

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman William Mason at 1:30 p.m. on January 29, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Daniel Williams- excused
Representative Todd Novascone- excused

Committee staff present:

Russell Mills, Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Dennis Hodgins, Legislative Research Department
Rose Marie Glatt, Secretary

Conferees appearing before the committee:

Senator Lana Oleen - State/Tribal Relations Committee (written testimony)
Ron Hein - Motion Picture Assn. of America & Prairie Band Potawatomi Nation
Ilse Smith, Legal Counsel, Kickapoo Tribe in Kansas
Brad Hamilton, Third District Commissioner, Jackson County Commission
Terry Scott, Chief of Police, Potawatomi Tribal Police
Sherif Bruce Tomlinson, Jackson County
Sheriff Lamar Shoemaker, Brown County

Others attending:

See Attached List.

The Chairman called for introduction of bills

Without objection, a bill was introduced as requested by Ron Hein, Motion Picture Association of America, to prohibit the use of camcorders in movie theaters.

Representative Rehorn moved that the January 20 & 22 minutes, with minor revisions, be approved. It was seconded by Representative Cox. The motion carried.

House Substitute for SB 9 - Native American tribal law enforcement officers; jurisdiction.

PROPOSERS:

The Chairman called attention to written testimony from Senator Lana Oleen that had been distributed. (Attachment 1). On behalf of the Joint Committee on State Tribal Affairs she urged the Committee to consider favorably **H Sub 9**, a law which would enhance public safety, as well as the safety of law enforcement officers.

Ilse Smith, introduced representatives of the Kickapoo Tribe in attendance: Police Chief Tom Conklin and Vice-Chair of the Kickapoo Tribal Council, Emily Conklin. She presented six benefits of authorizing Tribal officers to arrest non-Indians on the reservation (Attachment 2). In response to a question regarding oaths taken by officers, Chief Conklin stated that Tribal Officers take an oath to uphold the laws of Kansas, the Constitution and the Tribal Constitution. Currently there are three tribal officers that have had experience with other branches of law enforcement in the state.

Russell Mills, Legislative Research Department briefed the Committee on the history and activities of the Joint Committee on State-Tribal Relations. The bill before them has been recommended for the past four years, passed the Senate on three occasions, however has never been successful in the House.

Ron Hein, Legislative Counsel for the Prairie Band Potawatomi Nation, provided history of the legislation (Attachment 3). He stated that during the past four-five years, the Tribes and other proponents of the bill had responded to questions and objections raised by concerned parties, and those objections had been addressed and language presented which met those objections.

CONTINUATION SHEET

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE at 1:30 p.m. on January 29 in Room 313-S of the Capitol.

He offered draft amendments to address concerns raised by opponents of the bill:

- Double Prosecution and Land in Trust language. There was consensus that no amendments are needed regarding those issues.
- The Prairie Band Potawatomi Nation will support the definition of “reservation” proposed by Representative Hutchins.
- Indemnity protection for the county in the event of potential liability for the actions of Tribal law enforcement officers was addressed through an amendment.

The Tribe remained opposed to the three-year sunset clause, which they believed was inappropriate on legislation of this type.

Brad Hamilton, Third District Commissioner, Jackson County Commission, appeared in support of **H Sub 9**. He urged the addition of the three-year sunset provision, that would allow for evaluation of implementation of the statute (Attachment 4).

T. J. Scott, Chief of Police, Potawatomi Tribal Police, stated that the legitimate issues in the bill have been addressed and solutions have been forthcoming (Attachment 5). Passage of **H Sub 9** would provide additional trained law enforcement officers and all the citizens of Kansas would be better served as a result.

Sherif Bruce Tomlinson, Jackson County, rose in support of the three-year sunset clause in the legislation (no written testimony).

OPPONENTS:

Representative Hutchins acknowledged Lois Pelton, a Jackson County Commissioner in the audience. She spoke of a series of meetings in Jackson and Brown counties, attended by the law enforcement community and county officials, at which the following four questions and issues were raised (Attachment 6).

