

MINUTES OF THE HOUSE FEDERAL & STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairperson Doug Mays at 4:10 p.m. on April 4, 2001 in Room 519-S of the Capitol.

All members were present except: Representative Joe McLeland, Excused  
Representative Judy Morrison, Excused  
Representative Daniel Williams, Excused

Committee staff present: Theresa M. Kiernan, Revisor of Statutes  
Russell Mills, Legislative Research Department  
Shelia Pearman, Committee Secretary

Conferees appearing before the committee:  
Ron Hein, Indian Nations in Kansas  
Trista Beadles, Assistant Legal Counsel for Governor Graves

Others attending: See attached list

**Chairman Mays re-opened the hearing on SB 74 - Native American tribal law enforcement officers; powers, duties and immunities.**

Chairman Mays reminded the committee that Governor Graves is neutral on this bill. Mr. Hein submitted an amendment and stated that he has been working with Natalie Haag on amendments for this legislation. He drafted the present version and submitted to Ms. Haag yesterday which she wanted to have the Attorney General review.

He stated the amendment includes language as requested to clarify this is regarding "direct request for assistance." He stated subsection (e) was designed to limit the scope of the powers of the Tribal law enforcement officials and does not believe this bill has any correlation to "land-in-trust." He stated the waiver of immunity is encompassed in subsection (b) and subsection (c) which is virtually identical to the immunity in the Indian Gaming Compacts. He reiterated the tribal officers are required to have the same training as all other law enforcement officers except the continuing education requirements but under tribal law are required, therefore subsection (d) addresses this concern.

He stated the "land-in-trust" issue is addressed by recent federal regulations and this bill will not impact "land-in-trust" petitions in any way. He noted this bill does not address cross-deputization which could be considered an issue in "land-in-trust" requests. The intent of this bill is not to permit any increase of "land-in-trust." He urged the committee to adopt the amendments and this legislation. He acknowledged there is currently an appeal.

Representative Hutchins cited written testimony from Edward S. Dunn, Jackson County Attorney (Attachment #1), John Grau, Jackson County Commissioner, (Attachment #2) and Lois Pelton, Jackson County Commissioner (Attachment #3) distributed to the committee which have briefly reviewed the suggested amendment. Representative Hutchins stated the amendment did not adequately address liability concerns of Jackson County. She also referenced the map which shows tribes who have purchased land in Kansas and explained this bill has potential to affect areas other than Brown and Jackson counties. (Attachment #4)

Representative Barnes moved to adopt Mr. Hein's amendment. Representative Ruff seconded the motion.

Representative Hutchins offered a substitute motion that Committee table the bill. Representative Freeborn seconded the motion. The motion failed 5-12 on requested division.

Representative Rehorn clarified this is permissive legislation and that the counties do not have to request assistance from tribal officers.

Representative Barnes amended the motion to include the new language (below). Representative Ruff

seconded the motion. The motion passed.

Strike last sentence in (c) and the tribe shall waive its sovereign immunity solely to the extent necessary to permit recovery under the liability insurance not to exceed the policy limits. Also in every instance where "law enforcement officer" appears, add "or agency." Also, a direct request is made to a tribal officer and/or agency.

Ms. Beadles stated tribal law enforcement officers are currently listening to the same radio waves as officers of county law enforcement officers and respond to the calls despite it not being a direct request for assistance to the tribal law officials. She reiterated this relates to the liability concerns. She also noted there are currently fifty "land-in-trust" transactions pending in the following counties: Bourbon, Brown, Cherokee, Doniphan, Douglas, Franklin, Jackson, Johnson, Miami, Neosho, Sedgwick, and Wyandotte. She contends that if this legislation passes, tribes will attempt to take land off the tax rolls by providing the claim of law enforcement services on and near the reservation as authorized by this state law.

Representative Powell moved that Committee recommend SB 74 favorable for passage as amended. Representative Barnes seconded the motion. The motion passed.

Further discussion included the Miami County "land-in-trust" situation discussed during the interim session of a court decision which is currently being appealed. The following requested to be recorded as voting No citing the concern of "land-in-trust" issues: Representative Becky Hutchins, Representative Mary Cook, Representative John Edmonds, Representative John Faber, Representative Joann Freeborn, and Representative Ruby Gilbert.

The hearing on SB 74 was closed.

