

Approved: March 29, 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 15, 2000 in Room 313-S of the Capitol.

All members were present except: Representative Findley, 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:

Ron Hein, Indian Nations of Kansas
James Battese, Chief, Potawatomi Tribal Police
Terry J. Scott, Potawatomi Tribal Police
Daina Durham, Sheriff, Jackson County

Others attending: See attached list.

Representative Powell opened the meeting with a general discussion of the bills under consideration today (**HB 2926, HB 3033, SB 607, and SB 543**). Commenting as Chairman of the Joint Committee on State-Tribal Relations he reported that it had held a number of hearings last summer and made informative trips to Indian reservations. The Committee had a number of recommendations, two of their bill introductions are concerned with agreements with the Tribes and interlocal agreements.

Russell Mills, Legislative Research, presented the Report of the Joint Committee on State-Tribal Relations to the 2000 Kansas Legislature (Attachment #1). The Report reviews the organization of the Joint Committee (page 5-1). A sub committee was appointed to review a number of guidelines the Governor should consider in any future gaming compacts. The Joint Committee requested three bill drafts (page 5-4): to authorize the Governor to negotiate state-tribal compacts on topics other than gaming, subject to approval (**HB 2926**); to allow local governmental units to enter into agreements with the four resident tribes (**HB 3033, SB 607**); and to allow Class B clubs at Indian Gaming Casinos to offer temporary memberships (**SB 608** killed in the Senate). **HB 543** did not come directly out of the Joint Committee but was introduced by three members of the committee.

In response to request from Chairman Powell, Mr. Mills described the procedures involved in Indian gaming contracts, Mr. Mills said it was his understanding that under the law agreements negotiated between the Governor and the Tribes must be approved by the Legislature if in session or if not in session, by the Legislative Coordinating Council. When the State-Tribal Relations Committee was created it was given initial approval of any contract to be submitted to the Legislature or Legislative Coordinating Council if the legislature is not in session. **HB 2926** does not change that procedure. If the Governor enters into any side agreement with the tribes, that would be submitted to the Legislature.

Hearing was opened on

SB 543, Native American indian tribal law enforcement officers, powers when providing assistance to state, city or county agencies

The issue basically involves what is called cross-deputization, which relates to the ability of local units of government to authorize law enforcement personnel for the Native American Indian Tribes to act as agents and only grants deputization authority on a case by case basis.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

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Ron Hein, representing Indian Nations in Kansas, testified in support of SB 543 (Attachment #2). He said the issue basically involves what is known as cross-deputization, which relates to the ability of local units of government to authorize law enforcement personnel for the Native American Indian Tribes to act as agents to investigate, arrest, and otherwise execute law enforcement powers with regard to state and local statutes and ordinances.

Terry Scott, Detective and Wildlife Conservation Officer of the Prairie Band Potawatomi Tribal Police Department presented testimony in support of **SB 543** (Attachment #3). He presented the history of the Tribal Police. He described the training and experience of each member. He said the Tribal Police are as well trained and formally educated as any other law enforcement officers in Kansas and would like to make their resource available to other law enforcement agencies in times of need.

Daina Durham, Sheriff of Jackson County, presented testimony in opposition to **SB 543** (Attachment #4). She listed current statutes she believed should be considered and presented copies of Attorneys General Opinions. She said she had attempted to initiate communication with Chief Battese hoping to foster a reasonable working relationship. She listed reasons she believes this legislation is unnecessary. She testified she believes this bill is the first step and infringes on the jurisdiction and purview of the Sheriff.

Hearing was closed on SB 543.

Hearing was opened on

HB 2926, Negotiation of agreements with native American Indian tribes,
and **HB 3033, Native American Indian tribes; interlocal agreements.**

Ron Hein testified on behalf of Indian Nations in Kansas (INIK) in support of **HB 3033** (Attachment #5). INIK supports both bills. He said **HB 3033** would provide that Native American Indian Tribes that have gaming compacts with the State of Kansas would be able to serve as parties to interlocal agreements in the same manner and those agreements would be recognized by the State of Kansas with the same degree of recognition as contracts entered into between other political subdivisions of the state.

Mr. Hein presented testimony in support of **HB 2926** (Attachment #6), authorizing the Governor to enter into non-gaming compacts with the tribes which have entered into gaming compacts and permits the legislature to be involved in approval of such agreements. He noted that **SB 607**, a similar bill, has been recommended by the Senate Federal and State Affairs Committee. INIK believes it would be highly appropriate for the legislature to get involved in and have oversight and approval functions regarding non-gaming issues that warrant the compact process.

Meeting adjourned. Next scheduled meeting is March 16.

Report of the
Joint Committee on State-Tribal Relations
to the
2000 Kansas Legislature

CHAIRPERSON: Senator Lana Oleen

VICE-CHAIRPERSON: Representative Tony Powell

OTHER MEMBERS: Senators Don Biggs, Mark Gilstrap, Audrey Langworthy, and John Vratil; Representatives Tom Klein, Mike O'Neal, Susan Wagle, and Galen Weiland

NONLEGISLATIVE MEMBERS: Governor's Representative—Natalie Haag; Attorney General's Representative—Julene Miller

December 1999

JOINT COMMITTEE ON STATE-TRIBAL RELATIONS

CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee concludes that there are a number of areas in which state-tribal relations have been productive and beneficial to both the state and the tribes and that these mutually beneficial areas can be the basis of future positive relationships. The Joint Committee also is aware that there are some areas where state-tribal relationships could be improved. The Joint Committee believes that more open communication and cooperation between the state and the tribes is the key to improving these relationships. The members believe that the Joint Committee will be a useful forum to allow for improved communication and cooperation.

BACKGROUND

The Joint Committee on State-Tribal Relations was created through the enactment of 1999 HB 2065. The new Joint Committee replaces the Joint Committee on Gaming Compacts. The responsibilities and organization of the new Joint Committee are summarized below.

- The Joint Committee is authorized by statute to:
 - establish and transmit to the Governor proposed guidelines reflecting the public policies and state interests that the Joint Committee will consider in reviewing proposed compacts;
 - recommend to the Governor that any gaming compact provide for the imposition and collection of state sales and excise taxes on sales of nongaming goods and services to persons other than tribal members and imposition and collection of state income tax on revenues derived from sales of nongaming goods and services;
 - hold public hearings on proposed gaming compacts submitted to the Joint Committee by the Governor;
- recommend modification of proposed gaming compacts submitted by the Governor and introduce resolutions approving proposed gaming compacts and recommend that such resolutions be adopted or be not adopted, or report such resolutions without recommendation, and notify the Governor, in writing, of the Joint Committee's action;
- meet, discuss, and hold hearings on issues concerning state and tribal relations; and
- introduce such legislation as deemed necessary in performing its functions.
- Six members of the Committee constitute a quorum, however, actions of the Committee regarding approval of state-tribal gaming compacts require the affirmative vote of at least eight members—at least four senators and four representatives. The Committee could report a compact without recommendation on the affirmative vote of any five legislative members.
- Annually, the Committee will elect its chair and vice chair. The chair will alternate between the House (even years) and Senate (odd

- The Committee is authorized to appoint subcommittees and members may be paid and reimbursed for travel and subsistence for attendance at subcommittee or full Committee meetings.

COMMITTEE ACTIVITIES

The Joint Committee on State-Tribal Relations met for 11 days during the 1999 interim; in addition, a subcommittee held a one-day meeting and also held a meeting by conference call during the interim. The Joint Committee, at the invitation of the tribes, toured the reservations of each of the federally recognized tribes in Kansas. These tribes include the Prairie Band Potawatomi Nation of Kansas; the Kickapoo Tribe in Kansas; the Sac & Fox Nation of Missouri in Kansas and Nebraska; and the Iowa Tribe of Kansas and Nebraska. The Committee also toured each of the Indian gaming facilities currently in operation in Kansas under terms of the 1995 tribal-state gaming compacts. The four casinos, located in Brown and Jackson counties, include the Harrah's Prairie Band Casino; the Golden Eagle Casino (Kickapoo); the Sac & Fox Casino, and the White Cloud Casino (Iowa). Finally, the Committee toured Haskell Indian Nations University and the Tribal Law and Government Center located at the University of Kansas Law School.

