

Approved

4/9/88
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

11:00 a.m. ~~pm~~ on April 5, 1988 in room 254-E of the Capitol.

All members were present except:

Committee staff present:

Mary Torrence, Assistant Revisor of Statutes
Mary Galligan, Legislative Research
June Windscheffel, Committee Secretary

Conferees appearing before the committee:

Ms. Elizabeth Taylor, Independent Tobacco Wholesalers
Mr. Gary Smith, John Smith Tobacco Company of Southeast Kansas
Mr. Paul Coleman, Kansas Tobacco and Candy Vendors
Ms. Frances Kastner, Kansas Food Dealers Association
Mr. Fred Thomas, Kickapoo Nation, Horton, Kansas
Mr. Mark Burkhardt, Kansas Department of Revenue
Mr. Roger Kaul, Holton, Kansas
Adjutant Phil Finley, State of Kansas
Mr. Jonathan Small, who is LTC of KARNG (Kansas Army National Guard)

The Minutes of April 4, 1988, were before the Committee. Senator Arasmith moved they be approved. The motion was seconded by Senator Morris. The motion carried.

The Chairman directed the Committee's attention to SB720, concerning cigarette tax exemption for Indians.

The Chairman welcomed the conferees. The first conferee was Ms. Elizabeth Taylor, who said she was present to represent the Independent Tobacco Wholesalers. A copy of Ms. Taylor's presentation is part of these Minutes. (Attachment #1)

Mr. Gary Smith was welcomed next. Mr. Smith, representing the John Smith Tobacco Company of Southeast Kansas, said that Ms. Taylor had said what he felt needed to be said about the matter. He said he had been somewhat intimidated by the Kansas Department of Revenue and that may be the reason that other wholesalers were not here speaking up for their rights at this time.

Mr. Paul Coleman, Executive Secretary of the Kansas Tobacco and Candy Vendors, was the next conferee. He said he could only echo that the Oklahoma tribes are sovereign nations, and that the Departmental Administrative Regulations that the Kansas jobbers can no longer sell to the Oklahoma Tribe does nothing more than shift that commerce to another state. He asked to turn that commerce back to the State of Kansas.

Ms. Frances Kastner, representing the Kansas Food Dealers Association, was present. Her statement is part of these Minutes. (Attachment #2)

Mr. Fred Thomas, of the Kickapoo Nation, was the next conferee. He said he is not taking sides, and understands what is the issue. He said they are not subsidized by the State of Kansas. He said the Kickapoo Tribe has the right to govern the conduct of Indians on the reservation, which means reselling or wholesale. All the money that comes in goes to supplement the tribal government. Mr. Thomas said there are four federally recognized tribes in Kansas that regulate over their members. He spoke at length and answered questions from the Committee. At the request of the Chairman, Mr. Thomas agreed to send a copy of his remarks for these Minutes. (These remarks will be Attachment #3)* Mr. Thomas left a copy of the Constitution and By-Laws of the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas, approved February 26, 1937, with the Chairman.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

* Mr. Thomas was contacted by letter to again ask for his remarks. We received no answer.
ju

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,
room _____, Statehouse, at 11:00 a.m./~~p.m.~~ on April 5, 1988.

Mr. Mark Burkhardt appeared for the Department of Revenue. A copy of his prepared statement is part of these Minutes. (Attachment #4) He answered questions from the Committee. Mr. Phil Wilkes was also present and answered questions from the Committee.

Mr. Roger Kaul, a businessman from Holton, was also present. A copy of Mr. Kaul's comments will be forwarded to the Chairman, to become part of these Minutes. (Attachment #5)

The Chairman thanked all for appearing and said that would conclude the hearing for today on SB720.

The next bill for consideration and hearing by the Committee was HB3087, concerning revision of the Kansas Military Code of Justice. Adjutant General Philip B. Finley was welcomed by the Chairman. General Finley expressed his appreciation for the opportunity to have this presentation, and introduced LTC Jonathan Small to make the presentation. (Attachment #6)

The Chairman thanked LTC Small for his presentation.

The meeting was adjourned at noon.

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

*Senate, FSA
4/5/88
Attachment #1*

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



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Kansas Cigarette Tax Office, and was told that the Attorney General's office had indicated their 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



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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



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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

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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

Elizabeth Taylor - testimony



TAYLOR WHOLESALE GROCERY

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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.

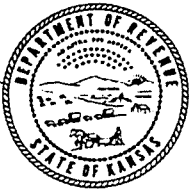
Yours truly,

TAYLOR WHOLESALE GROCERY

James O. Taylor
James O. Taylor

mw

cc Gov. Mike Hayden
Rep. Jim Russell
Elizabeth Taylor



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

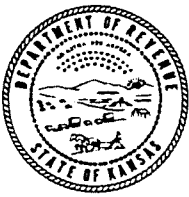
Dear Mr. Taylor:

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

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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.

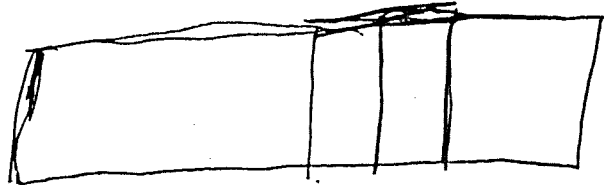
Sincerely,

Cleo G. Murphy

Cleo G. Murphy, Chief
Sales and Excise Tax Bureau

For the Director of Taxation

Telephone: (913) 296-2461



6731

D. Philip

CGM:c/676/4612/8
Enclosure

Wilkes



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.

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.

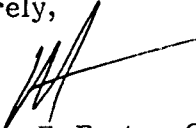
The Creek Nation is exempt from any State licensure and is able to sell untaxed cigarettes to Creek citizens on Tribal land, land which is restricted against alienation, or land which is held by the United States in trust for the Creek Nation. I have enclosed a certified copy of the Tribal Ordinance, 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
on Fri 2/12

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

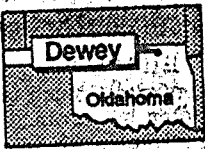


By James J. Fisher

Found: smoker's paradise

DEWNEY, Okla. — Three miles north of here is a modest structure on the east side of U.S. 75.