Chairman Mays opened the hearing on SCR 1611- Expressing opposition to amendments to IGRA; concerning Governor's approval of land acquisitions.

Mr. Hein appeared in support of this resolution which conveys State displeasure with legislation pending before Congress which would preempt the rights of the governor regarding "land-in-trust" to be used for casino purposes. (Attachment #5) He has worked with the governor's office on behalf of the tribes which many have already passed resolutions similar to this legislation. The Senate committee adopted the balloon amendments recommended by Mr. Hein and his clients.

Written testimony in support of SCR 1611 was submitted by Glenn Thompson, Stand Up for Kansas. (Attachment #6) The hearing on SCR 1611 was closed.

Representative Wilson moved to accept Revisor's technical amendments on SCR 1611 on page 2 line 8 change "opposed the proposed" to "oppose to the proposed." Representative Mason seconded the motion. The motion passed.

The following requested to be recorded as voting no citing support of Congressman Dennis Moore's efforts for his district: Representative Rick Rehorn, Representative Tom Burroughs, Representative Ray Cox, Representative Ruby Gilbert, Representative Broderick Henderson, and Representative L. Candy Ruff.

Representative Powell moved to adopt SCR 1611 as amended. Representative Hutchins seconded the motion. The motion passed.

Representative Wilson moved to approve the minutes of February 8, February 19, March 5, March 6, March 7, March 8, March 12, March 13, March 14, March 15, March 19 and March 20. Representative Mason seconded the motion. The motion passed.

The committee meeting adjourned at 5:05 p.m. No additional meetings are scheduled.

Representative Hutchins requested the April 6 letter (Attachment #7) from Jeffery Bottenberg, Kansas Sheriffs Association Attorney be added to the minutes.



04/04/01 14:25 FILE 700011000 EDWARD S. DUNN

**EDWARD S. DUNN**

Attorney at Law

Box 247  
Holton, Kansas, 66436  
Phone 785-364-2135

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April 4, 2001

Honorable Becky Hutchins, Representative  
50th District, State of Kansas  
State Capitol  
Topeka, Kansas, 66612

**Re: Senate Bill No. 74**

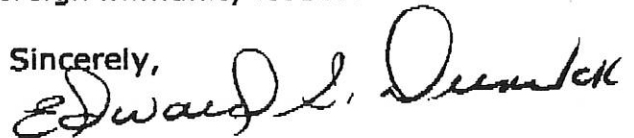
Dear Representative Hutchins:

I still have serious concerns concerning the draft copy of Senate Bill No. 74 with proposed amendments.

The language that "The Tribe shall not be deemed to have waived its sovereign immunity from suit with respect to such claims by virtue of adoption of the Kansas tort claims act ..." concerns me, and I feel would be an area that could cause some serious litigation in the future.

I still have concerns about the sovereign immunity issues.

Sincerely,



Edward S. Dunn

ESD:ck

House Fed. &  
State Affairs

Date 4/4/01

Attachment No. 1

Page 1 of 1

# Jackson County Commission

Courthouse - 400 New York  
Holton, Kansas 66436



April 4, 2001

**JOHN GRAU, SOLDIER**  
FIRST DISTRICT COMMISSIONER

**LOIS PELTON, HOLTON**  
SECOND DISTRICT COMMISSIONER

**BRAD HAMILTON, HOYT**  
THIRD DISTRICT COMMISSIONER

PHONE 364-2826 OR 364-2891  
FAX 364-4204

Honorable Becky Hutchins, Representative  
50th District, State of Kansas  
State Capitol  
Topeka, Kansas, 66612

**Re: Senate Bill No. 74**

Dear Representative Hutchins:

My reply to the amendments and Senate Bill No. 74 is that we want to work with the Prairie Band of Potawatomi Nation and to work these problems out. I do not want to jump on the bandwagon yet and say that I oppose or that I agree to certain things. I think this ought to have more input at a local level, and we are attempting to meet with the Tribe at the present time.

Sincerely,

John Grau,  
First District Commissioner

House Fed. &  
State Affairs

Date 4/4/2001

Attachment No. 2

Page 1 of 1

# Jackson County Commission

Courthouse - 400 New York  
Holton, Kansas 66436



April 4, 2001

**JOHN GRAU, SOLDIER**  
FIRST DISTRICT COMMISSIONER

**LOIS PELTON, HOLTON**  
SECOND DISTRICT COMMISSIONER

**BRAD HAMILTON, HOYT**  
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**Re: Senate Bill No. 74**

Dear Representative Hutchins:

I still have serious reservations concerning the draft copy of Senate Bill No. 74 with proposed amendments.

