Approved 3-13-89 Ginger Barr, Chm.
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Representative Ginger Barr at
Chairperson

1:30 a.m./p.m. on February 22, 1989 in room 526-S of the Capitol.

All members were present except:

Committee staff present:
Mary Torrence, Revisor of Statutes' Office
Mary Galligan, Kansas Department of Legislative Research
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Ramon Powers, Executive Director, Kansas State Historical Society
Robert Stephan, Attorney General
Tom Witty, State Archeologist, Kansas State Historical Society
Dr. Alfred Johnson, Professor, Department and Director of Museum of Anthropology, the University of Kansas
Harold Reed, Amateur Archeologist, Saline County, Kansas
Ed Bristow, Attorney, Native American Rights Fund
George Wahquahboshkuk, Chairman, Prairie Band Potawatomi Tribal Council
Penny Geis, Saline County Commissioner
Representative Jim Russell
Shelly Wakeman, Student at Washburn University, American Civil Liberties Union

HB 2144

Representative Charlton introduced students from Haskell Indian Junior College and noted a resolution drafted by the Native American Student Association, Attachment No. 1.

Ramon Powers described the efforts involved in molding HB 2144, Attachment No. 2. There will be an amendment to a bill which will address the Salina Indian burial pit. Dr. Powers reviewed the bill citing section eight as the key to the bill. It is the section that creates the illegal acts and indicated penalties.

Representative Douville inquired about the length of time fully authorized work on a site would be delayed due to unearthing unmarked skeletal remains. The state archeologist responded that state has always responded quickly. Under this bill a board would be created that would decide disposition. He would advise some emergency clauses be added.

Robert Stephan testified in support of the bill. He stated existing statutes treat human burials inconsistently but this bill allows the same statutory protections for all human burials, Attachment No. 3. In response to a question on proprietary rights from Representative Douville, the attorney general stated proprietary rights are questionable. He had considered eminent domain proceedings but after consultation with staff decided legislation was the better alternative. His stated opinion indicated proprietary rights were probably secondary to individual's rights.

Chairman Barr stated the attorney general's opinion had been requested on this point, was on file in her office and she would provide copies for the committee.

Tom Witty was heard as a proponent on the bill and submitted background and summary information, Attachment No. 4. Attachment No. 4A is a summary table of reburial legislation state by state. He explained such legislation is a national trend, further, legislation at the national level is being discussed.

There were numerous questions from the committee which elicited the following:

1. Ethnic origins can be determined from skeletal remains because of the proportional differences in long bones and configurations of skulls. A specialist is required to make such determinations and must use measurements, many of which are metric.
2. Current law requires no mandatory reporting of unearthing remains whereas HB 2144 would impose penalties for failure to report. The board which will be created (with the bill) will determine the rules and regulations.
3. There is nothing in current law requiring the state archeologist to respond in a particular time period.
4. Regarding the fiscal note - a staff archeologist has been requested for two years, with review for continuation at the end of that time period.
5. The board will have the ultimate decision on disposition of any artifacts in the gravesite.
6. The law would affect museums with displays or private individuals with human skeletal remains in their possession or on loan to small museums, approximately 20 museums will be affected.
7. Regarding the cost of reinterment - if the discovery is accidental, the state will probably pay. If the site has a permit issued, then the permittee would pay. The state does not yet have special land set aside for the purpose of reinterment.

Dr. Alfred Johnson spoke as a proponent of the bill emphasizing the current rate and manner of destruction of burial sites and the impact, Attachment No. 5.

Harold Reed testified in support of the bill as an amateur archeologist, Attachment No. 6.

Ed Bristow was heard as a proponent of the bill describing the need for it from the perspective of aboriginal tribes of Kansas and a brief survey of the legan and moral bases for the bill, Attachment No. 7.

In response to concern expressed about construction delay, Mr. Bristow explained the original intent was that it be covered in rules and regulations promulgated by the board. He agreed to work, in conjunction with the Historical Society, on an amendment addressing the issue and have it ready for the committee's February 27, 1989, meeting. Statutory response periods in other states are: California - 24 hours and Missouri - 30 days. Mr. Bristow explained construction delay is not of interest to the Native Americans since they support reburial as soon as possible. He maintained proprietary rights have never existed in a body, including burial goods and it should be extended to Native Americans' burials.

George Wahquahboshkuk spoke in favor of the bill citing the Salina burial pit as a desecration and asking legislative assurance that such an incident not be allowed to recur, Attachment No. 8.

Attachment No. 9 is the written testimony in support of the bill from Nancy Keller, Chairperson of the Sac and Fox Tribe of Missouri with an attached resolution.

Attachment No. 10 is the written testimony of Fred Thomas, Chairman, Kickapoo Tribe of Kansas with an attached resolution in support of the bill. Fred Thomas requested note be made that HB 2704 in his testimony is a typographical error and should read HB 2144.

Penny Geis cited the diffculty in resolving the issue of the Salina burial pit and urged adoption of HB 2144, Attachment No. 11. She brought a copy of the agreement with the last owner of the current property resolved earlier in the day to be delivered to the attorneys for the Native Americans.

For the benefit fo the committee, Chairman Barr noted the earlier referenced attorney general's opinion is behind tab 11 of Ed Bristow's testimony (Attachment No. 7).

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS,

room 526-S, Statehouse, at 1:30 ~~a.~~m./p.m. on February 22, 1989.

Representative Russell spoke in support of HB 2144, Attachment No. 12.

Shelly Wakeman supported the bill based on the first amendment, Attachment No. 13.

Written testimonies were received from the following:

1. Vernon Haddon, President, Wichita & Affiliated Tribes Executive Committee with attached resolution, Attachment No. 14.
2. Lawrence Goodfox, Jr., President, Pawnee Business Council with attached resolution, Attachment No. 15.
3. Chet Ellis, representing the Mandan, Hidatsa and Arikara Tribes, Fort Gerthold Indian Reservation, with attached resolution, Attachment No. 16.
4. Leon Campbell, Chairman, Iowa Tribe of Kansas and Nebraska, with attached resolution, constitution and by-laws, Attachment No. 17.

There were no opponents to the bill.

Representative Jones moved to approve the minutes of the February 7, 9, 13 and 14, 1989, meetings. Representative Aylward seconded the motion which carried on a voice vote.

Representative Schauf made a motion to approve the minutes of the February 21, 1989, meeting. Representative Long seconded the motion which passed on a voice vote.

Attachment No. 18 is a recommendation for foster care funding from KALPCCA, a supplement to the February 15, 1989, meeting of the committee.

The meeting adjourned at 2:54 p.m. The next meeting of the committee will be February 23, 1989, 1:30 p.m. in Room 526-S.

GUEST LIST

FEDERAL & STATE AFFAIRS COMMITTEE

DATE February 22, 1989

(PLEASE PRINT) NAME	ADDRESS	WHO YOU REPRESENT
MARGIE REED	3825 E. STIMMEL	
HAROLD REED	3825 E. STIMMEL	SALINA KS
Michael K. Fosha	321 1/2 Funston	Lawrence, Ks U.K
WILLIAM B. LEES	KANSAS STATE HISTORICAL SOC 120 W 10TH ST	TOPEKA KS KS. STATE HISTORICAL SOCIETY
Leon Campbell	R.R.1 Box 58A	Iowa Tribe of Ks & Neb. White Cloud, Ks 66094
Diann Hentmeyer	R.R.1-Box 58A	White Cloud, Ks 66094
Ramon Powers	E. Topeka	Kansas State Historical Society
Tom Witty	120 W. 10th St. Topeka	" " " "
Antoinette Quinones	P.O Box 460080 HIJC Lawrence, KS 66046	**Haskell Indian Jr. College**
Jeanette Castillo	P.O. Box 460083 Lawrence, KS 66046	Haskell Indian College
Pamela D. Moon	1301 W 24, #C-22 Lawrence, KS 66046	Haskell Indian JUCO Native American Student Ass.
Nathan Phillips	1029 Delaware Lawrence KS 66044	Haskell Indian Jr College
Jonny L James	P.O. Box 460536 Lawrence, Ks 66046	Haskell Indian Jr. College
Barb L. Taylor	2242 Ohio Lawrence, KS 66046	Native American Student Assoc Haskell Indian Jr. College
Donna M. Lucier	P.O. Box 460568 H.I.J.C. Lawrence, KS 66046	Haskell Indian Jr. College
Don Bread	1231 Prairie Ave. Lawrence, Kansas 66046	Interested Citizen
Marion Hughes	2429 Oustalet Rd Apt 30 Lawrence, KS 66046	Haskell Indian jr. College
Sue Cliff	1612 W 6th Str. Terr. Lawrence, KS	Haskell Indian Jr. College
Carrie Cornelius	PO Box 460377, HIJC, Lawrence KS	Prairie Band Potawatomi Haskell Indian Junior College
Eli Talmosey	511 S.W. 15th Topeka, KS 66612	Haskell Indian Junior College
CHET ELLIS JR.	1340 E. Admiral Blvd K.C. MO. 64106	THREE AFFILIATED TRIBES OF NORTH DAKOTA
Ronald L. Acuna	810 Warren Topeka, Kans.	Shawnee County Allied Tribes
George Wahpanahbosh	RR#2 Box 19B Mayetta, Ks 66509	Prairie Band Potawatomi Tribe
Mary Ann Weeks	401 Maine Lawrence Ks 66044	Kansan (NP)
Ken Bahr	Topeka	Ks. Cemetary Assn.
Jeanette Carson	Lawrence	ACLU representatives
Shelly Wadena	Baldwin	" "

NATIVE AMERICAN STUDENT ASSOCIATION

HASKELL INDIAN JR. COLLEGE
LAWRENCE, KANSAS

RESOLUTION

WHEREAS, The Native American Student Association is a duly recognized student organization at Haskell Indian Jr. College; and,

WHEREAS, Haskell Indian Jr. College has a student body representing well over 100 Indian tribes from more then 35 different states; and,

WHEREAS, The Native American Student Association (NASA) is dedicated to the perpetuation, protection, and preservation of the culture, traditions, and practices of Indian people both historically and contemporarily; and,

WHEREAS, the disgrace of past practices regarding the desecration of Indian burial sites; such as the "Indian Burial Pit" at Salina, Kansas, mandates legislation to end this shameful desecration of our Indian burial sites; and,

WHEREAS, the Kansas State Legislature is considering the passage of the Kansas Unmarked Burial Sites Preservation Act that will effectively address the Indian burial site desecration problem;

NOW THEREFORE BE IT RESOLVED, that the Native American Student Association of Haskell Indian Jr. College, Lawrence, Kansas, supports the proposed Kansas Unmarked Burial Sites Preservation Act and recommends it be approved and forwarded to the full Kansas State Legislature for final approval and passage.

CERTIFICATION

The foregoing Resolution as passed in regular session of the Native American Student Association by a unanimous vote on February 14, 1989.

Barbara Sayler

Ms. Barbara Sayler, President
Native American Student Association

ATTEST: Pamela Moon

Pam Moon, Secretary

Donald J. Bread

Donald J. Bread, Faculty Sponsor
Native American Student Association

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 1
February 22, 1989

Presentation to the House Federal and State Affairs Committee, February 22, 1989, concerning H.B. 2144 - the Kansas Unmarked Burial Sites Preservation Act.

Representative Barr and members of the House Federal and State Affairs Committee, I am Ramon Powers, Executive Director of the Kansas State Historical Society. I appreciate this opportunity to report back to the Committee on the issue of unmarked human burials, the issue you considered in the 1988 Session when you held hearings on H.B. 2704.

As you may recall, the parties who had an interest in that bill had not resolved all their differences at the time of the hearing before the subcommittee you created to consider that bill. I offered to meet with the interested parties over the summer and attempt to fashion a compromise that would be acceptable to everyone. I feel that H.B. 2144 meets that test.

I will not take your time with a recapitulation of our meetings but let me assure you that we did have a number of productive sessions among members of my staff, with professionals at the state's universities, and with representatives of the Native American communities within and without the state. I enjoyed working with all the parties involved, and I can assure you that we did not evade any issues or problems in our effort to resolve this difficult public policy issue.

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 2
February 22, 1989

I must tell you, however, that this bill does not entirely resolve the issue. Although we can argue that this bill is separate from the issue of the Salina Indian burial pit, the two matters are linked. This latter issue will be addressed in an amendment to a bill which will provide for the acquisition of the burial pit and the reburial of the skeletons contained therein. We are in the process of working out the particulars of that legislation.

This afternoon, however, the focus of our concern is on legislation that addresses the issue of unmarked human burials in general. We need to adopt this legislation in Kansas because it mandates a sensitive and appropriate response to the treatment of human skeletal remains from unmarked graves.

The Society's testimony on the bill will be presented by Tom Witty, State Archeologist.

Thank you for this opportunity to assist in resolving this significant public policy issue.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

Testimony of Attorney General
Robert T. Stephan
Before the House Federal and State Affairs Committee
RE: House Bill 2144
February 22, 1989

I strongly support House Bill No. 2144, both personally and professionally. I believe that this law would provide a valuable legal tool and give a clear signal to all that this state will not tolerate the mistreatment of human remains.

Regulations concerning cemeteries, burials and human remains are an exercise of state police power through which the public is assured that certain protections will govern the treatment of our dead. However, I believe that existing Kansas statutes treat human burials inconsistently. Kansas statutes clearly dictate that human remains buried in a known cemetery or marked grave must be treated in a certain way. However, the same statutory protections are not clearly available if human skeletal remains are not found in a known or marked cemetery or under a headstone.

The Salina Indian Burial Pit exemplifies how badly human remains can be treated under current law if the remains are found in an unmarked grave within Kansas. For many years dead American Indians have been put on public display by private citizens for

mere commercial gain. This economic exploitation of human remains is a shocking situation that has caused great pain and suffering to many Native American Kansans, and we should be ashamed if we allow it to continue.

House Bill 2144 allows the state to clearly provide the same statutory protections to all human burials, regardless of their age, culture or location. This law would further establish our state's traditional respect for our dead, while providing historic and educational institutions and professionals with clear guidance as to the treatment of human skeletal remains discovered in unmarked graves. I note also that many of these professionals and institutions support this bill.

On a personal level, I feel compelled to support this bill. While all may not share my personal feelings regarding disturbance of final resting places, common law has for centuries universally recognized and supported protections of graves. As a result, many cultures throughout this country and the world actively prohibit grave robbing. Thus, these beliefs have been codified and many states have enacted statutory laws protecting unmarked burials. It is time Kansas also enacts such a law.

To enact this law would provide Kansas with <u>statutory</u> protections for all human remains. I believe that this is a necessary and important addition to Kansas laws concerning proper treatment of human burials. I therefore urge the unanimous and speedy passage of House Bill No. 2144.

KANSAS STATE HISTORICAL SOCIETY

CENTER FOR HISTORICAL RESEARCH
120 West Tenth • Topeka, Kansas 66612-1291 • 913/296-3251

KANSAS MUSEUM OF HISTORY
6425 South West Sixth • Topeka, Kansas 66615-1099 • 913/272-8681

February 21, 1989

Representative Ginger Barr, Chairperson
Committee on Federal and State Affairs
Room 115 South, Statehouse
Topeka, Kansas

RE: House Bill No. 2144. "Kansas Unmarked Burial Sites Preservation Act"

Dear Representative Barr:

In regard to H.B. 2144, I wish at this time to submit the following background and summary information of the proposed action for the Kansas Unmarked Burial Sites Preservation Act. As State Archeologist I have been involved from the beginning with this issue in Kansas.

Introduction

During the past decade a national movement by Native Americans, sparked first by activist groups and later endorsed by the general Indian population became deeply concerned for the lack of protection, and control over the destruction, excavation, collection, and display of the remains of their ancestors from grave sites. The initial opposition was to the activities of archeologist, physical anthropologists and institutions with major collections of Indian skeletal material. However, in more recent years Native Americans have focused their attentions on an even larger problem, that of the private sector where relic hunters and collectors dig into graves and scatter skeletal remains for the purpose of recovering artifacts which may be interned or retrieving the bones themselves for their own private benefit. Also though small in number there are commercially operated establishments which display human skeletons to the public for a fee. It was primarily the latter situation which raised this issue in Kansas approximately two years ago.

The Indian Burial Pit on the east edge of Salina in Saline County is a prehistoric cemetery complex of the Smoky Hill culture which dated approximately A.D. 1300. It contains the remains of some 146 individuals ranging in age from infants to adults of both sexes (Figure 1). The burials have been exposed in place within an simple wooden building. For some fifty years it has been operated as a commercial display.

The Indian culture represented in this burial complex was a community living in a somewhat rural pattern whose dwellings were earth lodges and who practiced gardening as well as hunting for their primary subsistence. Their lifeways were quite similar to and in the same overall region as the Caddoan speaking people recognized in early historic times such as the Pawnee. Scientifically the archeological uniqueness and potential for research information on the burials themselves is outstanding. Recognition of this complex resulted in it being designated by the National Park Service as a National Historic Landmark in 1964.

The obvious importance of this site, the inadequate display facility and lack of interpretation caused the Historical Society to recommend that it be acquired by the state. The site would then have been developed as an interpretive center for the Smoky Hill culture to dignify, commemorate and interpret the lifeways of these peoples. The 1985 Legislature appropriated funds for the acquisition of the site but statements by the landowners that the proposed level of compensation was inadequate caused the governor to delete the appropriation in December of that year from the proposed FY86 budget.

In January, 1986 there was a meeting held at the Haskell Indian Junior College. Various Native American representatives of the former native tribes of Kansas as well as the now resident reservation groups voiced their opposition to the present situation or any future Indian burial pit facility which would exhibit those skeletal remains. Leaders in this discussion were members of the Caddoan speaking peoples who once resided in this region, e.g. the Pawnee, Wichita and Arikara. Recognizing their validity of the tribes' concerns and in sympathy with their views the Historical Society abandoned any plans to appeal for acquisition and interpretive development at the Indian Burial Pit site.

Following the Haskell meeting a committee was set up for the purpose of drafting legislation to consider the concerns of the Native Americans about the past and future excavation and display of their ancestor's remains in Kansas. This committee was made up of representatives of the resident tribes as well as the Caddoan groups, an archeologist from the University of Kansas, a physical anthropologist from Wichita State University, a layman, and myself.

Early in the discussion the Society proposed that the legislation be expanded to cover all unmarked graves regardless of race or ethnic identification of the skeletal remains. In actuality since the middle 1960s most skeletal remains which have been dealt with by society archeologists were those of non-Native Americans which have been exposed by natural actions or some land modifying activities such as cultivation, construction, accident or vandals (Figure 2-9). Such remains have less scientific value and there are no statutes covering their disposition. They may be curated in institutions for lack of procedures for reinterment, requested by the landowners or simply lost or destroyed. The recovery of such "modern" remains is technically not within the study area of archeologists but given their expertise in identifying skeletal remains investigations are often done as a public service.

The results of the committees' work was introduced as House Bill 2704

to the Committee on Federal and State Affairs in the 1987 Legislative Session. A subcommittee was created to review the bill. No action was taken on H.B. 2704 because of questions about the bill's effect on the operation of the Indian Burial Pit. Also, anthropologists from Wichita State University voiced some concerns over certain provisions in the bill, including the disposition of existing collections at institutions in the state.

The subcommittee recommended that Ramon Powers, Director of the Kansas State Historical Society, hold meetings with interested parties for the purpose of redrafting the proposal for resubmission in the 1989 Session. Meetings were held to which archeologists, physical anthropologists and representatives of the state's amateur archeology groups were invited. The results of those negotiations are now presented as H.B. 2144, the Kansas Unmarked Burial Sites Preservation Act for consideration in the 1989 Session.

Proposal

House Bill 2144 would establish protection for unmarked burial sites and human skeletal remains located on all lands within the State of Kansas. By unmarked it means any internment of human skeletal remains in other than a cemetery or which is otherwise protected by other Kansas statutes. The bill would make it unlawful for unauthorized disturbance, removal, possession or display of human skeletal material from an unmarked grave. In the case of present or potential disinterment of such remains procedures would be established whereby kin or descent groups (in this case referring to tribal descendants of historic Indian groups) if identified would be consulted as to the disposition of these remains.

An Unmarked Burial Sites Preservation Board, administered by the Secretary of the Kansas State Historical Society and chaired by the State Archeologist, on staff at that same institution would be created to establish policies and procedures, issue permits and make decisions concerning such burial sites and the included remains. The board would consist of a skeletal analyst, an historian, four tribal representatives from the resident tribes of Kansas and two laypersons appointed by the governor. The board would make determination on permit applications for disinterment of human skeletal material from unmarked graves. Appropriate reasons for disinterment could include scientific investigations, and imminent destruction by land altering activities such as cultivation or construction or to mitigate natural action. The board also could issue permits to allow for the exhibiting of skeletal remains from unmarked graves in the case of specific scientific or educational need.

With regard to previously excavated material, the material currently curated at the facilities of the four institutions represented by the Kansas Antiquity Commission (KSA 74-5402), the anthropology departments of the University of Kansas, Kansas State University, Wichita State University and the Archeology Department of the Kansas State Historical Society would be reviewed by the board and recommendations would be reported back to the legislature within the next three years. All other such collections or finds, lacking permit authority will come under the jurisdiction of the State Archeologist for the board's consideration. Provisions are made for a

period of study then the disposition of the remains will be made by the board. The bill would create a place of internment for such remains that could not be reburied in the original location or identified with kin or descent group and in such cases the descendants declined interest. In specific cases of individual importance, e.g., scientific uniqueness, the board may permit delay in reinterment.

Violation of this act would be a felony.

Conclusions

The proposed bill would prevent indiscriminate or purposeful excavation, collection or display of human remains recovered from a grave site normally outside of that of a traditionally recognized cemetery complex. This would cover the graves of all persons on any land within the state. It would provide for the consultation with kin or descent groups about the disposition of such material when it has been disinterred for whatever reason.

At present there is no such protection. Speaking as the State Archeologist of Kansas as well as a citizen of this state I believe no one has the right to manipulate or destroy the remains of another without careful consideration of purpose. This proposed bill does provide a procedure for judgement of that purpose and the alternatives necessary to preserve human dignity of the individuals as well as his (her) descendants.

Sincerely yours,

Thomas A. Witty, Jr.
Kansas State Historical Society

TAW:dlb

ILLUSTRATIONS

Photographs of Typical Unmarked Burial Investigations

Figure 1. View of the Indian Burial Pit near Salina.

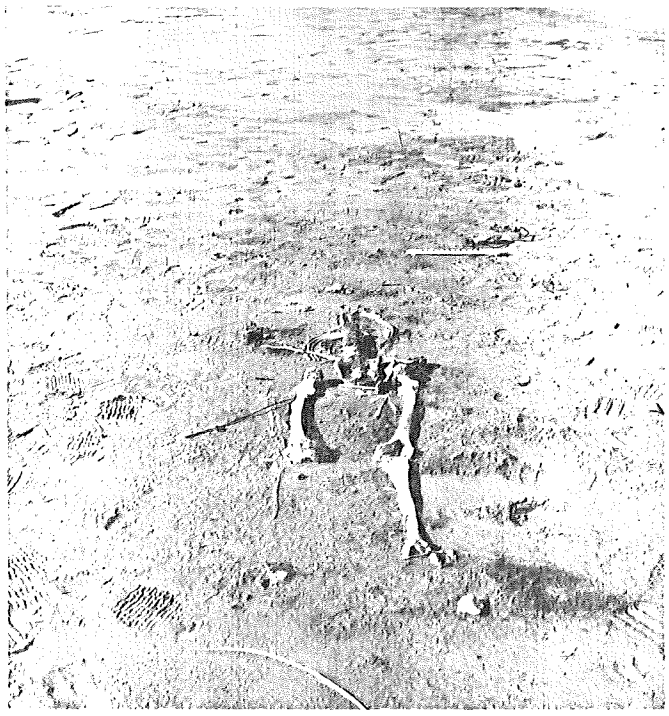


Figure 2. Natural erosion: One of two adult male caucasian burials at Waconda Lake, Mitchell County, 1980. Coffin hardware, buttons, etc. dated it at circa 1880. Recovered and curated by KSHS.

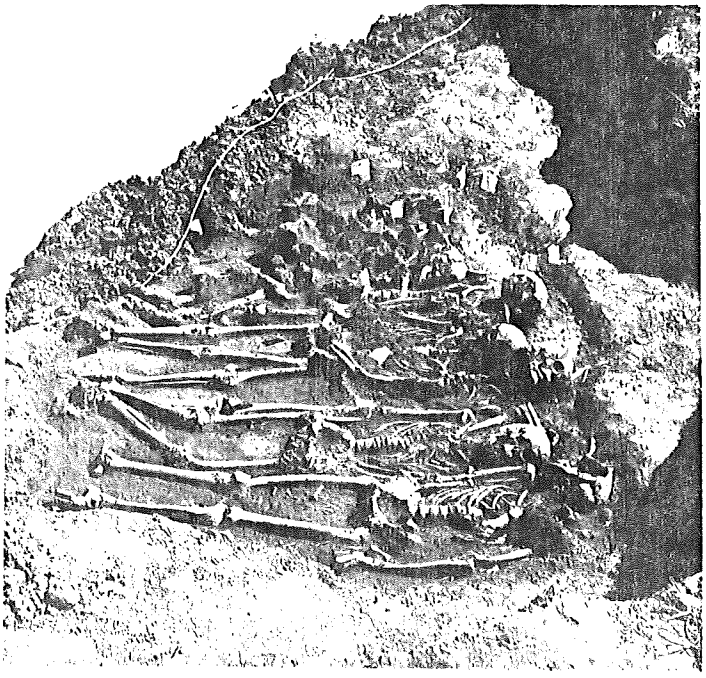


Figure 3. Natural erosion: Ten burials, eight caucasian, two negro, all male, adolescent and middle aged exposed on bank of Walnut Creek, Barton County in 1973. Historical documentation and artifacts identified them as teamsters killed by Kiowas on July 19, 1864 near Ft. Zarah. Recovered by KSHS and curated at Kansas State University.

Figure 4. Construction: An adolescent Indian burial exposed in road cut at north entrance to Scott Lake State Park in 1975. Probably prehistoric, circa A.D. 500. Recovered and curated by KSHS.

Figure 5. Accidental: A burial of an adult negro-caucasian discovered in backyard of home in La Crosse. It was found in a hole being dug to bury a dead dog in 1982. Excavated by KSHS, bones returned to land owner at their request.

Figure 6. Wind, vegetation: A coffin of an elderly adult male turned up in roots of tree following wind storm in Jackson County, 1982. Burial estimated to date around the turn of century. Recovered and curated by KSHS.

Figure 7. Curious digging: Infant Indian burial in a prehistoric burial mound in Jewell County, 1967. Dug out by land owner's daughter. Recovered and curated by KSHS. Estimated age circa 2,000 years.

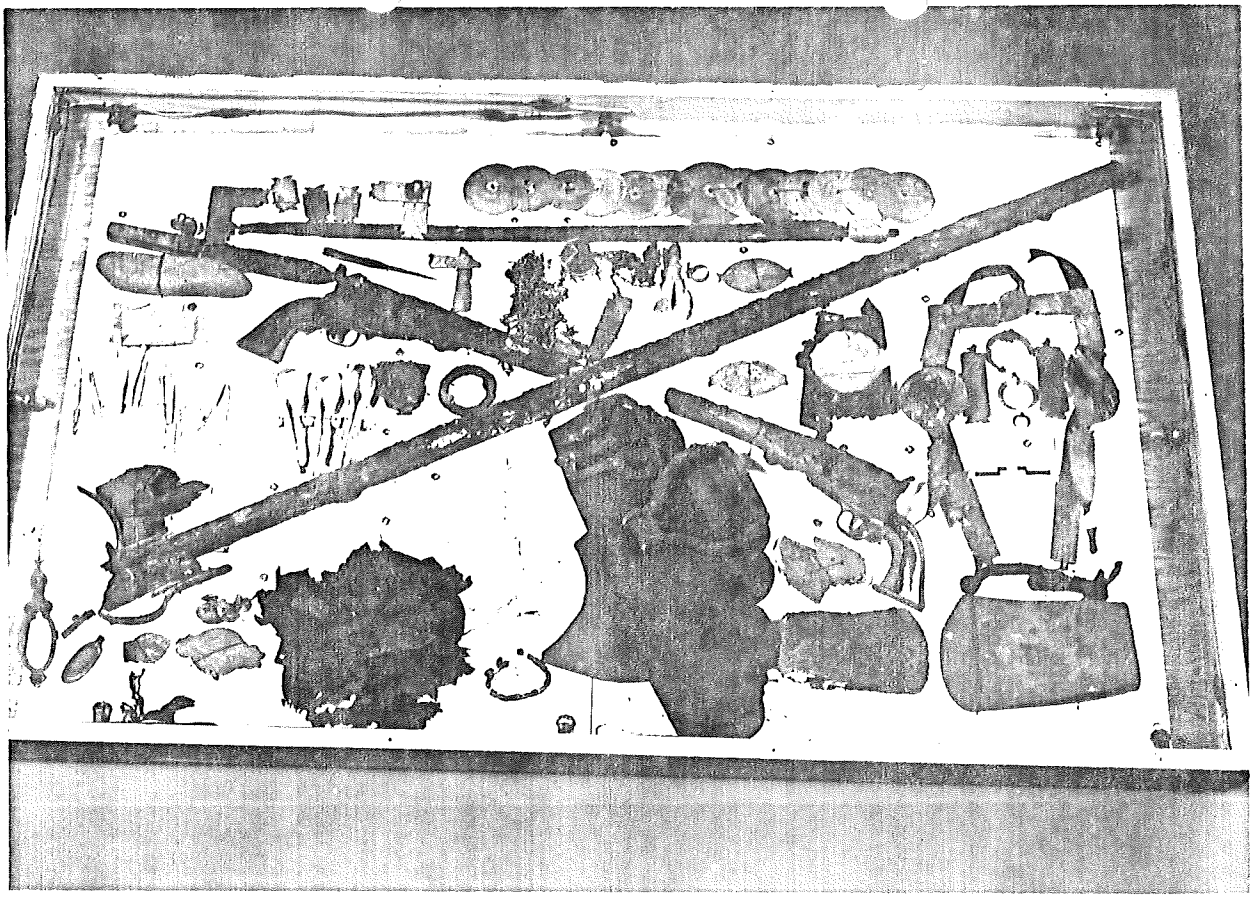


Figure 8. Looting: Home made display of artifacts and human remains (bone section and hair removed by KSHS prior to photo) from an Indian grave dug up in Kiowa County, 1940s. Probably represents an important warrior and his burial goods, circa 1860s. Excavated and displayed by private individuals, donated to KSHS in 1988.