"Smokers Welcome Here," reads the sign on the door.



Now there's a rare greeting in this year of 1988, as smokers continue to find themselves about as popular as flies at a family picnic.

These days scowls, grimaces and tongue lashings from non-smokers have become the norm; some proponents of a smoke-free society have the noisy fervor of Carry A. Nation, and no-smoking signs, warning of jail terms and hefty fines, appear as if by magic. Everywhere.

So the sign on the door of the Lenape Smoke Shop, Jim and Louise McCartlin, proprietors, is a breath of fresh air.

Figuratively speaking, that is. Inside the shop are what else — tobacco products. Cases and cases of cigarettes, boxes full of chewing tobacco, rolls containing tins of snuff.

"Oh, we get a lot of business out of Kansas. Cane and the state line are just 12 miles up 75," says Helen Wilson, the McCartlins' daughter and the woman who does the ordering and keeps the books.

And how's the cigarette business?

"We sell between 4,000 and 5,000 cartons a week," she said.

For a place about the size of your ordinary convenience store, that's a lot of smokes. The volume, naturally, is tied to the price the McCartlins charge —

\$8.75 for a carton of name-brand cigarettes; \$6 for a generic carton. Last week you could pick up a carton of Falcons on

sale for \$5; Lucky Strike filters, with rebate, came to \$6.75.

With a carton of cigarettes nudging \$12 in this part of country, the savings are considerable.

"I think our biggest sale was 90 cartons to one guy," Louise says. "He was from somewhere back East. Said cigarettes there were costing him \$17-\$18 a carton. He couldn't get his money out fast enough."

The key to the Lenape Smoke Shop is no Oklahoma state tax.

Jim McCartlin is a full-blood Delaware Indian. Under terms of various treaties the United States signed long ago, his land here — 10 acres allotted to his Grandpa and Grandma Fouts back in the 19th century — is exempt from such taxes. No property tax, Louise says. And no sales tax on what's sold out of the shop.

There are thought to be approximately 100 similar tobacco shops operating on Indian-owned land throughout Oklahoma.

Louise, a solid woman who describes herself as "a hard-head German," says the Oklahoma taxing authorities go absolutely bonkers when they think of her husband, a middle-aged Indian, having a business and not giving the state its cut.

But a deal's a deal, she says, pulling out a dog-eared volume on the specific rights of Indians and the various tribes under the U.S. Code.

Business at the shop is so brisk, in fact, that it has a drive-up window.

"We've got several customers in their 90s," Helen says. "They seem to like the old-type cigarettes, you know, non-filtered Camels and Luckies and Pall Malls. Ones with a kick."

"And there's one man who drives in — I think he's 92 — who dips snuff. Before he pays, he checks every can for the expiration date. He's a little fussy about freshness."

Helen, by the way, is the only one in the shop who smokes. The McCartlins don't have the habit.

"I don't think there's any doubt that it's a health hazard," says Louise, who was standing not far from some bumper stickers the shop sells. One of them read, oddly enough for a place that sells half a million cigarettes a week, "Cancer Cures Smoking."

Jim McCartlin, owner of the shop, is seen in the background.



Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205

PHONE: (913) 384-3838

April 5, 1988

SENATE FEDERAL & STATE AFFAIRS

EXECUTIVE DIRECTOR
JIM SHEEHAN
Shawnee Mission

SB 720

OFFICERS

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LEONARD MCKENZIE
Overland Park

VICE-PRESIDENT
MIKE DONELAN
Colby

TREASURER
SKIP KLEIER
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CHAIRMAN OF THE BOARD
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STAN HAYES
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Louisburg

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Leavenworth

BILL WEST
Abilene

LEROY WHEELER
Winfield

JOE WHITE
Kingman

DIRECTOR OF
GOVERNMENTAL AFFAIRS

FRANCES KASTNER

Although the Kansas Food Dealers Association does not have a retail member that is on an Indian Reservation, and would not be directly affected by implementing the provisions in SB 720, we feel compelled to make some comments.

At a time when the message sent by this legislature is to restrict smoking in public areas and schools, this bill sends a different message. We tried to determine the purpose of this bill and up to now have failed to come up with any logical explanation.

SB 720 would remove the 24 cents state tax currently paid on a package of 20 cigarettes. That translates to \$2.40 tax exemption per carton.

Anytime a product is sold to an organization, or group of people at a price that is considerably less than anyone else pays for the product at the retail level, you are inviting illegal RESALE of products.

In communities where military commissaries operate, the retail businesses do not enjoy the average amount of sales expected for that particular size city or town. It is difficult, if not impossible, for bonafide retailers to compete with prices of various products sold tax free. It results in a trickle-down loss of corporate taxes, sales tax, cigarette tax, etc. paid to the State.

We request that this Committee gives serious consideration before exempting various products from taxes and inadvertently opening a flood gate for requests for other products in future years.

Frances Kastner, Director
Governmental Affairs, KFPA

4/5/88
Attachment #2

ORGANIC ACT

An Act to Organize the Territory of Kansas

§ 19. Creation of territorial government. That all that part of the territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit, beginning at a point on the western boundary of the state of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the east boundary of the territory of Utah, on the summit of the Rocky Mountains; thence northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the state of Missouri; thence south with the western boundary of said state to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the territory of Kansas; and when admitted as a state or states, the said territory, or any portion of the same shall be received into the union with or without slavery, as their constitution may prescribe at the time of their admission: *Provided*, That nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory into two or more territories, in such manner and at such times as congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States: *Provided further*, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with an Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be ex-

cepted out of the boundaries, and constitute no part of the territory of Kansas, until said tribe shall signify their assent to the president of the United States to be included within the said territory of Kansas, or to affect the authority of the government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the government to make if this act had never passed. [Act May 30, 1854, ch. 59, § 19, 10 Stat. 283.]

CASE ANNOTATIONS

1. Legislative power vested in governor and legislative assembly. *Elliott v. Lochrane and others*, 1 K. 126, 136.
2. Object of act. *The State v. Stringfellow*, 2 K. 263.
3. State accepted admission on condition that Indian rights remain unimpaired. *Parker v. Winsor*, 5 K. 362, 367; *In re Nowgezhuck*, 69 K. 410, 413, 76 P. 877.

