Approved: March 17, 2004
Date

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 February 12, 2004 in Room 313-S of the Capitol.

All members were present.

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: None

Others attending:

The Chairman requested bill introductions.

Without objection a bill was introduced by Representative Gilbert concerning racial profiling by law enforcement.

Without objection, Representative Rehorn requested a bill introduction, on behalf of Unified Government of Wyandotte County concerning property taxation; relating to unpaid real property taxes; judgement and enforcement thereof pursuant to code of civil procedure.

Without objection, Representative Rehorn requested a bill introduction, on behalf of Representative Tom Thull, concerning the division of power and duties of emergency management.

Without objection, Representative Rehorn introduced a bill regarding medical standards for outpatient surgical clinics.

Without objection, Representative Novascone requested a bill introduction regarding the percentage taken by the Kansas Racing Commission on track wages.

Without objection, Steve Kearney, Executive Director of Kansas County and District Attorneys Association requested a bill regarding the limitation of "good time" to fifteen percent for juveniles, as it is to that of adults.

Without objection, Representative Ruff, requested a bill regarding Apprenticeship Council terms of office in the Kansas Department of Human Resources.

HR 6013 - Memorializing Congress to maintain Kansas' military installations.

Representative Lane stated that the purpose of the Resolution was to send a strong message to the U.S. Congress and the President of the United States of the huge importance that our Kansas military installations have on our Kansas economics (Attachment 1).

HB 2420 - Children's internet protection act

Mr. Mills reviewed the supplemental bill, that prohibits certain acts and provides remedies for violations of the act. Discussion followed regarding the fiscal note on the bill.

Representative Hutchins moved that they recommend HB 2420 favorably for passage. Representative Dahl seconded the motion.

Testimony was distributed from Representative Hutchins regarding a Supreme Court decision and relevant correspondence (Attachment 2). Discussion followed regarding changes in the status of opponents

regarding this bill and current filtering systems in Kansas libraries. Representative Rehorn stated that it was his understanding that the state libraries were not in agreement with the bill and had given him alternative language, which essentially paralleled the federal law, which does not allow for federal funding if appropriate filters are not in place. A question was raised regarding the liability and penalties of Library Boards and Directors.

Representative Hutchins moved that HB 2420 be passed out favorably. Representative Dahl seconded. The motion carried.

HOUSE Substitute for SB 9 -Native American tribal law enforcement officers; jurisdiction.
The Chairman stated that many people had worked hard on the issues that had resulted in many compromises. He commended the efforts of all parties involved.

Russell Mills briefed the Committee on the history of the bill. Testimony was distributed from Representative Hutchins regarding comments from the Attorney Generals's office and the Jackson County Commission (Attachment 3).

Representative Hutchins moved the adoption of the balloon on **H Sub for SB 9**. Representative Freeborn seconded

Ms. Torrence's explained the balloon on **H Sub for SB 9** (Attachment 4) which consists of changes to re-letter and re-number subsections, clarification of language, liability for mutual aid agreement, maps reflecting boundaries defined in the act, and the addition of a three year sunset clause.

Discussion followed regarding the state and counties' liability due to wrongful acts by American Tribal Law Enforcement Officers. The Committee's attention was directed to the testimony from the Attorney General's office as well as the Jackson County Commission. The issue of land in trust was defined and discussed. A question of support of law enforcement officers in the counties was raised.

The Chairman called for a vote on the adoption of balloon amendment on **H Sub for SB 9** made by Representative Hutchins and seconded by Representative Freeborn. The motion carried.

Representative Rehorn made a motion to move **H Sub for SB 9** as amended, out favorably. Representative Cox seconded the motion. The motion carried thirteen to eight.

The meeting adjourned at 2:30. The next meeting is February 16, 2004.

