Approved _____
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by ~~Representative Kathleen Sebelius~~ Chairperson at

1:00 ~~a.m./~~p.m. on Friday, April 10, 1992 in room 526-S of the Capitol.

All members were present except:
Representative Rand Rock - Excused

Committee staff present:
Mary Torrence, Office of the Revisor of Statutes
Mary Galligan, Kansas Legislative Research Department
Lynne Holt, Kansas Legislative Research Department
Connie Craig, Secretary to theCommittee

Conferees appearing before the committee:
HB 3205
Representative Alfred Lane, Twenty-fifth District, Kansas
John Goodwin, President, Access Corporation

HB 2928 & SB 739
Attorney General Robert Stephan, Kansas
Lance Burr, Attorney for the Kickapoo Nation
Dan Watkins, Attorney for the Sac and Fox Nation
Steve Cadue, Chairman, Kickapoo Indian Nation

Chair Sebelius called the meeting to order.

Representative Wagnon explained as part of the Children's Initiatives, work has been done on the establishment of a public/private partnership and a grant application will be submitted to the Annie E. Casey Foundation.

Representative Wagnon made a motion to introduce a bill to establish a public/private partnership. Representative Baker made a second to the motion which passed on a voice vote.

SB 703
Representative Long briefly explained that he would like to amend SB 703 by adding a section establishing the County Fair Horse Racing Fund by taking a third of the tax, or 1/18th of the total daily take out from the simulcast racing pool which would be remitted to the Racing Commission everyday. It would be used to help hold parimutuel races at licensed County Fair Horse Racing facilities; it would reimburse the Commission for the cost of stewards and animal health officer; pay the cost of expenses incurred by the county fair licensees and help pay for background investigations, as well as supplement some purses and provide basic operating assistance grants for organizational licensees that are county fair associations. It doesn't affect any of the current money that goes to the State Gaming Fund.

Chair Sebelius asked the Committee to pass over this bill until Representative Long's handouts arrive.

HB 2700
Chair Sebelius explained that this bill as drafted was requested by SRS, and it changes the number of hours that a child can be held in protective custody from 48 to 72.

Carolyn Hill appeared before the Committee with amendments to HB 2700, Attachment #1, in an effort to address some of the concerns of the Committee with the earlier draft of the bill. She explained the first proposed amendment only makes a statement that there is nothing in the section that we construe that the child must remain in protective custody for 48 hours, in fact, children go home now at any length of time, if we determine they can return home.

Chair Sebelius asked, assuming we adopt the balloon, should the 48 hours actually be 72hours in that section? Ms. Hill agreed that it should be 72 hours, not 48 hours.

Ms. Hill stated the second amendment relates to returning children to their home postdisposition without the approval of the court. She added the current statute is silent on the issue of our ability to return children home prior to disposition. SRS feels language is needed that specifically states SRS has the discretionary language to return children home in that period.

Ms. Hill stated the next section on page 2 and 3 essentially makes the same statment ondiscretionary authority. She pointed out on the last page there is a sunset provision of one year.

Representative Wagnon made a motion to adopt the amendments to HB 2700, Attachment #1. Representative Baker made a second to the motion, which passes on a voice vote.

Representative Wagnon made a motion to report HB 2700 as amended favorable for passage. Representative Jones made a second to the motion.

Representative Sprague made a substitute motion to leave the 48 hours in and strike July 1, 1993. Representative Lane made a second to the motion.

Representative Sprague explained the purpose of making the motion is that the necessary language on the clarification of holding kids in custody is absolutely necessary. There is a question relative to how SRS returns children home during that period of time, and therefore, a question of liability arrises. He reminded the Committee of their earlier disussion on the problems of giving SRS 24 more hours. He stated a child picked up on Friday with the following Monday being a national holiday, could be kept from the home in SRS custody for a total of 6 days as opposed to 5 days.

Chair Sebelius stated the substitute motion on the table is to strike the one year sunset and strike 72 hours and return to the language in the existing law of 48 hours. Division is called for after a voice vote. The motion fails by a show of hands.

Chair Sebelius stated the motion on the table is to report HB 2700 as amended favorable for passage. The motion passes by a voice vote.

Staff clarified the one year sunset applies only to the changes in the bill.

HB 3205

Representative Lane appeared before the Committee as an opponent of HB 3205, Attachment #2.

John Goodwin gave testimony to the Committee urging the favorable passage of HB 3205, Attachment #3.

Chair Sebelius closed the hearings on HB 3205.

HB 2928 and **SB 739**

Chair Sebelius stated to the Committee that 3 seperate newspaper articles have been passed out to all members, Attachment #7.

Lynne Holt gave background information on Indian Gaming Compacts and negotiating authorization, Attachment #4 and #5.

Chair Sebelius introduced the first conferee Attorney General Robert Stephan.

Attorney General Robert Stephan appeared before the Committee to respond to questions and pointed out the necessity to have some kind of agreement or statute in place that provides for compact negotiation and the finalization of the compact in the event the Supreme Court of Kansas determines that the Governor does not have legal authority to enter into the Compact without any input from the Legislature, Attachment #6.

One Committee member asked the Attorney General what role he sees his office playing. There was discussion regarding local authority to have a casino off the reservation and on trust property. It was asked of Attorney General Stephan what happens if a constitutional amendment is placed on the ballot, will there be court action?

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS,

room 526-S, Statehouse, at 1:00 ~~a.m./~~p.m. on Friday, April 10, 1992.

Lance Burr, Attorney General of the Kickapoo Nation, appeared before the Committee and gave history and background of the Indian Gaming Regulatory Act. He stated reasons for the Kickapoo Nation having casino gambling. Mr. Burr stated the Kickapoo Nation did want to be tied only to gambling that the Kansas Legislature authorizes. He asked the Attorney General why he did not advise the Legislature four years ago when IGRA was passed, that situations like this should be taken care of by the Legislature. He stated that the Kickapoo Nation is pleased with the Compact that has been negotiated with the Governor and urged the Committee not to change this arrangement pointing out that she has already been authorized by law to negotiate a compact. Mr. Burr also pointed out to the Committee Attorney General is incorrect in his opinion of who authorizes trust land for casino gambling.

One Commitee member asked Mr. Burr where the Kickapoo Indian Reservation is located. It was also asked if Indians are citizens of Kansas for purposes of representation in state government. It was pointed out American natives are citizens of the State of Kansas and they do have a representative in state government. Would it be feasible for the Kickapoo Nation to run parimutuel racing or a state owned and operated lottery?

Dan Watkins, Attorney for the Sac and Fox Nation, talked about the Tribe's plan to build a gambling casino resort in Kansas City, Kansas. He stated the Governor has the authority to enter into a gambling compact under K.S.A. 75-107 and has been negotiating with the Tribe for the past 90 days. Attachment #7

ChairSebelius brought to the Committee's attention testimony from Robert Pirtle, Attorney for the Prairie Band of the Potawatomie Tribe, Attachment #8.

Steve Cadue, Chairman, Kickapoo Indian Nation, appeared before the Committee as an opponent of SB 739 and HB 2928. He urged the Committee to honor the compact negotiated with the Governor of the State of Kansas.