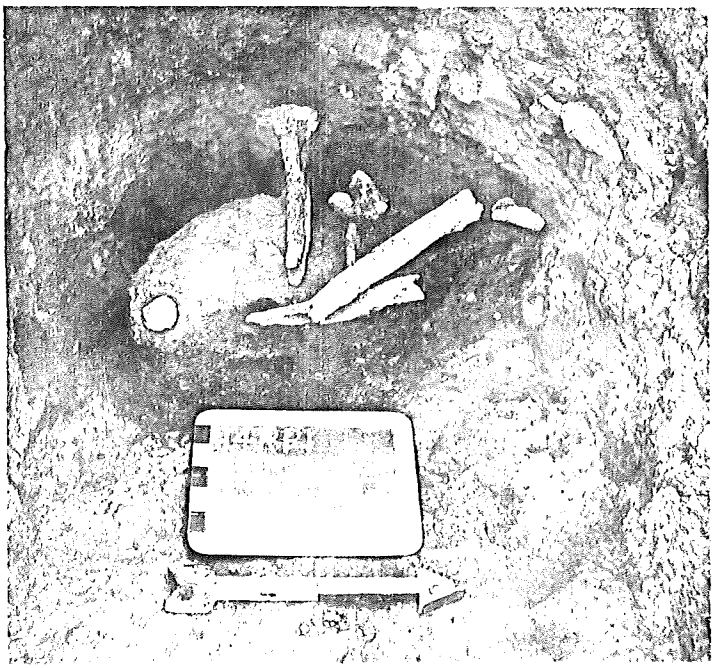


Figure 9. Vandalism: Vandalized Pawnee grave in Republic County, probably done in early 1900s. Investigated and bone recovered by KSHS in 1966.

State Archeologist
Kansas State Historical Society
20 West 10th St.
Topeka, Kansas 66612

RE: HB 2144

This table provides a state-by-state summary of reburial legislation. Information was gathered during a telephone and mail survey of State Historic Preservation Offices in all fifty states. It is accurate as of November, 1988. The following questions were asked of the respondents.

1) Does the state have an Indian-oriented reburial or unmarked graves law?

2) Does the law require reburial of skeletal remains discovered prospectively?

3) Does the law require reburial of skeletal remains and associated artifacts discovered prospectively?

4) Does the law require retroactive reburial of skeletal remains from existing scientific or educational collections?

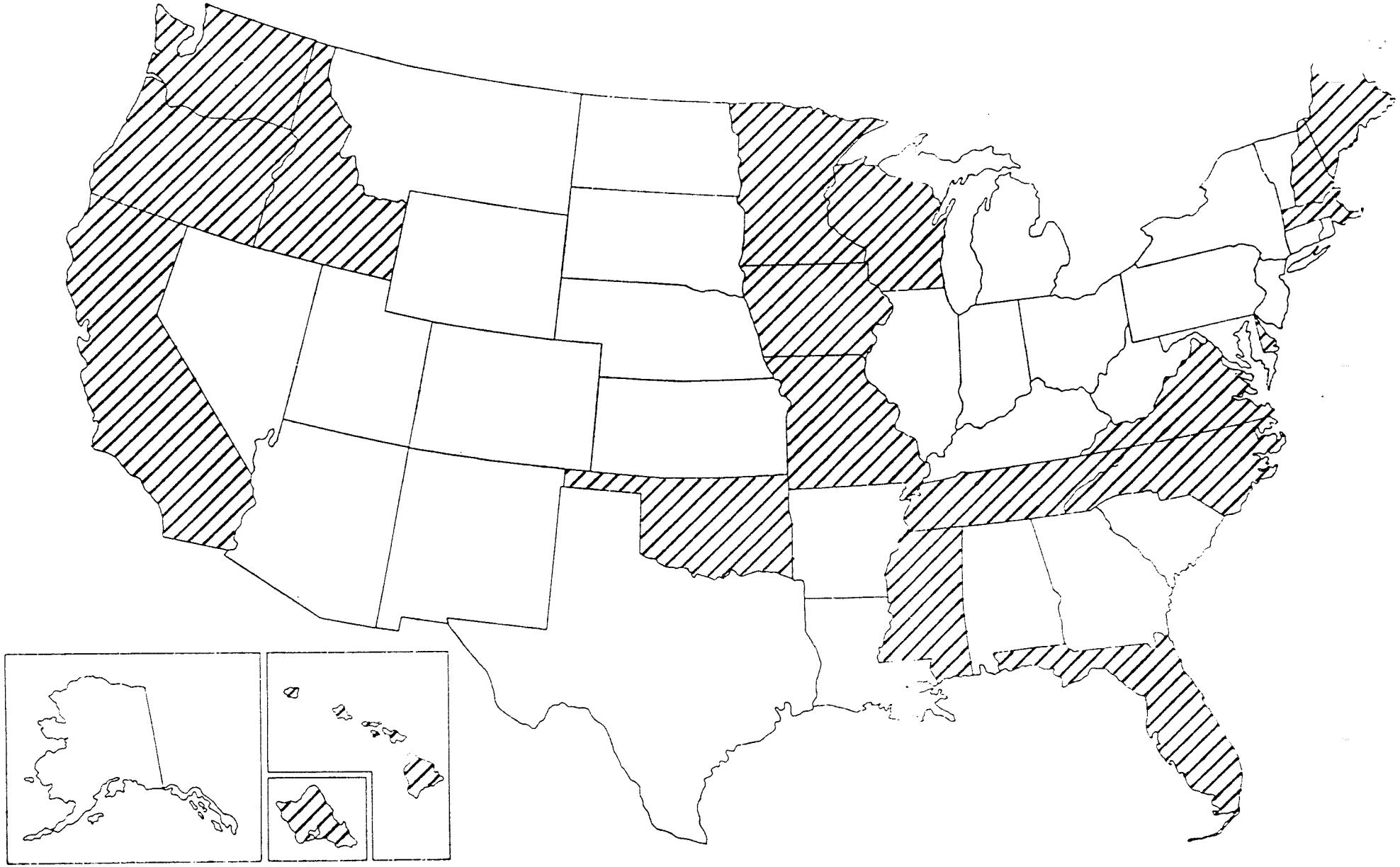
5) Does the law require retroactive reburial of skeletal remains and associated artifacts from existing scientific or educational collections?

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 4A
February 22, 1989

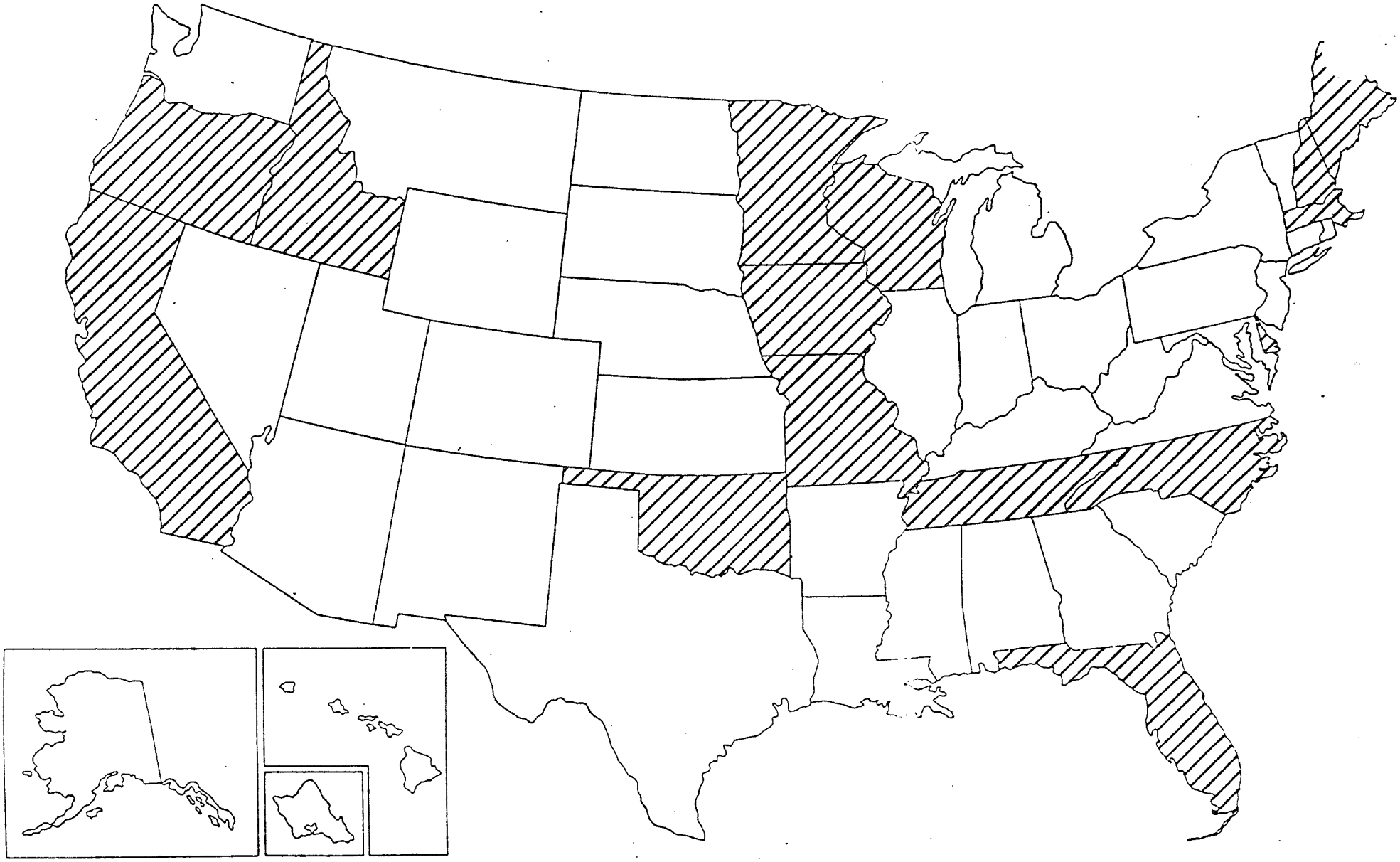
SUMMARY OF STATE BURIAL LAWS

STATE	1	2	3	4	5	COMMENT
Alabama	NO	-	-	-	-	
Alaska	NO	-	-	-	-	
Arkansas	NO	-	-	-	-	
Arizona	NO	-	-	-	-	
California	YES	YES	YES	NO	NO	
Colorado	NO	-	-	-	-	
Connecticut	NO	-	-	-	-	
Delaware	YES	YES	NO	YES	NO	----Reburial chamber or vault is in basement of state museum. Museum is built on a prehistoric burial ground.
Florida	YES	YES	YES	NO	NO	
Georgia	NO	-	-	-	-	
Hawaii	YES	NO	NO	NO	NO	
Idaho	YES	YES	YES	NO	NO	
Illinois	NO	-	-	-	-	
Indiana	NO	-	-	-	-	
Iowa	YES	YES	NO	NO	NO	
Kansas	NO	-	-	-	-	
Kentucky	NO	-	-	-	-	
Louisiana	NO	-	-	-	-	
Maine	YES	YES	NO	NO	NO	
Maryland	NO	-	-	-	-	
Massachusetts	YES	YES	NO	NO	NO	
Michigan	NO	-	-	-	-	
Minnesota	YES	YES	NO	NO	NO	
Mississippi	YES	NO	NO	NO	NO	----Archeological sites protection law only.
Missouri	YES	YES	NO	NO	NO	
Montana	NO	-	-	-	-	

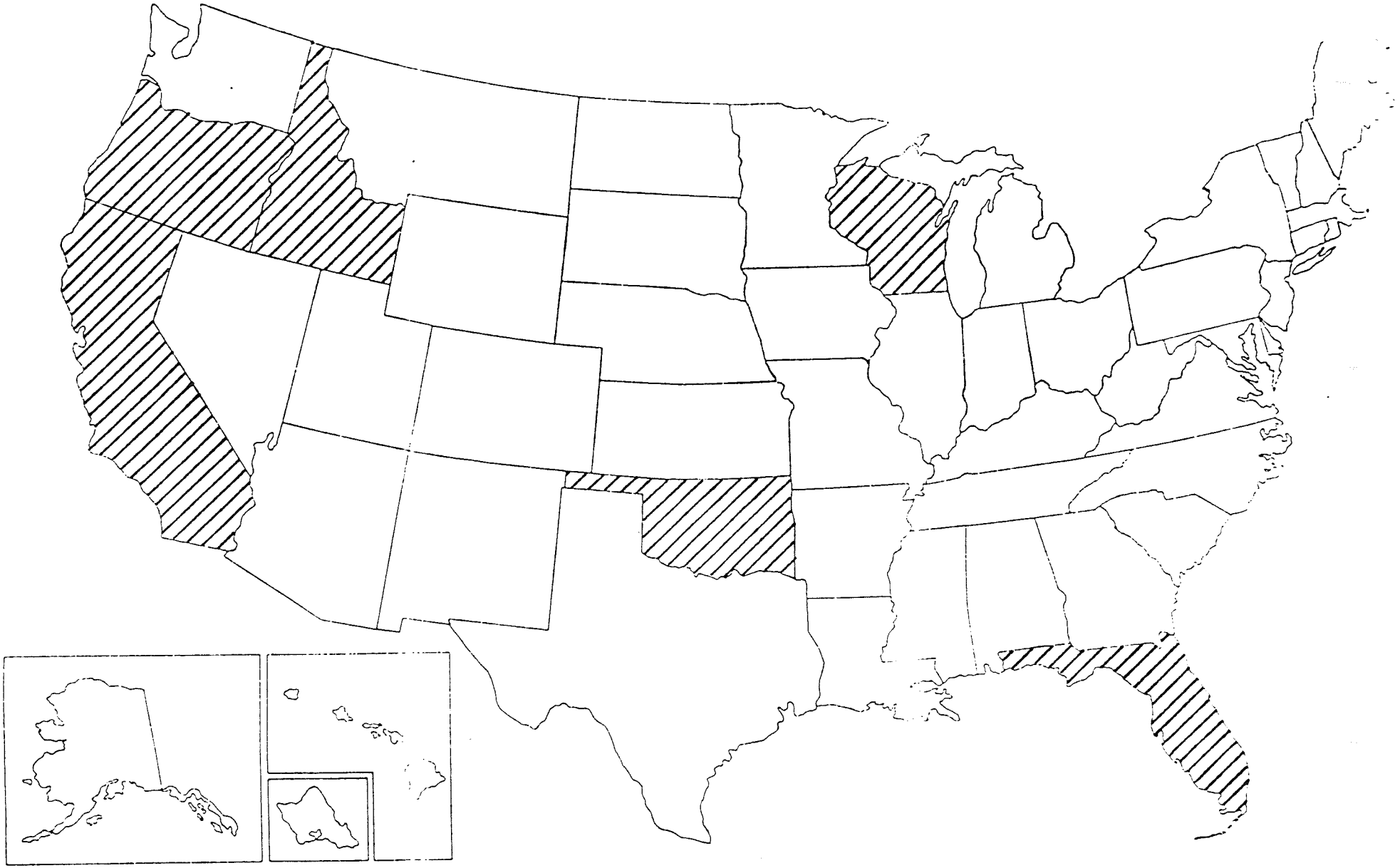
STATE	1	2	3	4	5	COMMEN.
Nebraska	NO	-	-	-	-	
Nevada	NO	-	-	-	-	
New Hampshire	YES	YES	NO	NO	NO	
New Jersey	NO	-	-	-	-	
New Mexico	NO	-	-	-	-	
New York	NO	-	-	-	-	
North Carolina	YES	YES	NO	NO	NO	
North Dakota	NO	-	-	-	-	
Ohio	NO	-	-	-	-	
Oklahoma	YES	YES	YES	NO	NO	
Oregon	YES	YES	YES	NO	NO	
Pennsylvania	NO	-	-	-	-	
Rhode Island	NO	-	-	-	-	
South Carolina	NO	-	-	-	-	
South Dakota	NO	-	-	-	-	
Tennessee	YES	YES	NO	NO	NO	
Texas	NO	-	-	-	-	
Utah	NO	-	-	-	-	
Vermont	NO	-	-	-	-	
Virginia	YES	NO	NO	NO	NO	
Washington	YES	NO	NO	NO	NO	----Archeological sites protection law only.
West Virginia	NO	-	-	-	-	
Wisconsin	YES	YES	YES	NO	NO	
Wyoming	NO	-	-	-	-	
TOTAL AFFIRMITIVE	19	15	6	1	0	



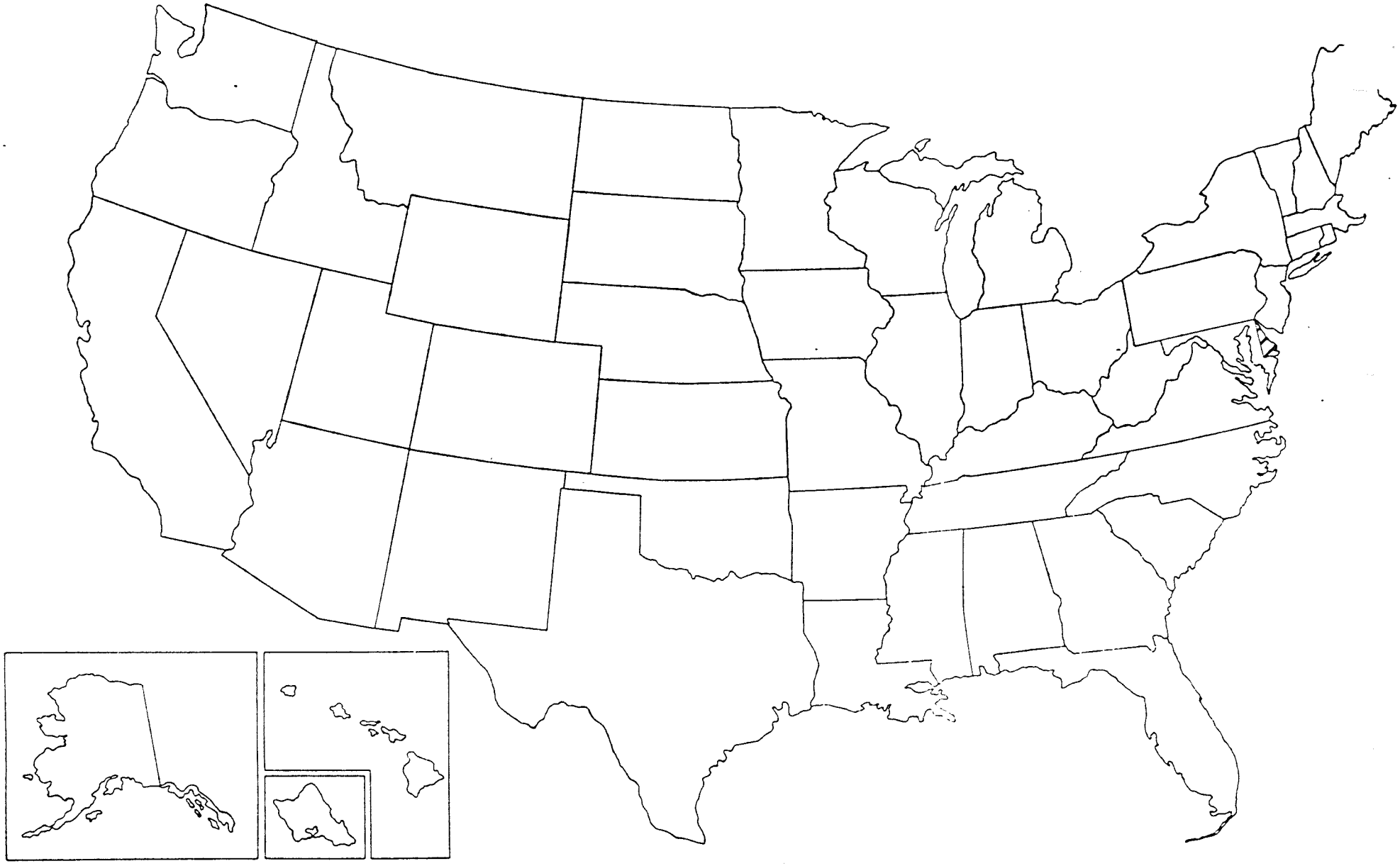
States which have a burial protection law.



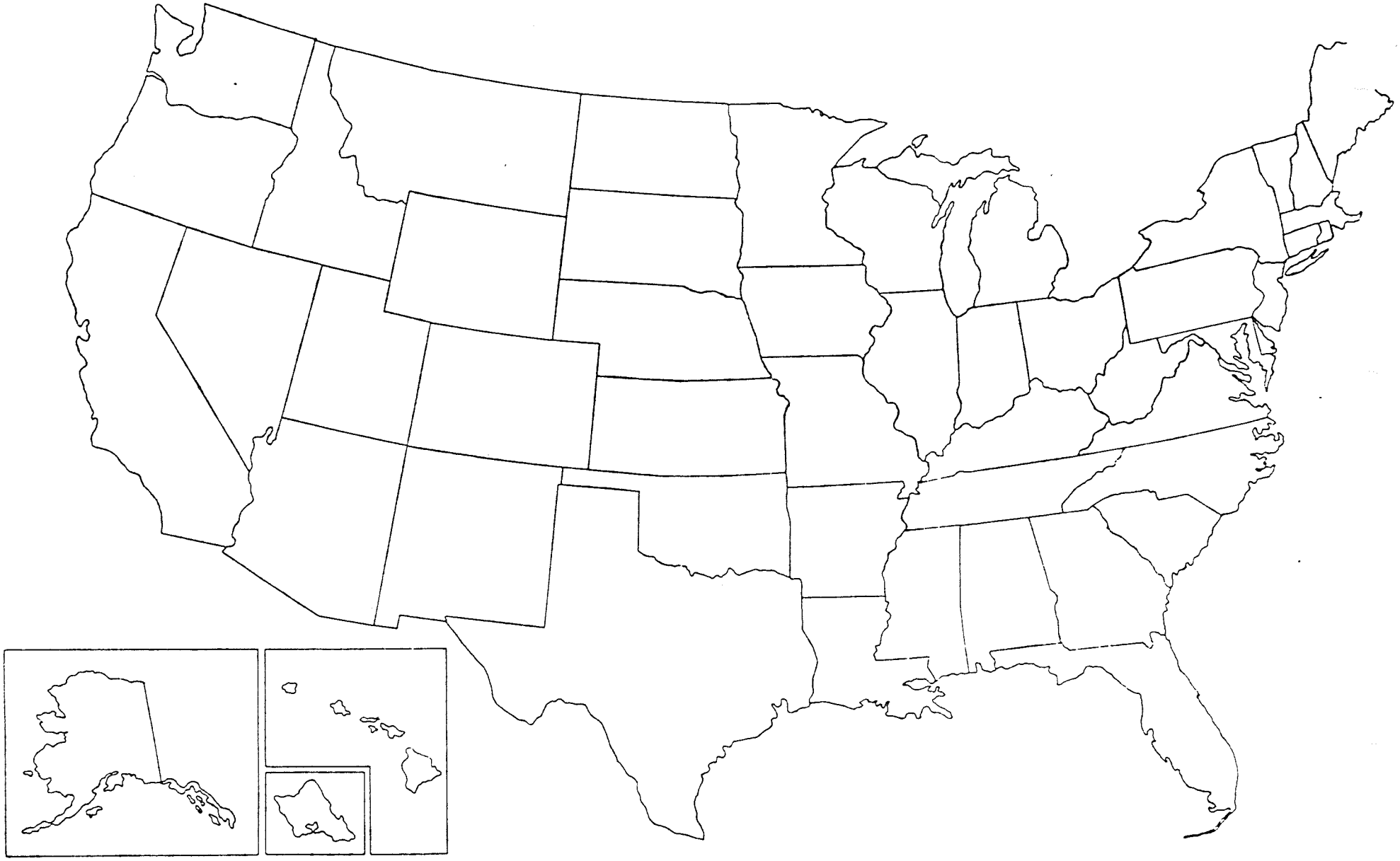
States which rebury newly-found skeletons.



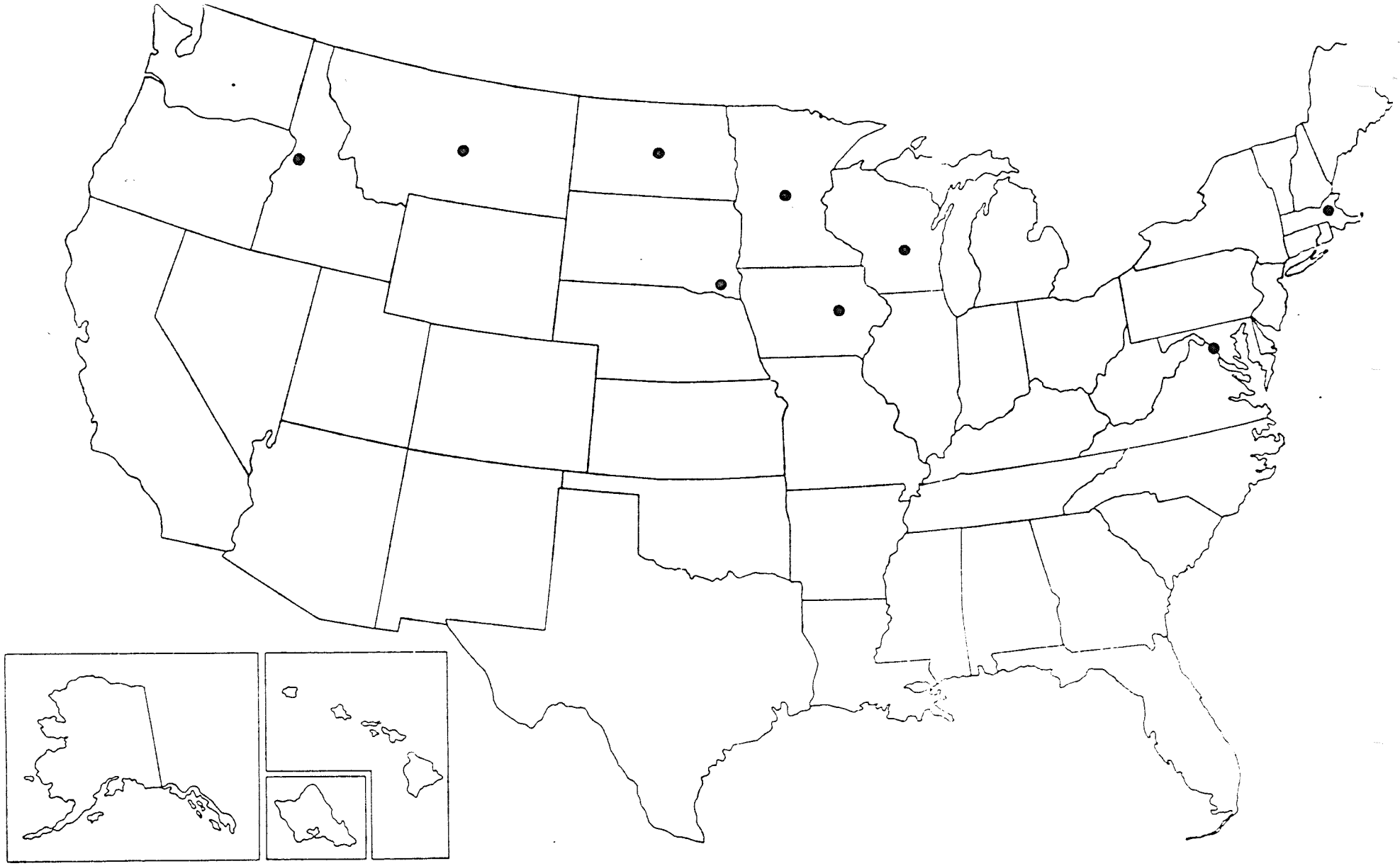
States which rebury newly-found skeletons and artifacts.



States which rebury existing skeletal collections.



States which rebury existing skeletal and artifact collections.



Institutions which have agreed to turn over existing collection material for reburial.

(out of 900 museums and 1,400 colleges and universities)

Testimony of Alfred E. Johnson
Federal and State Affairs Committee in
Support of House Bill No. 2144

My name is Alfred Johnson. I am a Professor in the Department and Director of the Museum of Anthropology at the University of Kansas. I have been involved with House Bill No. 2144 since its inception at a symposium at Haskell Indian Junior College in 1986, and I would like to speak in its support today. From my standpoint, as an archaeologist who works in Kansas, I view the bill as one of the most important pieces of historic preservation legislation to have been developed in Kansas in recent years.

For the United States as a whole, and Kansas is no exception, it is estimated that that portion of our cultural heritage left buried in the ground in the form of archaeological sites will have been destroyed within about 25 years. This a result of various types of development projects including road construction, urban expansion, and modern farming practices. Especially destructive is the almost continuous private digging for artifacts, either for themselves or their monetary value.

