

MINUTES

JOINT COMMITTEE ON STATE-TRIBAL RELATIONS

September 26-27, 2006
Room 519-S and 514-S—Statehouse

Members Present

Representative Becky Hutchins, Chairperson
Senator Pete Brungardt, Vice-Chairperson
Senator Les Donovan
Senator Mark Gilstrap
Senator David Haley
Senator John Vratil
Representative John Edmonds
Representative Tom Sawyer
Representative Bonnie Sharp
Representative Arlen Siegfried
Matt All, Governor's Representative
Julene Miller, Attorney General's Representative

Tribal Representatives Present

Jim Foster, Iowa Tribe of Kansas and Nebraska
Russell Bradley, Kickapoo Tribe in Kansas
Tracy Stanhoff, Prairie Band Potawatomi Nation

Staff Present

Dennis Hodgins, Kansas Legislative Research Department
Kathie Sparks, Kansas Legislative Research Department
Mary Torrence, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Judy Swanson, Committee Secretary

**Tuesday, September 26
Morning Session**

The Joint Committee on State-Tribal Relations was called to order by temporary Committee Chairperson Matt All, Tuesday, September 26, 2006, Room 519-S of the Statehouse at 10:05 a.m.

Senator Vratil nominated Representative Hutchins to serve as Committee Chairperson. Representative Siegfried seconded the motion, and the motion passed unanimously.

Senator Vratil nominated Senator Brungardt to serve as Committee Vice-Chairperson. Representative Siegfried seconded the motion, and the motion passed unanimously.

Newly elected Chairperson Hutchins welcomed Committee members and invited them and staff to introduce themselves.

Mary Torrence, Revisor of Statutes, presented an update on congressional bills that would prohibit/restrict Native American lands from being taken into trust for Class III gaming purposes (Attachment 1). She gave the history of the compact between the Sac & Fox Nation and the Kickapoo Tribe, and the State of Kansas from 2004 to the present.

Under the Indian Gaming Regulatory Act (IGRA) tribal gaming may take place only on "Indian lands." In addition to reservation lands, that term includes lands over which a tribe has governmental authority and which are held in trust by the United States government for the tribe. There have been concerns over permitting Indian gaming on trust lands acquired after enactment of IGRA. In response, bills have been introduced in Congress to restrict gaming on off-reservations lands. HR 4893 by Representative Richard Pombo of California was defeated in the House on September 13. SB 2078 by Senator John McCain of Arizona is being blocked in the Senate. If action is not taken by the end of the year, this bill will have to be reintroduced if any action is to be taken on it.

Representative Pombo's bill would have prohibited a tribe from conducting gaming in any state other than the state where the tribe had a reservation on the date IGRA was enacted.

Senator McCain's bill would eliminate the exception to IGRA for gaming on land placed into trust after IGRA's passage in 1988. Tribal requests prior to April 15, 2006 to have lands placed into trust would be considered.

Ms. Torrence presented a Congressional Research Service Report entitled, *Indian Gaming Regulatory Act: Gaming on Newly Acquired Lands* (Attachment 2).

The report provides background information dealing with lands being placed into trust under IGRA and the exceptions to the lands being placed into trust.

She then updated the Committee on the Sac & Fox Nation and Kickapoo Tribe and the State of Kansas proposed compact for a casino in Wyandotte County (Attachment 3). The Joint Committee on State-Tribal Relations voted in 2004 to forward the compact to the Legislative Coordinating Council without recommendation. The Legislative Coordinating Committee took no action on the proposed compact. Formal written request to put the Wyandotte County land in trust for a casino has been submitted to the Secretary of Interior.

Ms. Torrence then distributed 2004 House Sub. for SB 9, with major provisions explained (Attachment 4). Tribes are required to maintain liability insurance coverage for their law enforcement

officers to have state police powers on the reservation. There have been concerns over whether the tribes have maintained this liability insurance coverage, and the reporting requirements of the tribes of the insurance to the Attorney General's Office.

SB 320 (2006), deals with jurisdiction of law enforcement officers on reservations, including a subsection requiring liability insurance coverage (Attachment 5). The bill requires insurance companies to notify the Attorney General's Office of such coverage. The bill passed the Senate in 2006, but did not receive a hearing in the House Committee. Chairperson Hutchins said the House did not have a hearing because of the concern the bill could be amended with gaming issues. Dennis Hodgins, Legislative Research Department, said SB 320 has a sunset clause and suggested the Committee might want to reconsider that clause.

