigarettes. In the case of retail dealers who claim to be exempt from licensure or claim to be entitled to sell cigarettes without tax stamps, we recommend that you verify such claims through the proper licensing and taxing authorities.

We have enclosed with this letter an official list of those Kansas retailers which are exempt from licensure and to which you may sell cigarettes without Kansas tax stamps. We will update this list from time to time as needed. You should make sure that you do not sell untaxed cigarettes to any person or business in Kansas except those retailers described or specifically named on the most current list.



KANSAS DEPARTMENT OF REVENUE

Page 2

If you are contacted by a Kansas retailer wanting to purchase unstamped cigarettes, and if such retailer is not on our approved list, then you should refer the retailer to this Bureau for a review of their eligibility for selling untaxed cigarettes.

Before selling cigarettes to an out-of-state manufacturer's salesman, retail dealer or wholesaler, you should contact the licensing authority in that jurisdiction regarding whether such person or business is licensed or exempt from licensure. You should contact us if you need help with obtaining this information.

Sincerely

Cleo G. Murphy

Cleo G. Murphy, Chief
Sales and Excise Tax Bureau

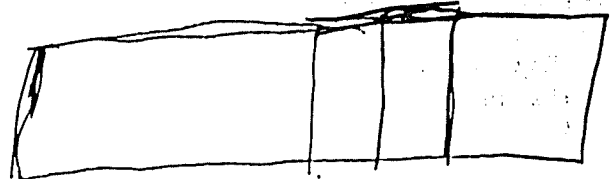
For the Director of Taxation

Telephone: (913) 296-2461

D. Philip

CGM:c/676/4612/8
Enclosure

Wilkes



673



KANSAS DEPARTMENT OF REVENUE
Division of Taxation
State Office Building · Topeka, Kansas 66625-0001

List of Kansas Retailers Found to be Exempt
From Kansas Cigarette Licensure Requirements and Who
May Purchase Cigarettes Without Kansas Tax Stamps

Effective September 1, 1987

All Officers Clubs, NCO Clubs, commissaries and other stores operated by the military at Fort Riley, Fort Leavenworth and McConnell Air Force Base. Untaxed cigarettes may only be resold by the retailer to purchasers authorized by applicable military regulations.

The Kickapoo Trading Post located upon the Kickapoo Reservation in Brown County. Untaxed cigarettes may only be resold by the retailer to purchasers who are members of the Kickapoo Tribe.

The snackbar at Haskell Indian Junior College in Lawrence. [Haskell is owned and operated by the Bureau of Indian Affairs, which is part of the U.S. Department of the Interior, and is located upon land owned by the U.S. Government.] Untaxed cigarettes may only be resold by the retailer to purchasers authorized by applicable regulations.

RECEIVED FEB 03 1988



TAYLOR WHOLESALE GROCERY

1300 WILLOW - P.O. BOX 572 - PHONE 316-251-1850 - COFFEYVILLE, KANSAS 67337

February 1, 1988

Department of Revenue
State of Kansas
State Office Building ;
Topeka, Kansas 66625

Attention: Harley T. Duncan, Secretary

Dear Sir:

I believe it is time to put on the record how we became involved with Indian Smoke Shops in Oklahoma, and what part the State of Kansas played in this project.

From the way this project has been handled recently, you could get the feeling that several Kansas Jobbers have been engaged in doing business with a group of law violators, and should be stopped from conducting such activity. This is not true, and for the purpose of explaining to late comers to this project it should be known that the State of Kansas, through Department of Revenue and State Statute, has been a full participant in this project by detailing procedure for shipment out of State, and assuring us that all merchandise shipped via ICC carrier to out of State locations would not be subject to tax by the State of Kansas. After reviewing the statutes, I believe they are right; and further, that we should be allowed to continue shipments.

For review of Taylor Wholesale status in this matter, I submit the following:

In early 1982, we were contacted by the Delaware Tribe of Indians of Bartlesville, Oklahoma, asking us to sell them unstamped cigarettes, to be sold by their tribe from their Smoke Shop in Bartlesville. We were told that they were buying from E. G. Stephens Tobacco at Wichita, and wanted to make a change.

Upon their initial visit with us, we told them we had no interest in selling untaxed cigarettes, because we thought it was not the proper thing to do, either morally or legally. After the initial visit, we were contacted several times at later dates by members of the Delaware Tribal Council, who insisted that we check into the matter and give further consideration to their request. At that time I contacted the



TAYLOR WHOLESALE GROCERY

1300 WILLOW - P.O. BOX 572 - PHONE 316-251-1850 - COFFEYVILLE, KANSAS 67337

Page 2

Kansas Cigarette Tax Office, and was told that the Attorney General's office had indicated there was no objection from the State of Kansas relative to shipping untaxed cigarettes out of State, so long as we had signed documents by the consignee as indicated in the State Statutes Paragraph 92-5-5. Because of the fact that Kansas State Statute provides for the shipment of untaxed cigarettes out of State; and further, that the Attorney General's office and Cigarette Division of Department of Revenue approved the shipment of tax exempt cigarettes at that time in 1982, we decided to ship.