In a not quite continuous association with Kansas archaeology for the past 37 years I have had the opportunity to view many burial sites left by the ancestors of present-day American Indians. While not all, a very great many, have been disturbed by artifact collectors and vandals. Unfortunately, in doing this, the perpetrators have succeeded in destroying the relationships between the human remains and associated artifacts, the contexts which allow a professional to infer the nature of cultural behavior in the past. In addition, invaluable information on human biology in the past, including nutrition and disease, is destroyed.

With the passage of House Bill No. 2144, the State will have a

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 5
February 22, 1989

workable and effective mechanism to assure the preservation of those remaining unmarked human burial sites for the future. A Board of knowledgeable citizens will evaluate the sites, on a case-by-case basis, when they are threatened with destruction, and excavations will only be conducted by means of a permit from the Board. If I, as an archaeologist, desire to make such an excavation I will have to petition the Board for a permit and I will have to justify my petition in terms of relevance. Fair enough.

The alternative is the pending total destruction of the sites and their included record of our cultural heritage. I say our as I firmly believe, that as global citizens, the accomplishments of all of our ancestors are significant, important to be understood, and worthy of celebration.

Let us consider for a moment the accomplishments of American Indians. These began approximately 12,000 years ago with an odyssey that carried the ancestors of modern American Indians from Siberia to the tip of South America by 7000 B.C. Slowly expanding throughout two previously uninhabited continents, early American Indians created an amazing array of successful adaptations to tremendously varying habitats. Hunting-and-gathering subsistence strategies began to be replaced as early as 5000 B.C. by agriculture, based on the domestication of native American plants such as corn, squash, beans, potatoes, tomatoes and some 9 other plants which have become staples throughout the world. Agriculture in turn set the stage for sedentary village farming communities, population expansion, and eventually urban centers such as at Cohokia in the Mississippi River valley and Teotihucan in Mexico. Amazing accomplishments, and totally independent of similar developments in other parts of the world.

The preservation of a portion of the archaeological record of our cultural heritage, made possible through the passage of House Bill No. 2144, is a meaningful accomplishment.

Respectfully submitted,

Alfred E. Johnson

Ref: Harold Reed
Salina, Ks.
Proponent to House Bill #2144

Gentlemen;

My experience with Kansas Archeology extends back some 25 years, some on paid crews but primarily as a volunteer with Kansas Anthropological Association. I have been fortunate to be associated with Tom Witty and his team of competent professionals.

Rarely have the unexpected problem of unmarked burials come to light when I was present. On those few occasions when it did happen I felt that they were handled professionally and with respect for the dead. I have known of other instances when this was not the case however.

Generally when curious and relatively uneducated individuals find something, he starts to dig, to satisfy his curiosity. I would rather not relate the details here but instead let me say that this legislation sets guidelines for handling the problem.

The problem of unmarked burials will not go away if it is ignored, instead it will only be compounded.

I encourage you to pass this legislation (HB2144) under consideration today.

Thank You

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 6
February 22, 1989

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House Bill No. 2144

WRITTEN TESTIMONY OF EDGAR T. BRISTOW BEFORE THE FEDERAL AND STATE AFFAIRS COMMITTEE IN SUPPORT OF THE "KANSAS UNMARKED BURIAL SITES PRESERVATION ACT", H.B. NO. 2144

INTRODUCTION

Good afternoon, Chairperson Barr and members of the Committee. My name is Edgar Bristow. Walter Echo-Hawk and I are the attorneys for three Indian Tribes who are the direct descendents of the aboriginal inhabitants of Kansas: The Wichita and Affiliated Tribes of Oklahoma, the Pawnee Tribe of Oklahoma, and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. The combined enrolled membership of these "First Kansans" totals almost 7,000 persons.

I am pleased to offer testimony on behalf of the "First Kansans" in favor of House Bill No. 2144. Attachments 1-3 to my testimony are Tribal Government resolutions for each of these three Indian Tribes formally supporting the Bill. Attachments 4-7 are additional resolutions in support of the Bill from all four of the present day Indian Tribes of Kansas: 1) the Kickapoo Tribe of the Kickapoo Reservation, Kansas; 2) the Iowa Tribe of Kansas and Nebraska; 3) the Sac & Fox Tribe of Missouri; and 4) the Prairie Band of Potawatomi Indians. These four Tribal Governments represent over 9,000 Kansas Indian members. House Bill No. 2144 thus enjoys complete support from the affected American Indian

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community of some 16,000 citizens.

Over the years, the Kansas Legislature has enacted almost one hundred statutes in a systematic effort to regulate and protect dead bodies, graves, and cemeteries. As a result, there is a very strong public policy in Kansas that all dead bodies are entitled to a decent burial, that all cemeteries and graves be maintained in a seemly manner, and that the sanctity of the dead should be protected from uneccessary disturbance. Unfortuanately, a potentially serious loophole in this social policy and legal protection seems to exist for unmarked burials. House Bill No. 2144 addresses that possible loophole in a responisble manner and extends these fundamental social policies to unmarked burials located within the State of Kansas.

My testimony today will: 1) describe the need for the Bill from the perspective of the aboriginal Tribes of Kansas; and 2) briefly survey the legal and moral bases for the Bill.

NEED FOR THE BILL

The State of Kansas is rich in its Indian heritage. It is the aboriginal homeland of many Plains Indian tribes, such as the Pawnee, Wichita, Arikara, and Kansa Indians. These first residents of Kansas bestowed a unique history on the State and left many valuable cultural and historic resources for the benefit of present and future generations. Much of that heritage has been preserved by the Kansas State Historical Society. This is a living heritage

that is further enriched by the present-day Kansas Indian Tribes.

An important and sensitive aspect of this precious Indian heritage is the tribal burial grounds of the Indians who once lived in Kansas. When the original Kansas Tribes ceded their prairie homelands to the United States in order to pave the way for non-Indian settlement and were removed to reservations in other States, they left behind their cemeteries and burial grounds, many of which are unmarked today. House Bill No. 2144 recognizes a responsibility to ensure that these human interrments are properly treated in accordance with prevailing social standards and with due regard for the sensibilities of the living American Indian descendents of the "First Kansans".

The need for the Bill has become increasingly apparent in recent years. Last year, for example, the Kansas State Archeologist informed this Committee in testimony on a similiar Bill (H.B. No. 2704) that human remains of all races from unmarked graves are encountered in Kansas from time to time and that no legislated procedures exist for the protection, control, or disposition of those human remains. See also, Attach. 8 (Letter from Tom Witty to Walter Echo-Hawk, 2-12-88). Other states have enacted legislation in recent years to provide statutory guidance for the proper care, protection, and disposition of human remains from unmarked burials in response to the same concerns expressed by the Kansas State Archeologist.[1] Failure to regulate in this

[1] Those 13 states are: Missouri (1987), Oklahoma (1987), Florida (1986), Wisconsin (1985), Oregon (1985), Idaho (1984), Massachutsetts (1983), North Carolina (1981), Washington (1977), Minnesota (1976), California (1976), Iowa (1975), and Maine (1974).

sensitive area allows two results. First, it permits patently offensive treatment of human remains to exist (examples abound). Secondly, it has resulted in irreplaceable losses of important historic and prehistoric resources due to unregulated looting and pothunting from unmarked graves, conducted for blackmarket profiteering. See, for example, Attach. 9 (Newspaper article entitled "Sacred Plunder" on Indian graverobbing activities nationally). H.B. No. 2144 will address and curb problems of this nature.

In addition, in 1986, Attorney General Stephen identified what he believed to be a loophole in Kansas criminal and cemetery statutes that permits open desecration of older, unmarked cemeteries and public display of human remains from such cemeteries. See, Attach. 10 (Letter from Attorney General Stephen to Executive Director of the Kansas State Historical Society, 3-14-86). At that time, the Attorney General recommended, *inter alia*, the passage of legislation, similar to that in other states (See, footnote 1), to specifically govern the discovery, public display, and reinterment of older human remains. Id., p.2. A Bill was introduced last year to address this serious state-wide problem (H.B.No. 2704). That Bill did not get out of sub-committee due to concerns regarding compensation raised by some lawmakers and other concerns raised by a few members of the Science Community. (Both of these concerns have now been addressed in H.B. 2144, as made clear by: 1) Testimony from Raymon Powers; 2) Attorney General

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I can supply copies of this legislation on request.

Opinion 88-73, 5-25-88 (Attach.11) , discussed later in my testimony; and 3) the pending efforts to deal seperately with the "Indian Bit Pit" issue, also addressed later in my testimony.)

Perhaps the clearest example of the need for the Bill is the so-called "Indian Burial Pit", located near Salina, Kansas. This privately owned tourist attraction displays approximately 146 dead Indian bodies to public viewing for an admission fee. My 7,000 Indian clients, as the "First Kansans", are the nearest next of Kin to these 146 decedents. Their long-standing, continuing efforts to provide a decent burial for these dead bodies has received increasing public attention and outcries by Kansans over the years. See, Attach. 12 (samples of Kansas newspaper editorials and articles). Through exhaustive and expensive efforts by concerned tribal, local and state officials, and as a result of increasing public indignation over the desecration of an entire cemetery for private profit, this deplorable situation may finally be corrected by mutual agreement between the landowners and the next of Kin, with assistance from the State of Kansas. See, Attach. 13 (Memorandum of Understanding). However, no one, regardless of race, should ever be subjected to such a protracted, expensive, heart-wrenching, and humiliating experience just to accord a decent burial for dead bodies in the State of Kansas, simply because their descrated graves happen to be "unmarked". H.B. No. 2144 will regulate sensitive situations of this nature in the future, and also protect appropriate displays of dead human remains by qualified institutions when needed for legitimate medical,

educational, or scientific purposes. In short, the various needs for the Bill are clear.

LEGAL, MORAL, AND ETHICAL BASES OF H.B. NO.2144

House Bill No. 2144 is legally and morally sound legislation. Morally, all human remains are equally entitled to reasonable protections, whether interred in a marked grave or mausoleum in a modern cemetery, or in an unmarked grave on the "back forty" or the open prairie. Similarly, the sensibilities of the living in their dead deserve equal protections regardless of the location, condition, or circumstances of the grave. This is especially true for American Indian Tribes who, for no fault of their own, are unable to provide adequate care and protection for their dead because they have been removed from their Kansas homeland by the federal government and relocated to distant states. For them we properly owe a special duty of trust as the present-day caretakers of lands containing their sacred burial grounds. Moreover, it is not difficult to understand the Native American concern for tribal dead: In all ages and in all societies, mankind has always buried his dead with reverence, religion, and respect. The aboriginal Kansas Indians are no different and they deserve the same simple respect for their dead that is accorded to your very own under the voluminous Kansas statutes already enacted for that purpose.

Legally, the Bill is sound. The Kansas Legislature may properly enact legislation concerning the subject matter of H.B. No. 2144 (dead bodies, graves, and cemeteries) pursuant to the

state's inherent police power [2], and has already done so on numerous previous occasions. Hence, ample authority exists for the Kansas Legislature to legislate to protect unmarked burials and to regulate public displays of dead human bodies, as numerous other states have done in recent years. See, footnote 1, supra.

Moreover, according to an Attorney General Opinion issued on this matter last Spring, in response to Representative Betty Jo Charleton's request, any private parties claiming "ownership" of a dead body are not legally entitled to monetary "compensation" from the State of Kansas merely because state regulation may prohibit displays of dead bodies or require relinquishment of the same. See, Attorney General Opinion No. 88-73, supra (Attach. 11). After all, American common law, which is deeply engrained and given full force and effect in Kansas jurisprudence, has never recognized a "property" interest in a dead human body. See,e.g., Hamilton v. Individual Mausoleum Co., 80 P.2d 501 (Kan. 1939); Alderman v. Ford, 72 P.2d 981, 983 (Kan. 1937). It would therefore be entirely alien to the common law of Kansas for persons to buy, sell, or otherwise trade in dead human bodies or their burial possessions as "property". In addition, Kansas courts have firmly recognized that certain types of activities by landowners within or with respect to burial grounds should not be permitted. See, e.g., Connolly v. Frobenius, 574 P.2d 971 (Kan. App. 1978) (commercial

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[2] In State ex rel. Stephen v. Lane, 228 Kan. 379, 388 (1980), the Kansas Supreme Court recently held that "the subject of burial grounds in general is a legitimate subject of the state's police power." SEE ALSO, Attorney General Opinion No. 88-73 (May 25, 1988), at 1, 5-6.

business located within a cemetery in Salina was disallowed). See also, In Re Hunlock's Creek Cemetery, 16 D&C 152, 154-55 (Pa. 1930) (Private commercial exploitation of the dead in a privately owned cemetery by the landowner was dissallowed and strongly condemned by the court). Hence, the proper regulation and protection for the dead human bodies and burial objects from unmarked graves provided by H.B. No. 2144 does not affect or impair any vested legal interests in these subjects that are otherwise subject to valid state regulation.

CONCLUSION

House Bill No. 2144 is needed, legally sound legislation that applies prevailing social standards to protect the sensibilities of the living in the dead. The Bill advances important scientific, educational, medical, and preservation interests in irreplaceable cultural resources of the State and protects these resources from losses caused by unregulated activity. For these reasons, the aboriginal Kansas Indian Tribes fully support the Bill and respectfully request favorable consideration by this Committee. I am available to respond to any questions. Thank you.

Respectfully submitted,

Edgar T. Bristow
Walter R. Echo-Hawk
Attorneys for the Wichita,Pawnee, and Three Affiliated Tribes

ATTACHMENTS TO EDGAR BRISTOW TESTIMONY

1. Resolution of Pawnee Tribe of Oklahoma
2. Resolution of Wichita and Affiliated Tribes of Oklahoma
3. Resolution of Three Affiliated Tribes, North Dakota
4. Resolution of the Kickapoo Tribe, Kansas
5. Resolution of the Iowa Tribe of Nebraska and Kansas
6. Resolution of the Sac & Fox Tribe, Kansas
7. Resolution of the Prairie Band of Potawatomi Indians, Kansas
8. Kansas State Archeologist letter, 2-12-88
9. Sacred Plunder, Tulsa Tribune, 3-4-88
10. Attorney General to Kansas State Historical Society, 3-14-86
11. Attorney General Opinion No. 88-73, May 25, 1988
12. Kansas newspaper editorials and articles
13. Memorandum of Understanding

Pawnee Tribe of Oklahoma

P. O. Box 470
Pawnee, Oklahoma 74058
918/762-3624

RESOLUTION NO. 89-02
January 19, 1988

RESOLUTION

WHEREAS, The Pawnee Business Council is the supreme governing body of the Pawnee Tribe and is authorized to conduct business on behalf of the Pawnee Tribe in accordance with Article IV, Sections I and II of the Pawnee Tribal Constitution and By-Laws; and

WHEREAS, The Pawnee Business Council met in special session on January 19, 1989, at the Tribal Administration Center Conference Room duly authorized with a quorum present; and

WHEREAS, The Pawnee Indian Tribe of Oklahoma is a federally recognized Indian tribe with an enrollment of 2,395 members, which carries our self-government activities; and

WHEREAS, The members of the Pawnee Indian Tribe of Oklahoma are descendents of aboriginal inhabitants of the geographic area now commonly known as the State of Kansas; and

WHEREAS, The members of the Pawnee Indian Tribe of Oklahoma have numerous ancestors currently buried in the geographic area now commonly known as the State of Kansas; and

WHEREAS, The Pawnee Business Council is vitally interested in the proper care, treatment protection and disposition of unmarked human burial sites and remains located within the State of Kansas; and

WHEREAS, The Pawnee Business Council has duly informed itself of the need for protective unmarked burial legislation in Kansas, having sent Council members to inspect the "Indian Burial Pit" located near Salina, Kansas, and to other fact-finding trips including symposia and meetings on the subject; and

WHEREAS, The Pawnee Business Council has participated in the efforts of the "writing committee" to explore legislative protection of unmarked burial sites and remains in the State of Kansas; and

WHEREAS, The Pawnee Business Council strongly supports a clear public policy giving adequate protection for unmarked human burials in order to prevent American Indian grave desecrations and to protect all legitimate interests in the remains of Native Americans; and

WHEREAS, The Pawnee Business Council has carefully examined the provisions of the attached bill (Kansas Unmarked Burial Sites Preservation Act), and has caused a review of its provisions by legal counsel.

NOW THEREFORE BE IT RESOLVED that the Pawnee Business Council approves and endorses the Bill (Kansas Unmarked Burial Sites Preservation Act), and recommends and urges its introduction and passage by the Kansas Legislature.

CERTIFICATION

I, Lawrence Goodfox, Jr., President of the Pawnee Business Council, do hereby certify that a special session of the Pawnee Business Council was held on the 19th day of January, 1989, and that the Pawnee Business Council is composed of eight (8) members, of whom 5 were present, 3 were absent, comprising a quorum, and that the foregoing resolution was duly adopted by the affirmative vote of 5 for, 0 against, and 0 abstaining and that said resolution has not been amended or rescinded.

Signed this 19th day of January.

ATTEST:

Cecil Rouwalk, Secretary-Treasurer
Pawnee Business Council

Lawrence Goodfox, Jr., President
Pawnee Business Council

R E S O L U T I O N

WT 89-14

WHEREAS, The Wichita & Affiliated Tribes (Waco, Keechi and Tawakonie) have a duly established Tribal Government recognized by the Secretary of Interior, and

WHEREAS, The Executive Committee has been empowered to act in all manner of business on behalf of the Tribe, and

WHEREAS, The members of the Wichita & Affiliated Tribes are descendents of aboriginal inhabitants of the geographic area now commonly known as the State of Kansas, and

WHEREAS, Ancestors of the members of the Wichita & Affiliated Tribes are currently buried in the geographic area now commonly known as the State of Kansas, and

WHEREAS, The Wichita Executive Committee has a strong governmental interest in the proper care, treatment, protection and disposition of unmarked human burial sites and remains located within the State of Kansas; and

WHEREAS, Facts surrounding the "Indian Burial Pit" indicated the need for protective legislation, such as the proposed KANSAS UNMARKED BURIAL SITES PRESERVATION ACT, and

WHEREAS, The Wichita Executive Committee has carefully examined the provisions of the attached KANSAS UNMARKED BURIAL SITES PRESERVATION ACT, and has caused a review of its provisions by legal counsel.

NOW THEREFORE BE IT RESOLVED: That the Wichita Executive Committee approves and endorses the Bill (KANSAS UNMARKED BURIAL SITES PRESERVATION ACT), and recommends and urges its introduction and passage by the Kansas Legislature.

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

The foregoing Resolution was adopted at a meeting of the Wichita Executive Committee on January 6, 1989, in Anadarko, Oklahoma, by the following vote: 5 FOR, 0 AGAINST, 0 ABSTENTIONS, with a quorum being present.

ATTEST:

Secretary
Wichita & Affiliated Tribes

APPROVED:

Vernon Haddon, President
Wichita & Affiliated Tribes

Resolution #89-14-TL

RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, Article VI, Section 5(j) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to protect and preserve the native arts, crafts, culture, ceremonies, and traditions of the Three Affiliated Tribes; and

WHEREAS, The Three Affiliated Tribes have, for many years, been devoting substantial effort generally in the protection and preservation of our Mandan, Hidatsa, and Arikara cultural and religious heritage, and specifically in the protection and preservation of our ancestral burial sites located both within and without the State of North Dakota, including certain sites located within the States of Kansas, Nebraska, and South Dakota; and

WHEREAS, Our Tribes have, in more recent years, been engaged in lobbying, negotiations, and discussions with certain federal agencies, including the United States Army Corps of Engineers, the United States Air Force, and the National Park Service, and with certain public institutions and agencies, including the Smithsonian Institution, the University of Minnesota, the North Dakota State Historical Society, the Kansas State Legislature, and the Nebraska State Legislature, for the purpose not only of providing for the protection and preservation of our ancestral burial sites, but also securing from certain of such institutions and agencies the release and return of the previously disinterred human skeletal remains and associated burial goods in their respective possession; and

WHEREAS, The recent endeavors of the Three Affiliated Tribes relative to the protection and preservation of Indian skeletal remains and associated burial goods located within the State of Kansas have been justified by and based upon the knowledge, gained through archaeological and anthropological study and through traditional teachings within the cultural heritage of our Tribes, that the members of the Arikara Tribe of the Three Affiliated Tribes are descendants of aboriginal inhabitants of the geographic area now commonly known as the State of Kansas; and

Resolution #89-14-TL

WHEREAS, The members of the Arikara Tribe have numerous ancestors currently buried in the geographic area now commonly known as the State of Kansas; and

WHEREAS, The Three Affiliated Tribes Tribal Business Council is vitally interested in the proper care, treatment, protection and disposition of unmarked human burial sites and remains located within the State of Kansas; and

WHEREAS, The Three Affiliated Tribes, through the Tribal Business Council Cultural Concerns Committee, have been informed of the need for protective unmarked burial legislation in Kansas, having sent representatives to inspect the "Indian Burial Pit" located near Salina, Kansas, and to meetings with members of six Kansas Tribes, University of Kansas officials, State of Kansas officials, archaeologists and anthropologists, Native American Rights Fund attorneys, and Haskell Indian Junior College representatives; and

WHEREAS, The Tribal Business Council, through its representative, Chester Ellis, has participated in the efforts of the "writing committee" to explore legislative protection of unmarked burial sites and remains in the State of Kansas; and

WHEREAS, The Tribal Business Council strongly supports a clear public policy giving adequate protection for unmarked human burials in order to prevent Native American grave desecrations and to protect all legitimate interests in the remains of Native Americans; and

WHEREAS, The Tribal Business Council has carefully examined the provisions of the proposed "Kansas Unmarked Burial Sites Preservation Act" and has caused a review of its provisions by attorneys with the Legal Department of the Three Affiliated Tribes; and

WHEREAS, It is the considered judgment of the Tribal Business Council that said proposed Act is a commendable piece of legislation reflecting the respective values of both the dominant and Indian societies in protecting and preserving human burial sites through the provision of affording equal and adequate protection of unmarked burial sites located within the State of Kansas;

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Business Council of the Three Affiliated Tribes hereby approves the proposed "Kansas Unmarked Burial Sites Preservation Act" and recommends its introduction in the Kansas State Legislature for enactment on the earliest practicable date.

Resolution #89-14-TL

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 6 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 12th day of January, 1989; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated the 12th day of January, 1989.

Secretary, Tribal Business Council

ATTEST:

Chairman, Tribal Business Council

Res ution No. KT89-12

R E S O L U T I O N

WHEREAS, the Kickapoo Tribe of the Kickapoo Reservation in Kansas is organized with the provision of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), and

WHEREAS, the Kickapoo Tribal Council is empowered pursuant to the Tribal Constitution and By-Laws to act on matters benefitting the Tribe, and

WHEREAS, the Kickapoo Tribal Council met in a special session on January 13, 1989 at the Kickapoo Tribal Office, and

WHEREAS, the Kickapoo Reservation is one of four federally recognized Indian reservations located within the State of Kansas, and

WHEREAS, the Kickapoo Tribal Council has a strong governmental interest in the proper care, treatment, protection and disposition of unmarked human burial sites and remains located within the State of Kansas; and

WHEREAS, facts surrounding the "Indian Burial Pit" indicated the need for protective legislation, such as the draft "Kansas Unmarked Burial Sites Preservation Act", and

WHEREAS, the Kickapoo Tribe in Kansas has received and reviewed the Writing Committee's draft "Kansas Unmarked Burial Sites Preservation Act" and recommends its submittal to the Kansas State Legislature, and

NOW, THEREFORE BE IT RESOLVED, that the Kickapoo Tribe in Kansas Tribal Council hereby approves the draft "Kansas Unmarked Burial Sites Preservation Act" and recommends its submittal to the Kansas State Legislature for passage at the earliest possible date.

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

The foregoing resolution was duly adopted by the Kickapoo Tribal Council in a meeting held this 13th day of January 1989 at which 6 members of the Tribal Council were present, constituting a quorum, by a vote of 5 for, 0 against, and 0 abstaining, with the Chairman not voting.

Fred Thomas

Fred Thomas, Chairman
Kickapoo Tribal Council

ATTEST:

Keith Keo

Keith Keo, Treasurer
Kickapoo Tribal Council

Resolution 89-R-05

IOWA TRIBE OF KANSAS & NEBRASKA
EXECUTIVE COMMITTEE
DECEMBER 21, 1988

WHEREAS, The Iowa Tribe Executive Committee being duly organized met in Regular Session this 21st day of December, 1988, and

WHEREAS, The Iowa Executive Committee has authority to act for the Iowa Tribe under the present constitutional authority as provided in Sec. 2, Article IV - Governing Bodies, and

WHEREAS, The Iowa Tribe of Kansas & Nebraska being organized and empowered by their Constitution and Bylaws (approved November 6, 1978), and

WHEREAS, The Iowa Tribe of Kansas & Nebraska does support the Unmarked Burial Bill to be presented at the next Legislature Session beginning in January, 1989, and

WHEREAS, The Bill to be presented is: An Act enacting the Kansas unmarked burial sites preservation act; providing for the regulation of the excavation, study, display and interment or other disposition of human skeletal remains and goods from unmarked burial sites; prohibiting certain acts and prescribing penalties for violation; amending K.S.A. 22a-232 and 74-5401 and repealing the existing sections.

NOW THEREFORE BE IT RESOLVED, that the Executive Committee of the Iowa Tribe of Kansas & Nebraska does hereby approve the Unmarked Burial Bill and recommends its submittal to the Kansas State Legislature for passage at the earliest possible date, and

FURTHER BE IT RESOLVED, the Iowa Tribe of Kansas & Nebraska has adopted the foregoing Resolution.

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

The foregoing Resolution was duly adopted this date, December 21, 1988 in a Regular Session of the Executive Committee at which 5 members of the Committee were present, constituting a quorum by a vote of 4 for, 0 against. Chairman abstaining.

Leon Campbell, Chairman
Iowa Executive Committee

ATTEST

Aquila Tilton, Secretary
Iowa Executive Committee

SAC & FOX TRIBE OF MISSOURI

Reserve, Kansas 66434 (913) 742-7471

SAC AND FOX TRIBE OF MISSOURI
TRIBAL COUNCIL

RESOLUTION NO. R-04-89

WHEREAS, The Sac and Fox Tribe of Missouri is organized in accordance with the Reorganization Act of June 19, 1934 (48 Stat. 984) and has a constitution as approved by the Secretary of the Interior on March 2, 1937, with the new tribal constitution approved by the Commissioner of Indian Affairs September 15, 1980 pursuant to the above statute, and

WHEREAS, The Sac and Fox Tribal Council has been given full authority by the Tribe to act in all matters of business for the Tribe, and

WHEREAS, The Sac and Fox Tribal Council met in session on January 25, 1989 at Reserve, Kansas, and

WHEREAS, The Sac and Fox Tribe is one of the Indian Tribes currently located within the State of Kansas, and

WHEREAS, The Sac and Fox Tribal Council has a strong governmental interest in the proper care, treatment, protection and disposition of unmarked human burial sites and remains located within the State of Kansas; and

WHEREAS, Facts surrounding the "Indian Burial Pit" indicated the need for protective legislation, such as the draft "Kansas Unmarked Burial Sites Preservation Act", and

WHEREAS, The Sac and Fox Tribe has received and reviewed the Writing Committee's draft "Kansas Unmarked Burial Sites Preservation Act" prior to its submission to the Kansas State Legislature, and

SAC & FOX TRIBE OF MISSOURI

Reserve, Kansas 66434 (913) 742-7471

SAC AND FOX TRIBE OF MISSOURI
TRIBAL COUNCIL

Res. No. R-04-89

NOW THEREFORE BE IT RESOLVED, That the Sac and Fox Tribe of Missouri Tribal Council hereby approves the draft "Kansas Unmarked Burial Sites Preservation Act" and recommends its submittal to the Kansas State Legislature for passage at the earliest possible date.

CERTIFICATION

The foregoing resolution was duly adopted this 25th day of January, 1989 in a Special Meeting of the Sac and Fox Tribal Council at which 5 members of the Council were present, constituting a quorum, by a vote of 4 for, 0 against, Chairperson abstaining.

Nancy E. Keller

Nancy E. Keller, Chairperson
Sac and Fox Tribe of Missouri
Tribal Council

ATTEST:

Sandra Keo

Sandra Keo, Secretary
Sac and Fox Tribe of Missouri
Tribal Council

PBP 88-46

PRAIRIE BAND OF POTAWATOMI INDIANS
TRIBAL COUNCIL

RESOLUTION

WHEREAS, The Prairie Band of Potawatomi Indians is a duly organized Tribe and has a Constitution and By-Laws as approved by the Secretary of the Interior on February 19, 1976, and amended August 28, 1985, and

WHERFAS, The Prairie Band of Potawatomi Indians is a legal contracting entity duly organized as a federally Indian Tribe, and

WHEREAS, The Prairie Band of Potawatomi Tribal Council met in a regular session at Mayetta, Kansas on December 21, 1988, and

WHEREAS, The Prairie Band Potawatomi Tribal Council approve the upcoming Senate Bill 9 RS 0001 which shall be known as the preservation of the Kansas unmarked burial sites, which provide protection for the human skeletal remaines located on all lands within the state of Kansas, and

WHEREAS, The Prairie Band Potawatomi Tribal Council shall appoint a person to be on the governing body for our tribe, and

NOW, THEREFORE, BE IT RESOLVED that this resolution be recognize and honor for the Tribe.

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

The foregoing Resolution was duly adopted this date, December 16, 1988 in a regular session of the Tribal Council at which 7 members of the council were present constituting a quorum by a vote of 6 for 0 against, the Chairman abstaining.