The Committee received testimony from:

- The Chairs and members of the tribal governments, as well as other interested tribal representatives, who raised a number of issues in the area of state-tribal relations;
- A history professor from the University of Kansas who discussed the history of the Native American tribes in Kansas;
- Two law professors from the University of Kansas and Washburn University who presented an overview of the concept of

tribal sovereignty and the evolution of national policy toward indigenous peoples;

- The Chief of the Wyandotte Tribe in Oklahoma who discussed the tribe's desire to develop a casino in Wyandotte County;
- A research professor from Kansas State University who discussed several research projects concerning gambling-related issues; and
- A professor with the Department of Horticulture, Forestry, and Recreation Resources from Kansas State University who briefed the Committee on a reforestation project being conducted by Kansas State University on the Potawatomi Reservation.

The Joint Committee also reviewed a number of Attorney General opinions dealing with state-tribal relations from 1982 to the present.

The Committee also received testimony and briefings from staff of:

- the State Gaming Agency who discussed the regulatory role of the Gaming Agency with regard to the tribal casinos;
- the Racing and Gaming Commission who reviewed the role of the Commission relative to the casinos;
- the Kansas Bureau of Investigation who discussed the prior efforts of the agency regarding background checks on casino management and employees;
- the Office of Native American Affairs established by the Governor during the 1999 Interim;
- the Kansas Department of Revenue who reviewed litigation involving the state and the tribes;

- the Department of Wildlife and Parks who stated that the Department has only limited contact with the Kansas tribes;
- the Department of Social and Rehabilitation Services who discussed coordination efforts between the tribes and SRS and the status of various programs available to the tribes; and
- the State Department of Education who reviewed the role of the Department in providing technical assistance to public school districts with Native American students, as well as federal Title IX funding which is provided under the Improving America's School Act of 1994 to help Native American students achieve high standards.

The Joint Committee received staff briefings and updates on various issues relevant to the topic of state-tribal relations. These briefings included a review of the state's responsibilities under the 1995 Tribal-State Gaming Compacts; major provisions of the Tribal-State Gaming Compacts; federal regulations for acquiring trust lands by the tribes; budgets and staffing levels of the State Gaming Agency and the Racing and Gaming Commission; various court cases relevant to the issue of state-tribal relations; and a comparison of the background check requirements for individuals involved in gambling in Kansas.

The Chair also appointed a Subcommittee on State-Tribal Gaming Compact Guidelines to review and compare the suggested guidelines recommended by the National Council of Legislators from Gaming States, along with the 1993 guidelines developed by the Kansas Legislature, and the 1995 Kansas Tribal-State Gaming Compacts. The Subcommittee recommended guidelines to be transmitted to the Governor for consideration during future gaming compact negotiations.

CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee concludes that there are a number of areas in which state-tribal relations have been productive and beneficial to both the state and the tribes. The Joint Committee is of the opinion that these mutually beneficial areas can be the basis of future positive relationships. Examples of these positive relationships include:

- The coordinated efforts of the Department of Social and Rehabilitation Services and the four tribes in the areas of child support enforcement, Medicaid and Healthwave, child welfare agreements, Indian Health Service participation in Medicaid and managed care contracts, Indian Child Welfare Act and the Adoption and Safe Families Act, Alcohol and Drug Abuse Services, Child Protective Services, and Welfare-to-Work Program information;
- The newly-formed (October 4, 1999) Kansas Office of Native American Affairs which was created at the Governor's direction in the Department of Human Resources and has been charged with promoting a greater understanding and awareness of the Native American race, ethnicity, ancestry, and religion in Kansas, as well as programs of public education and awareness to promote an understanding of Native American goals and needs common to all citizens of the state;
- The riparian buffer initiative undertaken by Kansas State University on the Potawatomi Reservation to control erosion of streambanks, implement conservation practices, and protect reservation resources;
- The Tribal Law and Government Center program at the University of Kansas Law School which has the two goals of preparing a new generation of advocates, particularly American Indians and other Indigenous peoples, for careers representing Indian nations and peoples, and estab-

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lishing a forum for the research and study of tribal legal and governance issues;

- The Tribal Management Program at Haskell Indian Nations University which is an attempt to improve management skills of student interns who also enroll in courses at the University of Kansas.

The Joint Committee is aware that the Kickapoo Tribe, Brown County, and the City of Horton have submitted a joint application to the Kansas Department of Transportation for a system enhancement to improve Highway K-20 which runs to the Golden Eagle Casino in Brown County. The Governor has supported this project. The members of the Joint Committee are supportive of this project to improve Highway K-20 and have directed the Chair to send a letter to the Kansas Department of Transportation expressing the Committee's support, with copies of the letter also sent to the Governor, President of the Senate, Speaker of the House, and the four tribal Chairs.

The Joint Committee formally adopted and recommended to the Governor the guidelines to be included in any future gaming compacts or in renegotiation of any existing gaming compacts. The guidelines are attached to this report.

The Joint Committee has also requested that the Revisor of Statutes prepare three bill drafts for review by the Committee in Janu-

ary. The three drafts would:

- Authorize the Governor to negotiate state-tribal compacts on topics other than gaming with the four resident tribes: the Prairie Band Potawatomi Nation of Kansas, the Kickapoo Tribe of Kansas, the Sac & Fox Nation of Missouri In Kansas and Nebraska, and the Iowa Tribe of Kansas and Nebraska. Any compacts would be subject to approval following the same procedures that are currently in place for approval of state-tribal gaming compacts.
- Include the four resident tribes as entities under the Interlocal Cooperation Act to allow the tribes and local governmental units to enter into agreements.
- Amend the Liquor Control Act to allow Class B clubs located in Indian gaming casinos to offer temporary memberships without any waiting period or membership fees, in the same manner as the existing law allows such memberships to be offered by Class B clubs in hotels and motels.

The Joint Committee also is aware that there are some areas where state-tribal relations could be improved. The Joint Committee believes that more open communication and cooperation between the state and the tribes is the key to improving these relationships. The members believe that the Joint Committee will be a useful forum to allow for improved communication and cooperation.

**COMPARISON OF SUGGESTED GUIDELINES OF THE NATIONAL COUNCIL OF LEGISLATORS FROM GAMING STATES (NCLGS);
1993 GUIDELINES; THE 1995 KANSAS TRIBAL/STATE GAMING COMPACTS; AND SUBCOMMITTEE RECOMMENDATIONS**

(Unless specifically stated otherwise, in addition to the Subcommittee's recommendations, all recommendations
in Columns 1, 2, and 3 should be included in any future compacts.)

NCLGS List	1993 Guidelines	1995 Compacts	Subcommittee Recommendations of Provisions to Be Included in Any Future Compacts or Renegotiation of Existing Compacts
<p>Declaration of policy could recognize the positive impact that gaming may have on the state, such as:</p>		<p>The tribe's interests in gaming include raising revenue to provide governmental services for the benefit of the tribal community and reservation residents; promoting public safety as well as law and order on the reservation; realizing the objectives of economic self-sufficiency and tribal self-determination; and regulating the activities of all people within the tribe's jurisdictional boundaries (Sec. 2A).</p>	
<p>— the utilization of gaming generated financial resources to fund programs and services on tribal lands such as education, health and human resources, housing development, road construction, and economic development; and</p>		<p>Tribal programs to be funded by gaming revenues include education, health and human resources, housing development, road construction and maintenance, sewer and water projects, police, fire, and judicial services, economic development, and all other purposes authorized under the Indian Gaming Regulatory Act (IGRA) (Sec. 2A).</p>	
<p>the positive economic effects of gaming enterprises which may extend beyond the tribal community into surrounding communities.</p>		<p>The state's interests in tribal gaming are enumerated and include the interplay of gaming with state public policy, safety, law, and regulatory system, increased tourism and related economic development activities which would generally benefit all northeastern Kansas . . . (Sec. 2B).</p>	