- Are traffic violations criminal or civil? She referred to an October 6, 2003 newspaper article, that was included in her testimony.
- Could the state or county taxpayers incur the additional cost for a claim imposed by a federal court, if a claim were awarded above the proposed cap in a liability suit against the action of tribal law enforcement officers?
- A concern was voiced that the definition of “reservation” could be better defined.
- It was suggested that a three-year sunset provision be added, allowing Brown and Jackson Counties time to study the impact H Sub 9 would have on their court systems and jails.

Discussion followed regarding the pros and cons of the three-year sunset provision and the benefit of the legislation to law enforcement officers.

Sheriff Lamar Shoemaker, Brown County spoke of the cooperation between enforcement agencies, however voiced his concern over the additional costs that might be incurred by the county. In response to a question he stated that he supported the basic concept of the bill, although he had not seen the latest version.

The Chairman closed the hearing on **House Substitute for SB 9**, and acknowledged the significant effort made in the last eight months by all parties to reach an agreement on the issues. He urged the parties to continue to work toward consensus.

The meeting adjourned at 3:05 p.m. The next meeting has not been scheduled.

HOUSE FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE January 29, 2004

NAME	REPRESENTING
Bruce Forlanson	Jackson Co Sheriff
Luis Pelton	Jackson County Commissioner
Bruce Forlanson	JACKSON COUNTY Commissioner
Frank Bergquist	Park City Kansas, Mayor
Carl Staugh	City of Hiawatha, ^{City} Administrator
Mark Doud	JACKSON County Sheriff Dept
Thomas L Conklin II	Kickapoo Tribal Police
LAMAR Sitomaken	Brown County S.O.
Jeff Frederick	Iowa Tribal Police
Natalie Cook	intern
David Prager	Prairie Band Potawatomi Nation
Emily Conklin	Kickapoo Tribe in KS
Ilse Smith	" "
Whitney Dameron	Kickapoo Tribe / Sac: Fox Nation
John McElroy	KSGA
Charles Keller	Hein Law firm
Ron Hori	Nation Picture Ass'n at American Prairie Band Potawatomi, Nation
Megan Dunn	Hein Law Firm

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

January 29, 2004

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

Chairman Mason and Members of the Committee:

Once again, I thank you for the opportunity to provide some written remarks in support of the concept of sharing resources and coordination of efforts for ensuring public safety. The various measures and favorable action of the Senate of the concept these past three years reflect the support of this issue. I am also pleased three separate interim reports have been supportive, and I believe the topic received considerable attention in the State/Tribal Relations Committee during the interim. I appreciate your commitment to bring the policy forward early in the 2004 Legislative Session.

As you work the bill this year, I would encourage you to return to consider the contents of Senate Bill 9 which 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.

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. A law which would enhance public safety, as well as the safety of law enforcement officers, is good public policy. I urge your favorable consideration on this issue.

Respectfully,

A handwritten signature in black ink that reads "Lana Oleen".

Lana Oleen

A handwritten note in black ink that says "Thanks!" with a large exclamation point.

HOME
3000 STAGG HILL ROAD
MANHATTAN, KANSAS 66502
(785) 537-3300

DISTRICT OFFICE
1619 POYNTZ AVENUE
MANHATTAN, KANSAS 66502
(785) 537-9194—PHONE
(785) 537-9198—FAX

HS Federal & State Affairs
ST
January 29, 2004
1
Attachment 1

TESTIMONY ON TRIBAL LAW ENFORCEMENT

By Kickapoo Tribe, Tribal Attorney – Ilse L. Smith

Chairman Mason & Members of the Committee on Federal and State Affairs:

My name is Ilse Smith, and I am the tribal attorney for the Kickapoo Tribe. Also present today representing the Kickapoo Tribe are Police Chief Tom Conklin and Vice-Chair of the Kickapoo Tribal Council, Emily Conklin. The Kickapoo Tribe supports the House Substitute for Senate Bill No. 9, except for the proposed “co-insured” language.