George L. Wahquahboshkuk
GEORGE L. WAHQUAHBOSHKUK, Chairman
Prairie Band Potawatomi Tribal Council

ATTEST:

Grace Pahmahmie Wahwassuck
GRACE PAHMAHMIE WAHWASSUCK, Secretary
Prairie Band Potawatomi Tribal Council

Mary K. Wabnum
NOTARY PUBLIC
State of Kansas
My Appointment Expires
4-1-91

SUBSCRIBED AND SWORN TO BEFORE ME THIS 16th DAY OF DECEMBER, 1988

Mary K. Wabnum
NOTARY PUBLIC

KANSAS STATE HISTORICAL SOCIETY
120 West Tenth • Topeka, Kansas 66612 • 913/296-3251

February 12, 1988

Walter R. Echo-Hawk
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302-6296

Subject: H.B. 2704, The Kansas Unmarked Human Burial and Skeletal Remains Protection Act

To whom it may concern:

The aboved referenced bill has been introduced during the 1988 Session in the Kansas House of Representatives. As the State Archeologist and head of the Archeology Department at the Kansas State Historical Society I wish to formally state that I do support the bill in its spirit and present basic form.

As archeologists working in Kansas we on occasion do become involved in the recovery and excavation of human skeleton remains. These remains can be Native Americans as well as those of more recent populations, e.g. Euro, Afro, and Asian American. There currently is no legislated procedures for protection, control or disposition of such remains from unmarked burials. This bill would establish a procedure whereby unnecessary disinternment could be prevented, studies prescribed to identify ancestry of kin and/or cultural affiliation, and a board to satisfactorily determine disposition of the unidentifiable remains.

The introduction of this bill is not a isolated event. Similar bills have recently been introduced and passed in some twelve states. In our region Iowa, Missouri, Oklahoma and South Dakota have already passed such bills and one has been introduced in Nebraska. Therefore this is not a unique situation but one of current social awareness.

Should there be any questions or comments concerning this issue I would be very glad to respond.

Yours truly,

Thomas A. Witty, Jr.
State Archeologist

TAW:dlb

The Tulsa Tribune

35¢

final TULSA, OKLAHOMA, FRIDAY, MARCH 4, 1988

Tribune photo by Mike Wyke

Pawnee tribal chairman Lawrence Goodfox inspects desecrated burial grounds.

Sacred plunder

Artifacts market drives desecration of Indian graves

SANDI McDANIEL
Tribune Writer

PAWNEE — But for the crow and the wind, the burial mounds are mute, their tall grass blanketing generations of Pawnee.

Tribal chairman Lawrence Goodfox quietly works his way up the windy slopes toward his ancestors.

He stops, standing over two gaping holes in Twin Mounds, a Pawnee burial ground since the 1870s, where the tribe believes at least one body has been removed.

Robbers are tearing open Indian graves across the state, scattering bones as they steal personal items such as pottery and jewelry for profit or hobby from marked and unmarked graves.

Goodfox said the tribe patrols the area more closely since the holes were discovered more than a year ago.

In an isolated Indian village cemetery near Fairfax, the remains of a 2-year-old Osage girl who died at the turn of the century have been stolen.

Scavengers dug a 50-foot-long trench along a Latimer County creek bank last September, tossing aside decaying bones of Caddo tribal members in their search for artifacts.

Battle shields, shell ornaments, clay pots — piece by piece, Oklahoma is being robbed of part of its Indian heritage.

There are 12,000 archaeological sites in Oklahoma, which has the second largest Indian population in the country. That makes the state an attractive dig to "pot hunters" or those who buy and sell what is called burial furniture, items placed with the dead.

Many tribes bury their dead with favorite possessions. The Pawnee take with them a sacred bundle, a pouch made of buffalo hide containing religious objects — items prized by looters.

"That's stealing," asserts Shawnee tribal activist Mary Mather of Sperry. "I think once we put them in the ground, that belongs to them. That's sacred."

Indian grave desecration became a felony in Oklahoma last year, but the new law has not stopped vandals.

See GRAVES, page 4A

Graves

From page 1A

March 4th Tulsa Tribune

A network of collectors and dealers in virtually every state has created a lucrative market for the stolen relics.

"It's massive," said Arkansas State Archaeologist Hester Davis, who supported legislation against grave looting in her state last year only to have the bill defeated by pot hunters.

In recent years, tribal leaders in Oklahoma have become more vocal in their response to grave robbers and collectors.

Harrison Fields, executive director of the Pawnee Tribe, is in Nebraska this week supporting legislation against land owners who refuse to release unearthed Pawnee remains for reburial.

They are charging the public a fee to view the opened graves. The Pawnee tribe, which came to Oklahoma from Nebraska in the 1870s, wants the bodies reburied.

"It's a moral issue that we're concerned about," said Fields. "We want our ancestors left alone ... Why don't they go and dig up white graves?"

The answer is simple: money.

A plain clay water bottle taken from a historic Indian grave can bring as much as $40 on the antiquities market. A finely decorated Caddo pot can be worth $25,000.

Rare pieces, such as effigy vases, carved stone figures or pots with faces molded into them, can bring any amount of money a collector will pay, said Davis. There is no ceiling price for art.

"IT'S AN OPEN market," Shawnee activist John Thomas said angrily. "They trade these relics, these burial items in the flea markets. And bones — in flea markets. Shows are advertised in major hotel chains.

"They say that there's no direct relation to any of the tribes today, so we're not hurting anybody," he said. "They don't call them graveyards or cemeteries. They call them campsites."

In Kansas and Arkansas, private collectors have charged admission to view Indian skeletons, said Brooks.

In Indiana, collectors successfully blocked felony penalties for grave looting last week.

The bill was rejected because artifact collectors wanted to dig up graves of Indians who died before 1600, about the time Indians came in contact with whites in Indiana.

"That, of course, would have left most of the Indian burial grounds uncovered by the law," said the bill's primary sponsor Rep. Dennis Avery.

THE BUYING and selling of bones is not a problem in Oklahoma according to State Archaeologist Robert Brooks, but skeletons have been destroyed, broken and discarded in the search for Indian treasures.

In the Latimer County dig, "Any skeletal remains they had simply chucked aside, trying to find something of value," said Brooks, who keeps the remains of three, perhaps four approximately 900-year-old Caddo adults in a cardboard box, awaiting reburial by the tribe. The bones were badly broken up by the looters.

More refined grave robbers employ sophisticated tools to probe and unearth the graves. "They use the same tools archaeologists use," said Brooks.

Metal detectors scan the ground for silver, copper or gold that may be buried with bodies. Long metal rods probe the graves. Some hunters go in with bulldozers.

OKLAHOMA LAW places a maximum fine of $1,000 and two years in prison on grave robbers, but the remote nature of most burial sites makes law enforcement difficult.

Sheriff's officers unsuccessfully staked out the looting site in Latimer County. "Word gets around," said Sheriff James Mickle.

"This had to be more than one individual. They were sifting it as they went along," he said. "They were professionals."

The stiffer penalties in Oklahoma reflect nationwide concerns.

Nearly a dozen states have passed similar laws within the last few years, said Walter Echo-Hawk, attorney for the Native American Rights Fund in Boulder, Colo.

"A lot of irreparable damage has already been done. But I think it is a major step that the states are acting on these loopholes," he said.

Historically, the only graves protected were those registered as cemeteries with local authorities.

UNMARKED GRAVES, including those of slaves, pioneers and soldiers slain in the Civil and Revolutionary wars, usually are unregistered. The Oklahoma law now makes punishment the same for looting any grave.

"It's sort of a weird situation — due process for dead people," said Brooks. "But it's true."

In Kentucky, legislators are expected this session to pass harsher penalties for Indian grave robbing. The move was prompted by the discovery in October of a 20-acre looting site near Uniontown where at least 1,200 graves were opened.

A state trooper stopped the digging in December after more than 400 holes pockmarked the site, now thought to be the largest Indian burial ground in North America.

The 10 men who leased the land are charged with a misdemeanor and will be tried April 22. Hundreds of Indians are expected to gather for a reburial ceremony at the site in May.

"Augers, water hoses; it was like a mining operation," said Mary Clark, president of Citizens Against Desecration, a civil group in Louisville.

Thomas is in Uniontown with Indian activist Dennis Banks to organize the reburial ceremony.

"THE SHAWNEE, the Miami, the Quapaw, Delawares, Caddoes ... all the Indians that were back East that are now living in Oklahoma — all their ancient burial grounds here are being robbed daily of their artifacts," he said.

Mary Mather of Sperry is raising money to send a group of Oklahoma Shawnee to the reburial where most Oklahoma tribes will be represented.

It also will be the first and last time the public is invited to an Indian reburial ceremony, said Thomas. Traditionally, the ceremony is private.

Tobacco is burned at the opened Uniontown graves every few days for purification and forgiveness.

Tribes will try to convey the importance of the sacred burial ground. It is not just immoral to steal the possessions of a dead person, Thomas said, but disturbing an Indian grave affects the Indian spirit.

"WE FEEL THAT their journey has been interrupted. A lot of the offerings that were given to the gods; the pipes and things that were taken with them, the personal possessions that were buried with these people, were gifts to the mother Earth.

"Once they were disturbed and taken, then their spirit also was disturbed in the life after," said Thomas.

Indians in Uniontown said they have asked President Reagan to declare Illinois, Indiana and Kentucky an emergency area.

"The innocence of collecting arrowheads," said Thomas, "has now become a deadly game ... we are destroying all the prehistoric sites."

COPY

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751

March 14, 1986

Joseph W. Snell
Executive Director
Kansas State Historical Society
120 West 10th Street
Topeka, Kansas 66612

Dear Mr. Snell:

Thank you for your letter dated February 20, 1986, regarding the public display of Indian skeletal remains at the Indian Burial Pit. I want you to know how much I deplore the activity which is occurring at the burial pit, and that I realize the display is offensive to native Americans and to many other people. Unfortunately, although I would like to help, I am extremely limited in any legal action which I can take to alleviate this problem. I reach this result because unlike several other states, Kansas has not enacted any legislation which specifically applies to the discovery, public display or reinterment of ancient human remains.

As you are probably aware, our criminal statutes must be strictly construed in their application, so as to carry out the specific intent of the legislature. After careful research, I am unable to conclude that the public display of ancient human remains is a violation of K.S.A. 21-4115. The statute applies to desecrating a cemetery; the owner has not destroyed or removed any of the remains, but has simply uncovered them so that they are exposed. Furthermore, I question whether the property can be defined as a cemetery, since the burial pit is located on private land, contains none of the traditional markings of a cemetery (i.e., tombstones, monuments, etc.), and has been operated as a tourist attraction for over 50 years. Finally, I am informed that the remains in question are so old (approximately 700 years) that a court could well find that the area has lost the character of a cemetery.

In my opinion, there are two options which may be considered. First, the state could institute a proceeding to condemn the land, in which case the property will be owned by the state and preserved by the Kansas State Historical Society. Second, I will recommend that legislation be passed in Kansas, based on similar statutes in other states, which will specifically apply to the discovery, public display and reinterment of ancient human remains.

In conclusion, it is my opinion that criminal prosecution of the owner of the Indian Burial Pit under K.S.A. 21-4115 is not legally feasible. However, as I have indicated in this letter, I am anxious to pursue one of the other aforementioned alternatives in order to stop its operation. Please feel free to contact me if you would like to set up a meeting regarding this matter.

Very truly yours,

ROBERT T. STEPHAN
Attorney General

RTS:BPA:jm
cc: Walter Echo-Hawk
Robbi Ferron
Representative Jane Aylward
Mr. Howard T. Hill

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE (913) 296-2215
CONSUMER PROTECTION 296-3751

May 25, 1988

ATTORNEY GENERAL OPINION NO. 88- 73

The Honorable Betty Jo Charlton
State Representative, Forty-Sixth District
1624 Indiana
Lawrence, Kansas 66044

Re: Eminent Domain -- Procedure Act -- Compensation

Synopsis: 1988 House Bill No. 2704, places restraints on the "property rights" of individuals in order to promote and protect the well established public welfare interest of insuring that human remains are treated properly. In our opinion it clearly represents a valid exercise of the state's inherent police power. Therefore, any private individual claiming ownership of human skeletal remains would not be entitled to compensation simply because the state regulation requires relinquishment of the remains. However, if a claimant convinced the court that 1988 House Bill No. 2704 operated as an eminent domain taking of an identifiable property interest, rather than a valid exercise of police power, the court could require compensation for any legally held property interest taken by the regulation. Valuation of such a property interest would require consideration of factors set forth in K.S.A. 26-513(d) and evidence of (1) the fair market value and condition of the portion of property at the time of the taking, and (2) the loss of that value to the legal owner. Cited herein: K.S.A. 7-103; 12-707; 12-1401; 13-14c01; 14-1007; 15-1001; 15-1014; 17-1302; 19-1015; 19-2901; 19-3106; 21-3512; 21-4112; 21-4115; 21-4214; 22-3902; 26-513; 41-101; 58-2501; 65-901; 65-1701; 65-4127; 73-301; and 80-916.

* * *

Dear Representative Charlton:

As Representative for the Forty-Sixth District, you request our opinion regarding certain legal issues connected with 1988 House Bill No. 2704, known as the Kansas unmarked human burial and skeletal remains protection act. You specifically ask:

> "(I) whether the proposed bill will operate as a use of police power or eminent domain as it affects any existing privately operated public display of human skeletal remains, and (II) if the bill operates as use of legislative eminent domain condemnation, what types or amounts of compensation might be available to private citizens operating a public display of human skeletal remains."

I. No bright line test exists for determining whether a legislative action constitutes police power or eminent domain. Goldblatt v. Town of Hempstead, 369 U.S. 590, 82 S.Ct. 987, 8 L.Ed. 2d 130 (1962). Police power is defined generally as "an authority conferred by the American constitutional system in the Tenth Amendment, U.S. Const., upon the individual states . . . to place restraints on the personal freedom and property rights of persons for the protection of the public safety, health, and morals or the promotion of the public convenience and general prosperity. . . ." Blacks Law Dictionary 1041 (5th ed. 1979). See also Small v. Kemp, 240 Kan. 113 (1986). Eminent domain is "the power to take private property for public use. . . ." Blacks Law Dictionary 470 (5th ed. 1979). See also, Lone Star Industries, Inc. v. Secretary of Kansas Department of Transportation, 234 Kan. 121 (1983). The distinction between eminent domain and police power may be stated as follows:

> "Eminent domain takes property because it is useful to the public, while the police power regulates the use of property or impairs rights in property because the free exercise of these rights is detrimental to public interest; and the police power, although it may take property, does not, as a general rule, appropriate it to another use, but

> destroys the property, while by eminent domain property is taken from the owner and transferred to a public agency to be enjoyed by the latter as its own. Many statements of the distinction agree to the effect that in the exercise of eminent domain private property is taken for public use and the owner is invariably entitled to compensation, while the police power is usually exerted merely to regulate the use and enjoyment of property by the owner, or, if he is deprived of his property outright, it is not taken for public use, but rather destroyed in order to promote the general welfare, and in neither case is the owner entitled to any compensation for any injury which he may sustain, for the law considers that either the injury is damnum absque injuria or the owner is sufficiently compensated by sharing in the general benefits resulting from the exercise of the police power." 29A C.J.S. Eminent Domain § 6 (1965).

The state's "police power" is a flexible, broad, variable process of a government intent upon keeping up to date with all of the public and social needs; thus, what may have once been allowed by the law may become unlawful. New York State Thruway Authority v. Ashley Motor Court, Inc., 210 N.Y.S. 2d 193, 196, 12 A.D.2d 223 (1961). See also Abie State Bank v. Bryon, 282 U.S. 765, 51 S.Ct. 252, 75 L.Ed. 690 (1930). A state may exercise police power by totally prohibiting persons within its jurisdiction from engaging in occupations or businesses that are detrimental to the public welfare. 16B C.J.S. Constitutional Law, §857 (1985).

Kansas laws exercise state police power in many areas. See landlord tenant laws (K.S.A. 58-2501 et seq.); liquor laws (K.S.A. 41-101 et seq.); drug laws (e.g. K.S.A. 65-4127(a) and (b), K.S.A. 21-4214); pornography laws (K.S.A. 22-3902 et seq.); prostitution laws (K.S.A. 21-3512 et seq.); zoning laws (e.g. K.S.A. 19-2901 et seq. and 12-707 et seq.); licensing and standards pertaining to certain professions (e.g. attorneys, K.S.A. 7-103 et seq. and funeral directors, K.S.A. 65-1701 et seq.); and cemetery laws (K.S.A. 12-1401 et seq., 17-1302 et seq., 15-1014 et seq. and 73-301 et seq.). These statutes represent only a sampling of behaviors that Kansas regulates, restricts,

or prohibits pursuant to the state's police power. Many of these statutes deny possession of certain property or forbid certain business activities, just as the bill in question proposes to do. These statutes do not take private property for public use, nor must the state pay compensation to every citizen regulated or effected by these laws.

Case law in which state action was held not to rise to the level of an eminent domain taking requiring compensation includes: Keystone Bituminous Coal Ass'n v. DeBenedictus, 480 U.S. _____, 108 S.Ct. _____, 94 L.Ed.2d 472 (1987), Penn. statute requiring coal mine operators to leave in certain amounts of coal; Griffeth v. Pence, 9 Kan. App. 253 (1900), assessments made to pay for drainage districts; Kimberlin v. City of Topeka, 238 Kan. 299 (1985), zoning laws restricting building heights and land use; Small v. Kemp, 240 Kan. 113 (1986), relocation of a frontage road resulting in less business; Busch v. City of Augusta, 9 Kan. App. 2d 119 (1983), demolition of partially burned out privately owned building because it represented a public safety hazard; and Kirksey v. Wichita, 103 Kan. 761 (1918), city ordinance providing that the city could give an exclusive contract to one garbage collector even though another collector therefore lost use of and business connected with the garbage. See also 29A C.J.S. Eminent Domain § 1 (1965). Though property may have been taken and destroyed or its use strictly regulated in these cases, the governmental action did not rise to the level of an eminent domain taking, and thus compensation was unavailable.

Constitutional provisions against taking private property for public use without just compensation impose no barrier to the proper exercise of police power. KCPL Co. v. State Corp. Comm., 238 Kan. 842, appeal dismissed 107 S.Ct. 41, 93 L.Ed.2d 4 (1986). Thus, when a regulation represents a valid exercise of police power, private individuals who are affected by the regulation are not entitled to compensation.

The Supreme Court allows police power regulation that adversely affects the entire value of legally owned private property. For example, in Mugler v. Kansas, supra, the Court approved a prohibition on the manufacture and sale of liquor that made the distiller's brewery of little value, but did not completely extinguish the value of the building. In Miller v. Schone, 276 U.S. 272, 72 L.Ed 568 (1927) the Court upheld a regulation that required an individual to cut down his cedar trees but allowed the owner to use the felled

trees. The Court held that these state actions constituted the use of police power for which no compensation was forthcoming even though a particular private use of legally owned property was restricted or denied.

In 1987 a divided Supreme Court upheld a judgment in favor of a Pennsylvania statute that required coal mine operators to leave a certain amount of coal in the ground for support. Keystone Bituminous Coal Co. Assoc. v. DeBenedictus, 480 U.S. _____, 108 S.Ct. _____, 94 L.Ed.2d 472 (1987). The Court stated that the statute did not effectuate a taking but was rather a proper exercise of state police power. Therefore, the Court required no compensation payment for the coal the owners could never remove and sell. The Court based its conclusion on the strong public purpose and character of the statute and characterized the owner's possession as a full "bundle of property rights." "The destruction of one 'strand' of the bundle is not a taking because the aggregate must be viewed in its entirety." Id., 94 L.Ed.2d at 498. See also Andrus v. Allard, 444 U.S. 51, 100 S.Ct. 318, 62 L.Ed.2d 210 (1979);. Armstrong v. U.S., 364 U.S. 40, 80 S.Ct. 1563, 4 L.Ed.2d 1554 (1960); Penn. Central v. New York, 438 U.S. 104, 99 S.Ct. 226, 57 L.Ed.2d 631 (1978). A spirited dissent, written by Chief Justice Rehnquist, focused on previous case law in which imposition of societal burdens on individual landowners was allowed only when the regulation did not entirely destroy essential legal uses of private property. Keystone 94 L.Ed.2d at 508; See also Curtin v. Benson, 222 U.S. 78, 56 L.Ed. 102 (1911). In the dissent Justice Rehnquist stated that under the statute in question, the coal operator's interest in particular identifiable segment of property, the coal deposits, had been completely destroyed. Thus, the dissent thought that compensation should be required. Note that neither the dissent nor the majority questioned the ownership of the coal as such ownership is a legally recognized and permissible property interest. The ability to own human skeletal remains does not enjoy such clearly established recognition.

Kansas case law recognizes that "the subject of burial grounds in general is a legitimate subject of the state's police power." State ex rel. Stephan v. Lane, 228 Kan. 379, 388 (1980). See also 14 Am. Jur. 2d Cemeteries, § 6 (1964). The plethora of legislation concerning such matters evidences attempts by the Kansas legislature to regulate matters affecting the treatment and disposal of human remains. Existing Kansas laws that regulate, restrict and prohibit certain behaviors connected with graves and human

remains include: K.S.A. 19-1015 (disposition of the deceased); K.S.A. 65-901 (disposition of unclaimed dead bodies); K.S.A. 12-1401 et seq., 17-1302 et seq., 19-3106 et seq., 80-916 et seq., 13-14c01 et seq., 14-1007 et seq. and 15-1001 et seq. (cemetery regulations), and K.S.A. 21-4112 and 21-4115 (criminal penalties for desecrating remains or cemeteries). Common law universally and historically recognizes a duty and right to care for and dispose of human remains. See 22 Am. Jur. 2d Dead Bodies, § 6 (1965). Disturbance of a final resting place and removal of remains therefrom are behaviors subject to the control and direction of the law. 25A C.J.S. Dead Bodies, § 4 (1966).

House Bill No. 2704 attempts to extend state protections to all human skeletal remains including those resting in unmarked graves. The stated purpose of 1988 House Bill No. 2704 is to:

> "(1) Provide adequate protection for unmarked human burial sites and human remains located on all private or public lands within the state of Kansas;
>
> (2) prohibit disturbance of unmarked human burial sites; and
>
> (3) provide procedures for the proper care and protection of unmarked human burial sites and skeletal remains found in the state of Kansas."

Thus, if 1988 House Bill No. 2704 is enacted, all human skeletal remains will in some way be protected by the state, not just those remains fortunate enough to be buried under a marker or in a recognized cemetery.

Although widely divergent in scope and approach, other states currently use police power to legislate on how human skeletal remains should be treated: N.C. Gen. Stat. § 70-26 et seq. (1981) (exhibit or sale of human skeletal remains prohibited unless connected with biology or medical studies); Fla. Stat. § 872.05 (1976) (public display of human remains allowed only if no objection is made by identifiable descendants or tribe); Mass. Ann. Laws ch. 713 § 38 (1984) (human remains discovered on private property to be reinterred); Okla. Stat. tit. 21, § 1167, § 1168.1, 1987 Supp. C. 204 § 13 (1987) (a felony to "knowingly buy, sell or barter for profit human skeletal remains or associated

burial furniture previously buried within the state of Oklahoma"); and OR. Rev. Stat. §97.740 et seq. (1981) (persons prohibited from taking, displaying or possessing native Indian remains or artifacts, unless supervised by the Indian tribe.) See also Ga. Code Ann. § 305.A 7 (1976); N.Y. Indian Law § 12a (McKinney Supp. 1973-74); Alaska Stat. § 41.35.200(c) (1976); Delaware Code Ann. tit. 7, § 5301 (1975); and Hawaii Rev. Stat. § 6-12 (1975).

If enacted, House Bill No. 2704 would require relinquishment and subsequent reinterment of human skeletal remains taken from unmarked graves. The remains may be studied for a brief time, in order to determine their origin, if possible, to return the remains to any identifiable decedents. Reinterment is the ultimate goal. Individuals discovering human skeletal remains do not lose any real property interest; they still own and may use their land. Moreover, any business connected with a burial site may still be conducted. The only possessory "right" that is possibly affected or taken by this bill is the possession of the human skeletal remains.

In keeping with the language and considerations expressed by the dissent in Keystone, the remains may arguably represent an identifiable segment, and thus relinquishment is arguably compensable. Ownership of dead bodies, however, is not a universally recognized property interest. See 14 Am. Jur. 2d Cemeteries § 6 (1964). In fact, most legal systems recognize that the person having charge of a body cannot be considered the owner of it; he holds it only as a trust for the benefit of those who may from family relationship or friendship have an interest in it. 22 Am. Jur. 2d Dead Bodies § 4 (1965). It may be argued that the antiquity of some human remains gives rise to an increased public interest in them, and thus a claim that ownership rights may accrue. The definition of dead body is "a corpse . . . the body of a human being, deprived of life." Blacks Law Dictionary 358 (5th ed. 1979). In one criminal grave desecration case, a state court absolved the defendant of criminal liability for opening a grave and stated that "a cadaver is not an everlasting thing, and after it has undergone an undefined degree of decomposition, it ceases to be a dead body in the eyes of the law." State v. Glass, 273 N.E. 2d 893 Ohio, 1971. See also Town of Sudbury v. Department of Public Utilities, 218 N.E. 2d 415 (Mass. 1966). However, a recent decision by a Louisiana court of appeals held that because such things were not owned by a mere "discoverer", an amateur archeologist, who had uncovered human remains and burial artifacts, had no claim to either. Charrier v. Bell, No.

85-0867, State of Louisiana Court of Appeals First Circuit (Oct. 15, 1986). Thus, the questionable ability of individuals to own human remains, combined with the well-established public welfare purpose served by protecting all human remains and burial sites, makes it doubtful that a court would allow a claimant to recover compensation based upon a claim that a regulation amounted to an eminent domain taking of the human remains. Moreover, it is interesting to note that compensation to those who discover such remains in the future has not been contemplated. If discovery of human remains on private property gives the land owner or discoverer ownership rights and remedies as to the remains, compensation would be contemplated for all such future "takings," not just to those who have previously discovered such remains.

Any challenge to the act will most likely be an attempt to characterize the regulation as an eminent domain taking. Generally, three requirements must be met before eminent domain powers can be exercised to take private property: (1) the property taken must be devoted to a public use; (2) there must be a public need for such a use; and (3) there must be just compensation paid to the legal owner of the property thus taken. Mid America Pipe Line Co. v. Missouri Pacific Railroad Co., 298 F. Supp. 1112 (Kan. 1969). See also 27 Am. Jur. 2d Eminent Domain, § 1 (1966), and 29A C.J.S. Eminent Domain, § 1 (1965).

Particular governmental actions that have been judicially recognized as exercises of eminent domain taking requiring compensation include: urban renewal projects, State v. Kansas City, 179 Kan. 435 (1956); taking water owned by one citizen to be used by many citizens, Wallace v. Winfield, 98 Kan. 651 (1916); taking privately owned property to be used as public duck hunting grounds, Ottawa Hunting Assoc. v. State; 178 Kan. 460, appeal dismissed 352 U.S. 804 77 S.Ct. 31, 1 L.Ed. 2d 38 (1955); taking privately owned property for the establishment of public streets and highways, Rindge Co. v. Los Angeles County, Cal., 262 U.S. 700 (1922); taking land for public parks, U.S. ex rel. Tenn. Val. Authority v. Welch, N.C., 327 U.S. 546 (1945); taking or using private land for flood control and soil conservation purposes, U.S. v. 21,250 Acres of Land, More or Less, Situated in Catvaraugus County, 161 F. Supp. 376 (N.Y. 1957); and temporarily using cemetery land in order to make bore tests on the feasibility of a tunnel under the cemetery, Washington Metropolitan Area Transit Authority v. One Parcel of Land, 514 F.2d 1350 (1975). Note that these cases all represent takings of one particular or certain

single piece of private property for public use and enjoyment. They do not regulate or affect all of a similarly situated type of property in the state. Additionally, the governmental action in these cases resulted in the public using the confiscated property. House Bill No. 2704 seeks to reinter the human remains, not let the general public or a public agency use them. This type of protective regulation a fortiori represents a classic use of police power.

Eminent domain takes private property for public use. Police power exerts control over the use and enjoyment of private property. Even assuming arguendo that a private landowner can establish a claim of legal ownership of human bones discovered buried on his land, police power allows the state to regulate or even forbid certain uses of privately owned property in order to promote the general welfare of the public (e.g. once enacted, gun laws prohibiting private possession of certain weapons often require the forbidden guns to be turned over or destroyed). No one individual will be affected differently by the proposed law; all human remains buried in unmarked graves would henceforth be treated in the same manner without regard to who discovers them or where they are buried. The state will not appropriate the remains to be publicly used in a manner that a private individual is forbidden to engage in. Furthermore, the property owner may still use his land for every other legal purpose.

Human remains buried in a known cemetery or under a marker are already protected. See K.S.A. 21-4112 and 21-4115. In order to promote uniformity of respect given to all human remains, House Bill No. 2704 merely extends state regulations to provide similar protections to human remains resting in unmarked graves. Therefore, it is our opinion House Bill No. 2704 obviously represents a valid exercise of the state's inherent police power to place restraints on the behavior and property of persons in order to promote and protect the well established public welfare interest served by insuring that all human remains are treated properly. Thus, any private individual affected by such regulation because they currently possess human remains, or may find such remains in the future, would not be entitled to compensation.