STATE OF KANSAS

AROLD LANE
REPRESENTATIVE, 58TH DISTRICT
1308 S KANSAS AVE
TOPEKA, KANSAS 66612
(785) 232-3610

TOPEKA

HOUSE OF
REPRESENTATIVES

OFFICE ADD
300 SW 10TH
CAPITOL BLDG—ROOM 273 W
TOPEKA, KANSAS 66612-1504
785) 296-7690

Testimony for HR 6013

Good afternoon Chairman Mason and fellow Committee Members. It is a pleasure to have the opportunity to testify here on HR 6013.

The purpose of this Resolution is to send a strong message to the U.S. Congress and the President of the United States of the huge importance that our Kansas military installations have on our Kansas economics, as well as the role they play in our national security.

It also describes the invaluable service to our country and the commitment as demonstrated by our security forces.

Our military must have strong support base to battle terrorism in today's uncertain perilous age.

Thank you and I will stand for any questions.

HS Federal & State Affairs
February 12, 2004
Attachment 1

Jump to: [Opinion] [Concurrence 1] [Concurrence 2] [Dissent 1] [Dissent 2]

UNITED STATES *et al. v.* AMERICAN LIBRARY ASSOCIATION, INC., *et al.*

appeal from the united states district court for the eastern district of pennsylvania

No. 02-361. Argued March 5, 2003--Decided June 23, 2003

Two forms of federal assistance help public libraries provide patrons with Internet access: discounted rates under the E-rate program and grants under the Library Services and Technology Act (LSTA). Upon discovering that library patrons, including minors, regularly search the Internet for pornography and expose others to pornographic images by leaving them displayed on Internet terminals or printed at library printers, Congress enacted the Children's Internet Protection Act (CIPA), which forbids public libraries to receive federal assistance for Internet access unless they install software to block obscene or pornographic images and to prevent minors from accessing material harmful to them. Appellees, a group of libraries, patrons, Web site publishers, and related parties, sued the Government, challenging the constitutionality of CIPA's filtering provisions. Ruling that CIPA is facially unconstitutional and enjoining the Government from withholding federal assistance for failure to comply with CIPA, the District Court held, *inter alia*, that Congress had exceeded its authority under the Spending Clause because any public library that complies with CIPA's conditions will necessarily violate the First Amendment; that the CIPA filtering software constitutes a content-based restriction on access to a public forum that is subject to strict scrutiny; and that, although the Government has a compelling interest in preventing the dissemination of obscenity, child pornography, or material harmful to minors, the use of software filters is not narrowly tailored to further that interest.

Held: The judgment is reversed.

201 F. Supp. 2d 401, reversed.

Rep. Becky Hutchins

HS Federal & State Affairs
February 12, 2004
Attachment 2

Chief Justice Rehnquist, joined by *Justice O'Connor, Justice Scalia*, and *Justice Thomas*, concluded:

1. Because public libraries' use of Internet filtering software does not violate their patrons' First Amendment rights, CIPA does not induce libraries to violate the Constitution, and is a valid exercise of Congress' spending power. Congress has wide latitude to attach conditions to the receipt of federal assistance to further its policy objectives, *South Dakota* v. *Dole*, 483 U. S. 203, 206, but may not "induce" the recipient "to engage in activities that would themselves be unconstitutional," *id.*, at 210. To determine whether libraries would violate the First Amendment by employing the CIPA filtering software, the Court first examines their societal role. To fulfill their traditional missions of facilitating learning and cultural enrichment, public libraries must have broad discretion to decide what material to provide to their patrons. This Court has held in two analogous contexts that the Government has broad discretion to make content-based judgments in deciding what private speech to make available to the public. *Arkansas Ed. Television Comm'n* v. *Forbes*, 523 U. S. 666, 672-674; *National Endowment for Arts* v. *Finley*, 524 U. S. 569, 585-586. Just as forum analysis and heightened judicial scrutiny were incompatible with the role of public television stations in the former case and the role of the National Endowment for the Arts in the latter, so are they incompatible with the broad discretion that public libraries must have to consider content in making collection decisions. Thus, the public forum principles on which the District Court relied are out of place in the context of this case. Internet access in public libraries is neither a "traditional" nor a "designated" public forum. See, *e.g.*, *Cornelius* v. *NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 802-803. Unlike the "Student Activity Fund" at issue in *Rosenberger* v. *Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 834, Internet terminals are not acquired by a library in order to create a public forum for Web publishers to express themselves. Rather, a library provides such access for the same reasons it offers other library resources: to facilitate research, learning, and recreational pursuits by furnishing materials of requisite and appropriate quality. The fact that a library reviews and affirmatively chooses to acquire every book in its collection, but does not review every Web site that it makes available, is not a constitutionally relevant distinction. The decisions by most libraries to exclude pornography from their print collections are not subjected to heightened scrutiny; it would make little sense to treat libraries' judgments to block online pornography any differently. Moreover, because of the vast quantity of material on the Internet and the rapid pace at which it changes, libraries cannot possibly segregate, item by item, all the Internet material that is appropriate for inclusion from all that is not. While a library could limit its Internet collection to just those sites it found worthwhile, it could do so only at the cost of excluding an enormous amount of valuable information that it lacks the capacity to review. Given that tradeoff, it is entirely reasonable for public libraries to reject that approach and instead exclude certain categories of content, without making individualized judgments that everything made available has requisite and appropriate quality. Concerns over filtering software's tendency to erroneously "overblock" access to constitutionally protected speech that falls outside the categories software users intend to block are dispelled by the ease with which patrons may have the filtering software disabled. Pp. 6-13.

2. CIPA does not impose an unconstitutional condition on libraries that receive E-rate and LSTA subsidies by requiring them, as a condition on that receipt, to surrender their First Amendment right to provide the public with access to constitutionally protected speech. Assuming that appellees may assert an "unconstitutional conditions" claim, that claim would fail on the merits. When the Government appropriates public funds to establish a program, it is entitled to broadly define that program's limits. *Rust* v. *Sullivan*, 500 U. S. 173, 194. As in *Rust*, the Government here is not denying a benefit to anyone, but is instead simply insisting that public funds be spent for the purpose for which they are authorized: helping public libraries fulfill their traditional role of obtaining material of requisite and appropriate quality for educational and informational purposes. Especially because public libraries have traditionally excluded pornographic material from their other collections, Congress could reasonably impose a parallel limitation on its Internet assistance programs. As the use of filtering software helps to carry out these programs, it is a permissible condition under *Rust*. Appellees mistakenly contend, in

reliance on *Legal Services Corporation* v. *Velazquez,* 531 U. S. 533, 542-543, that CIPA's filtering conditions distort the usual functioning of public libraries. In contrast to the lawyers who furnished legal aid to the indigent under the program at issue in *Velazquez*, public libraries have no role that pits them against the Government, and there is no assumption, as there was in that case, that they must be free of any conditions that their benefactors might attach to the use of donated funds. Pp. 13-17.

Justice Kennedy concluded that if, as the Government represents, a librarian will unblock filtered material or disable the Internet software filter without significant delay on an adult user's request, there is little to this case. There are substantial Government interests at stake here: The interest in protecting young library users from material inappropriate for minors is legitimate, and even compelling, as all Members of the Court appear to agree. Given this interest, and the failure to show that adult library users' access to the material is burdened in any significant degree, the statute is not unconstitutional on its face. If some libraries do not have the capacity to unblock specific Web sites or to disable the filter or if it is shown that an adult user's election to view constitutionally protected Internet material is burdened in some other substantial way, that would be the subject for an as-applied challenge, not this facial challenge. Pp. 1-2.