The language that "The Tribe shall not be deemed to have waived its sovereign immunity from suit with respect to such claims by virtue of adoption of the Kansas tort claims act ..." concerns me, and I feel would be an area that could cause some serious litigation in the future. I still have questions about the sovereign immunity issues.

I also have a concern that this could give the Tribe leverage in putting land in trust.

Sincerely,

A handwritten signature in cursive script that reads "Lois Pelton".

Lois Pelton,  
Second District Commissioner

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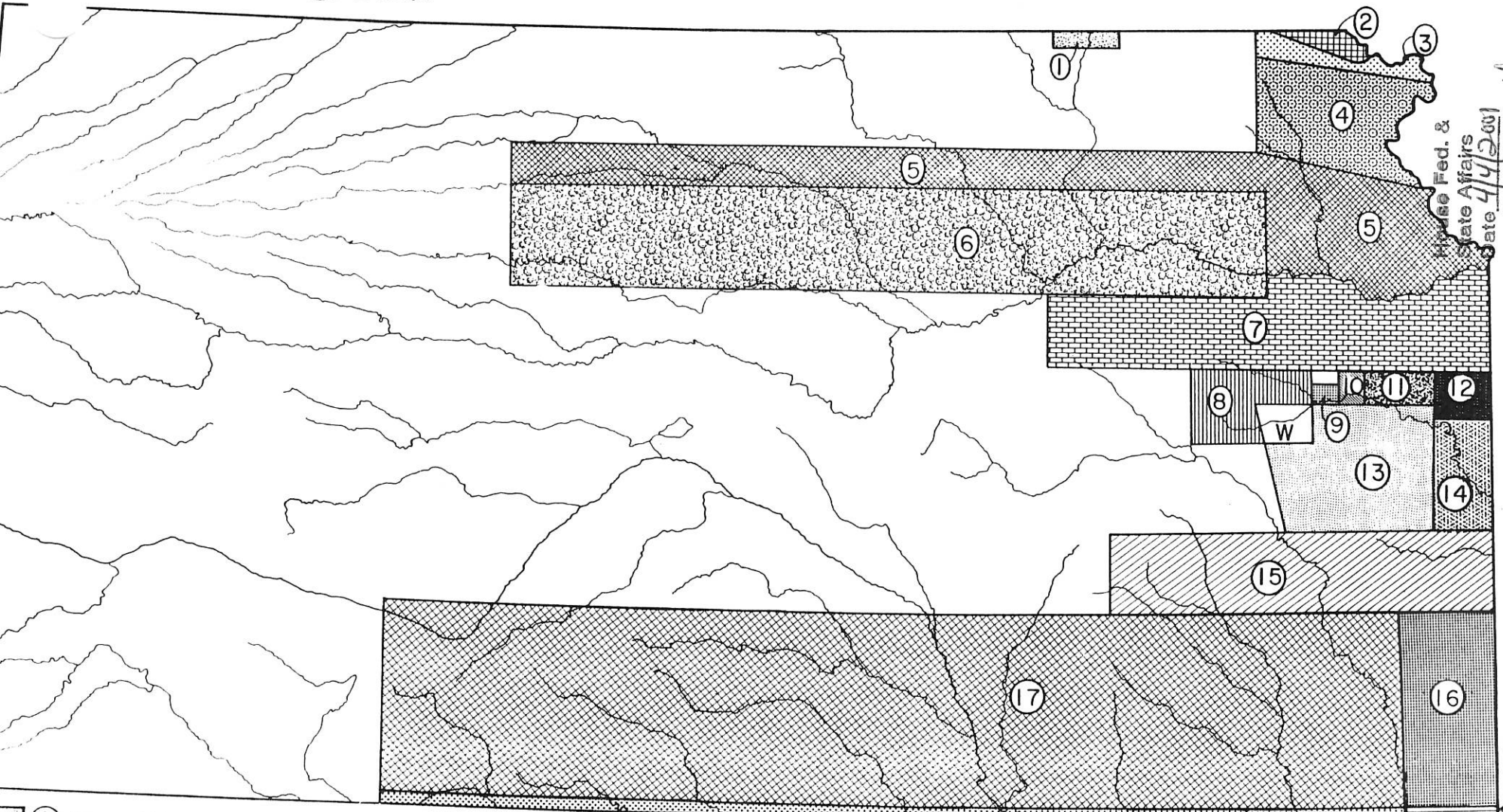
Date 4/4/2001