Chair Sebelius adjourned the meeting.

absent - Rock

GUEST LIST

DATE 4-10-92 at 1:00

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
Doug Bowman	Topeka	Children & Youth Advisory
Patrick Keerley	Topeka	McGill Assoc.
Amy Whitehead	Lawrence	Myself
Jamie Morris	Topeka	Observer
JOHN K. GOODWIN	WESTWOOD	ACCESS & COLLEGE SPORTS
Nick Roach	Topeka	I.G.T.
MARK A. BURGHART	"	REVENUE

House Federal & State Affairs
April 10, 1992
Attachment #1

Session of 1992

HOUSE BILL No. 2700

By Special Committee on Children's Initiatives

1-14

AN ACT amending the Kansas code for care of children; relating to protective custody; amending K.S.A. 1991 Supp. 38-1542 and repealing the existing sections.

relating to orders of temporary custody;

and K.S.A. 38-1543

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

Section 1. K.S.A. 1991 Supp. 38-1542 is hereby amended to read as follows: 38-1542. (a) The court upon verified application may issue *ex parte* an order directing that a child be held in protective custody and, if the child has not been taken into custody, an order directing that the child be taken into custody. The application shall state:

(1) The applicant's belief that the child is a child in need of care and is likely to sustain harm if not immediately afforded protective custody; and

(2) the specific facts which are relied upon to support the belief.

(b) The order of protective custody may be issued only after the court has determined there is probable cause to believe the allegations in the application are true. The order shall remain in effect until the temporary custody hearing provided for in K.S.A. 38-1543 and amendments thereto, unless earlier rescinded by the court. No child shall be held in protective custody for more than ~~48~~ 72 hours, excluding Saturdays, Sundays and legal holidays, unless within the ~~48-hour~~ *72-hour* period a determination is made as to the necessity for temporary custody in a temporary custody hearing.

Nothing in this section shall be construed to mean that the child must remain in protective custody for 48 hours.

(c) Whenever the court determines the necessity for an order of protective custody, the court may place the child in the protective custody of: (1) A parent or other person having custody of the child and may enter a restraining order pursuant to subsection (d); (2) a person, other than the parent or other person having custody, who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated; (3) a youth residential facility; or (4) the secretary. When circumstances require, a child in protective custody may be placed in a juvenile detention facility or other secure facility pursuant to an order of protective custody for not to exceed 24 hours, excluding Saturdays, Sundays and legal holidays.

When the child is placed in the protective custody of the secretary, the secretary shall have the discretionary authority to make a suitable placement for the child or to place the child with a parent.

(d) The order of protective custody shall be served on the child's parents and any other person having legal custody of the child. The

order shall prohibit all parties from removing the child from the court's jurisdiction without the court's permission.

(e) If the court issues an order of protective custody, the court may also enter an order restraining any alleged perpetrator of physical, sexual, mental or emotional abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child; or attempting to visit, contact, harass or intimidate the child. Such restraining order shall be served on any alleged perpetrator to whom the order is directed.

(f) The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds from evidence presented by the petitioner that reasonable efforts have been made to prevent or eliminate the need for removal of the child or that an emergency exists which threatens the safety of the child and requires the immediate removal of the child. Such findings shall be included in any order entered by the court.

Sec. (2)

38-1543. Orders of temporary custody; notice; hearing; procedure. (a) Upon notice and hearing, the court may issue an order directing who shall have temporary custody and may modify the order during the pendency of the proceedings as will best serve the child's welfare.

(b) A hearing hereunder shall be held within 48 hours, excluding Saturdays, Sundays and legal holidays, following a child having been taken into protective custody.

(c) Whenever it is determined that a temporary custody hearing is required, the court shall immediately set the time and place for the hearing. Notice of a temporary custody hearing shall be in substantially the following form:

(Name of Court)

(Caption of Case)

NOTICE OF TEMPORARY CUSTODY HEARING

TO:

(Names)	(Relationship)	(Address)

On _____ (day) _____ (date), 19__,

at _____ o'clock ____m. the court will conduct a hearing at _____ to determine if the above named child or children should be in the temporary custody of some person or agency other than the parent or other person having legal custody prior to the hearing on the petition filed in the above captioned case.

_____, an attorney, has been appointed as guardian *ad litem* for the child or children. Each parent or other legal custodian has the right to appear and be heard personally, either with or without an attorney. An attorney will be appointed for a parent who can show that the parent is not financially able to hire one.

Date _____, 19__ Clerk of the District Court

by _____

(Seal)

HFSSA 4-10-92 #1-2

REPORT OF SERVICE

I certify that I have delivered a true copy of the above notice to the persons above named in the manner and at the times indicated below:

Name	Location of Service (other than above)	Manner of Service	Date	Time

Date Returned _____, 19___.

_____
(Signature)

_____
(Title)

(d) Notice of the temporary custody hearing shall be given at least 24 hours prior to the hearing. The court may continue the hearing to afford the 24 hours prior notice or, with the consent of the party, proceed with the hearing at the designated time. If an order of temporary custody is entered and the parent or other person having custody of the child has not been notified of the hearing, did not appear or waive appearance and requests a rehearing, the court shall rehear the matter without unnecessary delay.

(e) Oral notice may be used for giving notice of a temporary custody hearing where there is insufficient time to give written notice. Oral notice is completed upon filing a certificate of oral notice in substantially the following form:

(Name of Court)

(Caption of Case)

CERTIFICATE OF ORAL NOTICE
OF TEMPORARY CUSTODY HEARING

I gave oral notice that the court will conduct a hearing at _____ o'clock ___m. on _____, 19___, to the persons listed, in the manner and at the times indicated below:

Name	Relationship	Date	Time	Method of Communication (in person or telephone)

I advised each of the above persons that:

(1) The hearing is to determine if the above child or children should be in the temporary custody of a person or agency other than a parent;

(2) the court will appoint an attorney to serve as guardian *ad litem* for the child or children named above;

(3) each parent or legal custodian has the right to appear and be heard personally either with or without an attorney; and

(4) an attorney will be appointed for a parent who can show that the parent is not financially able to hire an attorney.

_____
(Signature)

_____
(Name Printed)

_____
(Title)

(f) The court may enter an order of temporary custody after determining that: (1) The child is dangerous to self or to others; (2) the child is not likely to be available within the jurisdiction of the court for future proceedings; or (3) the health or welfare of the child may be endangered without further care.

(g) Whenever the court determines the necessity for an order of temporary custody the court may place the child in the temporary custody of: (1) A parent or other person having custody of the child and may enter a restraining order pursuant to subsection (h); (2) a person, other than the parent or other person having custody, who shall not be required to be licensed under article 5 of chapter 65 of the Kansas Statutes Annotated; (3) a youth residential facility; or (4) the secretary.

When the child is placed in the temporary custody of the secretary, the secretary shall have the discretionary authority to make a suitable placement for the child or to place the child with a parent. When circumstances require, a child may be placed in a juvenile detention facility or other secure facility, but the total amount of time that the child may be held in such facility under this section and K.S.A. 38-1542 and amendments thereto shall not exceed 24 hours, excluding Saturdays, Sundays and legal holidays. The order of temporary custody shall remain in effect until modified or rescinded by the court or a disposition order is entered.