§ 20. Governor of territory. That the executive power and authority in and over said territory of Kansas shall be invested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president of the United States. The governor shall reside within said territory, and shall be commander in chief of the militia thereof. He may grant pardons and respites for offenses against the laws of said territory, and reprieves for offenses against the laws of the United States, until the decision of the president can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed. [Act May 30, 1854, ch. 59, § 20, 10 Stat. 284.]

§ 21. Secretary of territory. That there shall be a secretary of said territory, who shall reside therein, and hold his office for five years, unless sooner removed by the president of the United States; he shall record and preserve all the laws and proceed-

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ings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semiannually, on the first days of January and July in each year, to the president of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives, to be deposited in the libraries of congress; and, in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy. [Act May 30, 1854, ch. 59, § 21, 10 Stat. 284.]

§ 22. Legislative assembly. That the legislative power and authority of said territory shall be vested in the governor and a legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of thirteen members, having the qualifications of voters, as hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall, at its first session, consist of twenty-six members, possessing the same qualifications as prescribed for members of the council, and whose term of service shall continue one year. The number of representatives may be increased by the legislative assembly, from time to time, in proportion to the increase of qualified voters: *Provided*, That the whole number shall never exceed thirty-nine. An apportionment shall be made, as nearly equal as practicable, among the several counties or districts, for the election of the council and representatives, giving to each section of the territory representation in the ratio of its qualified voters as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district or county or counties for which they may be elected, respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified

voters of the several counties and districts of the territory, to be taken by such persons and in such mode as the governor shall designate and appoint; and the person so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and be conducted in such manner, both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said council districts for members of the council, shall be declared by the governor to be duly elected to the council; and the persons having the highest number of legal votes for the house of representatives shall be declared by the governor to be duly elected members of said house: *Provided*, That in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor shall order a new election; and the persons thus elected to the legislative assembly shall meet at such place, and on such day as the governor shall appoint; but thereafter, the time, place, and manner of holding and conducting all elections by the people, and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: *Provided*, That no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days. [Act May 30, 1854, ch. 59, § 22, 10 Stat. 284.]

CASE ANNOTATIONS

1. No absolute rule laid down separating legislative from judicial duties. *Commissioners of Shawnee County v. Carter*, 2 K. 115, 116.

§ 23. Right to vote and hold office. That every free white male inhabitant above the age of twenty-one years, who shall be an actual resident of said territory, and shall possess the qualifications hereinafter prescribed, shall be entitled to vote at the first election, and shall be eligible to any office

within the said territory, and the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly: *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States, and those who shall have declared, on oath, their intention to become such, and shall have taken an oath to support the constitution of the United States and the provisions of this act: *And provided further*, That no officer, soldier, seaman, or marine, or other person in the army or navy of the United States, or attached to troops in the service of the United States, shall be allowed to vote or hold office in said territory by reason of being on service therein. [Act May 30, 1854, ch. 59, § 23, 10 Stat. 285.]

§ 24. Enactment of laws. That the legislative power of the territory shall extend to all rightful subjects of legislation consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands, or other property of nonresidents be taxed higher than the lands or other property of residents. Every bill which shall have passed the council and house of representatives of the said territory shall, before it become a law, be presented to the governor of the territory; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house, respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return, in which case it shall not be a law. [Act May 30, 1854, ch. 59, § 24, 10 Stat. 285.]

1. Organic act required no record of presenting bill to governor. *The State of Kansas, Johnson, ex rel., v. Hitchcock*, 1 K. 178.

2. Granting of municipal power of taxation within territorial legislative power. *Burnes et al. v. The Mayor and City Council of Atchison et al.*, 2 K. 454, 484, 485.

3. Creation of municipal corporations "rightful subject of legislation." *The State of Kansas v. Young and others*, 3 K. 445, 447.

4. Corporations granted either by general or special law. *Atchison v. Bartholow*, 4 K. 124.

§ 25. Township, district and county officers. That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory of Kansas. The governor shall nominate, and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for; and in the first instance, the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly; and shall lay off the necessary districts for members of the council and house of representatives, and all other officers. [Act May 30, 1854, ch. 59, § 25, 10 Stat. 286.]

§ 26. Holding of office by members of legislature. That no member of the legislative assembly shall hold, or be appointed to, any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said territory. [Act May 30, 1854, ch. 59, § 26, 10 Stat. 286.]

§ 27. Judiciary. That the judicial power of said territory shall be vested in a supreme court, district courts, probate courts, and in justices of the peace. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually; and they shall hold their offices dur-

successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the supreme court at such times and places as may be prescribed by law; and the said judges shall, after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and of justices of the peace, shall be as limited by law: *Provided*, That justices of the peace shall not have jurisdiction of any matter in controversy when the title or boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said supreme and district courts, respectively, shall possess chancery as well as common law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exception, and appeals shall be allowed in all cases from the final decisions of said district courts to the supreme court, under such regulations as may be prescribed by law; but in no case removed to the supreme court shall trial by jury be allowed in said court. The supreme court, or the justices thereof, shall appoint its own clerk, and every clerk shall hold his office at the pleasure of the court for which he shall have been appointed. Writs of error, and appeals from the final decisions of said supreme court, shall be allowed, and may be taken to the supreme court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness, shall exceed one thousand dollars; except only that in all cases involving title to slaves, the said writs of error or appeals shall be allowed and decided by said supreme court, without regard to the value of the matter, property, or title in controversy; and except also that a writ of error or appeal shall be allowed to the supreme court of the United States, from the decision of the said supreme court created by this act, or of any judge

this act, or of any judge thereof, upon any writ of habeas corpus, involving the question of personal freedom: *Provided*, That nothing herein contained shall be construed to apply to or affect the provisions of the "Act respecting fugitives from justice and persons escaping from the service of their masters," approved February twelfth, seventeen hundred and ninety-three, and the "Act to amend and supplementary to the aforesaid act," approved September eighteenth, eighteen hundred and fifty; and each of said district courts shall have and exercise the same jurisdiction in all cases arising under the constitution and laws of the United States as is vested in the circuit and district courts of the United States; and the said supreme and district courts of the said territory, and the respective judges thereof, shall and may grant writs of habeas corpus in all cases in which the same are granted by the judges of the United States in the District of Columbia; and the first six days of every term of said courts, or so much thereof as may be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws, and writs of error and appeal in all such cases shall be made to the supreme court of said territory, the same as in other cases. The said clerk shall receive the same fees in all such cases which the clerks of the district courts of Utah territory now receive for similar services. [Act May 30, 1854, ch. 59, § 27, 10 Stat. 286.]