Justice Breyer agreed that the "public forum" doctrine is inapplicable here and that the statute's filtering software provisions do not violate the First Amendment, but would reach that ultimate conclusion through a different approach. Because the statute raises special First Amendment concerns, he would not require only a "rational basis" for the statute's restrictions. At the same time, "strict scrutiny" is not warranted, for such a limiting and rigid test would unreasonably interfere with the discretion inherent in the "selection" of a library's collection. Rather, he would examine the constitutionality of the statute's restrictions as the Court has examined speech-related restrictions in other contexts where circumstances call for heightened, but not "strict," scrutiny--where, for example, complex, competing constitutional interests are potentially at issue or speech-related harm is potentially justified by unusually strong governmental interests. The key question in such instances is one of proper fit. The Court has asked whether the harm to speech-related interests is disproportionate in light of both the justifications and the potential alternatives. It has considered the legitimacy of the statute's objective, the extent to which the statute will tend to achieve that objective, whether there are other, less restrictive ways of achieving that objective, and ultimately whether the statute works speech-related harm that is out of proportion to that objective. The statute's restrictions satisfy these constitutional demands. Its objectives--of restricting access to obscenity, child pornography, and material that is comparably harmful to minors--are "legitimate," and indeed often "compelling." No clearly superior or better fitting alternative to Internet software filters has been presented. Moreover, the statute contains an important exception that limits the speech-related harm: It allows libraries to permit any adult patron access to an "overblocked" Web site or to disable the software filter entirely upon request. Given the comparatively small burden imposed upon library patrons seeking legitimate Internet materials, it cannot be said that any speech-related harm that the statute may cause is disproportionate when considered in relation to the statute's legitimate objectives. Pp. 1-6.

Rehnquist, C. J., announced the judgment of the Court and delivered an opinion, in which *O'Connor, Scalia*, and *Thomas, JJ.*, joined. *Kennedy, J.*, and *Breyer, J.*, filed opinions concurring in the judgment. *Stevens, J.*, filed a dissenting opinion. *Souter, J.*, filed a dissenting opinion, in which *Ginsburg, J.*, joined.

UNITED STATES, *et al.*, APPELLANTS *v.*

Rep. Becky Hutchins

From: tom meek <themeeks@kansas.net>
To: <hutchins@house.state.ks.us>
Date: Wed, Mar 12, 2003 4:46 PM
Subject: HB 2420

Dear Representative Hutchins,

I don't think we need to "lobby" you on this matter, but wanted you to see what we are sending to the other committee members.

We wish to express our support for HB 2420 which is being considered by the House Federal and State Affairs Committee. This bill would require publicly supported libraries to install filters on computers which provide internet access to minors. We use an internet filter on our home computer, and while the technology is not perfect, we are satisfied with the results. It is comforting to know that our sons are not likely to be exposed to objectionable material in our home. We would like that same protection in public libraries.

The Capital-Journal reported that the following objections to the bill were raised in committee hearings:

1) Cost - Our filter costs $39.95 per year, as much as one or two books. We would gladly see our library make that trade-off.

2) Ineffectiveness - Our experience with two different filters has been that they are quite effective, and are getting better all the time. Savvy computer users may be able to by-pass or disable filters, but at least innocent users are protected from accidental exposure to harmful content.

3) Burdens to library staff - It seems to us that filtering library computers would allow library employees to spend less time monitoring computers and relieve them from the responsibility of being internet "police."

Thank you for carrying the ball for us on this issue!

Sincerely,

Tom and Nancy Meek
1223 7th St.
Clay Center, KS 67432

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
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WWW.KSAG.ORG

February 12, 2004

Received from Rep. Hutchins

The Honorable Becky Hutchins
State Representative, 50th District
State Capitol, Room 502-S
Topeka, Kansas 66612-1504

Re: 2004 House Substitute for Senate Bill 9

Dear Representative Hutchins:

You seek our comments on several issues relating to 2004 House Substitute for Senate Bill No. 9 (SB 9).

"If the State of Kansas trains Tribal Law Enforcement officers and grants them additional authority to enforce state law (House Substitute for Senate Bill 9), could the state be held liable for any wrongful acts committed by Tribal Law Enforcement officers filed in federal court against the state?"