The benefits of this legislation authorizing Tribal officers to arrest non-Indians on the reservation according to state law are as follows:

***Promote and Enhance Continued Cooperation Among All Law Enforcement Agencies** - The Sheriffs’ departments and the Tribal police departments currently enjoy good working relationships and are often required to work together. Passage of this legislation would only strengthen these relationships.

***Highly Trained Officers**- Tribal officers are Kansas state-certified, professional police officers. Tribal officers complete the same initial training and subsequent continuing training that all other officers are required to complete under the Kansas Law Enforcement Act. Thus, procedures for all officers will be uniform, which will allow for easy processing of criminal matters.

***Efficient Use of Resources**-Tribal police officers with the authority to enforce state law on reservations will allow county officers to maintain their routine patrols and extend services to their citizens without any additional costs to the counties.

*** Increased Safety** – This legislation will provide additional police protection for all citizens and residents of Kansas, especially in cases where heightened safety enforcement may be required due to threats to our national security. Tribal officers can also fill voids when sheriff’s deputies may be assisting other citizens in rural areas of Kansas.

***Liability Insurance Coverage of Tribal Officers** – Tribes will carry their own insurance policies covering any acts or omissions of Tribal officers that may lead to claims of liability. County law enforcement agencies currently carry liability insurance that covers any actions or omissions of their officers. Mutual aid agreements in liability insurance policies would make each enforcement agency responsible for their own officers’ performance. (The Kickapoo Tribe cannot agree to provide insurance coverage for county officers because our insurance carrier will not underwrite a policy naming another agency as a co-insured.)

***Reporting to Department of Revenue**- The Kickapoo Tribe has offered to report traffic violations to the Kansas Department of Revenue, however, the offer has been declined. We renew our offer to report violations.

HEIN LAW FIRM, CHARTERED

5845 SW 29th Street, Topeka, KS 66614-2462

Phone: (785) 273-1441

Fax: (785) 273-9243

Ronald R. Hein
Attorney-at-Law
Email: rhein@heinlaw.com

Testimony re: H. Sub SB 9
House Federal and State Affairs
Presented by Ronald R. Hein
on behalf of
Prairie Band Potawatomi Nation
January 29, 2004

Mr. Chairman, Members of the Committee:

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

As a brief history for those new members of this committee who have not heard the extensive hearings about this legislation, this bill adds Tribal law enforcement officers to the laundry list of officers who are recognized as law enforcement officers pursuant to state law. All Tribal law enforcement officers meet the same training and qualification standards applicable to all law enforcement officers. Most, if not all, have experience as sheriff deputies, municipal officers, and even highway patrol officers prior to serving as Tribal law enforcement officers.

This very committee has passed legislation officially recognizing Tribal law enforcement officers on two separate occasions. Although the legislation approved by this committee has been in slightly different forms, the basic substance of the proposals have been similar. The first legislation recognizing Tribal law enforcement officers was proposed by the Joint Committee on State-Tribal Relations in 1999. This issue has passed the Senate three times. Despite the legislation having passed out of the House Federal and State Affairs Committee twice, the issue has never been brought to a vote on the floor of the House, despite widespread support for the legislation on the House floor.

Over the past 4-5 years, the Tribes and other proponents of this legislation have responded to questions, concerns, and objections raised by legislators, this committee, at least two committees of the House and Senate, the Attorney General's Office, and numerous representatives of the Governor's Office. At each stage, the objections have been addressed, and language has been presented which meets the objections.

Every step along the way of this process, new objections have been raised which have never been raised before. Many, if not all of the objections which have been raised over the last five years, have been objections which have never been raised for the other law enforcement agencies which have sought and received state recognition as law enforcement officers authorized pursuant to K.S.A. 22-2401a. Questions about liability for the county, liability for the state, insurance coverage in case of liability, and jurisdictional boundaries have never arisen regarding federal military reservations, municipalities, or even the security officers at Regent's institutions. All of these issues could have been raised regarding other law enforcement providers pursuant to K.S.A. 22-2401a, but, thus far, have only been raised regarding Tribal law enforcement officers.