We were furnished proper forms by the State of Kansas for reporting our shipments of cigarettes and tobacco upon a monthly basis. We made our first shipment to Delaware Tribe in late July - 1982. In about thirty days we were contacted by other shops who asked us to ship them cigarettes and tobacco products.

Since this appeared to be a real opportunity for expanding our business, I thought it best to make further inquiry into the legality of the Indian Smoke Shops in Oklahoma before becoming seriously involved. I contacted attorneys who represented Indian Tribes in Oklahoma. They indicated that Oklahoma Jobbers could not sell untaxed cigarettes to Indian Smoke Shops, because the State of Oklahoma did not recognize the Smoke Shops as being exempt from State authority. It was also stated that treaties the Tribes had made with the Government made them a sovereign government exempt from State authority on Indian Country property or Indian Trust land. I also found that Indian shops were paying tax to the Tribe instead of to the State of Oklahoma.

From the knowledge we gained and through further contact with Kansas Cigarette Tax Office, it was decided that we would ship to additional shops. We started shipping to additional shops in late 1982. This was the early days of Indian Smoke Shops in Oklahoma, and everyone including the Oklahoma Tax Commission was looking to the Courts for direction in dealing with a new activity affecting State government operations. We had the opportunity to go through the early beginning and the growth of these Smoke Shops, from a few to near 90 shops operating today.

We entered into the Indian Smoke Shop business in good faith and the good will and sanction of the State of Kansas. We

COMPLETE LINE: TOBACCO, CIGARETTES, CANDY, PAPER GOODS, GROCERIES, PLAYING CARDS,
SMOKING ACCESSORIES, FROZEN FOODS, CHEESE, BEAUTY AIDS, SCHOOL SUPPLIES, GLOVES



TAYLOR WHOLESALE GROCERY

1300 WILLOW - P.O. BOX 572 - PHONE 316-251-1850 - COFFEYVILLE, KANSAS 67337

Page 3

worked hard with the shops helping them set up shop and stock them properly. This helped us build confidence with our customers and also build considerable volume of movement of product through the Indian Smoke Shop. We attended meetings with the Tribal Councils of several tribes, as well as regional meetings which were held to get the tribes and Smoke Shops together for promotional programs and self-help programs in their retail business. I may be wrong, but I am convinced that so much progress has been made in Indian Government affairs in Oklahoma that many of their projects, which were fantasy only a few years ago, have become a permanent part of Indian activity; and further that Oklahoma Tax commission should consider making this Indian Smoke Shop business available to Oklahoma Jobbers instead of the way it is being passed around.

We have seen the State of Oklahoma challenge the Smoke Shop operators, and the Indian Tribes challenge the State of Oklahoma for the right to control them. As the Smoke Shops began to operate, the State of Oklahoma closed several shops and confiscated cigarettes and tobacco. We handled some of that product for the Courts and turned tobacco products into cash for the Court to handle. To my knowledge all those shops which were on Trust Land were reopened and are still operating. Shops that the Courts found illegal have been closed or the operators have been restrained from operating them.

We were able through our close cooperation with the Indian Tribes, as well as reports from court cases which evolved from the Smoke Shop activity, to become knowledgeable about the legal status of the Indian Smoke Shop in Oklahoma. To my knowledge no definite or binding decisions have been handed down by the Oklahoma Courts, either pro or con, in the matter of Indian Smoke Shop legality.

The Oklahoma courts have generally taken the position that they do not have jurisdiction in the matter, or ruled in favor of the Smoke Shops on Trust Land by not denying the Indian Tribes the right to operate Smoke Shops on Tribal Land. A few cases have gone to U. S. District Court in Denver; however, to my knowledge no decision has been handed down from that court which would change the status quo. In my opinion, the Indian Smoke Shops will be operating until the case of

COMPLETE LINE: TOBACCO, CIGARETTES, CANDY, PAPER GOODS, GROCERIES, PLAYING CARDS,
SMOKING ACCESSORIES, FROZEN FOODS, CHEESE, BEAUTY AIDS, SCHOOL SUPPLIES, GLOVES



TAYLOR WHOLESALE GROCERY

1300 WILLOW - P.O. BOX 572 - PHONE 316-251-1850 - COFFEYVILLE, KANSAS 67337

Page 4

Indian sovereignty is handled either through the United States Congress or the United States Supreme Court. Judging from the proliferation of these shops, they are probably a permanent fixture in the State of Oklahoma.

Some of the Indian Smoke Shops are near Kansas border, and some products would naturally be purchased by Kansas residents and brought back into Kansas. This is not good for Kansas retailers, neither is it good for the jobber who is doing business on or near State line, unless the jobber is permitted to furnish product for those few shops.

