

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 29, 2009, in Room 136-N of the Capitol.

All members were present.

Committee staff present:

Jason Long, Office of the Revisor of Statutes
Julian Efird, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Connie Burns, Committee Assistant

Conferees appearing before the committee:

Dale Goter, City of Wichita
Thomas Groneman, Alcoholic Beverage Control
Tuck Duncan, Distilled Spirits Council of the United States
Maggie Childs, Kansas Equality Coalition
Mike Leitch, Deputy Civil Litigation Attorney General's Office
Peter Ellenstein, William Inge Center for the Arts
Marcia Cebulska, Kansas Playwright
Larry Baer, League of Kansas Municipalities

Others attending:

See attached list.

Introduction of Bills

Senator Morris requested two bill introductions. The first bill introduction is regarding planning and zoning, dealing with certain easements.

Senator Morris moved that this request should be introduced as a committee bill. Senator Owens seconded the motion. The motion carried.

The next bill introduction is regarding regulating traffic; concerning driving in the right lane.

Senator Morris moved that this request should be introduced as a committee bill. Senator Reitz seconded the motion. The motion carried.

Dale Goter, City of Wichita, requested a bill introduction that would allow public consumption of alcohol during a special event.

Senator Faust-Goudeau moved that this request should be introduced as a committee bill. Senator Francisco seconded the motion. The motion carried.

Thomas Groneman, Alcoholic Beverage Control, requested a bill introduction that would allow the governing body of a city or county to request a hearing on whether a license should be issued, renewed, suspended, or revoked at any time. (Attachment 1)

Senator Owens moved that this request should be introduced as a committee bill. Senator Abrams seconded the motion. The motion carried.

Tuck Duncan requested a bill introduction for Whitney Damron, Distilled Spirits Council of the United States (Attachment 2) that would allow retail liquor dealers in our state to provide tastings of their products to consumers in their stores. (Attachment 2)

Senator Ostmeyer moved that this request should be introduced as a committee bill. Senator Owens seconded the motion. The motion carried.

Maggie Childs, Kansas Equality Coalition, requested a bill introduction concerning the Kansas act against discrimination; relating to sexual orientation; gender identity. (Attachment 3)

CONTINUATION SHEET

Minutes of the Senate Federal And State Affairs Committee at 10:30 a.m. on January 29, 2009, in Room 136-N of the Capitol.

Senator Owens moved that this request should be introduced as a committee bill. Senator Reitz seconded the motion. The motion carried.

Mike Leitch, Deputy Civil Litigation Attorney General's Office, provided the committee with an update on the Tribal Litigation in Wyandotte County. (Attachment 4) The 7th Street Casino is owned by the Wyandotte Tribe of Oklahoma. The land used for that casino is known as the Shriner Tract; and the building that now houses the casino is a former Masonic Temple and has been listed on the National Register of Historic Places since 1985.

The State of Kansas has been involved in litigation over that casino since 1996; and the Tenth Circuit noted three years ago, "For ten years, the Wyandotte Nation, the State of Kansas and the United States have been locked in litigation in multiple fora over the fate of the Shriner Tract, This long battle has produced a procedural history as complex as a random maze." *Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1249 (10th Cir. April 7, 2006).

The Wyandotte Tribe is not originally from Kansas, but in the mid 1840s they were given 23,000 acres at the junction of the Missouri and Kaw Rivers; and on 1855 the tribe was dissolved and all that land was ceded to the U.S., with the exception of what is now know as the Huron Cemetery in KCK. The Huron Cemetery is owned by the U.S. Government for the Wyandottes - and has been since 1855. When the tribe was dissolved, one group of Wyandottes refused to accept the federal government's citizenship offers and moved to Oklahoma where it was reconstituted as a tribe in 1867 and has remained there ever since. In 1984, Congress enacted Public Law 98-602, which provided compensation for the Wyandottes for various land ceded to the U.S. in the 1800s, Pub.L. 98-602 included a provision that "a sum of \$100,000 of such funds shall be used for the purchase of real property which shall be held in trust by the Secretary for the benefit of such Tribe."

In 1988 Congress passed the Indian Gaming Regulatory Act (IGRA) which includes a provision disallowing gaming on trust land acquired after 1988, with a few exceptions. Exceptions would:

1. Allow gaming on after-acquired land if the "lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988."
2. Exception was for land taken into trust "as part of a settlement of a land claim." See 25 U.S.C. 2719 (b)(1)(B)(I)

In 1995, the Wyandottes agreed to purchase what has become known as the "the Shriner Tract"; it is .52 acres adjacent to the Huron Cemetery containing an old Shriner Temple. The Tribe maintains it was purchased solely with Public Law 98-602 funds. In 1996, the Department of Interior decided to take the Shriner Tract in trust for the Wyandottes and to allow gaming on it, reasoning that the Huron Cemetery was a "reservation," and the Shriner Tract was immediately adjacent to it.

In November 2007 district court - Judge Rogers - was asked to reopen the first case; the case was reopened and in September 2008, on a motion of the federal government, he dismissed it. Judge Rogers ruled that because the Department of Interior had already taken the land into trust, the court lacked jurisdiction to consider challenges to it; and based this ruling on a federal law called the Quiet Title Act. This means that there still has yet to be a final determination by the Court of Appeals that only Public Law 98-602 funds were used in the purchase. The State of Kansas, the Iowa Tribe, and the Sac and Fox Tribe have jointly appealed Judge Rogers' decision. The AG's office has submitted its brief and is waiting on the federal government to submit its brief. The court will likely set the case for oral argument sometime later this year.

SB 1 - William Inge Theatre Festival designated as the official theatre festival of the state.

Chairman Brungardt opened the hearing on **SB 1**.

Senator Derek Schmidt gave a brief overview of the bill and introduced the first speaker.

Peter Ellenstein, William Inge Center for the Arts, appeared in favor of the bill and provided a history of the Center. (Attachment 5)

The bill would make the William Inge Theatre Festival the official State Theatre Festival of Kansas. In 1982, Margaret Hoheen, Inge's longtime friend and theatre instructor at Independence Community

CONTINUATION SHEET

Minutes of the Senate Federal And State Affairs Committee at 10:30 a.m. on January 29, 2009, in Room 136-N of the Capitol.

College (ICC), partnered with the great playwright Jerome Lawrence, and they decided to salute the legacy of William Inge by honoring a great American playwright each year with the *Distinguished Achievement in the American Theatre Award*. Starting with a half-day event, it has grown over two decades into a four-day festival filled with performance, educational workshops and a scholars' conference. Now in its 28th year, the William Inge Theatre Festival has welcomed to Kansas nearly every major American Playwright of the last half of the 20th century.

Marcia Cebulka, Kansas Playwright, spoke in favor of the bill. (Attachment 6) Ms. Cebulka stated that the William Inge Theatre Festival brings everyone together, lets them be accessible to one another, whether they be student or honoree, workshop attendee or movie star, Kansas playwright or L.A. screen writer; we are there together, townspeople, theatre friends and colleagues, working, meeting, and learning from one another. The William Inge Theatre Festival is a national phenomenon and a state treasure.

Chairman Brungardt closed the hearing on **SB 1**.

SB 53 - Licensure of cereal malt beverage retailers.

Staff provided an overview of the bill and a balloon that revises the bill to the action that was taken by the Senate Fed & State committee in the 2007 Legislative Session and the amended bill was then passed by the Senate 40-0. (Attachment 7)

Chairman Brungardt opened the hearing on **SB 53**.

Jason Gage, Salina City Manager, provided written testimony in support of the bill. (Attachment 8) The specific request is that the local licensing authority be granted reasonable discretion with regards to CMB license issuance, suspension and revocation actions; to ensure the penalty applied is fair and equitable with regard to the violation of the license holder.

Larry Baer, League of Kansas Municipalities, (LKM) appeared in favor of the bill as it is written, but requested some changes. (Attachment 9) The League supports this proposed change in current law; but would like to request two changes: 1) only cities and counties issue CMB licenses, the Director is not involved in the local CMB licensing process. Substituting "governing body of the city" correctly designates the parties that approve and issue CMB licenses. 2) delete the last sentence of subsection (a) including the proposed new language, and insert "or the governing body of the city" to the new language proposed in subsection (b): LKM believes that this correctly reflects the intent of proposed legislation and presents a bill that is more easily read.

In response to Committee discussion the Chairman requested staff to provide a balloon when the bill is worked.

Chairman Brungardt closed the hearing on **SB 53**

Final Action:

SB 3 - Senate confirmation oversight committee; membership.

Senator Owens moved to pass SB 3 out favorably. Senator Faust-Goudeau seconded the motion. The motion carried.

SB 29 - Board of technical professions; relating to licensure.

Staff provided an amendment on page 3 lines 26 that would strike *planning, mapping* on line 26 and insert *planning, mapping and* after *the* on line 25 and striking *fixed* and inserting *engineering* on line 38. (Attachment 10)

CONTINUATION SHEET

Minutes of the Senate Federal And State Affairs Committee at 10:30 a.m. on January 29, 2009, in Room 136-N of the Capitol.

Senator Abrams moved the amendment. Senator Ostmeyer seconded the motion. The motion carried.