Even as these questions have been raised, if the policy involved is correct, the same questions should be applied to the other law enforcement officers recogr

HS Federal & State Affairs
January 29, 2004
Attachment 3

Testimony H Sub. SB 9
House Federal and State Affairs Committee
January 29, 2004

the statute. To the best of my knowledge, no proposals have been put forth amending the other provisions of K.S.A. 22-2401a to provide for similar protections for the state or the county with regards to other officers authorized under this section.

H Sub SB 9, which passed out of the House Federal and State Affairs Committee during the 2003 Session, was re-referred back to this committee. Since then, the Joint Committee on State Tribal Relations considered amendments to this legislation proposed by Rep. Hutchins, but decided to take no action on those amendments. Tribal lobbyists have met with her to address these concerns. In response to these issues, I have prepared draft amendments that attempt to meet the concerns raised.

The concerns that were raised relate to double prosecution (sometimes referred to double jeopardy, which technically is not applicable), and to land in trust language, but after a discussion with Rep. Hutchins and with the Brown County attorney, I believe we have reached a consensus that no amendments are needed with regards to those issues.

Another concern related to the definition of "reservation". This constitutes, if my memory is correct, at least the fifth version of the definition of "reservation" over the past 4-5 years. I believe that the Prairie Band Potawatomi Nation, though not liking some of the versions, has indicated a willingness to live with virtually every definition that has been proposed in the past. I have included in our attached amendment the definition proposed by Rep. Hutchins, which we can support. However, we are unsure of the position of the Kickapoo and Sac and Fox on such definition.

Another concern related to indemnity protection for the county in the event of potential liability for the actions of Tribal law enforcement officers. Although, this is not a concern that has ever been expressed with regards to other law enforcement officers authorized pursuant to K.S.A. 22-2401a, the PBPN opposes any amendment regarding indemnity, especially given the fact that there would not be a comparable indemnity back to the Tribes for liability resulting from acts of county officers. We would offer the amendment which is on my attachment regarding the liability insurance policy already provided for in the bill. Please note that the Tribes also waive their sovereign immunity to the extent of the insurance policy required pursuant to the legislation. We believe that this provides the protection that the county is seeking.

Lastly, there has been a proposal for a three-year sunset clause in this legislation. We oppose a sunset clause, which is inappropriate on legislation of this type.

We are confident and hopeful that we have met the concerns that have been raised by legislators who have expressed concerns about the specifics of this legislation so that this legislation may finally be considered and approved on the House floor so that the fully trained law enforcement officers employed by the four resident Tribes can bring additional law enforcement to benefit the Tribes, the non-native Americans in northeast Kansas, and the citizens of the entire state.

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

HOUSE Substitute for SENATE BILL No. 9

By Committee on Federal and State Affairs

4-3

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

12
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2002 Supp. 22-2401a is hereby amended to read
15 as follows: 22-2401a. (1) Law enforcement officers employed by consol-
16 idated county law enforcement agencies or departments and sheriffs and
17 their deputies may exercise their powers as law enforcement officers:

18 (a) Anywhere within their county; and

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

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

24 (a) Anywhere within the city limits of the city employing them and
25 outside of such city when on property owned or under the control of such
26 city; and

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

30 (3) *Law enforcement officers employed by a Native American Indian*
31 *Tribe may exercise powers of law enforcement officers anywhere within*
32 *the exterior limits of the reservation of the tribe employing such tribal law*
33 *enforcement officer, subject to the following:*

34 (a) *The provisions of this subsection (3) shall be applicable only if*
35 *such Native American Indian Tribe has entered into a valid and binding*
36 *agreement with an insurance carrier to provide liability insurance to cover*
37 *the acts, errors and omissions of such tribal law enforcement agency or*
38 *officer while providing assistance pursuant to this section. Such insurance*
39 *policy shall be in an amount not less than \$500,000 for any one person*
40 *and \$2,000,000 for any one occurrence for personal injury and \$1,000,000*
41 *for any one occurrence for property damage. Such insurance policy shall*
42 *be subject to verification by the attorney general. Such insurance policy*
43 *shall include an endorsement providing that the insurer may not invoke*

and shall carry an endorsement to provide coverage for mutual aid assistance.