In July 1987 we had inquiry from a Cherokee Indian in South Coffeyville, Oklahoma, who was opening an Indian Smoke Shop and wanted us to furnish cigarettes and tobacco for his shop. We anticipated an outpouring of opposition from retailers in Coffeyville, if and when the shop was opened, because we had visited with several of them about the possibility of a shop in South Coffeyville. Sure enough, when we started shipping product to the South Coffeyville shop, calls were made to Topeka asking for help in closing the shop. It was only a short time later I had a call from one of the Indian shops in Tulsa indicating that Mr. Jenkins from the Oklahoma Tax Commission had told them that they were going to get the supply of cigarettes stopped from going to South Coffeyville. It seems ironic that on Sept. 13, 1987, we received a registered letter from the Department of Revenue indicating their opinion that we should consider ourselves subject to the same regulations for shipment of cigarettes out of State as prevailed in the State of Kansas, and in order to avoid criminal and administrative penalties, we should stop shipping cigarettes out of State. We called State Office to find effective date of order and were advised - at once.

All of our effort in promoting Indian Smoke Shop business has been done with the confidence that this business would continue into the foreseeable future. Our close contact with the situation in Oklahoma, as well as Kansas Department of Revenue concurrence, caused us to form that conclusion. Over the past five years we had built a business with the Indian Smoke Shops which moved approximately 150,000 cartons of cigarettes per month and approximately \$75,000 tobacco. In order to maintain ample stock for this movement, we had con-



TAYLOR WHOLESALE GROCERY

1300 WILLOW - P.O. BOX 572 - PHONE 316-251-1850 - COFFEYVILLE, KANSAS 67337

Page 5

siderable investment in supporting equipment and supplies. It is obvious that an operation of this magnitude has taken considerable planning, a substantial amount of money and credit to finance. It does not take very much intelligence to know that a sudden cut-off, without prior notice, of an activity of this magnitude would be devastating financially, as well as a physical and mental shock. In my opinion the persons involved with drafting and submitting the order to us of Sept. 12, took action without regard for fair treatment or fair play and without gathering all the facts of the case.

The Indian Tribes in Oklahoma have their own statutes governing the sale of cigarettes in Oklahoma on Indian Trust Land, and it would appear that when they take the position that they can legally sell them without Oklahoma State Tax stamps on Trust Land, they must be right, because they are still selling cigarettes and tobacco without interference from the State of Oklahoma.

The change in attitude and direction which the Department of Revenue has taken upon the shipment of untaxed cigarettes to out of State customers has caused us to lose five years of business building work, as well as caused our accounts which we have developed over a five year period to be literally handed intact and free of charge to jobbers in North Platte, Nebraska, Omaha, Nebraska and Memphis, Tenn. This

is not right, neither can it be justified if a realistic

examination of the current status of Oklahoma Indian Smoke Shops is reviewed. Approximately 45 Indian Smoke Shops in Oklahoma were our accounts. So long as cigarettes and tobacco are allowed to be shipped into Oklahoma Indian Smoke Shops, then I believe the Kansas Jobbers who have handled and developed these accounts should not be denied the right to continue shipping to them.

Since Tax Revenue had been mentioned in the order of Sept. 12, it should be noted that no change has been made in restoring lost revenue from cigarette sales in Kansas, because the cigarette supply is still being shipped into Oklahoma, and presumably some are being brought back into Kansas without stamps; however, State Income Tax is being lost from profits



TAYLOR WHOLESALE GROCERY

1300 WILLOW - P.O. BOX 572 - PHONE 316-251-1850 - COFFEYVILLE, KANSAS 67337

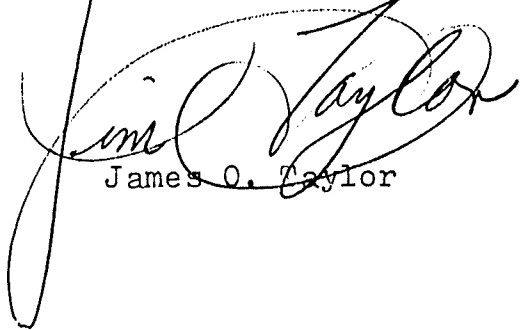
Page 6

jobbers would make on sales. From my visits with other jobbers and truck lines involved with all shipments from Kansas, it would appear that approximately 20 jobs have been lost. Tax revenue on taxes from these jobs has been lost, tax revenue on taxes from Truck Line operators has been lost, approximately \$2,500,000 sales per month has been lost to the economy and tax revenue from Banks involved has been lost.

Can you, Mr. Secretary, conscientiously continue to sustain the Department of Revenue decision as indicated in the letter of Sept. 12, 1987.

Yours truly,

TAYLOR WHOLESALE GROCERY



James O. Taylor

mw

cc Gov. Mike Hayden
Rep. Jim Russell
Elizabeth Taylor

The following smoke shops are currently licensed by the Muscogee (Creek) Nation per NCA 86-08, and are thus eligible to receive tobacco products for sale per our regulations, including but not limited to, prompt payment of tribal tobacco tax. As additional smoke shops are licensed, this office will notify you of their status.