Staff provided a balloon from the Board of Technical Professions that is an administrative amendment for the Board, on page 12 lines 16 - 25 striking redundant language that was added in regarding the information the Board requires from a business entity that is applying for a certificate of authorization.(Attachment 11)

Senator Ostmeyer moved the amendment. Senator Owens seconded the motion. The motion carried.

Senator Abrams moved to pass **SB 29** out favorably as amended. Senator Ostmeyer seconded the motion. The motion carried.

The next meeting is scheduled for January 31, 2009. The meeting was adjourned at 11:47 am

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

GUEST LIST

DATE 1-29-07

| NAME | REPRESENTING |
|------------------|-------------------------------------|
| Spencer Duncan | Capitol connection ks |
| Tuck Duncan | KS wine & spirits wholesalers Assn. |
| Mike Leitch | A.G.'s office |
| Maggie Childs | Kansas Equality Coalition |
| Thomas Witt | KANSAS EQUALITY COALITION |
| Larry R Baer | LCKM |
| Brian Dempsey | SRS |
| Tom Pance | PMCA of KS |
| Peter Ellenstrom | William Inge Center for the Arts |
| Marcia Cebulski | " " " " " " |
| Meghan Walsh | Francisco, Intern |
| Steven Brosemer | KSBTIP |
| Jean Bolini | Ks Bd of Tech. Prof. |
| Terry Heidner | KDOT |
| Scott Heidner | ACEC of Kansas |
| Eric Stafford | AGC of KS |
| Nick Jordan | Capitol Strategis |
| George Wengert | Reffler Companies |
| Derck Hein | Hein Law Firm |
| Christina Wood | Intern Faust Goudeau |
| Tom Beall | Arona Generic Opns |
| Amy Campbell | KABR |
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12

**Kansas Department of Revenue
Legislative Proposal ABC No. 2
2009 Session**

1. **Proposal ABC No. 2** – amend K.S.A. 41-2651 to allow the governing body of a city or county to request a hearing on whether a license should be issued, renewed, suspended, or revoked at any time.
2. **Summary.** Presently, the governing body of a city or county may request a hearing at the time of application for a new or renewal license to present evidence as to why that license should or should not be renewed or issued. This amendment will give the governing body the option of requesting a hearing at any time during a license year to present evidence as to why the license of any licensee should be revoked or suspended. The Director will then consider the evidence presented and make a determination in accordance with rules and regulations adopted by the Secretary.
3. **Administrative Impact.** N/A
4. **Fiscal Impact.** None.
5. **Policy Implications and Impact on the Agency Strategic Plan** - None

No impact to other agencies. No federal requirements.

6. Proposal Contacts.

Sarah Byrne, AAG

7. Full text of proposed amendment:

41-2651. Application for licensure or renewal; notice to governing body of city or county; hearing right of governing body to request hearing at any time. (a) When application for licensure or renewal of licensure as a club or drinking establishment is received by the director, the director shall notify the governing body of the city or county where the premises to be licensed are located, if such governing body requests such notification.

(b) No such license or renewal shall be granted by the director until the expiration of at least 10 days from the time of filing the application for licensure or renewal with the director, during which period the governing body of any city or county notified pursuant to subsection (a) may request the director to hold a hearing on the granting or refusal to grant such license or renewal.

(c) *At any time, the governing body of any city or county may request the director to hold a hearing on whether any license issued pursuant to this act should be revoked or suspended. The governing body shall provide the director reasonable cause to believe a hearing is necessary based upon factors included in rules and*

regulations adopted by the secretary. The director may refuse the governing body's request absent such reasonable cause.

(d) ~~The~~ *Any hearing on the application held pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act as provided in K.S.A. 41-2609 and amendments thereto.*

(e) ~~(e)~~ *At such hearing the governing body of such city or county shall have the right to appear before the director and present testimony and evidence and make recommendations regarding the granting or refusal to grant such license or renewal, or whether a license should be revoked or suspended. In determining whether to grant or to refuse to grant such license or renewal, or to revoke or suspend a license, the director shall take into consideration the testimony and evidence and recommendations of the governing body of such city or county. The director may refuse to grant such license or renewal, or may revoke or suspend a license based on the evidence gathered at such hearing, in the interest of protecting the public welfare, and in accordance with rules and regulations adopted by the secretary.*

~~(d) This section shall be part of and supplemental to the club and drinking establishment act.~~



REQUEST FOR BILL INTRODUCTION

TO: The Honorable Pete Brungardt, Chair
And Members of the Senate Committee on Federal and State Affairs

FROM: Whitney Damron
On Behalf of the Distilled Spirits Council of the United States

RE: Tastings Legislation for Beer, Wine and Spirits

DATE: January 29, 2009

Good morning Chairman Brungardt and Members of the Senate Committee on Federal and State Affairs. My name is Whitney Damron and I appear before you this morning to request introduction of legislation that would allow retail liquor dealers in our state to provide tastings of their products to consumers in their stores.

Currently there are ways a retailer can work within state law to provide tasting opportunities for potential customers, but the law is cumbersome and we believe should be clarified, with state oversight by the ABC.

Our proposal is modeled after Missouri law that has been in place for several years and appears to be of interest to consumers and retail liquor dealers alike.

On behalf of the Distilled Spirits Council of the United States, we would appreciate your introduction of our proposal. A copy of our proposed language is included with this cover page and has been provided to the Revisor's office.

Whitney Damron

Proposed Tastings Bill

Distilled Spirits Council of the United States

Requested By:

Whitney Damron
Whitney B. Damron, P.A.
919 S. Kansas Ave.
Topeka, KS 66612
(785) 354-1354
wbdamron@aol.com

New Sec. 1. (a) Notwithstanding any other provisions of this chapter to the contrary, any person who is licensed to sell intoxicating liquor in the original package at retail pursuant to KSA 41-308 under may apply to the secretary of revenue for an annual special permit to conduct wine, malt beverage and distilled spirit tastings on the licensed premises. A licensee under this section shall pay to the secretary of revenue an additional fifty dollars (\$50.00) a year payable at the same time and manner as other license fees.

(b) Nothing in this section shall be construed to permit the licensee to sell wine, malt beverages or distilled spirits for on-premises consumption.

(c) Samples must be from products in the inventory of the licensee.

(d) Sample sizes are limited to 100 milliliters for malt liquors, 50 milliliters for wine, 25 milliliters of liqueur or cordial, and 15 milliliters of distilled spirits. Samples must be of beverages that are otherwise for sale.

(e) The licensee may only conduct tastings one day a week and must provide notice to the director of the alcoholic beverage control no less than one-week in advance of its intent to conduct a tasting.

(f) The Secretary may adopt rules and regulations to implement the provisions of this section.

Good morning Chairman Brungardt and Members of the Committee.

My name is Maggie Childs and I am Chairperson of the Kansas Equality Coalition, the statewide organization working on behalf of lesbian, gay, bisexual and transgendered people in Kansas.

In August of 2007, Governor Sebelius issued an Executive Order extending non-discrimination protection to state employees on the basis of sexual orientation or gender identity.

It is clear from the large number of people who expressed relief and gratitude at that time that Kansas needs to expand the Kansas Acts Against Discrimination, and protect all Kansans from discrimination based on their sexual orientation or gender identity.

On behalf of the many people who fear to speak for themselves on this issue, I ask you to introduce this bill.

Thank you very much.

SENATE BILL NO. _____
By Committee on ^{Fed & State} Judiciary

AN ACT concerning the Kansas act against discrimination; relating to sexual orientation; gender identity; amending K.S.A. 44-1001, 44-1002, 44-1004, 44-1006, 44-1009, 44-1015, 44-1016, 44-1017, 44-1027 and 44-1030 and K.S.A. 2008 Supp. 44-1005 and repealing the existing sections.

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

Section 1. K.S.A. 44-1001 is hereby amended to read as follows: 44-1001. This act shall be known as the Kansas act against discrimination. It shall be deemed an exercise of the police power of the state for the protection of the public welfare, safety, health and peace of the people of this state. The practice or policy of discrimination against individuals in employment relations, in relation to free and public accommodations, in housing by reason of race, religion, color, sex, disability, national origin ~~or~~, ancestry, sexual orientation or gender identity, or in housing by reason of familial status is a matter of concern to the state, since such discrimination threatens not only the rights and privileges of the inhabitants of the state of Kansas but menaces the institutions and foundations of a free democratic state. It is hereby declared to be the policy of the state of Kansas to eliminate and prevent discrimination in all employment relations, to eliminate and prevent discrimination, segregation, or separation in all places of public accommodations covered by this act, and to eliminate and prevent discrimination, segregation or separation in housing.

It is also declared to be the policy of this state to assure equal opportunities and encouragement to every citizen regardless of race, religion, color, sex, disability, national origin ~~or~~, ancestry, sexual orientation or gender identity, in securing and holding, without discrimination, employment in any field of work or labor for which a person is properly qualified, to assure equal



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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Testimony of Deputy Attorney General Mike Leitch
Senate Federal and State Affairs Committee
January 29, 2009

Introduction

My name is Mike Leitch. I am the Deputy Attorney General responsible for the civil litigation division. Among other things, my division defends the state when it is sued for constitutional violations, civil rights violations, and other general tort claims. We also handle litigation with Indian tribes. I was asked to appear today to provide a status report on our litigation with the Wyandotte Tribe involving the casino in downtown Kansas City, Kansas.

