

MINUTES

JOINT COMMITTEE ON STATE-TRIBAL RELATIONS

December 18-19, 2001
Room 519-S—Statehouse

Members Present

Senator Lana Oleen, Chairperson
Senator Mark Gilstrap
Senator David Haley
Senator John Vratil
Representative Melany Barnes
Representative Becky J. Hutchins
Representative Doug Mays
Natalie Haag, Governor's Office
Julene Miller, Attorney General's Office

Staff Present

Russell Mills, Kansas Legislative Research Department
Theresa Kiernan, Revisor of Statutes Office
Shelia Pearman, Committee Secretary

Others Present

Representative Lana Gordon
Trista Beadles, Assistant Legal Counsel, Governor's Office
Emily Conklin, Tribal Secretary, Kickapoo Tribe
Tracy Diel, Kansas Racing and Gaming Commission
Michael Hale, Counsel for Kansas Department of Revenue
Brad Hamilton, Kansas Office of Native American Affairs
Ron Hein, Counsel for Indian Nations in Kansas, Inc.
Brian Johnson, Assistant Attorney General
Susan Johnson, National Conference of State Legislatures
Ray Kitchkumme, Tribal Council Member, Prairie Band Potawatomi Nation
Charlie Lehman, Counsel for the Kickapoo Tribe
Steve Ortiz, Prairie Band Potawatomi Tribal Secretary
Ron Parks, Kansas State Historical Society Curator at Kaw Mission
David Prager, Counsel for Prairie Band Potawatomi Nation

Shirley Sicilian, Counsel for Kansas Department of Revenue
John White, Engineer for Kickapoo Tribe
Badger Wahwasuck, Prairie Band Potawatomi Nation Tribal Chair

December 18, 2001
Morning Session

The Joint Committee on State-Tribal Relations met at the Statehouse at 10:30 a.m. on December 18, 2001. Chairperson Oleen called the meeting to order.

Representative Lana Gordon addressed the Committee to review the efforts to adopt HCR 5021, which encouraged the naming of the new state office building after Senator Charles Curtis (Attachment 1). She stated that her resolution found nearly unanimous support in the Legislature. The process ended on December 11, 2001, when the Topeka Public Building Commission named the new building located at SW 10th and Jackson as the Charles Curtis State Office Building.

The Committee viewed a video produced by Prairie Band Potawatomi Nation detailing recent developments on the reservation, including the nationally accredited daycare facility, as well as self-governing functions of law enforcement and road construction on the reservation and other infrastructure improvements. Tribal Chair Badger Wahwasuck stated that proceeds from the casinos are benefitting all members of the reservations. This video is available in the Legislative Research Department for review.

Staff distributed a June 5, 2001, memorandum which summarized proposed legislation from the 2001 Session concerning state-tribal relations (Attachment 2). Only one bill and one resolution endorsed by the Joint Committee were approved by the 2001 Legislature.

Theresa Kiernan, Revisor of Statutes Office, reviewed the provisions of SB 75, which was a procedural bill relating to the powers of the Joint Committee. The bill was enacted and established a procedure for calling the first meeting each year; provided statutory authority for a ranking minority member; and clarified the voting rights of the nonlegislative members of the Joint Committee. She stated that SB 74, concerning the powers of tribal law enforcement officers, was re-referred to the House Federal and State Affairs Committee. Amendments added by the Senate Committee defined Tribal Law Enforcement officer and required equivalent training as the local law enforcement officers. Additional amendments also addressed a tribal waiver of sovereign immunity and required the purchase of liability insurance.

Representative Hutchins distributed copies of an Attorney General's April 26, 2001, letter from Julene Miller which discussed the possible unintended consequences of SB 74 with regard to land-to-trust applications (Attachment 3). Representative Hutchins stated that

the discussions on SB 74 have not stopped the conversation between the state and the county regarding cross-deputization.

Mr. Charlie Lehman, Counsel, Kickapoo Tribe, stated that Brown County has developed a working arrangement with Kickapoo Tribal police.