Because granting tribal law enforcement officers the authority to enforce state law would empower them to act under color of state law and to perform one of the State's sovereign functions on the State's behalf, there is certainly a possibility that the State or its officers could be held liable under Section 1983 or other federal statutes for the conduct of those tribal law enforcement officers while performing such functions.

Subsection (3)(e) of the bill will help to express the Legislature's intent that the State itself, and its political subdivisions, be immune. However, liability is difficult to predict, especially in the abstract, and it is not possible to guarantee that the State and its political subdivisions will never be held liable by federal courts for the acts of individuals or entities acting on behalf of the State and under color of State law. For instance, federal courts have held that federal civil rights claims are not subject to the Kansas Tort Claims Act[1] and that the Tort Claims Act caps do not apply to limit damages in 1983 actions.[2] Further, the courts have held that the indemnification provisions of the Tort Claims Act do not serve as an 11th Amendment bar to 1983 actions against state officials acting in their individual

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[1] *Scheideman v. Shawnee County Board of County Comm'rs*, 895 F.Supp. 279, 282 (D.Kan. 1995).

[2] *Beach v. City of Olathe, Kan.*, 185 F. Supp.2d 1229, 1241 (D.Kan. 2002).

HS Federal & State Affairs
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Attachment 3

capacities.[3] In other words, if a "state official" (*i.e.* someone acting on behalf of the State to perform a State governmental function) is found liable for acts taken within the scope of his or her employment, the fact that the Tort Claims Act provides for indemnification of that official is not enough to support a claim of 11th Amendment immunity for the officials actions when sued under Section 1983. Thus, while it may have been intended that the State be immune from liability in these instances, the courts nevertheless found liability to exist. The facts of each individual case, the court in which it is brought, the persons or entities named as defendants and the cause of action will all be factors in determining whether liability exists. Courts consider these issues on a case-by-case basis. I have enclosed an article that addresses government liability for actions of law enforcement officers with the hope that it may be a helpful backdrop for this discussion.

Ultimately, the Legislature must weigh the fact that liability is a potential against the benefits that passing this bill may provide (as it does with any legislation that is before it), and determine as a matter of policy whether the potential benefits are worth the potential risk.

"If such a case were filed in federal court, and the court awarded damages above the limits of the proposed caps in House Substitute for Senate Bill 9, would the State of Kansas (i.e., the taxpayers) be responsible for those damages above the cap?"

Again, federal courts have held that the caps in the Kansas Tort Claims Act do not apply in civil rights actions brought in federal court. Thus, if the State or its agents are found liable, it would likely be responsible for any damages imposed above the caps. It is unclear how the caps in the Tribes' insurance policy would have any bearing on the State's potential liability, other than to cover the State up to the amount of the caps if the insurance policy is found to cover the cause of action and the State is found to be a beneficiary of that coverage.

"What proposed amendment could I submit to address this concern?"

If your goal is to protect the State, to the extent possible, from liability, one amendment that might be helpful is to clarify in subsection (3)(a) that the liability insurance coverage to be obtained by the Tribes must cover any claims brought against the State and/or its officials in either state or federal court. Another provision that might be helpful would be one that requires the Tribes to indemnify and hold the State harmless for any damages the State might incur as a result of tribal law enforcement officers' actions. This indemnification provision could be outside the caps imposed in subsection (3)(a). The Legislature might also consider amending the Tort Claims Act indemnification provisions to except tribal law enforcement officers so that the State is clearly not responsible to indemnify those officers or the Tribes for any liability that may be imposed on the officers.

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[3] *Beck v. Calvillo*, 671 F.Supp. 1555, 1560 (D.Kan. 1987).

Subsection (3)(b) of the bill could be read to require the State or its political subdivisions to be responsible for acts of tribal law enforcement officers when they are called to assist in situations occurring outside the geographic boundaries of the reservations. If your goal is to lessen or eliminate the State's liability and that of its political subdivisions, this subsection should be amended to make clear that it is the Tribes that will be liable, not the State, and that the Tribes will agree to waive their immunity to the extent necessary to give individuals recourse should damages arise.

