

## MINUTES

### JOINT COMMITTEE ON STATE-TRIBAL RELATIONS

January 26, 2011  
Room 144-S—Statehouse

#### Members Present

Senator Pete Brungardt, Chairperson  
Representative Forrest Knox, Vice-chairperson  
Senator David Haley  
Senator Kelly Kultala  
Senator Dennis Pyle  
Senator John Vratil  
Representative Tom Burroughs  
Representative Phil Hermanson  
Representative Lance Kinzer  
Representative Ponka-We Victors  
Caleb Stegall, Chief Counsel, Office of the Governor  
Steve Phillips, Office of the Attorney General

#### Tribes Represented

Russell Bradley, Kickapoo Tribe  
Twen Barton, Sac and Fox Nation of Missouri in Kansas and Nebraska  
Steve Ortiz, Prairie Band Potawatomi Tribe

#### Staff Present

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

#### Conferees

Carol Foreman, Governor Parkinson's Designee  
Russell Bradley, Chairperson, Kickapoo Tribe in Kansas  
Twen Barton, Chairperson, Sac and Fox Nation of Missouri in Kansas and Nebraska  
Steve Ortiz, Chairperson, Prairie Band Potawatomi Nation  
Mark Gunnison, Legal Counsel, Iowa Tribe of Kansas and Nebraska  
Mark Dodd, Legal Counsel, Sac and Fox Nation of Missouri in Kansas and Nebraska

## Others Attending

See attached list.

The meeting was called to order by Chairperson Pete Brungardt. The Chairperson stated the meeting was convened to consider a compact with the Wyandotte Nation that was negotiated under Governor Parkinson. This is a joint Committee of the House and Senate, whose function is to analyze the compact and make recommendation to the Legislature. The Committee has the ability to reject the compact at this level and make recommendations to the Governor for re-negotiations, or to make to the Legislature as a whole, and to each Chamber, a positive, neutral, or negative recommendation. The Wyandotte Nation was not represented at this meeting but will provide testimony at the Committee meeting on February 9, 2011. Chairperson Brungardt welcomed representatives of the four tribes with each of which the State of Kansas has a gaming compact.

Carol Foreman, Governor Parkinson's designee to conduct negotiations on a gaming compact with the Wyandotte Nation, appeared before the Committee to discuss the proposed compact (Attachment 1). Ms. Foreman stated the Wyandotte Nation requested negotiations of a tribal-state compact with the State of Kansas for Class III Gaming at the Shriner's Masonic Temple in Kansas City, Wyandotte County, Kansas, on August 2, 2010. With this request, the Wyandotte Nation submitted a proposed compact almost identical to the four existing Indian Gaming compacts. The Wyandotte Nation was advised on September 14, 2010, that Governor Parkinson designated Carol Foreman to conduct negotiations on the compact. Negotiations between the state and the Wyandotte Nation commenced shortly thereafter and concluded, resulting in the proposed compact and the appendices to be discussed at this meeting.

The Indian Gaming Regulatory Act creates a duty on states to negotiate in "good faith" with Tribes. Kansas has four existing Indian Gaming compacts that are considered almost identical. Therefore, the duty to negotiate in "good faith" required the negotiated compact with the Wyandotte Nation to be very similar to the four existing Indian Gaming compacts. Ms. Foreman stated it was the collective opinion to enter into negotiations for a Class III Gaming compact for the Kansas City facility.

The Committee asked who contributed to the collective opinion; the answer was John Yeary from the Governor's Office and, Patrick Hurley from the Attorney General's office, and input from Patrick Martin from the Gaming and Racing Commission. The Committee asked if the collective opinion was based on case law in Kansas, the 10<sup>th</sup> Circuit, or any statutory law in Kansas. Ms. Foreman stated she could not definitively answer that question.

Issues considered and addressed in the proposed compact were the following:

- Park City—added language to clarify that the compact is not a binding precedent on any future request to negotiate a Class III Gaming compact and clarified the compact applies only to the Shriner Tract;
- Conversion—added language addressing conversion of Class II electronic gaming machines to Class III gaming machines;
- Assessment—modified language as to imposition of assessment for State Regulatory Expenditures to conform with current practice;
- Responsible Gambling—added language addressing Responsible Gambling; and

- Statutory—added language stating the Tribe is to be regulated and subject to the Tribal Gaming Oversight Act, KSA 74-9801 *et. Seq.*

Revenue sharing was addressed and, because the four existing compacts do not have revenue sharing, the collective opinion was that would have been in violation of the “good faith” duty to enforce revenue sharing in this compact.