1. Okmulgee Indian Community Smoke Shop
2700 North Miami
Okmulgee, Ok 74447
2. Bristow Indian Community Smoke Shop
121 West Lincoln
Bristow, OK 74010
3. Holdenville Indian Community Smoke Shop
416 East Poplar
Holdenville, Ok 74848
4. Eufaula Indian Community Smoke Shop
702 West Forest
Eufaula, OK 74432
5. Muscogee (Creek) Nation Vietnam Veterans Intertribal Association
1006 North 6th
Oakdale Site
Okmulgee, OK 74447
6. Creek Nation Festival Committee
P. O. Box 580
Okmulgee, OK 74447
7. Robert Brooks d/b/a Alupsi Indian Smoke Shop
9016 West 51st
Tulsa, OK 74107
8. Koweta Smoke Shop
P. O. Box 22
East North Street
Coweta, OK 74429

Muscogee (Creek) Nation
Claude A. Cox, Principal Chief



Office of Public Gaming
& Taxation
Wm. E. Foster, Commissioner

September 16, 1987

Cleo G. Murphy, Chief
Sales and Excise Tax Bureau
Kansas Department of Revenue
Division of Taxation
Robert B. Docking State Office Bldg.
Topeka, KS 66625-0001

Subject: THE APPLICATION OF K.S.A. 79-3321 TO THE MUSCOGEE (CREEK) NATION.

Dear Mr. Murphy,

I am the Tax Commissioner for the Muscogee (Creek) Nation, a federally recognized Indian Tribe. The Creek Nation would like to purchase untaxed cigarettes from wholesalers in Kansas.

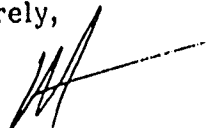
The Creek Nation is exempt from any State licensure and is able to sell untaxed cigarettes to Creek citizens on Tribal land, land which is restricted against alienation, or land which is held by the United States in trust for the Creek Nation. I have enclosed a certified copy of the Tribal Ordinance, authorizing such sales by Tribally licensed retailers.

Attached is a list of our Tribally licensed retail outlets.

The Creek Nation will have the Bureau of Indian Affairs Field Representative and Realty Officer at the Okmulgee Agency certify these tracts as being under federal and Tribal jurisdiction and administration.

On the basis of the enclosed NCA 86-08 and the certification of the Bureau of Indian Affairs can you issue a letter to me to the effect that your office considers Creek Nation exempt from State licensure and able to sell untaxed cigarettes to certain classes of purchasers, to permit Creek Nation to purchase cigarettes from Kansas wholesalers without exposing them to any liability? If you have any questions, or it is not possible to comply with my request, please contact me.

Sincerely,


William E. Foster, Commissioner
Office of Public Gaming and Taxation

WEM/kr

cc: James O. Taylor
file

Claude A. Cox, Principal Chief
Sherrin Watkins, General Counsel
Carney Roberts, Speaker-National Council
Jimmy Gibson, Field Representative, BIA Okmulgee Agency

Attachments: 2

Capitol Complex • Highway 75 at Loop 56 • P.O. Box 580 • Okmulgee, Oklahoma 74447

Okmulgee Office (918) 756-8700 • Tulsa Facility (918) 299-8434

Call him
in Oct 2/12

KICKAPOO TRIBE OF KANSAS

R. R. 1

Box 157A

HORTON, KANSAS 66439

Phone: 913/486-2131

April 28, 1988

The Honorable Michael Hayden
Governor of Kansas
State Capitol
Topeka, Kansas

Dear Governor Hayden:

Please let it be expressly understood that the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas does not support Senate Bill 720. Be it further understood that the Kickapoo Tribe does not consent to the State any civil regulatory powers over the Kickapoo Reservation in Kansas which is federally recognized.

Please inform your staff of the Kickapoo Tribe in Kansas expressed concern.

If your office should have any questions please contact the Tribal Office at (913) 486-2131.

Sincerely,



Fred Thomas
Tribal Chairman
Kickapoo Tribe in Kansas

FT/vrs

Enclosures

cc: Francis Gordon
Ed Reilly
Edward C. Rolfs
Don Sallee
Members of the Committee on Taxation
Chrono