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NCLGS List	1993 Guidelines	1995 Compacts	Subcommittee Recommendations of Provisions to Be Included in Any Future Compacts or Renegotiation of Existing Compacts
Findings could include the purposes of the Compact, such as:			
— creation of a Compact authority, e.g., to govern the particular form of Indian gaming;			The Subcommittee was unsure what NCLGS meant by the term "Compact Authority." The Subcommittee recommends that this finding not be included in future Compacts.
— Compact purposes, e.g., to provide the opportunity for a tribe to offer the particular form of gaming in a way that would benefit the tribe economically, insure fair operation of the game, and minimize corruption;		The purpose of the Compact is to provide for licensure and regulation of certain gaming to benefit the tribe economically while minimizing the possibility of corruption (Sec. 21D).	The Subcommittee prefers the language used in the 1995 Compact.
— the principal goal of federal Indian policy which is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and			Should not be included in Compact.
— the right of the tribal government to license and regulate gaming on its lands in accordance with IGRA and the Compact.			Should not be included in Compact.
Authorizing Power. This section could provide how the Compact would be approved, e.g., does the Governor have sole power to negotiate/renegotiate the Compact, or does it require legislative approval?			Authorizing power provisions should not be included in the Compact.
Definitions. This section could include <i>explicit</i> and <i>detailed</i> definitions of:		Definitions are part of the Compacts (Sec. 5).	All definitions should be reviewed to maintain accuracy and flexibility. Consistently use defined terms in an accurate and appropriate manner.
— the particular Class III gaming being authorized, gaming operations, gaming employees, nongaming employees, facilities, suppliers, etc.		Authorized and prohibited games are listed (Sec. 3).	
— tribal land, e.g., land on which reservations stand, land held in trust, and land appropriated by Indians; and		In addition to the definitions, maps of reservations are included as appendices.	
— other definitions.		Defined in Sec. 5.	

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<p>Regulatory Fees Re: IGRA. This section could acknowledge reimbursement to the states by the tribal governments of their share of regulatory costs necessary in the execution of the Compact, as authorized by IGRA. For example, tribal assessments in Kansas fully fund the Kansas State Gaming Agency.</p>		<p>The state annually shall make an assessment sufficient to compensate the state for the reasonable and necessary costs of regulating gaming pursuant to this Compact (Sec. 25A).</p>	<p>Tribal payment schedule should be coordinated with the state's fiscal year. Tribal assessments should be proportionally based on the tribe's ability to pay; this would require that all compacts contain such a provision. If not, payments in equal amounts would be required from all tribes.</p>
			<p>Provision to ensure that payments for the average costs of background checks are received upfront or are otherwise adequately secured through appropriate means.</p>
<p>Licensing and Background Investigations. This section could:</p>	<p>Background checks:</p>		
<p>— provide all requirements for licensing and background investigations including employee and vendor certification and provisions for federal/state review;</p>	<p>— any member of senior management, owners of 3 percent or more, anyone connected with the actual running, overseeing, or conducting games of chance available for review by the state (No. 15).</p>	<p>Background checks required for key employees and standard gaming employees (Sec. 13B).</p>	
<p>— clearly define who and what should be licensed, e.g., specific classes of employees, classes of vendors and business volume, facilities, etc; and</p>		<p>Licensing required for management contractors, primary management officials, and manufacturer/distributors (Sec. 17A).</p>	
<p>— define suitable criteria, minimum background efforts, provisions to allow for temporary licensing, duration, and renewal requirements for licenses, fees, provisions for work permits for those not required to be licensed, etc.</p>		<p>Relevant information required from applicants for licensure (Sec. 18).</p>	<p>In regard to temporary licenses, consider a balancing of the tribal interest in filling vacant employee positions and the state's interest in conducting appropriate, thorough, and adequate background checks.</p>
	<p>The State of Kansas and the proper gaming authorities should have available for review any proposed management contract, background investigations, and reports before the management contract is ratified (No.12).</p>	<p>The tribe shall provide its Tribal Gaming Commission and the State Gaming Agency with copies of a proposed management contract, and all correspondence and other documentation submitted to the NIGC (Sec. 20).</p>	
<p>Authorized Gaming Activities. This section could in accordance with IGRA, Supreme Court rulings, and state laws:</p>			
<p>— authorize the types, forms, and scope of Class III</p>		<p>Authorized Class III games are defined in the</p>	

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Regulation of Class III Gaming. This section could include:			
<ul style="list-style-type: none"> — the mechanics of tribal regulation and state oversight, including explicit definitions of the roles and responsibilities of tribal and state regulators, including licensing authority and authority in testing and certifying gaming equipment; 		<p>Tribal gaming regulations are specified in the Compact (Sec. 7).</p> <p>The structure of Tribal gaming regulation is set out in Sec. 10.</p> <p>State-tribal roles defined in Secs. 10, 11, 12, and 13.</p>	<p>Re-evaluate the job classifications in Appendix C to bring them into compliance with industry standards; this may require alteration of some definitions in the Compact.</p>
<ul style="list-style-type: none"> — restrictions on minors; 		<p>No person under the age of 21 may place a wager in any gaming activity under the Compact (Sec. 3C). Gaming employees must be 18 years of age or older (Sec. 5G).</p>	
<ul style="list-style-type: none"> — the reaffirmation of tribal laws and authority; 		<p>Applicability of tribal gaming ordinance recognized in Sec. 2D and Sec. 10C.</p>	<p>This provision recommended by NCLGS should not be included in the Compact.</p>
<ul style="list-style-type: none"> — recognize tribal regulators as primary regulators and as government agencies; and 		<p>The Tribal Gaming Commission shall have primary responsibility for enforcing tribal law with respect to each tribal gaming activity or operation conducted on the reservation pursuant to the Compact (Sec. 10 A).</p>	<p>This provision recommended by NCLGS should not be included in the Compact.</p>
<ul style="list-style-type: none"> — vest licensing authority with the tribe, providing the tribe equal or primary authority in testing and certifying gaming equipment. 		<p>The Tribal Gaming Commission licenses and regulates all gaming pursuant to the Compact and tribal law (Sec. 10C).</p>	<p>This provision recommended by NCLGS should not be included in the Compact.</p>
<p>Relationship to IGRA/National Indian Gaming Commission (NIGC). This section could include the preservation of tribal rights under IGRA and acknowledgment of the NIGC Minimum Internal Control Standards (MICS).</p>		<p>The Compacts specifically do not affect rights, powers, or abilities of the tribe, or its agents, to govern their internal economic affairs; to subject tribal property to taxation or state law except as provided in the Compact (Sec. 8). The tribe's rights under IGRA are specifically recognized in Sec. 32 as is the state-tribal relationship regarding taxes and the tribe's right to continued self-governance.</p>	

NCLGS List	1993 Guidelines	1995 Compacts	Subcommittee Recommendations of Provisions to Be Included in Any Future Compacts or Renegotiation of Existing Compacts
gaming to be allowed;		Compact (Sec. 3A).	
— prohibit unauthorized Class III gaming activities, such as Internet gaming;		Prohibited games are defined in the Compact (Sec. 3 B).	
— could set up a system for processing tribal applications for Class III gaming, e.g., approval, denial, judicial review; and			
— provide a system for tribes and a state to address new gaming activities that were not discussed or proposed at the time the Compact was signed.	Any additional gaming facilities should be negotiated under a separate and properly negotiated Compact (No. 13).	Compacts may be amended in accordance with procedure in the Compact (Sec. 35). New games may not be conducted without amendment of Compact unless state subsequently permits anyone to conduct other games (Sec. 3B).	
Limitations. This section could:			
— provide limitations, such as:	No video gambling (No. 3). No sports betting. (No. 4).	Prohibited games include parimutuel wagering, off-track betting, sports betting, club keno, and statewide lottery (Sec. 3B).	Consideration should be given to the limitations recommended by NCLGS. This would be an addition to the 1993 guideline recommendation.
— machines per facility (CA),			
— number of hours of operations, daily or otherwise,	Any gaming facility should be closed a minimum of six hours during each 24-hour period (No. 2).	Hours of operation are not addressed in the Compact.	
— betting and loss limits (MN), and	There should be limits on bets (No. 16).	Bet and loss limits are not addressed in the Compact.	
— number of gaming locations;	Only one gaming facility on each reservation, to be located on reservation land (No. 1). Any additional gaming facilities should be negotiated under a separate and properly negotiated Compact (No. 13).	All gaming under the Compact conducted at a facility on the tribe's reservation (location defined by a map in the Compact) (Sec. 4F).	Limit of one casino per compact at a specifically prescribed location.
— provide that good faith should prevail; and			
— successfully support the Compact Declaration of Policy.			
Integrity of Gaming (Devices) Equipment (CA). This section could establish:		The Compact contains an "Appendix A: Standard of Operation and Management for Class III Activities" which sets forth the technical requirements for gaming activities.	