The Committee asked if there was anything that would keep the Wyandotte Nation from pursuing additional gaming compacts. Ms Foreman stated there is nothing that would indicate it would not pursue further gaming compacts. Also asked if there was any discussion about the use of the term “reservation” and an expiration date, the Attorney General’s Office stated that, due to the federal court rulings, it is considered a reservation and the other compacts do not have an expiration date, so in “good faith” there was no pursuit of an expiration date on the proposed Wyandotte compact.

Chairperson Brungardt called upon Twen Barton, Chairperson, Sac and Fox Nation of Missouri in Kansas and Nebraska, to present her testimony ([Attachment 2](#)). Ms. Barton stated that her testimony was for the purpose of addressing concerns regarding the proposed agreement as currently written. The agreement would have a detrimental effect on her Tribe, and there are many statements made in the proposal that are not in accordance with facts.

Ms. Barton stated the first major concern is that the proposed agreement states more than once that the Wyandotte Nation has a “permanent reservation” in Kansas; this is incorrect. This agreement’s language is similar, but not identical, to the language of the compacts of the four Tribes actually located in Kansas. The word “reservation” has legal meanings which could pose a problem for the State of Kansas in the future in dealing with other issues regarding the Wyandotte Nation. This error alone should be enough for this Committee to send this proposed agreement back to the Governor for renegotiation. Additionally, she stated there are several things stated in the Recitals and in Section 2: Policy and Purpose, which are inaccurate, given the differences between the Wyandotte Nation and the Kansas Tribes. The compact between the state and the Sac and Fox Nation contains an appendix with technical standards. The proposed compact, Ms. Barton noted, contains no technical standards. The tribal headquarters of the Wyandotte Nation is located in Oklahoma, not Kansas or the location of the Gaming Commission, which could lead to problems, she stated. The proposed compact contains nothing about sufficient law enforcement to be located at the casino, which has not been an issue with the Kansas tribes, since they are located in the state and have citizens to serve as well. Additional details should be added to the compact to take into account the actual location of the Wyandotte Nation, and the issue that comes with being located out of state.

Ms. Barton stated the Sac and Fox Nation’s biggest concern is how the proposed compact places an unfair burden on all four tribes in Kansas. Section 25 addresses State Assessment for Costs of Oversight; the largest cost associated with this responsibility is the start-up cost to get an individual licensed and machines in place that meet technical standards. As written, this proposal will require the four tribes to pay for part of the Wyandotte Nation’s start-up cost. Ms. Barton stated this is inequitable and unjust and the provision should be renegotiated.

Ms. Twen stated she appreciated the opportunity to present her Tribe’s views. There are concerns regarding the proposed compact as currently drafted, and she urged the Committee to send the proposed compact back to the Governor for new negotiations that address the concerns raised.

Russell Bradley, Chairperson, on behalf of the Kickapoo Tribe in Kansas, provided input on the proposed compact ([Attachment 3](#)). He stated the Kickapoo Tribe was not aware that the former Governor was negotiating a compact with the Wyandotte Nation, and the Tribe has always opposed the Wyandotte tribal gaming efforts in the Kansas City area. By passing the Expanded Lottery Act in 2007, the state put a high price on the casinos to operate in the state. This law limits gaming for twenty-five years at four locations and three race tracks. Mr. Bradley stated the question is how Kansas can enter into a compact with the Wyandotte Nation without violating the state's own law.

Mr. Bradley stated the current State-Tribal compacts limit the Kansas Tribes to only one casino; the question is how is the state going to handle the compact with the Wyandotte Nation when the Wyandotte Nation is proposing a second casino in the Wichita area. Because the four Kansas Tribes have invested millions of dollars in the day-to-day operations and assets of the State Gaming Agency, they feel it appropriate that the four Tribes should have been consulted. Assignment of oversight of Wyandotte gaming to the state gaming agency without financial compensation to the four Tribes for their past contributions would be very inappropriate and confiscatory.

Mr. Bradley stated that the State Gaming Agency's background and criminal investigations leave a lot to be desired, and take too long, and a system of temporary licensing should be established. The State Gaming Agency, which oversees tribal gaming, is within the Racing and Gaming Commission, which operates the competing state casinos. This creates a conflict of interest. Mr. Bradley extended an invitation to the Committee to visit the reservation in the near future.