"[W]hat recourse [does] a non Native American [have] if cited for a civil tribal traffic violation within the confines of the reservation?"

The recourse available to a non Native American for violation of tribal ordinance is determined by the tribal ordinance, any applicable federal law and, of course, constitutional law. Typically, the initial recourse for challenging a tribal citation is to the tribal court. If the individual disagrees with the judgment of the tribal court, appeals may be made through the tribal court system and, if necessary, to the federal courts. The Tribes do not have jurisdiction to bring criminal actions against non Native Americans, so only civil proceedings may be had in tribal court in these circumstances.

Recourse for anyone cited by a tribal law enforcement officer for violation of State law would be to state courts. There is no authority in this bill or elsewhere that would allow tribal courts to process State law violations.

"Could that person be cited for both a civil tribal and state criminal traffic violation for the same offense if this bill passes?"

House Substitute for Senate Bill No. 9 does nothing to alter tribal jurisdiction over violations of tribal law. If the tribal ordinance is truly civil in nature, there would appear to be no double jeopardy issues with dual citations.[4] Additionally, even if the tribal ordinance is in reality criminal in nature, the authority for invoking tribal law does not derive from the State. Generally, if the authority of the Tribe and the State arise from separate sources, the separate sovereign doctrine applies to permit dual prosecution.[5]

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[4]*See* Attorney General Opinion No. 2003-11.

[5]*Heath v. Alabama*, 474 U.S. 82, 88, 106 S.Ct. 433, 88 L.Ed.2d 387 (1985).

I hope this discussion will be of assistance to you and the Committee in its consideration of this bill.

Sincerely,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE

Julene L. Miller

Julene L. Miller
Deputy Attorney General

JLM:jm
Enclosure

Public Notice

(First published in The Holton Recorder, Holton, Kan., on Monday, Feb. 2, 2004.)

NOTICE OF DECISION TO TAKE LANDS INTO TRUST FOR THE PRAIRIE BAND POTAWATOMI NATION

Pursuant to 25 Code of Federal Regulations, Part 151.12(b) notice is hereby given that the Agency Field Representative, Bureau of Indian Affairs, Horton Field Office, 908 First Avenue East, Horton, KS 66439, the authorized Representative of the Secretary of the Interior, Bureau of Indian Affairs, United States Department of Interior, has made a decision to acquire the following described real estate in the name of the United States of America in trust for the Prairie Band Potawatomie Nation.

The South Half of the Northeast Quarter and the Northeast Quarter of the Southeast Quarter, all in Section 18, Township 8 South, Range 14 East, of the 6th P.M., Jackson County, Kansas, containing 120 acres, more or less.

A final agency determination to accept subject real estate in trust has been made and the Secretary of the Interior shall acquire title in the name of the United States no sooner than thirty (30) days subsequent to publication of this notice.

ML9t4

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 364-2826 OR 364-2891
FAX 364-4204

October 15, 2001

NOTICE OF APPEAL

Bureau of Indian Affairs
Horton Field Office
908 First Avenue East
Horton, Kansas, 66439

Re: The property is described as the S 1/2 of the NE 1/4 and the NE 1/4 of the SE 1/4 of Section 18, Township 8 South, Range 14 East of the 6th P.M., Jackson County, Kansas;

Gentlemen:

This letter is sent to you in response to the letter dated October 12, 2001 from your office in reference to the Prairie Band Potawatomi Nation's application for acquisition of land by the United States to be held in trust for the use and benefit of the Prairie Band of Potawatomi Indians.

This letter is sent to your office and to other elected officials and individuals in order to register the objection of Jackson County, Kansas to the placing of the above described real estate in trust for the use and benefit of the Prairie Band of Potawatomi Indians.