KICKAPOO TRIBE IN KANSAS
R E S O L U T I O N

- WHEREAS, the Kickapoo Tribe of the Kickapoo Reservation in Kansas is organized in accordance with the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), and
- WHEREAS, the Kickapoo Tribal Council is empowered to its Constitution and By-Laws to act on matters benefitting the Tribe, and
- WHEREAS, the Kickapoo Tribe of Indians on the twenty-sixth day of November, one thousand eight hundred and thirty-two, made a treaty with the United States of America therein called TREATY WITH THE KICKAPOO, 1832, and
- WHEREAS, the Kickapoo Tribe of Indians on the eighteenth day of May, one thousand eight hundred and fifty-four, made a treaty with the United States of America therein called TREATY WITH THE KICKAPOO, 1854 and prior to the State of Kansas becoming a state, and
- WHEREAS, the Kickapoo Tribe of Indians on the twenty-eighth day of June, one thousand eight hundred and sixty-two, made a treaty with the United States of America and called TREATY WITH THE KICKAPOO, 1862, and
- WHEREAS, the Kickapoo Tribe of Indians has an established and recognized government to government relationship with the United States of America and the Congress of the federal government and the Constitution of the United States of America in ARTICLE I, Section 7, and
- WHEREAS, the Kickapoo Tribe of Indians has an approved Constitution and By-Laws by the Secretary of the Interior Department on February 18, 1937 which establishes and approves territory jurisdiction as defined under the Treaty of MAY 18, 1854 and grants POWERS OF THE TRIBAL COUNCIL, ARTICLE V, (f) to provide for the levying of taxes and the appropriation of available tribal funds for public purposes of the Kickapoo Tribe, and
- THEREFORE, BE IT RESOLVED, the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas does not support nor gives consent to the State of Kansas to exercise taxation of any kind on the Kickapoo Reservation in Kansas in Senate Bill 720 which attempts civil regulatory powers over Indians on the Kickapoo Reservation, and

BE IT FURTHER RESOLVED, the Kickapoo Tribe in Kansas clarifies its' position with the State of Kansas to be in a government to government relationship and the Kickapoo Tribe does not grant taxation authority to the State of Kansas and shall continue to exercise its' authority and power to tax within the Kickapoo Reservation, and

BE IT FURTHER RESOLVED, the Kickapoo Tribal Council is empowered to represent the Kickapoo Tribe of Indians on the Kickapoo Reservation in Kansas and this Tribal Council resolution shall become effective upon the proper Tribal Council signatures.

C E R T I F I C A T I O N

The foregoing Kickapoo Tribal Council Resolution was adopted on this 27th day of April, 1988, at which a Special Session was held and called for by the Kickapoo Tribal Chairman, at which 5 Kickapoo Tribal Council members were present, by a vote of 4 for, 0 against, 0 abstaining, with a required quorum with the Chairman not voting. This Tribal Council resolution is therefore adopted.

Fred Thomas
Fred Thomas, Tribal Chairman
Kickapoo Tribal Council

ATTEST:

Lena Belle Smith
Lena Belle Smith, Treasurer
Kickapoo Tribal Council

**CONSTITUTION AND BY-LAWS OF
THE KICKAPOO TRIBE OF INDIANS
OF THE KICKAPOO RESERVATION
IN KANSAS**

+

APPROVED FEBRUARY 26, 1937

**UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS**

**CONSTITUTION AND BY-LAWS OF
THE KICKAPOO TRIBE OF INDIANS
OF THE KICKAPOO RESERVATION
IN KANSAS**

APPROVED FEBRUARY 26, 1937



(As approved February 16, 1937
and amended to October 10, 1980)

**KICKAPOO TRIBAL PRESS
HORTON, KANSAS: 1980**

CONSTITUTION AND BY-LAWS OF THE KICKAPOO TRIBE OF INDIANS OF THE KICKAPOO RESERVATION IN KANSAS

PREAMBLE

We, the people of the Kickapoo Tribe in Kansas in order to form a recognized representative council to handle our tribal affairs; in order to take advantage of the benefits of the Indian Reorganization Act of June 18, 1934, and in order to improve the economic condition of members of the tribe, do establish this Constitution and By-laws.

ARTICLE I—TERRITORY

The jurisdiction of the Kickapoo Tribe shall extend to the territory within the confines of the Kickapoo Reservation as defined under the Treaty of May 18, 1854, and to such other lands as may be hereafter added thereto under any law of the United States.

ARTICLE II—MEMBERSHIP

***SECTION 1.** The membership of the Kickapoo Tribe shall consist of:

(a) All persons of Indian blood whose names appear on the official census roll of the Kickapoo Tribe as of January 1, 1937, provided that within one year from the adoption and approval of Amendment No. I to this Constitution and By-laws corrections may be made in the said roll by the Tribal Council subject to the approval of the Secretary of the Interior.

(b) All children born during the period from January 1, 1937, the date of the census roll, to the effective date of Amendment No. I, (September 19, 1960), to any member of the Kickapoo Tribe who is a resident of the Reservation at the time of the birth of said children; provided that children born off the reservation during that period to any member of the Kickapoo Tribe may be admitted to membership by a majority vote of the tribal members in general council.

(c) All children of one-fourth degree or more of Kickapoo blood born on or after the effective date of Amendment No. I, both of whose parents are members of the Kickapoo Tribe of Kansas.

(d) All children of one-fourth degree or more of Kickapoo Indian blood born on or after the effective date of Amendment No. I of a marriage between a member of the Kickapoo Tribe of Kansas and any other person; provided such child is admitted to membership by a majority vote of the tribal members in general council.

* Amendment I, approved September 19, 1960

SECTION 2. The Kickapoo Tribe shall have the power to admit persons of one-fourth degree or more Indian blood who are residing within the boundaries of the jurisdiction of the Potawatomi Area Field Office of the Bureau of Indian Affairs, and who are intermarried with members of the tribe, subject to the approval of the Secretary of the Interior, provided that such persons relinquish their membership in any other tribe.