(h) If the court issues an order of temporary custody, the court may enter an order restraining any alleged perpetrator of physical, sexual, mental or emotional abuse of the child from residing in the child's home; visiting, contacting, harassing or intimidating the child; or attempting to visit, contact, harass or intimidate the child.

(i) The court shall not enter an order removing a child from the custody of a parent pursuant to this section unless the court first finds from evidence presented by the petitioner that reasonable efforts have been made to prevent or eliminate the need for removal of the child or that an emergency exists which threatens the safety of the child and requires the immediate removal of the child. Such findings shall be included in any order entered by the court.

Sec. 2. K.S.A. 1991 Supp. 38-1542 is hereby repealed. and K.S.A. 38-1543 are

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book. The provisions of this act shall expire on July 1, 1993.

STATE OF KANSAS

ALFRED J. LANE
REPRESENTATIVE, TWENTY-FIFTH DISTRICT
JOHNSON COUNTY
6529 SAGAMORE ROAD
MISSION HILLS, KANSAS 66208
(913) 362-7824

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: EDUCATION
FEDERAL AND STATE AFFAIRS
LABOR AND INDUSTRY—
RANKING MINORITY MEMBER
SPECIAL COMMITTEE ON
WAYS AND MEANS/
APPROPRIATIONS-INTERIM

HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
April 10, 1992, 1:30 P.M.
Room 526-S

TO: Kathleen Sebelius, Chairperson
House Federal and State Affairs Committee

FROM: Representative Al Lane

SUBJECT: HB 3205

Thank you for permitting me to appear this afternoon. Thank you also, for holding hearings at this late date. I do apologize for the timing but this was just recently brought to my attention.

To the best of my knowledge, the private employment agency statute was last amended in 1984. We have a relatively new industry in existence now.

With these remarks, Madam Chairperson, I'll close and let the real conferees address the issue.

Thank you.

House Federal & State Affairs
April 10, 1992
Attachment # 2

Copy of Testimony Given at 1:30pm on April 10, 1992

To: Kathleen Sebelius
Chair of House Committee on
Federal and State Affairs

From: John Goodwin, President
Access Corporation

Thank you for the opportunity to address the members of the Committee on Federal and State Affairs. I will be brief in my remarks and will be happy to entertain questions after the testimony. In summary, the citizens and businesses and colleges in the State of Kansas would greatly benefit from a simple update of Kansas State Law to reflect improvements in computer technology and even more important, simplify and reduce the expense and frustration of job searches in Kansas.

In the last five years, a new industry has emerged that allows job seekers and employer with jobs to come together through an "electronic version" of a newspaper commonly referred to as a computer database service. There are a number of services currently marketed to citizens in the State of Kansas: Resumes on Computer by the Human Resource Information Network (HRIN), Job Bank USA, SkillSearch (affiliated with Alumni Centers at Duke and University of Kansas among others), ProNet (affiliated with Alumni Centers at Michigan and Stanford among others), and Resume Experts by Professional Resource Center. The industry has expedited and lowered the cost of the search process for job seekers by eliminating mass mailings of resumes and cover letters and by alleviating the need to make follow-up phone calls to the employers using the services.

Access utilizes this technology to the benefit of a wide diversity of Kansans. For example, I have included a list of those colleges and universities from all over the State of Kansas who have evaluated Access and recommended the service to their student graduates seeking employment in the Kansas City area.

School, Kansas Town	Placement Official	Phone Number
AMTECH Institute, Wichita	James Rucker	316-682-6548
Baker University, Baldwin City	Jeanne Mott	913-594-6451 X 595
Benedictine College, Atchison	Rhonda Swafford	913-367-5340 X 2503
Emporia State University, Emporia	Larry Hannah	316-341-5407
Kansas City, KS Community College	Linda Wyatt	913-334-1100 X 243
Kansas State University, Manhattan	Jim Akin	913-532-6508
MidAmerica Nazarene College, Olathe	Debbie Bickel	913-782-3750
Ottawa University, Ottawa	Cherrie Finch	913-242-5200 X 5540
Pittsburg State University, Pittsburg	Dr. James AuBuchon	316-235-4140
University of Kansas, Lawrence	Terry Glenn or Jim Henry	913-864-3624
Washburn University, Topeka	Jeannie Kessler	913-231-1010
Wichita State University, Wichita	Jill Pletcher	316-689-3435

(Continued on back)

House Fed. & State Affairs
April 10, 1992
Attachment #3

Because I learned about this hearing yesterday, I felt it inappropriate to ask any college placement officials to appear at this hearing. I urge you to contact them if necessary. James M. AuBuchon, Director of Placement at Pittsburg State University stated in a recent Press Release, "I appreciate Access Corporation's responsiveness to our student graduate's needs and look forward to ACCESS for Grads to produce job opportunities for them. We hope many more Kansas City area employers will use Access to select college graduates for entry level positions. It saves everybody time and money, which means more jobs for the graduates."

Major employers in Kansas City, Kansas (like Fairbanks Morse Pump and Central Plains Steel) and others like MidAmerican Bank with offices in Topeka, Lawrence, and Roeland Park are clients of Access.

The statute already exempts newspapers from its scope (see attached law). The proposed amendment would simply broaden this exemption to include computer databases. At the time this statute was adopted, computer database services like the one offered by Access did not exist. I do not believe that this statute was intended to regulate "passive" data providers (as opposed to active recruiters and employment services). The exemption of newspapers supports this view. The proposed amendment will bring the language of the law up-to-date with database technology now available to assist employers in locating qualified candidates.

The simple amendment to K.S.A. 44-401 is in the interests of Kansas and will preserve Kansas' reputation for maintaining leadership in supporting responsible technology. The addition of exemption (G) will clearly allow these computer database services to benefit the unemployed, the newly graduated college student and alumni population of our fine state colleges and universities, and the businesses in the State of Kansas.

THE END OF WRITTEN TESTIMONY

HPES
4-10-92
#3-2

Article 4.—PRIVATE EMPLOYMENT AGENCIES

44-401. Definitions. As used in K.S.A. 44-401 through 44-412, and amendments thereto:

(a) "Applicant" means any person who uses or attempts to use the services of a private employment agency in seeking employment.

(b) "Employer" means a person employing or seeking to employ a person for compensation, or any representative or employee of such a person.

(c) "Fee" means anything of value, including money or other valuable consideration or services or the promise of any of the foregoing, required or received by a private employment agency in payment for any of its services or any act rendered or to be rendered by the private employment agency.

(d) "Person" means any individual, association, partnership or corporation.

(e) (1) "Private employment agency" means any business which is operated for profit in this state and which:

(A) Secures employment; or

(B) by any form of advertising holds itself out to applicants as able to secure employment or to provide information or service of any kind purporting to promote, lead to or result in employment for the applicant with any employer other than itself.

(2) "Private employment agency" does not include:

(A) Any educational, religious, charitable, fraternal or benevolent organization which charges no fee for services rendered in securing employment or providing information about employment;

(B) any employment service operated by the state, the United States or any political subdivision of the state, or any agency thereof;

(C) any temporary help service that at no time advertises or represents that its employee may, with the approval of the temporary help service, be employed by one of its client companies on a permanent basis;

(D) any newspaper or publication of general circulation;

(E) any radio or television station; or

(F) any employment service where the fee is paid by the employer.