The 7th Street Casino is owned by the Wyandotte Tribe of Oklahoma. The land used for that casino is known as the Shriner Tract. The building that now houses the casino is a former Masonic temple and has been listed on the National Register of Historic Places since 1985.

The State of Kansas has been involved in litigation over that casino since 1996. As the Tenth Circuit noted three years ago, "For ten years, the Wyandotte Nation, the State of Kansas, and the United States have been locked in litigation in multiple fora over the fate of the Shriner Tract, This long battle has produced a procedural history as complex as a random maze." *Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1249 (10th Cir. April 7, 2006). I will do my best to summarize it for you and then try to answer any questions you may have.

I. HISTORY OF WYANDOTTE TRIBE

The Wyandotte Tribe is not originally from Kansas, but in the mid 1840s they were given 23,000 acres at the junction of the Missouri and Kaw Rivers. In 1855, the tribe was dissolved and all that land was ceded to the U.S., with the exception of what is now known as the Huron Cemetery in KCK. The Huron Cemetery is owned by the U.S. Government for the Wyandottes - and has been since 1855.

When the tribe was dissolved, one group of Wyandottes refused to accept the federal government's citizenship offers and moved to Oklahoma where it was reconstituted as a tribe in 1867. It has remained there ever since.

In 1984, Congress enacted Public Law 98-602, which provided compensation for the Wyandottes for various land ceded to the U.S. in the 1800s. Pub.L. 98-602 included a provision that “a sum of \$100,000 of such funds shall be used for the purchase of real property which shall be held in trust by the Secretary for the benefit of such Tribe.”

II. INDIAN GAMING REGULATORY ACT

In 1988 Congress passed the Indian Gaming Regulatory Act. The IGRA included a provision disallowing gaming on trust land acquired after 1988, with a few exceptions. One exception would allow gaming on after-acquired land if the “lands are located within or contiguous too the boundaries of the reservation of the Indian tribe on October 17, 1988.” Another exception was for land taken into trust “as part of a settlement of a land claim.” *See* 25 U.S.C. 2719 (b)(1)(B)(i).

III. SHRINER TRACT LITIGATION BEGINS

In 1995 the Wyandottes agreed to purchase what has become known as “the Shriner Tract.” It is .52 acres adjacent to the Huron Cemetery, containing an old Shriner Temple. The Tribe maintains it was purchased solely with Public Law 98-602 funds.

In 1996, the Department of Interior decided to take the Shriner Tract in trust for the Wyandottes and to allow gaming on it, reasoning that the Huron Cemetery was a “reservation,” and the Shriner tract was immediately adjacent to it.

A. The First Federal Lawsuit

Three out of four of the State’s resident tribes, along with the State of Kansas, filed suit in federal court on July 12, 1996 to challenge the Department of Interior’s decision. The State and resident tribes obtained a temporary restraining order preventing the Department of Interior from taking the Shriner Tract into trust. The Wyandottes intervened and appealed to the Tenth Circuit, alleging that the purchase of the Shriner Tract would fall through if it was not allowed to go into trust immediately. The Tenth Circuit modified the TRO, allowing the Department of Interior to take the property into trust, “subject to the conditions . . . that the respective rights of the parties to obtain judicial review of all issues which have been raised . . . including . . . whether gaming shall be permitted on the subject land.”

In this first challenge, the Tenth Circuit ultimately determined that the Huron Cemetery was not a “reservation” for purposes of IGRA. The Court also held that the Department of Interior had a duty to take the land into trust pursuant to Public Law 98-602, but remanded the case back to the Interior Department to determine whether the only funds used in the purchase were the \$100,000 (plus interest) of Pub.L. 98-602 funds. That was in August 2001.

The Department of Interior again determined that only Public Law 98-602 funds were used. When this determination came back to federal court, the judge ordered that any succeeding challenge be brought in a separate suit.

B. The Second Federal Lawsuit

Pursuant to the Court order, the parties brought a new case on July 11, 2003. In that round of litigation, Judge Julie Robinson in May 2006 held that only Public Law 98-602 funds were used in the purchase. In doing so, the Judge rejected Plaintiffs' argument that the real purchase price for the Shriner tract was \$325,000 and thus could not have been purchased with Pub.L. 98-602 funds.

Among the evidence for the State's argument is that the real estate commission of 6% in the amount of \$19,500 was paid at closing – which amounts to a \$325,000 purchase price. Indeed that was the original price, but late in the game, the deal was carved into two agreements – a \$180,000 purchase agreement and a non-compete, nondisclosure agreement for the balance. That commission, we believe, demonstrates precisely that the Tribe did not purchase the land with the right funds.

We appealed, but the Tenth Circuit failed to reach the issue. Instead, it held that because the tract had already been taken into trust when the case was filed, the Federal Quiet Title Act prevented any challenge. This argument was raised for the first time – after a decade of litigation – while the case was on appeal. Nevertheless, the Tenth Circuit vacated the district court and ordered the case dismissed.

However, in their decision, two of the judges strongly suggested that the first case be reopened. Their reasoning was that the parties had followed all of the Court's orders in filing the second suit, and the jurisdictional bar would not apply in the original 1996 case because it was filed before the Shriner Tract was taken into trust.

C. Current Status

In November 2007 we asked the district court - Judge Rogers - to reopen the first case. Judge Rogers did reopen the first case, but in September 2008, on motion of the federal government, he dismissed it. Judge Rogers ruled that because the Department of Interior had already taken the land into trust, the court lacked jurisdiction to consider challenges to it. He based this ruling of a federal law called the Quiet Title Act. This means that there still has yet to be a final determination by the Court of Appeals that only Public Law 98-602 funds were used in the purchase.

The State of Kansas, the Iowa Tribe, and the Sac and Fox Tribe have jointly appealed Judge Rogers' decision. We have submitted our brief and are waiting on the federal government to submit its brief. The court will likely set the case for oral argument sometime later this year.

IV. GAMBLING ON THE SHRINER TRACT

While this litigation was ongoing, the Wyandottes brought two mobile homes to the site and commenced a casino operation. On April 2, 2004, armed with a state court approved search warrant, KCK Police and the KBI raided the casino and confiscated the gaming machines, and seized a bank account owned by the Wyandottes.

The Wyandottes sued. Federal Judge Julie Robinson held that because the land was in trust, pursuant to the IGRA, Kansas had no jurisdiction to regulate gaming. She held that only the federal government has criminal authority over gaming on Indian lands. She enjoined Kansas from exercising jurisdiction over gaming on the Shriner Tract and ordered the property returned. Judge Robinson's injunction was upheld on appeal to the Tenth Circuit.

Since that decision, the Wyandottes have remodeled the Shriner building and have opened a casino. Pursuant to a federal court order that remains in place today, Kansas cannot exercise jurisdiction over it, and the casino has now been open for a full year.

The gambling operation is limited to what is known as Class II gaming. That generally means bingo and similar games played against other players and not the house. Class III gaming includes typical slot machines, blackjack, and other table games played against the house. The Tribe has to negotiate a compact with the State in order to conduct Class III gaming. They have asked to start those negotiations, but they have not yet begun.

Therefore, as a practical matter, all we can do - and what we plan to do -- is continue the litigation until at least the Court of Appeals can review whether the Tribe used the right funds to buy the land, and thus whether gambling there is legal.

Court Decisions and Litigation History Relating to Wyandotte Nation's Acquisition of Shriner Tract for Casino and Legality of Gambling:

Sac & Fox Nation of Missouri v. Babbitt, 1996 WL 512147, Case No. 96-4129, 96-4130 (D.Kan. 1996) (Rogers, J.) (granting Wyandotte Tribe's motion to intervene as a defendant).

Sac & Fox Nation of Missouri v. Babbitt, 92 F.Supp.2d 1124, Case No. 96-4129-RDR (D.Kan. March 2, 2000) (Rogers, J.) (dismissing complaint for failure to join an indispensable party, the Tribe; noting that had it been required to address the merits, the court would have ruled that Pub.L. 98-602 was a mandatory trust acquisition statute, and that the non-discretionary nature of the decision exempted it from the application of both NEPA and NHPA).

Sac & Fox Nation of Missouri v. Babbitt, 2000 WL 1926262, Case No. 96-4129-RDR (D.Kan. November 14, 2000) (determining that a bond should be required as security for an injunction issued by the Tenth Circuit while this case is on appeal, and setting bond at \$50,000 rather than the tribe's request for \$5 million).

Sac & Fox Nation v. Norton, 240 F.3d 1250, Case No. 00-3063 (10th Cir. Feb. 27, 2001) (holding that (1) Tribe was not a necessary or indispensable party to action; (2) federal legislation appropriating funds to Tribe in settlement of claims, and giving directives as to specified uses of funds, gave Secretary nondiscretionary duty to acquire tract; (3) Secretary thus was not required to comply with NHPA or NEPA in acquiring tract; but (4) evidence did not support finding that appropriated funds were used to purchase tract; and (5) cemetery adjacent to tract, which was reserved to tribe in 1855 treaty but had not since been occupied, was not a “reservation” under provision of IGRA allowing gaming on tracts adjacent to reservations).