Julene Miller said the Attorney General's Office does not know if tribes are currently carrying the proper liability insurance. The bill sets liability insurance amounts, but does not list maximum amounts as caps on this coverage. In response to a question, she said that a person could challenge the tribal police authority if the tribe does not follow the liability insurance provision.

Tracy Stanhoff, Prairie Band Potawatomi Nation, addressed SB 9 and SB 320. She said state police powers are working well for them, but they do come with their challenges. They are starting a Crime Stoppers Committee. They need to improve relations with members of their tribe and with Jackson County officials. She said her tribe does maintain the proper liability insurance, and it has had no problem acquiring the insurance. The tribe's insurance carrier never mentioned having caps on the coverage; however, she will check on that and report back. She said there is a problem with giving the information to the Attorney General's Office because of sovereignty. However, in the spirit of the bill, the information will be sent to the Attorney General's Office.

Staff was directed to find out how much Jackson County has to have in liability insurance.

Jim Foster, Vice Chairperson of the Iowa Tribe, said SB 9 was good for them as it created an atmosphere of trust and cooperation between the Indians and non-Indians. He said their police department has been allowed to operate as intended. He said his tribe also has the required insurance. He saw a challenge to the lawfulness of the insurance policies, and he is discussing that issue with Ms. Miller.

Maximum limits on liability insurance policies were discussed. Senator Vratil said tribes need to qualify for maximum aggregate claims, and they need to have a high aggregate liability limit. Representative Siegfried said sovereignty is a problem if the law is changed to require a larger aggregate limit.

Russell Bradley, Chairperson, Kickapoo Tribe, said there is an issue because of the tribe's sovereignty standing. He said the law works as it is now enacted, and he suggested no changes. Chairperson Hutchins said this is a very complicated issue.

Lamar Shoemaker, Brown County Sheriff, testified the current law is working. They work together with the tribes to get problems solved. He said currently, it saves the county a minimum of \$50,000 per year. He has three casinos in his county. He has personally seen two of the tribes' insurance policies. He said problems with SB 9 have been resolved.

Sergeant D. Howerton, Jackson County Sheriff's Department, agreed with Sheriff Shoemaker that the current law is working well and there is good cooperation with the tribe.

Chief of Police of the Iowa Tribe Jeff Frederick testified that cooperation between departments is working very well.

Brian Johnson, Special Assistant in the Attorney General's office, gave an update on the Supreme Court's decision on the motor fuel tax case involving the Prairie Band Potawatomi Nation and the State of Kansas, and the results of the subsequent appeal decision by the courts. The U.S. Supreme Court has upheld the Kansas motor fuels tax on a non-tribal distributor who received the fuel off of the Reservation. The Supreme Court ruled it did not apply to a tribe's sovereignty. No ruling has been made yet on the automobile license tag case.

Ms. Stanhoff commented that she found it problematic on how the Supreme Court came to its decision. She stated they take care of their reservation and the motor fuel tax helps to keep them self reliant.

Richard Cram, Kansas Department of Revenue, reported on the total motor fuel tax receipts for Kansas for the past two fiscal years (Attachment 6). Gasoline and gasohol motor fuel tax receipts were \$314.6 million for FY 2005 and \$309.8 million for FY 2006. The Kansas motor fuel tax at issue in the litigation is in the \$300,000/year figure or slightly higher. Mr. Cram also gave an explanation and implication of the United States Supreme Court's decision on the motor fuel tax involving the State of Kansas and the Prairie Band Potawatomi Nation (Attachment 7).

Matt All pointed out that the Department of Revenue does not set tax policy; it only enforces such policy. He stated that \$300,000/year of motor fuel tax revenue was a very small amount compared to the \$309.8 million received by the state.

Ms. Stanhoff said that it takes \$1.2 million to pave a mile of road on their reservation, and the motor fuel tax they generated, prior to the court decision, was used for that purpose.

It was stated that the motor fuel tax was divided between state highway fund and the city/county funds.

Ryan Dyer, Treasurer of the Potawatomi Nation, said they paid part of their motor fuel taxes under protest, and a portion not under protest. A portion is being held in escrow by the state.

Ms. Stanhoff testified that the Prairie Band Potawatomi Tribe has repeatedly attempted to include tribal vehicle registration and title information on the state law enforcement information system, but the Kansas Department of Revenue has refused to cooperate (Attachment 8). She said her tribe wants to cooperate with the state and does not want to be antagonistic in the licensing issue. She said there are approximately 200 people involved in licensing. Brian Johnson said the tribe's data could not be relied upon, and that is why the state opposes the licensing. He said safety was a key issue and automobile inspection was not addressed by the tribe. Another issue was officers stopping vehicles and not being able to get current information. Senator Donovan said he thought the safety and inspection issues could be easily solved by bringing the Tribe under other current state statutes.