History: L. 1911, ch. 187, § 1; R.S. 1923, 44-401; L. 1971, ch. 178, § 1; L. 1976, ch. 370, § 9; L. 1984, ch. 180, § 1; July 1.

Research and Practice Aids:

Licenses⇐11(7).

C.J.S. Licenses § 30.

HF SA
4/10/90
#3-3

NORTHEAST JOHNSON COUNTY SUN

SERVING MISSION, ROELAND PARK, FAIRWAY, MISSION HILLS, WESTWOOD, WESTWOOD HILLS, COUNTRYSIDE, MISSION WOODS

House Judicial & State Affairs Committee 4/10/92 #3-4

Tight times mean better business for Westwood job-search company

By Jacqueline Lehatto
Sun Correspondent

Timing is a factor in any successful business venture, and evidently one of Westwood's newest companies, Access, is timed just right.

The job search company has been in business less than six months and already has 1,000 names and resumes in its computer's data bank. Ready to use those names are more than 40 companies who subscribe to the service.

"The response has been overwhelming," said John Goodwin, a Westwood resident and co-founder of the company. He credits the success to the tight economy. "People are seeking more effective ways to find and fill jobs."

Goodwin said his service is cost-effective for companies scaling back on personnel departments and advertising budgets. Employers pay $250 to subscribe to the service and a fee for each job search.

In return, they get an alternative to advertising in the classified section, sorting through responses, screening candidates and sending replies. A search through Access' data bank for a qualified person might result in 10 resumes, available in less than an hour.

Candidates pay $25 for a three-month listing in the computer and get a refund if they get a job through the service.

Goodwin said the whole process is also time-effective. As an example, he recalled when an owner of a small real estate company called on a Friday and said he needed an executive secretary.

On Monday, Access sent him 15 resumes of qualified candidates. Tuesday the employer arranged interviews. Wednesday he interviewed. Thursday he made an offer to one of the candidates. Monday that candidate was working in the office.

The company places candidates in accounting, administrative, clerical, data processing, engineering and sales positions. Salaries range from $12,000 to $50,000.

According to Goodwin, the largest demand is for entry-level clerical positions. And although Hallmark, Boatmen's First National Bank and Marion Merrell Dow are among his subscribers, it's the middle-level and small businesses that are doing the hiring, he said.

"That's where the growth is," said Goodwin, a magna cum laude graduate in economics and biochemistry from Princeton University. "When you read about layoffs, it is the big companies who are doing it."

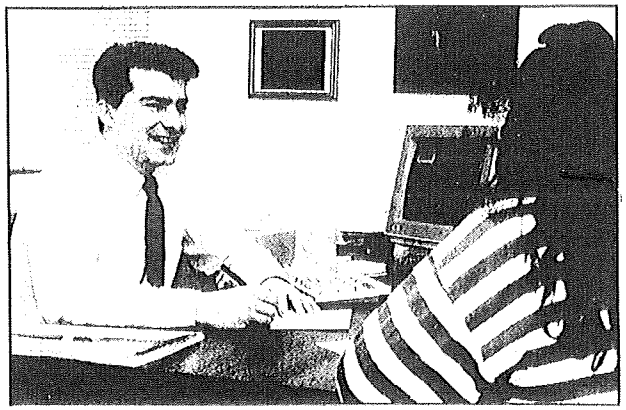
Goodwin sees all sorts of future growth for his own small company. As a community service, he is cooperating with a local social service for disabled people, listing clients' resumes for no fee. He has extended his offer to minority employment counselors and other community programs, also.

In the planning stages is a computer bulletin board listing job opportunities for data processors.

"That would bring our service to data processing professionals in a unique way, a way that they are accustomed to," said Goodwin. Interested job seekers could respond to the ads at their computer terminals.

Along with expanding the services offered, Goodwin is thinking of expanding where the services are offered. Eyeing St. Louis and Oklahoma markets, he said plans are in the works for branch offices.

And he gave the impression it's all just a matter of time before Access offices are all over the Midwest.



Sun Photo by David Brandt

ACCESS — John Goodwin, president of Access, looks over a resume with a job candidate in his office.

Firm hopes to give colle grads access to job market

By Jacqueline Lehatto
Sun Correspondent

The news has been gloom and doom for the fresh crop of college graduates entering the job market this spring.

That's why John Goodwin, president of Access, a Westwood-based job search firm, is hitting the college campuses. "It's a tough time," Goodwin said of the employment prospects for recent grads.

Access matches companies seeking specific employees with prescreened candidates.

Goodwin has sent out 2,500 brochures to area colleges and has met with career counselors from 10 local colleges to publicize his company's services.

Access has been in business six months. Goodwin said he moved up his long-range plans to advertise on college campuses because the employment outlook was so negative.

His service also benefits employers who can no longer afford on-campus recruitment, he said.

Goodwin said he thinks many recent graduates need to "readust their expectations" about their try-level positions. " that's the job of t schools' placement professionals, and not us," he added.

MEMORANDUM

Kansas Legislative Research Department

Room 545-N -- Statehouse
Topeka, Kansas 66612-1586
(913) 296-3181

April 10, 1992

To: House Committee on Federal and State Affairs

Re: Tribal-State Gaming Compacts -- Negotiating Authorization

The following states have enacted statutes to authorize certain parties to negotiate gaming compacts or other compacts which may encompass gaming activities.

Iowa

Iowa statute 10A.104 authorizes the Director of Inspections and Appeals (not comparable to any Kansas officer) to enter into and implement gaming compacts. There appear to be no other statutory provisions.

Minnesota

Minnesota statute 3.9221 provides for the Governor or the Governor's representatives to negotiate gaming compacts. The Attorney General serves as counsel for the Governor or Governor's representatives. The Governor, Attorney General, and Governor's representatives report to the Legislature semi-annually regarding compacts negotiated and prospective negotiations. The Legislature may, by joint resolution, request that an agreement be renegotiated or replaced by a new compact.

North Dakota

North Dakota statutes 54-40.2-01 *et seq.*, regarding tribal-state compacts do not appear to be applicable to gaming compacts. State agencies are authorized to enter into agreements with tribes but each agreement is subject to approval of the Governor.

South Dakota

South Dakota statute 1-4-25 requires the Governor or the Governor's designee to hold public hearings before entering into a gaming compact.

Wisconsin

Wisconsin statute 14.035 authorizes the Governor to enter into gaming compacts on behalf of the state.

Louisiana

Louisiana statute 46:2301 established the Governor's Commission on Indian Affairs. A bill enacted in 1990 authorized the Governor to appoint an Indian Gaming Commission (separate from the Governor's Commission on Indian Affairs which has negotiated nongaming compacts). The Indian Gaming Commission is composed of five members appointed by the Governor, who serve at the pleasure of the Governor. (The members appointed by the previous Governor included two legislators, as well as staff representation from the Governor's Commission on Indian Affairs.)

Colorado

Colorado statutes 12-47.2-101 *et seq* authorize the Governor to negotiate tribal-state compacts after consulting with the Colorado Limited Gaming Control Commission in the Division of Gaming. The Commission is composed of five members appointed by the Governor and approved by the Senate.

