Approved: April 4, 2003
Date

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Bill Mason at 1:35 p.m. on March 20, 2003 in Room 313-S of the Capitol.

All members were present except: Representative John Edmonds
Representative Candy Ruff

Committee staff present: Russell Mills, Legislative Research Department
Mary Torrence, Office of Revisor of Statutes
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:

Proponents: Lamar Shoemaker, Sheriff of Brown County
Ron Hein, Lobbyist for Prairie Band Potawatomi Nation
Terry Scott, Chief of Police for Prairie Band Potawatomi Nation

(written testimony only)
Senator Lana Oleen
Steve Jones, Chief of Police for Sac & Fox Nation
Tom Conklin, Chief of Police for Kickapoo Tribe
Jeff Frederick, Chief of Police for Iowa Tribe

Opponents: Representative Becky Hutchins
D. Durham, Sheriff of Jackson County

Others attending: See Attached

Representative Novascone introduced Marilyn and Molly Novascone, his mother and sister. Chairman Mason acknowledged his granddaughter, Martha Mason, who had spent the day at the Capitol.

SB 9 - Allows tribal law enforcement agencies and officers, when specifically requested to assist state, county, or city law enforcement agencies and officers, to be considered to be an officer of the agency being assisted. The tribal agency or officer would have the same powers, duties, and immunities of the state, county, or city agency during the period of time in which the tribal enforcement agency or officer is providing assistance.

Staff provided history and explanation of the bill. It was noted that there was language in the existing gaming compacts regarding the tribal law enforcement agencies. Staff answered questions regarding the differences in the 2002 bill and the new Senate bill and the definition of *coterminous*.

Lamar Shoemaker, Sheriff of Brown County, stated that although they were not opposed to **SB 9**, it does not address the problems of providing efficient law enforcement with limited fiscal realities or enhance the daily safety of communities (Attachment 1). He stated that there was a Judiciary Committee version that meets both those needs. It promotes protection for the citizens of Kansas by qualified law enforcement officers without the cost to the counties for duplication of services.

Ron Hein, legislative counsel for Prairie Bank Potawatomi Nation, appeared in support of **SB 9** (Attachment 2). He reviewed past legislation relating to tribal law enforcement officers. He suggested that the potential liability of counties/state could be solved with an amendment to the original SB9. He stated that the current version of the bill does not solve the problems facing law enforcement officers and he requested the committee approve legislation which is more consistent with SB 9 as introduced.

Terry Scott, Chief of Police, Potawatomi Tribal Police stated that the matter before them was simple. That issue being, should the Tribal Police be permitted to take into custody, non-Indians who commit crimes on the Indian Reservations and "deliver them up" to the appropriate authorities having authority to prosecute? **SB 9** as it was originally proposed provides a viable solution to the problem of consistent law enforcement on Reservations (Attachment 3).

Representative Hutchins spoke in opposition to the original **SB 9** and **SB 9** as amended by the Senate Committee of the Whole. The bill now reflects the language of last session's SB 74, which does address some of the concerns of potential liability for state and county governments (Attachment 4). However, the bill does not address the issue of land-into-trust decisions, and the possible unintended consequences of the bill. She provided three documents to support her concerns over this issue:

- Letter from Deputy Attorney General Julene Miller regarding impact of 2001 **SB 74**
- Notice of Appeal from the State of Kansas to put land into trust, from John Michael Hale, Special Assistant Attorney General for the Department of Revenue
- Arizona language to be used for an amendment to **SB 9**

She urged the committee not to recommend SB9 favorable passage until the land-into-trust is addressed.

Daina D. Durham, Sheriff of Jackson County explained why she was opposed to **SB 9** (Attachment 5). She explained three issues of concern in the bill; liability of the county and state for wrongful acts of tribal law enforcement officers, increase in court dockets for the 1st and 2nd Judicial Districts and the impact on counties with trust land eroding their tax base. She made four recommendations to the Legislation, offering solutions to her concerns.

It was noted that there were written remarks for **SB 9** from Senator Oleen, (Attachment 6). Due to time constraints supportive testimony was not heard but distributed from the following: Tom Conklin , Chief of Police for the Kickapoo Tribe in Kansas, (Attachment 7), Jeff Frederick, Chief of Police for Iowa Tribe, (Attachment 8), and Steve Jones, Chief of Police for Sac & Fox Nation (Attachment 9).

Discussion followed regarding the number of Tribal Law Enforcement Officers on four reservations and the impact of increased officers on jails, dockets and court costs, the intent of the bill and the effects of the land-into-trust issue, liability for the counties and state, expanding boundaries of Indian nation, and a comparison of jurisdiction of Tribal Law Enforcement Officers in Arizona and Kansas..

In response to a question regarding what other states are doing about this issue, staff agreed to deliver a copy of a 1999 survey that addressed that issue (Attachment 10).

The hearing was closed on **SB 9**. The meeting adjourned at 3:10 p.m. with the next meeting scheduled for March 24, 1:30 p.m., room 313-S at the Capitol.

HOUSE FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE March 20, 2003

NAME	REPRESENTING
T. J. Scott	Prairie Band Potawatomi Tribal Police
Ron Hein	Prairie Band Potawatomi Nation
David Prager, III	"
Charley Lamuy	Kickapoo Tribe
Edward [illegible]	
Dana Durham	Jackson County Sheriff's Office
Thomas L. Conklin JR	Kickapoo Tribal Police
LAMAR STOLTMAKER	BROWN CO S.O.
Jeff Fredrick	Iowa Tribal Police Dept.
Samuel L. Brant	Prairie Band of Potawatomi Nation
[illegible]	
STEVEN L. JONES	SAC AND FOX TRIBAL POLICE

Brown County Sheriff's Dept.

706 UTAH HIAWATHA, KS 66434
PHONE (785)-742-7125
FAX (785)-742-3058
Lamar Shoemaker-Sheriff

March 20, 2003

Chairman William Mason and Members of
Kansas House Committee on Federal and State Affairs
Kansas State Capitol
800 SW Tenth Street
Topeka, Kansas 66612

RE: Testimony for House Committee on SB 9

Chairman Mason and Committee Members:

My name is Lamar Shoemaker, and I am the Sheriff of Brown County, Kansas. I appear before you today to support the amendment of K.S.A. 22-2401a to authorize the Law Enforcement Officers of the four Kansas Native American Tribes to make arrests under the Kansas Criminal Code. In addition to this statement of support, I am also providing you with an Analysis of the Tribal Law Enforcement Initiative and the version of SB 9 as passed by the Senate Judiciary Committee and before amendment by the Senate. I support the Judiciary Committee version of SB 9.

While I do not oppose the Senate version of SB 9, I must point out that it does not address the broader problems facing rural county law enforcement in the State of Kansas . . . providing law enforcement within limited and sometimes shrinking fiscal realities. SB 9, as it stands before this Committee, simply does little to enhance the daily safety of our communities and does almost nothing to make my job as the Sheriff of a rural county more efficient. The Judiciary Committee version meets both of these criteria at no additional cost to my office.

Brown County has three tribes, Kickapoo, Sac & Fox and Iowa, occupying different portions of its area. All three tribes have law enforcement officers that are trained and certified just like my officers. These officers are going to enforce the law to protect their communities. At this time, if tribal law enforcement has to detain an offender that they can not arrest, then I have to send one of my officers out to duplicate their service.

Tribal Officers have full authority to detain any person to protect the safety of their community, and they do exactly that until an officer empowered to arrest arrives. I feel this is an inefficient system since the Tribal Officers must be witnesses in the case and testify in court if needed. My officers often duplicate much of the work the Tribal Officers have already done, which includes the writing and filing of reports

The Judiciary version of SB 9 is the prudent thing to do for rural law enforcement. It promotes protection for the citizens of our state by qualified law enforcement officers without the cost to the Counties for duplication of services. This version is a win-win scenario for everyone.

I request that before passing SB 9 as it now is drafted, that you consider addressing and amending the same to reflect the Senate Judiciary version. Those of us who have promoted the Judiciary version are willing to meet with any of you who have concerns about the proposed changes. Please feel free to contact me if you would like to set up such a meeting.

In conclusion, those of us who have put our time, effort and energy into this matter, are willing to continue to do so. Public safety is our primary concern, however, we feel that the current version of SB 9 does not adequately address the issue. I would like to thank you in advance for your time and consideration of this matter.

Respectfully,

J. Lamar Shoemaker
Sheriff of Brown County

TRIBAL LAW ENFORCEMENT INITIATIVE

INTRODUCTION:

The following materials were presented on March 20, 2003 to the Kansas House Committee on Federal and State Affairs by Sheriff Lamar Shoemaker, Brown County Sheriff supporting the amendment of the "Campus Police" law to encompass Tribal law enforcement officers as it was passed out of the Kansas Judiciary Committee and before being amended by the Kansas Senate. (A copy of SB 9 as it was passed out of the Senate Judiciary Committee is included with these written materials.)

BACKGROUND ANALYSIS:

All four of the Kansas Tribes have fully equipped law enforcement agencies with officers certified by the State of Kansas. Many of these officers are also certified as Bureau of Indian Affairs ("BIA") law enforcement officers. All are trained professionals.

These Tribal officers have criminal jurisdiction pursuant to their Tribal laws over all Native Americans on their Reservations[1]. If the officer is also BIA certified, then the officer has criminal federal law jurisdiction over any person on the Reservation[2]. These officers have no general felony jurisdiction over all persons on the Reservation.

This lack of general felony jurisdiction causes a delay in police protection in rural areas of Brown, Jackson, and Doniphan Counties. The sheriffs' offices are more than fifteen (15) miles from the Reservations, so the response time is at best fifteen minutes or more.

The jurisdictional scheme is a checkerboard in codes, territory, and officers because of this Tribal, Federal, and State jurisdiction with a major gap in general felony codes and police authority. The largest gap is the one created between the Tribal law enforcement over Native Americans under Tribal codes and the BIA enforcement of federal major felony crimes over any person within Indian Country. In between the Tribal misdemeanor codes covering only Native Americans and the federal major felony codes covering everyone, there is a large criminal code chasm – no codes for general felony crimes unless a State officer makes the arrest.

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[1] The Tribal codes are limited to misdemeanor violations.

[2] The federal codes address primarily major crimes.

This multi-dimensional checkerboard effect results in confusing and limited law enforcement protection within Indian Country in Kansas. This is not safe.

THE SOLUTION:

The State Criminal Code can only fill this gap if the officers are available. Presently, the State lacks sufficient resources to provide additional State officers. The Tribal officers can fill this need if they are authorized to arrest under the State Criminal Codes just like university officers and municipal officers.

This law would allow Tribal officers to arrest persons utilizing the Kansas Criminal Codes, and file the case with the Sheriff. The County Attorney would then prosecute the cases. The Tribal officers would assist in all law enforcement duties from initial arrest through trial, sentencing, and post conviction hearings at no expense to the State[3].

This legislation solves the multi-dimensional checkerboard jurisdictional problem by providing the following:

- Complete criminal jurisdiction (Tribal, State and Federal Code authority).
- All persons now subject to State Criminal law.
- Enhanced safety to everyone on the Reservation.
- No additional fiscal impact to the State.
- No duplication of services.
- Promotes law enforcement inter-cooperation.

PROPOSED AMENDMENT TO K.S.A. 22-2401a:

The proposed amendment to the Campus Police bill is attached hereto (SB 9 has it came out of the Senate Judiciary Committee). It simply modifies K.S.A. 22-2401a to authorize the Tribes' law enforcement officers to make arrests under the Kansas Criminal Codes like other officers authorized under this same law, including the campus and municipal law officers. This bill enhances the safety of everyone at no expense to any one.

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[3] The Tribes pay all of the Tribal law enforcement officers. Tribal Governments not State or local governments provide all of their equipment.

As Amended by Senate Committee

Session of 2003

SENATE BILL No. 9

By Joint Committee on State-Tribal Relations

1-10

AN ACT concerning jurisdiction of certain law enforcement officers; relating to Native American tribal law enforcement officers; amending K.S.A. 2002 Supp. 22-2401a and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2002 Supp. 22-2401a is hereby amended to read as follows: 22-2401a. (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:

(a) Anywhere within their county; and

(b) in any other place when a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person.

(2) Law enforcement officers employed by any city may exercise their powers as law enforcement officers:

(a) 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; and

(b) in any other place when a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person.

(3) Law enforcement officers employed by a Native American Indian Tribe may exercise powers of law enforcement officers:

(a) Anywhere within the exterior limits of the reservation of the tribe employing such tribal law enforcement officer;

(b) in any place where a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person;

(c) on the streets and highways that are immediately adjacent to ***and coterminous with*** *the boundaries of the reservation of the tribe employing such tribal law enforcement officer; and*

(d) when transporting persons in custody to an appropriate facility, wherever it may be located.

~~(3)~~ *(4)* University police officers employed by the chief executive officer of any state educational institution or municipal university may ex-

ercise their powers as university police officers anywhere:

(a) On property owned or operated by the state educational institution or municipal university, by a board of trustees of the state educational institution, an endowment association, an athletic association, a fraternity, sorority or other student group associated with the state educational institution or municipal university;

(b) on the streets, property and highways immediately adjacent to the campus of the state educational institution or municipal university;

(c) within the city where such property as described in this subsection is located, as necessary to protect the health, safety and welfare of students and faculty of the state educational institution or municipal university, with appropriate agreement by the local law enforcement agencies. Such agreements shall include provisions defining the geographical scope of the jurisdiction conferred, circumstances requiring the extended jurisdiction, scope of law enforcement powers and duration of the agreement. Any agreement entered into pursuant to this provision shall be approved by the governing body of the city or county, or both, having jurisdiction where such property is located, and the chief executive officer of the state educational institution or municipal university involved before such agreement may take effect; and

(d) additionally, when there is reason to believe that a violation of a state law, a county resolution, or a city ordinance has occurred on property described in ~~subsection (3)(a) or (b)~~ *paragraph (a) or (b) of subsection (4)*, such officers with appropriate notification of, and coordination with, local law enforcement agencies or departments, may investigate and arrest persons for such a violation anywhere within the city where such property, streets and highways are located. Such officers also may exercise such powers in any other place when in fresh pursuit of a person. University police officers shall also have authority to transport persons in custody to an appropriate facility, wherever it may be located. University police officers at the university of Kansas medical center may provide emergency transportation of medical supplies and transplant organs.

~~(4)~~ *(5)* In addition to the areas where law enforcement officers may exercise their powers pursuant to subsection (2), law enforcement officers of any jurisdiction within Johnson or Sedgwick county may exercise their powers as law enforcement officers in any area within the respective county when executing a valid arrest warrant or search warrant, to the extent necessary to execute such warrants.

~~(5)~~ *(6)* In addition to the areas where university police officers may exercise their powers pursuant to subsection ~~(3)~~ *(4)*, university police officers may exercise the powers of 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 assistance is

requested.

~~(6)~~ *(7)* In addition to the areas where law enforcement officers may exercise their powers pursuant to subsection (2), law enforcement officers of any jurisdiction within Johnson county may exercise their powers as law enforcement officers in any adjoining city within Johnson county when any crime, including a traffic infraction, has been or is being committed by a person in view of the law enforcement officer. A law enforcement officer shall be considered to be exercising such officer's powers pursuant to subsection (2), when such officer is responding to the scene of a crime, even if such officer exits the city limits of the city employing the officer and further reenters the city limits of the city employing the officer to respond to such scene.

~~(7)~~ *(8)* As used in this section:

(a) "Law enforcement officer" ~~has the meaning ascribed thereto~~ *means: (1) A law enforcement officer as defined* in K.S.A. 22-2202 and amendments thereto*; or (2) any tribal law enforcement officer employed by a Native American Indian tribe who has completed successfully the initial law enforcement training and any continuing education required under K.S.A. 74-5601 et seq.* and amendments thereto.

(b) "University police officers" means university police officers employed by the chief executive officer of: (1) Any state educational institution under the control and supervision of the state board of regents; or (2) a municipal university.

(c) "Fresh pursuit" means pursuit, without unnecessary delay, of a person who has committed a crime, or who is reasonably suspected of having committed a crime.

(d) "Native American Indian Tribe" means the Prairie Band Potawatomi Nation, Kickapoo Tribe in Kansas, Sac and Fox Nation of Missouri and the Iowa Tribe of Kansas and Nebraska.

(e) "Reservation" means that portion of a Native American Indian tribe's reservation as described in the gaming compact entered into between the tribe and the state of Kansas.

Sec. 2. K.S.A. 2002 Supp. 22-2401a is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

HEIN LAW FIRM, CHARTERED
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Ronald R. Hein
Attorney-at-Law
Email: rhein@heinlaw.com

Testimony re: SB 9, Tribal Law Enforcement Officers
House Federal and State Affairs Committee
Presented by Ronald R. Hein
on behalf of
Prairie Band Potawatomi Nation
March 20, 2003

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for Prairie Band Potawatomi Nation. The Prairie Band Potawatomi Nation is one of the four Kansas Native American Indian Tribes.

PBPN supports legislation which provides for Tribal law enforcement officers (TLEO) to have statutory recognition as law enforcement officers on the reservation or when other circumstances exist.

The Joint Committee on State-Tribal Relations first reviewed legislation relating to tribal law enforcement officers in the 1999 interim, and introduced SB 543 in the 2000 Session. SB 543 passed the Senate 40-0. The House committee took no action. In 2001, SB 74 was reintroduced by the Joint Committee on State-Tribal Relations exactly like 2000 SB 543 as it passed out of the Senate. The Senate approved SB 74 again 38-2. This committee approved SB 74 on a voice vote, with some dissenting votes, in 2001, but the bill was never debated on the House floor. At the end of the 2001 Session, SB 74 was re-referred to committee, and no action was taken on it in the 2002 session.

This past interim, the Joint Committee on State-Tribal Relations again discussed Tribal law enforcement legislation and introduced SB 9. We still support SB 9 as introduced.

SB 9, as introduced, added Tribal law enforcement officers who have successfully completed the law enforcement training pursuant to K.S.A. 74-5601, *et. seq.* to the laundry list of recognized law enforcement officers in K.S.A. 22-2401a. SB 9 granted tribal law enforcement officers jurisdiction on the reservation, when there has been a request for assistance, when in fresh pursuit, on highways coterminous with the boundaries of the reservation, and when transporting persons in custody to an appropriate facility. SB 9 as introduced did not require any law enforcement agency to request assistance from the tribal police–it is permissive only.

The Senate amended SB 9 in the Committee of the Whole to substitute, in essence, 2001 SB 74 as amended by House Committee. The PBPN is on record as supporting that legislation as well.

Currently there are no existing statutes that authorize Tribal LEO's the jurisdiction set out in SB 9 as introduced. K.S.A. 22-2407 permits a law enforcement officer to command the assistance of **any** individual when making an **arrest** only.

Tribal law enforcement personnel are fully trained, and pass the same law enforcement training as other law enforcement personnel in the state. SB 9 also

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Testimony SB 9
House Federal and State Affairs Committee
March 20, 2003

SB 9 as amended by Senate COW falls far short of what the Senate has approved and what is needed to solve the unresolved issues for Tribal officers and federal, state, and local law enforcement personnel desiring to work in a collaborative effort with Tribal law enforcement officers.

We have met with Representative Becky Hutchins who represents the area where the PBPN reservation is located, and who has expressed concerns with previous legislation of this type. She has concerns about potential liability for the county and other concerns. We believe the liability concern would be solved with an amendment to original SB 9 that provides that the state or any subdivision shall not be liable for any acts or failure to act by any such Tribal law enforcement officer. We believe other concerns which may be raised today are already addressed or can be with minor amendments.

In light of new efforts to improve communication and cooperation between **all** law enforcement agencies as evidenced by the increased emphasis on homeland security, we believe that legislation to recognize Tribal officers is not only important and warranted, but also needed to improve law enforcement for **all** Kansans.

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. This bill would be one more step in an ongoing effort to improve relationships and to have better intergovernmental cooperation between the Indian Tribes in Kansas and other units of government in Kansas.

The Prairie Band Potawatomi Nation fully supports SB 9 as introduced. We also have supported SB 9 as written, but this current version of the bill does not solve the problems facing law enforcement officers in the state. We respectfully request the committee to approve legislation which is more consistent with SB 9 as introduced.

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

As Amended by Senate Committee

Session of 2003

SENATE BILL No. 9

By Joint Committee on State-Tribal Relations

1-10

AN ACT concerning jurisdiction of certain law enforcement officers; relating to Native American tribal law enforcement officers; amending K.S.A. 2002 Supp. 22-2401a and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

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(a) Anywhere within their county; and

(b) in any other place when a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person.

(2) Law enforcement officers employed by any city may exercise their powers as law enforcement officers:

(a) 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; and

(b) in any other place when a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person.

(3) Law enforcement officers employed by a Native American Indian Tribe may exercise powers of law enforcement officers:

(a) Anywhere within the exterior limits of the reservation of the tribe employing such tribal law enforcement officer;

(b) in any place where a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person;

(c) on the streets and highways that are immediately adjacent to ***and coterminous with*** *the boundaries of the reservation of the tribe employing such tribal law enforcement officer; and*

(d) when transporting persons in custody to an appropriate facility, wherever it may be located.

~~(3)~~ *(4)* University police officers employed by the chief executive officer of any state educational institution or municipal university may ex-

ercise their powers as university police officers anywhere:

(a) On property owned or operated by the state educational institution or municipal university, by a board of trustees of the state educational institution, an endowment association, an athletic association, a fraternity, sorority or other student group associated with the state educational institution or municipal university;

(b) on the streets, property and highways immediately adjacent to the campus of the state educational institution or municipal university;

(c) within the city where such property as described in this subsection is located, as necessary to protect the health, safety and welfare of students and faculty of the state educational institution or municipal university, with appropriate agreement by the local law enforcement agencies. Such agreements shall include provisions defining the geographical scope of the jurisdiction conferred, circumstances requiring the extended jurisdiction, scope of law enforcement powers and duration of the agreement. Any agreement entered into pursuant to this provision shall be approved by the governing body of the city or county, or both, having jurisdiction where such property is located, and the chief executive officer of the state educational institution or municipal university involved before such agreement may take effect; and

(d) additionally, when there is reason to believe that a violation of a state law, a county resolution, or a city ordinance has occurred on property described in ~~subsection (3)(a) or (b)~~ *paragraph (a) or (b) of subsection (4)*, such officers with appropriate notification of, and coordination with, local law enforcement agencies or departments, may investigate and arrest persons for such a violation anywhere within the city where such property, streets and highways are located. Such officers also may exercise such powers in any other place when in fresh pursuit of a person. University police officers shall also have authority to transport persons in custody to an appropriate facility, wherever it may be located. University police officers at the university of Kansas medical center may provide emergency transportation of medical supplies and transplant organs.

