

Approved: March 27, 2000  
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Representative Tony Powell at 1:30 p.m. on March 7, 2000 in Room 313-S of the Capitol.

All members were present except: Representative Rehorn, excused

Committee staff present: Theresa Kiernan, Revisor of Statutes  
Russell Mills, Legislative Research  
Mary Galligan, Legislative Research  
Winnie Crapson, Secretary

Conferees appearing before the committee:

Bob Alderson, Casey's General Stores  
Ron Hein, Indian Nations in Kansas  
Roger Aeschilman, Sec., Dept. of Human Resources

Others attending: See attached list.

Chairman Powell opened the meeting and asked for bill introductions.

Without objection bill will be introduced as requested by Bob Alderson, representing Casey's General Stores, to preclude the Department of Revenue from issuing its own citation in cases of illegal sale of tobacco products in addition to one they have issued under their contract with U.S. Food and Drug Administration. Mr. Alderson's request is attached (Attachment #1).

Without objection bill will be introduced as requested by Representative Klein requiring equitable settlement in claims for health care. [HB 3022 introduced March 8.]

Chairman Powell opened consideration of **HB 2917, Administrative fines for cigarette tobacco infractions; if more than three years passed between infractions, new occurrences considered first occurrence.**

Technical amendment was distributed by Theresa Kiernan, Revisor, deleting repetitive reference to graduated fines. The bill provides that an occurrence after passage of three years without a violation will be considered the first occurrence.

Representative Burroughs moved that the amendment be adopted, Representative Mason seconded. Motion passed.

Representative Hutchins moved that Committee recommend HB 2917 favorable for passage as amended. Representative Mason seconded. Motion passed.

Chairman Powell opened hearing on  
HB 2845, Kansas Indian advisory commission established, executive director.

Ron Hein testified as legislative counsel for the Indian Nations in Kansas (Attachment #2). INIK is a coalition of three of the four Kansas Native American Indian Tribes (the Kickapoo Tribe of the Kickapoo Reservation in Kansas, the Prairie Band Potawatomi Nation, and the Sac and Fox Nation of Missouri.) He stated while INIK supports the concept of HB 2845. because they believe the more that the State of Kansas can do to facilitate communication with the Indian nations and an understanding of Indians by Kansas government agencies and employees and the Kansas constituency the better, they have some

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questions about whether this bill was the way to accomplish that. Mr. Hein suggested the committee should consider whether the proposed commission should be directly advisory to the governor or whether the four existing tribes who are sovereign nations should be communicating through direct government to government communication. He attached to his testimony a copy of the Act for the Admission of Kansas Into the Union and called attention to the reference to the rights of the Indians in the territory. Mr. Hein noted that **HB 2845** might provide an adjunct to the existing Joint Committee on State-Tribal Relations.

In response to questions Mr. Hein said the bill was not initiated by the IINIK but was by one of the tribal council members. INIK has some concerns that the bill is almost a tendency to trivialize the tribes' relationship with the Governor. He said it was his understanding that the federal government determines who is a "tribe in Kansas." There are four federally recognized tribes that have a reservation in Kansas.

Testimony was presented in opposition to the bill by Roger Aeschliman, Deputy Secretary of the Department of Human Resources (Attachment #3). He stated the intent has already been implemented and described the operation of the Kansas Office of Native American Affairs (ONAA) established by Governor Graves within Department of Human Resources. Brad Hamilton serves as executive director. It was established in October 1999 by Governor Graves as an "Office", not as a commission, by consolidating positions that were already in place.

Mr. Aeschliman listed his concerns about the proposed commission appointment process. Mr. Hamilton and his staff were to prepare a plan for the office. Mr. Aeschliman's testimony included the resulting 10-Point Plan. It includes things which are both "doable" and recognizable. Mr. Hamilton and his staff are already solving problems and performing the ombudsman function, item 1..

In response to questions about success in obtaining grant money, Mr. Aeschilman said skilled grant writers in the Department of Human Resources are presently helping to identify grants. There are about 80 or 90 federal and state programs that provide some kind of funding for training, job placement, putting people to work in some way. Effective July 1, 2000 as many of these programs as possible will be consolidated and Native Americans are identified as a target population in that consolidation.

Representative Weiland explained that the bill was the result of work which began about three years ago. At that time a bill was introduced in an attempt to establish relationships with the tribes. It was based upon legislation in other states and the tribes did not like the resulting proposal. Three of the tribes are in Representative Weiland's district. He accepted the offer of a member of the Kickapoo Tribe who expressed interest in working on a bill. These efforts began before either the Joint Committee on State-Tribal Relations or Office of Native American Affairs were established.