SECTION 3. The Tribal Council shall have the power to make ordinances, subject to review by the Secretary of the Interior governing the adoption of other persons of Indian blood, and governing future membership.

ARTICLE III—GOVERNING BODY

SECTION 1. The governing body of the Kickapoo Tribe shall be the Tribal Council which shall be composed of seven members elected by the tribe.

SECTION 2. The election shall be held annually on the first Monday in October. Within 30 days after the adoption and approval of this Constitution and By-laws the present Business Committee shall call, hold and supervise an election for members of the Tribal Council. The four persons receiving the highest number of votes shall serve until their successors are elected at the second annual election and the three receiving the next highest number of votes shall serve until their successors are elected at the first annual election which shall be held on the first Monday in October following the approval of this Constitution and By-laws. After this first election called by the Business Committee, the Councilmen elected at each annual election shall serve for two years.

SECTION 3. After each election of Councilmen the Tribal Council shall meet and organize for business by electing from its own number a Chairman, a Vice-Chairman, a Secretary and a Treasurer, and by appointing from the members of the Council or the tribe such other officials, committees or boards as may be deemed necessary.

***SECTION 4.** All members of the tribe who are 21 years of age or over shall be qualified voters in General Council meetings and tribal elections.

****SECTION 5.** Any member of the tribe, 21 years of age or over, shall be qualified to hold office as Councilman.

ARTICLE IV—VACANCIES AND REMOVAL OF COUNCILMEN

SECTION 1. Upon a petition signed by 30 percent of the qualified voters of the tribe stating a complaint against a member of the Tribal Council and asking for his recall, the Tribal Council shall call a meeting of the tribe to vote on whether or not the Councilman shall be recalled. At such meeting the accused Councilman shall be given an opportunity to speak in his own

* Amendment II, approved June 8, 1962

** Amendment III, approved June 8, 1962

defense. If such Councilman is recalled, the tribe shall proceed to elect a person to fill the unexpired term.

SECTION 2. The Tribal Council may by a vote of five of its members remove a Councilman for neglect of duty or misconduct in office, after giving such Councilman notice of the charge and an opportunity to be heard.

SECTION 3. Vacancies in the Tribal Council caused by removal, death or resignation may be filled by the Tribal Council by appointment of a member of the tribe to serve as Councilman for the unexpired term.

ARTICLE V—POWERS OF THE TRIBAL COUNCIL

SECTION 1. Enumerated powers.—The Tribal Council of the Kickapoo Tribe shall exercise the following powers, subject to any limitations imposed by the statutes or the Constitution of the United States.

- (a) To negotiate with the Federal, State, and local governments;
- (b) To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior;
- (c) To veto any sale, disposition, lease or encumbrance of tribal lands, interests in lands, or other assets of the tribe;
- (d) To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Kickapoo Tribe prior to the submission of such estimates to the Bureau of the Budget and to Congress;
- (e) To make and enforce ordinances, which shall be subject to review by the Secretary of the Interior, providing for the manner or making, holding and revoking assignments of tribal land or interests therein;
- (f) To provide for the levying of taxes and the appropriation of available tribal funds for public purposes of the Kickapoo Tribe;
- (g) To lease tribal land in accordance with law;
- (h) To regulate the procedure of the Council itself and other tribal agencies and of tribal meetings and elections.
- (i) To charter subordinate organizations for economic purposes and to delegate to such organizations, or to any subordinate boards, committees, or officials of the tribe, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power.
- *(j) To govern the conduct of Indians on the reservation; and to provide for the maintenance of law and order and the administration of justice by establishing appropriate courts on the reservation and defining their duties and powers. All codes and ordinances enacted by the Tribal Council pursuant to this authority shall be subject to the approval of the Secretary of the Interior.

SECTION 2. Future powers.—The Tribal Council may exercise such further powers as may in the future be delegated to the Council by any member of the tribe or by the Secretary of the Interior or any other duly authorized official or agency of the State or Federal Government.

* Amendment V, approved October 10, 1979

SECTION 3. Reserved powers.—Any rights and powers heretofore vested in the Kickapoo Tribe but not expressly referred to in this Constitution shall not be abridged by this article, but may be exercised by the people of the Kickapoo Tribe through the adoption of appropriate by-laws and constitutional amendment.

SECTION 4. Manner of review.—Any resolution or ordinance which by the terms of this Constitution, is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the reservation who shall, within ten days thereafter, approve or disapprove the same.

If the Superintendent shall approve any ordinance or resolution, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may, within 90 days from the date of enactment, annul the said ordinance or resolution for any cause, by notifying the Tribal Council of such decision.

If the Superintendent shall refuse to approve any ordinance or resolution submitted to him, within ten days after its enactment, he shall advise the Tribal Council of his reasons therefore. If these reasons appear to the Tribal Council insufficient, it may, by a majority vote, refer the ordinance or resolution to the Secretary of the Interior who may, within 90 days from the date of its enactment, approve the same in writing, whereupon the said ordinance or resolution shall become effective.