II. When a state regulation operates as a use of legislative eminent domain, the valuation of the property "taken" or "used" depends upon many factors. See K.S.A. 26-513(d). If a private claimant convinces a court that there has been an eminent domain taking of a possessory interest, the state must generally pay the legal property owner the fair

market value of the property taken. United States v. 100 Acres of Land, 468 F. 2d 1261 (9th Cir. 1972), cert. denied, 414 U.S. 822, 94 S.Ct. 119, 38 L.Ed. 54, (1973); U.S. v. Osborne County, Kansas, 478 F. 2d 484 (10th Cir. 1973), appeal after remand, 527 F. 2d 1000 (10th Cir. 1976). See also Comment, 27 WLJ 82, "Constitutional Law: Fifth Amendment Just Compensation Clause Supports Damage Award for Temporary Regualtory Taking." (1987). The owner is entitled to the fair market value of his property at the time of taking. This value is normally ascertained from what a willing buyer would pay in cash to a willing seller. Almota Farmers Elevator & Warehouse Co. v. U.S., 409 U.S. 470, 474, 43 S.Ct. 791, 35 L.Ed.2d 1 (1973). In fixing market values, courts and juries may also consider the highest and best use to which the property may be put. United States v. Weyerhaeuser Co., 538 F. 2d 1363 (9th Cir. 1976). When there are no known sales of comparable property it is difficult to arrive at a true valuation.

The value of land taken by eminent domain is always a matter of opinion and may be proved by opinion evidence. Mai v. City of Garden City, 177 Kan. 179 (1954). A property owner may put before a court all evidence necessary to determine the value of property. Board of park Commissioners v. Fitch, 184 Kan. 508 (1959); Eisenring v. Kansas Turnpike Authority, 183 Kan. 774 (1958). As a general rule, proof must be limited to showing the present condition of the property and uses to which it is naturally adapted. 27 Am. Jur. 2d Eminent Domain, § 435 (1966). In appraising appropriated land, the fundamental question asks what the owner has lost, not what the taker has gained. St. Agnes Cemetery v. N.Y., 163 NYS 2d 655 (1957).

In the case of House Bill No. 2704, the state does not propose a taking of real property. The only physical taking would be of the skeletal remains. An individual is not required to give up anything else. Before compensation becomes available the party seeking it must establish that they have a legally held property interest or right that has been impaired or destroyed. Riddle v. State Highway Commission, 184 Kan. 603 (1959); see also Small v. Kemp, 240 Kan. 113 (1986). As previously discussed, some question exists as to the ability of an individual to own human remains. If no possessory interest in the skeletal remains can be established, compensation will not be required to be paid for those remains.

Some individuals may claim that the required relinquishment of the remains adversely affects the value of their burial site business and real property.

The Supreme Court has repeatedly recognized that the government has considerable latitude in regulating property rights in ways that may adversely affect the owners. Hodel v. Irving, 481 U.S. _____, 107 S.Ct. _____, 95 L.Ed.2d, 668, 678 (1987). Pursuant to enactment of House Bill No. 2704 an individual may claim a loss of an economic benefit or a diminished property value because of the loss of the remains. Lost economic business benefits would be those that would have otherwise vested in the future. Damage measurement rules state that in order for future profits to be recoverable there must be reasonable proof of their amount. Future profit cannot be awarded when it is speculative, contingent or uncertain. 25 C.J.S. Damages, § 90 (1966). If the proposed regulation is passed, private displays of human remains would be illegal in the future. If compensation for lost revenue was available every time a government prohibited certain business activities, it could give rise to suits by every individual who might have otherwise chosen to go into such professions as prostitution or pornography. Additionally, this bill does not prohibit the business in toto; merely the display of human remains, thus mitigating any loss of business. This possible adverse affect on business profits can be analogized to claims by bookstore owners that a loss of forbidden pornographic materials adversely affects their business. Loss of revenue due to police power regulation or action is not compensable. See Small v. Kemp, 240 Kan. 113 (1986).

Diminution in real property value caused by forfeiture of the human remains could be another impact for which compensation might be claimed. A claim that the real property value is adversely affected by requiring relinquishment of the human skeletal remains would require evidence of the fair market value of the land with and without the remains. Pursuant to the regulation in question, the individual property owner may continue all legal uses of his property, including any business connected with the fact that the property once contained human remains. Furthermore, the property without the remains could be used for other purposes, such as farming, which would cause the fair market value to actually increase. Language contained in many Supreme Court decisions, such as Musler, Keystone and Pennsylvania Central, also makes it questionable whether potential loss of business or potential diminuation of property value is a sufficiently

distinguishable "identifiable segment" of the bundle of property rights. Thus, even assuming an individual could convince a court that this regulation constituted an eminent domain taking, valuation of interests arguably taken would be very difficult to establish and possibly too speculative or nondistinct to award.

In summary, the state has considerable latitude in regulating property rights in ways that adversely affect the owners. As stated in issue I, we believe that 1988 House Bill No. 2704 clearly operates as a valid exercise of police power, for which no compensation is necessary or available. However, if a claimant could convince the court that a regulation amounts to a taking, just compensation would be required. When an eminent domain taking has been established by the individual claiming compensation, the state must generally pay the owner the fair market value of any legally held property interest that has been taken. That value may be established by offering evidence as to factors set forth in K.S.A. 26-513(d) which can be summarized as proof of (1) the value and condition of the interest at the time of the taking and (2) the loss of that value to the owner.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Theresa Marcel Nuckolls

Theresa Marcel Nuckolls
Assistant Attorney General

RTS:JLM:TMN:bas

Salina
The Journal

Founded in 1871

Show story, not bones

The Indian Burial Pit near Salina has been a community embarrassment for years.

The display of skeletons excavated from an ancient Indian burial ground is the closest thing to a major tourist attraction Salina has. It's listed on all the maps. Yet the site itself has long inspired more aversion than pride in local residents, many of whom considered the pit tasteless at best and macabre at worst.

American Indian groups had, in recent years, protested the exploitation of the burial ground as a tourist attraction.

Last week an agreement was reached to rebury the bones. That should lay to rest the controversy over the site. We hope that the decision will not eliminate the possibility of creating a monument to the heritage of the Indians who lived and died in our county many centuries before Salina was founded.

That should be done with at least an appropriate monument and preferably a museum describing the burial site and its significance and telling the story of the living culture as well as the burial customs of the tribe.

The Indian burial site east of Salina was discovered in the 1930s. It was excavated and the bones were left on display as they lay for tourists who paid a fee to view.

Archaeologists have said the site is significant and worth preserving.

In 1985 the state proposed to buy the burial pit and turn it into a museum. That plan was cancelled when Indian groups protested and the owners refused to accept the amount of money the Legislature had appropriated for the purchase.

It's unfortunate the state was unable to proceed with the purchase then. State ownership would improve the prospects that the site will be turned into a fitting monument and could, in fact, have speeded up the reburial decision.

The agreement reached this week calls for the bones to be covered again. It leaves open the possibility that the state will purchase the site. The Kansas Historical Society is to study the site and determine whether a museum is feasible.

We hope it is. It's appropriate that Kansans be reminded that a people lived and died here before the "white man" "civilized" the prairies.

Letters

Cover burial site

There has been a lot of discussion about the Indian Burial Pit in Saline County. In my opinion we should close and cover the burial site, with an Indian ceremonial burial, and preserve the site as a sacred ground for the Indian tribes buried below.

I think we had ample time to study the history of the Indian tribes that are involved in the burial ground.

I was fortunate in finding a member of the Marlin family that homesteaded on that farm. He said his grandparents lived in a dugout in the vicinity of the burial grounds. He was not too impressed with the story about a dog finding the first remains of the Indians. He said when he was just a young lad on the farm, every time they had a heavy rain he could always find arm, leg and skull bones, as well as pottery made by Indians.

He said they never were too concerned about the finding of Indian remains. He said it was just a way of life. We figured it was nature's way of disposing of the remains of our native Indians.

I used to use my Indian pottery as targets for my slingshot and bust them to small pieces. Today they would be worth a fortune.

May we find a peaceful solution on how to give them an honorable burial that they so justly deserve.

—ARTHUR DENNING
302 S. Fourth

Salina Journal Jan 30, 1989

University Daily Kansan 1/23/86

THE UNIVERSITY DAILY
KANSAN

Let them rest in peace

For many moons, the spirits of Indian warriors have inhabited the Indian burial pit near Salina.

And for 50 years, anthropologists, archaeologists and tourists have invaded those sacred grounds to look upon the exposed bones.

Last week, representatives from seven Indian tribes met at Haskell Indian Junior College to shed tears for their ancestors whose bones have been stripped of their resting places.

In their cries, they also raised a debate over whether scientists should be allowed to continue digging up bones and pots in the name of science or whether the spiritual inhabitants of sacred grounds should remain undisturbed.

The Indian leaders also decided to ask Robert Stephen, Kansas attorney general, whether state laws against disturbing cemeteries applied to Indian burial pits.

There should be no question as to whether that law applies. Those burial grounds are no different from cemeteries. Both contain spirits and remains of the dead and both should be respected.

In the early 1800s, a curious entrepreneur robbed the grave of American revolutionary Thomas Paine, stripped the grave of his bones and paraded them around Europe. Now, no one knows where Paine lies.

Imagine the public outcry if a scientist were interested in extracting the remains of Benjamin Franklin.

Some scientists have said that digging up prehistoric grounds offers evidence to help explain man's history.

But disturbing sacred burial sites is abhorrent no matter how well the bones serve to feed science.

THE KANSAS CITY STAR.
Metro
Friday evening, November 25, 1988, Main Edition, 88 pages

Indians say tourist site desecrates skeletons

Burial pit is near Salina, Kan.

By Kathryn M. Nelson
staff writer

Harrison Fields' recurring nightmare destroys his sleep: The bones of his ancestors have been dug up and covered with varnish for a moneymaking tourist attraction.

The rising sun does not dispel this vision.

Near the banks of the Smoky Hill and Solomon rivers east of Salina, Kan., the Prehistoric Indian Burial Ground displays the 600-year-old remains of a tribe of hunter-gardeners who lived there. It is, a state archaeologist says, a 1930s-type tourist attraction.

Fields, executive director of the Pawnee Tribe of Oklahoma, has joined American Indians, scientists and legislators who call the display a desecration and want it stopped.

"It goes against everything we believe in as far as a person dying and going to the spirit world," Fields said.

A member of the Howard Price family of Salina, which owns the burial pit, said the family had no comment on the tug of war over the 146 skeletons there, which an amateur archaeologist unearthed in 1935.

The conflict will come before the 1989 session of the Kansas Legislature.

The site was purchased in 1936 by the Prices, who put a roof over it and began charging admittance to tourists.

Alfred Johnson, an anthropology professor at the University of Kansas in Lawrence, said the bones were those of Northern Caddo Indians, from which the Wichita and Pawnee tribes of Oklahoma and the Arikara tribe of North Dakota descended.

Although the site could have yielded useful information, he said, the layers of shellac coating the bones left them with "very limited potential for scientific research."

In 1984, Tom Witty, archaeologist with the Kansas State Historical Society, became disturbed by the site's condition and proposed the state buy it and spend $1.4 million to improve it.

Witty abandoned the effort after American Indians said the skeletons should be reburied.

"In many American Indian religious traditions, when you return your deceased to the earth, that place becomes sacred, spiritual," said Dan Wildcat, a teacher at Haskell Indian Junior College in Lawrence. "Tampering with that earth disturbs the spirits."

The three descendant tribes hired Walter Echo-Hawk, a staff attorney for the Native American Rights Fund in Boulder, Colo. Echo-Hawk first sought a criminal charge, but Kansas Attorney General Bob Stephan concluded in 1986 that although he considered the site offensive, state law restricting cemetery desecration would not apply to ancient remains.

The activists looked to the Legislature, and in the 1988 session some lawmakers suggested the state take control of the land. But the bill died because of concerns that the owners must be compensated.

Last spring Stephan issued an opinion that taking the land could be an exercise of police power, which does not require compensation.

Echo-Hawk, Witty and others are preparing a bill for the 1989 Legislature that would protect all unmarked graves and Indian burial sites in the state.

If the state closes the Salina burial pit, Fields said, the Pawnees will rebury their ancestors.

Fate of private Indian Burial Pit comes under renewed scrutiny

By LILLIAN ZIER
Staff Writer

For about 50 years, a simple white shed has shielded the remains of a prehistoric civilization from elements, but has exposed the bones each year to the gaze of thousands of visitors.

The Indian Burial Pit, about four miles east of Salina, is the resting place of 146 bodies, believed to be the ancestors of the Pawnee tribe.

The bones are the remains of men, women and children, buried with their heads to the south and their faces to the east, signifying complex and poetic religious beliefs. The south represents death, and the east, the rising sun.

The Price family of New Cambria has owned the site since 1938.

Today, Indian representatives, Saline County commissioners, state legislators and others will meet to discuss the future of the burial site.

"For my clients (the Pawnee), it's an extremely serious breach of their religious beliefs to disturb the dead, as well as their possessions that were interred," said Walter Echo-Hawk, Denver, staff attorney for the Native American Rights Fund.

"They can convey the fact that there's a burial ground without putting bodies on display."

— attorney Walter Echo-Hawk

The fund is a national non-profit organization that provides legal help to tribes that can't afford an attorney.

At today's meeting, Echo-Hawk hopes to reach an agreement with the Prices to have the remains covered and a public entity acquire and maintain the site.

Members of the Price family declined to comment on the meeting or to give information on the history of the site.

Echo-Hawk is representing the Pawnee and Wichita tribes of Oklahoma and the Arikara tribe of North Dakota. Because the tribes' languages are similar, they are believed to be related. They would be the nearest living kin to the Indians at the burial site.

The tribes want the remains and artifacts covered, in accordance with their religious beliefs, Echo-Hawk said.

The belief is that tampering with the dead or their possessions could bring consequences on the violator from a spiritual source, he said. Thus, the Indians believe they have a responsibility to protect the dead, he said.

Discovered in 1936

The site was discovered in 1936 by a dog scratching in the dirt. During the next year, amateur archaeologist Guy Whiteford excavated the site, uncovering the bones and several artifacts.

In 1938, four Price brothers bought

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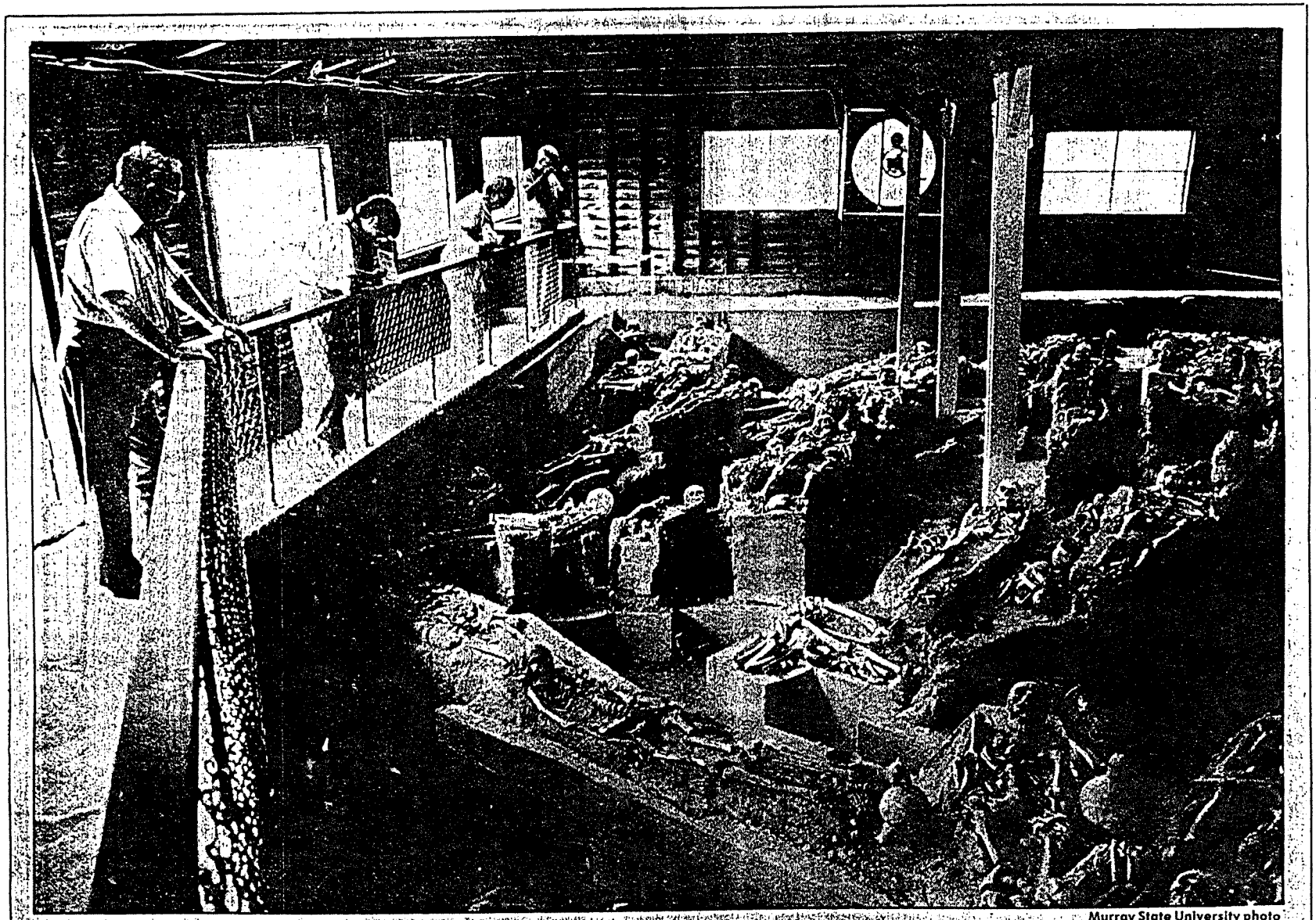


Murray State University photo

Murray State University, which owns Wyckliffe Mounds in Murray, Ky., is seeking grants to remove the bones from that burial site.

State failed to acquire site in '85

(Continued from Page 1)

the site, and it has been in the family's possession since. The family operates a museum at the site that Howard Price, the only remaining brother, has said is visited by 10,000 to 15,000 people a year.

For years, the museum drew little attention except from tourists and the scientific community.

But at a meeting in 1984, the Kansas Historical Sites Board of Review voted to recommend that the state acquire the site. The board's meeting was prompted by an application bearing the signatures of 10 people, including Howard Price.

In 1985, the Legislature appropriated $90,000 for the Kansas State Historical Society to buy the site. The historical society took up the cause with enthusiasm. Plans were made to build a new museum and improve the road to the site.

But by coincidence, an Indian woman visited the museum that year and was appalled by what she saw, said Tom Witty, state archaeologist and archaeology department head for the state historical society.

The woman took her concerns to Haskell Indian Junior College in Lawrence. The college conducted a forum in 1986 on the burial site and protested the state taking it over.

The Prices also demanded more than $90,000 for the land, Witty said.

As a result, the historical society dropped the issue. But the Indian groups did not.

Indians take up cause

Last year, Indian representatives tried to get the Legislature to close the site. The legislation failed in committee, because some lawmakers believed the Prices should be compensated for the loss of their business.

After last year's failed attempt, the Indians are taking a more grassroots approach.

Several local politicians have said they support the Indians' cause. However, none seems willing to pay for it.

Financial concerns include compensating the Prices, funding maintenance of the site and developing tourism.

One entity that could end up responsible for the property is the Saline County Commission.

County enters fray

In a memorandum that Echo-Hawk drafted and plans to present today, Echo-Hawk proposed the Prices execute a deed giving the land to Saline County, said Pat Neustrom, Saline County counselor.

The agreement states that the county would maintain the site, and the state would be responsible for any development for tourism.

Echo-Hawk has pointed out Kansas laws that he believes make the county responsible for the site.

One of the laws states that private burial ground not provided for in a will, deed or "in the possession of the owner in life" should be under the control of the county clerk. It also would be the clerk's duty to bring a lawsuit against anyone who damages the graves.

Echo-Hawk's proposal would allow the Prices to remove improvements made to the property. They also would be released from liability for possible violation of state laws concerning burial grounds.

Neustrom said maintenance probably would mean planting native prairie grass on the site and constructing a fence around it, which would be a minimal cost.

However, the road to the site crosses the Prices' property, which could inhibit the county's access to the site. Maintenance could become costly if the county would have to acquire land for access to the site.

Saline County commissioners have said they support legislative or other action to cover the remains, but the commissioners were reluctant to take over the site and fund maintenance of it.

File photo

Howard Price is pictured in the Indian Burial Pit in 1986.

Opinions on site differ

Like Witty, many archaeologists and historical society members have ambivalent feelings about covering the burial site, said Randy Thies, public archaeologist for the state historical society.

"There are different opinions," he said. "Some within the Kansas archaeology community would like to research the site by getting in there and working with it. But then there are the Indians' concerns."

The remains are of limited value to archaeologists, Thies said, because they were covered with shellac in the 1930s after they were excavated. The aging shellac has caused the bones to turn brown.

Shellac was "state of the art" preservative at the time, he said. But it can't be removed easily and doing so would destroy any value the bones would have for study.

Smoky Hill culture

The remains are believed to be those of the Smoky Hill culture, which existed between 1000 to 1500 A.D. The Indian burial site dates to about 1250.

Archaeologists believe the remains are ancestors of the Pawnee tribe, Thies said.

"We identify them by the artifacts that were with them — pottery in this case," he said.

Archaeologists have uncovered pottery at other sites known to be from the Smoky Hill culture, and the pottery at the Salina site is similar, Thies said.

Pushing legislation

Regardless of the outcome of today's meeting, Indian groups will continue to push for legislation in Kansas to protect burial sites not yet discovered, Echo-Hawk said.

The Indian Burial Pit is in Rep. Jayne Aylward's legislative district.

Aylward, R-Salina, could not say whether a bill would be introduced this session. There are several lawmakers interested in the issue, but public interest has not been overwhelming, she said.

"Public sentiment is everything," Aylward said. "If we have 50,000 people pushing on us for highways, and 50 pushing for this, you know which one is going to get attention.

"It's not a matter of a lack of interest. It's a matter of having only 90 days" in the session.

The issue of compensating the Prices might be viewed differently this year, Aylward said, because other states are passing bills that protect burial sites.

If compensation or other payment is required, the Legislature is not likely to approve the funds unless a public benefit can be shown, Aylward said. A museum could be that public benefit.

Echo-Hawk said the Pawnee would not oppose a museum.

"The tribe is not averse to public education about its culture," he said. "They can convey the fact that there's a burial ground without putting bodies on display.

"There're certainly many ways of educating the public without violating the very culture they're trying to preserve."

One of three in U.S.

The Indian Burial Pit is one of three sites of its kind in the nation. The others are in Lewistown, Ill., and Murray, Ky.

Controversy has not focused on the other sites, perhaps because archaeologists have not pinpointed a relationship to a historic Indian tribe.

Tom Emerson, chief archaeologist for the Illinois Historical Preservation Agency, said controversy has not arisen over the Dickson Mounds burial site in Lewistown. The remains have not been traced to a historic Indian tribe.

The state has operated the site for about 30 years, and it is done "tastefully," Emerson said.

The display at Wyckliffe Mounds in Murray, Ky., also has not been seriously protested, said Kit Wesler, director of the Wyckliffe Mounds Research Center. Murray State University acquired the site from private owners in 1983.

Wesler said the center is uncomfortable with the display of the bones.

"We'd like to get them completely off display," he said.

The center is seeking grants to remove the bones.

County asked to take over burial pit

12-29-88
S.J.

By LILLIAN ZIER
Staff Writer

Saline County may be responsible for taking over the Indian Burial Pit and returning it to a cemetery, an attorney representing Indian rights said Tuesday.

Walter Echo-Hawk, staff attorney for the Native American Rights Fund, Boulder, Colo., met with Saline County Commissioners Penny Geis and Dennis Carlson, and Reps. Jayne Aylward, R-Salina, and Eloise Lynch, D-Salina.

Echo-Hawk requested the meeting to discuss a legislative proposal for the session to begin Jan. 9 and to inform the county commission about the possibility it may be responsible for the burial site.

The burial site is owned by the Price family near New Cambria. The remains of American Indians, thought to be Pawnee, had been excavated and are on display at the site.

The Indians, and others, find the display offensive and want the commercialization of the grounds stopped. An effort to pass a law that would have closed the site failed in the 1988 legislative session.

On Tuesday, Echo-Hawk pointed out Kansas laws that he believes make the county responsible for the property.

"I don't want to get into the sepulcher business, but I want it taken care of — it's an abomination, I feel."
— Dennis Carlson
county commissioner

One of the laws states that private burial ground not provided for in a will, deed or "in the possession of the owner in life," should be under the control of the county clerk. It also would be the clerk's duty to bring a lawsuit against anyone who damages the graves.

County counselors are studying the laws to see whether they apply to the burial pit, said Pat Neustrom, an attorney with the law firm that represents the county.

Geis and Carlson said they support legislative or other action to cover the site, but it would be a problem for

(See Burial, Page 11)

Burial

(Continued from Page 1)

the county to take it over and fund it.

"I don't want to get into the sepulcher business, but I want it taken care of — it's an abomination, I feel," Carlson said.

Having the county take over the site could be an alternative to a lawsuit if Echo-Hawk cannot reach an agreement with the Price family and its attorney to cover the site.

Echo-Hawk said he plans to meet with the family to discuss alternatives.

"I've got strong legal grounds, and I want them to know that," he said.

Echo-Hawk also presented the commissioners and legislators the draft of a bill that would regulate unmarked burial sites. The bill may be considered by the 1989 Legislature.

In the past legislative session, a bill on the topic was killed in committee. That bill would have made it illegal to possess human skeletal remains from an unmarked grave site and publicly display the remains.

The bill was stalled because it did not provide compensation for the Price family if their business was closed, Rep. Ken Grotewiel, D-Wichita, said at the time. Grotewiel was on the subcommittee that studied the bill.

Aylward said she believes there might be more support this year for the bill.

"I do think legislators are becoming more aware this type of legislation is being looked at by other states, being passed by other states," she said after the meeting.

However, legislators are likely to believe the Prices should be compensated for loss of their land, she said. And legislators probably won't fund it unless they can see a public benefit.

"Hopefully, down the road, they can come up with a tourist-type center (as a public benefit)," she said. "I don't think the Indians are opposed to that as long as the bones are not there."

Echo-Hawk plans to draw up a proposal for a "memorandum of understanding" that outlines plans for the site. The group will meet in early January with other interested people to work out details of the memorandum.

The memorandum would be presented to the Legislature to show local opinion on the issue.

The New York Times

Founded in 1851

ADOLPH S. OCHS, Publisher 1896-1935
ARTHUR HAYS SULZBERGER, Publisher 1935-1961
ORVIL E. DRYFOOS, Publisher 1961-1963

Letters

Give American Indian Remains Back to Tribes

To the Editor:

"A Fight for Fragments of Indian Culture" (Week in Review, Oct. 23) notes that some museums have returned a handful of American Indian skeletons for reinterment. But Indians continue to be the victims of a practice that is without scientific or moral justification.

Throughout the Indian wars, Army doctors stripped the flesh from recently buried Indians, many of whose bones later formed part of the Smithsonian Institution's collection of 18,584 skeletons. When the remains of white settlers are uncovered, as much as $10,000 is expended for immediate reinterment; only $300 is allocated for Indian remains. Paying viewers may still see 146 Pawnee skeletons at the Salina burial pit in Kansas.

Many scientists now agree that there are no overriding reasons to retain collections of recent Indian remains. Little research is done on these collections, and little new has been learned from them. Museums argue that remains can be returned only to known descendants. But many scholars and Indians agree scientists should have a specified period of time for study, after which remains should be returned to the tribe with whom they can be identified by territory and culture.

Americans feel strongly about the final resting place of their dead. Considerable expense went into the recent return from Canada of 28 soldiers who died in the War of 1812, and we ardently seek the remains of 2,383 missing in action from Southeast Asia. The trust duty to the Indians our Congress and courts have consistently reaffirmed also counsels that science and history must relinquish their claims and allow the return of these remains for burial by their own people.

LAWRENCE ROSEN

Princeton, N.J., Oct. 29, 1988

The writer is professor of anthropology at Princeton University.

ACROSS THE USA: NEWS FROM EVERY STATE

2 people were bitten by ailing sea lion over weekend. Mammal may ing from bacterial ing area sea lions. me Court struck onth-old "submini- $3.50 an hour for s. Court ruled all 25 an hour, retro-

State Supreme ver is in physical ider drunken-driv- is running, car is r is asleep, uncon- heel. ... BASALT early this month to cially develop 46 million state Hwy. h routes 8,000 cars nercial downtown.

ICUT

— Actors' train- mer programs for will be offered at te planned at reju- can Festival The- ope to have theater in summer '89 — anniversary. ... — 2,000-member Retail Merchants Assn. will give bedding, furniture, appliances to homeless who get permanent housing. Plan expands effort begun in August.

April Witten, 2, brother Jonathan, 9 months, was caused by kerosene heater that had been knocked over, apartment building manager said. Probe continued.

IOWA

STORM LAKE — Mayor Wilbur Tucker will stand by decision to demote Police Chief Ed Gross after 2½ years in post. Tucker: Gross lacked leadership. City Council unanimously supported decision. ... DES MOINES — Gov. Branstad called statewide economic development good; warned effects of summer drought could linger into winter. Cited: drop in jobless rate to lowest level since '79, improved school enrollments.

KANSAS

TOPEKA — KPL Gas Service — state's largest utility — OK'd closure of waste disposal sites near Abilene, Calista, Minneola, Ulysses, will pay $9,000 in fees to help state monitor hazardous waste storage. ... SALINA — Pawnee Indians plan to pressure state, city into closing Indian burial pit unearthed in '30, used as tourist attraction. Walter Echo-Hawk, lawyer for Native American Rights Fund: It's an embarrassment.