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— technical standards for gaming devices and gaming device systems;		Technical standards for electronic games have been adopted under the provision of the Compact.	
— a system for the testing and approval of such devices; and		"Appendix A"	
— random testing procedures.			
— The section would include recognition that all Class III gaming equipment and devices must be tested, certified, approved, and monitored, <i>i.e.</i> , Keno, table games, Roulette, video and slot machines, and even chips and playing cards.		"Appendix A"	
— National Indian Gaming Commission (NIGC) minimum internal control standards (MICS) must be recognized by the Compact in regard to integrity of gaming devices. Tribal operators will be required to adhere to the more stringent of the standards (the Compact standards or the MICS).		"Appendix A"	Compact should require use of the more stringent standards.
Monitoring (CA). This section could:			
— authorize the Compact to monitor a tribe's Class III gaming operations to ensure compliance with Compact provisions;	Availability as to audit, inspection, and review of books of the gaming facility and its management/operation should be available at any time as often as needed by the State of Kansas (No. 11).	The State Gaming Agency and the Kansas Bureau of Investigation shall have the authority to monitor each tribal gaming activity . . . and have free and unrestricted access to all areas of the gaming facility during normal operating hours . . . (Sec. 12A).	Include provisions to allow the State Gaming Agency sufficient access to gaming facility to carry out its duties under the statutes and the Compact.
— authorize access to tribal gaming facilities by authorized personnel;			
— establish a system for such monitoring, including number of occasions of access, notice of access, etc.			
This section should be consistent with IGRA, NIGC, and tribal regulations. NIGC MICS must be recognized by the Compact in regard to monitoring. Tribal operators will be required to adhere to the more stringent of the standards (the Compact standards or the MICS).			

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Confidentiality. This section could address confidentiality and disclosure of tribal information and records.		Tribal records obtained under auspices of the Compact remain tribal property not subject to state's Open Records Law.	Provisions should be included for the disclosure to the Legislature to allow the Legislature to exercise its oversight role.
Criminal Jurisdiction. This section could allocate criminal jurisdiction to the Tribes, state, or federal authorities in respect to the form of criminal activity.		Criminal enforcement procedures are set forth in the Compact (Sec. 13).	Consider cross-deputization or other law enforcement needs.
Accounting/Auditing Procedures (MN). This section could lay out accounting and auditing procedures in regard to the Compact. NIGC MICS must be recognized by the Compact in regard to accounting/auditing. Tribal operators will be required to adhere to the more stringent of the standards (the Compact standards or the MICS).		The tribe shall engage an independent certified public accountant to audit the books and records of all gaming conducted pursuant to the Compact and make copies of the audit . . . available to the State Gaming Agency upon written request (Sec. 23).	
Compact Negotiations/Renegotiations. This section could authorize:			
— the length of the Compact;		Compacts are valid until replaced or until tribe repeals its gaming ordinance (Sec. 9).	Compact to specify the term of duration.
— sunset provisions; and		No such provision.	
— rules for renegotiation/amendment of the Compact (NM, MN, OH).		The Tribe retains the right to negotiate additional Compacts (Sec. 32A). The tribe and the state, through the Governor or the Legislature by concurrent resolution, may request negotiations to amend, modify, or replace the Compact (Sec. 35).	
Severability/Breach of Compact. This section would provide for the mechanics of severability and ramifications of breach of Compact.		Severability clause is included in the Compact (Sec. 39). Compacts include procedures for resolving disputes over application of Compacts (Sec. 31).	
Dispute Resolution/Enforcement (NM, CA). This section could address dispute resolution in regard		If the tribe and the state are unable to negotiate an amicable resolution of a dispute	Clarify how an issue in controversy will be dealt w prior to the arbitrator's decision.

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to Compact violations by the tribe or the state and include procedures such as notices of noncompliance and notices to cease, informal resolution, arbitration, and arbitration enforcement.		within a reasonable period of time deemed to be not less than 14 days, either party may refer the matter to arbitration under this section (Sec. 31A).	
The section should include recognition of courts of competent jurisdiction for specific purposes and waivers of sovereign immunity by tribes and states for those specified disputes.		Tribe and state agree that federal court is proper venue for resolution of disputes under the Compact. Tribe and state waive sovereign immunity for purposes of enforcement of judgements of federal courts under the Compact (Sec. 31).	
Health/Safety Issues (NM). This section could include issues such as:			
— liability insurance at facilities;		The tribe shall maintain public liability insurance with limits of not less than \$500,000 for any one person and \$2,000,000 for any one occurrence for personal injury, and \$1,000,000 for any one occurrence of property damage (Sec. 3E).	
— protection of consumers; and		Tort claims arising from alleged injuries at the tribe's gaming facilities shall be subject to disposition as if the tribe was the state, pursuant to the Kansas Tort Claims Act (Sec. 3D).	Provision requiring the tribe to indemnify the state for expenses, losses, or damages incurred by the state resulting from actions of the tribe.
— public safety.		The tribal gaming facility must comply with specified national and local codes, as well as the Americans With Disabilities Act (Sec. 26A).	
	There should be a requirement that any worker in the areas in which gaming occurs should be 21 years of age or over, and the employees be covered by Unemployment Compensation and Workers' Compensation Benefits (No. 14).	All key employees, standard employees, and non-gaming employees shall be covered by Unemployment Compensation and Worker Compensation benefits equivalent to that provided by state law (Sec. 26D).	
These provisions should be consistent with IGRA and NIGC regulations.			

NCLGS List	1993 Guidelines	1995 Compacts	Subcommittee Recommendations of Provisions to Be Included in Any Future Compacts or Renegotiation of Existing Compacts
Operative Date. This section would designate the date that the Compact becomes effective.		Upon publication by the Secretary of the Interior.	
Applicability of Other Laws. This section could include such things as:			
— state liquor laws;	No liquor of any type on the gaming floor. No one under 21 years of age allowed to purchase or consume liquor on the premises (No. 6).	Sale, possession, and consumption of alcoholic and cereal malt beverages in the gaming facility shall be regulated pursuant to state law as required by federal law (Sec. 26C).	Continue regulation of liquor pursuant to state and federal law.
— age restrictions on gambling; and	No one under 21 years of age allowed on the casino floor or allowed to play any games (No. 5).	Any person under 21 years of age shall be prohibited from placing any wager, directly or indirectly, in any gaming facility under this Compact (Sec. 3C).	
— off-track betting and parimutuel laws, etc.		The Tribe may not conduct parimutuel wagering, off-track betting, sports betting, club Keno, or statewide lottery gaming (Sec. 3B).	
	Kansas state sales tax should be collected and remitted to the State of Kansas for sales of any product, equipment, or merchandise to non-Indians (No. 7).	Maintain status quo (Sec. 32(c)).	
	Kansas income tax should be collected and remitted to the State of Kansas for gaming winnings over \$1,000 by non-Indians (No. 8).	To the extent that the tribe is required under federal law to withhold federal income tax from gaming winnings, the tribe agrees to withhold state individual income tax from gaming winnings of non-Indians in the amounts set forth in applicable Kansas law and to furnish the state with all reports of gaming winnings which the tribe is required by federal law to furnish to the Internal Revenue Service (Sec. 32C).	
	Infrastructure reimbursement should be agreed to by the Indian nation for any roads, highways, and maintenance provided by either the state or adjoining cities, townships, etc. (No. 9).	The tribe shall consult with appropriate state and county officials concerning maintenance and safety of roads, bridges, and other infrastructure made necessary by implementation of this Compact (Sec. 26E).	Infrastructure reimbursement should be agreed to by the tribe for any roads, highways, and maintenance provided by either the state or any local unit government.