Mr. David Prager, Counsel, Prairie Band Potawatomi Nation, stated a cross-deputization agreement is a start in addressing the tribal police officer's ability to provide services to non-Indians. He encouraged enactment of this bill as an incremental way to address this issue. He stated that most of the land-to-trust applications are intended to solidify the reservation. He stated that 80 percent of applications are on reservation lands. During 2001, the Bush administration has made three extensions for the comment period regarding the proposed regulations concerning land-to-trust issues.

Mr. Steve Ortiz, Prairie Band Potawatomi Secretary, stated that cross-deputization agreements would provide for the most effective use of tax dollars for equipment purchased with federal grants.

Mr. Ron Hein, Indian Nations in Kansas, Inc., stated that the focus of the tribal law enforcement bill is to provide tribal officers equivalent powers and duties the same as other law enforcement officers, but only if the tribal officer is called upon to assist another officer. He cited testimony to the 2001 Federal and State Affairs Committee by a tribal officer who stated that he would, if requested, likely assist another officer despite his concerns of liability since current law does not recognize him to be more than an armed citizen.

Ms. Julene Miller stated that there is an Attorney General's opinion to the effect that a sheriff can choose whom to deputize and thereby provide them the same authority as other officers.

Afternoon Session

Ms. Kiernan reviewed HB 2216 from the 2001 Session regarding current State Gaming Commission employees' ability to do background checks on potential gaming employees. Mr. Tracy Diel, State Gaming Agency, supplied a history of the tribal assessment procedure and the arbitration process. Mr. Diel stated the concepts contained in the bill had been requested by the Gaming Agency for the last several years. He also clarified most other agencies are able to do their background checks on potential employees rather than requiring the checks be done by the Kansas Bureau of Investigation. Ms. Natalie Haag, Governor's Office, suggested consideration by the Joint Committee of incorporating into the bill a provision permitting the Governor the flexibility of having one director for both the Racing and Gaming Commission and the State Gaming Agency to provide savings.

Mr. Diel also emphasized that the tribes are currently not satisfied with the present method of making the tribal assessments to fund the agency; however, his request for an

alternative method which the four tribes can agree upon has yet to be received for review. He stated that the Joint Committee could consider reopening the compact to address only the issue of assessments or to change the arbitration process. Other possible scenarios have previously been reviewed with the tribes by the Gaming Agency, although no agreement has been reached. Mr. Diel stated Gaming Agency staff currently are in the four gaming facilities every day.

Ms. Kiernan also reviewed SB 76, which amends procedure for other non-gaming compacts by expanding the Governor's ability to enter into contracts regarding taxing authority, law enforcement authority, and water rights with the four resident tribes. Mr. Hein addressed this issue and requested that the Joint Committee review some potential language which was developed with the Governor's staff. Chairperson Oleen discussed concerns of some legislators about whether new gaming compacts should require that the entire legislative body meet in a special meeting to approve such compacts, rather than allowing the Legislative Coordinating Council to have a role as current law permits.

Mr. Brad Hamilton, Kansas Office of Native American Affairs, advised the Joint Committee that the 53rd Annual National Conference of the Governor's Interstate Indian Council will be hosted by Kansas on August 24-28, 2002 at the Capitol Plaza Hotel in Topeka. He stated that a number of national figures will attend the national conference. He stated that the agenda will likely incorporate a reception at Haskell Indian Nation University, as well as panel presentations and tours of the various reservations in the local area. Mr. Hamilton requested the Joint Committee express its support for this upcoming conference. Chairperson Oleen stated that the Joint Committee would welcome the opportunity to be involved in the conference. Mr. Hamilton suggested that the Committee leadership prepare a letter to welcome the attendees to Kansas. Chairperson Oleen stated that such a letter would be prepared and signed by the Chair, Vice Chair, and Ranking Minority Member of the Committee.