Sac and Fox Nation of Missouri v. Kempthorne, 2008 WL 4186890, Case No. 96-4129-RDR (D.Kan. Sep 10, 2008) (granting federal government’s motion to dismiss on the basis of the Quiet Title Act).

Kickapoo Tribe of Indians v. Deer, 4 Fed.Appx. 728, 2001 WL 193810, Case No. No. 00-3095 (10th Cir. Feb. 27, 2001) (Wyandotte Tribe was not a necessary and indispensable party to Kickapoo’s action challenging the Secretary's determination regarding the Shriner Tract).

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Wyandotte Nation v. National Indian Gaming Commission, 2004 WL 3633976, Case No. 04-1727-RMU (D.D.C. 2004) (challenge to NIGC decision that Wyandotte may not conduct gaming on the Shriner Tract - transferred to federal court in Kansas on May 15, 2005).

Wyandotte Nation v. National Indian Gaming Commission, 2004 WL 759626, Case No. 04-2140-JAR (D.Kan. April 7, 2004) (denying renewed motion for temporary restraining order).

Wyandotte Nation v. National Indian Gaming Commission, 99 Fed.Appx. 836, 2004 WL 1098977, Case No. 04-3135 (10th Cir. May 18, 2004) (dismissing appeal for lack of jurisdiction to review the denial of the TRO).

Wyandotte Nation v. National Indian Gaming Commission, 437 F.Supp.2d 1193, Case No. 05-2210-JAR (D.Kan. 2006) (Robinson, J.) (Shriner tract did not qualify for application of the last reservation exception to IGRA’s prohibition of gaming on trust lands acquired after October 17, 1988; tract did not qualify for application of the restored lands exception; but NIGC's decision – that tract did not qualify for application of the settlement of a land claim exception to IGRA – was arbitrary, capricious and unsupported by law).

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Wyandotte Nation v. Sebelius, 337 F.Supp.2d 1253, Case No. 04-2140-JAR (D.Kan. Oct. 06, 2004) (enjoining Kansas from enforcing its gambling laws on Shriner Tract; ordering State to return money and property seized in raid; and enjoining Tribe from conducting gaming on Shriner Tract).

Wyandotte Nation v. Sebelius, 443 F.3d 1247, 1249, Case Nos. 04-3431, 04-3432 (10th Cir. April 7, 2006) (“For ten years, the Wyandotte Nation, the State of Kansas, and the United States have been locked in litigation in multiple fora over the fate of the Shriner Tract, a piece of land in downtown Kansas City, Kansas. This long battle has produced a procedural history as complex as a random maze.”) (reversing preliminary injunction barring the tribe from conducting gaming on the Shriner Tract; affirming injunction against Kansas officials preventing them from enforcing state gaming laws on the Shriner Tract and ordering them to return money and property seized in raid).

+++++

Governor of State of Kansas v. Norton, 2004 WL 955398, Case No. 03-4140-JAR (D.Kan. 2004) (denying plaintiffs' motion for leave to conduct discovery and supplement the administrative record).

Governor of State of Kansas v. Norton, 2005 WL 1785275, Case No. 03-4140-JAR (D.Kan. 2005) (Robinson, J.) (remanding the case to the agency for the limited purpose of additional investigation or explanation of the evidence set forth in plaintiffs' Exhibit B – an October 12, 1995 letter addressed to Guarantee Title Company and \$5,000 check purportedly drawn on the account of North American Sports Management (NORAM) for initial escrow deposit to buy the Shriner Tract).

Governor of Kansas v. Norton, 430 F.Supp.2d 1204, Case No. 03-4140-JAR (D.Kan. 2006) (affirming Secretary's decision that Shriner Tract was purchased with only Pub.L. 98-602 funds).

Governor of Kansas v. Kempthorne, 516 F.3d 833 (10th Cir. Jan 30, 2008) (holding that Court lacked jurisdiction to review whether Shriner Tract was purchased with Pub.L. 98-602 funds, because case was filed after land was already taken into trust).



The William Inge Center for the Arts

Honoring Playwrights
Since 1982

- Jerome Lawrence
- William Gibson
- Robert Anderson
- John Patrick
- Garson Kamin
- Sidney Kingsley
- Robert E. Lee
- Horton Foote
- Betty Comden
- Adolph Green
- Edward Albee
- Peter Shaffer
- Wendy Wasserstein
- Terrence McNally
- Arthur Miller
- August Wilson
- Neil Simon
- Stephen Sondheim
- John Guare
- A. R. Gurney
- Lanford Wilson
- John Kander
- Fred Ebb
- Romulus Linney
- Arthur Laurents
- Tina Howe
- Sheldon Harnick
- Christopher Durang

January 29, 2009

State and Federal Affairs Committee
State Capitol Building, Room 136 North
Topeka, KS

RE: SB1: declaring the William Inge Theatre Festival as Kansas' official state theatre festival.

William Inge, Kansas' most famous playwright, grew up in Independence. He brought the country to a closer understanding and appreciation of Middle America and the struggles of ordinary people by drawing deeply complex and humane characters. His remarkable talents made him the most successful American playwright of the 1950's with four consecutive hit plays: "Come Back, Little Sheba," "Picnic," "Bus Stop," and "The Dark at the Top of the Stairs." (Each was made into a successful movie with the biggest stars of the day). He won a Pulitzer-Prize for "Picnic" and an Oscar for his original screenplay, *Splendor in the Grass*. He died in 1973, but his plays continue to be performed all over the country and the world.

William Inge's entire library, manuscripts, artwork and assorted materials were left to Independence Community College (ICC) which he attended prior to graduating from KU. ICC, working with the National Endowment for the Humanities, catalogued the material which is now available to researchers from all over the world.

In 1982, Margaret Goheen, Inge's longtime friend and theatre instructor at ICC, partnered with the great playwright Jerome Lawrence, the writer of "Mame" and "Inherit the Wind." They decided to salute the legacy of William Inge by honoring a great American playwright each year with the *Distinguished Achievement in the American Theatre Award*. Starting as a half-day event, it grew over two decades into a four-day festival filled with performances, educational workshops and a scholars' conference. Now in its 28th year, the William Inge Theatre Festival has welcomed to Kansas nearly every major American Playwright of the last half of the 20th century: Including Arthur Miller, Neil Simon, Wendy Wasserstein, August Wilson, Kansas City native, John

Kander and Fred Ebb, and dozens more. Joining these world renowned playwrights are the finest theatre artists from across the country. Oscar, Tony, Emmy and Grammy winners, along with other noted theatre, film and television artists travel to Independence for this extraordinary event. A virtual “who’s who” of Broadway and Hollywood have visited Independence over the years. Their visits have created a lasting appreciation and respect between Kansas and the theatre world.

The William Inge Theatre Festival’s reputation has grown so much that we have even become a verb. At the Dramatist Guild, when an honoree is chosen, the other playwrights pronounce that they have been “Inged!”

Beginning in 1990 the William Inge Theatre Festival also created the *Otis Guernsey New Voices Playwriting* award. This award recognizes up-and-coming playwrights, and has developed a distinguished alumnus of those past winners, with many productions on and off-Broadway. Some of these winners include David Ives, Adam Bock, Teresa Rebeck, and David Hirson, among others.

The Festival has been featured in articles, newspapers and magazines across the country, been the subject of two PBS short documentaries, the Jim Lehrer NewsHour for our 25th Anniversary, in the NY Times Crossword Puzzle, and even as a Jeopardy question (and incidentally, answered correctly).

The William Inge Theatre Festival is known and respected throughout the nation by the theatre and entertainment industry, colleges and universities and the theatre-going public. Visitors from all over the country and the world attend each year, sharing in a celebration of the best theatre in the world and the best of small town hospitality. The Festival’s secret is the unique collaboration between Independence Community College, the William Inge Festival Foundation, the hundreds of community volunteers and the very finest theatre artists America has to offer.

For four days each year, the Festival becomes a haven, far from the bright lights and the big city, to celebrate American theatre, and revel in the true graciousness of small-town Kansas hospitality. Every participant discovers or rediscovers the uniqueness and commonality regardless of where they live. We have learned that it is often difficult to get someone from out of state to attend the Festival the first time; but it’s never hard to get them back.

The Festival has proven so successful that festivals in other states have been modeled after us. Our “step-children” include the Last Frontier Playwrights’ Conference in Alaska, the Great Plains Theatre Festival in Omaha, NE and the Horton Foote Theatre Festival in Waco, TX. They each owe their beginnings, in part, to the William Inge Theatre Festival.

Since 2001, the William Inge Theatre Festival has expanded, and is now one of the many year-round events produced by the William Inge Center for the Arts. The William Inge Center for the Arts offers year-round arts and arts-education programming. We’ve partnered with prominent educational and arts institutions, such as the Lincoln Center Institute for the Arts in Education, the 24-Hour Plays in New York City, and the Kennedy Center/American College Theatre Festival in Washington, DC.