Provisions of the compact are specified in statute.

California

California statute 19445 authorizes the California Horse Racing Board to negotiate with an Indian tribe on any compact concerning horse racing. Although there is no similar statutory provision, the Governor's office has delegated to the California Attorney General's office the authority to negotiate with tribes regarding other types of gambling, such as casinos and lotteries.

Oklahoma

Although not specifically addressing gaming compacts, Oklahoma statutes 1221 *et seq.*, authorize the Governor or designee to negotiate and enter into Indian compacts. Prior to becoming effective, such agreements must be approved by the Joint Committee on State-Tribal Relations composed of five members of the Senate and five members of the House of Representatives. A provision in the statutes also prohibits gaming on private land sold to Northeast Eight Intertribal Council (see 74-1225).

Montana

Montana statutes 18-11-101 *et seq.*, authorize public agencies to enter into agreements with tribes. Like Oklahoma's statutes, Montana's statutes do not specifically address gaming compacts. Prior to becoming effective, the agreement must be approved by the Attorney General.

Washington

The process of negotiating gaming compacts is not prescribed by statute. Instead, it is informal and is coordinated by the Governor's office. Prior to negotiating a compact, the Governor holds caucuses with state and local officials to get their suggestions regarding the requested compact. Toward the end of the negotiating process, the Governor holds another caucus with local officials to discuss the implementation of the proposed compact. If the Governor is satisfied with the compact, he or she signs it and the state is bound to its terms.

Much of the information included in this memorandum was furnished by the Office of the Revisor of Statutes.

92-2089/lh

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4/10/92
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MEMORANDUM

Kansas Legislative Research Department

Room 545-N -- Statehouse
Topeka, Kansas 66612-1586
(913) 296-3181

April 10, 1992

Re: Indian Gambling Compacts

Below is a list of possible policy guidelines that might be included in a statute regarding negotiation of tribal/state gaming compacts under the Indian Gaming Regulatory Act. Such a list might be included in 1992 H.B. 2928. A statute might enumerate certain provisions that must be included in any compact. Some examples are:

- a requirement that a compact only permit those games currently regulated in the state and that the compact be renegotiated in the event of statutory or constitutional change regarding regulation or prohibition of any game;

- a requirement that any compact include an enumeration of the specific class III games that may be conducted under the compact;

- a requirement that the compact preclude gambling by persons under a certain age;

- a requirement that specific game rules be included as part of the compact and a provision for amending the compact when those rules change;

- a requirement that compacts address a variety of security matters, including audits, staffing, individual game security, staff training, duties of the tribe to enforce internal security requirements, and ability for state law enforcement to also enforce and monitor security;

- a requirement that rules and odds of winning be displayed or available to the public in a gambling facility;

- a requirement that the compact include a method for resolving disputes between the state and tribal gaming agencies;

- a requirement that the compact delineate the division of responsibilities between tribal and state gaming agencies in regard to enforcement of the compact including access to the gaming facility and its records;

- a requirement that the compact include a delineation of responsibilities between the state and the tribe regarding criminal jurisdiction under the compact;

- a requirement that the compact contain an enumeration of all standards and requirements to obtain a license from or contract with the tribe to operate, manage, or conduct gambling activities covered by the compact;

- a requirement that all compacts provide for KBI background investigations of all gaming employees, contractors, and licensees of the tribe prior to and during the contract/license period and during employment;

- a requirement that all compacts prohibit hiring of or contracting with felons or persons convicted of gambling offenses;

- a requirement that the state be reimbursed by the tribe for any and all expenses incurred in connection with enforcement and administration of the state's obligations under the compact;

- a requirement that specific duties and responsibilities of the Tribal Gaming Agency be enumerated in the compact;

- a requirement that any facility housing activities included in a compact adhere to specific building, fire, and safety codes; and

- a requirement that any compact include a stipulation that the tribe will withhold state income tax from winnings of non-Indians.

A statute that speaks to negotiation and content of compacts with American Indian tribes might also address procedural matters such as:

- a description of the process for state acceptance or ratification of the compact, *e.g.*, the Governor's signature, a concurrent resolution adopted by the Legislature, or a bill placing the compact in statute;

- a requirement that the state hold public hearings before, during, or after an agreement has been reached on a compact (one might consider requiring that hearings be held in the area or areas that would be impacted by development associated with the gambling activity);

- designation or creation of a state gaming agency and enumeration of its powers and duties (this matter might be critical because the agency would be charged with regulation and enforcement of the compact which is neither promotion and operation which the Lottery currently does, nor exactly licensure and regulation which is what the Racing Commission does; the function might be closer to a combination of the regulatory functions of the Racing Commission and the investigatory functions of the KBI);

- designation of the state representative in any dispute arising under the compact; and

- a revocation/renegotiation procedure including a general timeline for renegoatiations (H.B. 2928 includes language that would partly address this issue).

While this list is not exhaustive, it includes many issues addressed in the compact between Kansas and the Kickapoo Tribe. Since hardly any states currently delineate in statute how compacts are negotiated, or matters that must be addressed or included in a compact, it is difficult to predict whether some policy statements that might be included in such a list would be allowed by courts if challenged. For example, since the Indian Gaming Regulatory Act includes procedures for acquisition of land by tribes specifically for gambling purposes, any state-imposed restrictions on the location of gambling activities might be challenged in court.

Some states do address in statute matters that must be included in a compact. The Iowa law simply states that "the agreements or compacts shall contain provisions intended to implement the policies and objectives of the Indian Gaming Regulatory Act." Minnesota also refers to the federal law and includes the federally-defined time limitations in its negotiation statute. Minnesota law contains a renegotiation provision essentially the same as the one in H.B. 2928. California has designated in statute the state Horse Racing Board as the entity responsible for negotiating compacts under the IGRA. California's statutes apparently do not address the issue in any other way. A Wisconsin statute simply states that "the governor may, on behalf of this state, enter into any compact that has been negotiated under [IGRA]."

North Dakota, which has a significantly larger American Indian population and more reservations within its borders than Kansas, has a relatively detailed statute that addresses agreements between public agencies and Indian tribes. Clearly, some of its provisions would not be applicable to state-tribal gambling compacts, but some matters like public notice of the agreement and the hearing requirement might be applicable to negotiation of compacts.

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN
ATTORNEY GENERAL

April 10, 1992

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

The Honorable Kathleen Sebelius
State Representative, 56th District
State Capitol, Room 280-W
Topeka, Kansas 66612

Dear Representative Sebelius:

I am writing to summarize my statement to the House Federal & State Affairs Committee on April 10, 1992. I am concerned about the present status of the law wherein there is no apparatus to deal with compact negotiation in regard to Indian gaming. In the event the Kansas Supreme Court determines that the Legislature has a role in compact negotiations, it is imperative that a mechanism be put in place prior to the adjournment of the Legislature. If this is not done, it could reflect on the issue of good faith. It is also my opinion that the Governor should not be given sole authority to negotiation, but there should be a legislative negotiating committee and then the same should be submitted to the Governor for ratification or denial.

In response to a question, I also stated that the more gambling that would be allowed in a constitutional amendment the more difficult it would be to prohibit Class III gambling on an Indian reservation.