Mr. Aeschilman said the activities of Representative Weiland are greatly appreciated and asked for time for the Governor and Office of Native American Affairs to prove that the ombudsman/emissary model works to benefit all parties.

Hearing was closed on **HB 2845**.

Meeting adjourned at 2:44 p.m. Next scheduled meeting is March 8.



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KANSAS AND MISSOURI

MEMORANDUM

TO: Chairman Tony Powell and Members of House Committee  
on Federal and State Affairs  
FROM: Bob Alderson on behalf of Casey's General Stores,  
Inc.  
DATE: March 7, 2000  
RE: Request for Bill Introduction

I am Bob Alderson and I am appearing on behalf of Casey's General Stores, Inc., to request the introduction of a bill by the House Committee on Federal and State Affairs.

The Kansas Department of Revenue (KDOR) has entered into a contract with the Food and Drug Administration (FDA) of the U.S. Department of Health and Human Services, to enforce the FDA's regulations regarding sales of cigarettes and smokeless tobacco to persons under the age of eighteen. Pursuant to this contract, a number of KDOR positions have been funded, and persons filling many of these positions are used to conduct "sting" operations to determine compliance with the FDA's regulations, which are adopted by virtue of authority granted by the Federal Food, Drug and Cosmetic Act. Under that Act, the FDA has authority to assess civil money penalties for violations, and in the event the KDOR personnel conducting the enforcement activities determines a violation, the alleged offender receives from the FDA a Notice of Violation. However, the alleged offender also receives a Cigarette Retailer Citation from the KDOR for the same offense.

Casey's believes this is an inappropriate situation. Where both KDOR and FDA seek to recover monetary penalties for the same violation, we believe that the legal doctrine of *res judicata* precludes both of them from exacting a penalty. Once a retailer has paid the monetary penalty assessed by one of these governmental agencies, because there is privity between these governmental entities by virtue of their contractual relationship, the doctrine of *res judicata* precludes the other from assessing its monetary penalty. We believe, therefore,

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that one agency or the other should not issue a citation. In this instance, where the violation is determined by KDOR personnel while acting pursuant to KDOR's contract with the FDA, we believe it is most appropriate that KDOR be precluded from also assessing a penalty for the same violation. Accordingly, we would respectfully request the introduction of a bill to that effect.

I do not have specific language, but I have information that can be provided to the Revisor's Office that will assist in drafting the legislation. Thank you for your attention to this request. I will be happy to respond to any questions.

# HEIN AND WEIR, CHARTERED

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## Testimony before House Federal and State Affairs

Re: HB 2845

Presented by Ronald R. Hein

on behalf of

Indian Nations In Kansas

March 7, 2000

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for the Indian Nations in Kansas (INIK). INIK is an ad hoc coalition of three of the four Kansas Native American Indian Tribes, the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas, the Prairie Band Potawatomi Nation, and the Sac and Fox Nation of Missouri.

HB 2845 establishes the Kansas Indian Advisory Commission, to be advisory to the Governor. Each of the four Kansas tribes will be represented on this commission. In addition, there will be representatives of the President of the Senate, Speaker of the House, Minority Leaders of the House and Senate, two appointees of the Governor recommended by the non-reservation Indian coalition representing the urban Native American Indian community, one in the eastern half of the state and one in the western half. The responsibilities of the advisory commission are set out on page 2, section 2.

The Indian Nations in Kansas support the concept of HB 2845. There is a great deal of misunderstanding about the Indian tribes whose reservations are in Kansas, as well as the Indian culture, history, religion and people in general. The more that the State of Kansas can do to facilitate communication with the Indian nations and an understanding of Indians by Kansas government agencies and employees, as well as the Kansas constituency, the better.

Whether the commission should be directly advisory to the governor is an issue which the committee should consider. To the extent that this bill encourages communication between the Indian tribes, their governments, and their members, the bill is a good one. As will be pointed out in later testimony, there may be some problems with regards to the specifics of this bill when it comes to whether or not the best form of communication with the governor is through an advisory commission or through sovereign government to sovereign government communication. An argument can be made that the advisory commission will be duplicative of the efforts of the tribes to communicate directly with

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the governor, the legislature, and state agencies. Those objections may have some validity.

There is also some question that having an advisory commission to the governor would seem to trivialize the four existing tribes, who are indeed, sovereign nations. There is a question whether or not these sovereign nations should be communicating with the governor and the legislature through an advisory council, or through direct government to government communication.

To assist you in understanding the nature of the relationship between the four Indian tribes in Kansas and the state government, I have attached a copy of the Act for the Admission of Kansas Into the Union.