P.O. Box 708 – Independence, KS 67301

Phone (620) 331-7768 – Toll Free (800) 842-6063, ext. 5835 – Fax (620) 331-9022 – info@ingecenter.org – www.ingecenter.org

We have become a major player in helping to develop and create new plays for America. This year marks our 30th professional playwright residency, where professional playwrights come to Independence, live in William Inge's home, work on their new plays and teach both at Independence Community College and a local high school. Professional guest artists aid the playwrights as they work on their new plays, and also offer workshops to the students. Many plays developed or researched during our residencies have gone on to full productions across the country. In fact one play, first seen in a workshop at the William Inge Center for the Arts goes into previews next week Off-Broadway.

The William Inge Center for the Arts is located on the campus of Independence Community College (ICC). Through our programs, ICC has developed one of finest two-year theatre programs in the region, featuring the best playwriting program in the nation. Nowhere else in the country can a student study with eight professional playwrights, and work with scores of guest artists, over two years; as they do through the William Inge Center for the Arts. The program has recruited very talented students not just from Kansas but from across the country. Most recently, this collaboration presented the world premiere of "Gathering Blue," a musical version of a best-selling novel by double Newbery Award-winner, Lois Lowry. A Grammy winning composer worked with the students and Lois Lowry herself spent several days with the students and the community.

The William Inge Center for the Arts is a unique example of collaboration. ICC's President and Board of Trustees works with the William Inge Festival Foundation, a Community Volunteer Steering Committee and a National Advisory Board made up of America's greatest theatre practitioners. Together with the Inge Center's small staff, these forces combine to provide an event that benefits the town of Independence, the citizens of Kansas, the entire region, and the theatre community throughout America. It generates tourism for the town, notoriety for the college, and leaves all of our out-of-state visitors with a new appreciation of what our state has to offer. For all of these reasons, I ask your consideration to bestow the great honor of declaring the William Inge Theatre Festival, the official State Theatre Festival of Kansas. Founders, Margaret Goheen (who passed away in 1990) and Jerome Lawrence (2004) would be so proud to know that their little Festival had grown to such renown and acclaim. I've no doubt that William Inge himself would be deeply honored to know that his beloved home state had honored him in this way. On behalf of the hundreds of students, citizens, volunteers and theatre artists who continue to support the William Inge Center for the Arts and the thousands of patrons who attend our events each year, I offer this testimony in support of passage of Senate Bill 1. I am happy to answer any questions at the conclusion of testimony.

Peter Ellenstein, Artistic Director, William Inge Center for the Arts

P.O. Box 708 – Independence, KS 67301

Phone (620) 331-7768 – Toll Free (800) 842-6063, ext. 5835 – Fax (620) 331-9022 – info@ingecenter.org – www.ingecenter.org

(6)

January 26, 2009

Marcia Cebulka
217 SW Woodlawn
Topeka KS 66606

Members of the State and Federal Affairs Committee
State Capitol Building
Room 136 North
Topeka, KS

For four days in April, Kansas becomes the center of the American theatre world. Each year at the William Inge Theatre Festival, an honored distinguished playwright is present (for example, Arthur Miller, Neil Simon, Stephen Sondheim, August Wilson, Wendy Wasserstein); new plays are given readings and productions; scholars deliver research papers; artists give and attend workshops on their profession; and theatre artists from New York City, Los Angeles and everywhere else picnic, hobnob, network, hone their craft, share trade secrets, celebrate the transformative art of theatre and enjoy the warm hospitality of small-town Kansas.

I have brought Washburn playwrighting students to the Festival who thought they would sit at the feet of their idol, Tina Howe, and instead found themselves chatting casually with her at lunch. I have forged artistic relationships at the Festival which resulted in my working with director Kevin Willmott and visual designer Michael Wood on the premiere production of *Now Let Me Fly*, a play written as playwright-in-residence at the Festival, premiered here in Topeka for the 50th anniversary of *Brown v. Board*, and since been performed nearly a thousand times nationally and internationally, filmed by a French film maker and highlighted in *American Theatre magazine*. I was honored to be commissioned by the Festival to write *TOUCHED*, which premiered there and allowed me to work with outstanding professional artists from Los Angeles and the state of Kansas. At the Festival, I have shared playwrighting experiences with America's greatest playwrights, I have dined with the editor of the *Best American Plays* volume, I have argued with the biographer of Kansas' most famous playwright William Inge, I have driven around the home town of Independence with the Director of Theatre for the National Endowment of the Arts, and I have danced with Broadway stars. I have learned and taught, I have experienced artistic triumphs and have been moved to tears.

The William Inge Theatre Festival brings us all together, lets us be accessible to one another, whether we be student or honoree, workshop attendee or movie star, Kansas playwright or L.A. screen writer. We are there together, townspeople, theatre friends and colleagues, working, meeting, and learning from one another. The William Inge Theatre Festival is a national phenomenon and a state treasure. We Kansans deserve to be truly proud of the William Inge Theatre Festival.

- Marcia Cebulka, playwright

Sen Fed & State

Attachment 6
1-29-09

SENATE BILL No. 53

By Committee on Federal and State Affairs

1-21

9 AN ACT concerning cereal malt beverages; relating to discretion by cities
10 in granting and suspending or revoking a retailer's license; amending
11 K.S.A. 2008 Supp. 41-2703 and 41-2708 and repealing the existing
12 sections.

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

15 Section 1. K.S.A. 2008 Supp. 41-2703 is hereby amended to read as
16 follows: 41-2703. (a) After examination of an application for a retailer's
17 license, the board of county commissioners or the director shall, if they
18 approve the same, issue a license to the applicant. ~~Except as provided in~~
19 ~~subsection (b), the~~ governing body of the city shall, if the applicant is
20 qualified as provided by law, issue a license to such applicant.

The

21 (b) ~~No retailer's license shall be issued~~ ~~The board of county commis-~~
22 ~~sions shall not be required to issue a retailer's license~~ to:

No retailer's license shall be issued

23 (1) A person who is not a resident of the county in which the place
24 of business covered by the license is located, has not been a resident of
25 such county for at least six months or has not been a resident in good
26 faith of the state of Kansas.

27 (2) A person who has not been a resident of this state for at least one
28 year immediately preceding application for a retailer's license.

29 (3) A person who is not of good character and reputation in the com-
30 munity in which the person resides.

31 (4) A person who is not a citizen of the United States.

32 (5) A person who, within two years immediately preceding the date
33 of application, has been convicted of a felony or any crime involving moral
34 turpitude, drunkenness, driving a motor vehicle while under the influence
35 of intoxicating liquor or violation of any other intoxicating liquor law of
36 any state or of the United States.

37 (6) A partnership, unless all the members of the partnership are oth-
38 erwise qualified to obtain a license.

39 (7) A corporation, if any manager, officer or director thereof or any
40 stockholder owning in the aggregate more than 25% of the stock of such
41 corporation, would be ineligible to receive a license hereunder for any
42 reason other than the citizenship and residency requirements.

43 (8) ~~A corporation, if any manager, officer or director thereof, or any~~

1 ~~stockholder owning in the aggregate more than 25% of the stock of such~~
 2 ~~corporation, has been an officer, manager or director, or a stockholder~~
 3 ~~owning in the aggregate more than 25% of the stock, of a corporation~~
 4 ~~which: (A) Has had a retailer's license revoked under K.S.A. 41-2708, and~~
 5 ~~amendments thereto; or (B) has been convicted of a violation of the drink-~~
 6 ~~ing establishment act or the cereal malt beverage laws of this state.~~

7 (9) A person whose place of business is conducted by a manager or
 8 agent unless the manager or agent possesses all the qualifications of a
 9 licensee.

(9)

10 (10) A person whose spouse would be ineligible to receive a retailer's
 11 license for any reason other than citizenship, residence requirements or
 12 age, except that this subsection (b)(10) shall not apply in determining
 13 eligibility for a renewal license.

(10)

14 (11) A person whose spouse has been convicted of a felony or other
 15 crime which would disqualify a person from licensure under this section
 16 and such felony or other crime was committed during the time that the
 17 spouse held a license under this act.

18 (c) Retailers' licenses shall be issued either on an annual basis or for
 19 the calendar year. If such licenses are issued on an annual basis, the board
 20 of county commissioners or the governing body of the city shall notify the
 21 distributors supplying the county or city on or before April 1 of the year
 22 if a retailer's license is not renewed.

