

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Chairperson Steve Morris at 10:40 a.m. on January 10, 2001 in Room 123-S of the Capitol.

All members were present except: All present

Committee staff present:

Alan Conroy, Chief Fiscal Analyst, Kansas Legislative Research Department
Deb Hollon, Kansas Legislative Research Department
Amory Lovin, Kansas Legislative Research Department
Carolyn Rampey, Kansas Legislative Research Department
Norman Furse, Revisor of Statutes
Mike Corrigan, Assistant Revisor of Statutes
Julie Weber, Administrative Assistant to the Chairman
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Carla Stovall, Attorney General, State of Kansas

Others attending: See attached guest list

Chairman Morris asked the Committee members to check with him ahead of time to coordinate bill introductions.

The Chairman welcomed Attorney General Carla Stovall, State of Kansas, who spoke to the Committee regarding water litigation, the tobacco master settlement agreement and the Blue Cross and Blue Shield Settlement. The following information was distributed to the Committee:

- Letter dated December 20, 2000, addressed to The Honorable Parris N. Glendening, et. al., from the National Association of Attorneys General (Attachment 1), concerning three important issues regarding protection of payments to the States under the Master Settlement Agreement (“MSA”) prescribing the terms of settlement of the States’ lawsuits against the tobacco companies:
 - the need to allocate a substantial portion of MSA payments to support tobacco prevention and public health programs.
 - the potential for the filing of a voluntary or involuntary bankruptcy petition by one or more tobacco companies as a result of judgments in class action proceedings.
 - the potential for downward adjustments in payments by virtue of the Non-Participating Manufacturer adjustment.
- Letter dated December 20, 2000, addressed to Senator Jim Costa, President of NCSL Executive Committee, et. al., from the National Association of Attorneys General, regarding the same issues as listed in Attachment 1 above (Attachment 2).
- A list of the members of the Sunflower Foundation: Health Care for Kansans Board of Trustees (Attachment 3).

Senator Morris noted that later on in the meeting during water litigation the Committee would probably go into executive session.

Tobacco Settlement

Attorney General Stovall mentioned that as a result of the 1998 settlement which is called the Master Settlement Agreement (MSA), that all the tobacco billboards have been taken down. There has been a significant decrease in tobacco advertising targeted to young people. The Association of Attorneys General, as well as individual Attorneys General, continue to monitor the marketing practices of cigarette manufacturers to be sure that they are not marketing to children in violation of the agreement. Attorney General Stovall continued explaining additional information regarding the tobacco settlement.

CONTINUATION SHEET

Blue Cross and Blue Shield of Kansas, Inc., Settlement Agreement Regarding Charitable Obligations

Attorney General Stovall gave background regarding the settlement and some history regarding Blue Cross and Blue Shield. She noted that after the state district court judge's initial decision, the Attorney General entered into settlement negotiations and ultimately settled the case. As a result of the settlement, which was also approved by the Insurance Commissioner who was involved as an intervener as well, \$75 million dollars was paid by Blue Cross and Blue Shield to go for the charitable obligations for the State of Kansas. The Attorney General explained the following information regarding the fund:

- the \$75 million dollars was put in a separate foundation called the Sunflower Foundation, Healthcare for Kansans.
- the fund will be governed by an independent board of directors, eight people chosen by the Attorney General and one person chosen by Blue Cross Blue Shield.
- It will be the Foundation's responsibility to govern this public money and their determinations will be important in setting the parameters as to what this money should go for and what health needs in Kansas should be addressed.
- the \$75 million is a permanent endowment.
- the Trustees are authorized to spend only the interest off the corpus which is currently invested in the Wichita Community Foundation because it was a charitable organization that had investment expertise.

Committee questions and discussion followed.

Overview of Water Litigation

Attorney General Stovall briefed the Committee regarding the three water lawsuits. Attorney General Stovall mentioned that there are three different lawsuits with two of the lawsuits against different states and she briefed the Committee regarding each lawsuit. The Attorney General mentioned that the lawsuit against Nebraska concerning the Republican River is very important because it involves about two to three times much water as that of the Arkansas River and the Colorado lawsuit. It also supplies municipal, industrial, recreational and irrigational uses in Junction City, Manhattan, Topeka, Lawrence and Kansas City and is a river that impacts a lot of people. Committee questions and discussion followed.

