

Approved: January 23, 1992
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Senator Wint Winter Jr. at 10:05 a.m. on January 15, 1992 in room 514-S of the Capitol.

All members were present except:
Senators Moran, Feleciano and Parrish who were excused.

Committee staff present:
Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Crapser, Secretary to the Committee

Conferees appearing before the committee:
Attorney General Robert Stephan

Chairman Winter opened the meeting by welcoming Attorney General Robert Stephan.

General Stephan briefed the committee on the Federal Indian Gaming Regulatory Act and how it affects the State of Kansas. (ATTACHMENT 1)

General Stephan stated that, in his opinion, action must be taken during the 1992 session if the legislature wishes to change the existing gambling statutes that would allow casino gambling under the Federal Indian Gaming Regulatory Act. If no action is taken in the current year there could be recourse to litigation by casino operators in the future.

General Stephan pointed out the likelihood of expanded legal problems with active casino gambling, specifically in criminal and law enforcement areas. Statistics show that whenever a gambling operation is allowed, there are increased criminal activities that create problems for law enforcement entities. He further stated that it is possible for a compact with American Indian tribes to preclude all state authority over regulation of operations.

Responding to questions from the committee, General Stephan reiterated his opinion that the Legislature must be a partner in any compact and has the power to prohibit certain forms of gambling. However, the prohibitions on gambling must be specific and should be acted on in the current year.

General Stephan also responded that American Indian tribes can not be bound to pay gambling taxes to the state. Nothing precludes them from voluntarily submitting funds to the state, but they can not be forced to submit tax funds.

This concluded General Stephan's testimony to the Committee on casino gambling.

Senator Bond announced to the Committee that he had two drafts of proposed legislation and invited any member to co-sponsor if they so desired. The first draft would be a change in criminal law, stating the definition of the lottery. It would make casino gambling a crime but allow enactment of video lottery, if approved by the Legislature. The second draft would amend the constitution, giving the public an opportunity to determine if casino gambling should be allowed. Additionally, the constitutional amendment draft would divide gambling proceeds equally between economic development and education.

The meeting was adjourned at 10:58 a.m.



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 Robert T. Stephan
Attorney General
Before the Senate Judiciary Committee
Indian Gaming Regulatory Act
January 15, 1992

Mr. Chairman, Members of the Committee:

I have been asked to brief you on the federal Indian gaming regulatory act and how it affects the state of Kansas.

The Indian gaming regulatory act provides for the regulation of gaming on Indian lands. The act classifies gaming into three categories; the provisions for regulation differ depending upon the class. Class I gaming is defined as "social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations." Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribe and is not subject to the act. Class II gaming is essentially bingo and non-banking card games. Class II gaming on Indian lands is also within the jurisdiction of the Indian tribe, but subject to the act and is regulated in part by the national Indian

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gaming commission. Class III gaming is defined as "all forms of gaming that are not class I gaming or class II gaming." Class III gaming generally includes slot machines, casino games including banking card games, horse and dog racing, pari-mutuel, jai alai, and so forth. Class III games may be operated on Indian lands in states that permit such gaming activities by any entity and are to be regulated pursuant to a tribal-state compact. It is class III gaming which has been the focus of the opinions I have been requested to issue.

In Attorney General Opinion No. 91-119 I concluded that since the state itself is permitted to conduct any game involving the elements of consideration, chance and prize, any game including these three elements may be negotiated for inclusion in a tribal-state compact. However, as discussed in Attorney General Opinion No. 92-1, if the legislature were to prohibit certain games across the board (meaning no one, including the state, may conduct or participate in those games) then those games would no longer be permissible subjects for inclusion in a compact.

Attorney General Opinion No. 91-119 also discusses the permissible contents of a tribal-state compact. The compact may provide for: the application of state criminal and civil laws or tribal ordinances to the operation; state or tribal enforcement of such laws; an agreement for the tribe to

reimburse the state for costs of regulating the operation; standards for the operation, including licensing; and any other subjects that are directly related to the operation of gaming activities. The state may not tax a tribe's class III gaming operations.

Finally, Attorney General Opinion No. 91-119 states my belief that some legislative action is necessary to render gaming compacts binding and enforceable against the state. The legislature may either ratify compacts presented to it, or specifically authorize the governor to formulate and execute the compacts. If the legislature fails to take any action to further the progress of the compacts, the state may be subject to provisions of the act which authorize tribes to proceed to federal court seeking an order to conclude negotiations within 60 days, after which time a mediator chooses which compact proposal (the state's or the tribe's) should be used.

One other opinion, No. 91-160, addresses the ability of a tribe to locate a gaming operation on land outside its currently recognized reservation boundaries. The Indian gaming regulatory act specifically provides for this if the land is acquired by the secretary of the interior in trust for the tribe, and if, after having consulted with state and local officials, the secretary and the governor determine

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that locating a gaming establishment on such lands would be
in the best interests of the tribe and not detrimental to the
community surrounding the proposed site.

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