23 Sec. 2. K.S.A. 2008 Supp. 41-2708 is hereby amended to read as
 24 follows: 41-2708. (a) The board of county commissioners or the governing
 25 body of any city, upon five days' notice to the persons holding a license,
 26 shall may revoke or suspend the license for any one of the following
 27 reasons:

28 (1) The licensee has fraudulently obtained the license by giving false
 29 information in the application therefor;

30 (2) the licensee has violated any of the provisions of K.S.A. 41-2701
 31 et seq., and amendments thereto, or any rules or regulations made by the
 32 board or the city, as the case may be;

33 (3) the licensee has become ineligible to obtain a license under this
 34 act;

35 (4) drunkenness of the licensee or permitting any intoxicated person
 36 to remain in or upon the licensee's place of business;

37 (5) the sale of cereal malt beverages to any person under the legal
 38 age for consumption of cereal malt beverage;

39 (6) the nonpayment of any license fees;

40 (7) permitting any gambling in or upon the licensee's place of
 41 business;

42 (8) permitting any person to mix drinks with materials purchased in
 43 or upon the place of business or brought in for that purpose;

After examination of an application for a retailer's license, the board of county commissioners or the governing body of a city may deny a license to a person, partnership or corporation if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, has been an officer, manager, director or a stockholder owning in the aggregate more than 25% of the stock, of a corporation which has:
 (1) Had a retailer's license revoked under KSA 41-2708, and amendments thereto; or
 (2) been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this state.
 (d)

1 (9) the employment of persons under 18 years of age in dispensing
2 or selling cereal malt beverages;

3 (10) the employment or continuation in employment of a person in
4 connection with the sale, serving or dispensing of cereal malt beverages
5 if the licensee knows such person has been, within the preceding two
6 years, adjudged guilty of a felony or of any violation of the intoxicating
7 liquor laws of this state, another state or the United States;

8 (11) the sale or possession of, or permitting any person to use or
9 consume on the licensed premises, any alcoholic liquor as defined by
10 K.S.A. 41-102, and amendments thereto;

11 (12) the licensee has been convicted of a violation of the beer and
12 cereal malt beverage keg registration act; or

13 (13) there has been a violation of K.S.A. 21-4106 or 21-4107, and
14 amendments thereto, in or upon the licensee's place of business.

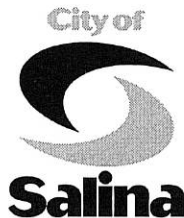
15 (b) The provisions of subsections (a)(8) and (11) shall not apply if the
16 place of business or premises also are currently licensed as a club or
17 drinking establishment pursuant to the club and drinking establishment
18 act.

19 (c) Within 20 days after the order of the board revoking or suspending
20 any license, the licensee may appeal to the district court and the district
21 court shall proceed to hear such appeal as though such court had original
22 jurisdiction of the matter. Any appeal taken from an order revoking or
23 suspending the license shall not suspend the order of revocation or sus-
24 pension during the pendency of any such appeal. ~~In case of the revocation~~
25 ~~of the license of any licensee, no new license shall be issued to the former~~
26 ~~licensee, or to any person acting for or on the former licensee's behalf,~~
27 ~~for a period of six months thereafter.]~~

28 Sec. 3. K.S.A. 2008 Supp. 41-2703 and 41-2708 are hereby repealed.

29 Sec. 4. This act shall take effect and be in force from and after its
30 publication in the statute book.

CITY MANAGER'S OFFICE
Jason A. Gage
City Manager
300 West Ash · P.O. Box 736
Salina, Kansas 67402-0736



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SB 53 Testimony to Senate Committee on Federal and State Affairs

By: Jason A. Gage – January 28, 2009

LEGISLATIVE REQUEST:

The City of Salina is respectfully requesting that you consider amending K.S.A. 2006 Supp. 41-2703 and 41-2708 by supporting the passage of Senate Bill 53 for the following reason. Section 1 of the current statute requires that a cereal malt beverage (“CMB”) license not be issued if the applicant is in violation of any provision contained in subsections (b)(1) through (b)(11). Section 2 currently requires that a license be revoked or suspended if the licensee is in violation of any provision contained in subsections (2)(1) through (2)(13). Neither of these two sections provides any discretion to the local licensing authority regarding these actions.

Our specific request as provided for under SB 53 is that the local licensing authority be granted reasonable discretion with regards to CMB license issuance, suspension and revocation actions. This is to ensure the penalty applied is fair and equitable with regard to the violation of the license holder.

ISSUE OR CHALLENGE:

The City of Salina is properly enforcing the CMB statute as written. This has resulted in numerous hearings with CMB license holders, including those that have sound, documented management policies and practices. From these hearings, multiple suspensions against local CMB license holders have been issued due to the prescriptive penalty requirements in the current statute. While Salina’s CMB license holders are in agreement with the City that these actions are statutorily required, they are also in agreement that the prescribed penalties for CMB violations are extremely inequitable and overly burdensome when compared to the statewide enforcement of alcoholic liquor violations.

Sen Fed & State

Attachment 8
1-29-09

REASON FOR CHANGE:

Most of our concerns are related the provision restricting the sale of CMB products to minors. The reason is that this is one of the most distinctive and common violations we see. The City of Salina believes strongly in preventing sales to minors, which is very much in accordance with the current CMB statute.

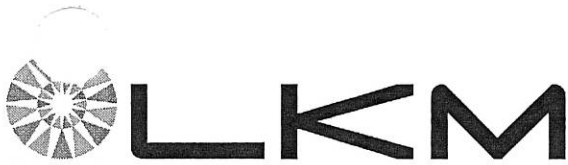
However, I would like to provide an example of the difficulty in enforcing the current CMB penalty provisions. Under the current statute Section 1(b)(8)(B), the City could not issue a CMB license to a corporation if a manager, officer, director or stockholder holding in aggregate more than 25% of the stock were convicted of the CMB laws or drinking establishment laws of the State, without reference to the prior date of the conviction. This provides a scenario in which a license holder could be suspended under Section 2(a)(5) for “the sale of cereal malt beverages to any person under the legal age for consumption of cereal malt beverage”, retain their license for the duration of the year, and then not be issued a license for the ensuing year. This scenario did occur in Salina in 2006. With regard to a similar penalty situation in Salina last year, a company chose to reorganize its corporate structure to get around the statutory provisions and obtain a new license.

We believe that reasonable licensing discretion would ensure an equitable penalty is applied to CMB license holders in violation of the CMB statute, but would also prevent the double jeopardy or creative restructuring scenarios as previously described. In addition, providing discretion to City and County boards of commissioners for applying penalties to the prescribed violations found in K.S.A. 2006 Supp. 41-2703 and 41-2708 will provide for a more effective use of warnings, probationary periods, relevant CMB training, and other similar actions for minor violations.

FINANCIAL AND/OR TAXING IMPLICATIONS:

We do not find that this item will have any negative financial or taxing impact on the State of Kansas, any other municipality or CMB retailers.

Thank you once again for taking the time to consider SB 53, which we believe to be a very timely and worthwhile statutory revision request.



League of Kansas Municipalities

Date: January 29, 2009
To: Senate Committee on Federal and State Affairs
From: Larry R. Baer
Assistant General Counsel
Re: SB 53
Testimony in Support

Thank you for allowing me to appear before you today and present testimony in support of Senate Bill 53 on behalf of the League of Kansas Municipalities and its 627 member cities.

It is our understanding that SB 53, as written, amends existing law to give cities and counties more discretion in the granting of retailer's cereal malt beverage (CMB) licences and in the suspension or revocation of the licenses.

The League of Kansas Municipalities supports this proposed change in current law. However, the League believes that SB 53, as written contains some drafting errors that need to be remedied. A mark-up of SB 53 showing our requested changes is attached to this written testimony.

The first change is the deletion of "director" in subsection (a) of Section 1. This refers to the Director of the Alcohol Beverage Control (ABC) of the Department of Revenue. This is an erroneous reference to ABC as a licensing agent for the issuance of CMB licenses. Only cities and counties issue CMB licenses. The Director is not involved in the local CMB licensing process. Substituting "governing body of the city" correctly designates the parties that approve and issue CMB licenses.

The second change deletes the last sentence of subsection (a), including the proposed new language and inserts "or the governing body of the city" to the new language proposed in subsection (b). We believe that this correctly reflects the intent of proposed legislation and presents a bill that is more easily read.

No other changes are requested.

While the League supports the intent behind the proposed legislation, we believe that the desired results can be best obtained by making the amendments discussed above and shown on the attached mark-up of SB 53. The League respectfully requests that you make the requested changes to SB 53 and pass the amended bill out favorably.

Thank you.

governing body of
the city

Session of 2009

SENATE BILL No. 53

By Committee on Federal and State Affairs

1-21

9 AN ACT concerning cereal malt beverages; relating to discretion by cities
10 in granting and suspending or revoking a retailer's license; amending
11 K.S.A. 2008 Supp. 41-2703 and 41-2708 and repealing the existing
12 sections.
13

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

15 Section 1. K.S.A. 2008 Supp. 41-2703 is hereby amended to read as
16 follows: 41-2703. (a) After examination of an application for a retailer's
17 license, the board of county commissioners or the ~~director~~ shall, if they
18 approve the same, issue a license to the applicant. *Except as provided in*
19 *subsection (b), the governing body of the city shall, if the applicant is*
20 *qualified as provided by law, issue a license to such applicant.*

21 (b) ~~No retailer's license shall be issued. The board of county commis-~~
22 ~~sions shall not be required to issue a retailer's license to:~~

23 (1) A person who is not a resident of the county in which the place
24 of business covered by the license is located, has not been a resident of
25 such county for at least six months or has not been a resident in good
26 faith of the state of Kansas.

27 (2) A person who has not been a resident of this state for at least one
28 year immediately preceding application for a retailer's license.

29 (3) A person who is not of good character and reputation in the com-
30 munity in which the person resides.

31 (4) A person who is not a citizen of the United States.