CASE ANNOTATIONS

1. Act of territorial legislature conferring power on probate court invalid. *Locknane v. Martin*, 1 McCahon 60, 62, 1 K. (Dass. Ed.) 494.
2. Organic act defines legislative power, vests judicial power in courts. *Commissioners of Shawnee County v. Carter*, 2 K. 115, 131.
3. Granting of attachment a ministerial act which clerk may perform. *Reyburn v. Brackett and Bassett*, 2 K. 227, 234.
4. Administration of municipal ordinances; not contemplated by this section. *State of Kansas v. Young et al.*, 3 K. 445, 447.
5. Creation of municipal courts for enforcement of municipal regulations authorized. *The State of Kansas v. Young and others*, 3 K. 445.
6. Town and village act of 1859 not in conflict herewith. *Kirkpatrick v. The State*, 5 K. 673.

§ 28. Fugitives from justice. That the provisions of the act entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters," approved February twelfth, seventeen hun-

the act entitled "An act to amend and supplementary to the aforesaid act," approved September eighteenth, eighteen hundred and fifty, be, and the same are hereby, declared to extend to and be in full force within the limits of the said territory of Kansas. [Act May 30, 1854, ch. 59, § 28, 10 Stat. 287.]

§ 29. Attorney and marshal of territory. That there shall be appointed an attorney for said territory, who shall continue in office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall receive the same fees and salary as the attorney of the United States for the present territory of Utah. There shall also be a marshal for the territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the president, and who shall execute all processes issuing from the said courts when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the district court of the United States for the present territory of Utah, and shall, in addition, be paid two hundred dollars annually as compensation for extra services. [Act May 30, 1854, ch. 59, § 29, 10 Stat. 287.]

§ 30. Officers generally; salaries. That the governor, secretary, chief justice, and associate justices, attorney and marshal, shall be nominated, and, by and with the advice and consent of the Senate, appointed, by the president of the United States. The governor and secretary to be appointed as aforesaid shall, before they act as such, respectively take an oath or affirmation before the district judge or some justice of the peace in the limits of said territory, duly authorized to administer oaths and affirmations by the laws now in force therein, or before the chief justice or some associate justice of the supreme court of the United States, to support the constitution of the United States, and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall be have been taken; and such certificate shall be received and recorded by the said secretary among the

officers in said territory, before they act as such, shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary, to be by him recorded as aforesaid; and, afterward, the like oath or affirmation shall be taken, certified, and recorded, in such manner and form as may be prescribed by law. The governor shall receive an annual salary of two thousand five hundred dollars. The chief justice and associate justices shall receive an annual salary of two thousand dollars. The secretary shall receive an annual salary of two thousand dollars. The said salaries shall be paid quarter-yearly, from the dates of the respective appointments, at the treasury of the United States; but no such payments shall be made until said officers shall have entered upon the duties of their respective appointments. The members of the legislative assembly shall be entitled to receive three dollars each per day during their attendance at the sessions thereof, and three dollars each for every twenty miles' travel in going to and returning from the said sessions, estimated according to the nearest usually traveled route; and an additional allowance of three dollars shall be paid to the presiding officer of each house for each day he shall so preside. And a chief clerk, one assistant clerk, a sergeant at arms, and doorkeeper may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day, during the session of the legislative assembly; but no other officers shall be paid by the United States: *Provided*, That there shall be but one session of the legislature annually, unless, on an extraordinary occasion, the governor shall think proper to call the legislature together. There shall be appropriated, annually, the usual sum, to be expended by the governor, to defray the contingent expenses of the territory, including the salary of a clerk of the executive department; and there shall also be appropriated, annually, a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the

United States, to defray the expenses of the legislative assembly, the printing of the laws, and other incidental expenses; and the governor and secretary of the territory shall, in the disbursement of all moneys entrusted to them, be governed solely by the instructions of the secretary of the treasury of the United States, and shall, semiannually, account to the said secretary for the manner in which the aforesaid moneys shall have been expended; and no expenditure shall be made by said legislative assembly for objects not specially authorized by the acts of congress making the appropriations, nor beyond the sums thus appropriated for such objects. [Act May 30, 1854, ch. 59, § 30, 10 Stat. 288.]

§ 31. Seat of government. That the seat of government of said territory is hereby located temporarily at Fort Leavenworth; and that such portions of the public buildings as may not be actually used and needed for military purposes may be occupied and used, under the direction of the governor and legislative assembly, for such public purposes as may be required under the provisions of this act. [Act May 30, 1854, ch. 59, § 31, 10 Stat. 289.]

§ 32. Delegate to the house of representatives; operation of federal laws. That a delegate to the house of representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the said house of representatives, but the delegate first elected shall hold his seat only during the term of the congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner, as the governor shall appoint and direct; and at all subsequent elections the times, places and manner of holding the elections shall be prescribed by law. The person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. That the constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within the said territory of Kansas as elsewhere within the

United States, except the eighth section of the act preparatory to the admission of Missouri into the union, approved March sixth, eighteen hundred and twenty, which, being inconsistent with the principle of nonintervention by congress with slavery in the states and territories, as recognized by the legislation of eighteen hundred and fifty, commonly, called the compromise measures, is hereby declared inoperative and void; it being the true intent and meaning of this act not to legislate slavery into any territory or state nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the constitution of the United States: *Provided*, That nothing herein contained shall be construed to revive or put in force any law or regulation which may have existed prior to the act of sixth of March, eighteen hundred and twenty, either protecting, establishing, prohibiting, or abolishing slavery. [Act May 30, 1854, ch. 59, § 32, 10 Stat. 289.]