3-3

1 tution under the control and supervision of the state board of regents; or
2 (2) a municipal university.

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

6 (d) "Native American Indian Tribe" means ~~the Prairie Band Pota-~~
7 ~~watomi Nation, Kickapoo Tribe in Kansas, Sac and Fox Nation of Missouri~~
8 ~~and the Iowa Tribe of Kansas and Nebraska.~~

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

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

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

(i) With respect to the Iowa Tribe of Kansas and Nebraska, the reservation established by treaties with the United States concluded May 17, 1854, and March 6, 1861, (ii) with respect to the Kickapoo Nation, the reservation established by treaty with the United States concluded June 28, 1862; (iii) with respect to the Prairie Band Potawatomi Nation in Kansas, the reservation established by treaties with the United States concluded June 5, 1846, November 15, 1861, and February 27, 1867; (A) the reservation established by the treaties with the United States concluded May 18, 1854, and March 6, 1861, and by acts of Congress of June 10, 1872 (17 Stat. 391), and August 15, 1876 (19 Stat. 208), and (B) the premises of the gaming facility established pursuant to the gaming compact entered into between such nation and the state of Kansas, and the surrounding parcel of land held in trust which lies adjacent to the east of U. S. Highway 75 and adjacent to and north of Kansas Highway 20, as identified in such compact .

Jackson County Commission

Courthouse - 400 New York
Holton, Kansas 66436



JOHN GRAU, SOLDIER
FIRST DISTRICT COMMISSIONER

LOIS PELTON, HOLTON
SECOND DISTRICT COMMISSIONER

✓ **BRAD HAMILTON, HOYT**
THIRD DISTRICT COMMISSIONER

PHONE (785)364-2826 OR 1-866-256-5472
FAX 364-4204

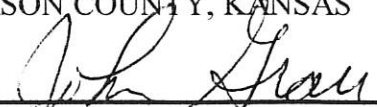
January 28, 2004

Honorable Madam Chair, Honorable Vice-Chair and Committee Members
Honorable Tribal Council Members

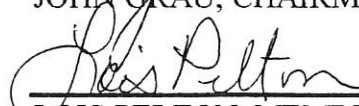
Thank you for the opportunity to provide testimony on this bill. After discussion with Jackson County Sheriff Bruce Tomlinson, the Jackson County Commission concurs with Sheriff Tomlinson in his support of the proposed legislation with a three- year Sunset Provision. The three-year Sunset Provision allows for evaluation of implementation of this statute, and the opportunity to address any unintended consequences or anomalies that may result.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
JACKSON COUNTY, KANSAS



JOHN GRAU, CHAIRMAN



LOIS PELTON, MEMBER



BRAD HAMILTON, MEMBER

HS Federal & State Affairs
January 29, 2004
Attachment 4

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



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

January 29, 2004

Mr. Chairman and Members of the Committee:

One of the responsibilities of Government is to insure the safety and security of its citizens. The issue before you has been heard on numerous occasions, and the Prairie Band Potawatomi Nation has responded to every single request or objection that has been raised.

We have asked for nothing, no shirking of our liability for wrongdoing, no financial aid or assistance from the State or County, nothing except that the job we are already performing be recognized by the State so that Tribal police and other law enforcement can continue the job of protecting honorable citizens.

A realistic view of the issue at hand from an unbiased outsider would perhaps find the matter almost comical if it weren't for the seriousness of the issue being addressed. Does Topeka Police Department call the Shawnee County sheriff when an "out of the city" resident violates the laws made to protect all Topeka residents. Certainly not! Topeka officers protect Topeka citizens by enforcement of their laws and codes irrespective of whom the law breaker is.