HB 2845 is not meant to be a cure-all for all of the issues that are confronting state governments and Indian nations at this time. However, this bill might help facilitate communication, and, if amended slightly, might work as an adjunct to the existing Joint Committee on State-Tribal Relations.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

# An Act for the Admission of Kansas Into the Union

## PREAMBLE

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

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

**§ 1. Admission; boundaries; Indian title.** That the state of Kansas shall be, and is hereby declared to be, one of the United States of America, and admitted into the union on an equal footing with the original states in all respects whatever. And the said state shall consist of all the territory included within the following boundaries, to wit: Beginning at a point on the western boundary of the state of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the twenty-fifth meridian of longitude west from Washington; thence north on said meridian to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the state of Missouri; thence south with the western boundary of said state to the place of beginning: *Provided*, That nothing contained in the said constitution respecting the boundary of said state shall be construed to impair the rights of person or property now pertaining to the Indians of said territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with such Indian tribe, is not, without the consent of such tribe, to be included within the territorial limits or ju-

risdiction of any state or territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the state of Kansas, until said tribe shall signify their assent to the president of the United States to be included within said state, or to affect the authority of the government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to make if this act had never passed.

**History:** 12 Stat. 126; ch. 20, § 1; Jan. 29, 1861.

## CASE ANNOTATIONS

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

**§ 2. Representative.** That until the next general apportionment of representatives, the state of Kansas shall be entitled to one representative in the house of representatives of the United States.

**History:** 12 Stat. 127; ch. 20, § 2; Jan. 29, 1861.

**§ 3. Force of act; school lands; university lands; public buildings; conditions; taxation.**

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# KANSAS

Bill Graves  
Governor

DEPARTMENT OF HUMAN RESOURCES  
*Office of the Secretary*

Richard E. Beyer  
Secretary

## TESTIMONY TO HOUSE FEDERAL AND STATE AFFAIRS

Tuesday, March 7, 2000

By Roger Aeschliman

Deputy Secretary, Kansas Department of Human Resources

House Bill 2845's time has already come. Under the administration of Governor Bill Graves, the intent of this bill has already been implemented. Last fall the Governor created the Kansas Office of Native American Affairs within the Kansas Department of Human Resources. Brad Hamilton is the appointed executive director. This office's primary function is to act as an ombudsman for any Native American in the state of Kansas and in many ways to also function as an emissary between the State of Kansas and the four tribes and several Indian Centers within Kansas.

This office is different from other offices working with targeted groups. It functions almost as an embassy, by bringing together governments and acting as a liaison between them. Hopefully, we will be able to help each group understand each other better. Success in this effort is best directed by this person to person approach, rather than trying to do state to state government by committee.

Attached is the 10-Point Plan established by the Office of Native American Affairs. You can see it is an aggressive and vigorous plan that is already being implemented. It smacks of success and positive, healthy relationships between the State of Kansas and the Native American peoples of our state.

I have several specific concerns about this specific bill:

- The appointment process does not include the Governor in any relevant manner. For a commission to advise the Governor it ought to include a majority of members appointed by the Governor.
- The appointments do not substantially include the non-tribal Native Americans in Kansas.

- The Tribes are left to appoint their own members to this Kansas Government commission.
- The cost of this model is greater than the current model.

While I support the premise of an organization dedicated to improving relations between the State of Kansas and the Native American citizens of Kansas, I believe the Governor and the Secretary of Human Resources have already addressed the issue. KDHR does not support this bill. We ask for time to prove the ombudsman/emissary model works to the benefit of all parties.

## **Kansas Native American Affairs Office 10pt. Blueprint**

*“Success for the future of all Native Americans in Kansas”*

1. Act as an ombudsman or liaison for Native Americans in Kansas.
2. Creation and distribution of a statewide Newsletter, as well as a website for people to access information regarding our office and current issues.
3. Development of a statewide Kansas Native American resource directory, to be distributed to the tribes, Indian centers, universities and schools.
4. Identification and assignment of a committee to develop curriculum standards for Native American history and culture in Kansas school districts, starting with high school history curriculum.
5. Government to Government exchange of interns or pages, for youth to understand and better respect each other's governments and cultures.
6. Facilitate meetings and serve as a communications liaison between the top executives of the state and tribal government. This includes such efforts as meetings between individual tribal heads of state and the Governor, as well as, meetings between tribal leaders and cabinet leadership, and an annual state/tribal conference or summit to include senior tribal and state officials.
7. Promote and encourage state internships across state agencies for students from Haskell Indian Nations University and other Native American college students.
8. Support the implementation of the Workforce Investment Act for Native Americans in Kansas.
9. Support culture awareness training for state agencies and their people.
10. Partner with other organizations to obtain grant money to promote the mission and goals of this office.

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