ARTICLE VI—REFERENDUM

SECTION 1. Upon petition by 30 percent of the qualified voters of the tribe protesting any action of the Tribal Council, the Tribal Council shall call a special meeting of the tribe to vote on whether the action of the Council shall be vetoed or upheld. The action of the tribe shall be final.

ARTICLE VII—AMENDMENTS

This Constitution and By-laws may be amended by a majority vote of the qualified voters of the tribe voting at an election called for that purpose by the Secretary of the Interior, provided that at least 30 percent of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment upon receipt of a request from the Tribal Council or a petition signed by one-third of the qualified voters.

BY-LAWS OF THE KICKAPOO TRIBE OF INDIANS OF THE KICKAPOO RESERVATION IN KANSAS

ARTICLE I—DUTIES OF OFFICERS

SECTION 1. Chairman of the Tribal Council.—The Chairman shall preside over all meetings of the Council and of the tribe, and shall perform the usual duties of a Chairman, and exercise any authority delegated to him by the Council.

SECTION 2. Vice-Chairman of the Tribal Council.—The Vice-Chairman shall assist the Chairman when called upon to do so and in the absence of the Chairman he shall preside. When so presiding, he shall have all the rights, privileges and duties as well as the responsibilities of the Chairman.

SECTION 3. Secretary of the Tribal Council.—The Secretary shall conduct all tribal correspondence and shall keep an accurate record of all matters transacted at tribal council meetings, which record shall be available to the Superintendent of the jurisdiction and the Commissioner of Indian Affairs, upon their request.

SECTION 4. Treasurer of the Tribal Council.—The Treasurer shall accept, receive, receipt for, preserve and safeguard all funds in the care of the Council. He shall deposit all funds in such depository as the Tribal Council shall direct and shall make and preserve a faithful record of such funds and shall report on all receipts and expenditures and the amount and nature of all funds in his possession and custody, at such times as are requested by the Tribal Council. He shall not pay out or otherwise disburse any funds in his possession or care except in accordance with a resolution duly passed by the Tribal Council. When in the opinion of the Tribal Council or the Commissioner of Indian Affairs, sufficient funds have accumulated to the Tribal Council Treasury to make it advisable to bond the Treasurer, he shall be required to give a bond satisfactory to the Tribal Council and Commissioner of Indian Affairs.

ARTICLE II—MEETINGS

SECTION 1. Regular meetings of the Tribal Council shall be held in October, January, April, and July on such date and at such place as may be designated by the Tribal Council, and at such other regular times as the Council may decide. Special meetings of the Council may be called by the Chairman at any time.

SECTION 2. Five members of the Tribal Council shall constitute a quorum.

SECTION 3. The Tribal Council shall call a regular meeting of the tribe in January and June of every year at which meeting the Council shall report its activities in the preceding six months and take up matters of general tribal interest. Special meetings of the tribe in addition to those required under the Constitution may be called in the discretion of the Tribal Council.

***SECTION 4.** Twenty-five qualified voters of the tribe shall constitute a quorum at any tribal meeting.

ARTICLE III—RATIFICATION OF CONSTITUTION AND BY-LAWS

This Constitution and By-laws, when adopted by a majority vote of the voters of the Kickapoo Tribe voting at a special election called by the Secretary of the Interior, in which at least 30 per cent of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be in force from the date of such approval.

CERTIFICATION OF ADOPTION

Pursuant to an order, approved December 18, 1936, by the Secretary of the Interior, the attached Constitution and By-laws was submitted for ratification to the Kickapoo Tribe of the Kickapoo Reservation in Kansas, and was on January 23, 1937, duly ratified by a vote of 70 for, and 8 against, in an election which over 30 per cent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935, (49 Stat. 378).

ALEX ALLEN

Chairman of Election Board.

ROBERT MASQUAT

Secretary of Election Board.

H.E. BRUCE, *Superintendent.*

I, Harold L. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached Constitution and ByLaws of the Kickapoo Tribe in Kansas.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said Constitution or By-laws are hereby declared inapplicable to these Indians.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said Constitution and By-laws.

Approval recommended February 18, 1937.

WILLIAM ZIMMERMAN, JR.

Assistant Commissioner of Indian Affairs.

HAROLD L. ICKES,

Secretary of the Interior.

SEAL

WASHINGTON, D.C., *February 26, 1937.*

* Amendment IV, approved June 8, 1962

100TH CONGRESS
1ST SESSION

S. CON. RES. 76

To acknowledge the contribution of the Iroquois Confederacy of Nations to the development of the United States Constitution and to reaffirm the continuing government-to-government relationship between Indian tribes and the United States established in the Constitution.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 1987

Mr. INOUE (for himself, Mr. EVANS, Mr. DECONCINI, Mr. BURDICK, Mr. MCCAIN, Mr. ADAMS, Mr. BOREN, Mr. CONRAD, Mr. CRANSTON, Mr. D'AMATO, Mr. DOLE, Mr. FORD, Mr. FOWLER, Mr. LEVIN, Mr. PELL, Mr. PRYOR, Mr. REID, Mr. RIEGLE, and Mr. STAFFORD) submitted the following concurrent resolution; which was referred to the Select Committee on Indian Affairs

CONCURRENT RESOLUTION

To acknowledge the contribution of the Iroquois Confederacy of Nations to the development of the United States Constitution and to reaffirm the continuing government-to-government relationship between Indian tribes and the United States established in the Constitution.