All we are asking is for the same treatment that this legislature has provided other governmental law enforcement officers, in an effort to insure the best law enforcement possible for the citizens of the State of Kansas. Our goal is protect our citizens and to assist and compliment other local law enforcement, not to cause problems for the county.

Is it fair to the remainder of the citizens of these counties, for sheriff's deputies to be summoned away from another area of the county or another matter requiring law enforcement intervention, to "redo" what a Tribal officer has already done in investigating a crime or arresting a suspect?

Those who believe that this is “just” a Reservation issue are quite mistaken. All citizens will suffer when law enforcement is spread too thin to protect those who are law abiding and in many instances, are too young, too old or simply can’t protect themselves from those who prey on their weakness.

The Federal Bureau of Investigation, one of the most prestigious law enforcement agencies in the world, has come to the realization that in this day and time, law enforcement cannot afford to have an elitist attitude toward the security of this country. All law enforcement, large and small, federal, state, local and tribal will be put to the task in the years ahead to insure that the peace and security that this Nation has enjoyed in the past, will continue for our children.

The legitimate issues have been addressed in Senate Bill 9. We believe that we have presented solutions for some of the relatively minor issues that have been most recently raised. Passage of HSub SB9 will provide additional trained law enforcement officers and all of the citizens of Kansas will be better served as a result.



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

BECKY HUTCHINS
 REPRESENTATIVE, FIFTIETH DISTRICT
 JACKSON AND SHAWNEE COUNTIES
 700 WYOMING
 HOLTON, KANSAS 66436
 (785) 364-2612



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 CHAIR TOURISM AND PARKS
 MEMBER EDUCATION
 FEDERAL AND STATE AFFAIRS
 JOINT COMMITTEE ON STATE
 TRIBAL RELATIONS

ROOM 502-S
 STATE CAPITOL
 TOPEKA, KANSAS 66612-1504
 (785) 296-7698

House Substitute SB 9
 January 29, 2004

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

I stand before you today in opposition to House Substitute for SB 9 as it is currently written.

Since the end of last session there have been a series of meetings in Jackson and Brown counties regarding House Substitute for SB 9. The meetings were attended by Jackson and Brown county law enforcement officials, tribal law enforcement officials of the four resident tribes, Jackson and Brown County attorneys, Jackson County Commissioners and other interested parties.

At these meetings questions about the current bill were raised that I feel should be addressed before its passage. Those concerns are:

1. Traffic Violations- if a person is cited for a criminal violation there should be no problem. It is my understanding that all non-native-Americans cited with criminal violations would go through the district court system. The question arises on civil citations. Currently, some tribal law enforcement officials are citing non-Native Americans for traffic violations on the reservation as tribal civil violations (due to the fact that they cannot currently cite them for a state violation). If and when this happens, fines assessed to non-Native Americans go to the tribal court and the infractions do not go on the individuals driving record. However, if non-Native Americans would be cited by tribal police for state traffic violations the fines would go to the state and the infraction would go on their driving record.

The question arises, are traffic violations criminal or civil? See an attached newspaper article from The Holton Recorder dated October 6, 2003.

2. Provide for reimbursement if the state or a political subdivision of the state is held liable for actions of tribal law enforcement officers. Although the current language on page 2, lines 19 and 20, states that the state and political subdivisions will not be liable, this would not prevent liability from being imposed by a federal court for a claim under federal law.

This question was raised by Brown County Attorney, Kevin Hill. He stated that there was one case filed against Brown County in federal court. Although the case was thrown out, the concern was

that for example, if a person's civil rights were violated by a tribal law enforcement officer, that person could file a suit in federal court against the county or state. Opponents will say that this proposal is not reasonable because we don't treat any other law enforcement entity like this. However, if a campus policeman does something wrong, a person can sue the university. In the case of the tribal law enforcement officer, a person can sue the officer up to the limits of the proposed legislation but cannot sue the tribe because of the tribe's sovereign immunity. What happens if a claim is awarded above the proposed cap? Would the state or county taxpayers incur the additional cost?