Attorney General Stovall updated information concerning the lawsuit the state is involved in against the State of Colorado concerning the Arkansas River. The Attorney General's office has requested \$970,000 for the Colorado lawsuit for FY 2002. The Governor recommended \$870,000 in his budget report for FY 2002. The Attorney General noted that the state won the liability phase of the Colorado lawsuit after ten years of litigation. The Attorney General has taken the position of encouraging further compliance by Colorado to the water compact and that the state would prefer money damages to reimburse the state for the water loss.

Senator Adkins moved, with a second by Senator Schodorf, that the open meeting of the Senate Committee on Ways and Means be recessed for a closed executive meeting for the purpose of consulting with the Attorney General and members of the staff of the Attorney General and other persons regarding water law litigation and disputes, that the consultation shall be on matters which relate to this subject, that the closed executive meeting is justified because the consultation is privileged in the attorney-client relationship, that the Senate Committee on Ways and Means resume the open meeting in room 123-S of the statehouse at 12 noon on January 10, 2001, and that this motion, if adopted, shall be recorded in the minutes of the Senate Committee on Ways and Means and shall be maintained as part of the permanent records. Motion carried. The Committee recessed at 11:20 a.m.

The Chair resumed the Senate Committee on Ways and Means at 12:00 noon and adjourned. The next meeting is scheduled for January 11, 2001.

**SENATE WAYS AND MEANS COMMITTEE
GUEST LIST**

DATE January 10, 2001

NAME	REPRESENTATIVE
Bill Denny	KS Gov Consulting
Katrina Hull	AP
Joyce Volant	Kans. Assoc. Med. Undersecret
Nancy Lindberg	AG office
Neil Wacmon	AG office
Carla Stovall	AG
John Campbell	AG
Dillon Kelsel	DOB
Julia Thomas	DOB
David Miller	DOB
Scott Brunner	DOB
Don Cowby	DOB
Amy Turner	Intern Sen Feleciano
John Kieflaber	KS Health Care Assn.
Chris Collins	KS Medical Society
Larrie Ann Lower	KAHP
Tom Bell	KHA
MARTY VINES	KAPE
ANDY SANCHEZ	KAPE
William Pitsenberger	Blue Cross and Blue Shield of Kansas
Brod Smoot	BeBS
JARROD FERRES	

SENATE WAYS AND MEANS COMMITTEE

GUEST LIST

DATE 1/10/2001

NAME	REPRESENTATIVE
Carol McDowell	Bottenberg + Associates
Cohen Mull	Kathy Samson + Assoc.
Julene Cole	Sen. Tyson's Office Staff
Christy Stutz	KS Secretary of State's office
Sandy Braden	Machew, Braden, Barber + Assoc
Nancy Blaughtnessy	Federico Consulting
Jennifer Ann	Federico Consulting
Joe L. Hund	KDHE

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Attorney General of Kansas

December 20, 2000

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Attorney General of Oklahoma

IMMEDIATE PAST PRESIDENT
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Chair of National Governors Association
State House
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Annapolis, MD 21401

The Honorable John Engler
Governor of Michigan
Vice Chair of National Governors Association
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The Honorable Mike Huckabee
Governor of Arkansas
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Little Rock, AR 72201

The Honorable Thomas R. Carper
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Governor of Utah
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The Honorable Howard Dean, M.D.
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The Honorable Tommy G. Thompson
Governor of Wisconsin
State Capitol
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Madison, WI 53707

Senate Ways and Means
1-10-01
Attachment 1

Dear Governors:

With new state legislature sessions about to begin, we would like to bring to your attention three important issues regarding protection of payments to the States under the Master Settlement Agreement ("MSA") that settled the States' lawsuits against the tobacco companies.