The land has an exceedingly high total valuation for possible commercial use and even for agricultural use as part of the tract is presently zoned. Even though the application for trust status indicates the use of the property as agricultural, it would seem inconceivable that this would be the final use of the property, especially at it's present location.

If these properties are accepted into trust status, then Jackson County, Kansas will be losing income which will affect all of the citizens of Jackson County.

In 25 CFR Section 151.10(e), the regulations state:

> "(e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls:"

This deals with on-reservation acquisitions and the same should apply to off-reservation acquisitions under 25 CFR Section 151.11.

Government services that are currently provided by Jackson County, Kansas property taxes are: the area schools--Royal Valley U.S.D. No. 337 and others, fire departments, ambulance services, mental health services, Senior Citizens, juvenile services and law enforcement. They also have the Court system, soil conservation service and agricultural extension services. All of these services require a tax base in order to raise funds.

We have also been told that one of the positions of the current Tribal Council of the Prairie Band of Potawatomi Nation is to buy back all of the land within the original reservation boundaries. With a loss of tax revenue and there still being a high demand for assistance and funds, it would be extremely difficult for Jackson County to survive. Even now with the large purchases of property being made by the profits from the Prairie Band Potawatomi Casino, we would strongly encourage a re-evaluation of allowing these tracts of land to go into trust. The impact and the tax burden of the rest of the residents of Jackson County, Kansas will no doubt have a deteriorating effect upon the County's tax base and the services offered to all it's citizens.

Jackson County not only has the Prairie Band of Potawatomi Reservation and Harrah's Prairie Band Casino, but it has the Golden Eagle Casino located North of Holton and on North of that on U.S. Highway 75 is located the Sac and Fox Casino. The increased traffic and regulatory problems associated with the traffic patterns on U.S. Highway 75 have caused Jackson County to expend more money for law enforcement and traffic control. In addition to the increased case load for the Sheriff's office, County Attorney and District Court officers because of the large traffic count. County roads are becoming more heavily traveled requiring increased maintenance expenditures. We believe part of this increase has been attributed to the Casinos.

As far as the job market is concerned, the Harrah's Casino being able to create approximately 750 jobs and pay higher wages because of the tremendous profits from the gaming industry, local businesses are losing employees and having a hard time replacing them.

We are sure the other side of the argument you have heard from the Prairie Band of Potawatomi Tribe is that they cannot indefinitely rely upon the very lucrative gaming operation as a source of income for the Tribe and that in order to offset perhaps a loss of

income they need to acquire land to use for some type of income endeavor. The County feels that this is fine as long as they pay taxes on the land just like everyone else does. Let's hope this makes the present table level for all concerned.

Pertaining to regulatory jurisdiction over this property, Jackson County, Kansas has for many years past exercised such jurisdiction, both by nature of zoning and by nature of real property taxes and special assessments.

Notification was not given to local government to provide them with an opportunity for written comments and that opportunity is being exercised at this time.

We would like to further point out and we attach hereto a breakdown prepared by the Jackson County Road and Bridge office--this document prepared by the office administrator. This document clearly shows that over the last five (5) years from 1996 to 2000 the County has consistently been expending funds specifically for the benefit of the Reservation. The figures on the attachment are only for expenditures on the Reservation. Then you think about all of the years that the County has maintained the roads on the Reservation for some 80 to 90 years or longer and you can see why there is a tremendous investment in these roads.

Jackson County, Kansas does not feel that it is necessary for the Tribe or for the development of tribal needs that this property be placed in trust. The letter says that the Tribe has taken responsibility for maintaining the majority of the roads on the Reservation. For all of these years, Jackson County, Kansas has bore the burden of maintaining the roads on the Reservation. Consequently, what money is being expended by the Tribe at this time is merely a small token of the funds spent by Jackson County, Kansas in years past when there was not Tribe or government contributions for the road system.