Lana Oleen testified she had looked at the history of the automobile license tag issue as former Chairperson of this Committee, and it recommended several years ago that the Committee should work together with the tribes to get it resolved.

The Committee recessed at 11:45 a.m. for lunch.

Afternoon Session

The Committee reconvened at 1:35 p.m.

Eric Rucker, Attorney General's Office, presented an update on the court's decision dealing with the seizure of gaming equipment from the Wyandotte Tribe in Kansas City, Kansas by the State of Kansas. The equipment and money that were seized were returned two years ago, pursuant to Judge Robinson's order. He gave an update on the National Indian Gaming Commission (NIGC), and the U.S. Department of Justice's filing of an appeal on the court's decision dealing with lands being placed in trust for gaming purposes. In regard to the NIGC suit, there has been a notice of appeal and briefs are being written. The Attorney General's Office has not made a decision as to its involvement in the case.

An informal session of discussion ensued, dealing with the cooperation between the Prairie Band Potawatomi Nation and Jackson County concerning the U.S. Highway 75 and the 150th Road interchange in Jackson County. Ms. Stanhoff presented the Prairie Band Potawatomi Nation contributions to the 150th Road/US Hwy 75 interchange costs. She testified that on December 8, 1999, the Prairie Band Potawatomi Nation and Jackson County signed a cooperative agreement for the interchange, with the Nation contributing \$445,000 for the right-of-way, utility, relocation, and preliminary engineering. The agreement expressly limited the Nation's contribution to \$445,000 plus 5 percent for cost overruns.

Ms. Stanhoff presented the Prairie Band Potawatomi Nation's contribution to the 150th Road interchange and Highway 75 costs.

In October 2001, KDOT informed the County and the Nation of new cost estimates, which were 300 percent more than the original agreed upon amount. Instead of the agreed upon \$445,000, it was \$1,351,000.

On September 23, 2002, the Nation and the County signed an amended cooperative agreement, with the Nation agreeing to pay \$1,250,000 conditioned on the rest of the money coming from nontribal sources ([Attachment 9](#)).

The cost of the interchange has gone up 360 percent since the original estimates.

In spring 2006, Jackson County contacted the Nation and requested that it pay an additional \$264,986.61. The Nation offered to make a payment if the county would reach a compromise with the Nation on reservation fee-to-trust application ([Attachment 10](#)). The county declined the Nation's offer and the Nation declined the county's request. The Diamond Interchange is to be kept up by the state, and 150th Road is to be maintained by the Tribe.

Terry Heidner, Kansas Department of Transportation (KDOT), presented information about the US-75 and County Road 150 interchange project ([Attachment 11](#)). The total cost of the project is \$13.9 million. Jackson County is responsible for \$1.6 million of the total cost, which is 100 percent of the preliminary engineering, utility, relocation, and right-of-way costs. KDOT would be responsible for 100 percent of the costs for construction and inspection costs.

The project was let to construction in October 2005, for \$10.9 million and is scheduled for completion in the fall of 2007. The total estimated cost, including KDOT and local sponsor costs, is \$13.9 million.

It was noted that Jackson County Commissioners had been personally invited by Legislative Research staff to attend this meeting; however, they were not in attendance.

After discussion, the Committee adjourned at 2:15 p.m.

Wednesday, September 27 Morning Session

Chairperson Hutchins called the meeting to order at 9:05 a.m. on Wednesday, September 27, 2006, in Room 514-S of the Statehouse. The topic of State-Tribal cooperation continued, with the Tribal Council Chairpersons discussing tribal activities in coordination with state/local government efforts, and to review what is working and what problems exist.

Russell Bradley, Chairperson of the Kickapoo Tribe, said he felt this Committee has been beneficial to their Nation. He listed items he thought were still at issue.

- **Fuel Tax.** Although a fuel tax compromise was reached, they feel there is still progress that could be made in this area.
- **Gaming in Kansas City.** They will continue their efforts to open a casino in Kansas City, Kansas.
- **Water.** They have filed a lawsuit in federal court to sustain their water rights because they have a water shortage.
- **Property Taxes.** Tribal members should not be required to pay property taxes to Kansas.
- **Veterans' Services.** Veterans' services should be given in a fair and equitable manner to Indian veterans.