~~(4)~~ *(5)* In addition to the areas where law enforcement officers may exercise their powers pursuant to subsection (2), law enforcement officers of any jurisdiction within Johnson or Sedgwick county may exercise their powers as law enforcement officers in any area within the respective county when executing a valid arrest warrant or search warrant, to the extent necessary to execute such warrants.

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requested.

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(b) "University police officers" means university police officers employed by the chief executive officer of: (1) Any state educational institution under the control and supervision of the state board of regents; or (2) a municipal university.

(c) "Fresh pursuit" means pursuit, without unnecessary delay, of a person who has committed a crime, or who is reasonably suspected of having committed a crime.

(d) "Native American Indian Tribe" means the Prairie Band Potawatomi Nation, Kickapoo Tribe in Kansas, Sac and Fox Nation of Missouri and the Iowa Tribe of Kansas and Nebraska.

(e) "Reservation" means that portion of a Native American Indian tribe's reservation as described in the gaming compact entered into between the tribe and the state of Kansas.

Sec. 2. K.S.A. 2002 Supp. 22-2401a is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

Prairie Band Potawatomi Police Department
16344 "Q" Road
Mayetta, Kansas 66509

Chief of Police
T. J. Scott
785-966-3024
Fax 966-2585

March 20, 2003

Mr. Chairman,

Please accept our sincere appreciation for the opportunity to appear to discuss Senate Bill 9 and to share with you some information that we believe will vividly illustrate the need for this bill.

First, we need to state that we are here in support of this bill as it was originally proposed by the Tribal and State Affairs committee and as it originally passed out of the Senate Judiciary committee. We are not in opposition to the current language of the bill, however, it simply doesn't address the problem.

In the past, in testimony before this committee, we've informed the committee of the qualifications of Tribal officers insofar as education, training, testing, etc. is concerned. These things have not changed. Tribal officers are still certified by the Kansas Law Enforcement Training Commission as Kansas law enforcement officers and our officers complete the mandatory (for Ks. Officers) forty hour annual training. Suffice to say, Tribal officers are on par with other Kansas officers in their training and abilities.

The matter before us is really quite simple if we stick to the basics and not permit sidebar issues, (which can be addressed by simple negotiation,) to cloud or overshadow the real problems that this bill would address. That issue being, **should the Tribal Police be permitted to take into custody, non-Indians who commit crimes on the Indian Reservations and "deliver them up" to the appropriate authorities having authority to prosecute?**

In addressing this question, I like to share some background that impacts this bill and correct some misinformation that has been provided to some of the members of this committee as well as others involved in the legislative process.

First is a misrepresentation regarding 18 U.S.C. 3243, commonly known as the Kansas Act. The language of this legislation confers "complete" criminal jurisdiction on Indian Reservations in the State of Kansas to the State of Kansas. This "complete" jurisdiction includes Indians as well as non-Indians, misdemeanors and felonies alike, in other words, all crimes committed on the Reservation. What it does not do, is grant "EXCLUSIVE" jurisdiction as some would have you believe. Nothing in this act, or any of the Treaties between the four Kansas Tribes and the U.S. Government has acted to divest the Tribes of their authority to regulate criminal conduct and maintain good order on their Reservations. <u>This power to regulate is only meaningful when accompanied by the power to enforce those regulations.</u> Given the fact that the Kansas Act was intended to "improve" law enforcement on Kansas Reservations, a serious disparity would exist in contending that this law gave exclusive jurisdiction to the State and stripped the Tribes of the ability to regulate their own legitimate affairs.

Some of you have been told that Tribal police are "an unrecognized law enforcement agency" with no authority to enforce State laws. Speaking for our agency, the Tribal police were negotiated into existence by the State of Kansas in the compact agreement with the Prairie Band Potawatomi Nation. It then becomes obvious that the State of Kansas recognizes the Tribal police as a law enforcement agency.

Attached to your handout material is a copy of a letter that I received from the Jackson County sheriff regarding the handling of D.U.I.'s on our reservation in which she states that she will not permit deputies to accept D.U.I.'s from Tribal officers. The reasoning given for this decision is that deputies must develop their own probable cause and personally observe the violation. This is not correct, the Kansas Supreme Court states, "Collective information of police officers and law enforcement officers involved in an arrest can form basis for probable cause, even though that information is not within the knowledge of the arresting officer."[1]

Also attached is a copy of my response to the sheriff and a copy of a memorandum to Tribal officers making certain that they are fully aware of our policy and the rationale behind it. If the sheriff, as a representative of the State, is unwilling to accept criminals who have violated State laws on our reservations, when Tribal police "deliver them up", what would you have us do?

Also, attached in your handouts are exerts from two court decisions, one from the U.S. 9th Circuit Court of Appeals and the other from the Supreme Court of the State of Montana. A third from the Supreme Court of the State of Washington is provided in it's entirety since we believe the circumstances are almost identical to the issue we're attempting to deal with as we speak today. We're aware that these decisions are not binding on Kansas Courts, however, since Kansas courts have never addressed the issue, we believe it's safe to say that these decisions would be referenced and given a great deal of weight in the event a decision was made to address the matter judicially.

In another area of "misinformation", the sheriff would have you believe, as she's stated, "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."[2] We would direct your attention to page 1342 of the Washington court decision and I would like to read what the High court in Washington said in regard to such a statement.

> **"Finally, the State Patrol urges this court to base a tribal officer's authority to detain on a citizen's arrest theory. We decline their invitation. There would be a serious incongruity in allowing a limited sovereign such as the Suquamish Indian Tribe to exercise no more police authority than its tribal members could assert on their own. Such a result would seriously undercut a tribal officer's authority on the reservation and conflict with Congress' well-established policy of promoting tribal self-government. Potentially, DWI drivers would simply drive off or even refuse to stop if pulled over by a tribal officer with only a citizen's arrest capability."[3]**

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[1] State of Kansas v Harold Clark; No. 47912 (Jan. 24, 1976)

[2] Presentation on Indian Law As it applies in Kansas, Presented by Sheriff Diana D. Durham, Jackson County Sheriff's Office (Native Nations Law Symposium 2002)

[3] State of Washington v David P. Schmuck No. 58987-9

Our policies and procedures are in accord with the guidance we're given by the courts that have dealt with these issues. We are firmly committed to protecting the lives and property of the citizens of the reservation in a profession, competent, thorough fashion.

We are not seeking to adjudicate and/or punish non-Indians who commit crimes on our Reservation. We have in the past "delivered them up" and have been prepared to assist in the prosecution of those crimes. We simply wish to see justice done.

By the decision of the Jackson County sheriff, we are now seriously hampered in our determination to deal with non-Indian D.U.I. offenders on the Reservation. We have requested intervention by the Kansas Highway Patrol although we are very well aware of their shortage of adequate manpower to deal with even their own issues. We have not yet received a response from the Patrol, but are hopeful that they would be unwilling to allow a D.U.I. driver to be released back onto Kansas roads to kill or maim innocent persons.

In the event that no Troopers are available, then we may very well be placed in a position to evict a D.U.I. from our reservation. We abhor such a decision, however, we may be faced with no alternative. There have been concerns expressed about the liability the State faces by granting Kansas law enforcement authority to Tribal police. I submit to you that the State faces considerably greater and much more certain liability if the present situation is not addressed decisively and quickly.

Senate Bill 9 as it was originally proposed provides a very viable solution to the problem of consistent law enforcement on Reservations. President Thomas Jefferson was once reported to have said, "Congress will ultimately do the right thing, because it is the right thing to do." We are asking you to do the right thing in considering this bill.

Respectfully,

T. J. Scott, Chief of Police
Prairie Band Potawatomi Tribal Police

Jackson County Sheriff's Office

210 US 75 Hwy.
Holton, Kansas
Phone (785) 364-2251
Fax (785) 364-4820

Daina D Durham, Sheriff
Steven D Rupert, Undersheriff

February 23, 2003

Terry Scott
Acting Chief of Police
Prairie Band Potawatomi Tribe
16344 "Q" Road
Mayetta, Kansas 66519

Dear Acting Chief Scott:

This letter is to inform you that there have been several incidences where one of your officers have effected traffic stops on non-tribal members for Driving Under the Influence. Each time your officer has moved the alleged perpetrator from the scene of the stop. Your officer(s) have advised my deputies that this is your department's policy regarding DUI in which there is a non-tribal member being investigated for DUI.

As you are aware, Federal Code, 18 United States Code Annotated § 3243, conferees jurisdiction on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State. According to prior Attorney General Opinions that unless deputized or otherwise employed by the county in which the reservation is located, tribal law enforcement officers are not authorized to enforce state laws within the boundaries of the reservation. Therefore, my deputies will not be able to assume any traffic or misdemeanor cases that were commenced by Tribal Law Enforcement except when they personally observe or establish probable cause for the offense. When the driver is removed from the scene, I will not allow them to accept jurisdiction.

I would greatly appreciate your assistance in this matter, as it is my intention to do what ever I can to protect the citizens of Jackson County from lawbreakers, especially drunk drivers. I would recommend that we get together to discuss Jackson County Sheriff's Office protocol for accepting traffic cases initiated by your officers. Please call me at (785) 364-2251 if you would like to discuss this matter. Thank you for your prompt reply.

Sincerely,

Daina D. Durham
Sheriff
Jackson County, Kansas.

RECEIVED
FEB 24 2003
BY: R Patt

Cc: Lois Pelton, Chairman Jackson County Board of Commissioners
Zack Pahmamie, Chairman, Prairie Band Potawatomi Tribe
Alan Metzger, United States Attorney's Office
Tracy Klinginsmith, Administrative Judge, 2nd Judicial District
Representative Becky Hutchins, 51st District

3-4

Prairie Band Potawatomi Police Department
16344 "Q" Road
Mayetta, Kansas 66509

Chief of Police
T. J. Scott
785-966-3024
Fax 966-2585

Daina D. Durham, Sheriff
210 US Highway 75
Holton, Kansas

Dear Sheriff Durham:

I am in receipt of a letter you've authored regarding incidents wherein Tribal officers stopped violators who were determined to be Under the Influence of Intoxicating Liquor. Your understanding is correct regarding the departmental policy when a driver is being investigated for DUI, that is, that we will conduct a full, competent, professional investigation in the same manner we would when we discover any breach of the peace or threat to the safety or welfare to the lives or property of citizens of the Reservation.

Yes, I am aware of the U.S. Code commonly referred to as the Kansas Act, which assigns criminal jurisdiction regarding Indian Reservations in Kansas. I am also aware of prior Attorney General's opinions concerning jurisdiction and authority on Indian Reservations and frankly disagree with some of those interpretations and statements. While we respect those opinions, we do not necessarily accept that they always accurately reflect the Court's opinions and rulings concerning these same matters. We also find that individuals sometimes interpret the rulings from the Attorney General to suit themselves.

We are further aware that Tribal authorities are prohibited from adjudicating and punishing non-Indians for violations of criminal codes on the Reservation. And finally, we are aware of the areas of Federal Code applicable to Indian Country and our role in the enforcement of those laws.

None of these however, restricts, nor are they intended to restrict Tribal officers in their efforts to detect offenders and conduct investigations to determine if a crime has been committed and, if there is a criminal offense, whether the offender is or is not subject to the Tribal criminal justice system. We are very comfortable in the application of our policies regarding those investigations and firmly believe that these policies will stand examination in whatever court should choose to review them.

We sincerely regret your decision to refuse custody of non-Indian drivers who are Driving While under the Influence on the Reservation. Since we're dealing with traffic offenses, there doesn't appear any way for us to permit your officers to "personally observe or establish probably cause" for these offenses short of permitting the violator to drive on, which we're unwilling to do.

In light of these facts, we will remain pro-active in detecting, apprehending and investigating these offenses and will present our investigations to the proper Kansas officials "having authority to prosecute" such violations.

We will cease to notify your office as you've requested and after having completed our investigation, if we determine the offender is non-Indian, we will evict the offender from the Reservation, as is our right to do so. We would be remiss, however, if we did not inquire if you wish to be notified when we do so, for obviously, when they leave the Reservation still under the influence, then they become a problem for Jackson County and your responsibility and liability should an incident occur.

I would welcome the opportunity to discuss this matter at a time convenient to you and at a suitable location.

Respectfully,

Terry J. Scott
Chief of Police
Prairie Band Potawatomi Tribal Police

Cc: Lois Pelton, Chairperson Jackson County Board of Commissioners
Zach Pahmahmie, Chairman, Prairie Band Potawatomi Nation
Alan Metzger, Assistant United States Attorney
Honorable Judge Tracy Klinginsmith, 2nd Judicial District
Representative Hutchins, Kansas House of Representatives, 51st District
Doug Fisher, Jackson County Attorney

POTAWATOMI TRIBAL POLICE

Memorandum

TO: All Uniformed Officers

FROM: 63

CC: 51

DATE: 3-17-03

For the past three weeks or so, each of you has been under some stress as a result of the decision made by the sheriff of Jackson County to refuse custody of D.U.I.'s identified as a result of your traffic enforcement. I sincerely regret this situation, however, as I've explained, the issue here is very straightforward.

At issue is first, whether the Tribal Police can perform law enforcement functions on the Reservation and secondly whether Racial Profiling is permissible in any law enforcement agency.

My decision concerning the processing of suspected D.U.I.'s is not only permitted by court decisions, but is **required** by the standards imposed on law enforcement officers concerning racial considerations, more specifically, racially profiling offenders.

In addressing the issue of law enforcement authority, each of you has been provided clear instructions regarding your ability to enforce and investigate breaches of the peace and criminal conduct on the Reservation. You are also aware of your limitations regarding powers of arrest concerning non-Indians and you've been trained in the area of Federal law violations and your ability to deal with those issues. I am very confident in your ability to distinguish where your authority lies and what restrictions you face and as always, Assistant Chief Grant and I are available for consultation in those unusual circumstances that arise.

The sheriff's position is that Tribal officers must inquire concerning the stopped subject's race immediately after the traffic stop is initiated. This position is not legally nor ethically defensible since the race of the subject is not a factor for consideration since at this point, a decision to arrest and initiate prosecution has not been made.

Our policy was, is and will remain, to conduct a thorough and professional investigation, gather **all** of the evidence lawfully available and **after** examining that evidence and having made the decision that the individual has committed a crime for which he/she must be held accountable, then at that juncture, determine whether the person is subject to the Tribal Criminal Justice system. Race of the person then becomes a legitimate factor that merits consideration and justifies examining by the investigating officer. Premature racial inquiries are unethical at best and very likely illegal and clearly serve no legitimate purpose in the investigatory stage of any criminal investigation.

As each of you are aware, we are held accountable by the courts, but more importantly, by the community we serve, to conduct our law enforcement activities without bias or prejudice and to stand firm in maintaining the standards of conduct of professional police officers.

Again, I regret the difficulties that you're encountering while simply attempting to do your job. I'm very well aware that finding a responsible party to take custody of the D.U.I. will not always be possible. When you've exhausted those avenues without success, contact either me or Captain Grant and we will make the decision concerning the disposition of that individual. It will not be an easy one, since there are only two alternatives, one illegal and the other immoral and unethical and I will not place you in the position of making that decision.

If you have any questions, feel free to discuss any part of this issue with either Captain Grant or me.

T. J. Scott, Chief of Police
Prairie Band Potawatomi Tribal Police

Basin uted an acknowledgment that "tak ad occurred, that the Indians' reserved water right for fish had been diminished, and precludes the Indians from arguing that those rights have not been diminished in any respect; (5) this court is collaterally estopped from considering the effect of the 1945 consent judgment on the Indians' treaty-reserved rights to water for fishing purposes, but may consider the effect of the judgment on the Indians' rights to water for irrigation, and we hold that the Indians' interests were represented in *Kittitas Reclamation Dist. v. Sunnyside Valley Irrig. Dist.*, 763 F.2d 1032, 1034 (9th Cir.), *cert. denied sub nom., Sunnyside Valley Irrig. Dist. v. United States*, 474 U.S. 1032, 106 S.Ct. 593, 88 L.Ed.2d 573 (1985) by the United States as trustee and that the Indians are bound by the terms of the Judgment with respect to water rights for irrigation; and (6) the language of the Act of 1914 and of the Act of 1940, the language of the contracts of 1921 and 1936, and the legislative history in this case clearly show that Congress intended to and did limit and quantify the Yakima Indians' reserved water rights for irrigation purposes by making their right to water for irrigation, beyond the 720 cfs allocated in the Act of 1914, pro-ratable and given a priority date of May 10, 1905.

[304] Affirmed.

UTTER, BRACHTENBACH, DURHAM, GUY and JOHNSON, JJ., concur.

121 Wash.2d 373

[373] **STATE of Washington, Respondent,**

v.

David P. SCHMUCK, Petitioner.

No. 58987–9

Supreme Court of Washington, En Banc.

May 6, 1993.

[...] was convicted before the Dis[...] Court, Kitsap County, for driving while under the influence of intoxicating liquor, and he appealed. The Superior Court, James I. Maddock, J., affirmed conviction, and defendant sought direct review. The Supreme Court, Johnson, J., held that: (1) Indian tribal officer had inherent authority to stop a non-Indian driving motor vehicle on public road within reservation to investigate possible violation of tribal law; (2) tribal officer had inherent authority to detain non-Indian motorist who allegedly violated state and tribal law while on the reservation until he could be turned over to state authorities for charging and prosecution; and (3) state statute asserting criminal and civil jurisdiction over operation of motor vehicles on Indian territory and reservations did not divest Indian tribe of its inherent authority to stop and detain non-Indian who allegedly violated state and tribal law while traveling on public road in reservation, until he could be turned over to state authorities for charging and prosecution.

Affirmed.

1. Indians ⇐38(2)

Indian tribal courts do not have inherent jurisdiction to try and punish non-Indians who commit crimes on their land; instead, criminal offenses committed on a reservation by non-Indians are subject to prosecution by state and or federal governments, depending on the offense.

2. Automobiles ⇐349(11)
Indians ⇐32(13)

Indian tribal officer has requisite authority to stop non-Indian driving motor vehicle on public road within reservation to investigate possible violation of tribal traffic code and to determine if driver was an Indian, subject to code's jurisdiction.

3. Arrest ⇐63.2
Indians ⇐32(13)

Indian tribal officer has inherent authority to stop and detain a non-Indian who has allegedly violated state and tribal law while on the reservation until he or she can be turned over to state authorities for charging and prosecution.

4. Automobiles ⇐349(11)
Indians ⇐32(13)

Tribal police officer had authority to stop and detain non-Indian driver, who was allegedly driving while intoxicated on reservation, until he could be turned over to Washington State Patrol for charging and prosecution.

5. Indians ⇐2

State does not have authority to divest an Indian tribe of sovereignty; tribal sovereignty can be divested only by affirmative action of Congress.

6. Indians ⇐3(1, 2)

Under rules of construction for Indian treaties, rights reserved by tribe may be exercised unless and until affirmatively divested by Congress; however, congressional intent to override particular Indian right must be clear; repeal by implication is not favored.

7. Indians ⇐3(3)

Where ambiguity exists in an Indian treaty, ambiguity must be resolved in favor of Indians.

8. Arrest ⇐63.2
Automobiles ⇐349(11)
Indians ⇐32(13)

Washington statute providing for assertion of state civil and criminal jurisdiction over the "operation of motor vehicles upon public streets, alleys, roads and highways" within Indian reservations does not divest Indian tribe of its inherent authority to stop and detain a non-Indian motorist who has allegedly violated state and tribal law while traveling on public road in reservation, until he or she can be turned over to state authorities for charging and prosecution. West's RCWA 37.12.010(8); Act Aug. 15, 1953, §§ 1 et seq., 6, 67 Stat. 588.

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[376] The Norbut Law Firm, Gregory P. Norbut, Poulsbo, WA, for petitioner.

C. Danny Clem, Kitsap County Prosecutor, Pamela B. Loginsky, Deputy, Port Orchard, WA, for respondent.

John C. Sledd, Tribal Atty., Suquamish, WA, amicus curiae for respondent on behalf of the Suquamish Indian Tribe.

Christine O. Gregoire, Atty. Gen., John W. Hough, Deputy, Olympia, WA, amicus curiae for respondent.

Robert S. Mueller, III, Asst. Atty. of U.S., John T. Bannon, Jr., Washington, DC, amicus curiae for respondent.

JOHNSON, Justice.

At issue is whether an Indian tribal police officer has authority to stop and detain a non-Indian who allegedly violates state and tribal law while traveling on a public road within a reservation until that person can be turned over to state authorities for charging and prosecution. Petitioner David P. Schmuck was found guilty of driving while intoxicated on the Port Madison Reservation after being detained by a Suquamish tribal officer and turned over to the Washington State Patrol. Kitsap County Superior Court denied his appeal and affirmed the conviction. We affirm.

[377] I

The parties have stipulated to the facts. Clerk's Papers, at 132–41, 146–50. Suquamish Tribal Police Officer Bailey is commissioned by the Suquamish Indian Tribe (Tribe) to enforce tribal laws within the geographic confines of the Port Madison Reservation (Reservation). The Port Madison Reservation is located in Kitsap County, Washington.

On September 2, 1991, at approximately 7:30 p.m., Tribal Officer Bailey observed a blue Ford pickup truck traveling southbound on Brockton Avenue, a road running through the Reservation. The truck was obviously exceeding the posted 25 m.p.h. speed limit; the officer' [...]lar reading indicated 36 m.p.h. Office[...]ailey turned on

his e[illegible]ency lights and pursued the truck[illegible]h responded by speeding up. Office[illegible]ley turned on his siren and continued to follow the truck down multiple streets of the Reservation. After running a stop sign and continuing to accelerate, the truck finally came to a stop on the side of the road.