KENTUCKY

FRANKFORT — Suspension of Kentucky State University dean

worker who copied — but didn't distribute — Functional Literacy Exam won't be punished. Future violators can expect stiffer penalties under new law, officials said.

MISSOURI

JEFFERSON CITY — Gov. Ashcroft opposes MedAssist health insurance plan voters will consider Nov. 8. Plan would raise taxes by $296 million yearly to help low income people get health coverage. ... KANSAS CITY — Trial began for 3 nuclear weapons protesters, charged with August trespass at Minuteman II silo. Charged: Dorothy Jane Eber, 63, Chicago; Ariel Glenn, 27, Milwaukee; Rev. Jerome A. Zawada, 51, Milwaukee Catholic priest.

MONTANA

HELENA — 86% of those eligible have registered to vote, Secretary of State Verner Bertelsen says. 505,541 are signed up — 4% less than in '84. Cited for decline: population loss. ... BILLINGS — Yellowstone County Homeless Project wants 10¢ weekly for 1 year from county's 100,000 residents to raise $500,000 for homeless shelter. Group, Montana Rescue Mission want to turn Lincoln Hotel into emergency shelter.

NEBRASKA

LINCOLN — 5 years after col-

Indians seek support for bone issue

By SHARON MONTAGUE
Staff Writer

The signs on the highways proclaim, "Turn Right, Follow Arrow, Prehistoric Indian Burial."

It's promoted as a tourist attraction, and each year thousands of tourists flock to the burial pit east of Salina to view bones thought to be those of Pawnee Indians.

But the descendants of the Indians who were buried in the pit don't see the pit as a tourist attraction. They see it as an insult to the Indians and an embarrassment to Salina.

Those Indians gathered in Salina Saturday for a symposium during which they discussed the burial grounds and what might be done to end what they consider commercialization of those grounds.

And in an attempt to educate Salinans about Indian customs and beliefs, they discussed their traditions.

Dan Wildcat, a teacher at Haskell Indian Community College in Lawrence and organizer of the symposium, said the intention was "to raise issues about how to preserve history in a way that is sensitive to Indian traditions and culture."

Walter Echo-Hawk, staff attorney for the Native American Rights Fund, said the Indian Burial Pit is "the commercial exploitation of 146 dead people. Nothing like this exists anywhere else in the world, and it continues to be an embarrassment both to Salina and to the state."

The burial pit is owned by Howard Price of Salina and his family. It was designated a National Historical Landmark by the National Park Service in 1964.

Echo-Hawk and others said the burial pit should be closed, and the Pawnee tribe should be allowed to bury the bones that were unearthed in the late 1930s.

"The only way to combat the exploitation is to make the public aware of how the Indians feel," said Lori Callahan, lobbyist for the Native American Rights Fund.

"The Indian Burial Pit isn't something to be proud of. It's a terrible thing being done to these Indians — these people who are just like everyone else."

The Indians also are pushing for legislation that would afford equal protection for Indian graves.

"Kansas has a whole set of statutes to protect cemeteries and unmarked graves to preserve the final resting place," Echo-Hawk said. "But there is a loophole, and Indian graves and bodies don't have that protection. People can dig them up and do anything they want.

"If you did that to a non-Indian, you might wind up in Lansing."

He said it hurts Indians' feelings to see the bones of their ancestors on display, but when the Indian Burial Pit in Salina was opened as a tourist attraction people did not realize that.

"They thought Indians were different, that they didn't have any feelings," Echo-Hawk said. "In the last century, Manifest Destiny was a popular theory. They thought the white man should have all the land, and that the red man would vanish.

"But the red man didn't vanish."

Society is beginning to rethink the attitude that Indians aren't on the same level as white men, Echo-Hawk said, and some states are beginning to protect Indian burial grounds.

But Kansas has yet to enact such a protective law.

Lori Callahan, lobbyist for the Native American Rights Fund, hopes that legislation establishing such protection will be approved by the next Legislature.

The Native American Rights Fund supported a bill that was before the Legislature in the 1988 session, Callahan said, but that bill failed. Indians, scientists and historians worked all summer on a new bill that will be presented to the 1989 Legislature.

The bill provides that if bones are found they are to be examined by the county coroner and a representative of the Kansas State Historical Society.

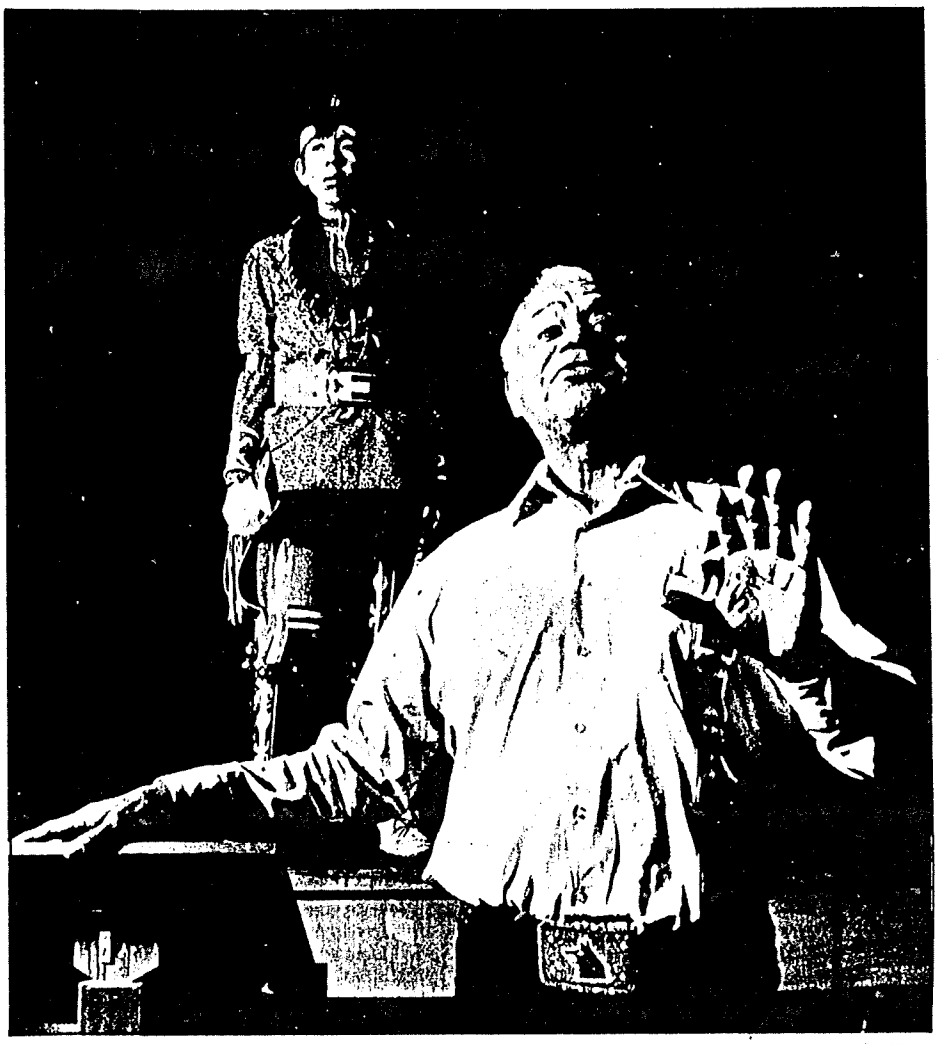
If there is evidence the bones were deposited recently and might be related to a crime, the coroner would take custody of the bones, Callahan said. But if it is discovered that the bones are of historical value they would be turned over to the historical society for examination.

After a certain length of time for examination, the bones would be turned over for re-burial.

Also, burial grounds also would be protected from excavation by the bill, Callahan said.

She said the 1988 bill failed because some legislators were concerned about compensating the owners of the Indian Burial Pit for lost revenue if that site were closed.

However, Callahan said an attorney general's opinion states that if a business is operated contrary to public policy, such as a house of prostitution, the business is not entitled to compensation.



Ben Harris

Brummett Echo-Hawk talks about the dance clothing worn by his grandson Bunky Echo-Hawk.

Wichita Eagle-Beacon 1/24

Indians near accord with pit owners

By Bud Norman
Staff Writer

Representatives of three Native American Indian tribes have reached a tentative agreement with the owners of the Indian Burial Pit outside Salina to provide a more dignified resting place for the 146 Pawnee Indians that have been displayed there as a roadside tourist attraction for more than 50 years.

"Basically, we have agreed to agree," said Walter Echo-Hawk of the Native American Rights Fund, which is representing the three tribes whose ancestors were buried at the site.

The Price family of New Cambria, which owns the site and has operated the museum located above it since 1937, also seemed happy with the agreement reached this weekend.

"We're glad we settled it," said Palmer Price, one of the property owners. "That's all that needs to be said."

The agreement was reached at a meeting attended by the area's four state legislators, county commissioners, members of the Price family, Pawnee, Wichita and Arikara tribal leaders and representatives of the Kansas State Historical Society, which agreed to supervise the re-burial of the remains. The tentative agreement is contingent on the state compensating the Price family for the loss of revenue from the museum.

"We are in the process of attempting to hammer out a written agreement which would itself be contingent on the introduction and passage in the state Legislature of a special appropriations bill to pay for the re-burial," Echo-Hawk said. "And to compensate the owners of the tourist attraction for their lost business."

> "We're glad we settled it. That's all that needs to be said."
> — Palmer Price

The tribes that are demanding the remains be covered tried unsuccessfully to get action from the Legislature last year, but are optimistic about the chances of winning approval during the current session. The Legislature will also consider a separate piece of legislation that would provide protection for unmarked burials in Kansas.

Echo-Hawk, one of the most prominent advocates of Indian burial rights, said the Salina burial pit offended Native American religious sensibilities and should have a similar effect on any American.

"It should not be difficult for anyone to understand their feelings on the matter," Echo-Hawk said. "Quite simply, all people are entitled to a decent burial, and all societies and cultures have buried their dead with reverence, respect and religion. Those universal values are certainly shared by American Indians, and those values naturally are basically offended by a tourist attraction putting bodies on public display from an entire cemetery."

juice.

jeopardy rights by pleading guilty.

Hays Daily News 1/23/89, p6

Agreement: Indian bones will be reburied

SALINA (HNS) — In the "Treaty of Smoky Hill of January 1989," representatives of three Indian tribes and the owners of the Indian Burial Pit agreed Saturday that the remains of 146 people at the pit will be reburied.

The Price family of New Cambria owns the site and operates the museum in which the bones are displayed.

When burial pit will close and whether it continues operation in some form as a museum have not been decided, however.

The remains are believed to be the ancestors of the Pawnee, Wichita and Arikara tribes. Modern Indians find the site offensive and have demanded the remains be covered.

In a 2½-hour meeting Saturday at the Salina Area Chamber of Commerce office, the 26 people attending agreed the bones should be reburied.

Salina's four legislators; Saline County commissioners; representatives of the Kansas State Historical Society; members of the Price family, Indian representatives and others attended.

"We're glad we settled it," said Palmer Price, one of the property owners. "That's all that needs to be said."

Indian representatives were equally pleased.

"I feel good. We don't have to worry about this anymore," said Donald Horsechief, council member of the Wichita Indian tribe.

Walter Echo-Hawk, attorney for the three Indian tribes, said the agreement was "a good starting point."

"The large number in attendance shows this is of a serious and large community concern," Echo-Hawk said. "I'm glad it's not viewed as a tribal problem and family problem, but a community problem."

Indian groups had made several efforts to have the site closed, including failed legislation last year.

In the most recent effort, Echo-Hawk pointed out Kansas laws against displaying human remains. But rather than taking the Prices to court, he arranged Saturday's meeting.

He devised a memorandum, which he called the "Treaty of Smoky Hill of January 1989," which served as an outline for Saturday's discussion. Saturday's agreement includes many of the proposals in Echo-Hawk's memorandum.

In the oral agreement, the groups decided:

- Reburial of the remains is the Prices' goal.
- Reburial is the Indians' goal, and they would work with legislators to find compensation for the Prices.
- The Kansas State Historical Society will be given a year to study the site.

Topeka Capital Journal 1/24

Agreement reached to rebury Indian remains from burial pit

SALINA (AP) — An agreement reached over the weekend to rebury the remains of 146 people in the controversial Indian Burial Pit near Salina was hailed by representatives of Indian tribes.

"I feel good. We don't have to worry about this anymore," Donald Horsechief, council member of the Wichita Indian tribe, said of the so-called "Treaty of Smoky Hill of January 1989."

The display of the remains have offended the Indian tribes — Pawnee, Wichita and Arikara — whose ancestors were buried in the pit, which was excavated in 1937. The tribes have demanded that the remains be covered and tried unsuccessfully to get action from the Legislature last year.

The Price family of New Cambria owns the site and operates the museum that is located over the burial pit. "We're glad we settled it," said Palmer Price, one of the property owners.

The agreement to close the pit was reached at a meeting attended by the area's four state legislators, county commissioners, representatives of the Kansas State Historical Society, members of the price family and Indian representatives.

Walter Echo-Hawk, attorney for the three tribes, said he was pleased and the agreement was "a good starting point."

Negotiations remain before the burial pit is actually closed, but both sides said they hope to have a signed agreement within a couple of weeks. Among details to be worked out are compensation for the Price family, whether the state historical society will pursue construction of a museum at the site and whether the state will purchase the site.

The tribes plan to conduct a burial ceremony when the site is covered.

to LHS.
Lawrence J-World 1/24

Museum owners agree to close Indian burial pit

SALINA (AP) — An agreement reached over the weekend to rebury the remains of 146 people in the controversial Indian Burial Pit near Salina was hailed by representatives of Indian tribes.

"I feel good. We don't have to worry about this anymore," Donald Horsechief, council member of the Wichita Indian tribe, said of the so-called "Treaty of Smoky Hill of January 1989."

The display of the remains have offended the Indian tribes — Pawnee, Wichita and Arikara — whose ancestors were buried in the pit, which was excavated in 1937. The tribes have demanded that the remains be covered and tried unsuccessfully to get action from the Legislature last year.

Native American Rights Fund

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FEDERAL EXPRESS

February 14, 1989

Mike Montoya
ACHTERBERG & NEUSTROM
Attorneys at Law
P.O. Box 1697
118 S. Seventh Street
Salina, Kansas 67402-1697

RE: Treaty of Smoky Hill

Dear Mike:

I am enclosing the original "Treaty of Smoky Hill" [Memorandum of Understanding], which bears my final approval and signature, for your review. If the document meets with the County Commissioners' final approval, please have it approved with an appropriate signature.

In order to meet pressing legislative needs, we are trying to have the document signed by all parties by Friday, February 17. In that regard, I greatly appreciate your kind offer to also present the document to George Yarnevich, for his final review and signature, and then to bring the document to Topeka Thursday night on your upcoming trip so that it might be received by the Attorney General's office on Friday.

I have enjoyed working with you and your clients on this matter, which can now hopefully be resolved in the dignified and speedy manner that is provided for in the enclosed Treaty of Smoky Hill.

Best regards,

Walter Echo-Hawk

Walter R. Echo-Hawk
WRE/kk
Enclosure

cc: George Yarnevich
Robert Stephen, Attorney General
Theresa Nuckolls, Assistant Attorney General
Ramon Powers, Kansas State Historical Society
Tom Witty, State Archeologist
Saline County area Legislative Delegation
Ginger Barr, Representative
Tribal Government Clients
Lori Callahan
Saline County Commissioners

TREATY OF SMOKY HILL OF FEBRUARY, 1989
[MEMORANDUM OF UNDERSTANDING]

The undersigned parties enter into this MEMORANDUM OF UNDERSTANDING for the purposes of: 1) providing for a proper burial of the Indian decedents presently on display at the "Indian Burial Pit", located near Salina, Kansas and for the sale and proper disposition of the burial ground; 2) supporting the introduction and passage of special legislation for an appropriation of public funds to accomplish the reburial, to compensate the owners of the "Indian Burial Pit", and to otherwise carry out the purposes of this agreement; 3) allowing the "Kansas Unmarked Burial Sites Preservation Act", House Bill No. 2144 to proceed before the Kansas Legislature with the joint support of the parties; 4) and providing for an historic development feasibility study by the Kansas State Historical Society of landowners' properties in consultation with interested parties.

PARTIES TO THE AGREEMENT

1. LANDOWNERS. The owners of record of the "Indian Burial Pit", and all of them, their agents, successors-in-interest, and assigns (hereinafter, "Landowners") are parties to this agreement: Howard Price, Calvin Price, Donald Price, and Mrs. Joseph W. Spencer.

2. NEXT OF KIN. The nearest next of kin to the Indian decedents are represented by the signatory Tribal Governments: The Pawnee Tribe of Oklahoma, The Wichita and Affiliated Tribes of Oklahoma, and The Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

3. LOCAL GOVERNMENT. The signatory local governmental authorities are the Saline County Commissioners.

4. PRESERVATION AGENCIES. Public preservation interests affected herein are represented by the Kansas State Historical Society, the State Historic Preservation Officer (SHPO), and the State Archeologist.

REBURIAL, ACCESS, PROTECTION, AND MAINTENANCE AGREEMENT

5. SALE AGREEMENT. Contingent upon passage of the special appropriations Bill during this 1989 Legislative session that is provided for herein in paragraphs 10-11 infra, (hereinafter referred to as "Bill"), Landowners agree to sell their land containing the "Indian Burial Pit" (approximately 1\4 acre), together with an ingress\egress easement necessary to carry out

the purposes of this agreement, to the State of Kansas for a sale price of $90,000. Should the Bill fail to pass during this Legislative session, this sale offer by the Landowners is withdrawn, and this agreement may be voided by the parties as provided in paragraph 14, infra.

6. CEASE COMMERCIAL OPERATIONS. Landowners may continue commercial operations of the "Indian Burial Pit" up until the date of its sale to the State of Kansas as provided in paragraph 5; provided however, that the signatory Tribal and Local Governments do not waive any legal rights or claims they may have against Landowners for said operations in the event that this agreement is declared void under paragraph 14, infra. Within 90 days of the date of the sale, Landowners will cause any associated billboards which are owned or controlled by them and which advertise the "Indian Burial Pit" to be removed.

7. REBURIAL PROCEDURE. Upon the sale and transfer of title to the State of Kansas as provided in paragraph 5, all parties to this agreement shall cooperate in the reburial of the Indian decedents of the "Indian Burial Pit" as follows: A. Reburial shall be done under the direction and control of the three signatory Tribal Governments in accordance with tribal religious and mortuary traditions and in consultation with the State Historical Preservation Officer, the State Archeologist, the State Historical Society, and the Landowners; B. Reburial shall be done in situ with minimum disturbance of the remains, provided however that the existing structure and other improvements covering the remains shall be removed from the immediate premises at an appropriate time to be determined by the parties in connection with the interment ; C. All parties to this agreement in possession of any "grave goods", which is defined to mean any object reasonably believed by the party in possession of the object to have been interred with any of the decedents of the Burial Pit, from the burial ground shall return the same for reinterment by the Tribes; D. The manner of reburial shall be done in a way that will protect against unlawful grave looting, such as, for example, the emplacement of a concrete or other protective slab over the interment or interments; E. Costs of the reburial will be paid for out of funds provided in the Bill; F. The Kansas State Historical Society shall be afforded a reasonable period of time in which to scientifically study the remains before reinterment, not to exceed one month after the date of sale and the date that actual study of the remains in the Burial Pit commences; G. Landowners shall allow the parties access to their lands as necessary to carry out this reburial agreement, provided the parties shall use their best effort to complete reburial within one month after the study period is completed and the actual reinternment work commences; H. These reburial procedures shall be approved as in compliance with K.S.A. Sec. 75-2724; I. The three signatory Tribal Governments will determine the appropriate marking, landscaping, and fencing

(if any) for the burial ground in consultation with state and local preservation agencies and the Landowners; and such marking, landscaping, and fencing will be carried out by the Kansas State Historical Society, in consultation with the State Archeologist, through funds made available for these purposes by the Bill, subject to the final approval of the Landowners; and J. It is understood that the landowners use their surrounding lands as farmlands and that none of the reburial activities will interfere with said farming activities to the extent practical.

8. RELEASE OF LIABILITY. After reburial in accordance with paragraph 7, the Indian next of kin, acting by and through their respective Tribal Governments, shall grant to Landowners a written release of liability releasing Landowners from any liability of any kind to said next of kin or said Tribal Governments by reason of the operation of the "Indian Burial Pit".

9. ACCESS AND COOPERATION AGREEMENT. Upon reinterment as provided in paragraph 7, Landowners, their agents, assigns, and successors-in-interest agree in perpetuity to: 1) refrain from future land uses that will be exploitative or destructive to the marked Indian burial ground; 2) immediately notify appropriate state or local authorities and the three signatory Tribal Governments of any tampering, disturbance or desecration of the Burial ground as may come to their attention; 3) allow reasonable access to their lands by authorized representatives of the three signatory Tribal Governments to inspect burial ground conditions and to pay respects; 4) allow reasonable access and provide other cooperation with state and local law enforcement agencies as may be necessary to protect the burial ground from desecration or other harm under Kansas statutes;and 5) allow reasonable access by the State of Kansas as necessary to maintain the fences, markings, and distinct character of the Indian Burial ground.

AGREEMENT TO SUPPORT SPECIAL LEGISLATION ON REBURIAL AND COMPENSATION

10. All parties to this agreement agree to support special legislation to be introduced into the Kansas Legislature this session, and to use their best efforts to secure the passage of said legislation.

11. Said special legislation will appropriate state funds in the following amounts for the following purposes: 1) $90,000, to purchase the "Indian Burial Pit" and easement from the Landowners; 2) $ 45,800 to cover the cost of scientific study, of removing the existing structure over the burial ground, for reinternment materials as necessary to prevent looting of the remains, and for the appropriate marking, landscaping, and

fencing of the burial ground. The proposed special legislation will also: 1) provide that the State of Kansas acquire the "Indian Burial Pit" for reburial and historic cemetery purposes; 2) direct the Kansas State Historical Society to do, within one year, a study of the feasibility of any associated historical developments in consultation with interested parties; provided however, that the results of said study shall not be mandatory or binding upon any party and shall not preclude any mutually agreed upon historical developments that might be reached after the one year period; 3) direct appropriate State officials to revise existing state tourism, highway, or other state public information concerning the "Indian Burial Pit" to reflect the new status of the burial ground provided for in this agreement; and 4) authorize the Kansas State Historical Society to deaccession any of its catalogued material as necessary to carry out the reburial agreement of paragraph 7, regardless of K.S.A. 75-2701(a).

AGREEMENT TO SUPPORT THE "KANSAS UNMARKED HUMAN BURIAL SITES PRESERVATION ACT" HOUSE BILL NO. 2144

12. Subject to paragraphs 10-11, the Landowners support the "Kansas Unmarked Human Burial Sites Preservation Act", House Bill No. 2144, as a separate piece of desireable legislation that can serve to provide legislative guidelines for similar problems as may arise in Kansas in the future, and hope that this proposed legislation will receive full support by Kansas lawmakers.

13. All other parties support passage of the "Kansas Unmarked Human Burial Sites Preservation Act", House Bill No. 2144, without the reservation made in paragraph 12.

MISCELLANEOUS PROVISIONS

14. All reburial and other affirmative obligations provided for in this agreement are expressly contingent upon the introduction and passage of the special Bill provided for in paragraphs 10-11, supra; and, in the event that said Bill does not pass in the present legislative session, this agreement is void and all pre-existing legal rights, duties, liabilities, and responsibilities of the parties, if any, shall be reserved and otherwise unaffected by this agreement.

15. Each of the undersigned warrants and guarantees that he or she has full and complete authority to bind the signatory party below represented herein.

APPROVED AND AGREED:

BY THE LANDOWNERS,

George Yarnevich
KENNEDY, BERKLEY, YARNEVICH
& WILLIAMSON
710 United Building
P.O. Box 2567
Salina, KS 67402-2567
(913) 825-4674
Counsel for Landowners

DATED: February ____, 1989.

BY THE INDIAN NEXT OF KIN, ACTING THROUGH THEIR TRIBAL GOVERNMENTS,

Walter Echo-Hawk

Walter Echo-Hawk
Ed Bristow
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80302
(303) 447-8760

Counsel for Signatory
Tribal Governments

DATED: February 14, 1989.

BY THE SALINE COUNTY COMMISSIONERS

By: _____
Board of County Commissioners
Saline County, Kansas
City County Building
300 West Ash
Salina, KS 67402-2567
(913) 827-1961

DATED: February ____, 1989.

BY THE KANSAS STATE HISTORICAL SOCIETY, STATE HISTORIC PRESERVATION OFFICER, AND STATE ARCHAEOLOGIST

Robert T. Stephan,
Attorney General
Theresa Nuckolls,
Asst. Attorney General
OFFICE OF THE ATTORNEY GENERAL
2nd Floor, Kansas Judicial
Center
Topeka, KS 66612
(913) 296-2215
Counsel for Preservation
Agencies

DATED: February ____, 1989.

Prairie Band of Potawatomi Indians

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

February 21, 1989

Honorable Legislators, distinguished guests, members of the media and concerned citizens. (Introduction)

The Prairie Band Potawatomi Tribe has been in this territory since the early 1800's, and is located 25 miles North of Topeka. As the Tribal Chairman, I represent the Prairie Band Potawatomi Tribal Council and its 4,000 constituencies, with over 50 treaties entered into with the United States Government, constituting the Prairie Band Potawatomi to be a federally recognized Tribe of Indians.

In order to maintain our government to government relationship, we the Prairie Band Potawatomi Tribe of Indians have given our official support of Senate Bill 9RS 0001, known as "The Preservation of the Kansas Unmarked Burial Sites", which would provide protection for the human skeletal remains located on all lands within the State of Kansas.

Today I come to bear witness to the proposed piece of State legislation mentioned and some unjust acts in the past that have been committed against human skeletal remains, called desecration. It is the Salina, Pawnee Burial Site, of which I speak. All human races have some type of ritual performed to commemorate death and in that sense sanctify the site, and remains therein, as can be attested to, through the annals of history.

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 8
February 22, 1989

I would like to quote from four notable authors and texts, not in the order of importance.

> William Shakespeare, Julius Caesar, "Friends, Romans, countrymen, lend me your ears: I come to bury Caesar, not to praise him. The evil that men do lives after them, the good is oft interred with their bones: So let it be with Caesar."

I say too, so let it be with the Pawnee Burial Site. The writings also say that our earthly and heavenly life cannot be complete, without allowing the body to be left alone, in its sanctity.

As was indicated by Sir Walter Raleigh in 1618, written the night before his death, found in his Bible in the Gatehouse of Westminster:

> "Even such is time, which takes in trust our youth, our joys, and all we have, and pays us but with age and dust, who in the dark and silent grave, when we have wandered all our ways. Shuts up the story of our days. And from which earth, and grave and dust, the Lord shall raise me up, I trust."

To further this philosophy of human remains, I quote from the Book of Common Prayer, First Anthem:

> "We therefore commit his body to the ground: earth to earth, ashes to ashes, dust to dust; in sure and certain hope of the Resurrection of eternal life."

Then, finally we go to the Old Testament of the Holy Bible, Ezekiel 37:1-14. At this time, I ask you to read these verses, in the presence of God the Creator.

Holy Bible, King James Version, Old Testament, Ezekiel 37:

1. The hand of the Lord was upon me, and carried me out in the spirit of the Lord, and set me down in the midst of the valley which was full of bones.
2. And caused me to pass by them round about: and, behold, there were very many in the open valley; and, lo, they were very dry.
3. And He said unto me, Son of man, can these bones live? And I answered, O Lord God, thou knowest.
4. Again He said unto me, Prophesy upon these bones, and say unto them, O ye dry bones, hear the word of the Lord.
5. Thus saith the Lord God unto these bones: Behold, I will cause breath to enter into you, and ye shall live.
6. And I will lay sinews upon you, and will bring up flesh upon you, and cover you with skin, and put breath in you, and ye shall live; and ye shall know that I am the Lord.
7. So I prophesied as I was commanded: and as I prophesied, there was a noise, and behold a shaking, and the bones came together, bone to His bone.
8. And when I behold, Lo, the sinews and the flesh came up upon them, and the skin covered them above: but there was no breath in them.
9. Then said He unto me, Prophesy unto the wind, prophesy, Son of man, and say to the wind, thus saith the Lord God: Come from the four winds, O breath, and breathe upon these slain, that they may live.

10. So I prophesied as He commanded me, and the breath came into them, and they lived, and stood up upon their feet, an exceeding great army.

11. Then He said unto me, Son of man, these bones are the whole house of Israel: behold, they say, Our bones are dried, and our hope is lost: we are cut off for our parts.

12. Therefore prophesy and say unto them, thus saith the Lord God: Behold, O my people, I will open your graves, and cause you to come up out of your graves, and bring you into the land of Israel.

13. And ye shall know that I am the Lord, when I have opened your graves, O my people, and brought you up out of your graves.

14. And shall put my spirit in you, and ye shall live, and I shall place you in your own land: then shall ye know that I the Lord have spoken it, and performed it, saith the Lord.

Are we not all God's children?

I did not come here today to chastise you, but to plead for the future of this human race. To life, liberty and the pursuit of happiness, life and liberty and the pursuit of happiness in death. To assure that no such acts such as the Salina, Pawnee Burial Site, should ever be committed by human against another human skeletal remains.

As we step to close the door of the 20th Century (to be forever in history), let this legislation go down in history, to set the standards for the 21st Century, by passing this proposed humanitarian piece of legislation, into law and take appropriate steps to rectify and ~~resolve~~ resolve the human morally unjust situation in Salina.