In response to Committee members' questions, Mr. Bradley said the American Legion has a staff position to help veterans, and the State Office of Veterans Services is not giving Indians referrals they should get for needed services.

Mr. Bradley said their Tribe has a paramount right to the water on their Reservation. When asked if it just would not be easier to put a small lake on the reservation itself, rather than off the reservation, he responded by stating there is a boundary dispute, they have procured two-thirds of the land already, and there is no other spot because piping water in is too expensive. He said the watershed board will not condemn the land needed. There seems to be no immediate solution to this dispute.

Chairperson Hutchins noted Nemaha-Brown Watershed District has the right of eminent domain. She requested staff to find out if there was an option to build a multi-purpose small lake within the reservation boundaries.

Ms. Stanhoff distributed a copy of testimony from December 19, 2001, for proposed legislation by Tribal Attorney David Prager, which was made to the Joint Committee concerning tribal tax and motor vehicle legislation. Proposed testimony suggested tribal excise tax credit for Indian

businesses in Indian country; state and local government tax exemptions for Indian Tribes; and recognition of vehicle titles and registration issued by Indian Tribes (Attachment 12).

She then made the following recommendations:

- **Health Care.** Health care funds should trickle down from the federal government, through the state government to their tribe.
- **Grants.** Arbitration for grants, rather than following Kansas law, should be granted so they can retain their sovereignty.
- **Economic Development.** They are in the process of taking over operation of their casino from Harrah's. They support reservation-based gaming only, and oppose all other gaming.

In response to Chairperson Hutchins, Ms. Stanhoff said her reservation chose to partner with the City of Holton for its water, and that has been a very good choice for them.

Ms. Stanhoff testified that their new health center will open October 18, and it is a state-of-the-art facility. They have ten examining rooms, physical therapy, all social service programs, an ambulance program, and other service programs. They will be bringing in specialists to work with their current physicians.

John McElroy, Executive Director, Kansas State Gaming, testified that they have gaming equipment within their office, so agents can practice and understand what to look for as problems in casinos. Tribal employees are invited and encouraged to attend their training sessions. In FY 2006, they provided training for 730 people. They are not required to do this under the compact, but it has been working out well. Reports to the tribes on criminal investigations are being made, and they are mostly for fraudulent checks.

Matt All, Governor's Office, gave a presentation on the Department of Interior's (National Indian Gaming Commission) *Rules and Regulations* (25 CFR Part 502) dealing with the "Definition for Electronic or Electromechanical Facsimile." The rules and regulations were created to define the difference between Class II and Class III gaming devices.

Mr. All outlined the differences between the three classes of gaming under IGRA. Class I is social and traditional Indian games; Class II is Bingo; and Class III is everything else. There is a different regulatory group for each class. The line between Class II and Class III has been blurred because of electronic gaming. He testified on how the lines have been drawn by the federal rules and regulations to designate the difference between a Class II and Class III game being played. Committee discussion followed with Mr. All.

Dennis Hodgins followed up on the Committee's request for insurance liability required in Jackson County (Attachment 13).

Jill Wolters, Revisor of Statutes Office, presented an amended balloon of SB 320 from the 2006 Session. (She noted if this bill were re-introduced in 2007, it would have a new bill number) (Attachment 14). The amended version would have an aggregate cap limit of \$2 million, and the sunset provision would be deleted.

Senator Brungardt made a motion that the Committee adopt the amended balloon version of SB 320. Representative Sawyer seconded the motion, and the motion passed.

Representative Gilstrap moved that the Committee recommend pre-filing the amended balloon version of SB 320 as a new bill to the Legislative Coordinating Council (LCC). Senator Brungardt seconded the motion, and the motion passed.

The Committee agreed to further recommend to the LCC that the bill be introduced in the Senate.

The Committee agreed to recommend to the Senate Transportation Committee that it get interested parties to agree on language to solve the license plate problem outside of the court system, and to pass a bill to accomplish this task. The Committee further recommended that Legislative Research and the Department of Revenue get information from other states to see how they resolved this issue, and forward that information to Committee members for their review no later than December 15, 2006.

Chairperson Hutchins thanked Committee members for their support and cooperation, and expressed her personal wishes that this Committee successfully continue to do its good work.

Since there was no further business, the meeting adjourned at 11:00 a.m.

Prepared by Judy Swanson
Edited by Dennis Hodgins

Approved by Committee on:

October 19, 2006

(date)