This is a very brief summary of the points I wanted to make and I hope that it will be useful.

Sincerely,

Bob Stephan

Robert T. Stephan
Attorney General

RTS:bls

House Federal & State Affairs
April 10, 1992
Attachment #6

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

April 6, 1992

ATTORNEY GENERAL OPINION NO. 92-46

The Honorable Kathleen Sebelius
State Representative, Fifty-Sixth District
State Capitol, Room 280-W
Topeka, Kansas 66612

The Honorable Edward F. Reilly, Jr.
State Senator, Third District
State Capitol, Room 225-E
Topeka, Kansas 66612

Re: Constitution of the State of Kansas--Miscellaneous--Lotteries; Indian Gaming Regulatory Act; Video Gaming

Synopsis: Video lottery games fall within the definition of class III gaming under the Indian gaming regulatory act and the national Indian gaming commission's proposed rules. Cited herein: 25 U.S.C.S. § 2703; 56 Fed. Reg. 56,278 (1991) (to be codified at 25 C.F.R. § 502.1.

* * *

Dear Representative Sebelius and Senator Reilly:

You request our opinion regarding the Indian gaming regulatory act (IGRA). Specifically, you inquire whether video lottery games would fit within the act's definition of class II gaming, therefore permitting Indian tribes to operate such games without having to enter into a tribal-state gaming compact.

In defining class II gaming the IGRA provides in part:

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> "(7)(A) The term 'class II gaming' means--
>
> "(i) the game of chance commonly known as bingo (whether or not electronic, computer, or other technological aids are used in connection therewith)--
>
> . . . .
>
> "(B) The term 'class II gaming' does not include--
>
> . . . .
>
> "(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind." 25 U.S.C.S. § 2703.

The national Indian gaming commission has proposed rules which define "electronic, computer or other technological aid" as:

> "a device such as a computer, telephone, cable, television, satellite or bingo blower and which when used:
>
> "(1) Is not a game of chance but merely assists a player or the playing of a game; and
>
> "(2) Is readily distinguishable from the playing of a game of chance on an electronic facsimile; and
>
> "(3) Is operated according to applicable Federal communications law." 56 Fed. Reg. 56281 (1991) [to be codified at 25 C.F.R. § 502.1(h)].

"Electronic or electromechanical facsimile" is defined as:

> "any gambling device as defined in 15 U.S.C. 1171(a) (2) or (3) (except any gambling devices described in paragraph (h) of this section) and any games or

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devices such as video bingo." Id., at § 502.1(i).

The commission explains its rationale for defining these terms in this way:

> "An elementary principle of statutory construction is that an agency must give effect to all the terms used by Congress. Colautti v. Franklin, 439 U.S. 379 (1979). Therefore, in interpreting statutes, one cannot ignore distinctions intended by the use of distinctly different terms. In using the two terms ("electronic or electromechanical facsimiles of any game of chance" and "electronic, computer, or other technologic aids") in question, Congress intended the Commission to give effect to both. This the Commission did in proposing definitions for those terms.
>
> . . . .
>
> "In proposing definitions for "electronic, computer or technologic aid" and "electronic or electromechanical facsimile," the Commission relied heavily of the Senate Report accompanying S. 555.
>
> . . . .
>
> "Electronic or Electromechanical Facsimile.
>
> "The significance of this definition is that it defines technology prohibited under the definition of class II gaming. Where technology goes beyond merely assisting in the playing of a game and becomes the game itself, the Commission proposes that such technology be classified as class III gaming and therefore under the jurisdiction of a tribal-state compact. To that end, the Commission proposes including any gambling device as defined in 15 U.S.C. 1171(a) (2)

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or (3) ("The Johnson Act") except devices which are not games themselves and meet the criteria for technologic aid (e.g., bingo blowers).

"In the Highlights portion of the Senate Report, under the heading Grace period, the Report states, '[a]ll video machines and other electronic or electromechanical facsimiles of games of change (sic) may continue to operate for 1 year after the date of enactment of the bill to give tribes the opportunity to negotiate tribal-state compacts to cover the operation of such games.' In the view of the General Counsel, such language, along with the grace period language in 25 U.S.C. 2703(7)(D), provide clear and unambiguous guidance concerning Congressional intent with respect to this term. Congress clearly intended to classify as class III, video machines and other facsimile games. The grace period language is further explained and examples given in the Senate Report under the section titled Explanation of Major Provisions. There, the Report lists video bingo. Therefore, in the view of the General Counsel video bingo is a class III game." Id., at 56279. (Emphasis added).

These definitions and the commission's explanation therefore clearly establish video lottery games as class III, subject to tribal-state gaming compacts. We note that the commission's rules have not yet been formally adopted and are therefore subject to change, but had not been amended from the above-quoted version as of March 30, 1992.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS

Julene L. Miller

Julene L. Miller
Deputy Attorney General

RTS:JLM:jlm

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4/10/92
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The Topeka Capital-Journal, Friday, April 10, 1992

Opinion: Video lottery possible

The Capital-Journal

Video lottery is Class III gambling that could be offered by Indian casinos, Attorney General Bob Stephan said in an opinion Thursday.

He said the federal Indian Gaming Regulatory Act, which allows tribes to establish and operate casinos on their reservations, and the National Indian Gaming Commission clearly establish video lottery as Class III gambling, subject to state-tribal gaming compacts.

The non-binding opinion was requested by Sen. Ed Reilly, R-Leavenworth, and Rep. Kathleen Sebelius, D-Topeka, chairmen of the Senate and House Federal and State Affairs committees.

Those are the legislative panels that deal with gambling issues.

There had been some question about whether Indian casinos could automatically offer video lottery games if tribes are authorized to begin operating casinos.

All four tribes in northeast Kansas have requested or completed negotiations with the state to launch casino operations.

However, none of the state-tribal compacts have gone into effect because Stephan has filed suit in the Kansas Supreme Court challenging Gov. Joan Finney's authority to sign such agreements on behalf of the state.

House Judiciary/State Affairs
April 10, 1992
Attachment #7

Tribes need state OK for video gambling, Indian gaming panel says

The Los Angeles Times

A federal commission has ruled that the nation's Indian gambling halls may not use video gambling machines without the approval of state authorities.

In long-awaited regulations, published Thursday in the Federal Register, the National Indian Gaming Commission rejected the pleas of tribes that some of the lucrative gambling machines be classified as mere "technologic aids" to mild forms of wagering, such as bingo, over which the states have no control.

Tribal attorneys vowed to go to court to block the regulations, which will take effect in 30 days. If not overturned, they could unleash raids by federal authorities against reservations that continue to use slot machine-type devices without state compacts.

Video gambling machines have been the subject of controversy and confusion in many states.

At issue was how to interpret the 1988 federal Indian Gaming Regulatory Act, which said tribes could conduct high-stakes versions of bingo, pulltabs — and sometimes poker — without their home states having a say. Tribes were supposed to negotiate with their states to set the ground rules for more serious forms of gambling, such as off-track betting, blackjack and slot machines.

But tribal attorneys argued various machines were allowed without state compacts because they were essentially automated versions of bingo and pulltabs.