Officer Bailey approached the pickup truck, advised the driver of the reason for the stop, and requested his driver's license. The license identified the driver as petitioner, David P. Schmuck (Schmuck). Schmuck is not an enrolled member of any recognized Indian tribe, maintains no social ties with any tribe, and is not aware of any Indian ancestors.

Schmuck smelled of intoxicants. Officer Bailey asked him if he had been drinking, and Schmuck said, "I've had a few". Officer Bailey then asked him if he would be willing to take a few field sobriety tests. Schmuck declined. Because Schmuck was a non-Indian, Officer Bailey informed him that he would be detained until the Washington State Patrol could respond[1] to their location to investigate whether Schmuck had been driving while under the influence of alcohol or drugs (DWI).

After some discussion, Schmuck agreed to perform some field sobriety tests.[2] After reviewing the results, Officer Bailey again advised Schmuck that he was being detained until the State Patrol arrived. At approximately 7:40 p.m., Officer Bailey requested assistance from the Washington State Patrol. Trooper Clark arrived at the scene around 8 p.m.

Trooper Clark contacted Schmuck, who was sitting in the truck, and detected a strong odor of intoxicants. Schmuck's eyes were bloodshot and watery. The trooper asked Schmuck to step from the vehicle; Schmuck complied very slowly and walked across the street to Clark's patrol car with a zigzag staggering motion.

Schmuck performed four field sobriety tests and failed them all. Based upon Officer Bailey's report of Schmuck's driving, Schmuck's performance on the field sobriety tests, and the smell of liquor, Trooper Clark advised Schmuck of his constitutional rights and placed him under arrest for DWI. Schmuck was transported to Kitsap County Jail, where he was again advised of his constitutional rights and implied consent warnings. Schmuck voluntarily waived his rights and agreed to answer questions on the alcohol arrest report form. He stated he had consumed a couple of beers, but did not believe his driving was affected by his alcohol use. A BAC Verifier Datamaster was administered at 9:11 p.m., resulting in readings of .17 and .17 grams of alcohol per 210 liters of breath. Clerk's Papers, at 148–50.

On December 23, 1991, judgment was entered against Schmuck in Kitsap County District Court for driving while under the influence of intoxicating liquor in violation of RCW 46.61.502. Kitsap County Superior Court denied Schmuck's appeal and affirmed his DWI conviction, holding that the Suquamish tribal officer had authority to stop and detain Schmuck. This court granted direct review pursuant to RAP 4.2(a)(4).

1. Tribal Officer Bailey was not cross-deputized by the Kitsap County Sheriff's Department or the Washington State Patrol. The Suquamish Tribal Police Department has not entered into a mutual aid agreement with the Kitsap County Sheriff's Department or the Washington State Patrol. Clerk's Papers, at 132. Previously, the Tribe had a cooperative agreement with Kitsap County. The County, however, refused to share any of the revenue collected with the Tribe. Subsequently, the County elected not to continue a cooperative traffic enforcement program wit[illegible]. Brief of Respondent, at 12 (q[illegible]nish Tribal Law and Order Code 10.

2. Although not included in the stipulation of facts, both parties noted in their briefs that the specific tests included a "horizontal gaze nystagmus" and a breath test on an ALCO-SENSOR portable breath testing machine. Schmuck's breath sample registered .201. During the eye test, neither of Schmuck's eyes "pursued smoothly", and the onset of the nystagmus was prior to 45 degrees. Brief of Petitioner, at 4–5; Brief of Respondent, at 5.

II

We address three issues presented for review. First, does an Indian tribal officer have inherent authority to stop a non-Indian driving a motor vehicle on a public road within the reservation to investigate a possible violation of tribal law? Second, does a tribal officer have inherent authority to detain a non-Indian motorist who has allegedly violated state and tribal law while on the reservation until he or she can be turned over to state authorities for charging and prosecution? Third, if an Indian tribe does have such inherent authority, has that authority been divested by the State's enactment of RCW 37.12.010 assuming criminal and civil jurisdiction over the operation of motor vehicles on Indian territory and reservations?

[1] We begin by noting that the Suquamish Indian Tribe did not assert authority to prosecute Schmuck for driving while intoxicated, speeding, or running a stop sign. Indian tribal courts do not have inherent jurisdiction to try and punish non-Indians who commit crimes on their land. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212, 98 S.Ct. 1011, 1022, 55 L.Ed.2d 209 (1978). Instead, criminal offenses occurring on a reservation by non-Indians are subject to prosecution by state or federal governments, depending on the offense. Thus, the question presented is not whether the Suquamish Indian Tribe had authority to *prosecute* Schmuck, but rather, whether the Tribe had authority to *stop* and *detain* Schmuck until he could be turned over to State governmental officials who did have authority to prosecute.[3]

[2] Schmuck first argues that Tribal Officer Bailey did not have inherent authority to *stop* Schmuck's vehicle. We disagree. A review of United States Supreme Court precedent indicates that Indian tribes are limited sovereigns which retain the power to prescribe and enforce internal criminal and civil laws. This power necessarily includes the authority to stop a driver on the reservation to investigate a possible violation of tribal law and determine if the driver is an Indian, subject to the jurisdiction of that law.

Jurisdictional disputes on Indian reservations often involve questions of overlapping federal, state, and tribal jurisdiction. *See* F. Cohen, *Federal Indian Law* ch. 6 (1982); Note, *Falling Through the Cracks After Duro v. Reina: A Close Look at a Jurisdictional Failure*, 15 U. Puget Sound L.Rev. 229, 230–35 (1991). Whether the Suquamish Indian Tribe has authority to stop and detain a non-Indian necessarily turns on an analysis of the limited sovereignty retained by the Tribe.

In analyzing issues of Indian sovereignty, "[i]t must always be remembered that the various Indian tribes were once independent and sovereign nations...." *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 172, 93 S.Ct. 1257, 1262, 36 L.Ed.2d 129 (1973). However, when Indian tribes were incorporated into United States territory and accepted protection by the federal government, they necessarily lost some of their sovereign powers:

> The sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to complete defeasance. But until Congress acts, the tribes retain their existing sovereign powers. In sum, Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.

3. We note that Schmuck's assignment of error is limited to the sole question of whether the Tribe has inherent *authority* to stop and detain. He does not challenge the *reasonableness* of that detention, include any arguments in his brief, or present any evidence that the detention was in fact unreasonable. This court will not consider an issue on appeal that is not raised by an assignment of error or supported by argument and citation of authority. *McKee v. American Home Prods. Corp.*, 113 Wash.2d 701, 705, 782 P.2d 1045 (1989). Therefore, we do not address any arguments by respon[illegible]r amicus curiae regarding the scope of t[illegible]ention.

Jnited States v. Wheeler, 435 U.S. 313, 23, [illegible] 1079, 1086, 55 L.Ed.2d 303 1978).

[381]Despite their limited sovereignty, Indin tribes also have a dependent status, in vhich some aspects of their sovereignty ave been either expressly or implicitly diested. Normally, "[a] basic attribute of ull territorial sovereignty is the power to nforce laws against all who come within ne sovereign's territory, whether citizens r aliens". *Duro v. Reina*, 495 U.S. 676, 85, 110 S.Ct. 2053, 2060, 109 L.Ed.2d 693 990). However, tribes can no longer be escribed as sovereigns in this sense. Cather, tribes only retain that sovereignty vhich is needed to control the tribe's interal relations and to preserve their own nique customs and social order. *Duro*, 95 U.S. at 685–86, 110 S.Ct. at 2059–60.

Thus, although the status of tribes is nat of a limited sovereign, tribes still reain their power of internal self-goverance. *Duro*, 495 U.S. at 686, 110 S.Ct. at 060. This power includes "the power to rescribe and enforce internal criminal aws". *Wheeler*, 435 U.S. at 326, 98 S.Ct. t 1088. This power is part of a tribe's primeval sovereignty", that is, "part of the tribe's] own retained sovereignty". *Vheeler*, 435 U.S. at 328, 98 S.Ct. at 1089. his inherent authority is the source of an ndian tribe's power to create and adminisr an internal criminal justice system, *Orz–Barraza v. United States*, 512 F.2d 176, 1179 (9th Cir.1975), including "the nherent power to prescribe laws for their embers and to punish infractions of those aws". *Wheeler*, 435 U.S. at 323, 98 S.Ct. t 1086.

An Indian tribe may also regulate the onduct of its members on the reservation. *Montana v. United States*, 450 U.S. 544, 564, 101 S.Ct. 1245, 1257, 67 L.Ed.2d 493 (1981). For example, the Ninth Circuit has acknowledged a tribe's authority to enact a civil traffic code, including speed limits, which it can enforce against on-reservation Indians. *See Confederated Tribes of Colville Reservation v. Washington*, 938 F.2d 146, 149 (9th Cir.1991), *cert. denied*, —— U.S. ——, 112 S.Ct. 1704, 118 L.Ed.2d 412 (1992). Moreover, where a tribe has shown that its own highway safety laws and institutions are adequate for self-government, the Ninth Circuit held the State may not assert jurisdiction to enforce the State's civil traffic regulations, such as speed limits, [382]against tribal members operating motor vehicles upon public roads within the reservation. *Confederated Tribes*, 938 F.2d at 149.[4]

In the exercise of this recognized jurisdiction, the Suquamish Indian Tribe enacted various ordinances regulating its members' conduct upon the Reservation's roads and highways. These ordinances are codified in the Suquamish Tribal Law and Order Code (S.T.C.). These ordinances include S.T.C. 10.1.19, which authorizes tribal officers to issue citations or arrest a tribal member for driving while intoxicated or driving in a reckless and negligent manner. S.T.C. 10.1.33 and 10.1.21 require tribal members to observe posted speed limits and obey stop signs. *See also* S.T.C. 10.1.9 (authority to issue notice of traffic infraction).

The Suquamish Indian Tribe employs police officers, including Officer Bailey, to enforce its Tribal Law and Order Code. "The propriety of [operating] ... tribal police forces has been recognized, presently and in the past, by the federal government". An Indian tribe "may employ police officers to aid in the enforcement of tribal law and in the exercise of tribal power". *Ortiz–Barraza*, 512 F.2d at 1179.

Fundamental to enforcing any traffic code is the authority by tribal officers to stop vehicles violating that code on roads within a reservation. In this case, Officer Bailey was exercising the Tribe's authority to enforce its traffic code when he observed the speeding pickup truck and pursued it through the streets of the Reservation. When he first saw the truck, he had no means of ascertaining whether the driver was an [383]Indian. Only by stopping the vehicle could he determine whether the driver was a tribal member, subject to the jurisdiction of the Tribe's traffic code. The alternative would put tribal officers in the impossible position of being unable to stop any driver for fear they would make an unlawful stop of a non-Indian. Such a result would seriously undercut the Tribe's ability to enforce tribal law and would render the traffic code virtually meaningless. It would also run contrary to the "well-established federal 'policy of furthering Indian self-government.'" *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 62, 98 S.Ct. 1670, 1679, 56 L.Ed.2d 106 (1978) (quoting *Morton v. Mancari*, 417 U.S. 535, 551, 94 S.Ct. 2474, 2483, 41 L.Ed.2d 290 (1974)).

We hold Suquamish Tribal Officer Bailey had the requisite authority to stop Schmuck to investigate a possible violation of the Suquamish traffic code and to determine if Schmuck was an Indian, subject to the code's jurisdiction.

III

[3] Schmuck next contends that even if Tribal Officer Bailey had authority to stop him, Officer Bailey did not have inherent authority to *detain* him once Bailey determined that Schmuck was a non-Indian. Schmuck contends this detention violated the Washington State Constitution, Article 1, section 7, in which "[n]o person shall be disturbed in his private affairs, or his home invaded, *without authority of law*". (Italics ours.) We disagree. The Suquamish Indian Tribe expressly retained in its treaty the Tribe's inherent authority to detain offenders and turn them over to government officials for prosecuting. Moreover, this authority has been recognized by both the United States Supreme Court and the Ninth Circuit.

In 1855, the Tribe entered into the Treaty of Point Elliott (Treaty), Jan. 22, 1855, 12 Stat. 927, and agreed to settle on a 7,276–acre reservation near Port Madison, Washington. *Oliphant*, 435 U.S. at 192–93, 98 S.Ct. at 1013. The Port Madison Reservation is a checkerboard consisting of tribal community land, allotted Indian land (so-called "Indian Trust Land"), property [384]held in fee simple by non-Indians, and various roads and public highways maintained by Kitsap County. *Oliphant*, 435 U.S. at 193, 98 S.Ct. at 1013. According to *Oliphant*, approximately 37 percent of the Reservation is Indian land, subject to the trust status of the United States. The other 63 percent is owned in fee simple by non-Indians. *Oliphant*, 435 U.S. at 193 n. 1, 98 S.Ct. at 1013 n. 1. However, all of the property within the geographic boundaries of the Reservation, including the land owned by non-Indians, is defined in federal law as "Indian country". 18 U.S.C. § 1151(a); *Seymour v. Superintendent of Wash. State Penitentiary*, 368 U.S. 351, 357–58, 82 S.Ct. 424, 427–29, 7 L.Ed.2d 346 (1962).

Prior to signing the Treaty, the Suquamish Indian Tribe began its "relationship with the Federal Government as a sovereign power" and its "criminal jurisdiction, no less than its civil jurisdiction, was that of any sovereign power". *Powers of Indian Tribes*, 55 Interior Dec. 14, 19, 57, 1 Opinions of Solicitor, Department of Interior, Indian Affairs 445, 447, 472 (Oct. 25, 1934). By the Treaty and by Congress' plenary legislative authority over Indians, *e.g., Delaware Tribal Business Comm. v. Weeks*, 430 U.S. 73, 83–84, 97 S.Ct. 911, 918–919, 51 L.Ed.2d 1[illegible]977), the Tribe

4. In *Confederated Tribes*, the Ninth Circuit held the State does not have jurisdiction over tribal members on the reservation for purposes of enforcing civil traffic laws against tribal members. *Confederated Tribes*, 938 F.2d at 149. Schmuck argues that because the Ninth Circuit held that tribes have exclusive jurisdiction over civil traffic infractions by tribal members, then the [illegible]necessarily have exclusive jurisdic[illegible]ffic violations by non-Indians. Schmuck's argument is not persuasive. Given the complexities of tribal, state, and federal jurisdiction over Indians and non-Indians on reservations, *Confederated Tribes* cannot support such a conclusion. The Ninth Circuit addressed only State jurisdiction over civil traffic infractions by Indians, not authority to detain non-Indians for civil infractions like speeding or for criminal violations like DWI.

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ave u[ne], but not all, of its territory
nd s[ty]. The Treaty was "not a
rant [g]ats to the Indians, but a grant
f rights from them—*a reservation of
hose not granted*". (Italics ours.) *Unit-
d States v. Winans*, 198 U.S. 371, 381, 25
.Ct. 662, 49 L.Ed. 1089 (1905); *United
tates v. Moore*, 62 F.Supp. 660, 666
V.D.Wash.1945), *aff'd*, 157 F.2d 760 (9th
ir.1946), *cert. denied*, 330 U.S. 827, 67
.Ct. 867, 91 L.Ed. 1277 (1947). Thus, with-
their remaining territory, the Suquamish
ndian Tribe's aboriginal powers are re-
erved unless limited by the United States'
uperior power. *E.g., United States v.
Vheeler*, 435 U.S. 313, 323, 98 S.Ct. 1079,
086, 55 L.Ed.2d 303 (1978); *Worcester v.
Georgia*, 31 U.S. (6 Pet.) 515, 560–61, 8
.Ed. 483 (1832).

Article 9 of the Treaty of Point Elliott *xpressly* provides that the Tribe shall turn
ver to government authorities any [385]in-
ruder on the Reservation who has violated
Jnited States law:

> the said tribes agree not to shelter or conceal offenders against the laws of the United States, but *to deliver them up to the authorities for trial.*

Italics ours.) Treaty of Point Elliott, art.
, 12 Stat. 927 (1855). This provision ap-
pears to reflect a common concern of the
federal government during treaty negotia-
ions in the mid–1800's to prevent non-
Indians from hiding out on reservations in
he mistaken belief that they would be free
rom prosecution for their crimes. *See,
.g.*, H.R.Rep. No. 474, 23rd Cong., 1st
Sess., at 98 (1834) (federal government to
protect Native people from "unprincipled
white men" entering Indian country,
"where they fancy themselves free from
punishment").

Treaty provisions reserving tribal powers are subject to certain canons of construction. Powers reserved by a tribe in its treaty may still be exercised, unless curtailed by later federal congressional action. *E.g., Wheeler*, 435 U.S. at 323, 98 S.Ct. at 108[0]; *[Mas]er*, 31 U.S. at 560–61. Treaties [are] construed liberally for the benefit of the Indians, *e.g., Choctaw Nation v. United States*, 318 U.S. 423, 431–32, 63 S.Ct. 672, 677–78, 87 L.Ed. 877 (1943), and as the Indians would have understood it. *E.g., Choctaw Nation v. Oklahoma*, 397 U.S. 620, 631, 90 S.Ct. 1328, 1334, 25 L.Ed.2d 615 (1970); *Pioneer Packing Co. v. Winslow*, 159 Wash. 655, 661, 294 P. 557 (1930). Ambiguities must be resolved in favor of the Indians. *E.g., McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 174, 93 S.Ct. 1257, 1263, 36 L.Ed.2d 129 (1973). In addition, the court may consider the practical construction given the treaty by the parties. *E.g., United States v. Top Sky*, 547 F.2d 486, 487 (9th Cir.1976). These canons compensate for the non-Indian party's "presumptively superior negotiating skills and superior knowledge of the language in which the treaty is recorded...." *Washington v. Washington Comm'l Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 675–76, 99 S.Ct. 3055, 3069–70, 61 L.Ed.2d 823 (1979).

Applying these principles to the Point Elliott treaty, article 9 specifically authorizes the Suquamish Indian Tribe to [386]detain alleged offenders of United States laws and turn them over to government officials for prosecution. Support for this authorization may be found in two opinions of the United States Supreme Court: *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 98 S.Ct. 1011, 55 L.Ed.2d 209 (1978) and *Duro v. Reina*, 495 U.S. 676, 110 S.Ct. 2053, 109 L.Ed.2d 693 (1990).

Oliphant involved crimes by two non-Indians on the Port Madison Reservation. *Oliphant*, 435 U.S. at 194, 98 S.Ct. at 1013. The United States Supreme Court held that the Suquamish Tribal Court did not have criminal jurisdiction to try and punish non-Indians absent affirmative delegation of that power by Congress. *Oliphant*, 435 U.S. at 207–08, 98 S.Ct. at 1020–21. The Court noted that when the Tribe entered into the Treaty of Point Elliott, the Tribe acknowledged its dependence upon the United States, and in all probability was recognizing "that the United States would

arrest and try non-Indian intruders who came within their Reservation". *Oliphant*, 435 U.S. at 207, 98 S.Ct. at 1020. Relying on the language from article 9, the Court concluded the Tribe is obligated to deliver a non-Indian offender to government authorities for prosecution:

> Thus the Tribe "agree[s] not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial." Read in conjunction with 18 U.S.C. § 1152, which extends federal enclave law to non-Indian offenses on Indian reservations, *this provision implies that the Suquamish are to promptly deliver up any non-Indian offender, rather than try and punish him themselves.*

(Italics ours.) *Oliphant*, 435 U.S. at 208, 98 S.Ct. at 1020.[5]

Schmuck contends that the Supreme Court's decision in *Oliphant* bars tribal police from exercising *any* authority over non-Indians. We disagree. *Oliphant* holds that tribal courts do not have criminal jurisdiction to *try and punish* non-Indian offenders. At the same time, the Court *acknowledged*[387] the continuing vitality of the Tribe's power, reserved in article 9, to detain offenders and turn them over to governmental authorities who do have authority to prosecute.

More recently, the Supreme Court again acknowledged a tribe's power to detain. [388]Schmuck and promptly delivered him up,

> *Duro*, 495 U.S. at 696–97, 110 S.Ct. at 2065–66. In *Duro*, the Supreme Court held that an Indian tribe may not assert criminal jurisdiction over a nonmember Indian for misdemeanor crimes.[6] *Duro*, 495 U.S. at 688, 110 S.Ct. at 2061. In response to concerns that a lack of tribal jurisdiction would allow nonmember Indians to violate the law with impunity while on the reservation, the Court responded that alleged offenders need not go free:
>
> > The tribes also possess their traditional and undisputed power to exclude persons whom they deem to be undesirable from tribal lands.... Tribal 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.*
>
> (Citations omitted. Italics ours.) *Duro*, 495 U.S. at 696–97, 110 S.Ct. at 2065–66.
>
> Thus, twice the Supreme Court has stated that a tribe's proper response to a crime committed by a non-Indian on the reservation is for the tribal police to detain the offender and deliver him or her to the proper authorities.[7] This is precisely what Tribal Officer Bailey did: he detained

5. In a case directly on point, the New Mexico Court of Appeals also looked to this language from *Oliphant* and held that an Indian tribal officer had inherent authority to detain a non-Indian offender and deliver him or her to state authorities, even though the officer was not cross-commissioned by state police. *State v. Ryder*, 98 N.M. 453, 649 P.2d 756, *aff'd on other grounds*, 98 N.M. 316, 648 P.2d 774 (1982).

6. In 1991, Congress overruled the holding in *Duro* by passing legislation declaring that tribes possess inherent criminal jurisdiction over all Indians. Pub.L. No. 102–137, § 1, 105 Stat. 646 (1991). Nevertheless, *Duro*'s reasoning that tribes have inherent sovereignty to detain and deliver offenders is still sound. In fact, it is supported by Congress' action in affirming tribal criminal jurisdiction over all Indians, action which is consistent with the federal policy of furthering Indian self-government. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 62, 98 S.Ct. 1670–1679, 56 L.Ed.2d 106 (1978). Holding that tribes have inherent sovereignty to detain and deliver offenders is also consistent with that policy.