Whereas the original framers of the Constitution, including most notably, George Washington and Benjamin Franklin, are known to have greatly admired the concepts, principles and governmental practices of the Six Nations of the Iroquois Confederacy; and,

Whereas the confederation of the original Thirteen Colonies into one republic was explicitly modeled upon the Iroquois Confederacy as were many of the democratic principles which were incorporated into the Constitution itself; and,

Whereas since the formation of the United States, the Congress has recognized the sovereign status of Indian tribes, and has, through the exercise of powers reserved to the Federal Government in the Commerce Clause of the Constitution (art. I, s8, cl.3), dealt with Indian tribes on a government-to-government basis and has, through the treaty clause (art. II, s2, cl.2) entered into three hundred and seventy treaties with Indian tribal nations; and,

Whereas from the first treaty entered into with an Indian nation, the treaty with the Delaware Indians of September 17, 1778, and thereafter in every Indian treaty until the cessation of treaty-making in 1871, the Congress has assumed a trust responsibility and obligation to Indian tribes and their members to "exercise the utmost good faith in dealings with the Indians" as provided for in the Northwest Ordinance of 1787, (1 Stat. 50); and,

Whereas Congress has consistently reaffirmed these fundamental policies over the past two hundred years through legislation specifically designed to honor this special relationship; and,

Whereas, the judicial system of the United States has consistently recognized and reaffirmed this special relationship:
Now, therefore, be it

1 *Resolved by the Senate (the House of Representatives*
2 *concurring), That—*

3 (1) the Congress, on the occasion of the two hun-
4 dredth anniversary of the signing of the United States

1 Constitution, acknowledges the historical debt which
2 this Republic of the United States of America owes to
3 the Iroquois Confederacy and other Indian nations for
4 their demonstration of enlightened, democratic princi-
5 ples of Government and their example of a free asso-
6 ciation of independent Indian nations;

7 (2) the Congress also hereby reaffirms the consti-
8 tutionally recognized government-to-government rela-
9 tionship with Indian tribes which has historically been
10 the cornerstone of this Nation's official Indian policy;

11 (3) the Congress specifically acknowledges and re-
12 affirms the trust responsibility and obligation of the
13 United States Government to Indian tribes, including
14 Alaska Natives, for their preservation, protection and
15 enhancement, including the provision of health, educa-
16 tion, social and economic assistance programs as neces-
17 sary, to assist tribes to perform their governmental re-
18 sponsibility to provide for the social and economic well-
19 being of their members and to preserve tribal cultural
20 identity and heritage; and

21 (4) the Congress also acknowledges the need to
22 exercise the utmost good faith in upholding its treaties
23 with the various tribes, as the tribes understood them
24 to be, and the duty of a great Nation to uphold its
25 legal and moral obligations for the benefit of all of its

1 citizens so that they and their posterity may also con-
2 tinue to enjoy the rights they have enshrined in the
3 United States Constitution for time immemorial.

○

Rm #519S

Prairie Band of Potawatomi Indians

Route 2, Box 50A
MAYETTA, KANSAS 66509
913 966-2255

APRIL 28, 1988

Kansas House of Representatives

Hearing on Senate Bill 720

My name is George Wahquahboshkuk and I am the Tribal Chairman, of the Prairie Band of Pottawatomi Indian Nation.

What I would like to say is, through the signing of the Treaties with the United States Government, the recognition of the Indian Tribes as Nations. As a Nation, those Nations have the inherent powers to regulate laws on the reservations, the Pottawatomi Nations have been involved with and signed over 50 Treaties with the United States Government. The Prairie Band Pottawatomi is such a nation.

The Prairie Band Potawatomi have enacted General Revenue and Taxation Ordinances. Chapter II deals with the Prairie Band Pottawatomi Tobacco Tax. Thereby, regulating the sale of cigarettes within the boundries and jurisdiction of the Prairie Band Pottawatomi Indian Nations Government.

Also, we the Prairie Band Pottawatomi by Tribal Council have adopted a resolution opposing Senate Bill 720, because as stated earlier we have the inherent power to regulate within our reservation.

To go through with this Bill will most certainly create conflict in the future.

One other note, with the passing of this Bill will cause the Oklahoma Indian Tabacco market to look elsewhere, and will cause the Prairie Band Potawatomi's to seriously look at getting into the cigarette wholesale business.

Thank you

George L. Wahquahboshkuk

George L. Wahquahboshkuk, Chairman