The first issue is the need to allocate a substantial portion of MSA payments to support tobacco prevention and public health programs. The MSA declares that the Settling States "have agreed to settle their respective lawsuits and potential claims pursuant to terms which will achieve for the Settling States and their citizens significant funding for the advancement of public health [and] the implementation of important tobacco-related public health measures...."

Subsequent to the signing of the MSA, the US Department of Health and Human Services ("HHS") asserted that it was entitled to a substantial portion of the payments made to the Settling States on the theory that the federal government had borne a share of the costs for which the settlement provided recovery. The States sought and obtained federal legislation that waived the federal government's claim to payments made under the MSA and protected the Settling States' right to receive 100% of the payments called for in the MSA. A key element in obtaining enactment of this legislation was the representation made to Congressional leaders by State officials that the payments received under the MSA would be used to support tobacco prevention and public health programs. Senator McCain, Chairman of the Senate Commerce Committee and the principal Senate sponsor of the legislation, has frequently stated that his support for this legislation depended upon this representation.

Some Senators have considered repealing the federal statute that protects the payments from federal invasion, particularly with respect to states that have failed to allocate MSA payments to tobacco prevention and public health programs. The Senate Commerce Committee held a hearing on state tobacco prevention programs in October, and Senator McCain used the occasion to characterize the failure by many states to allocate MSA payments to tobacco prevention and public health programs as a promise betrayed. The General Accounting Office, at Senator McCain's request, is conducting a study on how states are using tobacco settlement funds. Moreover, the Center for Disease Control is preparing a comprehensive study of state use of the MSA funds that is scheduled to be completed by January, 2001. Senator McCain is also planning extensive hearings on the states' use of tobacco settlement funds some time during the first quarter of 2001. There is a serious prospect that the Congress will enact legislation reinstating the federal government's claim to a share of the MSA payments.

Although Attorneys General can make recommendations to state legislatures and governors, the allocation of the tobacco payments is ultimately the responsibility of the legislatures and governors. The Attorneys General of the Settling States urge State Governors to

1

The MSA was entered into by 46 states, the District of Columbia, Puerto Rico, and four U.S. territories (the "Settling States"). Four states, Mississippi, Minnesota, Florida, and Texas, had previously settled their lawsuits with the tobacco companies.

do all they can to allocate funds to tobacco prevention and public health programs. The failure to do so could jeopardize the Settling States' right to receive 100% of the MSA payments.

The Center for Disease Control, after considerable study and analysis, has prepared a document entitled "Best Practices for Comprehensive Tobacco Control Programs," (August 1999) that can serve as a basis for a state plan for tobacco prevention and reduction of youth smoking. Moreover, several states have implemented imaginative and effective programs that have achieved impressive results in reducing youth smoking. The Surgeon General's recently released report makes a strong case that these programs actually work. The MSA payments deliver the resources necessary to support such programs.

A second issue that is of great concern to all States is the potential for the filing of a voluntary or involuntary bankruptcy petition by one or more tobacco companies as a result of judgments in class action proceedings. A bankruptcy filing could disrupt payments to the Settling States from the company or companies involved. The Attorneys General have retained counsel to provide expert advice on bankruptcy proceedings. The Attorneys General are in the process of forming a State Creditors Tobacco Industry Bankruptcy Committee to facilitate planning and permit the States to take necessary action promptly in the event of such a filing. A bankruptcy filing may come with little or no warning and we intend to take all necessary steps to protect the interests of the States.

The third issue of great importance to the States is the potential for downward adjustments in payments by virtue of the Non-Participating Manufacturer adjustment. Under the MSA, payments by the Participating Manufacturers can be subject to substantial reductions if Participating Manufacturers, in the aggregate, lose market share to Non-Participating Manufacturers. For the year 1999, according to the latest report by PricewaterhouseCoopers, the Independent Auditor under the MSA, there was a potential NPM Adjustment of over \$190 million. Each Settling State, except for four territories, has enacted a Model Statute requiring Non-Participating Manufacturers to make escrow payments to the States. The burden of an NPM adjustment falls only on Settling States that (1) do not have in place a Model Statute or (2) have in place a Model Statute but do not "diligently enforce" the statute. In other words, a state that has a Model Statute and diligently enforces it has a safe harbor.