7. Additional support for the Supreme Court's construction of article 9 in *Oliphant* and *Duro* can be found in the dissent to the Court of Appeals' opinion in *Oliphant*, which was reversed by the Supreme Court. *Oliphant v. Schlie*, 544 F.2d 1007 (9th Cir.1976), *rev'd*, 435 U.S. 191, 98 S.Ct. 1011, 55 L.Ed.2d 209 (1978). The Supreme Court opinion in *Oliphant* largely adopted the position of this dissent written by Justice Kennedy while still sitting on the Ninth Circuit. Justice Kennedy subsequently wrote the majority opinion in *Duro*. The dissent states:

> It is important to focus on the precise issue in this case [*Oliphant*]. We are not considering whether Indian [t]ribes may pass reserva-

n acc e with *Oliphant*'s and *Duro*'s direct

In addition to the Supreme Court, the Ninth Circuit has squarely addressed the issue of tribal authority to detain a non-Indian in a case directly on point. *Ortiz–Barraza v. United States*, 512 F.2d 1176 (9th Cir.1975). In *Ortiz*, a tribal police officer observed a camper truck driving through an Indian reservation under suspicious circumstances indicating the driver might be an illegal alien. The officer followed the truck onto a state highway running through the reservation and stopped the driver. When the driver could not produce a driver's license or vehicle registration, the officer checked the truck for identification papers and discovered marijuana. The driver, a non-Indian, was detained by the tribal police and transferred to drug enforcement officials. *Ortiz–Barraza*, 512 F.2d at 1178–79.

The Ninth Circuit held that an Indian tribe has inherent authority to stop and detain a non-Indian allegedly violating state or federal law on public roads running through the reservation until the non-Indian can be turned over to the appropriate authorities. *Ortiz–Barraza*, 512 F.2d at 1180. According to the court, this power exists *regardless* of the fact that tribes have been divested of their power to exercise criminal jurisdiction:

> It has at times been held that tribes may not exercise criminal jurisdiction over non-Indians. Such holdings ... have not [389]derogated from the *sovereign power* of tribal authorities to exclude trespassers who have violated state or federal law by *delivering the offenders to the appropriate authorities.*

(Citation omitted. Italics ours.) *Ortiz–Barraza*, 512 F.2d at 1179. Although this case was decided prior to *Oliphant*, the above language is consistent with both *Oliphant* and *Duro*.

The Ninth Circuit based its finding of authority, in part, on the tribe's traditional inherent authority to exclude: "Also intrinsic in the sovereignty of an Indian tribe is the power to exclude trespassers from the reservation. A tribe needs no grant of authority from the federal government in order to exercise this power." (Citation omitted.) *Ortiz–Barraza*, 512 F.2d at 1179. *See also New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333, 103 S.Ct. 2378, 2385, 76 L.Ed.2d 611 (1983). The Suquamish Indian Tribe also reserved its inherent right to exclude or to condition the presence of trespassers on the Port Madison Reservation in the Treaty of Point Elliott. In article 2, the Treaty sets aside land for the "exclusive use" of the tribes, "nor shall any white man be permitted to reside upon the same without permission of the said tribes...." Treaty of Point Elliott, art. 2, 12 Stat. 927 (1855).

Amicus Washington State Patrol argues the Suquamish Indian Tribe no longer has the power to exclude from its Reservation or the lesser included power to detain, in particular because Schmuck was traveling on a public road in the Reservation. The State Patrol argues that the language from *Duro* citing the power to exclude applies only to *tribal* land, not public roads. *See Duro*, 495 U.S. at 696–97, 110 S.Ct. at 2065–66.

In *Ortiz–Barraza*, the Ninth Circuit explicitly rejected amicus' argument that a tribe does not possess the power to detain when a non-Indian is traveling on a public road:

> [T]he fact that the events of interest here may have occurred within the right-of-way for a state highway avails the defendant nothing. Rights of way running through a reservation *remain part of the reservation and within the territorial jurisdiction of the tribal police.*

(Italics ours.) *Ortiz–Barraza*, 512 F.2d at 1180 (citing *Gourneau v. Smith*, 207 N.W.2d 256 (N.D.1973)).

[389] tion ordinances, having the force of law, governing the conduct of the tribe's members; they may.... Nor are we determining whether Indians have the right to exclude from the reservation nonmembers they deem undesirable; they have.... *Nor is there any* [illegible] *potential lawbreakers going un-*[illegible] point given special emphasis by [illegible]y, for we have held that *tribal authorities have the power to apprehend violators of state and federal law and to deliver the offenders to the appropriate authority.* Oriz [sic]-*Barraza v. United States*, 512 F.2d 1176, 1179 (9th Cir.1975).
(Footnote and citations omitted. Italics ours.) *Oliphant v. Schlie*, 544 F.2d at 1014 (Kennedy, J., dissenting).

[390] We agree with the Ninth Circuit. Just because Schmuck's offense was committed on a public road does not mean he is immune from tribal authority. By federal statute, "Indian country" is defined as all land within the limit of any Indian reservation, "notwithstanding the issuance of any patent, and, *including rights-of-way*". (Italics ours.) 18 U.S.C. § 1151. *See, e.g., DeCoteau v. District Cy. Court*, 420 U.S. 425, 427 n. 2, 95 S.Ct. 1082, 1084 n. 2, 43 L.Ed.2d 300 (1975) (land within reservation is subject to tribal and federal jurisdiction including rights of way); *Confederated Tribes of Colville Reservation v. Washington*, 938 F.2d 146, 146 (9th Cir.1991) (public roads are within and therefore part of the reservation), *cert. denied*, — U.S. —, 112 S.Ct. 1704, 118 L.Ed.2d 412 (1992); *Enriquez v. Superior Court*, 115 Ariz. 342, 565 P.2d 522 (1977) (granting of easement for public highway running through reservation does not alter status as "Indian country"). Thus, public roads remain part of the Reservation and are within the territorial jurisdiction of the Suquamish tribal police, at least for the limited purpose of asserting the Tribe's authority to detain and deliver alleged offenders.

The State Patrol argues, however, that recognizing tribal authority to detain will *necessarily* result in additional tribal regulation of roads running through the Reservation, such as adopting different speed limits or building toll booths. While we acknowledge the concerns of the State Patrol, we think these fears are unwarranted. Holding the Tribe has expressly reserved a *limited* authority to stop and detain alleged offenders in no way confers an *unlimited* authority to regulate the right of the public to travel on the Reservation's roads.

We also note that the Tribe's authority to stop and detain is not necessarily based *exclusively* on the power to exclude non-Indians from tribal lands, but may also be derived from the Tribe's general authority as sovereign. *See Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137, 102 S.Ct. 894, 901, 71 L.Ed.2d 21 (1982) (tribe's power to tax non-Indians does not derive solely from power to exclude but from general [391] authority as sovereign to control economic activity within its jurisdiction). Although we recognize that a tribe's inherent sovereign powers do not generally extend to the activities of nonmembers of the tribe, *Montana*, 450 U.S. at 565, 101 S.Ct. at 1258, tribes still retain some limited authority to regulate the conduct of non-Indians on reservation land:

> To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, *even on non-Indian fee lands*.... A tribe may also retain inherent power to exercise civil authority over the *conduct of non-Indians on fee lands within its reservation when that conduct threatens* or has some direct effect on the political integrity, the economic security, or the *health or welfare* of the tribe.

(Italics ours.) *Montana v. United States*, 450 U.S. 544, 565–66, 101 S.Ct. 1245, 1258, 67 L.Ed.2d 493 (1981). Allowing a known drunk driver to get back in his or her car, careen off down the road, and possibly kill or injure Indians or non-Indians would certainly be detrimental to the health or welfare of the Tribe.

As a practical matter, the Suquamish Indian Tribe provides most of the law enforcement patrols on the Reservation. The Tribe employs five full-time officers to patrol the Reservation, whereas no state or federal law enforcement officers are assigned solely to that area. Brief of Amicus Suquamish Indian Tribe, app. C. Kitsap County assigns approximately three deputies to north Kitsap C[illegible], but they must patrol an area substan[illegible] larger than the

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Reser... Holding that the Tribe does not h... limited authority to stop and detain ...ged offenders who present a clear threat to community members would severely hamper the Tribe's ability to protect the welfare of Indians, as well as non-Indians, on the Reservation.

In this case, if the Suquamish Indian Tribe did not have the authority to detain, Schmuck would have been free to drive away with an alcohol level exceeding the limit for legal intoxication. In the 20 minutes it took for Trooper Clark to respond, Schmuck could have easily caused extensive property damage or seriously injured other motorists. He also [392] could have left the Reservation and eluded capture by the State Patrol. As the New Mexico Court of Appeals noted:

> To hold that an Indian police officer may stop offenders but upon determining they are non-Indians must let them go, would be to subvert a substantial function of Indian police authorities and produce a ludicrous state of affairs which would permit non-Indians to act unlawfully, with impunity, on Indian lands.

State v. Ryder, 98 N.M. 453, 456, 649 P.2d 756, *aff'd on other grounds*, 98 N.M. 316, 648 P.2d 774 (1982). Nothing in *Oliphant*, *Duro*, or *Ortiz-Barraza* supports such a result. Quite the opposite. These cases support the position that tribes can detain any such offender and "promptly deliver him or her up" to the appropriate officials who are authorized to prosecute.

Finally, the State Patrol urges this court to base a tribal officer's authority to detain on a citizen's arrest theory. We decline their invitation. There would be a serious incongruity in allowing a limited sovereign such as the Suquamish Indian Tribe to exercise no more police authority than its tribal members could assert on their own. Such a result would seriously undercut a tribal officer's authority on the reservation and conflict with Congress' well-established pol... ...ting tribal self-government. *Se... ...ra Pueblo v. Martinez*, 436 U.S. 49, 62, 98 S.Ct. 1670, 1679, 56 L.Ed.2d 106 (1978). Potentially, DWI drivers would simply drive off or even refuse to stop if pulled over by a tribal officer with only a citizen's arrest capability.

[4] We conclude an Indian tribal officer has inherent authority to stop and detain a non-Indian who has allegedly violated state and tribal law while on the reservation until he or she can be turned over to state authorities for charging and prosecution. We hold Tribal Officer Bailey, as a police officer employed by the Suquamish Indian Tribe, had authority to stop and detain Schmuck, who was allegedly driving while intoxicated on the Reservation, until he could be turned over to the Washington State Patrol for charging and prosecution.

[393] IV

Schmuck contends that even if the Tribe did have inherent authority to stop and detain him, that authority was divested by the State's enactment of RCW 37.12.010. Schmuck argues that the statute gives the State *exclusive* jurisdiction over motor vehicle offenses committed on reservation land, citing *Makah Indian Tribe v. State*, 76 Wash.2d 485, 457 P.2d 590 (1969).

By enacting RCW 37.12.010, the State of Washington assumed criminal and civil jurisdiction over Indians and Indian territory and reservations. RCW 37.12.010. The statute specifically provides for the assumption of jurisdiction over Indians on reservations for the "operation of motor vehicles upon the public streets, alleys, roads and highways". RCW 37.12.010(8).

In *Makah*, this court held that vehicles being operated by Indians upon public roads running through a reservation are subject to jurisdictional control of the State pursuant to RCW 37.12.010. *Makah*, 76 Wash.2d at 493, 457 P.2d 590. Schmuck argues that *Makah*, read in conjunction with RCW 37.12.010, vests *exclusive* jurisdiction over motor vehicles in the State.

Makah is not dispositive. Nothing in *Makah* makes such a clear statement that

RCW 37.12.010 grants *exclusive* jurisdiction to the State. The issue in *Makah* pertained only to questions of state jurisdiction *over Indians* on the Makah Reservation. It did not address issues of jurisdiction over non-Indians or exclusivity of jurisdiction.

[5] *Makah* notwithstanding, Schmuck argues that RCW 37.12.010 divested the Tribe of any authority to detain Schmuck by giving the State exclusive criminal and civil jurisdiction over Indian reservations including the operation of motor vehicles. The State does not have authority to divest the Tribe of its sovereignty; tribal sovereignty can be divested only by affirmative action of Congress. *See United States v. Wheeler*, 435 U.S. 313, 323, 98 S.Ct. 1079, 1086, 55 L.Ed.2d 303 (1978); *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 154, 100 S.Ct. 2069, 2081, 65 L.Ed.2d 10 (1980) ("tribal sovereignty is dependent on, [394] and subordinate to, only the Federal Government, not the States"); *Native Village of Venetie I.R.A. Coun. v. Alaska*, 944 F.2d 548, 558 (9th Cir.1991). However, RCW 37.12.010 was enacted pursuant to congressional authority in Pub.L. No. 83–280, § 6, 67 Stat. 588 (1953) (hereafter Public Law 280); *State v. Hoffman*, 116 Wash.2d 51, 65–66, 804 P.2d 577 (1991). Because the State statute was enacted under congressional authority, this issue necessarily turns on whether Congress, by enacting Public Law 280, affirmatively divested the Tribe of its power to detain and deliver offenders to governmental authorities for prosecution.

Enacted in 1953, Public Law 280 mandated the transfer of civil and criminal jurisdiction over Indian country from the federal government to five state governments. Pub.L. No. 83–280, § 6, 67 Stat. 588 (1953); *Venetie*, 944 F.2d at 559–60. Other states, including Washington, were permitted to assume such jurisdiction voluntarily. Pub.L. No. 83–280, § 7, 67 Stat. 588 (1953). In 1963, Washington adopted RCW 37.12.010 pursuant to Public Law 280. *Hoffman*, 116 Wash.2d at 65–66, 804 P.2d 577. RCW 37.12.010 complies with Public Law 280 and is constitutional. *Washington v. Confederated Bands & Tribes of Yakima Indian Nation*, 439 U.S. 463, 484, 493, 99 S.Ct. 740, 757, 58 L.Ed.2d 740 (1979); *Hoffman*, 116 Wash.2d at 65–66, 804 P.2d 577.

Although legislative history on the law is sparse, Congress' primary motivation in enacting Public Law 280 was to remedy the lack of adequate criminal law enforcement on some reservations. *Venetie*, 944 F.2d at 560; *Bryan v. Itasca Cy.*, 426 U.S. 373, 379–80, 96 S.Ct. 2102, 2106–07, 48 L.Ed.2d 710 (1976) (Congress' primary concern was the problem of lawlessness and the absence of adequate tribal law enforcement on certain reservations). Tribes that had a satisfactory tribal law and order organization were exempted from the provisions of Public Law 280. *Bryan*, 426 U.S. at 385, 96 S.Ct. at 2109.

Both the United States Supreme Court and the Ninth Circuit have concluded that Public Law 280 is not a divestiture statute. *Venetie*, 944 F.2d at 560; *see California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207–12, [395] 107 S.Ct. 1083, 1087–90, 94 L.Ed.2d 244 (1987); *Bryan*, 426 U.S. at 383–90, 96 S.Ct. at 2108–12. In the area of criminal jurisdiction, the Eighth Circuit concluded that Public Law 280 did not itself divest Indian tribes of their sovereign power to punish their members for violations of tribal law: "Nothing in the wording of Public Law 280 or its legislative history precludes concurrent tribal authority". *Walker v. Rushing*, 898 F.2d 672, 675 (8th Cir.1990). In the area of civil regulatory authority, the United States Supreme Court observed that nothing in the text of Public Law 280 addresses the removal of tribal authority, as would be expected if Congress intended such a "sweeping change in the status of tribal government". *Bryan*, 426 U.S. at 381, 96 S.Ct. at 2107. The Ninth Circuit has also concluded that Public Law 280 was designed to supplement tribal institutions, not supplant them. *Venetie*, 944 F.2d at 560. Thus, the court held that no provision ...ither a federal

child welfare statute or Public Law 280 ... ed concurrent state and tribal juris- ... *Venetie*, 944 F.2d at 561. *See also Confederated Tribes of Colville Reservation v. Washington*, 938 F.2d 146, 149 (9th Cir.1991) (Public Law 280 does not divest a tribe of its right to enact and enforce its own internal civil traffic code against its members), *cert. denied*, — U.S. —, 112 S.Ct. 1704, 118 L.Ed.2d 412 (1992). The so-called mandatory Public Law 280 states that have addressed the issue consider state and tribal jurisdiction to be concurrent under Public Law 280. *Venetie*, 944 F.2d at 561 (citing 70 Op. Att'y Gen. Wisc. 237, 243 (1981); Opinion No. 48, Opinion Letter from Robert M. Spire, Att'y Gen. Neb., to State Sen. James E. Goll (Mar. 28, 1985)). *See also* F. Cohen, *Federal Indian Law* ch. 6, § C3a(1), at 367 (1982) (Public Law 280 did not extinguish tribal jurisdiction, which probably remains concurrent with the states).

No court has squarely addressed the issue of whether Public Law 280 divests a tribe's authority to stop and detain non-Indian motorists allegedly violating state and tribal law while traveling on reservation roads. As noted in the above cases, however, nothing in the language or history of Public Law 280 indicates an intent by Congress[396] to diminish tribal authority. Likewise, nothing in the language of RCW 37.12.010 affirmatively grants exclusive jurisdiction to the State. *See* RCW 37.12.010. In any event, because RCW 37.12.010 was enacted pursuant to Public Law 280, its scope cannot exceed that authorized by Public Law 280. Given that one of the primary goals of Public Law 280 is to improve law enforcement on reservations, holding that Public Law 280 divested a tribe of its inherent authority to detain and deliver offenders would squarely conflict with that goal.

[6, 7] Thus, Public Law 280, by which the State assumed jurisdiction over the operation of motor vehicles on Indian reservations, is at best ambiguous about whether that jurisdiction is exclusive or concurrent with existing tribal authority to stop and detain an alleged offender until he or she can be turned over to government authorities for prosecution. Under the rules of construction for Indian treaties, rights reserved by a tribe in its treaty may be exercised unless and until affirmatively divested by Congress. *See Wheeler*, 435 U.S. at 323, 98 S.Ct. at 1086; *Venetie*, 944 F.2d at 558. However, congressional intent to override a particular Indian right must be clear; repeal by implication is not favored. *Morton v. Mancari*, 417 U.S. 535, 549–50, 94 S.Ct. 2474, 2482–83, 41 L.Ed.2d 290 (1974). Where ambiguity exists, ambiguities must be resolved in favor of the Indians. *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766, 105 S.Ct. 2399, 2403, 85 L.Ed.2d 753 (1985).

[8] Accordingly, we hold that RCW 37.12.010, enacted pursuant to Public Law 280, does not divest the Suquamish Indian Tribe of its inherent authority to stop and detain a non-Indian who has allegedly violated state and tribal law while traveling on a public road in the Reservation, until he or she can be turned over to state authorities for charging and prosecution.[8]

[397] The judgments of Kitsap County District Court and Kitsap County Superior Court upholding Schmuck's DWI conviction are affirmed.

ANDERSEN, C.J., concurs in result only.

UTTER, BRACHTENBACH, DURHAM, SMITH and GUY, JJ., concur.

8. Our disposition makes it unnecessary for us to address petitioner's other arguments on appeal. To the extent additional arguments are raised ... we decline to address them. This ... not consider issues or arguments raised only by an amicus curiae. *State v. Gonzalez*, 110 Wash.2d 738, 752 n. 2, 757 P.2d 925 (1988); *Coburn v. Seda*, 101 Wash.2d 270, 279, 677 P.2d 173 (1984).

Finally, substantial credible evidence supported the court's finding that Brett failed to c[illegible]espondents in the Brooks transacti[illegible]e record shows that in October 1983, several of the other owners of the 1/10 interest in the Sceptre package had sold their interests for $100,000. The record reflects conflicting testimony as to whether Brett advised respondents to seek out Brooks in Denver for a possible investment. However, respondents testified that Brooks did not inform them of the price for which the other owners of the Sceptre package had sold their interests. Brooks proceeded to offer his 1/10 interest to respondents for $500,000. Respondents purchased 1/2 of Brooks' interest for $250,000. The record also shows that Brett received commission payments from Brooks as a result of this transaction. The court found that neither Brooks nor Brett, as respondents' agent, disclosed the interest's real value to them. Berlin and Peterson testified that had they known of its fair value, they would not have purchased Brooks' interest. The evidence supports the District Court's findings.

Review of the record also shows that the court did not misapprehend the effect of the evidence, and we are not left with a definite and firm conviction that a mistake has been committed.

We hold that the District Court's findings of fact are supported by substantial credible evidence on these issues and are not clearly erroneous.

ISSUE 5

[10] Was respondents' action barred by accord and satisfaction?

During trial, appellant made a motion based on accord and satisfaction, and the court denied the motion. On appeal, appellant argues that because in 1985 Brooks and respondents had renegotiated the $250,000 purchase in the 1984 Brooks transaction, respondents cannot now maintain a suit against Brett or the corporation regarding that transaction because of an accord and satisfaction between them and Brooks. In 1985, Brooks and respondents renegotiated the Br[illegible]action whereby respondents were to receive all of Brooks' interest, excluding his Michigan interests, for $214,233.

An accord and satisfaction extinguishes only the obligation between the parties to the agreement. *See* §§ 28–1–1401 and –1402, MCA. Accord and satisfaction in the Brooks transaction occurred between Brooks and respondents in 1984, and again in 1985, upon modification of their contract. The accord and satisfaction occurred only for that transaction, but did not serve to release Brett from his potential liability to respondents as their agent in either the Sceptre or Brooks transactions.

Appellant's argument has no merit. We hold that respondents' action was not barred by accord and satisfaction.

ISSUE 6

[11] Did the District Court err when it pierced the corporate veil?

Appellant asserts that the District Court erred when it found that Brett Boedecker was the alter ego of the corporation. Appellant argues that he did not make the corporate decisions alone on all the issues, but collaborated with his wife, who was secretary for Boedecker Resources.

[12] We have defined a two-prong test for piercing the corporate veil. First the trier of fact must find that the defendant was either the alter ego, instrumentality, or agent of the corporation. *Drilcon, Inc. v. Roil Energy Corporation, Inc.* (1988), 230 Mont. 166, 176, 749 P.2d 1058, 1065. Second, the trier of fact must find evidence that the corporate entity was used as a "subterfuge to defeat public convenience, justify wrong, or perpetrate fraud." *Drilcon*, 749 P.2d at 1065.

The District Court found that the actions of the corporation and Brett were interchangeable, as the corporation's assets were constantly intermingled with Brett's individual assets. The court found that Brett owned 97 percent of the corporate stock, was its president, and completely controlled the corporation. As a result, the court found that respondents' remedy was for joint and several liability of the corporation and Brett.