§ 33. Public buildings. That there shall hereafter be appropriated, as has been customary for the territorial governments, a sufficient amount, to be expended under the direction of the said governor of the territory of Kansas, not exceeding the sums heretofore appropriated for similar objects, for the erection of suitable buildings at the seat of government, and for the purchase of a library, to be kept at the seat of government for the use of the governor, legislative assembly, judges of the supreme court, secretary, marshal, and attorney of said territory, and such other persons, and under such regulations as shall be prescribed by law. [Act May 30, 1854, ch. 59, § 33, 10 Stat. 289.]

§ 34. Lands. That when the lands in the said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby, reserved for the purpose of being applied to schools in said territory and in the states and territories hereafter to be erected out of the same. [Act May 30, 1854, ch. 59, § 34, 10 Stat. 289.]

CASE ANNOTATIONS

1. Section amounts to grant of lands for use of schools. *The State v. Stringfellow*, 2 K. 263.

§ 35. Judicial districts. That until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts; and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts by proclamation, to be issued by him; but the legislative assembly, at their first or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts as to them shall seem proper and convenient. [Act May 30, 1854, ch. 59, § 35, 10 Stat. 289.]

§ 36. Bonds of officers. That all officers to be appointed by the president, by and with the advice and consent of the senate, for the territory of Kansas, who, by virtue of the provisions of any law now existing, or

which may be enacted by congress, are required to give security for moneys that may be entrusted with them for disbursement, shall give such security at such time and place, and in such manner, as the secretary of the treasury may prescribe. [Act May 30, 1854, ch. 59, § 36, 10 Stat. 290.]

§ 37. Indians. That all treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territories embraced within this act shall be faithfully and rigidly observed, notwithstanding anything contained in this act; and that the existing agencies and superintendencies of said Indians be continued with the same powers and duties which are now prescribed by law, except that the president of the United States may, at his discretion, change the location of the office of superintendent. [Act May 30, 1854, ch. 59, § 37, 10 Stat. 290.]

An Act for the Admission of Kansas Into the Union

PREAMBLE

WHEREAS, The people of the territory of Kansas, by their representatives in convention assembled, at Wyandotte, in said territory, on the twenty-ninth day of July, one thousand eight hundred and fifty-nine, did form to themselves a constitution and state government, republican in form, which was ratified and adopted by the people, at an election held for that purpose, on Tuesday, the fourth day of October, one thousand eight hundred and fifty-nine, and the said convention has, in their name and behalf, asked the congress of the United States to admit the said territory into the union as a state, on an equal footing with the other states; therefore,

Be it enacted by the senate and house of representatives of the United States of America in congress assembled:

§ 1. Admission; boundaries; Indian title. That the state of Kansas shall be, and is hereby declared to be, one of the United States of America, and admitted into the union on an equal footing with the original states in all respects whatever. And the said state shall consist of all the territory included within the following boundaries, to wit: Beginning at a point on the western boundary of the state of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the twenty-fifth meridian of longitude west from Washington; thence north on said meridian to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the state of Missouri; thence south with the western boundary of said state to the place of beginning: Provided, That nothing contained in the said constitution respecting the boundary of said state shall be construed to impair the rights of person or property now pertaining to the Indians of said territory, so long as such rights shall remain unextinguished by treaty

between the United States and such Indians, or to include any territory which, by treaty such Indian tribe, is not, without the consent of such tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the state of Kansas, until said tribe shall signify their assent to the president of the United States to be included within said state, or to affect the authority of the government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to make if this act had never passed. [Act Jan. 29, 1861, ch. 20, § 1, 12 Stat. 126.]

CASE ANNOTATIONS

1. Section considered in determining control of Ft. Leavenworth military reservation. *Clay v. The State*, 4 K. 49.
2. Taxation of Indian lands by state government, recognizing Indian tribe. *Blue-Jacket v. The Commissioners of Johnson County*, 3 K. 299. Reversed: *The Kansas Indians*, 72 U.S. 737, 18 L.Ed. 667.
3. Kansas accepted admission on condition that Indian rights remain unimpaired. *Parker v. Winsor*, 5 K. 362, 367.
4. Taxation; Indian lands; primary disposal of soil; federal laws govern. *Douglas Co. v. Union Pac. Ry. Co.*, 5 K. 615, 624.
5. Taxation of lands granted to railroad company considered. *Kansas Pacific Rly. Co. v. Culp*, 9 K. 38, 47. Reversed: *Railway Co. v. Prescott*, 83 U.S. 603, 21 L. Ed. 373.
6. Indian lands, when taxable and alienable, considered; government patents. *Comm'rs of Franklin Co. v. Pennock*, 18 K. 579. Affirmed: *Pennock v. Commissioners*, 103 U.S. 44, 26 L. Ed. 367.
7. Indian lands held under patents not exempt from state taxation. *Comm'rs of Franklin Co. v. Pennock*, 18 K. 579. Affirmed: *Pennock v. Commissioners*, 103 U.S. 44, 26 L. Ed. 367.
8. Discussed; residents on lands ceded to United States may not vote at precincts established prior to cession. (Dissenting opinion.) *Herken v. Glynn*, 151 K. 855, 870, 101 P.2d 946.
9. United States may recover taxes illegally collected from Indian ward. *Board of Comm'rs v. United States*, 100 F.2d 929, 935.

§ 2. Representative. That until the next general apportionment of representatives, the state of Kansas shall be entitled to one representative in the house of representatives of the United States. [Act Jan. 29, 1861, ch. 20, § 2, 12 Stat. 127.]

§ 3. Force of act; school lands; university lands; public buildings; conditions; taxation. That nothing in this act shall be construed as an assent by congress to all or any of the propositions or claims contained in the ordinance of said constitution of the people of Kansas, or in the resolutions thereto attached; but the following propositions are hereby offered to the said people of Kansas for their free acceptance or rejection, which, if accepted, shall be obligatory on the United States and upon the said state of Kansas, to wit:

First. That sections numbered sixteen and thirty-six, in every township of public lands in said state, and where either of said sections or any part thereof has been sold or otherwise been disposed of, other lands, equivalent thereto and as contiguous as may be, shall be granted to said state for the use of schools.