In releasing the regulations, commission chairman Tony Hope said gambling proponents had misinterpreted the law to get an "unfair competitive advantage" by using slot machines in states where they are banned.

Justices to review casino spat

By ROGER MYERS
The Capital-Journal

The Kansas Supreme Court agreed Thursday to hear oral arguments in Attorney General Bob Stephan's lawsuit challenging Gov. Joan Finney's authority to sign gaming compacts with Indian tribes on behalf of the state.

Arguments will begin at 1:30 p.m. on May 20, during the final week of hearings before the court's summer recess.

The decision was a setback for Finney and the Kickapoo Indian Nation.

The governor's attorney, Bill McCormick, filed a response last week urging the Supreme Court to dismiss Stephan's lawsuit on grounds that Finney had authority as the state's chief executive officer to sign state-tribal compacts on behalf of Kansas.

If the court had agreed with McCormick and dismissed the suit, it would have freed U.S. Secretary of Interior Manuel Lujan to approve the compact that was signed in January between Finney and the Kickapoos.

That would have allowed the tribe to immediately establish a temporary casino in its existing bingo parlor on its reservation west of Horton and resume planning on a permanent Las Vegas-style casino south of Hiawatha.

LAW OFFICES
PIRTLE, MORISSET, SCHLOSSER & AYER
A PROFESSIONAL SERVICE CORPORATION

M. FRANCES AYER[1,2]
PHILIP BAKER-SHENK[1,3]
FRANK R. JOZWIAK[4]
PATRICIA A. MARKS[3]
MASON D. MORISSET[4]
ROBERT L. PIRTLE[4]
THOMAS P. SCHLOSSER[4]

1 DISTRICT OF COLUMBIA BAR
2 GEORGIA BAR
3 PENNSYLVANIA BAR
4 WASHINGTON BAR

DEANNA B. DREAMER
LEGISLATIVE ASSISTANT

SUSAN K. McWHIRTER
LEGAL ADMINISTRATOR

1115 NORTON BUILDING
801 SECOND AVENUE
SEATTLE, WASHINGTON 98104-1509
FACSIMILE: (206) 386-7322
(206) 386-5200

WASHINGTON, D.C. OFFICE
THE FEDERAL BAR BUILDING
1815 H STREET N.W., SUITE 750
WASHINGTON, D.C. 20006-3604
FACSIMILE: (202) 331-8738
(202) 331-8690

PLEASE REPLY TO THE SEATTLE OFFICE

March 3, 1992

Representative Kathleen Sebelius
Co-Chairman, State & Federal Affairs Committee
State of Kansas
State Capitol
Topeka, Kansas 66612-1590

Re: Testimony of Robert L. Pirtle Regarding Senate Bill 739 and Tribal-State Gaming Compact Legislation (March 2, 1992)

Honorable Kathleen Sebelius:

Yesterday afternoon Robert Pirtle requested that I send you a copy of the above-referenced testimony. I enclose a copy of such testimony for your perusal.

Very truly yours,

PIRTLE, MORISSET, SCHLOSSER & AYER

Gary A. Lindquist
Assistant to Robert L. Pirtle

\gl

enclosure

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House Federal & State Affairs
April 10, 1992
Attachment #8

TESTIMONY OF ROBERT L. PIRTLE
REGARDING SENATE BILL 739
AND
TRIBAL-STATE GAMING COMPACT LEGISLATION

APRIL 10, 1992

My name is Robert L. Pirtle. I am the senior partner in the law firm of Pirtle, Morisset, Schlosser & Ayer with offices in Seattle and Washington, D.C. Our firm practices exclusively in the field of Indian law, representing, at any given time, between 20 and 30 Indian tribes and tribal organizations scattered in States throughout the nation including Hawaii and Alaska. We are special counsel to the Prairie Band of Potawatomi Indians. On November 24, 1991, Chairman Wahquahboshkuk requested the State to enter negotiations for a Tribal-State Gaming Compact pursuant to the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2710(d)(7)(B)(i), thus triggering the 180-day period for completion of the compact. Accordingly, Kansas is required by IGRA to complete the Tribal-State Compact with the Potawatomi Tribe prior to May 25, 1992. On February 5, 1992, we delivered the proposed Gaming Compact between the Prairie Band of Potawatomi Indians and the State both to Governor Joan Finney and to the Kansas Legislature.

In its Report to the Kansas Legislature on Proposed Gaming Compact between the Prairie Band of Potawatomi Indians and the State of Kansas, dated February 17, 1992, the Potawatomi Tribe asked the Legislature for immediate negotiations upon its proposed gaming compact and requested that the Legislature establish, by legislation, a mechanism suitable to the Legislature for conducting the requested negotiations. I have

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reviewed Senate Bill 739 and House Bill No. 2928 and conclude that, consistent with IGRA, either would establish such a mechanism. It is not the place of the Potawatomi Tribe to recommend to Kansas which mechanism it chooses; however, the Tribe does recommend that one of the two measures be enacted into law at the earliest possible opportunity and because the entire matter of proposed gaming compacts between Kansas tribes and the State of Kansas has occurred within the last six months, it behooves me to advise this Committee of the urgency involved. The nature of the urgency is two-fold: it is both legal and practical. I will first address the legal aspects.

Under the American federal constitutional framework, the States possess no inherent sovereignty over Indian affairs. The exercise of State jurisdiction on Indian lands such as that exercised by Kansas under 18 U.S.C. § 3243, may only be done pursuant to a specific congressional authorization. Because of the special protective relationship of the federal government to Indian tribes, and because federal protection is often required to prevent State encroachments, such transfers of jurisdiction must be strictly construed to limit the scope of such delegated jurisdiction. *Bryan v. Itasca County*, 426 U.S. 373, 392 (1976). Prior to enactment of the IGRA by Congress, States had no jurisdiction to interfere or regulate Indian gaming in Indian country. *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310 (5th Cir. 1981); *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). Both the *Butterworth* and *Cabazon* opinions held that if the gaming conducted by an Indian tribe does not violate the State's public policy, that is, is not "criminal/prohibitory" in nature but merely "civil/regulatory" in nature, then

the tribe can operate the gaming activity free of any State interference. In Senate Report No. 100-446, which accompanied S. 555 (the bill which became the IGRA), the Senate expressly recognized the lack of State power to regulate Indian gaming, summarizing the *Butterworth-Cabazon* rule as providing that ". . . tribes in States that otherwise allow gaming, have a right to conduct gaming activities on Indian lands unhindered by State regulation." Senate Report at 2-3.

The IGRA is unique: never in the history of Indian law has Congress enacted a statute which delegated a portion of its exclusive Indian jurisdiction to States while, at the same time, providing a regulatory mechanism founded on a Tribal-State compact and consequent inter-governmental cooperation. The uniqueness of the concept embodied in the IGRA includes cross-delegation of jurisdictional powers between the compacting parties. In the Senate Report, the Committee explained that the compact provision, as the legislative balancing of the governmental interests of tribes and States was ". . . the best mechanism to insure that the interests of both sovereign entities are met with respect to the regulation of complex gaming enterprises such as paramutuel horse and dog racing, casino gaming, jai alai, and so forth." Senate Report at 5. Thus Kansas has the opportunity of utilizing the control mechanisms embodied in the IGRA to compact with the four Kansas Indian tribes for Indian gaming activities in such a manner as to fulfill the purposes of the IGRA, that is, promote tribal economic development, tribal self-sufficiency and strong tribal government by providing a statutory basis for the

regulation of Indian gaming adequate to shield it from organized crime and other corrupting influences and assure that Indian gaming is conducted fairly and honestly.