The record shows that the royalties in the Exok transaction were to be assigned to Brett, but the actual royalties became assigned to the corporation. In another transaction, Brett transferred certain Flathead County property from the corporation to himself and his wife for no consideration. In addition, Brett told respondents at their first meeting, "I am Boedecker Resources." The record shows that Brett executed all relevant documents regarding the transactions between the parties, where his wife was involved in none of them. Generally, the record shows that Brett had a continuous course of dealing with respondents where he was in complete control of the corporation, and the gain was for him individually, not for the corporation. The evidence is substantial that Brett was the alter ego of Boedecker Resources, Inc., in all his transactions with respondents.

Finally, the evidence showed that Brett used the corporate entity of Boedecker Resources as a subterfuge to justify wrong and perpetrate fraud against respondents. From his first dealings with respondents while entertaining them in his home, and his impressive display of maps, charts, and associations in the oil and gas industry, Brett perpetrated fraud against respondents.

We agree with the District Court that these actions by Brett were "sufficient enough to demonstrate to [respondents] that Brett and/or the Corporation had not only extensive, but impressive knowledge and association, in the oil and gas industry and was such [as] to justify an expectation of trust and confidence in Brett's success, knowledge and reliability." Brett made misrepresentations to respondents that he could choose the most valuable 1400 acres available from the Sceptre package. He misrepresented that the net royalty interests purchased by respondents would be valuable investments. Brett failed to reveal the discrepancy between the 5850 net royalty acres he was to receive from the Exok transaction, and the 90 royalty acres respondents were to receive. Finally, Brett did not disclose to respondents the full value or potential problems and losses of what they were buying.

The record contains substantial credible evidence upon which the District Court concluded that Brett was the corporation's alter ego and that Brett used the corporate entity to perpetrate fraud against respondents. The court properly determined that Boedecker Resources' corporate veil should be pierced and that the corporation and Brett should be jointly and severally liable.

We hold that the District Court did not err when it pierced the corporate veil.

Affirmed.

TRIEWEILER, GRAY, NELSON and WEBER, JJ., concur.

WEST KEY NUMBER SYSTEM

STATE of Montana, Plaintiff and Respondent,

v.

Thomas HASKINS, Defendant and Appellant.

No. 93–408.

Supreme Court of Montana.

Submitted on Briefs Sept. 1, 1994.

Decided Dec. 21, 1994.

Defendant was convicted in the Twentieth Judicial District Court, Lake County, C.B. McNeil, J., of criminal sale of dangerous drugs, and he appealed. The Supreme Court, Hunt, J., 255 Mont. 202, 841 P.2d 542, affirmed on issues properly preserved for appeal. Subsequently, defendant filed petition for postconviction relief alleging ineffective assistance of counsel based on counsel's failure to preserve five defaulted issues for appeal. The Supreme Court issued order permitting defendant to go forward with appeal on those issues, and later held in an opinion by Nelson, J., that: (1) private investigator was not qualified to give expert testimony on results of inves[illegible]on of undercov-

r officer· (2) undercover officer was compe-
ent tc ; (3) undercover officer was not
egally itable for conduct for which de-
endant was convicted based on his partic-
ation in controlled drug buy; and (4) tribal
olice officers were not precluded from inves-
gating and gathering evidence of his of-
enses and turning evidence over to state for
rosecution.

Affirmed.

Criminal Law ⇐469.2, 1153(1, 2)

Whether witness is expert and whether
s testimony is admissible is largely within
scretion of trial court and will not be over-
rned on appeal absent abuse of discretion.

Criminal Law ⇐476.6

District court was well within its discre-
on in precluding private investigator from
fering expert opinion testimony on results
his investigation of undercover police offi-
r as to whether officer's conduct deviated
om what investigator considered to be
oper training or instructions for undercov-
drug operation, as testimony did not in-
lve scientific, technical or other specialized
owledge. Rules of Evid., Rule 702.

Criminal Law ⇐627.8(6), 629.5(7)

Where defendant failed to comply with
sclosure requirements of discovery order
d statute and offered opinion testimony
at was not within requirements of expert
stimony rule, district court properly grant-
in part state's motion in limine and sanc-
oned defendant by prohibiting private in-
stigator from offering expert opinion testi-
ony on results of his investigation of under-
ver narcotics officer. MCA 46–15–
3(4)(b) (1987); Rules of Evid., Rule 702.

Witnesses ⇐46

Trial court is not required to disqualify
itness, sua sponte, after witness has testi-
d simply because of inconsistencies in wit-
ss' testimony. Rules of Evid., Rule 601.

Witnesses ⇐48(1)

Undercover narcotics officer's appreciа-
on of ' ' tell truth was not neces-
rily by prior violations of law, so as to preclude him from testifying as witness. Rules of Evid., Rule 601.

6. Criminal Law ⇐507(4)

Defendant's narcotics convictions were not invalid because based solely upon testimony of undercover officer who was purchaser of dangerous drugs during controlled buy; undercover officer was not legally accountable as an accomplice for defendant's sales of dangerous drugs.

7. Indians ⇐32(13)

Indian tribes do not have criminal jurisdiction to prosecute non-Indians for crimes committed in Indian country.

8. Indians ⇐32(13), 38(2)

With respect to crimes committed by non-Indians in Indian country, prosecution of those offenses must be accomplished either by federal government or by state. 18 U.S.C.A. §§ 1152, 1153.

9. Indians ⇐38(2)

State may not prosecute criminal offense committed by non-Indian in Indian country where victim of offense is an Indian or where Indian property is subject of offense, but may prosecute criminal offense committed by non-Indian in Indian country where victim of offense is non-Indian or offense involves "victimless" crime.

10. Indians ⇐38(2)

State may assume criminal jurisdiction over crimes committed in Indian country with consent of affected tribe. Act August 15, 1953, § 2, 67 Stat. 588.

11. Indians ⇐38(2)

State had jurisdiction to prosecute non-Indian for his drug sale offenses committed within exterior boundaries of reservation, in light of tribe's inability to prosecute and state's authority to prosecute crimes committed in Indian country with consent of affected tribe, and because offenses were victimless crimes. Act August 15, 1953, § 2, 67 Stat. 588; MCA 2–1–301 et seq.

12. Indians ⇐32(6, 13)

Where state had jurisdiction to prosecute non-Indian for undercover drug sales committed in Indian country, tribal police officers were not thereby precluded from investigating and gathering evidence of defendant's offenses and turning that evidence over to proper jurisdiction with authority to prosecute his crimes.

13. Indians ⇐32(6, 13)

Indian tribes have authority to enact ordinances regulating conduct of their members and to employ law enforcement officers to enforce such ordinances and to maintain the peace.

14. Indians ⇐32(8, 13)

Tribal police officers have power to restrain non-Indians who commit offenses within exterior boundaries of reservation and to eject them by turning such offenders over to proper authority with jurisdiction to prosecute.

15. Indians ⇐32(6, 13)

Tribal police have authority to investigate violations of state and federal law.

16. Indians ⇐32(8)

Although tribal authorities have jurisdiction to detain and eject non-Indian offender, non-Indian offender does not have a right to immediate detention and ejectment.

17. Criminal Law ⇐394.2(2)

Fact that admissible evidence was gathered by peace officers employed by jurisdiction which lacked authority to prosecute defendant did not render evidence per se inadmissible for use by jurisdiction with authority to prosecute.

William F. Hooks, State Appellate Defender, Helena, for appellant.

Joseph P. Mazurek, Atty. Gen., John Paulson, Asst. Atty. Gen., Helena, Larry J. Nistler, Lake County Atty., Polson, for respondent.

NELSON, Justice.

Appellant Thomas Haskins (Haskins) appeals from his November 27, 1989 conviction by a Twentieth Judicial District Court, Lake County jury of four counts of criminal sale of dangerous drugs. We affirm.

BACKGROUND

The factual background and a portion of the procedural background of this case is set forth in *State v. Haskins* (1992), 255 Mont. 202, 841 P.2d 542, (*Haskins I*) and will not be repeated in any detail here except as necessary to address the issues raised. Suffice it to say that Haskins is a non-Indian; that the State criminal offenses of which he was convicted were committed entirely within the exterior boundaries of the Flathead Indian Reservation in Lake County, Montana; that he was arrested for those offenses by law enforcement authorities of the State of Montana; that he was prosecuted and sentenced for those offenses by the State of Montana in district court in Lake County; that the evidence utilized by the State in Haskins' conviction was obtained as a result of an undercover investigation and controlled drug buys conducted by police officers employed by the Confederated Salish and Kootenai Tribes for the Flathead Tribal Police Department, the evidence being then turned over to the State authorities by those officers; and that two of the State's witnesses were Indian tribal police officers.

Haskins' raised thirteen issues in his first appeal. We determined that only eight of those issues had been properly preserved for appeal, and as to those issues, we affirmed. *Haskins I*, 841 P.2d at 545, 548. On August 18, 1993, Haskins filed a petition for postconviction relief in this Court alleging ineffective assistance of counsel, based on his counsel's failure to preserve the five defaulted issues for appeal. In January 1994, we issued an order permitting Haskins to go forward with the appeal on those five issues and authorized the filing of supplemental briefs. Subsequently, we also granted leave to the Confederated Salish and Kootenai Tribes to appear amicus curiae.

The five remaining issues which we consider on this appeal are:

1. Whether the District Court abused its discretion in not allowing Haskins to call Martin Cramer as an expert witness?

2. Whether undercover ·icer Robert Nelson was competent tc ·ify?

Gas & Equipment Co., 405 F.2d 1140 (5th Cir. 1969), and apparently in NLRB v. [illegible]al Furniture Mfg. Co., 315 F.2d [illegible]th Cir. 1963), most of the employee's undesirable activities were discovered by the employer prior to the illegal discharge.

The evidence here clearly shows that the charging employee was and is unfit for the job for all of the reasons recited. Reinstatement with back pay would not effectuate the policies of the Act. It would reward conduct both reprehensible in quality and egregious in scope. We reverse the portion of the Board's order which provides for the reinstatement of Nichols with back pay and deny enforcement thereof; we affirm the order which requires the Company to cease and desist from committing the unfair labor practices found and to post notices in conformity with this decision.

Jose Luiz ORTIZ–BARRAZA, Appellant,

v.

UNITED STATES of America, Appellee.

No. 74–1905.

United States Court of Appeals, Ninth Circuit.

March 19, 1975.

Defendant was convicted before the United States District Court for the District of Arizona, Thomas F. Murphy, J., of importation of marijuana and of possession with intent to distribute marijuana. The defendant appealed. The Court of Appeals, Lindberg, Senior District Judge, held that tribal police officer employed by Papago Indian tribe was authorized to investigate within the reservation state and federal law violations thought to have been committed by non-Indian offenders and the officer had probable cause to stop and search defendant's vehicle as it proceeded across the reservation from the direction of the Mexican border.

Affirmed.

1. Indians ⇐2

Indian tribes possess an inherent sovereignty except where it has been specifically taken away from them by treaty or act of Congress. 25 U.S.C.A. § 13; Indian Reorganization Act, § 16, 25 U.S.C.A. § 476; Act May 15, 1886, ch. 333, 24 Stat. 29.

2. Indians ⇐32

Intrinsic in the sovereignty of an Indian tribe is the power of a tribe to create and administer a criminal justice system and the tribe may exercise a complete criminal jurisdiction over its members and within the limits of the reservation subordinate only to the expressed limitations of federal law. 25 U.S.C.A. § 13; Indian Reorganization Act, § 16, 25 U.S.C.A. § 476; Act May 15, 1886, ch. 333, 24 Stat. 29.

3. Indians ⇐32

Intrinsic in the sovereignty of an Indian tribe is the power to exclude trespassers from the reservation and a tribe needs no grant of authority from the federal government in order to exercise this power. 25 U.S.C.A. § 13; Indian Reorganization Act, § 16, 25 U.S.C.A. § 476; Act May 15, 1886, ch. 333, 24 Stat. 29.

4. Indians ⇐32

Even if Indian tribes may not exercise criminal jurisdiction over non-Indians, the sovereign power of tribal authorities to exclude from reservation trespassers who have violated state or federal law permits tribal authorities to deliver the offenders to the appropriate authorities. 25 U.S.C.A. § 13; Indian Reorganization Act, § 16, 25 U.S.C.A. § 476; Act May 15, 1886, ch. 333, 24 Stat. 29.

5. Indians ⇐32

An Indian tribe may lawfully employ police officers to aid in the enforcement of tribal law and in the exercise of tribal power. 25 U.S.C.A. § 13; Indian Reorganization Act, § 16, 25 U.S.C.A. § 476; Act May 15, 1886, ch. 333, 24 Stat. 29.

6. Indians ⇐32

A tribal police officer employed by the Papago tribe had authority to investigate within the Sells reservation any on-reservation violations of state and federal law, where the exclusion of the trespassing offender from the reservation might be contemplated, and had power to stop and search vehicle coming from the direction of Mexico and which might be used in smuggling marijuana. 25 U.S.C.A. § 13; Indian Reorganization Act, § 16, 25 U.S.C.A. § 476; Act May 15, 1886, ch. 333, 24 Stat. 29.

7. Searches and Seizures ⇐7(4)

In event that Papago tribal police officer did not have the power to stop non-Indian driver and search the vehicle on reservation, the officer was acting as an individual and his acts would not be within the scope of constitutional provisions.

8. Indians ⇐32

State highway rights-of-way running through an Indian reservation remain part of the reservation and within the territorial jurisdiction of the tribal police. 25 U.S.C.A. § 13; Indian Reorganization Act, § 16, 25 U.S.C.A. § 476; Act May 15, 1886, ch. 333, 24 Stat. 29.

9. Automobiles ⇐349

Where tribal police officer observed unfamiliar and muddy camper driven by an unknown non-Indian and proceeding through the reservation coming from the direction of the Mexican border, tribal officer acquired information sufficient to constitute a founded suspicion warranting a stop to check for a driver's license and registration and the officer's "patdown" of the defendant was justifiable. 18 U.S.C.A. § 1151; Civil Rights Act of 1968, § 202, 25 U.S.C.A. § 1302(2).

10. Drugs and Narcotics ⇐183

Where tribal officer discovered no driver's license, registration or identification upon the defendant after officer had stopped defendant's vehicle which was proceeding through the reservation coming from the direction of the Mexican border, the officer had probable cause to search the vehicle for contraband and the marijuana discovered within the camper vehicle was not the product of an unreasonable search. 18 U.S.C.A. § 1151; Civil Rights Act of 1968, § 202, 25 U.S.C.A. § 1302(2).

Gilbert Veliz (argued), Tucson, Ariz., for appellant.

James E. Mueller, Asst. U. S. Atty. (argued), for appellee.

Before BARNES and CARTER, Circuit Judges, and LINDBERG, District Judge.*

OPINION

LINDBERG, Senior District Judge:

The defendant has appealed from his conviction for violation of 21 U.S.C. §§ 952(a), 960(a)(1) (1970), importation of one thousand eighty-one pounds of marijuana, and of 21 U.S.C. § 841(a)(1) (1970), possession with intent to distribute the same marijuana. We affirm.

The two-count indictment was returned on January 24, 1974. After a plea of not-guilty, a motion to suppress evidence was filed by the defendant. Two hearings, one pre- and one post-trial, were held concerning the motion. On April 2, 1974, the motion to suppress was denied. Meanwhile, a trial to a jury had resulted in a guilty verdict on both counts. The district court entered judgment of conviction on April 2, 1974, and ordered the defendant committed. Notice of appeal was timely filed.

The only error asserted on appeal was the district court's denial of the motion

* Honorable William J. Lindberg, Senior United States District Judge, Western District of Washington, sitting by designation.

to suppress evidence. The defendant has [illegible] that the search of his camper, in the marijuana was discovered, was [illegible]wful. In support of this proposition, it has been argued that the discovering tribal police officer acted in excess of his authority by conducting the search as part of an investigation of suspected state and federal law violations committed by the defendant, a non-Indian. In addition, the defendant has claimed that the search conducted violated constitutional prohibitions against unreasonable searches. We hold that the tribal officer acted within the scope of his authority and that the search conducted by him was reasonable under the circumstances.

The facts are not in dispute. On the morning of January 5, 1974, Officer Robert Antone, Jr., had been patrolling the streets of Sells, Arizona. Sells is within the confines of the Papago Indian Reservation. Antone was then employed by the tribe as a police officer, and he was using a police patrol car which was both distinctively marked and had red lights on top. Officer Antone had parked in front of the trading post on the main street in Sells and, subsequently, had observed a white Ford pickup truck, on which were mounted a camper and Arizona license plates. The truck had turned off the San Miguel Gate road onto the main street.

The truck and camper were muddy and dirty, and the curtains in the camper were closed. The San Miguel Gate road passes from Sells through San Miguel and on to the Mexican border.[1] From San Miguel to the border, the road is unpaved. Other roads in the area are also unpaved. There had been rain recently.

Antone observed the driver of the camper. The driver and sole occupant of the vehicle was a young Mexican male whom Antone did not recognize. The residents of the area near the San Miguel Gate road are either Papago Indians or priests and nuns associated with a mission at Topawa. It was Antone's testimony that he could recognize all of the non-Indians who lived in the vicinity of the San Miguel Gate road. Occasionally, of course, non-Indian visitors travel in the area.

Officer Antone decided to stop the driver of the camper and check the camper's registration and the license of the driver in order to ascertain to whom the vehicle belonged. Accordingly, Antone followed the camper onto the state highway. Before Antone was required to stop the camper, the driver had stopped of his own volition on the highway shoulder and had gotten out. Antone then turned on the flashing red lights mounted on the patrol car, drove up behind the camper and stopped. Antone approached the driver, who had not yet reentered the vehicle.

When Antone asked the driver, who was the defendant, for his driver's license and vehicle registration, the defendant stated in Spanish that he spoke no English. Because Antone spoke little Spanish, he frisked the defendant, looking for the identification papers sought. Finding neither driver's license nor registration, Antone had the defendant wait in the patrol car while the truck cab was checked for registration. No identification papers were found either in the cab or on the ground near the vehicle.

At this point Officer Antone believed that he had discovered an alien who had entered the country and was transporting either illegal aliens or controlled substances. Antone determined to search the vehicle. Upon opening the camper door, burlap sacks containing the marijuana involved in this prosecution were discovered. The defendant was taken to the Papago detention facility and held for transfer to the drug enforcement administration.

Officer Antone has testified that he was employed by the Papago tribe rather than by the Department of the Interior, Bureau of Indian Affairs (BIA). Antone has also stated that he had not been granted a certificate which, under certain Arizona procedures, would have rendered him a peace officer for that state.

1. Sells is approximately twenty miles from the Mexican border as the crow flies, approximately twenty-five miles from the Mexican border via the San Miguel Gate road. Between Sells and the border, the San Miguel Gate road is intersected by through highways only twice. These highways are, for the most part, ungraded and unimproved roads which connect the San Miguel Gate road with state highway eighty-six near Tracy and Gunsight, Arizona. These highways pass by the Mesquite Mountains and traverse the San Simon Wash and the Vamori Wash. The highways some thirty-five or more miles in length. *See* Sheets Number 5, 6, and 10, General Highway Map of Pima County, Arizona, prepared by the Photogrammetry and Mapping Division of the Arizona Highway Department in cooperation with the United States Department of Commerce, Bureau of Public Roads (1961, revised 1972, 1974); *and see*, General Highway Map of Arizona, prepared by the Photogrammetry and Mapping Division of the Arizona Highway Department (1974). From these facts it appears that there is a high probability that a non-resident found travelling north on the San Miguel Gate road has crossed the international border.

I.

[1, 2] Indian tribes possess an inherent sovereignty except where it has been specifically taken away from them by treaty or act of Congress. United States v. Mazurie, 419 U.S. 544, 95 S.Ct. 710, 717–718, 42 L.Ed.2d 706 (1975); Iron Crow v. Oglala Sioux Tribe of Pine Ridge Reservation, South Dakota, 231 F.2d 89 (8th Cir. 1956). Intrinsic in this sovereignty is the power of a tribe to create and administer a criminal justice system. "An Indian tribe may exercise a complete [criminal] jurisdiction over its members and within the limits of the reservation subordinate only to the expressed limitations of federal law." F. Cohen, Handbook of Federal Indian Law 148 (1942 ed. as republished by the University of New Mexico Press). The status of Indian tribes as dependent sovereigns with inherent but limited powers (which include the power to draft a constitution and to enact law) has been recognized by Congress. 25 U.S.C. § 476 (1970).

[3, 4] Also intrinsic in the sovereignty of an Indian tribe is the power to exclude trespassers from the reservation. 1 Op. Atty. Gen. 465 (1821); Department of the Interior, Office of the Solicitor, Federal Indian Law 438, 439 (1958). A tribe needs no grant of authority from the federal government in order to exercise this power. F. Cohen, Handbook of Federal Indian Law 306 (1942 ed. as republished by the University of New Mexico Press). It has at times been held that tribes may not exercise criminal jurisdiction over non-Indians. Ex parte Kenyon, 14 Fed.Cas.No.7720 (1878). Such holdings, if presently valid, have not derogated from the sovereign power of tribal authorities to exclude trespassers who have violated state or federal law by delivering the offenders to the appropriate authorities.

[5] Indian tribal police forces have long been an integral part of certain tribal criminal justice systems and have often performed their law enforcement duties to the limits of available jurisdiction. W. Hagan, Indian Police and Judges (1966). The propriety of operation of tribal police forces has been recognized, presently and in the past, by the federal government. 18 Op. Atty. Gen. 440 (1886); 25 U.S.C. § 13 (1970); Act of May 15, 1886, ch. 333, 24 Stat. 29, 43; 25 C.F.R. §§ 11.301 et seq. (1974). Thus, as a general proposition, we have little difficulty in concluding that an Indian tribe may employ police officers to aid in the enforcement of tribal law and in the exercise of tribal power.

On January 6, 1937, the Papago Indians adopted a constitution which was, in addition, approved by the BIA. Under the constitution the Papago Council was empowered, article five, section three:

> (b) To provide for the maintenance of law and order and the administration of justice by establishing a tribal court . . . and a police force, and defining the powers and duties of such courts and police. (c) To remove or exclude from any of the three Papago Reservations non-members who occupy reservation land without lawful authority and whose presence may be injurious to the peace, happiness or welfare of the members of the tribe.