32 (5) A person who, within two years immediately preceding the date
33 of application, has been convicted of a felony or any crime involving moral
34 turpitude, drunkenness, driving a motor vehicle while under the influence
35 of intoxicating liquor or violation of any other intoxicating liquor law of
36 any state or of the United States.

37 (6) A partnership, unless all the members of the partnership are oth-
38 erwise qualified to obtain a license.

39 (7) A corporation, if any manager, officer or director thereof, or any
40 stockholder owning in the aggregate more than 25% of the stock of such
41 corporation, would be ineligible to receive a license hereunder for any
42 reason other than the citizenship and residency requirements.

43 (8) A corporation, if any manager, officer or director thereof, or any

or the
governing body
of the city

1 stockholder owning in the aggregate more than 25% of the stock of such
2 corporation, has been an officer, manager or director, or a stockholder
3 owning in the aggregate more than 25% of the stock, of a corporation
4 which: (A) Has had a retailer's license revoked under K.S.A. 41-2708, and
5 amendments thereto; or (B) has been convicted of a violation of the drink-
6 ing establishment act or the cereal malt beverage laws of this state.

7 (9) A person whose place of business is conducted by a manager or
8 agent unless the manager or agent possesses all the qualifications of a
9 licensee.

10 (10) A person whose spouse would be ineligible to receive a retailer's
11 license for any reason other than citizenship, residence requirements or
12 age, except that this subsection (b)(10) shall not apply in determining
13 eligibility for a renewal license.

14 (11) A person whose spouse has been convicted of a felony or other
15 crime which would disqualify a person from licensure under this section
16 and such felony or other crime was committed during the time that the
17 spouse held a license under this act.

18 (c) Retailers' licenses shall be issued either on an annual basis or for
19 the calendar year. If such licenses are issued on an annual basis, the board
20 of county commissioners or the governing body of the city shall notify the
21 distributors supplying the county or city on or before April 1 of the year
22 if a retailer's license is not renewed.

23 Sec. 2. K.S.A. 2008 Supp. 41-2708 is hereby amended to read as
24 follows: 41-2708. (a) The board of county commissioners or the governing
25 body of any city, upon five days' notice to the persons holding a license,
26 ~~shall~~ may revoke or suspend the license for any one of the following
27 reasons:

28 (1) The licensee has fraudulently obtained the license by giving false
29 information in the application therefor;

30 (2) the licensee has violated any of the provisions of K.S.A. 41-2701
31 et seq., and amendments thereto, or any rules or regulations made by the
32 board or the city, as the case may be;

33 (3) the licensee has become ineligible to obtain a license under this
34 act;

35 (4) drunkenness of the licensee or permitting any intoxicated person
36 to remain in or upon the licensee's place of business;

37 (5) the sale of cereal malt beverages to any person under the legal
38 age for consumption of cereal malt beverage;

39 (6) the nonpayment of any license fees;

40 (7) permitting any gambling in or upon the licensee's place of
41 business;

42 (8) permitting any person to mix drinks with materials purchased in
43 or upon the place of business or brought in for that purpose;

1 (9) the employment of persons under 18 years of age in dispensing
2 or selling cereal malt beverages;

3 (10) the employment or continuation in employment of a person in
4 connection with the sale, serving or dispensing of cereal malt beverages
5 if the licensee knows such person has been, within the preceding two
6 years, adjudged guilty of a felony or of any violation of the intoxicating
7 liquor laws of this state, another state or the United States;

8 (11) the sale or possession of, or permitting any person to use or
9 consume on the licensed premises, any alcoholic liquor as defined by
10 K.S.A. 41-102, and amendments thereto;

11 (12) the licensee has been convicted of a violation of the beer and
12 cereal malt beverage keg registration act; or

13 (13) there has been a violation of K.S.A. 21-4106 or 21-4107, and
14 amendments thereto, in or upon the licensee's place of business.

15 (b) The provisions of subsections (a)(8) and (11) shall not apply if the
16 place of business or premises also are currently licensed as a club or
17 drinking establishment pursuant to the club and drinking establishment
18 act.

19 (c) Within 20 days after the order of the board revoking or suspending
20 any license, the licensee may appeal to the district court and the district
21 court shall proceed to hear such appeal as though such court had original
22 jurisdiction of the matter. Any appeal taken from an order revoking or sus-
23 pending the license shall not suspend the order of revocation or sus-
24 pension during the pendency of any such appeal. In case of the revocation
25 of the license of any licensee, no new license shall be issued to the former
26 licensee, or to any person acting for or on the former licensee's behalf,
27 for a period of six months thereafter.

28 Sec. 3. K.S.A. 2008 Supp. 41-2703 and 41-2708 are hereby repealed.

29 Sec. 4. This act shall take effect and be in force from and after its
30 publication in the statute book.

SENATE BILL No. 29

By Committee on Federal and State Affairs

1-14

9 AN ACT concerning the state board of technical professions; relating to
 10 licensure; amending K.S.A. 74-7003, 74-7009, 74-7013, 74-7018, 74-
 11 7021, 74-7022, 74-7023, 74-7025, 74-7026, 74-7029, 74-7031, 74-7034,
 12 74-7036 and 74-7041 and repealing the existing sections; also repealing
 13 K.S.A. 74-7043, 74-7044 and 74-7045.

14

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

16 Section 1. K.S.A. 74-7003 is hereby amended to read as follows: 74-
 17 7003. As used in ~~this act~~ K.S.A. 74-7001 *et seq.*, and amendments thereto:

18 (a) "Technical professions" includes the professions of engineering,
 19 land surveying, architecture, landscape architecture and geology as the
 20 practice of such professions are defined in ~~this act~~ K.S.A. 74-7001 *et seq.*,
 21 and amendments thereto.

22 (b) "Board" means the state board of technical professions.

23 (c) "License" means a license to practice the technical professions
 24 granted under ~~this act~~ K.S.A. 74-7001 *et seq.*, and amendments thereto.

25 (d) "Architect" means a person whose practice consists of:

26 (1) Rendering services or performing creative work which requires
 27 architectural education, training and experience, including services and
 28 work such as consultation, evaluation, planning, providing preliminary
 29 studies and designs, overall interior and exterior building design, the
 30 preparation of drawings, specifications and related documents, all in con-
 31 nection with the construction or erection of any private or public building,
 32 building project or integral part or parts of buildings or of any additions
 33 or alterations thereto, or other services and instruments of services related
 34 to architecture;

35 (2) representation in connection with contracts entered into between
 36 clients and others; and

37 (3) observing the construction, alteration and erection of buildings.

38 (e) "Practice of architecture" means the rendering of or offering to
 39 render certain services, as described in subsection (d), in connection with
 40 the design and construction or alterations and additions of a building or
 41 buildings; the design and construction of items relating to building code
 42 requirements, as they pertain to architecture, and other building related
 43 features affecting the public's health, safety and welfare; the preparation

10-2

1 plats; any of which embraces such service or work, either public or private,
 2 for any utilities, structures, buildings, machines, equipment, processes,
 3 work systems, projects and industrial or consumer products or equipment
 4 of a mechanical, electrical, hydraulic, pneumatic or thermal nature, in-
 5 sofar as they involve safeguarding life, health or property. As used in this
 6 subsection, "engineering surveys" includes all survey activities required
 7 to support the sound conception, planning, design, construction, main-
 8 tenance and operation of engineered projects, but excludes the surveying
 9 of real property for the establishment of land boundaries, rights-of-way,
 10 easements and the dependent or independent surveys or resurveys of the
 11 public land survey system.

12 (j) "Land surveyor" means any person who is engaged in the practice
 13 of land surveying as provided in ~~this act~~ K.S.A. 74-7001 *et seq.*, and
 14 *amendments thereto*, and who is licensed by the board.

15 (k) "Practice of land surveying" includes:

16 (1) The performance of any professional service, the Adequate per-
 17 formance of which involves the application of special knowledge and ex-
 18 perience in the principles of mathematics, the related physical and ap-
 19 plied sciences, the relevant requirements of law and the methods of
 20 surveying measurements in measuring and locating of lines, angles, ele-
 21 vation of natural and man-made features in the air, on the surface of the
 22 earth, within underground workings and on the bed of bodies of water
 23 for the purpose of determining areas, volumes and monumentation of
 24 property boundaries;

25 (2) the preparation of plats of land and subdivisions thereof, including
 26 the ~~planning, mapping,~~ topography, rights-of-way, easements and any
 27 other boundaries that affect rights to or interests in land, but excluding
 28 features requiring engineering or architectural design;

29 (3) the preparation of the original descriptions of real property for
 30 the conveyance of or recording thereof and the preparation of maps, plats
 31 and field note records that represent these surveys;

32 (4) the reestablishing of missing government section corners in ac-
 33 cordance with government surveys; ~~and~~

34 (5) the teaching of land surveying by a licensed land surveyor in a
 35 college or university offering an approved land surveying curriculum of
 36 four years or more; *and*

37 (6) *the locating or laying out of alignments, positions or elevations for*
 38 *the construction of* ~~fixed~~ *works* ~~whose construction involved or required~~
 39 ~~public funding~~.

40 (l) "Person" means a natural person, ~~firm, corporation or partnership~~
 41 *or business entity*.