3. Define reservation better - suggested by Brown County Attorney Kevin Hill. Currently the language in House Substitute SB 9 states that "Reservation" means that portion of a Native American Indian Tribes' reservation described in the gaming compact entered into between the tribe and the state of Kansas. There was a concern that the definition of reservation could be better defined. For example, reservation in one compact is a picture of a map. Also, I would propose the definition of reservation not include trust land off the reservation, except for those off reservation trust lands listed in the compacts.
4. A three-year sunset provision. This provision is supported by:

Jackson County Commissioners
Jackson County Sheriff
Warren Ploeger, Brown County Commissioner
Jackson County Counselor

The three-year sunset would allow Brown County and Jackson County time to gather data as to the impact the passage of House Substitute for SB 9 could have on the two counties court systems and jails. The sunset provision would require legislative review of this legislation to address any unforeseen issues that may arise that we have not currently addressed in the bill.

I have visited with Ron Hein and Whitney Damron and am willing to work with them in hopes that these concerns can be addressed to the satisfaction of everyone.

Sincerely,



Becky Hutchins
Representative, 50th District

Oct. 6, 2003

HOLTON RECORDER Oct 6, 2003

Law enforcement, zoning topics for county and tribe

By SANDRA M. SIEBERT
Recorder Staff

The Jackson County Commission and Prairie Band Potawatomi Tribal Council hope to reach agreements on how to deal with issues of zoning and law enforcement. But they want those who work in those areas every day to recommend the best courses of action. During a joint meeting on Monday, they set deadlines for reports.

County and tribal law enforcement heads and attorneys from Jackson County, the Prairie Band Potawatomi Nation and other Kansas counties and tribes will be asked to meet to discuss proposed legislation that would authorize tribal police officers to enforce state law on the reservations. The results of the meeting, it is hoped, will be recommendations for changes in the legislation or for local agreements to resolve issues not addressed in the legislation.

The group would then report to the county commissions with resident tribes (Jackson, Brown and Doniphan counties) and to the tribal councils (PBP, Kickapoo, Iowa, and Sac and Fox) by Oct. 10.

That would allow those agencies time to develop a presentation to the state-tribal relations committee. Rep. Becky Hutchins, who attended Monday's meeting, said the committee will meet three more times before the next legislative session begins.

"It would be nice if all four tribes would have a joint resolution in support of this," said PBP council member Steve Ortiz.

The county-tribal law enforcement group would address issues that the proposed legislation does not, or cannot address, such as one raised by Rep. Hutchins on Monday.

"Traffic violations: are they criminal or civil?" Hutchins asked.

The answer to that question may determine whether traffic citations made by tribal officers on the reservation for violations by non-tribal members go through a District Court or a tribal court.

In answering an earlier question, PBP Attorney David Prager noted that "it is a given" that criminal arrests of non-tribal members made on the reservations by any law enforcement officer would go to District Court.

"I believe they're civil," Prager said of traffic violations.

However, Hutchins said, that according to an attorney general's opinion, traffic violations on U.S. Highway 75 (which runs through the Potawatomi Reservation) can be considered criminal violations in some cases. That question is something that needs to be answered before the legislation is adopted, she said.

"We need some answers before signing on the dotted line - at least, I do," Hutchins said.

Answering such questions will be the task of the law enforcement officers and attorneys from the counties and tribes.

"It makes sense for the people doing this day to day to be working on this," said PBP council member Jim Potter.

"Let the law enforcement people

have a big say in it," added Jackson County Commissioner John Grau.

Having the county commissioners endorse what the law enforcement group recommends will make a difference in the legislation's consideration, Hutchins said.

When this and similar legislation previously were discussed by the Legislature, Hutchins said, one thing that legislators noted was that county commissioners did not attend hearings or appear to take part in the process. Lobbyists for the tribes were involved, as well as law enforcement officers, she said.

Continued to Page 10

Rep Becky Hutchins