Mr. Hamilton also expressed his appreciation for Representative Gordon's efforts regarding the legislation in support of naming the new State Office Building at SW 10th and Jackson the Charles Curtis Office Building. Chairperson Oleen asked whether an official celebration will occur on the observance of Curtis' birthday, January 25. Mr. Hamilton said he will notify the Committee of upcoming details.

Mr. Brian Johnson, Assistant Attorney General, stated that he has been assigned to handle tribal-related litigation in the Attorney General's Office. He discussed his background in the Department of Corrections, the U.S. Attorney's Office, and the Kansas Corporation Commission. Mr. Johnson briefly reviewed current pending litigation including cases involving taxes, land-in-trust applications, and sovereignty and gaming issues. Mr. Johnson distributed a summary document which lists the land-to-trust applications currently pending from the four Kansas resident tribes (Attachment 4). Chairperson Oleen stated that acreage amounts would also be helpful additional information concerning the land-in-trust applications.

Mr. Johnson also discussed the motor fuel tax case in which the 10th Circuit Court of Appeals has sustained the state's ability to impose this tax, and has remanded the case to

the district court. Chairperson Oleen requested that the Department of Revenue provide an accounting of the hours spent on this tax case. Mr. Johnson emphasized that the license plate case is important to continue to litigate due to the reciprocity issue of Oklahoma's acknowledgment of other states' tribal license plates. Ms. Haag noted that the State of Kansas had, prior to the litigation, offered to resolve the issue by allowing the tribes to design and administer eligibility of license tags, with the state entering the data in the motor vehicle computer database. She stated that this proposal was rejected by the tribes.

Mr. Prager stated that Oklahoma's recognition of tribal tags was due to a 1983 district court decision which stated that "to not recognize these tags would impair the sovereignty of the tribes." Chairperson Oleen requested a comparison of other states' resolution of the license plate issue.

Ms. Trista Beadles, Assistant Legal Counsel, Governor's Office, noted that the Secretary of Interior has the power to determine what a "reservation" is for purposes of the Indian Gaming Regulatory Act (IGRA). She stated that Senator Brownback is today introducing language in a Conference Committee specifically addressing the Huron Cemetery issue.

December 19, 2001

The Committee reconvened on Friday, December 19, and was called to order by Chairperson Oleen at 9:45 a.m. Chairperson Oleen discussed the National Conference of State Legislatures (NCSL) publication, *Government to Government*, regarding Indian issues. Chairperson Oleen served on the committee which published the book. Mr. Mills has copies of the book available for review by Committee members.

Ms. Susan Johnson, NCSL, provided additional information regarding the *Government to Government* project. She discussed items covered in her presentation on "Improving Relations Between State Legislatures and Tribes," ([Attachment 5](#)). Ms. Johnson also discussed information on revenue sharing by the tribes and state governments and the devolution of programs to tribal governments. She stated the need for state governments and tribal governments to cooperate and coordinate efforts to avoid duplication, while striving to meet common goals. She stated that NCSL utilizes various survey mechanisms to study procedural issues and to focus on specific issues; the research is available to all state legislators. She provided a comparison table for "Indian Gaming Revenue to State and Local Governments," ([Attachment 6](#)).

Mr. Ron Parks, Administrator of the Kaw Mission site, presented information regarding the Kaw Mission State Historic Site in Council Grove. He noted that the site, although constructed as a school for the Kansa children, has operated as one of the 16 historical sites since the State of Kansas purchased the facility in 1951. Mr. Parks discussed the "Voices of the Wind People" drama which has been produced five times (1992, 1993, 1996, 1999,

and 2001) (Attachment 7). Mr. Parks also showed a 4- minute film segment of a “Sunflower Journeys” film regarding the "Voices" pageant.

Ms. Haag informed the Committee that her staff is assisting Senator Brownback’s staff in regards to the Wyandotte-related legislation in Washington, D.C. She noted the partnership efforts of an inter-governmental contract with Prairie Band Potawatomi regarding foster care providers. She stated that this is a good cooperative effort. Ms. Haag stated that the Governor’s Office had some concerns about the Pikitanoi water project, which now appears to be on hold as two federal agencies try to define their roles in the project.