NCLGS List	1993 Guidelines	1995 Compacts	Subcommittee Recommendations of Provisions to Be Included in Any Future Compacts or Renegotiation of Existing Compacts
		Upon mutual consultation and agreement between the tribe and the state and local governments, the tribe agrees that certain related costs of the operation of the gaming facility may be paid for from the operating revenues of the tribal facility. Such costs shall be limited to the cost of increase police patrol and necessary road improvements, if any (Sec. 27).	Reimbursement of all increased costs incurred by local units of government resulting from the operation of the gaming facility.
	All Indian law enforcement agents or officers should be trained at the Kansas Law Enforcement Training Center (No. 10).	Included in Compact (Sec. 5(AG)).	
		Gaming on credit shall be limited to checks, wire transfers, bank credit cards, and bank money machine cards (Sec. 3G).	
		Representatives of the Tribal Gaming Commission and the State Gaming Agency shall meet, on not less than a quarterly basis, to review past practices and examine methods to improve the regulatory program created by this Compact (Sec. 11).	
		To the extent permitted by law, the tribe and the state agree to enter into such cross-deputization agreements as may be necessary and proper to facilitate cooperation between tribal and state law enforcement personnel (Sec. 15).	
		Nothing in this Compact shall be deemed to authorize the state to impose any tax, fee, charge, or assessment on the tribe, any management contractor, or any gaming activity or operation except for the reimbursement of expenses expressly authorized pursuant to Section 25 of this Compact, nor to diminish the state's right to tax as provided by applicable federal and state law (Sec. 32A).	

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**Testimony re: SB 543
House Federal and State Affairs Committee
Presented by Ronald R. Hein
on behalf of
Indian Nations In Kansas
March 15, 2000**

Madam 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.

SB 543 passed the Senate 40/0.

INIK supports SB 543, which provides for cross deputization under certain circumstances. This bill deals with an issue that was reviewed and discussed by the Joint Committee on State-Tribal Relations when they met this last interim. The issue basically involves what is known as cross deputization, which relates to the ability of local units of government to authorize law enforcement personnel for the Native American Indian Tribes to act as agents to investigate, arrest, and otherwise execute law enforcement powers with regards to state and local statutes and ordinances.

Currently, deputization of tribal law enforcement personnel does occur, but on a highly spotty basis and with no specific authority set out in the Kansas Statutes.

SB 543 would specifically authorize the state and local units of government to deputize tribal law enforcement officers.

Speaking generally to the relationship between the State of Kansas and its political subdivisions in relation to the Native American Indian Tribes, it is our hope, goal, and intention, that the relationship between the respective governments can be improved at all levels. SB 543 would be one more step in an ongoing effort to improve relationships and to have better intergovernmental cooperation.

SB 543 is not perfect, and only grants deputization authority on a case by case basis. To say the least, the bill is not drawn as broadly as we would desire. The law enforcement

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House Federal and State Affairs Committee

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personnel at the Indian reservations are fully trained, and are required to pass the same law enforcement training as other law enforcement personnel in the state. They are competent, trained professionals.

But this bill is a step in the right direction to improving communication with and the relationship with the Indian tribes in Kansas. We appreciate the sponsors of this bill introducing it, and we would respectfully request the committee approve SB 543 with the recommendation that it be passed.

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

PRAIRIE BAND POTAWATOMI POLICE DEPARTMENT

March 14, 2000

First, we would like to express our appreciation for the opportunity to appear before this committee. This permits us an avenue to provide information concerning the Tribal Police Department and how our department has interacted with other law enforcement agencies in the past and perhaps some insight as to what the future holds.

First, we'd like to give you a brief history of the Tribal Police for the Prairie Band Potawatomi Nation.

The tribal police department is slightly over two years old and came into being as a result of several factors, principally, the opening of Harrah's Casino. In the gaming compact with the State of Kansas, the Tribe is **required** to maintain a police department. Certain stipulations are made, including educational requirements for tribal police officers. These requirements mandate that tribal police officers meet the same training requisites that every other law enforcement officer in Kansas must meet.

Our officers have been trained at K.L.E.T.C. in Hutchinson, Topeka PD police academy, Federal law enforcement training center in Brunswick, Georgia, the North Texas Regional Police Academy in Wichita Falls, Texas and the Kansas Highway Patrol Training center in Salina. Clearly, tribal police basic training is on a par with any law enforcement agency in Kansas.

Tribal police officers recently completed a program sponsored by the U.S. Department of Interior, Bureau of Indian Affairs in which tribal police officers were given training and certified as "Special deputies of the Bureau of Indian Affairs". This permits tribal officers to enforce certain Federal criminal codes on the reservation irrespective of the perpetrator's race, tribal affiliation or lack thereof.

Our position on training is simply that competent training equips officers to better serve the citizens we've sworn to protect.

We would next like to discuss the experience of the Tribal Police Department. Officer experience belies the fact that this department is only two years old.

Beginning with the Chief of Police, James Battese, who began his career in law enforcement with the Jackson County Sheriff's department. Mr. Battese served as undersheriff to Sheriff Don Collins, leaving that position to accept employment with the Santa Fe Railroad as a criminal investigator for the Railroad Police. In that capacity, he was commissioned as a law enforcement officer with statewide authority in Kansas, Oklahoma, Texas and Colorado. In his position as a railroad special agent, he found it necessary to work harmoniously with state, local and federal law enforcement agencies. Mr. Battese retired from that position to become Chief of Police for the Tribal Police Department. His experience in law enforcement exceeds thirty years.

Lieutenant Joe Morris has been with the Tribal police for slightly over six months. Joe came to us after serving a short while with the Jackson County Sheriff. His prior law enforcement experience came from his service as an enforcement officer for the United States Department of Interior, Bureau of Land Management. Lieutenant Morris served in Nevada, Utah and until his retirement, was stationed in Alaska. His experience in law enforcement exceeds twenty years.

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Detective/Wildlife Conservation Officer Terry Scott came to the Tribal police in May of 1999. Detective Scott had retired from the Kansas Highway Patrol attaining the rank of Lieutenant Colonel and serving as Assistant Superintendent under Colonel Lonnie McCollum, for the first two years of Lonnie's administration. Prior to service with the K.H.P., he had served as a police officer for the City of Wellington. His experience in law enforcement exceeds thirty two years.

Officer Herbert Nance recently accepted employment with the Tribal police, having retired from the Gainesville Police Department, in Gainesville, Texas. Officer Nance had attained the rank of Sergeant, shift supervisor and has over twenty years of law enforcement experience.

Officer Verle Creek has been employed for slightly over one year with the Tribal police. While reasonably new to this area of law enforcement, Verle had served for over five years as a communications operator with the Kansas Highway Patrol. He brought expertise which proved invaluable in setting up a law enforcement communications center and training dispatchers to handle those duties. His experience in law enforcement exceeds six years. Note: The tribal police communications center was rated in the top 10% in the state in operational protocol, adherence to NCIC policies and procedures and overall accountability by Kansas Highway Patrol Sergeant in Charge of NCIC, Larry Warders.

The remaining officers employed by the Tribal police are young officers, some with prior experience, others with none, but each of whom has successfully completed basic law enforcement training as statutorily required. These officers were chosen for their willingness to learn and their desire to become professional law enforcement officers.

This information illustrates clearly that, although the Tribal Police Department is a young agency, those responsible for its administration are not neophytes. The Tribal Police Department has become a mix of older officers with a great deal of experience and younger officers who need such maturity to guide them in their career development. They are individually and collectively dedicated to leading the agency into the future through training and competent leadership to achieve proficiency and professionalism on a level with any law enforcement agency in Kansas.

Following are some of the agencies with whom we've worked cooperatively in the past and will undoubtedly do so in the future:

Federal Alcohol, Tobacco and Firearms: This agency was assisted in an investigation by Tribal Police involving illegal firearms, manufacturing silencers and possible sale of military weapons. This investigation resulted in a federal parole violation being filed against the suspect.