Attachment No. 3

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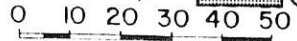
Becky Hutchins  
50<sup>th</sup> District



- |                            |  |                               |                        |                    |
|----------------------------|--|-------------------------------|------------------------|--------------------|
| ① Otoe and Missouri        | ④ Kickapoo   | ⑥ Kansa                       | ⑩ Ottawa               | ⑮ New York Indians |
| ② Iowa                     | ⑤ Delaware and Wyandot Reserve and Delaware Outlet | ⑦ Shawnee                     | ⑪ Peoria and Kaskaskia | ⑯ Cherokee         |
| ③ Sauk and Fox of Missouri |  | ⑧ Sauk and Fox of Mississippi | ⑫ Wea and Piankashaw   | ⑰ Neutral Lands    |
|                            |  | ⑨ Chippewa                    | ⑬ Pottawatomie         | ⑱ Osage            |
|                            |  |                               | ⑭ Miami                | ⑲ Cherokee Strip   |
|                            |  |                               |                        | ⑲ Quapaw Strip     |

INDIAN RESERVATIONS  
IN NSAS, 1846

W—Lands in common use by 8 and 9



House Fed. &  
 State Affairs  
 Date 4/4/2001  
 Attachment No. 4  
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# HEIN AND WEIR, CHARTERED

*Attorneys-at-Law*

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\*Admitted in Kansas & Texas

**Testimony re: SCR 1611  
before Senate Federal and State Affairs  
Presented by Ronald R. Hein  
on behalf of  
Indian Nations In Kansas  
March 28, 2001**

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 in Kansas, the Prairie Band Potawatomi Nation, and the Sac and Fox Nation of Missouri.

The Indian Nations in Kansas support SCR 1611. This resolution expresses opposition to House Resolution 291 currently before Congress or any similar legislation which would nullify the legal rights of the State of Kansas preserved by the Indian Gaming Regulatory Act.

The INIK Tribal Councils are in the process of adopting similar resolutions to be submitted to Congress.

Attached to my testimony are balloon amendments that we propose be adopted to indicate the Tribes' support for the Governor and this resolution. With the balloon amendments, the Resolution would stress that the Governor, the legislature, and the Tribes are speaking with a unified voice to oppose this type of congressional action.

The Indian Nations in Kansas would urge adoption of the amendments and adoption of SCR 1611.

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

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State Affairs

Date 4/4/2001

Attachment No. 5

Page 1 of 5



# Senate Concurrent Resolution No. 1611

By Committee on Federal and State Affairs

3-21

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State Affairs  
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Attachment No. 5  
Page 2 of 3

9 A CONCURRENT RESOLUTION expressing the Legislature's oppo-  
10 sition to amendments to the Indian Gaming Regulatory Act which  
11 eliminate the Governor's right to concur in acquisitions of land for  
12 gaming purposes.  
13

14 WHEREAS, In 1995, the State of Kansas entered into a tribal-state  
15 gaming compact with each of the resident tribes of the state, namely the  
16 Iowa Tribe of Kansas and Nebraska, the Kickapoo Tribe in Kansas, the  
17 Prairie Band Potawatomi Nation of Kansas and the Sac and Fox Nation  
18 of Missouri in Kansas and Missouri; and

19 WHEREAS, The four resident tribes each currently operate a tribal  
20 gaming casino under tribal-state gaming compacts; and

21 WHEREAS, The Wyandotte Tribe of Oklahoma, a nonresident tribe  
22 seeks to construct and operate a gaming casino in downtown Kansas City,  
23 Kansas, on land which is adjacent to the Huron Cemetery; and

24 WHEREAS, The Wyandotte Tribe of Oklahoma claims that the Hu-  
25 ron Cemetery is a reservation; and

26 WHEREAS, The Governor of the State of Kansas has expressed op-  
27 position to the establishment of casino gaming by nonresident tribes; and

28 WHEREAS, Litigation has been filed to stop the construction and  
29 operation of a casino by the Wyandotte Tribe of Oklahoma; and