42 (m) "Plat" means a diagram drawn to scale showing all essential data
 43 pertaining to the boundaries and subdivisions of a tract of land, as deter-

planning, mapping and

the

engineering

1 (d) Work involving matters of rates, rating and loss prevention by
2 employees of insurance rating organizations and insurance service organ-
3 izations and insurance companies and agencies.

4 (e) The performance of services by a licensed landscape architect or
5 ~~corporation~~ *business entity* issued a certificate of authorization to provide
6 services in landscape architecture under K.S.A. 74-7036, and amend-
7 ments thereto, in connection with landscape and site planning for the
8 sites, approaches or environment for buildings, structures or facilities.

9 (f) For the purposes of this section:

10 (1) "Building" means any structure consisting of foundation, floors,
11 walls, columns, girders, beams and roof, or a combination of any number
12 of these parts, with or without other parts and appurtenances thereto,
13 including the structural, mechanical and electrical systems utility services,
14 and other facilities as may be required for the structure.

15 (2) "Agricultural building" means any structure designed and con-
16 structed to house hay, grain, poultry, livestock or other horticultural prod-
17 ucts and for farm storage of farming implements. Such structure shall not
18 be a place for human habitation or a place of employment where agri-
19 cultural products are processed, treated or packaged; nor shall it be a
20 building or structure for use by the public.

21 Sec. 12. K.S.A. 74-7034 is hereby amended to read as follows: 74-
22 7034. The provisions of ~~this act~~ *K.S.A. 74-7001 et seq., and amendments*
23 *thereto*, requiring licensure or the issuance of a certificate of authorization
24 under K.S.A. 74-7036, and amendments thereto, to engage in the practice
25 of land surveying shall not be construed to prevent or to affect:

26 (a) Surveying, other than land surveying where such surveying is in-
27 cidental to the design or construction of engineering or architectural
28 works.

29 (b) The practice of land surveying by an individual of such individual's
30 own real property or that of such individual's employer for purposes other
31 than the conveyance of an interest in such real property.

32 (c) The surveying on farms for agricultural purposes other than the
33 conveyance of an interest in such farm property.

34 (d) The performance of services by a licensed landscape architect or
35 by a ~~corporation~~ *business entity* issued a certificate of authorization to
36 provide services in landscape architecture under K.S.A. 74-7036, and
37 amendments thereto, in connection with landscape and site planning for
38 the sites, approaches or environment for buildings, structures or facilities.

39 Sec. 13. K.S.A. 74-7036 is hereby amended to read as follows: 74-
40 7036. (a) ~~The practice of or offer to practice a technical profession by an~~
41 ~~individual licensed to practice the technical professions through a cor-~~
42 ~~poration as an officer, employee or agent of such corporation is authorized~~
43 ~~as provided under this section~~ *Notwithstanding any other provision of*

1 (⇔) (3) the satisfactory passage of such examinations in the funda-
2 mentals of geology and in geologic practice as utilized by the board.

3 (b) *The board may issue an intern geologist certificate to a person*
4 *who meets the education and examination qualifications prescribed by the*
5 *board.*

6 Sec. 15. K.S.A. 74-7003, 74-7009, 74-7013, 74-7018, 74-7021, 74-
7 7022, 74-7023, 74-7025, 74-7026, 74-7029, 74-7031, 74-7034, 74-7036,
8 74-7041, 74-7043, 74-7044 and 74-7045 are hereby repealed.

9 Sec. 16. This act shall take effect and be in force from and after its
10 publication in the statute book.

10-4

SENATE BILL No. 29

By Committee on Federal and State Affairs

1-14

9 AN ACT concerning the state board of technical professions; relating to
10 licensure; amending K.S.A. 74-7003, 74-7009, 74-7013, 74-7018, 74-
11 7021, 74-7022, 74-7023, 74-7025, 74-7026, 74-7029, 74-7031, 74-7034,
12 74-7036 and 74-7041 and repealing the existing sections; also repealing
13 K.S.A. 74-7043, 74-7044 and 74-7045.

14

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

16 Section 1. K.S.A. 74-7003 is hereby amended to read as follows: 74-
17 7003. As used in ~~this act~~ K.S.A. 74-7001 *et seq.*, and amendments thereto:

18 (a) "Technical professions" includes the professions of engineering,
19 land surveying, architecture, landscape architecture and geology as the
20 practice of such professions are defined in ~~this act~~ K.S.A. 74-7001 *et seq.*,
21 and amendments thereto.

22 (b) "Board" means the state board of technical professions.

23 (c) "License" means a license to practice the technical professions
24 granted under ~~this act~~ K.S.A. 74-7001 *et seq.*, and amendments thereto.

25 (d) "Architect" means a person whose practice consists of:

26 (1) Rendering services or performing creative work which requires
27 architectural education, training and experience, including services and
28 work such as consultation, evaluation, planning, providing preliminary
29 studies and designs, overall interior and exterior building design, the
30 preparation of drawings, specifications and related documents, all in con-
31 nection with the construction or erection of any private or public building,
32 building project or integral part or parts of buildings or of any additions
33 or alterations thereto, or other services and instruments of services related
34 to architecture;

35 (2) representation in connection with contracts entered into between
36 clients and others; and

37 (3) observing the construction, alteration and erection of buildings.

38 (e) "Practice of architecture" means the rendering of or offering to
39 render certain services, as described in subsection (d), in connection with
40 the design and construction or alterations and additions of a building or
41 buildings; the design and construction of items relating to building code
42 requirements, as they pertain to architecture, and other building related
43 features affecting the public's health, safety and welfare; the preparation

1 *law, a business entity may be organized for the practice of one or more*
2 *of the technical professions if: (1) One or more ~~of the corporate officers~~*
3 *~~of such corporation~~ principals is designated as responsible for the activ-*
4 *ities and decisions relating to the practice of such profession and is li-*
5 *icensed to practice such profession by the state board of technical profes-*
6 *sions and is a regular employee of and active participant in the ~~corporation~~*
7 *~~business entity~~; (2) ~~all personnel of such corporation who act in its behalf~~*
8 *~~in the practice of such profession~~ are each person engaged in the practice*
9 *of the technical profession is licensed to practice such profession by the*
10 *state board of technical professions or are persons lawfully practicing is*
11 *exempt from licensure under K.S.A. 74-7031 through 74-7035, and*
12 *amendments thereto, or are is exempt from examination for licensure in*
13 *this state under K.S.A. 74-7024, and amendments thereto; and (3) such*
14 *~~corporation~~ business entity has been issued a certificate of authorization*
15 *by the state board of technical professions.*

16 (b) A ~~corporation~~ *business entity* may apply to the board of technical
17 ~~professions~~ for a certificate of authorization, upon a form prescribed and
18 ~~furnished~~ by the board, listing the names and addresses of all ~~officers and~~
19 ~~members of the board of the corporation and also of an individual or~~
20 ~~individuals~~ *principals* licensed to practice a branch of the technical pro-
21 ~~fessions~~ *profession* ~~[and the name and address of the principals who will~~
22 ~~be responsible for the] practice of such branch of the technical professions~~
23 ~~in this state through such corporation, [activities and decisions relating to~~
24 ~~the practice of such profession]~~ and such other information as may be
25 required by the board of technical professions. The application for a cer-
26 tificate of authorization shall be accompanied by an application fee fixed
27 by the board under K.S.A. 74-7009, and amendments thereto. *Except as*
28 *provided in subsection (e), the certificate of authorization shall be re-*
29 *newed biennially.* The biennial renewal fee fixed by the board under
30 K.S.A. 74-7009, and amendments thereto, shall be accompanied by ~~the~~
31 ~~same form~~ *a form prescribed by the board* providing current information.
32 In the event of a change of any ~~officer of such corporation or a change~~
33 ~~of any member of the board~~ *principal*, such change shall be designated
34 ~~on such form and filed with~~ *provided to the board* within 30 days after
35 the effective date of such change.

36 (c) If the board of technical professions finds that such ~~corporation~~
37 *business entity* is in compliance with all of the requirements of this sec-
38 tion, the board shall issue a certificate of authorization to such ~~corporation~~
39 *business entity* designating the ~~branch or branches of the technical pro-~~
40 ~~fessions~~ *technical profession* for which such ~~corporation~~ *business entity* is
41 authorized to provide services. ~~A corporation to which a certificate of~~
42 ~~authorization has been issued is hereby authorized to provide services in~~
43 ~~the branch or branches of the technical professions for which such cor-~~

1 ~~(e)~~ (3) the satisfactory passage of such examinations in the funda-
2 mentals of geology and in geologic practice as utilized by the board.

3 (b) *The board may issue an intern geologist certificate to a person*
4 *who meets the education and examination qualifications prescribed by the*
5 *board.*

6 Sec. 15. K.S.A. 74-7003, 74-7009, 74-7013, 74-7018, 74-7021, 74-
7 7022, 74-7023, 74-7025, 74-7026, 74-7029, 74-7031, 74-7034, 74-7036,
8 74-7041, 74-7043, 74-7044 and 74-7045 are hereby repealed.

9 Sec. 16. This act shall take effect and be in force from and after its
10 publication in the statute book.