Thank you.

George L. Wahquahboshkuk

GEORGE L. WAHQUAHBOSHKUK, Chairman
Prairie Band Potawatomi Tribal Council

SAC & FOX TRIBE OF MISSOURI

Reserve, Kansas 66434 (913) 742-7471

Written Testimony of
the Sac and Fox Tribe of Missouri

by Nancy E. Keller, Chairperson

On behalf of all Sac and Fox Tribe of Missouri members, Tribal Council, and our ancestors, I feel we must support House Bill HR 2144, the Kansas Unmarked Human Burial and Skeletal Remains Protection Act and Objectives.

As Native Americans, we need to uphold our rights, and those of our ancestors, in preventing the desecration and exploitation of our sacred burial sites. The remains of our ancestors have been removed from their place of rest for the purpose of study and put on display.

The remains of our Native American ancestors should not be treated any differently in respect to other individual's rights for final burial. The non-Indian community do not allow the desecration of their ancestors and the law protects those rights. We feel the law has been discriminatory towards the Native American community in allowing incidents such as the "Salina Burial Pit" to go unpunished.

Perhaps the question "Would the non-Indian community allow that the remains of their great-grandfathers be removed from their origianl site of burial for use in studies and/or public display?" be directed to everyone concerned. Does the Native American community not have equal rights as provided by law?

We feel the passage of this bill will ensure equal protection to the human race, not just a select majority.

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 9
February 22, 1989

SAC & FOX TRIBE OF MISSOURI

Reserve, Kansas 66434 (913) 742-7471

SAC AND FOX TRIBE OF MISSOURI
TRIBAL COUNCIL

RESOLUTION NO. R-04-89

WHEREAS, The Sac and Fox Tribe of Missouri is organized in accordance with the Reorganization Act of June 19, 1934 (48 Stat. 984) and has a constitution as approved by the Secretary of the Interior on March 2, 1937, with the new tribal constitution approved by the Commissioner of Indian Affairs September 15, 1980 pursuant to the above statute, and

WHEREAS, The Sac and Fox Tribal Council has been given full authority by the Tribe to act in all matters of business for the Tribe, and

WHEREAS, The Sac and Fox Tribal Council met in session on January 25, 1989 at Reserve, Kansas, and

WHEREAS, The Sac and Fox Tribe is one of the Indian Tribes currently located within the State of Kansas, and

WHEREAS, The Sac and Fox Tribal Council has a strong governmental interest in the proper care, treatment, protection and disposition of unmarked human burial sites and remains located within the State of Kansas; and

WHEREAS, Facts surrounding the "Indian Burial Pit" indicated the need for protective legislation, such as the draft "Kansas Unmarked Burial Sites Preservation Act", and

WHEREAS, The Sac and Fox Tribe has received and reviewed the Writing Committee's draft "Kansas Unmarked Burial Sites Preservation Act" prior to its submission to the Kansas State Legislature, and

SAC & FOX TRIBE OF MISSOURI

Reserve, Kansas 66434 (913) 742-7471

SAC AND FOX TRIBE OF MISSOURI
TRIBAL COUNCIL

NOW THEREFORE BE IT RESOLVED, That the Sac and Fox Tribe of Missouri Tribal Council hereby approves the draft "Kansas Unmarked Burial Sites Preservation Act" and recommends its submittal to the Kansas State Legislature for passage at the earliest possible date.

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

The foregoing resolution was duly adopted this 25th day of January, 1989 in a Special Meeting of the Sac and Fox Tribal Council at which 5 members of the Council were present, constituting a quorum, by a vote of 4 for, 0 against, Chairperson abstaining.

Nancy E. Keller

Nancy E. Keller, Chairperson
Sac and Fox Tribe of Missouri
Tribal Council

ATTEST:

Sandra Keo

Sandra Keo, Secretary
Sac and Fox Tribe of Missouri
Tribal Council

KICKAPOO TRIBE OF KANSAS

R. R. 1 Box 157A

HORTON, KANSAS 66439

Phone: 913/486-2131

February 22, 1989
To The Honorable State Governor Hayden
To The Honorable Committe on Federal & State Affairs

Altho the Kickapoo Tribe of Kansas is not considered a recent tribe or former residents of Kansas, we have been on our current reservation since 1832, a period of 157 years, and I should also add, prior to Kansas becoming a State, we have considerable interests in the Kansas House Bill No. 2704, the Kansas Unmarked Human Burial and Skeletal Remains Protection Act. We submitted our approval and consent of the Kansas Bill by Tribal Resolution KT 89-12, and by this Testamony from an Indian Government and I as the Tribal Spokeman. History seems to repeat itself in strange ways, especially in the State of Kansas. The United States Government has continued to permit the abuse of the native people of this land. Nowhere in this world can things happen to people as they have happened to Indian people. Native Indian people were slaughtered by the US Government and their lands were taken away by force and coercion to be sold or given to the White Race and when Indian people were burried, they thought their bones would be protected by the earth. But even after death, Indians weren't allowed to remain with their Mother, the earth, instead they were dug back up and sold to Universities, to Museums, to State Historical Societies, or given to the US Government for their use to sell or to make a profit for some other federal agency as the National Park Service, as the Indian Burial Pit in Saline, Kansas. The Department of Interior, a major federal agency/branch of the federal government, has since the primary responsibility for Indian Burial sites as sited in the Code of Federal Regulations, 43 PUBLIC LANDS: Interior, in which the Archaeological Resources Protection Act of 1979, was designed

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 10
February 22, 1989

KICKAPOO TRIBE OF KANSAS

R. R. 1 Box 157A

HORTON, KANSAS 66439

Phone: 913/486-2131

for the protection of Indian burial sites on public lands and Indian Reservations were under the authority of the Department of Interior but this has not happened and the Indian Tribes must look toward other resources for support. We are doing this today by coming forth to the State of Kansas for the support of Kansas House Bill No. 2704. We support this Bill and the state passage of Bill No. 2704 for the protection of burial sites in the state of Kansas which affect Indian people of the State of Kansas.

Fred Thomas

RESPECTFULLY,

Mr. Fred Thomas, Chairman
KICKAPOO TRIBE OF KANSAS

Resolution No. KT89-12

R E S O L U T I O N

WHEREAS, the Kickapoo Tribe of the Kickapoo Reservation in Kansas is organized with the provision of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), and

WHEREAS, the Kickapoo Tribal Council is empowered pursuant to the Tribal Constitution and By-Laws to act on matters benefitting the Tribe, and

WHEREAS, the Kickapoo Tribal Council met in a special session on January 13, 1989 at the Kickapoo Tribal Office, and

WHEREAS, the Kickapoo Reservation is one of four federally recognized Indian reservations located within the State of Kansas, and

WHEREAS, the Kickapoo Tribal Council has a strong governmental interest in the proper care, treatment, protection and disposition of unmarked human burial sites and remains located within the State of Kansas; and

WHEREAS, facts surrounding the "Indian Burial Pit" indicated the need for protective legislation, such as the draft "Kansas Unmarked Burial Sites Preservation Act", and

WHEREAS, the Kickapoo Tribe in Kansas has received and reviewed the Writing Committee's draft "Kansas Unmarked Burial Sites Preservation Act" and recommends its submittal to the Kansas State Legislature, and

NOW, THEREFORE BE IT RESOLVED, that the Kickapoo Tribe in Kansas Tribal Council hereby approves the draft "Kansas Unmarked Burial Sites Preservation Act" and recommends its submittal to the Kansas State Legislature for passage at the earliest possible date.

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

The foregoing resolution was duly adopted by the Kickapoo Tribal Council in a meeting held this 13th day of January 1989 at which 6 members of the Tribal Council were present, constituting a quorum, by a vote of 5 for, 0 against, and 0 abstaining, with the Chairman not voting.

Fred Thomas

Fred Thomas, Chairman
Kickapoo Tribal Council

ATTEST:

Keith Keo

Keith Keo, Treasurer
Kickapoo Tribal Council

SALINE COUNTY

Board Meetings — Monday, Tuesday, Wednesday
Meeting Room 209 — Office Room 211 — 300 W. Ash
Salina, Kansas 67401-2396
Phone (913) 827-1961
Phone (913) 823-3746

COMMISSIONERS:
Pennington Geis
First District

Roy W. Allen
Second District

Dennis E. Carlson
Third District

TESTIMONY BEFORE THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS:
THE HONORABLE GINGER BARR, CHAIRMAN

February 22, 1989

The Indian Burial Pit in Salina has long been recognized as an important site in Kansas. For many years the State Legislature has grappled with an appropriate way to deal with this symbol of history of the land on which we live. In the past our commonly held values for the rights of private property and free enterprise, for respect for our heritage, and the dignity of a cemetery have competed to stymie efforts to deal with this site appropriately. It is, therefore, with pleasure that I join with you in seeing what appears to be a solution to the problem. A solution which will satisfy all the competing interests.

I would like to complement the Pawnee, Arikara and Wichita tribes and their council chairman as well as their attorneys and lobbyist for the positive and determined manner in which they have worked to resolve their concerns in this issue. The Price family also can be complemented for their efforts to see that this important site receives its due attention from the state and their willingness when approached, to join with the descendent peoples to find a solution acceptable to all. All of the Saline County Legislators have been involved in resolving this issue. In particular I'd like to thank Representative Aylward for her efforts over several years. The Attorney General's office, the State Archeologist, the State Historical Society, the Salina Area Chamber of Commerce, have all played a part in crafting a solution which meets the needs of the general public as well as all of the individual parties involved.

The bill before you, HB 2144, is an important part of the total solution of this problem. Respect for the buried remains of people who have lived before us is a value not only of the Pawnee, Arikara and Wichita but a value commonly held across Kansas. The people of Salina for example, would be outraged if our other cemeteries were left uncovered. I understand that there is other related legislation which addresses the funding necessary to accomplish the re-burial. We are also in favor of that legislation. It is an important part of the total solution.

We believe there is wide-spread support in the Salina-Saline County community for the passage of both HB 2144 and the related funding measures. We urge your adoption of both. Thank you.

Pennington Geis, Chairman

Dennis E. Carlson, Member

Roy W. Allen, Member

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 11
February 22, 1989

STATE OF KANSAS

JIM RUSSELL
REPRESENTATIVE, SEVENTH DISTRICT
704 SPRUCE
COFFEYVILLE, KANSAS 67337
(316) 251-1615

TOPEKA

COMMITTEE ASSIGNMENTS
MEMBER COMMERCIAL AND FINANCIAL INSTITUTIONS
ELECTIONS
TRANSPORTATION

HOUSE OF
REPRESENTATIVES

February 22, 1989

TO: House Federal and State Affairs Committee

SUBJECT: H.B. 2144

Madam Chair...members of the House Federal and State Affairs Committee. Thank you for the opportunity to appear before you today in support of H.B. 2144.

You are dealing with an issue that is quite sacred to the heart and spirit of all Native Americans. I commend you, Mr. Ramon Powers, of the Kansas State Historical Society, and Mr. Walter Echo-Hawk of the Native American Rights Fund for H.B. 2144...for providing a solution to a very sensitive and unnecessary problem.

Mankind has always buried its dead with reverence, religion and respect. H.B. 2144 will eliminate the emotional trauma and spiritual distress that has plagued the Indian culture for too long.

I urge your support for H.B. 2144. And again, I commend you for your efforts and sensitivity to this issue.

Thank you,

Jim Russell
Representative
Seventh District

JR:hlh

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 12
February 22, 1989

February 22, 1989

HOUSE BILL 2144

TESTIMONY BEFORE THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

My name is Shelly Wakeman. I am a law student at Washburn University. I represent the ACLU of Kansas and I am here to express our support for House Bill 2144, which concerns the Kansas unmarked burial sites preservation act. The ACLU is the only nationally recognized organization whose sole purpose is the defense of our constitutional liberties of freedom of inquiry and expression, due process of law, equal protection of the laws, privacy and most importantly, in relation to this bill, free exercise of religion.

The primary basis of our support for this legislation is centered around the First Amendment Religion Clauses, which state:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;

The First Amendment distinguishes the Establishment of Religion and Free Exercise Clauses by recognizing the difference between state action which aids in the establishment of religion and that which PROTECTS a minority religion. The Free Exercise Clause applies to all religions. The Supreme Court has defined religious belief as an individual's belief in relation to a Superior Being. A Native American's religion is one such religion. The Native American religion has historically been treated unfairly and with disrespect by the majority.

HOUSE FEDERAL AND STATE AFFAIRS
Attachment No. 13
February 22, 1989

There are two ways to handle situations where unfairness has occurred. The first is that we promise to no longer continue the unfair practice and that we will be dilligent in the future. The other way, which is even better, is that we assist those unfairly treated in the past by affirmatively helping them rectify the effects of the past unfairness along with the promise to not be unfair in the future.

This bill does both. First, it contains provisions to correct the past unfairness toward the American Indian concerning disrespect for their religious ways, and second, encourages and respects their free exercise of religion in the future by providing for adequate protection for unmarked burial sites as provided for in the bill.

Thank you for the opportunity to present our views.

Wichita And Affiliated Tribes

P.O. Box 729
Anadarko, OK 73005
405/247-2425

Vernon Haddon

TESTIMONY OF VERNON HADDON
ON BEHALF OF THE WICHITA & AFFILIATED TRIBES
BEFORE THE FEDERAL-STATE RELATIONS
COMMITTEE IN SUPPORT OF H.B. 2144,
"KANSAS UNMARKED BURIAL SITES PRESERVATION ACT,"

Good afternoon, Chairperson Barr and members of the Committee, my name is Vernon Haddon. I am the President of the Wichita and Affiliated Tribes Executive Committee, which is the governing body for the Wichita and Affiliated Tribes of Oklahoma. I am pleased to offer testimony on behalf of the Wichita and Affiliated Tribes in support of H.B. 2144. Attached to my testimony is our Wichita and Affiliated Tribes Executive Committee resolution in support of H.B. 2144.

BACKGROUND OF THE WICHITA TRIBE

The Wichita Tribe is one of the aboriginal inhabitant tribes of Kansas. Our people greeted the first Europeans to come to Kansas. We met Coronado on the banks of the Arkansas River during his search for the "Seven Cities of Gold". The Wichita Tribe lived and hunted in what is today known as central, western, and southern Kansas. The Wichita Tribe maintains close ties with Kansas, as is demonstrated by student attendance at Haskell Junior College in Lawrence, Kansas, and by the naming of the town of Wichita after the area's original inhabitants.

INTEREST IN H.B. 2144

We support H.B. 2144, because Wichita Indians are buried in unmarked burial grounds that are scattered throughout our Kansas homeland. Sicne we have been removed to Oklahoma, the Tribe no longer has the ability to protect unmarked Wichita burials from desecration. We must now look to the State of Kansas, as the successor government, to protect our dead in a responsible and humane manner.

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 14
February 22, 1989

The Wichita Tribe and its people have been hurt by grave desecration in Kansas. The source of this anguish is the "Indian Burial Pit" tourist attraction, where 146 dead bodies are presently displayed. Our people, along with our relative tribes, the Pawnee and the Arikara, are the nearest living next of kin to those 146 dead people. Much time and money has been spent by the Wichita Tribe in trying to rebury those 146 people. The only "bright spot" in this deplorable situation has been the moral support and efforts of the local Salina community. The community appears to be in full support of a decent burial of these 146 Indians. This is the only normal, moral thing to do- rebury exposed dead bodies. If legislation such as H.B. 2144 had been in place, all persons involved could have relied on those guidelines to resolve the problem in a speedy and dignified manner. House bill 2144 will prevent future difficulties such as those involved with the Salina Indian Burial Pit.

All living human beings, regarless of race, should be fully protected when it comes to a matter as sensitive as the reburial of dead kinfolk and the protection of their graves. On behalf of my Tribe, myself, and all living person, I beseech you to act favorably upon H.B. 2144, so that all Tribes with ties to Kansas, both living and dead, can be treated with dignity.

Thank you.

Respectfully submitted,

Vernon Haddon, President
Wichita & Affiliated Tribes Executive Committee

R E S O L U T I O N

WT 89-14

WHEREAS, The Wichita & Affiliated Tribes (Waco, Keechi and Tawakonie) have a duly established Tribal Government recognized by the Secretary of Interior, and

WHEREAS, The Executive Committee has been empowered to act in all manner of business on behalf of the Tribe, and

WHEREAS, The members of the Wichita & Affiliated Tribes are descendents of aboriginal inhabitants of the geographic area now commonly known as the State of Kansas, and

WHEREAS, Ancestors of the members of the Wichita & Affiliated Tribes are currently buried in the geographic area now commonly known as the State of Kansas, and

WHEREAS, The Wichita Executive Committee has a strong governmental interest in the proper care, treatment, protection and disposition of unmarked human burial sites and remains located within the State of Kansas; and

WHEREAS, Facts surrounding the "Indian Burial Pit" indicated the need for protective legislation, such as the proposed KANSAS UNMARKED BURIAL SITES PRESERVATION ACT, and

WHEREAS, The Wichita Executive Committee has carefully examined the provisions of the attached KANSAS UNMARKED BURIAL SITES PRESERVATION ACT, and has caused a review of its provisions by legal counsel.

NOW THEREFORE BE IT RESOLVED: That the Wichita Executive Committee approves and endorses the Bill (KANSAS UNMARKED BURIAL SITES PRESERVATION ACT), and recommends and urges its introduction and passage by the Kansas Legislature.

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

The foregoing Resolution was adopted at a meeting of the Wichita Executive Committee on January 6, 1989, in Anadarko, Oklahoma, by the following vote: 5 FOR, 0 AGAINST, 0 ABSTENTIONS, with a quorum being present.

ATTEST:

Secretary
Wichita & Affiliated Tribes

APPROVED:

Vernon Haddon, President
Wichita & Affiliated Tribes

Pawnee Tribe of Oklahoma

P. O. Box 470
Pawnee, Oklahoma 74058
918/762-3624

TESTIMONY OF LAWRENCE GOODFOX
ON BEHALF OF THE PAWNEE TRIBE OF OKLAHOMA
BEFORE THE FEDERAL-STATE RELATIONS
COMMITTEE IN SUPPORT OF H.B. 2144
"KANSAS UNMARKED BURIAL SITES PRESERVATION ACT."

Good afternoon, Chairperson Barr and members of the Committee. My name is Lawrence Goodfox. I am the President of the Pawnee Business Council, which is the governing body for the Pawnee Tribe of Oklahoma. I am pleased to offer testimony on behalf of the Pawnee Tribe in support of H.B. 2144. Attached to the written transcript of my testimony is our Pawnee Tribal Government resolution in support of H.B. 2144.

BACKGROUND OF THE PAWNEE TRIBE

I would like to first give you a little background of the Pawnee Tribe, so that you may understand our interest in H.B. 2144. The Pawnee Indians and their four Confederated Bands are the aboriginal inhabitants of present-day Kansas. Our ancestors resided in earthlodge villages along the rivers and streams of this state from time immemorial until the Pawnee Tribe ceded its Kansas homeland to the United States Government in the Treaty of 1833 (7 Stat.488). The purpose of that 1833 Treaty was to make lands available for the relocation to Kansas of the present-day Indian Tribes of Kansas. The Pawnees were removed under the Treaty to a reservation north of the Platte River in Nebraska. The Pawnee Tribe was later moved again from its Nebraska reservation by the federal government to Oklahoma in the 1870's.

Today, the Pawnee Nation resides on an Indian Reservation located in Pawnee County, Oklahoma. There are 2,395 enrolled tribal members. The Pawnee Government has jurisdiction over Reservation lands and individual trust allotments. It administers many govenrment services, including tribal cemeteries maintenance, law enforcement, education, health, housing, and welfare for tribal members.

HOUSE FEDERAL & STATE AFFAIRS
Attachment No. 15
February 22, 1989

Contemporary Pawnees enjoy a rich religious and ceremonial life, which includes ancient tribal ceremonies carried down from our Kansas and Nebraska forefathers as the Young Dog Dance, the Kitkihaki Aruska Dance, and the Kus-Ca-Ha-To. Newer religious observances, such as those of the Native American Church and various Christian religions are also practiced within the Tribe. Numerous tribal cultural organizations sponsor traditional activities throughout the Pawnee Ceremonial year, such as handgames, dances, feasts and other activities. Traditional Pawnee burial rites and ceremonial funeral feasts are followed upon death, under the supervision of ceremonial leaders, of which I am one. Though certain aspects of the ancient Pawnee religion have naturally changed over time, our people strive to maintain our traditions as we survive in an ever-changing world.

Today, the Pawnee People maintain close ties with the State of Kansas, as exemplified by the recent gift of the sacred Pawnee medicine bundle to the Kansas State Historical Society; and by the Pawnee Indian students who attend Haskell Indian Junior College at Lawrence Kansas.

PAWNEE TRIBAL INTERESTS IN H.B. 2144

I would now like to tell you why we support H.B. 2144. The Pawnee Indians are an ancient people with burial grounds scattered throughout our Kansas and Nebraska homeland. However, our Tribal Government does not have jurisdiction over these areas, and is therefor unable to extend governmental protection for unmarked Pawnee graves and deceased tribal ancestors. As a result of the unprotected status of Pawnee graves, private parties, "pot hunters", amateur and professional archaeologists have dug up Pawnee Indian burials through out the years and mistreated Pawnee dead bodies as if they are nothing more than "property" to be bought or sold. Sadly, we have experiences very severe problems. For example, in the State of Nebraska we have recently learned that at least 300 dead Pawnee Indian bodies have been removed from village cemeteries. The Pawnee Government has been forced to seek corrective

legislation in Nebraska.

In Kansas, the Pawnee Tribe has experienced extreme emotional and spiritual distress, caused by the unregulated grave desecration and display of 146 diead bodies at the "Indian Burial Pit" tourist attraction. Our people are the nearest living next of kin to those 146 dead people. The "Indian Burial Pit" display of those deceased persons has hurt living Pawnee Indians, as you can imagine. This hurt and anguish is real. In addition to the emotional hardship, a great expense in money and manpower has been spent by the Tribe to date in trying to resolve that deplorable situation, We are grateful for the local Salina community, which appears to be in full support of a decent burial of these 146 Indians. Nonetheless, it must be stated for the record that an inordinate amount of time that has been spent by tribal, state and local government officials to solve this vexing problem. If legislation such as H.B. 2144 had been in place, all persons involved could have relied on those guidelines to resolve the problem in a speedy and dignified manner rather than attempt to "remake the wheel" as we have been forced to do. House Bill 2144 will prevent future difficulties such as those involved with the "Indian Burial Pit".

Several states have responded in recent years to society's change in attitude regarding the proper treatment of deceased American Indians by enacting legislation to protect unmarked burials. These states have come to realize that Indian people are no different from others in their feelings for their dead, and their respect for the final resting place. Hopefully, Kansas will join the ranks of those states by enacting House Bill 2144 to afford ordinary protections for Indian burials.

No one, whether Red, White, or Black, should ever have to be subjected to the torment, anguish and expense that our Tribe has endured in a matter as sensitive as reburial of so many desecrated dead kinfolks. I urge you to act favorable upon H.B. 2144, so that our Pawnees, both living and dead, can be treated with dignity and

never again suffer the torment and pain of seeing our ancestors' graves go desecrated and unprotected in our Kansas homeland.

Thank you.

Respectfully Submitted.

Lawrence Goodfox, Jr.,
President,
Pawnee Business Council

Pawnee Tribe of Oklahoma

P. O. Box 470
Pawnee, Oklahoma 74058
918/762-3624

RESOLUTION NO. 89-02
January 19, 1988

R E S O L U T I O N

WHEREAS, The Pawnee Business Council is the supreme governing body of the Pawnee Tribe and is authorized to conduct business on behalf of the Pawnee Tribe in accordance with Article IV, Sections I and II of the Pawnee Tribal Constitution and By-Laws; and

WHEREAS, The Pawnee Business Council met in special session on January 19, 1989, at the Tribal Administration Center Conference Room duly authorized with a quorum present; and

WHEREAS, The Pawnee Indian Tribe of Oklahoma is a federally recognized Indian tribe with an enrollment of 2,395 members, which carries our self-government activities; and

WHEREAS, The members of the Pawnee Indian Tribe of Oklahoma are descendents of aboriginal inhabitants of the geographic area now commonly known as the State of Kansas; and

WHEREAS, The members of the Pawnee Indian Tribe of Oklahoma have numerous ancestors currently buried in the geographic area now commonly known as the State of Kansas; and

WHEREAS, The Pawnee Business Council is vitally interested in the proper care, treatment protection and disposition of unmarked human burial sites and remains located within the State of Kansas; and

WHEREAS, The Pawnee Business Council has duly informed itself of the need for protective unmarked burial legislation in Kansas, having sent Council members to inspect the "Indian Burial Pit" located near Salina, Kansas, and to other fact-finding trips including symposia and meetings on the subject; and

WHEREAS, The Pawnee Business Council has participated in the efforts of the "writing committee" to explore legislative protection of unmarked burial sites and remains in the State of Kansas; and

WHEREAS, The Pawnee Business Council strongly supports a clear public policy giving adequate protection for unmarked human burials in order to prevent American Indian grave desecrations and to protect all legitimate interests in the remains of Native Americans; and

WHEREAS, The Pawnee Business Council has carefully examined the provisions of the attached bill (Kansas Unmarked Burial Sites Preservation Act), and has caused a review of its provisions by legal counsel.

NOW THEREFORE BE IT RESOLVED that the Pawnee Business Council approves and endorses the Bill (Kansas Unmarked Burial Sites Preservation Act), and recommends and urges its introduction and passage by the Kansas Legislature.

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

I, Lawrence Goodfox, Jr., President of the Pawnee Business Council, do hereby certify that a special session of the Pawnee Business Council was held on the 19th day of January, 1989, and that the Pawnee Business Council is composed of eight (8) members, of whom 5 were present, 3 were absent, comprising a quorum, and that the foregoing resolution was duly adopted by the affirmative vote of 5 for, 0 against, and 0 abstaining and that said resolution has not been amended or rescinded.

Signed this 19th day of January.

ATTEST:

Cecil Rouwalk
Cecil Rouwalk, Secretary-Treasurer
Pawnee Business Council

Lawrence Goodfox
Lawrence Goodfox, Jr., President
Pawnee Business Council

House Bill No. 2144

Testimony of Chester L. Ellis Jr., From
The Three Affiliated Tribes [Mandan,
Hidatsa, and Arikara Indians] Fort Berthold
Indian Reservation, New Town, North Dakota

Good afternoon, Chairperson Barr and members of the Committee. My name is Chet Ellis. I am employed at the Heart of America Indian Center, Inc. in Kansas City. I am an Arikara Indian who has been asked by the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, to offer testimony today in support of House Bill No. 2144. The Three Affiliated Tribes are legally represented by the Native American Rights Fund and my testimony will supplement that of Ed Bristow of the Native American Rights Fund on behalf of the Three Affiliated Tribes.

BACKGROUND OF THE ARIKARA INDIANS AND THE THREE AFFILIATED TRIBES

The Fort Berthold Reservation is inhabited by three tribes of Indians with diverse histories that are now known as the Three Affiliated Tribes. These are the: Mandans, Hidatsas, and the Arikara. My testimony will focus on the Arikara Indians not only because I am a member of that Tribe but also because the Arikara Indians are aboriginal inhabitants of present day Kansas, along with their close relation --to the Pawnee and Wichita Indians - and have numerous unmarked burials located within this state of Kansas.

The Arikara Indians are linquistically and culturally of Northern Caddoan stock, which means that they are closely

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related to the Pawnee Indians and the Wichita Indians. The Arikaras in fact were once an actual part or branch of the Skidi Pawnee Indians. Indeed, the word "Arikara" is a Skidi Pawnee word that means "horns" and derives from our traditional custom of wearing our hair in horn design. The Arikara Indians eventually separated from our Pawnee relatives sometime between 1400 and 1650 A.D. after we had slowly migrated northward from Kansas to the Loup River Country of Nebraska. The slow northward migration of the Arikara Indians continued along the Missouri River as the Tribe was harassed by marauding Sioux. French traders encountered Arikara villages in South Dakota in 1770, as did the American explorers, Lewis and Clark, in 1804. By the early or mid 1800's, the Arikaras joined the Mandan and Hidatsa Indians on the Missouri River in the vicinity of our present Reservation where the Arikara people have lived continuously --except for a very brief period in the 1800's when the Arikaras rejoined their Pawnee relations temporarily--up until the present.

INTEREST OF THE ARIKARA PEOPLE AND THE THREE TRIBES IN HOUSE BILL NO. 2144

The Arikara people, along with their Pawnee tribesman, have numerous unmarked burials located in Kansas predating the 15th or early 16th Century when the two people lived as one. Although there is great diversity in the religious traditions of different Tribes in North America, there is a generally held belief amount the North Caddoans and other

plains Indians that when an individual dies and the remains of that individual are given proper ceremonial treatment for burial, then the remains of that person and any objects placed with the interred remains become sacred and are intended to be left undisturbed by human activity forever. The Arikara people are deeply hurt and offended when the graves of our people go unprotected by the laws of the white men. Desecration of Indian graves and display of tribal skeletal remains burdens the religious beliefs and practices of the Arikara Indians as well. According to our beliefs, mistreatment of the dead by disturbance, desecration, and display destroys the spiritual balance of life and nature--as well as the spiritual well-being of the decedent that has been disturbed. These beliefs and practices are protected by the First Amendment and deserve to be specifically protected by Kansas statutes, such as House Bill No. 2144.