Federal Bureau of Investigation: We are currently working with the FBI investigating a burglary in which Indian artifacts were stolen and possibly sold out of state.

Kansas Bureau of Investigation: KBI Agents were requested to assist Tribal officers with a "Meth Lab" which had been discovered by Tribal officers on the reservation. Special Agent Supervisor, Currie Myers, Agent Patti Bottorff and Chemist Kamala Hinnergardt responded and with assistance from Tribal officers processed the

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crime scene. This resulted in the arrest of two persons for manufacturing illegal drugs. Cooperation between the agencies was exemplary.

Topeka Police Department; Topeka PD has afforded Tribal officers an opportunity to attend their basic training academy, which we have accepted in instances in which we would have a longer wait for KLETC to begin a class. Additionally, Tribal officers have worked with Topeka PD officers to investigate crimes which were discovered on the reservation, but were initiated or carried out within the City of Topeka. Tribal officers have also served warrants issued by the City of Topeka and taken the suspects into custody until Topeka officers could transport them to a correctional facility.

United States Marshal's Fugitive Task Force; Tribal police were notified by Officer Beth Mechler that they were seeking a person believed to be on the reservation for parole violation. This information was provided at approximately 2:00 P.M. At 10:30 P.M. on the same date, the wanted person was taken into custody and delivered to Officer Mechler. Tribal officers have, on several occasions, been requested to be on the look out for offenders who are targeted by the Task Force and have assisted Task Force officers in building searches for wanted suspects.

Shawnee County Sheriff: Tribal officers have on several occasions served arrest warrants and delivered suspects to Shawnee County Deputies. Our proximity to Shawnee County lends itself to criminals moving freely back and forth. Detectives from the Sheriff's office and the Tribal police detective work closely in those areas affecting both jurisdictions.

Major Case Squad: This multi-jurisdictional body is comprised of officers from city and sheriff's departments in the area surrounding Shawnee County. As the name implies, the M-Squad can be called upon by a participating jurisdiction to assist with any major crime. Tribal officers have been accepted as members of the M-Squad and participate in their training sessions.

Kansas Highway Patrol: Tribal officers have on numerous occasions assisted State Troopers in performing their duties from assisting at accident scenes to providing "back up" for the trooper on automobile stops. The K.H.P. provided training for the Tribal canine and Officer Creek, his handler.

Kansas Fire Marshal's Office: Tribal officers aided The Fire Marshal's agent in his investigation of a residence which sustained an explosion caused by a broken propane line.

Kansas Parks and Wildlife: Area supervisor Rob Ladner and the Tribal conservation officer have been clarifying and negotiating the needs of each agency regarding enforcement of Kansas statutes and Tribal code which govern hunting on the reservation. It is the intent of both agencies to develop an understanding which would achieve the ultimate goal of effectively managing mutual natural resources to become a reality. Both agencies accept that we must work together to accomplish this goal.

Other Criminal Justice Agencies: The Tribal police have in the past and will continue in the future to work cooperatively with courts, prosecutors, social service agencies, corrections and any others, to assure that the rights and safety of citizens, including those accused of a crime, are protected to the best of our ability

Jackson County Sheriff: Officers of the Tribal police work continuously with this agency. Everything from court ordered civil process, arresting and holding perpetrators, providing cover officers for service of search warrant's in which the

suspects were known to be armed and other areas in which they've requested our assistance. While there is animosity between these two agencies, the officers of the Tribal police have never allowed that animosity to compromise in any manner, their professional responsibilities as law enforcement officers, nor have they permitted those areas to jeopardize the safety of citizens insofar as present authority will permit.

Lastly and most importantly, we would point out the present operating procedure, Tribal police do have authority to halt persons suspected of committing a crime and if probable cause exists, to hold such person, while on the reservation, until they can be delivered to the Jackson County Sheriff or the Kansas Highway Patrol. This scenario has occurred more than 100 times during 1999. The deputy or the trooper is called away from whatever activity he was involved in, makes the arrest of the suspect(s) transports him/her to the county jail and becomes the arresting officer of record. In actuality, the Tribal officer will prepare an arrest report and any other documentation needed for court presentation and will be the one to testify in court concerning the events which led up to the arrest of the individual. The deputy or trooper then, becomes merely a prisoner transport officer. They follow the exact same procedure that the Tribal officer would follow, given full police authority, but must spend three to five hours of his/her time writing a report, going through booking procedures, etc. Some of these reports the Tribal officer has already done, the remainder, which he could do, given authority. It is estimated that Jackson County will devote between 300 and 500 man-hours to this activity during calendar year 1999 and this figure most certainly will go up in the future. Tribal police will become more effective in their efforts to discourage drinking and driving and other criminal activities on the reservation.

In addition to these on-reservation incidents, tribal police have been requested on many occasions to respond to off-reservation incidents wherein a deputy or trooper was not available or needed assistance.

These requests have varied in nature including, to name a few: An intrusion alarm at an animal clinic in Hoyt that had been burglarized on at least three occasions; A hit and run accident in Mayetta; Providing a back up officer for a Jackson County Deputy in which four persons were arrested in a stolen car; Assisting troopers on US 75 highway investigating accidents; Providing cover officers for Jackson County while they were executing a search warrant and many others. As law enforcement officers, we cannot in good conscience refuse to respond to a call for assistance from another law enforcement agency even though in responding, we are placed in a tenuous position by not having been officially recognized as a law enforcement officer by Kansas Statute.

In summary, we are asking this committee to recognize what is best for the citizens of Kansas by approving Senate Bill 543. In doing so, the legislature simply legitimizes what is already being done.

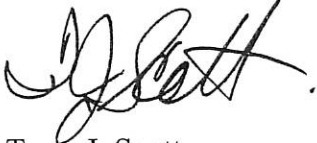
We have officers working 24 hours a day and can respond to an incident immediately adjacent to the reservation faster than the primary agency in most cases, if that agency should choose to request that we do so. Situations involving domestic abuse, child abuse, fights, disorderly conduct, automobile accidents and others in which there is an immediate danger to the safety of citizens on or off of the reservation would clearly be better served.

Passage of SB 543 will not in any manner compromise the authority of an existing law enforcement agency. It will, in fact, provide additional law enforcement assistance if

it's needed, when it's needed, all at no cost to the requesting agency. The requesting agency makes the determination whether to utilize the services offered by the Tribal Police.

The Prairie Band Potawatomi Tribal Police Department has, at present, eleven certified law enforcement officers who combine a great deal of experience with the vitality of youth. Tribal police are as well trained and formally educated as any other Law Enforcement officer in Kansas. To continue to make this resource unavailable in times of need to other law enforcement agencies is not in the best interest of the citizens of Kansas.

We ask for favorable consideration of SB543. Thank You.



Terry J. Scott
Detective and Wildlife Conservation Officer
Prairie Band Potawatomi Tribal Police Department

Attachments:

Jackson County Sheriff's Office

210 U.S. 75 Highway
Holton, Kansas 66436
Tel. (785) 364-2251 Fax (785) 364-4820

Daina D. Durham
Sheriff
Steve Frederick
Undersheriff

March 15, 2000

Chairman Powell and Committee Members:

My name is Daina D. Durham, I am the Sheriff of Jackson County. We are one of the counties that have a Native American reservation within its jurisdictional boundaries. The Prairie Band Potawatomi Nation's reservation lies within the 658 square miles of Jackson County.

I believe it is important to address the proposed Senate Bill No 543 in light of the current statutes that it will effect.

K.S.A. 19-813 sets out the general duties and responsibilities of the Sheriff.

'It shall be the duty of the sheriff and undersheriffs and deputies to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots and unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they, and every coroner, may call to their aid such person or persons of their county as they deem necessary.'

K.S.A. 22-2202(11) defines 'law enforcement officer' in part for purposes of the Kansas Criminal Code as:

'[A]ny person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof or with a duty to maintain or assert custody over persons accused or convicted or crime'

K.S.A. 22-2401 requires a law enforcement officer to arrest an individual when he has probable cause to believe that the person is committing or has committed a felony. Thus, a police officer, as a law enforcement officer, has a duty to arrest a person for committing a felony.