30 WHEREAS, The Tenth Circuit Court of Appeals rendered a decision  
31 on February 27, 2001, finding that the Huron Cemetery is not a reser-  
32 vation and requested a review by the Department of Interior on the trust  
33 status of land purchased by the Wyandotte Tribe of Oklahoma; and

34 WHEREAS, House Resolution No. 291, introduced in the United  
35 States House of Representatives on January 30, 2001, would authorize  
36 gaming without the Governor's prior approval on land to be purchased  
37 by the Wyandotte Tribe of Oklahoma; and

38 WHEREAS, The amendment proposed in House Resolution No. 291  
39 would eliminate the right of the Governor of the State of Kansas under  
40 the Indian Gaming Regulatory Act to concur in acquisition of land for  
41 gaming purposes within the State of Kansas; and

42 WHEREAS, The Governor of the State of Kansas recently wrote to  
43 the Kansas Republican Congressional Delegation expressing his opposi-

four

and the four resident tribes in Kansas have

WHEREAS, the four resident tribes have actively participated in such litigation with the State of Kansas; and

; and

WHEREAS, the four resident tribes of Kansas are wholly opposed to the legislation being proposed in the U. S. Congress and are in support of the Governor's position

1 tion to the legislation: Now, therefore,  
 2 *Be it resolved by the Senate of the State of Kansas, the House of Rep-*  
 3 *resentatives concurring therein:* That the Legislature of the State of  
 4 Kansas joins with the Governor of the State of Kansas in expressing its  
 5 opposition to House Resolution No. 291 or any similar legislation which  
 6 would nullify the legal rights of the State of Kansas preserved by the  
 7 Indian Gaming Regulatory Act and the interpretation of such act by the  
 8 decision of the Tenth Circuit Court of Appeals; and  
 9 *Be it further resolved:* That the Secretary of State be directed to pro-  
 10 vide an enrolled copy of this resolution to the Honorable: Secretary of  
 11 State Colin L. Powell; President pro tempore of the United States Senate,  
 12 Senator Strom Thurmond; Speaker of the United States House of Rep-  
 13 resentatives, Representative J. Dennis Hastert; Chairperson of the Senate  
 14 Committee on Indian Affairs, Senator Ben Nighthorse Campbell; Chair-  
 15 person of the House Committee on Resources, Representative James V.  
 16 Hansen; and to each member of the Kansas Congressional Delegation,  
 17 Senator Sam Brownback, Senator Pat Roberts, Representative Todd  
 18 Tiahrt, Representative Jerry Moran, Representative Jim Ryun and Rep-  
 19 resentative Dennis Moore.

House Fed. &  
 State Affairs  
 Date 4/4/2015  
 Attachment No. 5  
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P.O. Box 780127 • Wichita, KS 67278 • (316) 634-2674

**Testimony To Senate Federal and State Affairs Committee  
on Senate Concurrent Resolution No. 1611**

by  
Glenn O. Thompson  
Executive Director, Stand Up For Kansas  
March 28, 2001

Good morning Senator Harrington and other members of this committee. Thank you for this opportunity to speak at this public hearing. I am speaking today on behalf of Stand Up For Kansas, a state-wide coalition of grassroots citizens who oppose the expansion of gambling in Kansas. **We urge you to vote YES on SCR 1611.**

First, I would like to commend the governor and his legal staff for opposing, first in the district court and then in the Tenth Circuit Court of Appeals, the Oklahoma Wyandotte Tribe's proposal for a casino adjacent to the Huron Cemetery. The ruling of the Appeals court with regard to their interpretation of the word "reservation," as used in the Indian Gaming Regulatory Act (IGRA), will have a major impact on future "off-reservation" Indian casinos, not only in the six states covered by the Tenth Circuit, but throughout the United States.

As you may know, the Appeals Court concluded:

*"... that the interpretation forwarded by plaintiffs (Graves, et al) is the one Congress intended to adopt when it enacted IGRA. As noted by plaintiffs, IGRA's use of the phrase 'the reservation of the Indian tribe' in 25 USC 2719(a)(1), suggests that Congress envisioned that each tribe would have only one reservation for gaming purposes."* (underline added for emphasis)

*"Further, as pointed out by plaintiffs, IGRA specifically distinguishes between the 'reservation' of an Indian tribe and lands held in trust for the tribe by the federal government."* (underline added for emphasis)

*"Applying what we believe to be the proper definition of the term 'reservation' for purposes of IGRA to the facts of this case, it is apparent that the Huron Cemetery does not fall within that definition."* (underline added for emphasis)

(See attached March 6, 2001 "Casino Alert" for more on this ruling.)