The IGRA deferred to State law; accordingly, the State of Kansas must decide exactly which branch of Kansas State government is entitled to compact with Indian tribes. The IGRA neither designates the appropriate branch of State government nor makes any attempt to alter or influence State law in that respect. It is because of the conflicting opinions in this regard in the gubernatorial and legislative branches of Kansas State government that the Potawatomi Tribe has delivered its proposed Gaming Compact *both* to the Governor and to the Legislature. Only the State of Kansas can tell the Potawatomi Tribe who in Kansas is to compact with the Tribe; however, one thing remains clear - the Tribal-State gaming compact must be negotiated prior to May 25, 1992 or Kansas could be held by a federal court not to have negotiated with the tribe in good faith.

If a federal court were to hold that Kansas did not negotiate with the Potawatomi Tribe under the IGRA in good faith, the remedies set forth in 25 U.S.C. § 2710(d)(7)(A) could be initiated by the Tribe in the federal district court. The IGRA provides that the federal judge would order the State and the Tribe to conclude the gaming compact within sixty days. If the State and the Tribe failed to do so, the judge would appoint a mediator to select between proposed compacts from the State and the Tribe. The mediator would select the compact "which best comports with the terms of this Act

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(IGRA) and any other applicable Federal law and with the findings and order of the court." Finally, the Secretary of the Interior would approve the compact to govern gaming activities by the Potawatomi Tribe.

In addition to the mandate of the IGRA and the need to prevent an expensive federal court suit, I recommend that the Legislature act with expediency because of an urgent practical consideration. Indian tribes have sued States in a number of instances; those States include Florida, Washington, Mississippi, Michigan, Alabama, Wisconsin, Connecticut and New Mexico. Other States about to be sued include Arizona and North Dakota. A standard pattern of defense by the States being sued is to raise the defense of State sovereign immunity under the Eleventh Amendment to the U.S. Constitution. In short, the defense is that States have sovereign immunity from suit in federal courts under the Eleventh Amendment and Congress does not have legal authority to waive the sovereign immunity of the States through enactment of legislation such as the IGRA. In one such case, *Poarch Band of Creek Indians v. State of Alabama*, 1991 WL 220712 (S.D. Alabama) (October 30, 1991), the federal judge upheld the sovereign immunity defense and dismissed the State of Alabama from the suit. It might seem at first blush that the upholding of the sovereign immunity defense in the *Poarch Band* case is a victory for States, a simple method whereby States can now defeat the promised federal court remedy, eliminate any need to enter into gaming compacts with tribes, and result in the destruction of Class III gaming by Indian tribes.

The reality, however, is much more grim - not for Indian tribes, but for States. The reason is that the federal court remedies included in the IGRA are so integral to the IGRA that if the State sovereign immunity defense prevails, *the entire IGRA will probably fail.*

The IGRA contains a "severability" clause, 25 U.S.C. § 2721, which provides that in the event any provision of the Act is held invalid, the remainder of the Act shall continue in full force and effect. But such a severability clause creates no more than a rebuttable presumption of validity. *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 686 (1987). The test for whether such a clause can operate to save a statute when one provision is declared unconstitutional is simple: "Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law." *Id.* at 684, *quoting Buckley v. Valeo*, 424 U.S. 1, 108 (1976), *quoting Champlin Refining Co. v. Corporation Comm'n of Oklahoma*, 286 U.S. 210, 234 (1932).

This means that the remaining provisions of a particularly invalid statute are also invalid if it appears that (1) Congress would not have enacted the remainder in the absence of the affected provision or (2) what remains of the statute is not fully operative as law. Therefore, if Congress would not have enacted the remainder of the IGRA in the absence of the federal court remedies provision, then the remainder of the IGRA is not severable and the entire statute falls. As the Supreme Court held in the *Alaska*

Airlines case "[t]he unconstitutional provision must be severed unless the statute created in its absence is legislation that Congress would not have enacted." *Alaska Airlines*, 480 U.S. at 685. In summary, then, the test is whether the constitutional and unconstitutional provisions of a statute are so inter-dependent that one cannot stand without the other; in such case, both must fail.

A close examination of the entire history of the IGRA leads me to the conclusion that the federal court remedy promised to Indian tribes is so integral to the entire IGRA that if it is defeated by the sovereign immunity defense, the entire IGRA must fail. This conclusion follows from the fact that the jurisdictional provision granted tribes access to federal court is an integral part of the fundamental compromise reached in the IGRA to balance tribal and State interests. Before the IGRA, States had no jurisdiction whatsoever with respect to Indian gaming on Indian lands if the *Butterworth-Cabazon* test were met. The IGRA was a compromise, reached after many years of struggle between the States and tribes. In the IGRA, Congress sought to strike a balance between the demands of the States and the gaming industry that Indian tribes only be allowed to engage in gaming specifically permitted by State law and under State regulation, on the one hand, and the tribes' demands that they be free to continue to engage in any kind of gaming which was legal under the *Butterworth-Cabazon* test, on the other.

But success by the States in hiding behind the sovereign immunity defense would turn the carefully crafted congressional compromise embodied in the IGRA on its head,

for no State would be required to give "good faith" consideration or any real consideration to tribal requests for gaming compacts, even if the kind of gaming involved were undeniably available to the Tribe prior to passage of the IGRA and, therefore, were clearly eligible for inclusion in a gaming compact.

Failure of the IGRA by virtue of its being struck down in the federal court in any of the States now engaged in litigation with Indian tribes is the grim reality I have already mentioned; it would leave Kansas tribes with the right to conduct all Class III games in Kansas Indian country without any compact with the State and without any State oversight or control whatsoever. Such a result would eliminate the careful control mechanisms established by the Potawatomi Tribe in its proposed gaming compact and would leave the Tribe, the game and the State of Kansas without any regulatory protection other than that supplied by the federal government. But the federal government makes no promise of such protection at the site of Indian gaming operations and has no facilities or manpower in place to provide such protection. Perhaps more important, the federal government has no funds to pay for any such activity.

On the other hand, the IGRA was carefully crafted to allow the Potawatomi Tribe and the State of Kansas to erect the protective mechanisms that both believe necessary to regulate Indian gaming in the State. To insure success of such shared regulation, the IGRA provides that the cost will be borne as an expense of each Indian tribes engaged in gaming activities pursuant to a Tribal-State gaming compact.

Let me reiterate that the threat to Kansas is not that the Potawatomi Tribe will file an action in federal court to which the State will raise the sovereign immunity defense and out of which the IGRA will fall. The threat to Kansas and to the Potawatomi Tribe, as well as other Kansas Indian tribes, is that a federal district court in one of the other States will do so and will thus seal the fate of Kansas as well. Thus, in my opinion, it is urgent that the Kansas Legislature establish the appropriate mechanism for negotiating and concluding gaming compact negotiations with the Potawatomi Tribe prior to May 25, 1992.

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