K.S.A. 22-2401a (as amended by L. 1982, ch. 380, § 2) establishes the jurisdictions of both sheriffs and city law enforcement officers thus:

'(1) Law enforcement officers employed by consolidated county law enforcement agencies or departments and sheriffs and their deputies may exercise their powers as law enforcement officers anywhere within their county and also may exercise such powers in any other county when in fresh pursuit of a person.

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'(2) Law enforcement officers employed by any city may exercise their powers as law enforcement officers anywhere within the city limits of the city employing them and outside of such city when on property owned or under the control of such city. Such officers also may exercise such powers in any other place when in fresh pursuit of a person.

(3) In addition to the areas where law enforcement officers may exercise their powers pursuant to subsection (1) or (2), law enforcement officers may exercise their powers as law enforcement officers in any area outside their normal jurisdiction when a request for assistance has been made by law enforcement officers from the area for which such assistance is requested.' (Emphasis added.)

Reading these statutes together, it is apparent that the sheriff and the city police have concurrent jurisdiction and duties within the city limits and on city-owned property outside the city limits. But, as has been held by previous letters and opinions of the Attorney General's Office, it has been concluded that the sheriff has the primary responsibility for apprehending and investigating crimes throughout the county.

No Kansas cases delineate the respective duties of the sheriff and police officers. However, the Missouri Supreme Court, in considering the duties of a sheriff, provides guidance in *State v. Williams*, 144 SW 2d 98 (1940), as follows:

'His authority is county wide. He is not restricted by municipal limits. For better protection and for the enforcement of local ordinance the cities and towns have their police departments or their town marshals. . . . Still the authority of the sheriff with his correlative duty remains. It has become the custom for the sheriff to leave local policing to local enforcement officers but this practice cannot alter his responsibility under the law. . . . A policeman is an officer whose duties have been, for local convenience, carved out of the old duties of constable, and the constables were always part of the general force at the disposal of the sheriff. There is no division of authority into those of the sheriff and the police. Each is a conservator of the peace possessing such power as the statutes authorize. . . . The courts have taken cognizance of the development of local enforcement agencies.

Since there would appear to be few, if any, substantive differences in the duties of sheriffs and city police officers in Missouri and Kansas, the Attorney General opined the foregoing principles have application in Kansas. Therefore, in light of these principles and the statutory provisions previously cited above, the sheriff and a city police officer have concurrent jurisdiction to enforce state laws within such city but that the Sheriff's jurisdiction is ultimately superior and county wide. This principle is historically and logically based in the desire to afford the people of the county to vote to determine whom best advances their law enforcement needs.

The problem arises when the issue of jurisdiction and status of tribal police officers occurs. As previously stated, K.S.A. 22-2202(11) defines 'law enforcement officer' in part for purposes of the Kansas Criminal Code as:

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'[A]ny person who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for violation of the laws of the state of Kansas or ordinances of any municipality thereof or with a duty to maintain or assert custody over persons accused or convicted of crime . . .

Attorney General Opinion No. 94-152 held that Unless deputized or otherwise employed by the county in which the reservation is located, or some other appropriate state law enforcement authority, tribal law enforcement officers are not authorized to enforce state laws within the boundaries of the reservation even upon receiving certification from the Kansas law enforcement training commission. However, under the tribe's sovereign authority, and in order to preserve the peace, tribal law enforcement officers may detain persons who have committed an unlawful breach of the peace within the boundaries of the reservation and transport such persons, as far as the reservation border, to the proper authorities. What constitutes an "unlawful breach of the peace" will depend on the circumstances and the applicable law.

K.S.A. 22-2401 sets forth the circumstances under which a "law enforcement officer" may make an arrest in the state of Kansas. **Any person who is not a "law enforcement officer" as defined in K.S.A. 22-2201 is subject to the provisions of K.S.A. 22-2403 when making an arrest under the laws of this state.**

K.S.A. 19-813 is the state law that vests sheriffs, undersheriffs and sheriffs' deputies with a duty to maintain public order. K.S.A. 12-4111 vests law enforcement officers employed by Kansas cities with the power to detain persons, to place them in custody and to arrest them for violation of municipal ordinances. Highway patrol officers are vested with authority pursuant to K.S.A. 74-2108, capitol area security officers pursuant to K.S.A.1993 Supp. 75-4503 and university police officers are empowered by K.S.A. 76-726. The law enforcement powers of these various officers are further defined and limited by the jurisdictional boundaries established in K.S.A.1993 Supp. 22-2401a. There are no state laws vesting similar authority in tribal law enforcement officers as such. Neither are we aware of any federal laws or treaty provisions that would give the tribe authority to enforce state laws. Therefore, tribal law enforcement officers are not law enforcement officers within the definition of the Kansas code of criminal procedure. Such officers would be subject to the provisions of K.S.A. 22-2403 and would be considered private persons when making arrests for violations of state laws unless they do so pursuant to a proper appointment by the sheriff of the county in which they are located. This is true regardless whether the tribal officers have received training at the state law enforcement training center and are certified by the law enforcement training commission. While these officers may very well be qualified to perform law enforcement functions, they have not been statutorily vested with authority to enforce state laws by virtue of employment with the state or one of its political subdivisions as listed above unless they are deputized or otherwise employed by the county sheriff or other appropriate law enforcement authority.

While tribal law enforcement officers have no law enforcement powers vested by state law, the United States Supreme Court has stated that, pursuant to the tribe's retained sovereign powers, "[t]ribal law enforcement authorities have the power to restrain those who disturb public order on the reservation, and if necessary, to eject them. Where jurisdiction to try and punish an offender rests outside the tribe, tribal officers may exercise their power to detain the offender and transport him to the proper authorities." *Duro v. Reina*, 495 U.S. 676, 109 L.Ed.2d 693, 711, 110 S.Ct. 2053 (1990). *Duro* involved a tribe's ability to criminally prosecute a non-tribal member in tribal court in a situation where neither the state nor the federal government were exerting jurisdiction. The Court held that the tribe could not, under its sovereign powers, prosecute non-members, but indicated that the tribe's power to exclude persons from tribal lands in order to preserve the peace remained intact unless and until diminished by federal statute or voluntarily surrendered by the tribe itself. See *Brendale v. Confederated Yakima Nation*, 492 U.S. 408, 106 L.Ed.2d 343, 365, 109 S.Ct. 2994 (1989) (Justice Stevens concurring opinion); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 76 L.Ed.2d 611, 619, 103 S.Ct. 2378 (1983). It therefore appears that the tribe, pursuant to its sovereign powers, may detain persons who have committed an unlawful breach of the peace within the boundaries of the reservation, and may transport such persons to the proper authorities, at least as far as the reservation border. The sheriff's ability to receive and process a particular person is commensurate with his ability to receive an individual who has been placed under citizen's arrest.

In conclusion, pursuant to statute and Kansas Attorney General Opinions, unless deputized or otherwise employed by the county in which the reservation is located, or some other appropriate state law enforcement authority, tribal law enforcement officers are not authorized to enforce state laws within the boundaries of the reservation even upon receiving certification from the Kansas law enforcement training commission.

I would like to point out that pursuant to the above-mentioned Kansas Statutes and Attorney General Opinions, I would like to draw exception to the printed testimony of Terry Scott. He states on page four of his testimony "Lastly and most importantly, we would point out the present operating procedure, Tribal police do have authority to halt persons suspected of committing a crime and if probable cause exists, to hold such person, while on the reservation, until they can be delivered to the Jackson County Sheriff or the Kansas Highway Patrol." I have great concern with the "present operating procedure." I see no authority within the statutes or Attorney General Opinions where this action is legal or legitimate. In my opinion it is an attempt to get around the statutory limitations addressed above and an attempt by the tribe to bypass constructive and reasonable discussions on the issue of jurisdiction, cross-deputization and ultimately, authority.