Second. That seventy-two sections of land shall be set apart and reserved for the use and support of a state university, to be selected by the governor of said state, subject to the approval of the commissioner of the general land office, and to be appropriated and applied in such manner as the legislature of said state may prescribe for the purpose aforesaid, but for no other purpose.

Third. That ten entire sections of land, to be selected by the governor of said state, in legal subdivisions, shall be granted to the said state for the purpose of completing the public buildings, or for the erection of others at the seat of government, under the direction of the legislature thereof.

Fourth. That all salt springs within said state, not exceeding twelve in number, with six sections of land adjoining or as contiguous as may be to each, shall be granted to said state for its use, the same to be selected by the governor thereof within one year after the admission of said state, and when so selected to be used or disposed of on such terms, conditions and regulations as the legislature shall direct: *Provided*, That no salt spring or land, the right whereof is now vested in any individual or individuals, or

which may hereafter be confirmed or adjudged to any individual or individuals, shall, by this article, be granted to said state.

Fifth. That five percentum of all sales of all public lands lying within said state, which shall be sold by congress after the admission of said state into the union, after deducting all the expenses incident to the same, shall be paid to said state for the purpose of making public roads and internal improvements, or for other purposes, as the legislature shall direct: *Provided*, That the foregoing propositions hereinbefore offered are on the condition that the people of Kansas shall provide by an ordinance, irrevocable without the consent of the United States, that said state shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations congress may find necessary for securing the title in said soil to *bona fide* purchasers thereof.

Sixth. And that the said state shall never tax the lands or the property of the United States in said state: *Provided, however*, That in case any of the lands herein granted to the state of Kansas have heretofore been confirmed to the territory of Kansas for the purposes specified in this act, the amount so confirmed shall be deducted from the quantity specified in this act. [Act Jan. 29, 1861, ch. 20, § 3, 12 Stat. 127.]

CASE ANNOTATIONS

1. Taxation of Indian lands; recognition of Indian treaties considered. *Blue-Jacket v. The Commissioners of Johnson County*, 3 K. 299. Reversed: *The Kansas Indians*, 72 U.S. 737, 18 L. Ed. 667.
2. Kansas accepted admission on condition that Indian rights remain unimpaired. *Parker v. Winsor*, 5 K. 362, 367.
3. Taxation of lands granted to railroad company considered. *Kansas Pacific Rly. Co. v. Culp*, 9 K. 38, 47. Reversed: *Railway Co. v. Prescott*, 83 U.S. 603, 21 L. Ed. 373.
4. Grants of land for railroad construction considered. *Kansas Pac. Rly. Co. v. Missouri, K.P. Rly. Co.*, 15 K. 15, 21. Affirmed: *M.K. & T. Rly. Co. v. Kan. Pac. Rly. Co.*, 97 U.S. 491, 24 L. Ed. 1095.
5. Claims of railroad companies under land grants considered; Osage ceded lands. *L.L. & G. Rld. Co. v. Coffin*, 16 K. 510.
6. Provison setting aside lands for state university construed. *The State v. Lawrence*, 79 K. 234, 269, 100 P. 485.
7. Section considered in determining right of state to build roads. *The State, ex rel., v. Knapp*, 99 K. 852, 854, 163 P. 181.
8. Right of state to tax Indian lands considered; recognizing tribal organization. *The Kansas Indians*, 72 U.S. 737, 18 L. Ed. 667.

9. Taxation of lands granted to railroad company; issuance of patents. *Railway Co. v. Prescott*, 83 U.S. 603, 21 L. Ed. 373.

10. Cited in holding Laws 1939, chapter 92 (10-417, 10-421), relating to refunding bonds, unconstitutional. *State, ex rel., v. School Fund Commission*, 152 K. 427, 432, 103 P.2d 801.

11. Right to tax lands owned by federal reconstruction finance corporation discussed. *Boeing Airplane Co. v. Board of County Comm'rs*, 164 K. 149, 155, 156, 188 P.2d 429.

§ 4. Judicial district; court officers; cases. That from and after the admission of the state of Kansas, as hereinbefore provided, all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within that state as in other states of the union; and the said state is hereby constituted a judicial district of the United States, within which a district court, with like powers and jurisdiction as the district court of the United States for the district of Minnesota, shall be established; the judge, attorney and marshal of the United States, for the said district of Kansas, shall reside within the same, and shall be entitled to the same compensation as the judge, attorney and marshal of the district of Minnesota; and in all cases of appeal or writ of error heretofore prosecuted, and now pending in the supreme court of the United States upon any record from the supreme court of Kansas Territory, the mandate of execution or order of further proceeding shall be directed by the supreme court of the United States to the district [court] of Kansas, or to the supreme court of the state of Kansas, as the nature of such appeal or writ of error may require; and each of those courts shall be the successor of the supreme court of Kansas Territory as to all such cases, with full power to hear and determine the same, and to award mesne or

final process thereon.
20, § 4, 12 Stat. 128.]

§ 5. Terms of court. That the judge of the district court for the district of Kansas shall hold two regular terms of said court annually, at the seat of government of the said state, to commence on the second Monday of April and October in each year. [Act Jan. 29, 1861, ch. 20, § 5, 12 Stat. 128.]

ADMISSION

JOINT RESOLUTION of the Legislature of the State of Kansas, accepting the terms imposed by Congress upon the admission of the State of Kansas into the Union.

PROPOSITIONS CONTAINED IN ACT OF ADMISSION
ACCEPTED

Be it resolved by the Legislature of the State of Kansas:

Proposition accepted. That the propositions contained in the act of congress, entitled "An act for the admission of Kansas into the Union," are hereby accepted, ratified, and confirmed, and shall remain irrevocable, without the consent of the United States. And it is hereby ordained, that this state shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations congress may find necessary for securing the title to said soil, to *bona fide* purchasers thereof; and no tax shall be imposed on lands belonging to the United States. [C.L. 1862, ch. 6; approved January 20, 1862.]

CASE ANNOTATIONS

1. Laws of United States govern in primary disposal of soil. *Douglas Co. v. U.P.R.W.*, 5 K. 615.
2. Improvements made on government lands not taxable before final proof. *Comm'rs of Chase Co. v. Shipman*, 14 K. 532, 537.
3. Congress may give state permission to tax lands under its control. *Logan v. Comm'rs of Clark Co.*, 51 K. 747, 33 P. 603.