Now, with respect to HR 291, since the appeals court ruled that the Huron Cemetery is not the reservation of the Oklahoma Wyandotte Tribe, Congressman Moore, the tribe and their financial backers have introduced HR 291 in Congress to build and operate an Indian casino in Kansas without the approval of the governor or any other state elected official. **This is bad public policy!** Congress enacted IGRA in 1988 to establish an orderly process for a state, through the governor, to have a voice on a proposed Indian casino on land acquired and put in trust after the enactment of IGRA (Oct. 17, 1988). **HR 291 is an obvious tactic to bypass this process.**

**I urge you to express your opposition to HR 291 to Congress by approving SCR 1611.**

1. Tenth Circuit US Court of Appeals, No. 00-3063, Sac and Fox Nation of Missouri; Iowa Tribe of Kansas and Nebraska; Prairie Band of Potawatomi Indians; Bill Graves, Governor of State of Kansas, Plaintiffs-Appellants, v. Gale A. Norton, Secretary of the Interior; Wyandotte Tribe of Oklahoma, Defendants-Appellees, Feb. 27, 2001

House Fed. &

State Affairs

Date 4/4/2001

Attachment No. 6

Page 1 of 1

# Polsinelli | Shalton | Welte

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Jeffery S. Bottenberg  
jbottenberg@pswlaw.com

seat  
41

April 6, 2001

## BY HAND DELIVERY

The Honorable Becky Hutchins  
State Representative, 50th District  
State Capitol, Room 175-W  
300 SW 10th Avenue  
Topeka, KS 66612

**Re: SB 74**

Dear Representative Hutchins:

On behalf of my client, the Kansas Sheriffs Association (the "KSA"), I would like to express our position on Senate Bill 74. Although the KSA takes an official neutral position on the bill, we are concerned that the latest version of the bill does not adequately immunize sheriffs and counties from civil suit regarding the actions of tribal police.

Specifically, the KSA is concerned about the additional liability the sheriff and the county may incur when a tribal police department is called for assistance. Under current law, the various Native American tribal nations have been granted sovereign immunity from civil suit due to their recognized status as a foreign nation. Therefore if a tribal officer violates the civil rights of a private citizen, such citizen would not be able to maintain a cause of action against the tribe, and accordingly would seek full redress against the sheriff and/or county.

Although the proponents of SB 74 have attempted to address this concern in the latest version of the bill, such attempt falls short of correcting the problem. The bill does require the tribes, in order to assist law enforcement, to purchase insurance that covers the errors and omissions of their officers, up to certain policy limits. Such policies are required to contain endorsements that will prohibit the insurer from invoking the defense of sovereign immunity up to the policy limits.

However, what would happen if a plaintiff files a lawsuit against the tribe demanding an award in excess of the policy limits? Since the tribe's insurer may invoke sovereign immunity for amounts over the limits of the policy, the insurer would only be liable for the policy limits, and the sheriff and the county taxpayers would be liable for the excess amount. The insurer might also immediately seek to dismiss the case before the trial began on the grounds that such amount is in

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Attachment No. 7



The Honorable Becky Hutchins

April 6, 2001

Page 2

Jeffery S. Bottenberg  
jbottenberg@pswlaw.com

excess of its duty to defend. Thus the sheriff, in seeking the assistance from such tribal officer, would be liable for either part or all of any resulting judgement.

We also have serious doubts about the ability of a plaintiff to bring a cause of action against a foreign nation, regardless of the existence of liability insurance. Generally a full waiver of such immunity is required to submit to the jurisdiction of the courts of a foreign nation. Therefore, the KSA would like the tribes to fully waive any claim to sovereign immunity in regards to the actions of their tribal officers operating under the authority of the sheriff.

The KSA does support the concept of the sheriff being able to ask qualified, trained tribal police deputies for assistance. However, such decision must rest with the sheriff, and accordingly, we must be assured that the sheriff will not be held liable for the intentional or negligent actions of tribal officers.

The KSA appreciates the opportunity to comment on SB 74. Please feel free to contact me if we may be of further assistance.

Very truly yours,



Jeffery S. Bottenberg

JSB

cc: Sheriff John Foster

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State Affairs

Date 4/4/2001

Attachment No. 7

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