Pursuant to its constitution, the Papago Council adopted a code of law which contained the following provision, chapter section two:

> Any person, undesirable, not a member of the Papago Tribe who, within the Gila Bend, Sells and San Xavier Reservations, commits any act which is a crime under Federal or State Laws, or which would be a misdemeanor under the Ordinance of the Papago Tribe, if committed by a member thereof, may be forcibly ejected from these Reservations by any Police Officer, Officer of the United States Indian Service, or Tribal Police, and may be turned over to the custody of the United States Marshal or Sheriff or other officer of the State of Arizona, for prosecution under Federal or State Law.

On June 1, 1972, the Papago Council adopted a special resolution ordering an investigation to be made and the taking of other necessary action, including the hiring of additional policemen, in order to stop marijuana smuggling from Mexico into the United States through the Papago Reservation.

[6] We find that the actions of the Papago Council, taken together with the Papago Constitution and the applicable law previously discussed, clearly establish the authority of a tribal police officer, like Officer Antone, to investigate any on-reservation violations of state and federal law, where the exclusion of the trespassing offender from the reservation may be contemplated. *Compare*, 25 C.F.R. § 11.304(b)(3).

[7] Our holding, in a sense, parallels that rendered in Settler v. Lameer, 507 F.2d 231 (9th Cir., 1974). In *Settler* it was noted, in another context, that the power to regulate is only meaningful when combined with the power to enforce. That principle may be applied in the instant case. The power of the Papago to exclude non-Indian state and federal law violators from the reservation would be meaningless were the tribal police not empowered to investigate such violations. Obviously, tribal police must have such power.[2]

[8] As a final word on the subject of Officer Antone's authority, we note that the fact that the events of interest here may have occurred within the right-of-way for a state highway avails the defendant nothing. Rights of way running through a reservation remain part of the reservation and within the territorial jurisdiction of the tribal police. *See*, Gourneau v. Smith, 207 N.W.2d 256 (N.Dak. 1973); 18 U.S.C. § 1151 (1970).

II.

In searching the defendant and his camper, Officer Antone was required to avoid effecting a constitutionally unreasonable search. 25 U.S.C. § 1302(2) (1970). We hold that the search conducted in the instant case was reasonable.

[9] In observing the unfamiliar and muddy camper driven by an unknown non-Indian and proceeding through the reservation coming from the direction of the Mexican border, Officer Antone acquired information sufficient to constitute a founded suspicion warranting a stop to check for a driver's license and registration. Wilson v. Porter, 361 F.2d 412 (9th Cir. 1966). There is, of course, some question here whether a stop may be said to have occurred. The pat-down of the defendant was justifiable. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *and see*, United States v. Robinson, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973).

[10] Officer Antone's founded suspicion ripened into probable cause to search the camper when no driver's license, registration or identification were discovered upon the defendant, and the proximity to Mexico together with the other facts previously adverted to suggested an illegal crossing of the international border, perhaps involving smuggling of contraband. Such probable cause supported the inquiry which ultimately revealed the marijuana. Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925).

CONCLUSION

The judgment of the district court is affirmed. The tribal police officer was authorized to investigate within the reservation state and federal law violations thought to have been committed by non-Indian offenders. The search of the defendant and of the vehicle were reasonable under the circumstances.

2. If we are wrong, and Officer Antone did not have such power as a tribal police officer, then he was acting as an individual and his acts would not be within the scope of constitutional provisions. United States v. Ogden, 485 F.2d 536 (9th Cir. 1973); cert. den. 416 U.S. 987, 94 S.Ct. 2392, 40 L.Ed.2d 764 (1974).

3-20

STATE OF KANSAS

BECKY HUTCHINS
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TOPEKA

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FEDERAL AND STATE AFFAIRS
JOINT COMMITTEE ON STATE
TRIBAL RELATIONS

Testimony on Senate Bill 9
Tribal Law Enforcement Officers
March 20, 2003

Chairman Mason and members of the House Federal and State Affairs Committee:

I come before you today to speak in opposition to the original SB 9 and in opposition to SB 9 as amended by the Senate Committee of the Whole.

SB 9 raised many questions regarding the potential liability the State of Kansas might incur with its passage in its original form. I had requested an Attorney General's opinion on SB 9 as originally written. My concern was that if the state of Kansas trained tribal law enforcement officers and the State allowed tribal law enforcement officers additional duties and responsibilities, the State could be held liable for any wrongful acts committed by tribal law enforcement officers. Before the Attorney General's office had time to issue an opinion, language in SB 9 was struck, and replaced by language that was in the former SB 74 (2001-2002 legislative session). Once that occurred, I cancelled my request for an Attorney General's opinion for SB 9.

SB 9, which now reflects the language of last session's SB 74, does address some of the concerns I have regarding potential liability to state and county governments. However, SB 9 does not address my concern regarding land-into-trust decisions. I have provided three documents that I would like to bring to your attention:

1. Letter from Deputy Attorney General Julene Miller regarding impact of 2001 SB 74
2. Notice of Appeal from the State of Kansas to put land into trust, from John Michael Hale, Special Assistant Attorney General for the State of Kansas Department of Revenue
3. Arizona language that I would like to see amended into SB 9

Until the land-into-trust issue is addressed, I cannot support this bill. The unintended consequences and the impact the passage of SB 9 could have on Jackson County makes me an opponent of the bill, and I ask you please not to recommend SB 9 favorable for passage.

Thank you.
Becky Hutchins

50th District Representative

Hs Federal & State Affairs
Date: 3-20-03
Attachment # 4
Page

State of Kansas
Office of the Attorney General
120 S.W. 10th Avenue, 2ND FLOOR, TOPEKA, KANSAS 66612-1597

CARLA J. STOVALL
ATTORNEY GENERAL

MAIN PHONE: (785) 296-2215
FAX: 296-6296

April 26, 2001

Members of the House Committee
on Federal and State Affairs
Members of the Senate Committee
on Federal and State Affairs
State Capitol
Topeka, Kansas 66612

Dear Committee Members:

Earlier this session I sent letters to Senator Vratil and Representative Mays regarding the potential impact of 2001 Senate Bill No. 74 on land-to-trust decisions made by the Bureau of Indian Affairs. It is my understanding that these letters were further disseminated and many of you received copies.

Attached please find two recent decisions from the BIA to take land into trust in Jackson County, Kansas. You will note that one decision takes land into trust that is outside of the reservation and it specifically refers to Senate Bill 74 as a factor that was taken into consideration when making the decision to take the land into trust. This appears to confirm my initial concerns regarding what may be unintended consequence of this Bill.

I hope this information will be of assistance to you in your deliberations of this legislation.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
CARLA J. STOVALL

Julene L. Miller
Julene L. Miller
Deputy Attorney General

JLM:jm

Rep Becky Hutchins
50th District

4-2

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Horton Field Office
908 First Avenue East
Horton, Kansas 66439

IN REPLY REFER TO:
785, 486 – 2161

CERTIFIED-Return Receipt

April 17, 2001

County Commissioners
Jackson County Courthouse
400 New York
Holton, KS 66436

RE: Notice of Decision

Dear Commissioners:

Our office has received an application from the Prairie Band Potawatomi Nation to acquire land in trust status. The land is described as follows:

The West 96 acres of the NE Fractional Quarter of Section 27, T8S, R15E, 6th PM, Jackson County, KS less highway right of way beginning at the North Quarter Corner of said Section 27, containing 1.18 acres, including .60 acres of existing public road right of way (0.58 acres of additional right-of-way.)

In reviewing the procedures to evaluate tribal requests as set forth in the Code of Federal Regulations criteria listed in 25 CFR §151.10, we furnish the following.

a) The statutory **authority** for the acquisition is the Indian Reorganization Act.

b) The **need** is to obtain additional land for ranching and farming to increase economic activity and employment opportunities for tribal members, Tribal members are employed in a land management program which provides on-the-job training and work experience in land conservation, lease management and agricultural development. The tribe recently planted several fruit trees for an orchard. The tribe has a well known buffalo preservation program of 50 head of buffalo and the tribe is providing care for an additional 15 head of buffalo for the Inter-tribal Bison Cooperative for a total of 65 head of buffalo.

c) The **purpose** for which the land will be used is for agriculture. Land management will strengthen tribal self-government over the reservation territory. The PBP tribe has an active Natural Resource Committee which recommends the best use for management of the trust lands and a Zoning Board which regulates land use on the reservation. These organizations provide guidance and increased responsibility for management of lands thereby strengthening tribal self government. The land management program has a staff of tribal members who are actively managing tribal lands. The Nation's regulation of reservation land, including the land placed in trust, will help to restore and to develop the Nation's initiative for self-support and self-determination, which is one of the principal purposes of the federal laws under which the acquisition of land in trust is mandated. Uniformity in title of tribal lands will facilitate tribal management and strengthen self-government.

d) Does not apply to tribal acquisition.

e) Notification was given to the state and local government to provide written comment on the acquisition's potential **impacts** on regulatory jurisdiction, real property taxes and special assessments. Jackson County has expressed a general concern on the real property taxes, and loss of income. The Tribe has responded that the minimal loss of revenue ($240.44) is more than offset by the reservation road improvement, bridge construction and maintenance, law enforcement services, fire protection, environmental protection and zoning services, social welfare and other government services that the tribe currently provides to the reservation. The State objection was for the loss of taxes and affect on the public schools, law enforcement, fire protection and other governmental services; traffic wear and tear on roads, highways and bridges; jurisdiction; change in land use and development of land on the reservation rather than additional land. The Tribe has responded that the PBP Nation has taken responsibility for maintaining a majority of the reservation roads and bridges. Approximately $3,000,000 of Bureau of Indian Affairs and tribal funds were expended for road improvement (asphalt) on seven (7) miles of reservation road. Several new bridges were constructed. All residents benefit from this improvement. It is questionable whether these roads would have been improved without the perseverence and support of the tribe. The PBP Nation maintains a Tribal Fire Department which provides fire and first response medical services for all residents of the reservation and non-reservation areas. This is a much needed resource for residents in the rural farm community. The school district receives substantial funding for enrolled Indian students. Impact Aid provides financial assistance for the maintenance and operations of school districts in which the Federal government has acquired substantial real property and to local education agencies providing education for substantial numbers of federally-connected pupils. Royal Valley received $164,431 for the past school year. The PBP Nation recently built a law enforcement center on the reservation. Tribal responsibility for law enforcement alleviates the county of fiscal and management obligations for the reservation and conversely, strengthens tribal government.

f) **Jurisdictional** problems and potential conflicts of land use which may arise. The land use will not change as it will remain agriculture. The tribe has regulatory responsibility and has adopted zoning regulations. (The county zoning does not cover the reservation area.) The tribe has an active law enforcement program. The officers are certified to enforce Federal laws. The commissioned officers provide an enforcement resource for the county. The tribe and county have been working toward an agreement addressing this issue and a bill has passed through the senate on this matter.

g) The **Bureau of Indian Affairs** is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status as it is agriculture and the land is nearby trust lands and is located one mile (1) from the reservation.

h) The acquisition is in compliance with the National Environmental Policy Act (**NEPA**).

151.11 Off-Reservation Acquisition

b) The location of the land is one mile east of the present reservation boundaries. The State of Kansas and Jackson County have requested that trust status be rejected. Jackson County and the State of Kansas have cited the loss of income, increased wages, impact and tax burden on the residents of Jackson county, increased traffic and jurisdiction. The annual property tax is $240.44 and the governmental services provided are schools, fire/ambulance service, law enforcement, Senior Citizen and juvenile services. The tribe has responded that the transfer of the Buck tract into trust will have no material impact on the citizens of Jackson County or the State of Kansas. The benefits to the tribe and offset of the tribal management of government services such as law enforcement, fire protection, road and bridge construction and maintenance, social, daycare/head start, senior citizen programs diminish the responsibility of the county and state for residents of the Prairie Band Potawatomi Reservation. The state objection that the property is not on the reservation is countered by the tribal statement referencing *Mescalero Apache Tribe v. Jones* concerning the Indian Reorganization Act ... The transfer of land to the US trust will serve "to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism". Further, Section 5 of the IRA... provides that the Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, ... any interest in lands.., within or without existing reservations... for the purpose of providing land for Indians. The tribe is not restricted to purchasing lands only on the reservation.

c) The property is not acquired for a business purpose. The proposed use is agriculture, which has been the historical usage and does not require a business plan.

Based on this information and information supplied by letters from the Prairie Band Potawatomi Nation, the Field Representative of the Bureau of Indian Affairs, Horton Field Office, issues notice of our intent to accept the taking of this land in trust for the benefit and welfare of the Prairie Band of Potawatomi Nation.

As provided in 25 CFR Part 2, Notice of Appeal Rights is hereby given on the decision to acquire land in trust status. You are hereby advised of your right to appeal as provided in 25 CFR Part 2, Appeals from Administrative Actions. This decision may be appealed to the Regional Director, Southern Plains Regional Office, PO Box 368, Anadarko, OK 73005, in accordance with the regulations in 25 CFR Part 2. (Copy attached.) Your notice of appeal must be filed in this office within 30 days of the date you receive this decision.

A copy of this letter will serve as notice to other interested parties.

Sincerely,

/s/ Betty L. Moore

Field Representative (Acting)

Attachments: 25 CFR, Part 2
PBP Nation Letters dated 01/22/01 and 07/20/99

cc: State of KS - Office of the Governor (w/25 CFR Part 2,) Certified-Return Receipt
Iowa Tribe of Kansas & Nebraska
Kickapoo Tribe of Kansas
Sac & Fox Nation of Missouri
Prairie Band Potawatomi Nation (For Information)

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Horton Field Office
908 First Avenue East
Horton, Kansas 66439

IN REPLY REFER TO:
785, 486 – 2161

CERTIFIED-Return Receipt

April 18, 2001

County Commissioners
Jackson County Courthouse
400 New York
Holton, KS 66436

RE: Notice of Decision

Dear Commissioners:

Our office has received an application from the Prairie Band Potawatomi Nation to acquire land in trust status. The land is described as follows:

The West Half of the Southwest Quarter of Section 367, T8S, R13E, 6th PM, Jackson County, KS subject to an easement for ingress and egress to the Grantor's remaining property which is adjacent to and contiguous with the subject property, said easement being 20.00 feet wide, the centerline of which is described as beginning 1783.48 feet North of the SW Corner of Section 35, T8S, R13E,, 6th PM, Jackson Co., KS thence S 79°45'45" East 105.18 feet; thence S 89°56'42" East 1218.20 feet to the East line of the West Half of the Southwest Quarter of said section.

In reviewing the procedures to evaluate tribal requests as set forth in the Code of Federal Regulations criteria listed in 25 CFR §151.10, we furnish the following.

Criteria listed in **25 CFR 151.10**, On-reservation acquisitions,

a) The statutory **authority** for the acquisition is the Indian Reorganization Act.

b) The **need** is to obtain additional land for residential housing, ranching and farming to increase economic activity, employment and housing opportunities for tribal members, Tribal members are employed in a land management program which provides on-the-job training and work experience in land conservation, lease management and agricultural development. The tribe has developed the house into a halfway house residence for Native Americans who are recovering from drug or alcohol addiction. There is a need for a facility which will meet the unique needs of Native Americans in Kansas. The tract contains 64 acres of pasture and 15 acres of cropland,

c) The **purpose** for which the land will be used is for agriculture and residential housing. Land management will strengthen tribal self-government over the reservation territory. The PBP Nation has an active Natural Resource Committee which recommends the best use for management of the trust lands and a Zoning Board which regulates land use on the reservation. These organizations provide guidance and increased responsibility for management of lands thereby strengthening tribal self government. The land management program has a staff of tribal members who are actively managing tribal lands. The Nation's regulation of reservation land, including the land placed in trust, will help to restore and to develop the Nation's initiative for self-support and self-determination, which is one of the principal purposes of the federal laws under which the acquisition of land in trust is mandated. Uniformity in title of tribal lands will facilitate tribal management and strengthen self-government. The acquisition of the land will provide a facility for to meet the needs of Native Americans and restore previously allotted land and assist the Nation in reducing the checkerboard character of on-reservation land by consolidating tribal land interests under federally supervised ownership.

d) Does not apply to tribal acquisition.

e) **Notification** was given to the state and local government to provide written comment on the acquisition's potential **impacts** on regulatory jurisdiction, real property taxes and special assessments. *Jackson County did not respond.* The State objection was for the loss of taxes and affect on the public schools, law enforcement, fire protection and other governmental services; traffic wear and tear on roads, highways and bridges; jurisdiction; Kansas limited remedies should change in land use occur and development of land on the reservation rather than additional land. The Tribe has responded that the minimal loss of revenue ($603) is more than offset by the reservation road improvement, bridge construction and maintenance, law enforcement services, fire protection, environmental protection and zoning services, social welfare and other government services that the tribe currently provides to the reservation. The Tribe has taken responsibility for maintaining a majority of the reservation roads and bridges. Approximately $3,000,000 of Bureau of Indian Affairs and tribal funds were expended for road improvement (asphalt) on seven (7) miles of reservation road. Several new bridges were constructed. All residents benefit from this improvement. The PBP Nation maintains a Tribal Fire

Department which provides fire and first response medical services for all residents of the reservation and non-reservation areas. This is a much needed resource for residents in the rural farm community. The school district receives substantial funding for enrolled Indian students. Impact Aid provides financial assistance for the maintenance and operations of school districts in which the Federal government has acquired substantial real property and to local education agencies providing education for substantial numbers of federally-connected pupils. Royal Valley received $164,431 for the last school year. The PBP Nation has developed a law enforcement center on the reservation. Tribal responsibility for law enforcement alleviates the county of fiscal and management obligations for the reservation and conversely, strengthens tribal government.

f) **Jurisdictional** problems and potential conflicts of land use which may arise. The land use will not change as it will remain housing and agriculture. The tribe has regulatory responsibility and has adopted zoning regulations. (The county zoning does not cover the reservation area.) The tribe has an active law enforcement program with certified officers. The commissioned officers provide an enforcement resource for the county. The county and PBP Nation have been working toward a resolution on the jurisdictional issues and a bill has passed the Senate addressing utilization of tribal law enforcement.

g) The **Bureau of Indian Affairs** is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status as it is for housing and agriculture located on the reservation, The tribe has been responsibly managing tribal lands and has set up various committees to provide guidance and assistance.

h) The acquisition is in compliance with the National Environmental Policy Act (**NEPA**).

Based on this information and information provided by the PBP Nation in a letter dated 2/9/2000 in response to the State objection, the Field Representative of the Bureau of Indian Affairs, Horton Field Office, issues notice of our intent to accept the taking of this land in trust for the benefit and welfare of the Prairie Band of Potawatomi Nation.

As provided in 25 CFR Part 2, Notice of Appeal Rights is hereby given on the decision to acquire land in trust status. You are hereby advised of your right to appeal as provided in 25 CFR Part 2, Appeals from Administrative Actions. This decision may be appealed to the Regional Director, Southern Plains Regional Office, PO Box 368, Anadarko, OK 73005, in accordance with the regulations in 25 CFR Part 2. (Copy attached.) Your notice of appeal must be filed in this office within 30 days of the date you receive this decision.

A copy of this letter will serve as notice to other interested parties.

Sincerely,

Field Representative (Acting)

Attachments: 25 CFR, Part 2
PBP Nation Letter dated 02/09/00
News Article re: Halfway House

cc: State of KS - Office of the Governor (w/25 CFR Part 2,) Certified-Return Receipt
Iowa Tribe of Kansas & Nebraska
Kickapoo Tribe of Kansas
Sac & Fox Nation of Missouri
Prairie Band Potawatomi Nation (For Information)

BEFORE THE DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

In The Matter of the Decision	)
of the Bureau of Indian Affairs	)
to Acquire Land in Trust on	)
Behalf of the Prairie Band of	)
Potawatomi Indians	)
Dated August 9, 1999	)

NOTICE OF APPEAL

COMES Now the State of Kansas (hereinafter "Kansas") and hereby files its notice of appeal as provided in 25 CFR Part 2, Appeals from Administrative Actions, from the Bureau of Indian Affairs' (hereinafter "agency") decision to take certain lands into trust on behalf of the Prairie Band of Potawatomi Indians (hereinafter "tribe"). Specifically, Kansas objects to and appeals from the agency's decision dated August 9, 1999 (EXHIBIT 1) regarding the following described property:

NW4 of Section 35, T8S, R15E, 6th Principal Meridian, Jackson County, KS described as follows: Commencing at the NW Corner of said NW4; thence N88°44'08"E (assumed bearing) along the N line of said NW4, 534.75 ft. To the POB; thence continuing N88° 44'08"E along said N line, 765.00 ft.; thence S 6°05'18"E, 1253.39 ft.; thence S89° 10'37"W 1175.26 ft. To the E ROW line of US 75 highway; thence N2° 26'05"E along said ROW line, 195.06 ft.; thence N6°09'34"W along said ROW line, 519.66 ft.; thence N88°44'08"E, 368.46 ft.; thence N4°43'41"W 528.44 ft. to the POB.

STATEMENT OF REASONS

The basis for the State of Kansas' appeal is as follows:

1) The agency's stated basis for the acquisition is to, "provide employment opportunities ... and to promote and protect the health and welfare of the

tribe... and to enhance tribal self government." (Decision, August 9, 1999, ¶ B). There is no substantial evidence cited as a basis for finding that the acquisition will provide employment opportunities, promote and protect the health and welfare of the tribe or enhance tribal self government.

2) There is no substantial evidence cited as a basis for the finding that the tribe needs this land for agricultural purposes. There is no factual finding that the tribe is an agrarian tribe, or that it is in need of additional lands for agricultural cultivation. Moreover, the less than thirty acres in question leaves in doubt that the land is sufficient to provide tillable or pasture land for the tribe, and calls into question the actual intended use of the land. Finally, as pointed out in the Notice of Appeal filed by Jackson County (EXHIBIT 2), the tribe has already sought a change in zoning from agricultural use to highway district use. This clearly reflects that the tribe has no interest in maintaining this land for agricultural purposes.

3) There are no facts to support the finding that the tribe provides the following services to off reservation persons or properties: law enforcement; road and bridge construction and maintenance; fire protection; Headstart/daycare services; senior citizen meals; impact aid and related funding to Royal Valley School.