Mr. John White, Engineer for the Kickapoo Tribe, addressed the Committee to clarify questions regarding the two federal agencies. He stated the two studies are being developed from different bases. Mr. White stated that the Bureau of Reclamation study concerns the economics of water needs, while the Corps of Engineers study is looking more at water supply needs. He stated that there has been some confusion regarding the focus of the different studies. Chairperson Oleen suggested the tribe request Congressman Ryun’s or Senator Brownback’s staff to assist in resolving the issue.

Ms. Shirley Sicilian, Department of Revenue, addressed questions from Chairperson Oleen regarding the number of hours used in pursuing the *Prairie Band of Potawatomi Indians v. Karla Pierce, Sheila Walker & Don Brownlee*. She noted that the hours were held to a minimum because of expertise of one attorney with the Department of Revenue. Mr. Michael Hale, Department of Revenue, also addressed questions from the Committee regarding the issue of tribal sovereignty related to the above case.

Mr. Hein presented possible language for amendments to SB 74, concerning tribal law enforcement officers, and SB 76, concerning interlocal agreements with native tribes (Attachment 8). He stated that he had been involved in negotiations with the Department of Revenue and the Governor’s Office regarding these bills. He also stated that while the news coverage and general perception is as though no economic benefit or tax revenues are being derived from the tribe, this is not accurate. Various taxes and benefits, including personal income tax, both to the State of Kansas and to local governments, are derived from the land-in-trust issues. He also urged the Committee to consider the focus on taxes as well as important economic benefit derived from the casinos.

Mr. Prager presented proposal relative to tribal tax and motor vehicle legislation (Attachment 9). Mr. Prager’s proposal would provide for the following:

- An excise tax credit would be allowed to the extent a tribal excise tax is imposed with respect to Indian businesses in Indian country;
- State and local government tax exemptions would be allowed for the Indian tribes; and
- The state would recognize vehicle titles and registrations issued by Indian tribes.

Chairperson Oleen recommended that the Committee review Mr. Prager's proposal prior to the 2002 Session.

Chairperson Oleen stated that she and Representative Powell attended the Native American Law Symposium earlier this year and she expressed appreciation for Washburn University's participation in this event.

Ms. Haag will call the next Committee meeting to order early in the 2002 Legislative Session to elect new leadership. Minutes of the October meeting were previously distributed by mail. *Senator Haley moved to approve the minutes. Senator Vratil seconded the motion with unanimous approval.*

Mr. Mills provided information received from Oklahoma that indicates that approximately 200,000 Native American license plates exist in Oklahoma (Attachment 10). He also distributed an article regarding the Prairie Band's donation to Topeka USD 501 (Attachment 11).

The Committee reviewed the draft 2001 Interim report. With regard to the draft report, the Committee directed staff to make the following additions:

- Note that the Committee plans to prefile two bills (one relating to the interlocal agreement act and one authorizing the Governor to enter into agreements other than gaming compacts with the tribes);
- Express support for the current practice of allowing tribal chairs to sit at the Committee table and participate in discussion;
- Express support for the Governor's Interstate Indian Council to be held in Topeka in August of 2002;
- Support the decision to name the new state office building the Charles Curtis Building;
- Express support for the Pikitanoi water project and urge those involved to resolve the problem areas;
- Recommend that the Committee continue to study the tax proposal presented by Mr. Prager;
- Commend the Prairie Band Potawatomi for the educational video and urge widespread distribution of the video; and
- Commend the Prairie Band Potawatomi for the charitable donations made by the tribe.

Senator Haley voiced his appreciation for the bipartisan leadership under Senator Oleen's chairmanship this year.

The meeting was adjourned.

Prepared by Shelia Pearman
Edited by Russell Mills

Approved by Committee on:

August 26, 2002