Diligent enforcement of the NPM statutes must therefore be a priority matter for any Settling State in order to protect its payments. Enforcement mechanisms vary from state to state, but typically the gathering of information necessary to enforce the NPM statute is done by the state tax administrators who will require resources to do their job effectively. In addition, it is important to ensure appropriate communication among the various state agencies involved in the information gathering and enforcement processes. The Attorneys General will be happy to work with other agencies of state government to ensure diligent enforcement and protection of the State's payments.

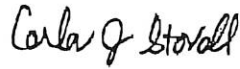
We look forward to working with you to ensure both that federal legislation protecting our payments remains in place and that MSA payments are allocated to the uses for which they were originally intended. If you or your staffs have any questions, please contact your Attorney

General or the NAAG Chief Tobacco Counsel, Mark Greenwold, who can be reached at 202-326-6014 (mgreenwold@naag.org).

Sincerely yours,



Attorney General Drew Ketterer,
Maine
President, NAAG



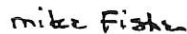
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President-Elect, NAAG



Attorney General W.A. Drew Edmondson,
Oklahoma
Vice-President, NAAG
Chair, NAAG Tobacco Committee



Attorney General Chris Gregoire,
Washington
Immediate Past President, NAAG



Attorney General Mike Fisher,
Pennsylvania
Chair, Tobacco Enforcement Committee



Attorney General Bill Sorrell,
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Chair, Tobacco Economic Enforcement
Committee

cc: All Attorneys General
Raymond C. Scheppach, Executive Director, NGA
Lynne M. Ross, Executive Director, NAAG

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December 20, 2000

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Attorney General of Oklahoma

IMMEDIATE PAST PRESIDENT
CHRISTINE O. GREGOIRE

Senator Jim Costa
President of NCSL Executive Committee
State Capitol, Room 5100
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Senator Stephen Saland
President-Elect of NCSL Executive
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Senator Angel Monson
Vice-President of NCSL Executive
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Oklahoma City, OK 73105-4808

Representative Paul Mannweiler
Immediate Past President of NCSL
Executive Committee
State House, Room 3-7
Indianapolis, IN 46204

Dear NCSL Officers:

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Senate Ways and Means
1-10-01
Attachment 2

Subsequent to the signing of the MSA, the US Department of Health and Human Services ("HHS") asserted that it was entitled to a substantial portion of the payments made to the Settling States on the theory that the federal government had borne a share of the costs for which the settlement provided recovery. The States sought and obtained federal legislation that waived the federal government's claim to payments made under the MSA and protected the Settling States' right to receive 100% of the payments called for in the MSA. A key element in obtaining enactment of this legislation was the representation made to Congressional leaders by State officials that the payments received under the MSA would be used to support tobacco prevention and public health programs. Senator McCain, Chairman of the Senate Commerce Committee and the principal Senate sponsor of the legislation, has frequently stated that his support for this legislation depended upon this representation.

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Although Attorneys General can make recommendations to State Legislatures and Governors, the allocation of the tobacco payments is ultimately the responsibility of the Legislatures and Governors. The Attorneys General of the Settling States urge State Legislatures to do all they can to allocate funds to tobacco prevention and public health programs. The failure to do so could jeopardize the Settling States' right to receive 100% of the MSA payments.

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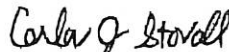
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Sincerely yours,



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President, NAAG



Attorney General Carla Stovall, Kansas
President-Elect, NAAG



Attorney General W.A. Drew Edmondson,
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Attorney General Chris Gregoire,
Washington

Vice-President, NAAG
Chair, NAAG Tobacco Committee

Immediate Past President, NAAG

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William Sorrell

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cc: All Attorneys General
William T. Pound, Executive Director, NCSL
Carl Tubbesing, Deputy Executive Director, NCSL
Lynne M. Ross, Executive Director, NAAG

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Senate Ways and Means
1-10-01
Attachment 3

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