KANSAS DEPARTMENT OF REVENUE

Office of the Secretary

Robert B. Docking State Office Building

Topeka, Kansas 66612-1588

M E M O R A N D U M

To: The Honorable Ed Reilly, Chairman
Senate Committee on Assessment and Taxation

From: Mark A. Burghart, General Counsel
Department of Revenue

Re: 1988 S.B. 720

Date April 5, 1988

Thank you for the opportunity to appear and comment on S.B. 720 which would exempt certain sales of cigarettes from the state cigarette tax. Specifically, cigarette sales to Indians under certain circumstances would be exempted by the bill.

It is the Department's understanding that the bill merely restates the exemption for sales of cigarettes to Indians which has been developed through case law, including cases decided by the U.S. Supreme Court. These cases require that certain factors be present in order for cigarette sales to Indians to qualify for an exemption.

1. The sales must take place upon land which is recognized as a reservation by the Bureau of Indian Affairs. The land must be owned by the Indian tribe or by the U.S. Government in trust for the Indian tribe. The land must be under the control of an Indian tribe recognized by the Bureau of Indian Affairs.
2. The sales must be made by the tribe itself or by a retailer approved by the tribe under regulations or ordinances adopted by the tribal government pursuant to its constitution. Typically, the tribe will license the retailer and charge its own excise tax, but the imposition of a tax by the tribe is not necessary. The person or persons actually operating the retail business do not have to be a member of that tribe or even an Indian.
3. The sales must be made only to members of the same tribe as the one which controls the reservation and regulates the retailer. Sales made to non-Indians or members of other Indian tribes are not exempt from the state cigarette tax. The state may require the retailer to keep records documenting the exempt sales, such as the date, name of purchaser, and, quantity of cigarettes purchased. The state may require that the retailer ask each purchaser to show proof of tribal membership.

General Information (913) 296-3909

*Office of the Secretary (913) 296-3041 • Legal Services Bureau (913) 296-2381
Audit Services Bureau (913) 296-7719 • Planning & Research Services Bureau (913) 296-3081
Administrative Services Bureau (913) 296-2331 • Personnel Services Bureau (913) 296-3077*

4/5/88
Attachment #4

To the extent that S.B. 720 codifies these factors, the Department does not oppose the bill. However, if the bill is designed to limit the ability of the Department to address certain abuses involving out-of-state Indian retailers, then the Department opposes the bill.

A problem surfaced during 1987 where untaxed cigarettes were being sold by Kansas wholesalers to out-of-state Indian retailers who would then sell to non-Indians on property which apparently was not part of an Indian reservation. In July, 300,000 cartons were sold to such retailers. Indian smokeshops would establish themselves across the state line and sell untaxed cigarettes to Kansas residents who would travel the short distance in order to purchase the cheaper cigarettes. These out-of-state sales obviously reduced retail sales in Kansas and resulted in a reduction in Kansas cigarette tax revenue.

The Department addressed this problem by informing Kansas wholesalers that tax-exempt sales to Indians could be made to out-of-state tribes only if the Indian retailers were exempted by the appropriate state taxing authority where the retailers were located. The Department operated under a literal interpretation of K.S.A. 79-3321 which specifically prohibits the sale of cigarettes to unlicensed retailers. The Department would oppose S.B. 720 if the bill could be construed in a way to prohibit the Department from applying the provisions of K.S.A. 79-3321 as indicated. It would appear that Texas, Tennessee, Louisiana and Arkansas have adopted similar policies as that employed by Kansas to deter the growth of unauthorized exempt cigarette sales.

The Department also would note that the bill does not authorize or specify how the Department can verify that: (1) wholesalers are selling only to qualified Indian tribes or the retailers of the Indian tribe; and (2) the Indian tribe or retailer of the Indian tribe is selling cigarettes only to members of the same tribe. Administrative rules and regulations would be required to be promulgated to establish a verification procedure.

Finally, the term "Indian tribe" or "tribe" should be defined as a tribe which has been approved as a sovereign tribe by the United States Congress (or recognized by the Federal Bureau of Indian Affairs) and whose home is within the State of Kansas. This would prevent out-of-state tribes from setting up as retailers merely by purchasing a small parcel of real estate in Kansas.

Thank you for the opportunity to bring these concerns to your attention.

Holton

Senator Edward Reilly
Chairman Senate Committee on
Federal and State Affairs

RE: SB 720

This bill, as proposed, does not comply with original policies when the Organic Act, an act to Organize the Territory of Kansas, was passed, SB 720 does not comply with policies set forth in the Act for Admission of Kansas into the Union. In both pieces of legislation, Kansas agreed to set apart from itself the territories within Indian Reservation Boundaries, not to be regulated in any way by the State or it's political sub-divisions, (including but not limited to the Department of Revenue). Therefore it is not necessary for the state to pass legislation regulating commerce activity that applies within the recognized boundaries of any reservation as this proposes to do. The only requirement this bill should set forth should be that (Line 32-SB 720) "The taxes imposed by this act shall not be levied upon sales of cigarettes made within the recognized boundaries of an Indian Reservation". The Indian Tribe controlling the reservation territory should have the final say from that point. The Department of Revenue would like to be able to regulate several things:

- 1- Where the cigarettes are sold within the reservation; whether trust land or tribal owned land.
- 2- Only members of that tribe on the reservation in question could purchase these tax exempt cigarettes.
- 3- Require records and proof of membership in the tribe,
- 4- Require that the tribe license the retail outlet and possibly even impose it's own tribal tax.

None of these items are within the authority of the powers given to the state. Federal law gives Indian Tribes authority to control these things within the boundaries of their own reservation. Each tribe has it's own authority to regulate licenses and taxes, but nowhere in the constitution of each tribe does it state that a tribe "must" do these things only that the tribe has the "right" to do so.

In 1978 Federal Judge Richard Rogers ruled, (in case # 78-4197) that the State of Kansas "could not legally impose personal property tax on any enrolled Indian" on any reservation in the state. This was not regulated by whether or not the land on which the Indian lived was held in trust, or owned by the tribe, or even owned by a non-indian and merely rented by the enrolled indian. If this tax cannot be legally imposed, then how can a tax on cigarettes sold on the reservation be legal, or even considered?