Steve Ortiz, on behalf of Prairie Band Potawatomi Nation, submitted recommendations for revisions to the proposed Wyandotte Tribe of Oklahoma Tribal Gaming compact ([Attachment 4](#)):

- The compact be revised to provide a sunset clause of ten years, rather than the compact being in perpetuity;
- The compact be revised to provide that the Wyandotte Tribe pay its own gaming regulatory costs, especially the initial regulatory costs, and that such tribal regulatory costs NOT be shared with the four native Kansas tribes currently being assessed for gaming regulation costs. The Wyandotte Tribe of Oklahoma is NOT a native Kansas Tribe; its costs should be borne by that tribe, exclusively without any sharing with the four native Kansas tribes;
- The compact be revised to provide the Wyandotte Tribe of Oklahoma utilize a Kansas bank for depositing its revenues, so that the proceeds of the Wyandotte casino are not exported out-of-state to a non-Kansas bank;
- The compact be revised to require the Wyandotte Tribe of Oklahoma share revenue with the State of Kansas, as part of the privilege of the State of Kansas agreeing to a Tribal compact; and
- The compact be revised to provide a prohibition of the Wyandotte Tribe of Oklahoma entering into negotiations for, or engaging in, any activities seeking any other casino in the State of Kansas, whether such casino be a Class II or a Class III casino.

Mr. Ortiz provided a copy of the recommendations, which the Prairie Band Potawatomi Nation Tribal Council sent to the Governor's office regarding this issue.

Mark Gunnison appeared on behalf of the Iowa Tribe of Kansas and Nebraska regarding the proposed Class III Gaming compact with the Wyandotte Nation ([Attachment 5](#)). Exhibit "A" attached

to the testimony is a letter sent by Chairperson Tim Rhodd to the Governor setting out the Iowa Tribe's comments and objections to certain portions of the proposed compact.

- Reservation designation—the Shriner Tract is NOT the reservation of the Wyandotte Nation, as the Tenth Circuit Court of Appeals has previously ruled that the Huron Cemetery (which is contiguous to the Shriner Tract) is not a reservation of the Wyandotte Nation; it is simply land that the United States holds in trust for the Wyandotte Nation;
- State Assessment for Costs-Section 25—it is respectfully submitted that the four Kansas tribes should not be obligated to pay any portion of the Wyandotte Nation's start-up expenses; and
- The Wyandotte Nation should be required to abandon Park City, Kansas. A Class III compact should be conditioned on the Wyandotte Nation abandoning its application to have the Park City, Kansas, land taken into trust for gaming. It is not fair that the Wyandotte Nation be allowed potentially two casino locations that are hundreds of miles from its Oklahoma reservation in the two largest metropolitan areas in Kansas.

Mark Dodd, General Counsel to the Sac and Fox Nation of Missouri in Kansas and Nebraska, spoke on issues regarding the use of the term “reservation” and whether the requirement in the Indian Gaming Regulatory Act (IGRA) of “good faith” negotiations requires the compact with the Wyandotte Nation to be virtually the same as the compacts with the four Kansas Tribes (Attachment 6). The other issue is the requirement of the state to negotiate in “good faith.” Nowhere in the IGRA does it make such a requirement; further, IGRA actually allows for differences based on the circumstances of different groups and the time at which the compact is negotiated, among other things.

There were many circumstances pointed out by other presenters that addressed the difference between the Wyandotte Nation and the four tribes in Kansas that would necessitate changes in the compact.

Chairperson Brungardt stated the Committee had several things brought to its attention: the significance of “reservation” and the language in the current compact, the possibility of revenue sharing and other restrictions, as well as the regulation expenses that apparently have to be shared by the four existing Tribes and compacts. The Wyandotte Nation will be in attendance at the next meeting .

The Committee requested a write up on State Assessment for Costs of Oversight with the four Tribes and information on what adding the Wyandotte Nation would change. The Committee asked whether the State of Kansas currently deposits all its assets in Kansas banks and whether there is a requirement to do so. The Committee also requested information on IGRA, what the state's options are on negotiations, and what the alternative is if the state takes no action.

The meeting was adjourned. The next Committee meeting is February 9, 7:30 a.m.

Prepared by Connie Burns  
Edited by Dennis Hodgins

Approved by the Committee on:

June 1, 2011  
(Date)