4) The agency did not make one factual finding that Kansas provides essential governmental services to both tribal and non-tribal members both on and off reservation (see EXHIBIT 3, attached). Instead, it appears that the agency's sole determination of Kansas' interests is the $66.16 annual

property taxes. This is an inadequate and improper standard to measure the interests of Kansas, and is an abuse of discretion, arbitrary and capricious decision of the agency.

5) The decision finds that the tribe has zoning and law enforcement jurisdiction on the reservation (*Id.* at ¶ G). However, this land is not within the exterior boundaries of the reservation. Thus, the tribe has no zoning authority as to this property whatsoever. Moreover, The Kansas Act, a federal enactment, confers criminal jurisdiction solely in Kansas, not the tribe.

6) The statutory basis for the agency's acquisition, Indian Reorganization Act June, 18, 1934, 48 Stat. 984, violates the Tenth Amendment to the Constitution of the United States. The agency decision, based on this statute, likewise violates the Tenth Amendment since removal of this land from the sovereign State of Kansas implicates significant and special sovereign interests of Kansas and attempts to extract a portion of Kansas' sovereign lands. Under the Tenth Amendment, both Congress and the agency lack the Constitutional authority to force Kansas to surrender its sovereign right to exercise jurisdiction and regulatory control over this land.

7) The agency's action violates the separation of powers doctrine. Congress cannot, under the Constitution, delegate to an administrative agency the authority to strip Kansas of its sovereign authority over the land in question.

8) The agency action violates the Act for Admission of Kansas into the Union. Under the Act, Kansas ceded jurisdiction to the United States only on a limited and finite number of acres of land for federal use. At the time of its admission into the Union, Kansas reserved unto itself Kansas' sovereign jurisdiction and regulatory control over all lands within Kansas' specified borders not specifically ceded to the United States. Congress approved this reservation of sovereign jurisdiction and authority over this land by Kansas. There is no showing that Kansas has ever relinquished its sovereign control and jurisdiction over the land in question. The agency's decision violates the principle that Kansas was admitted into the Union on an equal footing with the original thirteen states, and violates Kansas' Constitutional sovereignty.

9) The agency decision attempts administratively to expand the tribe's reservation boundaries beyond the historical treaties with the tribe. Again, this action violates the Tenth Amendment, the separation of powers doctrine and the Act for the Admission of Kansas Into the Union.

10) The agency's decision is not authorized by statute (48 Stat. 984 et seq.) since the statute only allows acquisitions for landless Indians for agricultural purposes. There is no evidence in the record that the tribe is landless. As such, the agency's decision is arbitrary, capricious and an abuse of discretion.

11) Kansas objects to the following parties being listed as interested parties in this matter: 1) Iowa Tribe of Kansas & Nebraska; 2) Kickapoo Tribe of

Kansas; and, 3) Sac & Fox Nation of Missouri. There has been no finding that these three unrelated tribes have any interest in the land in question. It is unreasonable and unnecessary to have these three tribes listed as interested parties.

12) Kansas reserves the right to raise additional reasons at the administrative hearing and upon the filing of the administrative record to file a more detailed brief in support of its appeal in this matter.

WHEREFORE, Kansas respectfully requests that the decision of the agency to take certain lands specified herein into trust on behalf of the Prairie Band of Potawatomi Indians dated August 9, 1999 be reversed, and that Kansas' sovereign authority, jurisdiction and control over the subject land be left as it was when Kansas was admitted into the Union in January 1861.

Kansas further respectfully requests that the agency's decision be stayed pending a final determination in this matter.

Kansas also requests the opportunity for a full hearing in this matter in order to submit testimony, documentary evidence, present oral argument and file briefs.

Respectfully Submitted,

John Michael Hale, Special Assistant Attorney General
State of Kansas, Department of Revenue
Second Floor
Docking State Office Building
915 SW Harrison
Topeka, Kansas 66612-1588
(785) 296-2381

ARIZONA

Where control of the requesting police department was limited to directing the assisting police department to a place where it was needed and neither the requesting department nor the assisting department had the right to control the forces of the other in any other respect, joint venture did not arise when assisting department rendered aid to requesting department by virtue of an intergovernmental agreement for mutual aid in law enforcement, and thus workmen's compensation was not the sole remedy of member of assisting department who was shot in back by member of the requesting department during an attempt to flush gunman out of a residence. Garcia v. City of South Tucson (App. Div.2 1981) 131 Ariz. 315, 640 P.2d 1117.

§ 13–3873. Provisions cumulative and supplemental

The provisions of this article are cumulative and supplemental and are in addition to any other authority granted by other provisions of law.

Added as § 13–1363 by Laws 1970, Ch. 194, § 1. Renumbered as § 13–3873 by Laws 1977, Ch. 142, § 129, eff. Oct. 1, 1978.

Library References

Municipal Corporations ⇐188.
WESTLAW Topic No. 268.
C.J.S. Municipal Corporations § 574.

§ 13–3874. Indian police; powers; qualifications

A. While engaged in the conduct of his employment any Indian police officer who is appointed by the bureau of Indian affairs or the governing body of an Indian tribe as a law enforcement officer and who meets the qualifications and training standards adopted pursuant to § 41–1822 shall possess and exercise all law enforcement powers of peace officers in this state.

B. Each agency appointing any Indian police officer pursuant to this section shall be liable for any and all acts of such officer acting within the scope of his employment or authority. Neither the state nor any political subdivision shall be liable for any acts or failure to act by any such Indian police officer.

Added as § 13–1364 by Laws 1972, Ch. 76, § 1, eff. April 25, 1972. Renumbered as § 13–3874 by Laws 1977, Ch. 142, § 129, eff. Oct. 1, 1978. Amended by Laws 1991, Ch. 143, § 1.

Historical and Statutory Notes

The 1991 amendment substituted "who meets the qualifications and training standards adopted pursuant to § 41–1822" for "holding a certificate of qualification and training from the director of the department of public safety" in subsec. A.

Cross References

Peace officers training fund, see § 41–1825.

Library References

Indians ⇐39.
WESTLAW Topic No. 209.
C.J.S. Indians § 49.

4.12

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Appeal was filed with the Bureau of Indian Affairs, Horton Agency, 908 First Avenue East, Horton, Kansas 66439 pursuant to 25 CFR Part 2, § 2.9(a) by Federal Express overnight postage pre-paid on September 8, 1999.

I further certify that a copy of the foregoing Notice of Appeal was mailed pursuant to 25 CFR Part 2, § 2.9(a) to Bureau of Indian Affairs, Area Director, Anadarko Area Office, P.O. Box 368, Anadarko, Oklahoma 73005 on September 8, 1999.

I further certify that a copy of the foregoing Notice of Appeal was mailed postage pre-paid on September 8, 1999 to the following:

Iowa Tribe of Kansas & Nebraska
RR 1, Rulo NE
White Cloud, KS. 66094

Sac & Fox Nation of Missouri
Route 1, P. O. Box 60
Reserve, KS. 66434

Kickapoo Tribe of Kansas
Rural Route 1
Horton, KS. 66439

Jackson County
Jackson County Courthouse
400 New York
Holton, KS. 66436

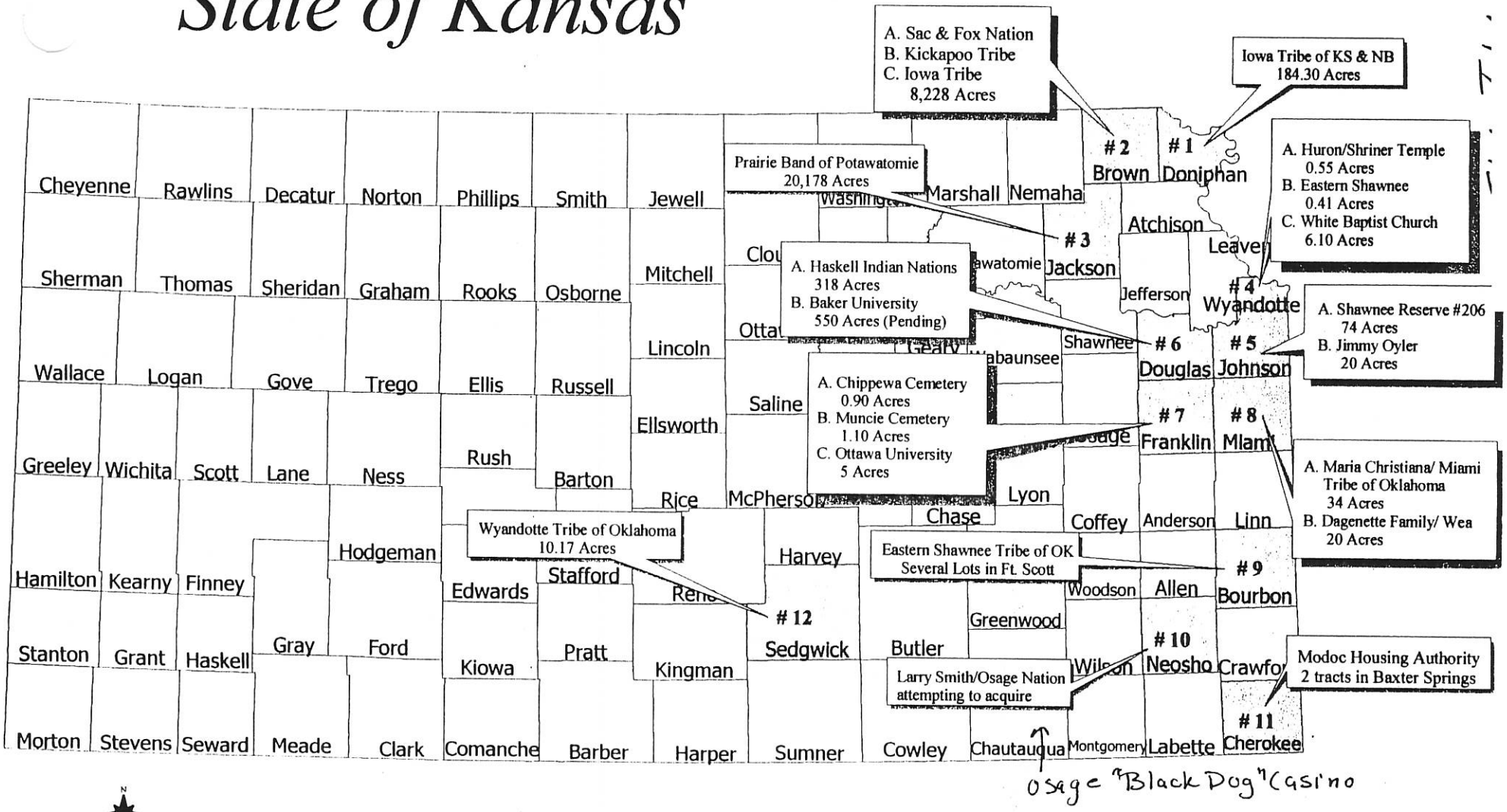
Prairie Band of Potawatomi Indians
16281 Q Road
Mayetta, KS. 66509-9093

John Michael Hale, Attorney

4-13

#13

State of Kansas



Osage "Black Dog" Casino

Council Grove - Osage request
" " Kaw Nation

25 0 25 Miles

Map # AD99-004

September 1, 1999

This information was compiled based upon best information county offices could provide utilizing property ownership information. The information should not be construed as portraying accurate legal descriptions or ownership titles. We accepted the information provided "as is," understanding that despite reasonable efforts, some of the information may not be wholly complete or accurate.

Jackson County Sheriff's Office

210 US 75 Hwy.
Holton, Kansas
Phone (785) 364-2251
Fax (785) 364-4820

Daina D Durham, Sheriff
Steven D Rupert, Undersheriff

March 20, 2003

Testimony of Sheriff Daina D. Durham

I am here today to testify regarding Senate Bill #9. Many individuals who hear I am not supporting Senate Bill #9 immediately believe this is a personal issue with me. It is not, I have been dealing with this issue for over 5 years, my concerns are professional. Like you, who are elected to represent the citizens of their districts, I was elected to represent the citizens of Jackson County. I am sure you understand very well that your personal feelings cannot get in the way of doing what is professionally right. You are here to do what is in the best interest of your constituents and the citizens of Kansas as a whole. I am here to represent all the citizens' who reside, do business and travel through Jackson County.

I want to start by saying I am not totally against Tribal Law Enforcement. You ask what is my concern/why am I here? I am here because my biggest concern is that I do not feel enough research has taken place into some of the unintended consequences of the decision to pass this bill.

Federal Statute, 18 United States Code Annotated § 3243, conferees jurisdiction on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.

Prior Attorney General Opinions state that unless deputized or otherwise employed by the county in which the reservation is located, 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.

The proposed legislation currently before the State Legislature would grant all federally recognized Indian Tribes located within the exterior boundaries of the State of Kansas to exercise law enforcement functions:

(a) Anywhere within Indian Country as defined by 18 U.S.C. 1151(b);

(b) In any place where a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person;

(c) On the streets, roads, highways, property other highways that are immediately adjacent to the boundaries of Indian Country:

(d) Such officers also may exercise such powers in any other places when in fresh pursuit of a person and have authority to transport persons in custody to an appropriate facility, wherever it may be located.

This proposed legislation would give Tribal law enforcement jurisdiction concurrent with the Sheriff and similar to city police. In other words, they would have full law enforcement jurisdiction within the reservation and the land and roads touching the reservation, i.e. HWY 75, ect.

Why is this Important? Three primary concerns

1. Tribal Sovereign Immunity
2. Court docket and oversight
3. Trust land and tax base (KS Attorney General Letter)

First, is the state accepting liability for the wrongful acts of tribal law enforcement officer? City, Sheriff and State law enforcement officers are subject to civil liability for acts of misconduct or violation of a citizen's civil rights. Because of Tribal sovereign immunity the same is not true of a tribal officer. Indian tribes have sovereign immunity from civil liability. The Tribe, its officials acting within their official capacity, tribal agencies and in some jurisdictions tribal corporations are immune to civil suit. Due to the tribe's sovereign immunity, tribal officers who may violate the civil rights of a citizen of Kansas while operating within its tribal jurisdiction are not subject to the same liabilities as other law enforcement officers. There is no redress for the wronged party in the form of civil suit. If the tribal officer is recognized by and commissioned by the State of Kansas, does Kansas become the inevitable deep pocket that attorneys go after if one of the Tribal Officers violates citizen's rights?

If the State does not accept liability, what redress does a citizen have for a wrongful act by a tribal law enforcement issue? Are we taking care of all our citizens if we do not protect their recognized right to address wrongful acts under civil law? Do we want to create an organization or agency that can operate with impunity from oversight and liability?

Second, With the increase in law enforcement operations within the mostly rural counties, it is highly likely that the dockets for the 1st and 2nd Judicial Districts will increase greatly. Why does the Legislature not put in language whereby the tribes who do not pay taxes to support the court system, can pay to the judicial districts affected by this legislation some funds to lesson the effects of this legislation. The Legislature could develop a fair and equitable formula to determine the appropriate costs. Much in the same way as gaming, the State accepted additional investigation and audit responsibilities under the Gaming Compacts but did not require any contributions from the tribes for the right to operate the casinos. Any knowledgeable member of the Judicial Branch can attest to the fact that in today's budgetary environment of shrinking dollars and increasing dockets, the fees imposed do not cover current costs. There is no way the increased traffic within our court system could be good for the smooth flow of justice. I believe that if the tribes are requesting to receive rights from the State, they should accept some responsibilities along with the benefits.

Additionally, who is going to have State oversight for the actions of the tribal law enforcement agencies? Are the tribes going to accept state and district court oversight? There have been

numerous incidents over the past two or three years regarding Tribal Law Enforcement exceeding their jurisdiction and perhaps violating the rights of citizens. What will continue to occur and what recourse will the state have against these violations? If I as Sheriff abuse the

powers that the legislation has granted me, will you the legislation then grant me even greater powers? I truly doubt it!

Finally, A recent Attorney General letter to Representative Hutchins stated that if the Tribal Law Enforcement Jurisdiction is changed, the Tribes would be in a better position to demonstrate they are providing necessary services and therefore would be in a better position to justify the movement of newly purchased land on and off the reservation from county property tax rolls and into trust. The result is a decrease in the tax base for Jackson County. At a time when the State is cutting promised funds to the counties and municipalities, this legislation could have long-term implications for the rural counties involved. Again, why not have the tribes provide some contribution for the requested rights and authority they are seeking. The Legislation could establish a formula whereby when land is placed into trust after the passage of this legislation, the tribes would contribute an equal amount of funds as would have been received by the county based upon fiscal year tax rules into the county fund. This contribution would be for 5 year for land within the reservation boundary and 10 years outside the reservation boundary. In consideration for such agreement, county officials would not contest the requests of tribes for land going into trust within reservation boundary and only contest trust requests for land outside reservation boundary.

Ultimately, the decision to give law enforcement jurisdiction to tribal police is the Legislatures, all we ask is that hasty decisions not be made, and that the unintended consequences be thoroughly evaluated before a decision is made. Counties are suffering under the current economic situation and additional service requirements without funding equals an unfunded mandate from the State at the same time funding is being cut. The tribe wants something from the State, jurisdiction. The counties need something from the State, dollars. Why not have the tribes pay reasonable amounts for the rights they are receiving.

Fifth, there have been numerous incidents over the past two or three years regarding Tribal Law Enforcement exceeding their jurisdiction and perhaps violating the rights of citizens. What will continue to occur and what recourse will the state have against these violations? If I as Sheriff abuse the powers that the legislation has granted me, will you the legislation then grant me even greater powers? I truly doubt it!

My recommendation for the Legislation:

1. That language used in the proposed legislation copies University Police who are patch worked within city and must move on city and county roads to their property. The reservation area is a clearly defined geopolitical boundary and not a patchwork. I disagree with (c) as it is written. Limit jurisdiction to reservation boundaries, no need to have jurisdiction outside reservation unless requested by Sheriff. If it is defined by Indian Country, there may be no way for the State to determine who, when, where and why outside tribes could not purchase land, get it put into trust as an allotment and start a police force, casino ect. As you are aware, Indian county as

defined by the Indian *Country Crimes Act, 18 United States Code Annotated §1152 (1949)*, is: *As the Tribe moves to buy more land off the reservation and have made this a clear goal of gaining as much land in and around the reservation, there could come a day when they could own land outside the reservation then in and thus could become in essence a county police force. Not sure if that is what the legislature would want. Under this write-up, the tries could expand*

their jurisdiction to include private property and roads off the reservation, Sheriff's offices and city police do not have that expansion to jurisdiction that is in excess of geographical area as determined by the State or Federal governments and recorded by patent and controlled by the political subdivision (tribe).

2. Have the tribes agree to waive sovereign immunity, develop a tort liability act, and immunize the state and county for the acts of their officers, agents and representatives. . The Tribe must enact Tort liability reform and must waive its sovereign immunity and submit to State oversight and procedural rules as well as state court rules.

3. Where would the cases go to trial and where would the percentages of fines and fees go, to a tribal criminal court not under state court rules or to the District Courts that the Tribe falls within. What about the increase in court dockets and caseloads? What about cottage issues such as jail fees, juvenile intakes, JJA, costs for state prison space, and the many other issues that fall within the Justice department of the state and affected by the creation of at a minimum four new law enforcement jurisdictions within Kansas. If the Tribes are requesting rights from the State, they should reasonably be expected to pay for the increased costs.

4. I think the recognition should be limited to Indian Tribes located in Kansas with recognized reservations (i.e. the same language that was used to negotiate the gamming compacts with just the 4 tribes with reservations in Kansas). Otherwise, we could have issues where law enforcement departments could begin exercising law enforcement on the property and roads around a tribal cemetery or single tract of land, or a casino and the many possible problems that could cause.

Thank you for the opportunity to present my concerns to you.

Daina D. Durham
Sheriff, Jackson County

State of Kansas

LANA OLEEN
SENATOR, 22ND DISTRICT
GEARY AND RILEY COUNTIES
(785) 296-2497

COMMITTEE ASSIGNMENTS
CHAIR: CONFIRMATION OVERSIGHT
STATE-TRIBAL RELATIONS
VICE CHAIR: ORGANIZATION, CALENDAR & RULES
MEMBER: STANDING & JOINT COMMITTEES

Majority Leader
Kansas Senate

SENATE CHAMBER, STATE CAPITOL
TOPEKA, KANSAS 66612-1504

March 20, 2003

House of Representatives
Committee on Federal and State Affairs
Senate Bill 9

Chairman Mason and Members of the Committee:

Thank you for the opportunity to provide some written remarks in support of SB 9, concerning tribal law enforcement officers and their interaction with other law enforcement officers.

Senate Bill 9 allows tribal law enforcement agencies and officers, when specifically requested to assist state, county, or city law enforcement agencies and officers, be considered an officer of the requesting agency. The tribal officer would have the same powers, duties, and immunities of the state, county or city agency during the period of time in which the tribal enforcement agency or officer is providing assistance. All officers are graduates of the Kansas law enforcement training center, and meet all continuing education requirements.

The Joint Committee on State-Tribal Relations introduced SB 9 with recommendation for passage. In recent sessions, this legislation - with different versions - has passed the Senate with wide margins of support. I am hopeful this session the House of Representatives will give this measure a chance to be considered by the Chamber.

Members of the Joint Committee work hard to foster better communication and coordination with the four resident tribes in Kansas. The good faith efforts exhibited in this bill are important steps in our continued cooperative relationship. SB 9 would enhance public safety, as well as the safety of law enforcement officers. It is good public policy. I urge your favorable consideration of this measure.

Respectfully,

Lana Oleen

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DISTRICT OFFICE
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Hs Federal & State Affairs
Date: 3-20-03
Attachment # 6
Page

KICKAPOO TRIBAL POLICE DEPARTMENT
824 K 20 HWY
HORTON, KANSAS 66439
PH: 785-486-3665 FAX: 785-486-3779

Tom Conklin, Chief of Police

March 20, 2003

Chairman William Mason and Members
of Kansas House Committee on Federal and State Affairs
Kansas State Capitol
800 SW Tenth Street
Topeka, Kansas 66612

Re: Testimony for House Committee on SB 9.

Chairman Mason and Committee Members:

My name is Tom Conklin. As the Chief of Police for the Kickapoo Tribe in Kansas, I appear before you today to present testimony supporting the amendment of K.S.A. 22-2401a to authorize the Law Enforcement Officers of the Four Kansas Native American Tribes to make arrests under the Kansas Criminal Code. I support the version of SB 9 passed by the Senate Judiciary Committee and before amendment by the Senate as a whole.