Upon my assuming the responsibility of the Jackson County Sheriff's Office, I attempted to initiate a communication with Chief Battese in the hopes of fostering a reasonable working relationship. I even went so far as to prepare a very reasonable proposed contract for mutual cooperation and cross-deputization of his officers. I did this not because I was mandated to by any compact or agreement by the state, but because as

the chief law enforcement officer within the county, I believe it is important to foster mutual relationships. What I received in return for my good faith efforts was a “no thank you”, followed by an overt attempted end-run around my authority and responsibility by the tribal leadership and its counsel. After they were once again informed as to the Sheriff’s duties, jurisdiction and, above all, responsibility via new Attorney General Opinions (included), they again dismissed the proper channels and decided to bypass the cooperation method by pushing for the proposed legislation. The problem with this legislation in my opinion is three-fold.

First, it is unnecessary. I believe it is already covered within the statute in K.S.A. 22-2407. Assisting law enforcement officer. K.S.A. 22-2407 states:

(1) A law enforcement officer making an arrest may command the assistance of any person who may be in the vicinity.

(2) A person commanded to assist a law enforcement officer shall have the same authority to arrest as the officer who commands his assistance.

(3) A person commanded to assist a law enforcement officer in making an arrest shall not be civilly or criminally liable for any reasonable conduct in aid of the officer or any acts expressly directed by the officer.

Mr. Scott in his own testimony states “In addition to these on-reservation incidents, tribal police have been requested on many occasions to respond to off-reservation incidents wherein a deputy or trooper was not available or needed assistance. It appears from his own words that the system is working as it should. Mr. Scott’s testimony conflicts with Mr. Hein when he stated “Currently, deputization of tribal law enforcement personnel does occur, but on a highly spotty basis and with no specific authority set out in the Kansas Statutes. SB 543 would specifically authorize the state and local units of government to deputize tribal law enforcement officers.” Mr. Hein’s statement leads me into my second point.

Second, in my opinion the proposed statute conflicts with the previously mentioned statutes of K.S.A. 22-2202, 19-813 and 22-2401a. Without the overt action of the Sheriff or other law enforcement agency as defined by the statutes, there are no state laws vesting authority in tribal law enforcement officers to enforce Kansas Statutes, neither are there any federal laws or treaty provisions that would give the tribe authority to enforce state laws. That language already exists in K.S.A. 22-2403 and 22-2407 and as stated above appears to be functioning appropriately.

Third, I fear this law is the first step and infringes on the jurisdiction and purview of the Sheriff. I, as Sheriff, accept liability for the actions of all officers and employees in the execution of their duties. I do this not for myself, but for the people of Jackson County. As such, I must certify and attest to the fitness and training of said personnel. That is why I alone am tasked with the authority and duty of determining who is authorized to carry deputy cards. This duty can not be delegated to any other except for

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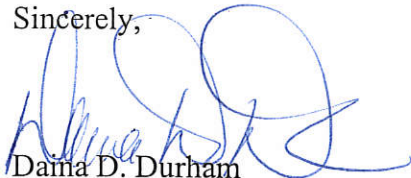
the case of K.S.A. 22-2407. I take that responsibility very seriously. That is why cross-deputization is only vested in the Sheriff and why it must remain there.

In early 1998, I proposed a very fair and workable system of joint cooperation with measurable objective standards for continued training in the hopes it would ultimately lead to cross-deputization of the Prairie Band Potawatomi Tribal Police. What I received for my efforts has been nothing but continual undermining of my office and outright hostility from the Tribal authorities. I disagree with Mr. Ron Hein, when he stated in his testimony that the intended outcome of SB 543 "would be one more step in an ongoing effort to improve relationships and to have better intergovernmental cooperation." His statement is akin to the federal government forcing you, as a sovereign state legislature, to cede some of your inherent powers to a separate sovereign state government, and then tell you it will improve cooperation between you. After you attempted to work with said state with unsatisfactory results. The only way to improve cooperation is to ensure both parties are forced to deal on equal footing. To cooperate, one must be prepared to cooperate. As was stated by Mr. Scott, the system is already working as intended. If a law enforcement agency requests assistance from the tribal police, they get it and they are covered under K.S.A. 22-2407. This is not an issue of improving relations or providing support to the citizens, but an attempt to garner power and jurisdiction where there is none. As I understand it, the Prairie Band Potawatomi Tribe has cultural sovereignty over the members of the tribe, but not territorial sovereignty over the reservation.

Therefore it is unnecessary to create another exemption.

Thank you for your time and consideration.

Sincerely,



Dana D. Durham
Sheriff
Jackson County, KS

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Testimony re: HB 3033
House Federal and State Affairs Committee
Presented by Ronald R. Hein
on behalf of
Indian Nations In Kansas
March 15, 2000

Madam 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.

SB 607 relating to interlocal agreements has currently passed the Senate Federal and State Affairs Committee and, I believe, will be worked this week.

INIK supports legislation adding Indian tribes to the Interlocal Cooperation Act. The addition of the Native American Indian Tribes to the provisions of the Interlocal Cooperation Act would permit the tribes to enter into agreements with any county, township, city, school district, or any other political subdivision, or any other state or any state agency of the State of Kansas pursuant to the terms of that act.

HB 3033 would permit the tribes to contract with those other agencies or political subdivisions, but would also permit those political subdivisions or agencies to contract with the tribes. Any such agreement would be recognized by the State of Kansas with the same degree of recognition as contracts that are entered into between other political subdivisions of the state.

There are many areas where the tribes and various local units of government would benefit from having such agreements, including law enforcement issues such as cross deputization; education issues such as would be applicable with agreements between school districts and the tribes; highway issues; health and welfare issues; and a myriad of other issues.

As I have testified before to this committee, it is important that the mechanisms exist that would permit cooperation and agreement between the tribes and state and local government and their agencies. In the absence of such ability to communicate and to

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come to agreement, there will be a natural tendency to be confrontational and to let litigation solve disputes that arise.

In light of this, INIK would strongly urge you to support HB 3033. Thank you very much for permitting me to testify, and I will be happy to yield to questions.

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Testimony re: HB 2926

House Federal and State Affairs Committee

Presented by Ronald R. Hein

on behalf of

Indian Nations In Kansas

March 15, 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.

The Indian Nations in Kansas support HB 2926, which authorizes the Governor to enter into non-gaming compacts with the tribes which have entered into gaming compacts. This bill will permit a process by which the Governor can negotiate compacts on other issues with the tribes, if the Governor and the tribes are both willing to enter into such compacts. By setting up the procedure pursuant to the Indian gaming compact statutes, this process also permits the legislature to be involved in the approval of these compacts.

I want to bring to your attention the existence of SB 607, which has already passed the Senate Federal and State Affairs Committee, which provides for certain local units of government and any "agency or instrumentality of the state" to enter into interlocal agreements with a Native American Indian Tribe. I assume that the Governor's or the Governor's Office would be an agency or an instrumentality of the State of Kansas, and thus would be able to enter into interlocal agreements with the tribes pursuant to the provisions of SB 607, if that act is enacted into law.

I would raise for the committee's consideration the relationship between the provisions of HB 2926 and the provisions of SB 607. We would think that, in some significant cases, it would be highly appropriate for the legislature to get involved and have an oversight and approval function regarding non-gaming issues that warrant the compact process. However, it is also possible that the Governor might enter into agreements with the tribes on issues that do not need to involve the legislature, and do not rise to that level of significance.

INIK believes that there is a place for both SB 607 and HB 2926, but one or both of the

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bills should be amended to make it clear when the procedure of SB 607 should be utilized specifically by the Governor, and when the procedure set out in HB 2926 should be utilized. It would seem appropriate to specify those instances in which the procedure of HB 2926 should be utilized, and to allow all other not specifically identified issues to be dealt with by the procedures of SB 607.

The thrust of our testimony is that INIK believes strongly that there should be a procedure for the tribes to enter into agreements with the government, and specifically the Governor. If the legislature wishes to have involvement regarding certain issues that are of significant importance to warrant the time and involvement of the legislature, then the tribes would not have an objection to that. However, we hope that this issue would be able to be clarified, perhaps with some input from the legislature and the governor's office. It would be INIK's goal not to make the process so cumbersome for certain issues that there is a chilling impact upon moving forward with an agreement between the respective parties.

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