The additional information for the above tract of real estate is as follows:

1. The annual amount of property taxes currently levied on the property.

Answer: Taxes:$414.96 Valuation: Land--$3915

2. Any special assessments, and amounts thereof, which are currently assessed against the property.

Answer: None

3. Any governmental services which are currently provided to the property by your jurisdiction.

Answer: Schools, fire and ambulance service, law enforcement, Senior Citizens and juvenile services, etc.

4. If subject to zoning, how the property is currently zoned.

Answer: On Reservation

The County would respectfully request that this application by the Prairie Band of Potawatomi Nation be denied.

Respectfully submitted,

Attest:

Jackson County Commissioners

John Grau

Lois Pelton

Brad Hamilton

Kathy Mick, Jackson County Clerk

cc: Senator Pat Roberts
cc: Senator Sam Brownback
cc: Natalie G. Haag, Chief Legal Counsel for Governor Bill Graves
cc: John Michael Hale

Session of 2003

HOUSE Substitute for SENATE BILL No. 9

By Committee on Federal and State Affairs

4-3

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.

(a)

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

(i)

[(a)] The provisions of ~~this subsection (3)~~ shall be applicable only if subsection (3)(a)

such Native American Indian Tribe has entered into a valid and binding agreement with an insurance carrier to provide liability insurance ~~to cover the acts, errors and omissions of such tribal law enforcement agency or officer while providing assistance~~ pursuant to this section. Such insurance policy shall be in an amount not less than $500,000 for any one person and $2,000,000 for any one occurrence for personal injury and $1,000,000 for any one occurrence for property damage. Such insurance policy shall be subject to verification by the attorney general. Such insurance policy shall include an endorsement providing that the insurer may not invoke

coverage for damages assessed in state or federal court and arising from the acts, errors or omissions of such tribal law enforcement agency or officer while acting

and shall carry an endorsement to provide coverage for mutual aid asistance

tribal sovereign immunity up to the limits of the policy set forth herein.

(b) If a claim is brought against any tribal law enforcement agency or officer for acts committed by such agency or officer while ~~*providing assistance pursuant to this section and while such agency or officer is outside the jurisdiction of such agency or officer*~~*, such claim shall be subject to disposition as if the tribe was the state pursuant to the Kansas tort claims act, provided that such act shall not govern the tribe's purchase of insurance. The tribe shall waive its sovereign immunity solely to the extent necessary to permit recovery under the liability insurance, but not to exceed the policy limits.*

(c) Nothing in this subsection (3) shall be construed to prohibit any agreement between any state, county or city law enforcement agency and any Native American Indian Tribe.

(d) Nothing in this subsection (3) shall be construed to affect the provision of law enforcement services outside the exterior boundaries of reservations so as to affect in any way the criteria by which the United States department of the interior makes a determination regarding placement of land into trust.

(e) Neither the state nor any political subdivision of the state shall be liable for any act or failure to act by any tribal law enforcement officer.

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

(ii) The provisions of subsection (3)(a) shall be applicable only if such Native American Indian Tribe has filed with the county clerk a map clearly showing the boundaries of the Tribe's reservation as defined in this section.

acting pursuant to this section

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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) Any law enforcement officer as defined* in K.S.A. 22-2202, and amendments thereto*; or (2) any tribal law enforcement officer who is employed by a Native American Indian Tribe and has completed successfully the initial and any subsequent law enforcement training required under the Kansas law enforcement training act*.

(b) "University police officers" means university police officers employed by the chief executive officer of: (1) Any state educational insti-

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tution 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 described in the gaming compact entered into between the tribe and the state of Kansas~~:

(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; and

(iv) with respect to the Sac and Fox Nation of Missouri in Kansas and Nebraska: (A) the reservation established by 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 and east of U.S. Highway 75 and adjacent to and north of Kansas Highway 20, as identified in such compact.

(9) The provisions of subsection (3) and subsections (8)(a)(2), (8)(d) and (8)(e) shall expire on July 1, 2007.

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.