For the above reasons, and because of recent problems we have encountered in Kansas concerning the "Indian Burial Pit" display of our relatives, the Arikara people, acting through their tribal government--the Three Affiliated Tribes, fully support the House Bill No. 2144. I am attaching the Three Affiliated Tribes' resolution in support of the Bill to my testimony. I hope that the government of the State of Kansas will act to protect the burials of all American Indian Tribes, past and present, located in this State and not allow them to be unnecessarily disturbed.

Respectfully submitted,
Chester L. Ellis Jr.

Resolution #87-36-TA

RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, The Three Affiliated Tribes, through the Tribal Business Council Cultural Concerns Committee, had been informed during 1986 by members of the various Tribes residing in the State of Kansas that possible desecration/commercial exploitation of Indian remains had been taking place; and

WHEREAS, primary concern centered around the exhibit of remains at the private site known as the "Salina Burial Pit", closing this site, and the prevention of similar, future occurrences; and

WHEREAS, the Committee participated in research in this matter because of the historical residence of the Arikara Tribe in and around the State of Kansas; and

WHEREAS, Members of the Committee and Westly Plenty Chief-Arikara Tribe traveled to inspect the site and provide input into discussion being held by the members of six Kansas Tribes, University of Kansas Officials, State of Kansas Officials, archaeologists & anthropologists, Native American Rights Fund Officials, and Haskell Indian Junior College representatives; and

WHEREAS, due to the numerous meetings scheduled and the distance/travel facts involved, the Cultural Concerns Committee designated Mr. Chester Ellis (Arikara Tribal member residing in the area) as their Official Representative who would participate in the meetings and provide reports to the Three Affiliated Tribes on the "Writing Committee's" efforts to develop corrective legislation; and

WHEREAS, Mr. Ellis has transmitted the Writing Committee's "Draft Kansas Unmarked Human Burial and Skeletal Remains Protection Act and Objectives" for review and comment prior to its submission to the Kansas State Legislature; and

WHEREAS, The Cultural Concerns Committee has reviewed the Draft Act and Objectives; and

WHEREAS, It has been noted that the Act should be effective in closing the "Salina Burial Pit" commercial operation and in preventing future desecrations through a number of key elements in its language such as:

- o Membership on the proposed "Unmarked Burial Sites Preservation Board" of four Tribal representatives of the resident Kansas Indian Tribes
- o State funding of implementation of the Act
- o Kansas Attorney General enforcement of prohibitions set forth under the Act
- o Penalties of up to $5000 for violators and a fine for commercial operators of up to 2 times the gross value gained
- o A limitation upon the time which remains may be kept by the scientific community for study
- o Consultation on the appropriate means of reinterment
- o Development and maintenance of a Registry of unmarked burial sites to aid in enforcement of the Act

THEREFORE BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes hereby approves the "Draft Kansas Unmarked Human Burial and Skeletal Remains Protection Act and Objectives" and recommends its submittal to the Kansas State Legislature for passage at the earliest possible date.

FURTHER RESOLVED, that the Tribal Business Council wishes to commend and thank Tribal Member Chester Ellis for his contribution in the development of the Draft Act and his exemplary representation of the interests of the Three Affiliated Tribes.

FURTHER RESOLVED, that the Tribal Business Council also wishes to extend its gratitude to the Members of the "Writing Committee", contributors to the Committee, State and University officials, and any supporting organizations.

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

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 5 were present at a Special Meeting thereof duly called, noticed, convened, and held on the 1st day of May, 1987; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 5 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated the 1st day of May, 1987.

Secretary, Tribal Business Council

ATTEST:

Edward Lone Fight

Chairman, Tribal Business Council

TESTIMONY OF LEON CAMPBELL
ON BEHALF OF
THE IOWA TRIBE OF KANSAS AND NEBRASKA
AND BEFORE
THE FEDERAL - STATE RELATIONS COMMISSION
IN SUPPORT OF H.B. 2144

Dear Commission Members:

I Leon Campbell, Chairman of the Iowa Tribe of Kansas and Nebraska, hereby submit this testimony in Support of H.B. 2144.

We are a Federally recognized Indian Tribe located on a Reservation located in Brown County, Kansas. Please find a copy of our Constitution and by-laws attached.

The Iowa Tribe of Kansas and Nebraska is particularly interested in the passage of this bill because we have burial sites and mounds located on and near our Reservation.

We also have encountered the problem of people and agencies disturbing these burial sites on our Reservation.

Our ancestors chose these sites to bury their people they loved. These sites were very much sacred to them, as was the memories of their people.

We believe the digging up of the remains of a human and the grave robbing should not be allowed, whether it be for historical purposes or other reasons.

Those sites were sacred to our people and remain to be to this day.

In most cases, the people that are robbing these burial sites are only interested in the trinkets and belongings that were buried with the bodies.

I believe that this is the most disgraceful act that could ever be committed against another human being. I believe that these type of crimes must be stopped.

It is unlawful to enter a Non-Indian Cemetary and dig up remains of human bodies. I ask you, what is the difference between a Indian burial site and a Non-Indian burial site? THERE IS NONE!

There is history buried in every burial site, whether it be Indian or Non-Indian, and I certainly believe that once a human body is buried, regardless of race, creed, or color deserves the respect to be left alone.

I would like to refer to the Salina burial pit. This is the most disgraceful act that ever could be committed against any race of people. I hope that nothing such as the Salina burial pit would ever take place on the Iowa Reservation.

It is for reasons such as the Salina Burial Pit and for other reasons that I have mentioned that this bill needs to be passed.

These unmarked Tribal graves need protection from grave robbers looking for trinkets or for any other reasons.

It is highly important to the Iowa Tribe and the other Tribes that H.B. 2144 be passed.

As Chairman of the Iowa Tribe of Kansas and Nebraska I thank you for your time and consideration.

Respectfully,

Leon Campbell

Leon Campbell, Chairman
Iowa Tribe of Kansas and Nebraska

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IOWA TRIBE OF KANSAS AND NEBRASKA
EXECUTIVE COMMITTEE
FEBRUARY 15, 1989

WHEREAS, The Iowa Tribe Executive Committee being duly organized met in Regular Session this 15th day of February, 1989, and

WHEREAS, The Iowa Executive Committee has authority to act for the Iowa Tribe under the present constitutional authority as provided in Sec. 2, Article IV - Governing Bodies, and

WHEREAS, The Iowa Tribe of Kansas and Nebraska being organized and empowered by their Constitution and Bylaws (approved November 6, 1978), and

WHEREAS, The Iowa Tribe of Kansas and Nebraska Reservation is located in Brown County and Doniphan County in Kansas, and

WHEREAS, The Iowa Tribe is concerned that all precautions be taken by our legislative representatives to protect the unmarked burial sites of American Indians, and

WHEREAS, Let it be known that the Iowa Tribe of Kansas and Nebraska does support the passage of bill H.B. 2144, and

NOW THEREFORE BE IT RESOLVED, That the foregoing Resolution is adopted by the Iowa Tribe of Kansas and Nebraska.

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

The foregoing Resolution was duly adopted this date, February 15, 1989 in a Regular Session of the Executive Committee at which 5 members of the Committee were present, constituting a quorum by a vote of 4 for, 0 against. Chairman abstaining.

Leon Campbell

Leon Campbell, Chairman
Iowa Executive Committee

ATTEST

Aquila Tilton

Aquila Tilton, Secretary
Iowa Executive Committee

CONSTITUTION AND BY-LAWS

OF THE

IOWA TRIBE OF KANSAS & NEBRASKA

(As amended August 27, 1980)

CONSTITUTION AND BYLAWS OF IOWA TRIBE OF KANSAS AND NEBRASKA
(as amended August 27, 1980)

PREAMBLE

We, the members of the Iowa Tribe of Kansas and Nebraska, initially organized under a constitution and bylaws approved February 26, 1937, pursuant to the Indian Reorganization Act (IRA) of June 18, 1934 (48 Stat. 984), do hereby establish this constitution and bylaws under the authority of the IRA in order to form a more functional government, develop our tribal resources and promote the economic and social welfare of ourselves and our descendants.

ARTICLE I - TERRITORY

The jurisdiction of the Iowa Tribe shall extend to the territory within the confines of the Iowa Reservation as defined in the Treaty of March 6, 1861, and to such other lands as may be hereafter added thereto.

ARTICLE II - MEMBERSHIP

Section 1. The membership of the Iowa Tribe of Kansas and Nebraska shall consist of the following:

a. All persons of Indian blood whose names appear on the official census roll of the tribe as of January 1, 1937; provided that the roll may be corrected at any time by the General Council, subject to the approval of the Secretary of the Interior.

b. All lineal descendants of persons enrolled under Section 1 (a), one of whose parents is an enrolled member of the tribe and; provided such descendant possesses Iowa of Kansas and Nebraska Indian blood.

Section 2. Persons who are enrolled as members of another Indian tribe shall not be eligible for enrollment with the Iowa Tribe of Kansas and Nebraska if they have, by virtue of enrollment as members of another Indian tribe, shared in assets of that tribe, including land or monetary benefits. Persons who are enrolled as members of another Indian tribe and have not shared in tribal assets as specified above, shall be eligible for membership with the Iowa Tribe of Kansas and Nebraska if they file a formal relinquishment of membership in the other tribe.

Section 3. The Executive Committee shall serve as the enrollment committee and shall approve membership with the Iowa Tribe of Kansas and Nebraska, subject to the approval of the Secretary of the Interior; and shall have the authority to enact resolutions consistent with Article II of this constitution and to establish enrollment procedures.

Section 4. Honorary tribal membership may be bestowed by the Executive Committee of the Iowa Tribe of Kansas and Nebraska. This honorary membership will entitle the individual to the title of "honorary tribal member" only, and does not qualify any such honorary member for tribal benefits, assets, or the right to vote as a member.

ARTICLE III - BILL OF RIGHTS

Section 1. All members of the tribe shall enjoy without hindrance, freedom of worship, conscience, speech, press, assembly and association.

Section 2. This constitution and bylaws shall not in any way alter, abridge, or otherwise jeopardize the rights and privileges of the members of the tribe as citizens of the States of Kansas and Nebraska, or the United States.

Section 3. The individual property rights of any member of the Iowa Tribe of Kansas and Nebraska shall not be altered, abridged, or otherwise affected by the provisions of this constitution and bylaws.

Section 4. Tribal members shall have the right to review all tribal records, including financial records, at any reasonable time in accordance with procedures established by the Executive Committee.

Section 5. In accordance with Title II of the Indian Civil Rights Act of 1968 (82 Stat. 77), the Iowa Tribe of Kansas and Nebraska in exercising its powers of self-government shall not:

a. Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

b. Violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particulary describing the place to be searched and the person or thing to be seized;

c. Subject any person for the same office to be twice put in jeopardy;

d. Compel any person in any criminal case to be a witness against himself;

e. Take any private property for a public use without just compensation;

f. Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

g. Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishments greater that imprisonment for a term of six (6) months or a fine of $500 or both;

h. Deny to any persons within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of laws;

i. Pass any bill of attainder or ex post facto law; or

j. Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

ARTICLE IV - GOVERNING BODIES

Section 1. The General Council, composed of all enrolled members who are at least eighteen (18) years of age, shall exercise those governing authorities specifically set out for its use in this constitution and bylaws, subject to any limitation imposed by the laws or Constitution of the United States.

Section 2. The Executive Committee, composed of five (5) members elected at large from the General Council for three-year terms of office, shall exercise those authorities delegated to it by this constitution and bylaws. The General Council shall elect, by secret ballot, a Chairman, Vice-Chairman, Secretary, Treasurer, and Member.

ARTICLE V - POWERS

Section 1. Enumerated Powers. The Executive Committee of the Iowa Tribe of Kansas and Nebraska shall exercise the following powers, subject to any limitations imposed by the laws or the Constitution of the United States:

a. To negotiate with Federal, State, and local governments and conclude contracts, grants, or other agreements including participation in the Farmers Home Administration Loan Program (84 Stat. 120);

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 advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Iowa Tribe of Kansas and Nebraska prior to the submission of such estimates to the Office of Management and Budget and to Congress;

d. To lease tribal land in accordance with the law;

e. To prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe;

f. To regulate the conduct of the Executive Committee itself and of tribal meetings;

g. To establish subordinate organizations for economic or social welfare 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;

h. To maintain law and order, and establish a tribal judicial system through enactment of codes and ordinances subject to the approval of the Assistant Secretary--Indian Affairs;

i. To exercise any other authority in which the tribe is empowered to act now or in the future, except as otherwise provided in this constitution.

Section 2. Reserved Powers. Any rights and powers not expressly referred to in this constitution shall not be abridged by this article, but shall remain with the tribe in the General Council and may be exercised through the adoption of appropriate constitutional amendments.

Section 3. Manner of Approval. Any ordinance or resolution which by the terms of this constitution, or as required by law, is subject to approval by the Secretary of the Interior, shall be submitted to the Superintendent who shall promptly arrange for the appropriate official to either approve or disapprove such tribal enactment. It shall beome effective only upon approval by the Secretary or his authorized representative.

Section 4. Tribal Delegations.

a. When it is necessary for a delegation to represent the Iowa Tribe of Kansas and Nebraska, the delegates are to be chosen by the Executive Committee. The number of delegation trips shall be held to a minimum as requirements dictate.

b. When a delegation is authorized to meet with government officials by authority of the Executive Committee, said delegation shall provide a full report of its findings to the Executive Committee at its next regular meeting.

ARTICLE VI - REMOVAL, RECALL, REFERENDUM AND FILLING VACANCIES

Section 1. Removal. Any member of the Executive Committee or other official of the Iowa Tribe of Kansas and Nebraska, who during the term for which he is elected or appointed, is convicted of a felony, shall automatically forfeit his office, effective on the date of his initial conviction in court. Any such official found guilty in any court, or by the Executive Committee, of behavior involving misconduct reflecting on the dignity and integrity of the tribal government, malfeasance in office, or gross neglect of duty, may be removed from office if at least four (4) members of the Executive Committee vote in favor of such removal. Voting must be by secret ballot and the Chairman is entitled to vote. If the accused is a member of the Executive Committee, the accused shall have the right to cast a secret ballot. Before any vote for removal from office is taken, such member or officer shall be given a written statement of the charges against him at least ten (10) days before the meeting of the Executive Committee at which he is to appear, and he shall be given an opportunity to answer any and all charges at the designated Executive Committee meeting. The decision of the Executive Committee shall be final, and such Executive Committee member or official shall not be returned to office unless duly elected by the General Council. No member of the Executive Committee shall preside over the meeting at which his removal is being considered.

Section 2. Recall. Upon receipt of a petition signed by at least seventy-five percent (75%) of the number of voters who signed the register at the preceding election, it shall be the duty of the Chairman to call and conduct within thirty (30) days, a special meeting of the General Council to consider the recall of a member of the Executive Committee. Such meeting is subject to quorum provisions. Only one (1) member of the Committee shall be considered for recall at any given recall meeting. Once an individual is subjected to recall proceedings, he shall not again be considered for such action during the balance of his term of office. If the Chairman is the object of a recall petition, it shall be the duty of the Vice-Chairman to call and conduct the special recall meeting. If the Vice-Chairman refuses to call and conduct such a meeting, the other officers in descending rank shall be empowered to do so. If each of the Executive Committee members refuses to call and conduct such a meeting, the spokesman for the petitioners shall be empowered to do so.

Section 3. Initiative and Referendum. Upon receipt of a petition signed by at least sixty (60) qualified voters, it shall be the duty of the Chairman to call and conduct within thirty (30) days, a special meeting of the General Council for the purpose of presenting to the voters for their determination any issue or question, except recall (See Section 2 of this Article for Recall). If the Chairman refuses to call such a meeting, the Vice-Chairman or other officer in descending rank shall be empowered to do so. If each of the Executive Committee members refuses to call and conduct such a meeting, the spokesman for the petitioners shall be empowered to do so. The decision of the majority of those voting shall be binding on the Executive Committee, provided a quorum is present. Once a petition concerning any issue or question has been submitted to a vote of the tribal members and rejected, that same issue or question shall not again be considered for such action for at least six (6) months.

The Chairman, upon written request by a majority of the Executive Committee, shall be required to call and conduct a special meeting of the General Council within thirty (30) days after receipt of such notice for the purpose of presenting to the voters for their determination, any issue or question except recall. (See Section 2 of this Article for Recall). If the Chairman refuses to call such meeting, the Vice-Chairman or other officers in descending rank shall be empowered to do so.

Section 4. Vacancies in the membership of the Executive Committee which occur in the first half of the elected three year term shall be filled at a special election as provided for in the tribal election ordinance. Vacancies occuring in the second half of the elected three year term shall be filled by appointment of the Executive Committee. Each vacancy in the membership of the Executive Committee shall be filled by a tribal member who shall be qualified pursuant to Article IX, Section 1. Vacancies in appointive positions shall be filled by appointment of the Executive Committee.

ARTICLE VII - CONFLICTS OF INTEREST

Section 1. Any Executive Committee member who may be personally interested in any matter before the Iowa Tribe of Kansas and Nebraska Executive Committee shall not vote on such matter without the consent of the remaining members. Failure to reveal to the Committee a personal interest in a matter before that body, not similarly shared by all members of the Committee, shall constitute dereliction of official duty, and may be cause for removal from office.

ARTICLE VIII - TRIBAL ENACTMENTS

Section 1. Ordinances. All final decisions on matters of general and permanent interest to members of the tribe shall be embodied in ordinances, such as an enrollment ordinance or an election ordinance. Such enactments shall be available for inspection by members of the tribe during normal office hours.

Section 2. Resolutions and Motions. All final decisions on matters of short term or one time interest where a formal expression is needed, shall be embodied in resolutions. Other decisions of a temporary nature or relating to particular individuals, officials, or committees shall be put in the form of motions and noted in the minutes of the committee deliberations and shall be available for inspection by members of the tribe during normal office hours.

Section 3. All ordinances and resolutions shall be dated and numbered, and shall include a certification showing the presence of a quorum and the number of members voting for and against the proposed enactment.

Section 4. No enactment of the Executive Committee, General Council or other body, shall have any validity or effect in the absence of a quorum of the membership thereof at a legally called session.

ARTICLE IX - ELECTIONS

Section 1. First Election. All terms of office for the Executive Committee members, incumbent at the time this amendment to the constitution and bylaws becomes effective, shall expire at the first annual meeting following the approval date of this amendment. Thereafter, there shall be an election of all five (5) members of the Executive Committee at each third annual meeting of the General Council and all terms shall be three (3) years in length.

Section 2. Election Ordinance. All tribal elections, including the first one under this constitution, shall be conducted in accordance with an election ordinance, consistent with this constitution and bylaws, which shall be enacted by the Executive Committee. Such ordinance shall provide for secret balloting, nomination of candidates, and a procedure for resolving election disputes. Further, it shall require that no write-in votes or absentee ballots be accepted in any tribal election since such elections shall be conducted during meetings of the General Council. Provisions shall also be included regarding the conduct of recall, referendum and initiative elections and an uniform procedure for submitting petitions. Elections to amend this constitution shall be conducted pursuant to Article XV of this document.

Section 3. Voter Qualifications. Any member of the tribe shall be qualified to vote, provided the member is eighteen (18) years of age or over on the date of the election.

Section 4. Qualifications of Candidates. Any member of the tribe who will be at least twenty-one (21) years of age on the date of the election, shall qualifiy as a candidate for membership on the Executive Committee, or a subordinate body by election or appointment, except those persons previously convicted in any court of competent jurisdiction of a felony, or any member who is delinquently indebted to the tribe, provided that persons who have satisfied their penalty for a felony at least five (5) years before the election and otherwise qualify, may become candidates.

ARTICLE X - INSTALLATION OF ELECTED OFFICIALS

Section 1. All duly elected Executive Committee members of the Iowa Tribe of Kansas and Nebraska shall be installed in office at the first succeeding regular meeting of the Executive Committee following their election, upon taking the following oath to be administered by such person as may be designated by resolution of the Executive Committee:

> Oath: "I, (Name), do solemnly swear that I will support and defend the Constitution of the United States and the Constitution and Bylaws of the Iowa Tribe of Kansas and Nebraska; that I will carry out, faithfully and impartially, the duties of my office to the best of my ability; that I will cooperate with other members of the Executive Committee, promote, and protect the best interest of my tribe, in accordance with its constitution and bylaws."

ARTICLE XI - DUTIES OF OFFICERS

Section 1. The Chairman of the Executive Committee shall preside over all Executive Committee and General Council meetings of the tribe, except as otherwise provided in this constitution and bylaws. The Chairman shall be allowed to vote only in case of a tie except as provided in Article VI, Section 1, and shall exercise only the authority specifically delegated by the Executive Committee or as otherwise provided by this constitution and bylaws. The Chairman shall have the general supervision over the affairs of the Executive Committee and shall perform all duties pertaining to the office of Chairman.

Section 2. The Vice-Chairman of the Executive Committee shall assist the Chairman when called upon to do so. In the absence of the Chairman, the Vice-Chairman shall preside, and when so presiding, shall have all the rights, privileges, and duties, as well as the responsibilities, of the Chairman. In the event of an extended absence or inability of the Chairman to perform the duties as Chairman, and when the office is for either of these reasons declared by a majority vote of the Executive Committee to be vacant, the Vice-Chairman shall automatically succeed the Chairman and inherit the designated duties and responsibilities of this position. Should the office of Vice-Chairman be vacated before the tenure of the elected term expired, a new Vice-Chairman shall be elected in accordance with the provisions of Article VI, Section 4.

Section 3. The Secretary of the Iowa Tribe of Kansas and Nebraska Executive Committee shall correctly record the proceedings of all meetings of the Executive Committee and the General Council, and shall forward copies of the minutes and resolutions of all meetings to the Superintendent of the Horton Agency. The Secretary shall be responsible for the prompt and efficient handling of correspondence pertaining to the business of the Committee. The Secretary shall make out the order of business at the direction of the Chairman, shall notify Committee members of their appointments, and shall have custody on behalf of the tribe of the records and papers of the Committee.

The Secretary shall keep a correct list of members of the Committee shall authenticate accounts or order of the Committee and in the absence of the Chairman and Vice-Chairman, shall call the meeting to order until a Chairman Pro Tempore is selected. The Secretary shall read the minutes of the previous meeting. At the expiration of the term of office, all records, equipment, supplies, and tribal papers in the possession of the Secretary shall be turned over to the successor within ten (10) days. The Secretary shall issue notices of General Council meetings and make available by public announcement the anticipated agenda of such meetings. In the event of an extended absence or inability of the Secretary, and when the office is for either of these reasons declared by a majority vote of the Executive Committee to be vacant, the Treasurer shall assume the designated duties of office of the Secretary until such time as the election or appointment of a new Secretary.

Section 4. The Treasurer of the Iowa Tribe of Kansas and Nebraska Executive Committee shall be responsible for each yearly budget allowance received by the Executive Committee ahd shall keep an accurate account of all receipts and disbursements from this budget allowance. The Treasurer shall make appropriate reports (of all accounts) to the Executive Committee and present summary reports at meetings of the General Council. The accounts and records of the Executive Committee shall be open at all times for inspection and audit by the Assistant Secretary--Indian Affairs or his authorized representative. The books of the Treasurer shall be subject to audit or inspection at the discretion of the Executive Committee. All budget funds entrusted to the care of the Treasurer shall be kept in a special account in a bank authorized by the Executive Committee and all disbursements therefrom shall be made by check with the checks to be countersigned by the Chairman of the Iowa Tribe of Kansas and Nebraska Executive Committee. The Treasurer shall file a surety bond satisfactory to the Executive Committee and the Assistant Secretary--Indian Affairs or his authorized representative. The cost of all tribal surety bonds shall be paid from tribal funds. All disbursements from tribal funds shall be made under authority of a properly executed resolution. In the event of an extended absence or inability of the Treasurer to perform his duties, and when the office is for either of these reasons declared by a majority vote of the Executive Committee to be vacant, the Secretary of the Iowa Tribe of Kansas and Nebraska Executive Committee, when properly bonded, shall assume the designated duties of the Treasurer until a new Treasurer has been elected or appointed.

Section 5. Appointive Officers. The duties of all appointive committees and officers shall be clearly defined by resolution at the time of their creation or appointments. Such committees or officers shall report from time to time, as required, to their appointing body; their activities and decisions shall be subject to review by such body upon petition of any person aggrieved.

Section 6. Tribal Employees. Whenever it becomes necessary, the Iowa Tribe of Kansas and Nebraska shall employ tribal employees. The employees shall be tribal members if at all possible. Any member of the tribe may be employed by the tribe whether or not he holds an elective or appointive office. Applicants will apply to the Executive Committee, and the Committee shall prepare a list for presentation to the Executive Committee. A fifteen (15) day public notice shall be given in which to receive such applications. The funds for salaries may be from allocated funds, i.e., tribal funds, State or Federal grants, or funds provided by any organization, foundations, or other souce. Any and all tribal employee(s) shall come under the jurisdiction of this constitution and bylaws. A work and expense report OF and BY the employee(s) shall be made to the Executive Committee each quarter on dates specified by the Executive Committee.

ARTICLE XII - MEETINGS

Section 1. General Council Meeting.

a. Annual meetings of the General Council shall be held on the third (3rd) Saturday in October for the purpose of receiving reports, and transacting other business. An election of the Executive Committee shall be held at each third (3rd) Annual Meeting beginning with the first Annual Meeting following this amendment.

b. Special meetings of the General Council may be called at the discretion of the Chairman, and shall be called by the Chairman upon receipt of a petition signed by forty (40) members of the General Council, or by resolution of the Executive Committee. Should the Chairman refuse to timely call a special meeting requested by either a petition of the Council or a resolution of the Executive Committee, the next highest ranking officer shall exercise such authority, except as provided in Article VI, Sections 1 and 2.

c. Notice of Special General Council Meeting. The principal object of a special General Council meeting must be stated in the notification and may include the words "and for the transaction of other business that may be presented." Such notice shall be publicly posted for at least five (5) days in advance of the meeting date.

d. The Agenda for all meetings of the Iowa Tribe of Kansas and Nebraska General Council shall be compiled in advance by the Executive Committee. Following the completion of discussion on all agenda items, other tribal business may be discussed.

e. Quorum. No business of any nature shall be transacted by the General Council unless a quorum is present. A quorum shall consist of thirty (30) members of the General Council. Except for the election of the Executive Committee which shall be decided by a plurality vote (larger vote than any other candidate), decisions shall be reached by a majority vote (more than half the votes cast). The Chairman shall not vote except in the event of a tie and in the election of the Executive Committee. In the event a quorum is not achieved at the annual meeting ,when an election is required, the election part of such meeting shall proceed as scheduled in order to carry out the intent of the consitution and bylaws.

Section 2. Conduct of Meetings.

a. All meetings shall be conducted in accordance with Robert's Rule of Order, as amended, unless otherwise specified in this constitution and bylaws.

b. Order of Business
(1) Call to Order
(2) Roll Call
(3) Adoption of Minutes
(4) Reports
(5) Unfinished Business
(6) New Business
(7) Adjournment

Section 3. Executive Committee Meetings. All meetings of the Executive Committee shall be open to tribal members.

a. Frequency. Meetings of the Executive Committee shall be held monthly or as may be fixed by resolution of the Executive Committee.

b. Quorum. Three (3) members of the Executive Committee shall constitute a quorum at all Executive Committee meetings.

c. Meeting Notice. An appropriate written notice shall be given to each Executive Committee member by the Secretary unless a regular time is specified by an Executive Committee resolution.

d. Absences from regular meetings must be excused by a majority vote of the Committee members present. Two (2) successive or a total of three (3) unexcused absences in one (1) year may be sufficient cause to remove a Committee member from office. The decision will be left up to a majority of the Executive Committee.

e. Special or Emergency Meetings. Special or emergency meetings of the Executive Committee may be called by the Chairman or by any three (3) members of the Executive Committee. The notice in regard to any special or emergency meeting shall be given verbally in person, or by telephone, or by written notice to each Executive Committee member as early as possible prior to the meeting, stating the purpose of the meeting. The order of business as required by Section 2 (b) of Article XII, may be waived if necessary in dealing with emergency matters.

ARTICLE XIII - SAVINGS CLAUSE AND REPEAL OF PREVIOUS CONSTITUTION

Section 1. The Constitution and Bylaws of the Iowa Tribe of Kansas and Nebraska approved on February 26, 1037, as amended in 1960 and 1961, under the provisions of Section 16 of the Act of June 18, 1934 (84 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378), is hereby repealed and superseded by this constitution and bylaws.

Section 2. All ordinances and resolutions heretofore enacted by the Iowa Tribe of Kansas and Nebraska shall remain in full force and effect to the extent they are consistent with this constitution and bylaws.

ARTICLE XIV - SEVERABILITY

If any provisions of this constitution and bylaws shall, in the future, be declared invalid by a court of competent jurisdiction, the invalid provisions shall be severed and the remaining provisions shall continue in full force and effect.

ARTICLE XV - AMENDMENTS

This constitution and bylaws may be amended by a majority vote of the qualified voters of the Iowa Tribe of Kansas and Nebraska voting in an election called for that purpose by the Secretary of the Interior, provided that at least thirty percent (30%) 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 at the request of the General Council, the Executive Committee, or upon receipt of a petition of at least one hundred (100) qualified voters of the Iowa Tribe of Kansas and Nebraska. The amendment shall be authorized by the Secretary of the Interior and conducted pursuant to his regulations set forth in 25 CFR 52.

ARTICLE XVI - ADOPTION

Section 1. This constitution and bylaws, when adopted by a majority vote of the qualified voters of the Iowa Tribe of Kansas and Nebraska, voting at an election called for that purpose by the Secretary of the Interior, in which at least thirty percent (30%) of those entitled to vote shall case their ballots, shall be submitted to the Secretary of the Interior for his approval, and shall be effective from the date of his approval.