I do not oppose the version passed by the Senate, but if falls far short of addressing the issues of enhancing the safety of the citizens of this State by making law enforcement in this State more efficient. SB 9 as it stands before this Committee simply states that Tribal police can be called out for assistance. This is already the law. The current bill does not address the issue of providing a safer environment for the citizens of this State by creating a more efficient law enforcement system in counties with Tribal Police Departments.

Currently, Brown, Doniphan and Potawatomi Counties have Indian Reservations located within their counties. All of the Reservations have qualified and certified law enforcement officers. As you are already aware Lamar Shoemaker, Sheriff of Brown County, already supports the Judiciary Committee version of SB 9. Sheriff Shoemaker has three of the four Kansas Reservations either wholly or partially inside Brown County. The version of SB 9 that Sheriff Shoemaker and I support creates a viable, safe, and efficient method to enhance the safety of the citizens of the State with no fiscal impact on the State.

The Sheriff of Doniphan County, Larry Hunsaker, could not be present here today because he is the only available officer for Doniphan County today. Sheriff Hunsaker supports the same version of SB 9 as the rest of the Tribal Police and Sheriff Shoemaker. Attached to this testimony is Sheriff Hunsaker's letter of support.

I support the version of SB 9 passed by the Senate Judiciary Committee. The Judiciary version provides that Tribal Law Enforcement Officers can arrest under the Kansas Criminal Code the same as State Police Officers, County Sheriffs' Officers, Municipal Police Officers, and University Police Officers. This version is not new to Kansas law enforcement and does not create an additional burden on any governmental entity within the State. The Senate Judiciary version makes the process for arresting non-natives less cumbersome and expensive for the Sheriff's offices involved.

Presently, the Tribal Police detain any alleged violator that can not be arrested under the Tribal Criminal Code or the Federal Major Crimes Act, then contact the Sheriff's Office. The Sheriff then sends out one of his officers to assist and arrest. This causes duplication in work for the Sheriff's Office. There is no need for this duplication. It makes law enforcement in rural Kansas Counties with Tribal Police less efficient.

SB 9 has approved by the Senate Judiciary Committee is the right law enforcement bill to enhance the safety and efficiency of rural law enforcement in Brown, Doniphan, and Potawatomi Counties. It may not be perfect, and there may be some discussions that need to occur before this version is passed out of this Committee, but the major components of the Senate Judiciary Committee version need to be reinstated into this legislation. I will assist in any way to enhance the safety of our citizens. If we need to have some additional meetings to address some concerns, I am available and look forward to the same.

Thank you for your time.

Respectfully,

Tom Conklin
Chief of Police Kickapoo Tribe

LARRY HUNSAKER
SHERIFF

OFFICE OF

785-985-3711
785-985-3543

DONIPHAN COUNTY SHERIFF

P.O. BOX 32
TROY, KANSAS 66087

Suggested Letter of Support for Tribal Police in Tribal Police in Indian Country Amendment to K.S.A. 22-2401a.

TO: State Senator or State Representative
FROM: Doniphan County Sheriff's Department
DATE: 01-02-03
RE: Support of Tribal Criminal Authorization within Indian County in Kansas

Dear

As Sheriff of Doniphan County, Kansas, I am writing to urge you to support of the referenced legislation authorizing Tribal Law Enforcement Officers to arrest under the Kansas Criminal Code within Indian County in Kansas. I fully support this legislation. This legislation fills a gap in our rural police protection within Indian County in Kansas by authorizing Tribal Law Enforcement Officers to arrest under the Kansas Criminal Codes, then submit the same for prosecution through the Kansas District Court.

I strongly support his bill for several reasons: First, safety; It provides additional police protections for all citizens and residence of this State. Second, fiscal policy. This additional police coverage will not cost the State of Kansas any additional money for Law Enforcement Officers. Third, inter-cooperation between law enforcement agencies (this legislation promotes inter-cooperation between the local law enforcement agencies, which is strongly promoted at the Federal and State level after the events of September 11, 2001). Fourth, formal solutions. This State statute does not rely upon who is the Sheriff of Doniphan County, it provides limited expense for State authority for all certified Tribal Law Enforcement Officers. And fifth, the liability is virtually non-existent (there is little down side when you consider the overriding safety concerns against the remote possibility of a lawsuit).

At this time when all of us need to be cooperating for the safety of all of the citizens of this State and when fiscal responsibility is mandated, this bill promotes both. I strongly urge your support. I am available to discuss this matter with you by telephone or in person.

Respectfully,

Larry Hunsaker, Sheriff

March 20, 2003

Chairman William Mason and Members of the
Kansas House Committee on Federal and State Affairs
Kansas State Capitol
800 SW Tenth Street
Topeka, KS. 66612

RE: Testimony for House Committee on SB9

Chairman Mason and Committee Members,

My name is Jeff Frederick, and I am Chief of Police for the Iowa Tribal Police for the Iowa Tribe of Kansas and Nebraska. I am here to testify in support of the amendment of K.S.A. 22-2401a to authorize certified law enforcement officers who are employed by the four Kansas Native American Tribes to make arrests under the Kansas Criminal Codes. Myself and the Iowa Tribe of Kansas and Nebraska support the version of SB-9 that was passed by the Senate Judiciary Committee. As a police department, we operate in a unique position as we work in 2 States, Kansas and Nebraska, and with 3 different County Sheriff's Departments; Richardson County Sheriff's Department on the Nebraska side of the Reservation and with the Doniphan County and Brown County Sheriff's Departments on the Kansas side of the Reservation, this leads to some very unique but very complex and confusing situations that our officers can find themselves in.

Since our Reservation lies in both Kansas and Nebraska, we require our officers to become certified officers by both Kansas and Nebraska Law Enforcement Training Centers. We also are requiring our officers to become certified through the Bureau of Indian Affairs. Once receiving the certification from the B.I.A. we are then commissioned as Federal Law Enforcement Officers through the B.I.A. This allows us to prosecute certain cases through the United States Attorney's Office in Federal Court. For traffic and criminal violations that happen on the Nebraska side of the Reservation, the State of Nebraska has given our Tribal Officer's the authority and power to prosecute these violations in County and District Courts, the same as any other Nebraska Law Enforcement Officer. With the Governor's approval, we are then issued certificates and I.D. cards appointing us "Special Deputy State Sheriff's" of the State of Nebraska. We have had this authority for over 3 years without any problems or lawsuits.

As far as Tribal Police Departments in the State of Kansas, the Tribal Police are required by the State of Kansas to attend the Kansas Law Enforcement Training Center. We pay the State for this training but yet have no authority to use it. The Tribes do not have any jurisdiction over non-Native Americans for crimes or violations that are committed on the Kansas side of the Reservation. This is something that seriously needs to be changed, through Legislative action by the State. On the opposite side, when a person or a victim looks to us for help in a number of situations, we feel we are letting them down when we have to tell the victim that there is nothing we can do for them because we are Tribal

officers and the person committing the criminal act is a non-Native American. How do you think that victim feels about this? This also goes for Non-Natives that live on the Reservation.

This problem of jurisdiction is a problem for Tribal Police, County Sheriff's and the citizens of our Reservations and Counties. All 4 Tribal Police Departments have people that refuse to accept that the Tribal Police Departments are here to stay and that the Tribal Police have a duty and obligation to enforce laws, whether it be Tribal codes or State laws in order to keep and preserve the peace. These people are also the ones that think they do not have to pull over for a Tribal Officer when requested to do so by the Tribal Police vehicles. Therefore they don't stop or they try to flee to avoid arrest. This very quickly turns into a dangerous situation for all the Tribal Officer, County Deputies and the citizens of the area and on the streets and highways. To give an example of this, about a year ago our Tribal Officers received a call of a domestic situation and possibly a vehicle was being stolen. Upon arrival at the scene a non-Native suspect driving a tow truck, pulling the victims vehicle, was driving erratically out of our housing area. The Tribal officer attempted to stop the suspect driving the tow truck. The driver refused to stop and was fleeing to avoid arrest, while pulling another vehicle behind his tow truck. The suspect called the Doniphan County Sheriff's office and told them that he was not going to stop for any Tribal Officers for any reason because they had no authority over him. The pursuit went for approximately 19 miles through our Tribal housing area, across the Reservation, through the town of White Cloud and proceeded down K-7 Highway. When finally met by a Sheriff's Deputy, the suspect stopped. I think that if Tribal Officers were recognized as having State authority this is a dangerous situation that might not have happened. Another example of a problem where Tribal Police are not recognized as Kansas Law Enforcement Officers came about last February involving myself and one of my fellow officers. At our Casino, we were called to escort 3 intoxicated, non-Native Americans individuals out of the Casino following a disturbance inside. In the process, we were physically assaulted and obstructed while trying to make a detention of these individuals, by them. But because Tribal Officers are not recognized by the State as Law Enforcement Officers, the County Attorney could not charge these 3 subjects with "Assault on a Law Enforcement Officer", they could only be charged simply with "Assault". Luckily, we contacted the United States Attorney's Office on the case and were able to get the 3 subjects charged in Federal Court with "Resisting Arrest" and " Assault of a Federal Law Enforcement Officer". This is a case where the Federal Courts received the court costs and fines when the County Courts could be getting the fines and court costs if we had authority and were recognized by the State of Kansas.

In closing, the decision to pass legislation giving Tribal Officers the authority to enforce Kansas Law should not be about politics, taxes, land in trust or any other disagreements that exist between the Tribes and the State. The decision should be about service and protection to all people, not just Native Americans that come onto our Reservation. The majority of the people visiting our Reservations are non-Native, they deserve to be looked after and protected the same as our own Native Americans. It would be extremely inefficient and ineffective for the State to not take advantage of having approximately 40

experienced, very well trained and very well equipped Kansas Certified Tribal Police Officers in Northeast Kansas in a 3 County area.

That is all that I have to speak on and I appreciate the honor and the opportunity to speak to you today. Thank you very much.

Respectfully,

Jeff Frederick
Chief of Police

Sac & Fox Nation of Missouri
Tribal Police
301 North Main St., Reserve, KS 66434
Phone: (785) 742-7190 Fax: (785) 742-7548

March 19, 2003

Chairman William Mason and Members
Of Kansas House Committee on Federal and State Affairs
Kansas State Capitol
800 SW Tenth Street
Topeka, Kansas 66612

Re: Testimony for House Committee on SB 9.

Chairman Mason and Committee Members:

My name is Steven L. Jones, and I am the Chief of Police for the Sac and Fox Nation. I appear before you today to present testimony supporting the amendment of K.S.A. 22-2401a to authorize the Law Enforcement Officers of the Four Kansas Native American Tribes to make arrests under the Kansas Criminal Codes. I support the version of SB 9 as passed by the Senate Judiciary Committee and before amendment by the Senate.

I do not oppose the version passed by the Senate, but I must point out that it does not address the broader problems facing the State of Kansas, which is providing quality law enforcement within limited fiscal restraints. SB 9 as it stands before this Committee simply does very little to enhance the safety of our communities and make law enforcement more efficient.

I support the version of SB 9 passed by the Senate Judiciary Committee. The Judiciary version provides that Tribal Law Enforcement Officers can arrest under the Kansas Criminal Code the same as State Police Officers, County Sheriff's Officers, Municipal Police Officers, and University Police Officers.

All law enforcement officers believe in one thing – the safety of the citizens whom we are sworn to protect and serve. The Police Officers' Creed makes no mention of jurisdiction or who to protect and serve. My officers, as well as others, are working or on call twenty-four hours each day, seven days a week, all year long to provide a safe community for all of our citizens.

When you hear something in the night, you dial 911 and hope that an officer responds before something happens. You do not care who he or she may be or which department employs the officer – you are only concerned with your immediate safety and so are we.

Sac & Fox Nation of Missouri
Tribal Police
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Every department would like to take a proactive approach to crime, but with limited officers and funding, each department has certain limitation. The version of SB 9 that I support provides additional law enforcement officers to assist the Sheriff of Brown County Kansas, and at no expense to the County.

Although this is not the overall answer to crime suppression, it is a step in the right direction. With the passage of this bill, the counties will have additional law enforcement officers who can assist in the prevention of crime at no cost to the county. The Tribes pay for the officers and of their equipment and benefits.
Questions can always be raised about liability issues, but those issues exist for all law enforcement officers every day. This is why our department carries liability insurance. My concern is for enhanced safety of the citizens. This bill provides additional safety to the citizens of Kansas at no additional cost. It promotes interagency cooperation to make law enforcement more efficient.

This bill makes law enforcement more efficient. Presently, when a Tribal law enforcement officer sees a crime being committed in his presence, he detains the person committing the offense to protect the health, welfare and safety of his community, then contacts the Sheriff's Office, and the Sheriff then sends out an officer to make the actual criminal arrest and if necessary transport the offender to jail. This bill would simplify this process and save the Sheriff time, energy and money, by authorized the Tribal Officer to make the arrest.

Thank you for your time and consideration.

Respectfully,

Steven L. Jones
Chief of Police
Sac and Fox Nation

As Amended by Senate Committee

Session of 2003

SENATE BILL No. 9

By Joint Committee on State-Tribal Relations

1-10

AN ACT concerning jurisdiction of certain law enforcement officers; relating to Native American tribal law enforcement officers; amending K.S.A. 2002 Supp. 22-2401a and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2002 Supp. 22-2401a is hereby amended to read as follows: 22-2401a. (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:

(a) Anywhere within their county; and

(b) in any other place when a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person.

(2) Law enforcement officers employed by any city may exercise their powers as law enforcement officers:

(a) 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; and

(b) in any other place when a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person.

(3) Law enforcement officers employed by a Native American Indian Tribe may exercise powers of law enforcement officers:

(a) Anywhere within the exterior limits of the reservation of the tribe employing such tribal law enforcement officer;

(b) in any place where a request for assistance has been made by law enforcement officers from that place or when in fresh pursuit of a person;

(c) on the streets and highways that are immediately adjacent to ***and coterminous with*** *the boundaries of the reservation of the tribe employing such tribal law enforcement officer; and*

(d) when transporting persons in custody to an appropriate facility, wherever it may be located.

~~(3)~~ *(4)* University police officers employed by the chief executive officer of any state educational institution or municipal university may ex-

ercise their powers as university police officers anywhere:

(a) On property owned or operated by the state educational institution or municipal university, by a board of trustees of the state educational institution, an endowment association, an athletic association, a fraternity, sorority or other student group associated with the state educational institution or municipal university;

(b) on the streets, property and highways immediately adjacent to the campus of the state educational institution or municipal university;

(c) within the city where such property as described in this subsection is located, as necessary to protect the health, safety and welfare of students and faculty of the state educational institution or municipal university, with appropriate agreement by the local law enforcement agencies. Such agreements shall include provisions defining the geographical scope of the jurisdiction conferred, circumstances requiring the extended jurisdiction, scope of law enforcement powers and duration of the agreement. Any agreement entered into pursuant to this provision shall be approved by the governing body of the city or county, or both, having jurisdiction where such property is located, and the chief executive officer of the state educational institution or municipal university involved before such agreement may take effect; and

(d) additionally, when there is reason to believe that a violation of a state law, a county resolution, or a city ordinance has occurred on property described in ~~subsection (3)(a) or (b)~~ *paragraph (a) or (b) of subsection (4)*, such officers with appropriate notification of, and coordination with, local law enforcement agencies or departments, may investigate and arrest persons for such a violation anywhere within the city where such property, streets and highways are located. Such officers also may exercise such powers in any other place when in fresh pursuit of a person. University police officers shall also have authority to transport persons in custody to an appropriate facility, wherever it may be located. University police officers at the university of Kansas medical center may provide emergency transportation of medical supplies and transplant organs.

~~(4)~~ *(5)* In addition to the areas where law enforcement officers may exercise their powers pursuant to subsection (2), law enforcement officers of any jurisdiction within Johnson or Sedgwick county may exercise their powers as law enforcement officers in any area within the respective county when executing a valid arrest warrant or search warrant, to the extent necessary to execute such warrants.

~~(5)~~ *(6)* In addition to the areas where university police officers may exercise their powers pursuant to subsection ~~(3)~~ *(4)*, university police officers may exercise the powers of 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 assistance is

requested.

~~(6)~~ *(7)* In addition to the areas where law enforcement officers may exercise their powers pursuant to subsection (2), law enforcement officers of any jurisdiction within Johnson county may exercise their powers as law enforcement officers in any adjoining city within Johnson county when any crime, including a traffic infraction, has been or is being committed by a person in view of the law enforcement officer. A law enforcement officer shall be considered to be exercising such officer's powers pursuant to subsection (2), when such officer is responding to the scene of a crime, even if such officer exits the city limits of the city employing the officer and further reenters the city limits of the city employing the officer to respond to such scene.

~~(7)~~ *(8)* As used in this section:

(a) "Law enforcement officer" ~~has the meaning ascribed thereto~~ *means: (1) A law enforcement officer as defined* in K.S.A. 22-2202 and amendments thereto*; or (2) any tribal law enforcement officer employed by a Native American Indian tribe who has completed successfully the initial law enforcement training and any continuing education required under K.S.A. 74-5601 et seq.* and amendments thereto.

(b) "University police officers" means university police officers employed by the chief executive officer of: (1) Any state educational institution under the control and supervision of the state board of regents; or (2) a municipal university.

(c) "Fresh pursuit" means pursuit, without unnecessary delay, of a person who has committed a crime, or who is reasonably suspected of having committed a crime.

(d) "Native American Indian Tribe" means the Prairie Band Potawatomi Nation, Kickapoo Tribe in Kansas, Sac and Fox Nation of Missouri and the Iowa Tribe of Kansas and Nebraska.

(e) "Reservation" means that portion of a Native American Indian tribe's reservation as described in the gaming compact entered into between the tribe and the state of Kansas.

Sec. 2. K.S.A. 2002 Supp. 22-2401a is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

KANSAS LEGISLATIVE RESEARCH DEPARTMENT
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REVISED
September 27, 1999

To: Joint Committee on State-Tribal Relations

From: Russell Mills, Principal Analyst

Re: Provisions Concerning Tribal Police in Selected States

The following paragraphs summarize the existing provisions affecting tribal police in Kansas and several selected states. The material was gathered through a survey of selected states and a review of the state statutes concerning tribal police forces.

Kansas. The Law Enforcement Training Center Act provides that employees of a law enforcement agency of an Indian nation that has entered into a tribal-state gaming compact are eligible to be applicants for admission to the training courses (K.S.A. 74-5605). The training center is authorized to charge tuition for each employee of a tribal law enforcement agency (K.S.A. 74-5609a). Under Kansas law, tribal officers are *not* defined as law enforcement officers (K.S.A. 22-2202).

Arizona. Arizona statutes since 1972 have granted full police powers to Indian police officers appointed by the Bureau of Indian Affairs or the governing body of a tribe if such officers hold a certificate of qualification and training from the State Department of Public Safety (13-3874a). The statutes also provide that no liability is placed on the state or on political subdivisions for the actions of Indian police officers (13-3874b). Presumably, any liability would accrue to the employing tribe. Tribal officers must attend a state-certified academy to obtain Arizona state certification. All training costs are incurred by the tribal agency. Some tribal police officers are cross-certified and can enforce tribal laws as well as state statutes (13-3875).

Nebraska. The Legal Counsel for the Nebraska State Patrol reports that most tribal police officers in Nebraska receive training through various federal training academies. This training is recognized by the Nebraska Law Enforcement Training Center and such certified officers are empowered to enforce both tribal law and state laws on the reservations. Such tribal officers have no jurisdiction outside the confines of the reservation. The Legal Counsel also stated that there is some cross-deputization of sheriffs' officers to allow them to enforce state laws on the reservation; liability rests with the employing police unit.

New Mexico. New Mexico statutes grant full police powers to tribal police and Bureau of Indian Affairs (BIA) police when such officers are commissioned by the Chief of the New Mexico State Police, in accordance with written agreements executed between the Chief of the State Police and the tribe or appropriate BIA official (29-1-11A). Each applicant for such commission must complete 400 hours of basic police training in a course approved by the Director of the New Mexico Law Enforcement Academy. The tribe must present evidence that adequate public liability and property damage insurance is in place for the officer; the federal government is exempt from this requirement. Tribal police may attend the New Mexico Law Enforcement Academy at no charge (29-7-12). As consideration for the law enforcement services rendered for the state by tribal police officers, each tribe receives from the Law Enforcement Protection Fund the sum of $300 annually for each commissioned peace officer in the tribe (29-1-11C10).

North Dakota. Tribal police officers must attend the North Dakota Training Academy. The training is provided at no cost to the tribal police or any law enforcement officers in the state. Tribal police officers have enforcement powers on the reservation and in the county in which the reservation is located, once they have received the required training and are licensed as a peace officer. There is some cross-deputization between tribal police and the counties, but this varies from county to county. Most tribal police departments carry a minimum amount of liability insurance, but there is no requirement.

Oregon. The Oregon statutory definition of "police officer" includes an officer who is commissioned by an Indian reservation (181.610). Thus, tribal police are granted full police powers in Oregon. Tribal police attend the state training academy (400 hours) and the state pays the full cost of tuition, meals, and lodging (181.640). The local tribal agency may carry liability insurance, but no minimum amount is specified. Upon certification as an Oregon police officer, tribal police have the authority to enforce state statutes anywhere within the state. As a result, there is no need for any cross-deputization.

South Dakota. South Dakota does not have any statutory provisions regarding tribal police. Current practice allows tribal police to attend the Training Academy (250 hours), on a space-available basis, and the tribe must pay all tuition and fees. The Director of the Academy noted that there has been a very limited amount of cross-deputization of sheriff deputies as tribal police officers. There is no cross-deputization of tribal police as sheriff deputies. Tribal police generally have law enforcement authority only on the reservation.

Washington. Washington statutes allow tribal police officers to receive training (440 hours) from the Washington State Criminal Justice Training Commission if: (1) the tribe is recognized by the federal government and (2) the tribe pays the full cost of providing such training (43.101.230). Tribal police have enforcement authority only upon the reservation, unless they have been cross-deputized by the county. Cross-deputization has occurred with only a limited number of tribal police. Most tribes do not carry liability insurance.