Thank You:

Roger Kaul

Senate FSA
4/5/88
Attachment # 5

SENATE BILL No. 720

By Committee on Federal and State Affairs

3-7

0016 AN ACT relating to cigarette taxation; exempting certain sales
0017 made to Indians; amending K.S.A. 1987 Supp. 79-3310 and
0018 repealing the existing section.

0019 *Be it enacted by the Legislature of the State of Kansas:*

0020 Section 1. K.S.A. 1987 Supp. 79-3310 is hereby amended to
0021 read as follows: 79-3310. There is imposed a tax upon all ciga-
0022 rettes sold, distributed or given away within the state of Kansas.
0023 The rate of such tax shall be \$.24 on each 20 cigarettes or
0024 fractional part thereof or \$.30 on each 25 cigarettes, as the case
0025 requires. Such tax shall be collected and paid to the director as
0026 provided in this act. Such tax shall be paid only once and shall be
0027 paid by the wholesale dealer first receiving the cigarettes as
0028 herein provided.

0029 The taxes imposed by this act are hereby levied upon all sales
0030 of cigarettes made to any department, institution or agency of the
0031 state of Kansas, and to the political subdivisions thereof and their
0032 departments, institutions and agencies. *The taxes imposed by*
0033 *this act shall not be levied upon sales of cigarettes made to an*
0034 ~~Indian tribe or to a retailer approved by the tribe if the sales of~~
0035 ~~cigarettes made by such tribe or its approved retailer take place~~
0036 ~~upon land owned by such tribe or by the United States govern-~~
0037 ~~ment in trust for such tribe and such sales are made solely to~~
0038 ~~members of such tribe.~~ *within the boundaries of an Indian*
0039 Sec. 2. K.S.A. 1987 Supp. 79-3310 is hereby repealed. *Reservation.*
0040 Sec. 3. This act shall take effect and be in force from and
0041 after its publication in the Kansas register.

4/5/88
Attachment

STATE OF KANSAS
THE ADJUTANT GENERAL

P.O. BOX C-300
MILITARY DIVISION
TOPEKA, KANSAS 66601-0300

April 5, 1988

Members of the Senate
Federal and State Affairs Committee
State Capitol
Topeka, Kansas 66603

Dear Senators:

I appear today in support of 1988 House Bill 3087 and ask for your favorable consideration and recommendation for its passage by the Senate.

HB 3087 addresses a critical need of the Kansas National Guard by amending and adding several new provisions to the Kansas Code of Military Justice (KCMJ; K.S.A. 48-2301 et seq.). These changes are necessary to correct several existing ambiguities and frailties with our present act and just as importantly to move our code into closer alignment with the federal Uniform Code of Military Justice (UCMJ; 10 U.S.C. §§ 801 et seq.).

All individuals serving in the Kansas National Guard upon entering service are first required to take an oath to the United States and become a member of the National Guard of the United States. This status and allegiance remains at all times superior to that given to the state of Kansas. As a consequence Guardsmen are subject to two different penal codes, which as a result of recent changes in the federal code, have become important to address at this time. The significance of this dual membership status is constantly emphasized by the fact that at several times during any given year, guardsmen perform duty of one kind or the other in a federal status. This means that our members are frequently subjected to different judicial codes depending upon which sovereign they are serving. The substantive differences between these codes make it very difficult for our airmen and soldiers to comprehend these dissimilarities, particularly as concerns their understanding of what is expected of them as Guardsmen and their statutory rights in a particular situation.

Most of the amendments and changes to the KCMJ presented in HB 3087 emanate from the federal UCMJ which has undergone several significant modifications over the past two years. The nearer we are able to synchronize our code with the federal code the more effective we become in maintaining discipline and our readiness to perform military missions, both key components of our program which are so interrelated as to be inseparable.

*Senate FSA
4/5/88
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Page Two

The major substantive code changes presented in the bill are designed to improve the KCMJ to provide commanders with a more efficient and effective judicial system while at the same time enhancing procedural and substantive due process rights of our members under that system.

The changes which I would like to highlight for you are:

(1) rules for apprehension of soldiers absent from duty are clarified and defined to provide that any person subject to the code who misses a movement to annual training of state active duty or is absent without leave may be apprehended by either civilian law enforcement personnel or military police and delivered to the person's commanding officer pursuant to a warrant issued by a military judge (Sec. 3);

(2) a special court martial is established allowing for an intermediate trial authority (Sec. 11 and various additional sections throughout the bill);

(3) penalties are adjusted to authorize a \$500 fine and up to six month's confinement (New Sec. 12);

(4) the amount of pay that could be forfeited as a penalty imposed by General courts-martial is set at 2/3 of the monthly pay for three months (Sec. 13);

(5) provision is made to restructure and redefine the appellate review process and a court of military review is established (New Sec. 44 and various additional sections);

(6) redefines operating vehicles under the influence of intoxicants and also the possession of controlled substances to conform offenses more closely to Kansas law. (Sec. 37 and New Sec. 58);

(7) authority to provide service of process and other courts martial documents is more clearly explained (Sec. 63);

(8) enhanced enforceability of payment of fines by providing that persons who do not pay fines imposed by courts-martial may be arrested by civilian law enforcement personnel and held in jail until the fine is paid or for one day for each \$1 of the fine that is not paid (Sec. 64).

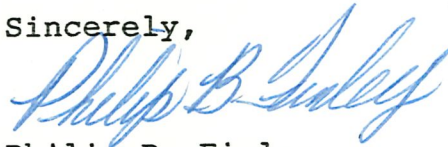
The KCMJ if amended by the provisions of HB 3087 will in my judgment greatly improve the present military penal code for the Kansas National Guard. It will strengthen our ability to administer discipline within our ranks, which in turn will enhance our ability to timely perform our missions not only

April 5, 1988
Page Three

here in Kansas but around the globe wherever and whenever we
might be called to serve.

Thank you for your consideration.

Sincerely,



Philip B. Finley
Brigadier General, Kansas
Army National Guard
The Adjutant General