

MINUTES

JOINT COMMITTEE ON STATE-TRIBAL RELATIONS

December 15, 2003
Room 123-S—Statehouse

Members Present

Senator Lana Oleen, Chair
Representative Bill Mason, Vice Chair
Senator David Adkins
Senator Mark Gilstrap
Senator David Haley
Representative Becky Hutchins
Representative Doug Patterson
Representative Tom Sawyer
Representative Bonnie Sharp
Matt All, Governor's Representative

Tribal Representatives Present

John Thomas, Kickapoo Tribe
Don Pilcher, Iowa Tribe
Emily Conklin, Kickapoo Tribal Vice Chairperson

Staff Present

Russell Mills, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Mary Torrence, Office of the Revisor of Statutes
Diana Lee, Office of the Revisor of Statutes
Judy Swanson, Committee Secretary

Conferees

Nicholas Luna, Wetlands Preservation Organization
Sally Howard, Chief Counsel for the Kansas Department of Transportation
David Prager, Counsel for Prairie Band Potawatomi Nation
Ron Hein, Legislative Counsel for Prairie Band Potawatomi Nation
Brian Johnson, Special Assistant to the Kansas Attorney General

Ilsa Smith, Kickapoo Tribal Attorney
Bruce Tomlinson, Jackson County Sheriff
Emily Conklin, Kickapoo Tribal Vice Chairperson
Whitney Damron, Counsel for Kickapoo Tribe and Sac and Fox Nation
Dan Watkins, Attorney
Paul Alexander, General Counsel for Sac and Fox Nation
Bob Winter, Special Counsel to Kickapoo Tribe,
Aviv Lawrence, Global Communications Group
Alan Gordon, Bank of America

The Joint Committee on State-Tribal Relations was called to order by Committee Chair, Senator Lana Oleen, on Monday, December 15, 2003, in Room 123-S of the Statehouse at 9:54 a.m.

Staff presented updated information concerning the South Lawrence Trafficway project (Attachment 1).

Nicholas Luna, Wetlands Preservation Organization, made comments concerning the Lawrence bypass project. He said that the land considered has religious, cultural, environmental, and educational significance to Indians. Haskell University's objective is to keep the Indian heritage alive. The University is contiguous with wetlands, and that is very important to them. It is a natural landmark, and water quality is good because of the wetlands. An environmental impact study has never been completed for North of 42nd Street in Lawrence. He noted that sweat lodges are considered churches in which the Native Americans pray. A north of the river route will have an adverse affect on their religious practices.

Sally Howard, Chief Counsel for the Kansas Department of Transportation (KDOT), testified concerning the preferred alternative selected by the Corps of Engineers for the South Lawrence Trafficway (SLT) (Attachment 2). She provided background information on the SLT project and a history of the project. She stated that, even though a final selection for the SLT location has been made, funds have not been provided by the Legislature to build the project at this time. She answered questions from the Committee.

David Prager, Counsel for Prairie Band Potawatomi Nation, testified that the Prairie Band has sent over 100 pages of correspondence to the U.S. Corps of Engineers concerning the SLT. The Corps and KDOT's priority is to move traffic, and traffic can be moved quicker on the 32nd Street route. He noted that KDOT hired a firm to draft the environmental impact statement. He said that the Corps does not get involved in recommending the actual route. A problem with the recommended route includes the fact that the 42A Street route was put over Eastern Wakarusa floodways, and KDOT was indifferent to the cost of the wider crossing. He said if they moved the route west, they could save \$22 million. He said the Corps did no mitigation in regard to the 42nd Street route. He said it is a very sensitive subject to all Indian people. The Lawrence City Commission favors the 42A route. He believes the SLT is to go around the city, not through the city. He said that KDOT intentionally inserted the maximum curve in the 42C route. He said that Mike Reese, former general counsel with KDOT, is still employed by KDOT.

The Committee reviewed a draft of a letter to the Kansas Congressional Delegation requesting an audit for the procedure used for the taking of land into trust by the Interior Department in the case of the Wyandotte Tribe of Oklahoma (Attachment 3).

Representative Mason made a motion to make appropriate grammatical revisions and send the letter. Representative Hutchins seconded the motion. The motion passed. Senator Haley abstained from voting.

Mary Torrence, Revisor of Statutes Office, presented a draft of proposed amendments to House Sub. for SB 9 (Attachment 4). Representative Hutchins referenced federal legislation being considered which addresses the same concerns being considered by the state legislation (Attachment 5). There have been three meetings in her district about some of the concerns and the consequences of passing this proposed bill. The definition of "reservation" was discussed.

Ron Hein, Legislative Counsel for Prairie Band Potawatomi Nation (PBPN), testified that the PBPN has significant concerns about the proposed amendments to House Sub. for SB 9 (Attachment 6). He stated that on every step along the way of this legislation, which would recognize tribal law enforcement officers, new objections have been raised which have never been raised before. He said that, in regard to the term "reservation" the supporters have had no objection to any of the definitions used. He would like to work with the Committee to solve issues and get appropriate legislation passed. He was not aware of any problem concerning double jeopardy or liability issues. He noted that frivolous or not, no one can be prevented from bringing a lawsuit against anyone. He encouraged the Committee to leave the land in trust verbiage in the bill, even though the state cannot tell the federal government what to do. He would like the sunset date removed.

David Prager, Tribal Attorney for the Prairie Band Potawatomi Nation (PBPN), expressed concerns about the proposed amendments to House Sub. for SB 9 (Attachment 7). He said it would be a bad idea to require indemnification agreements with state and local governments. The proposed amendments would purport to address an alleged "double jeopardy" issue. Committee discussion followed his testimony. He said there is no double jeopardy issue in Kansas. There may be a practical issue of venue, but not a legal issue. Representative Hutchins said her goal is to avoid litigation.

Brian Johnson, Special Assistant to the Kansas Attorney General, said local officials, not the Legislature, should handle this issue. The Legislature should not appear to "solve all problems". The vehicles that are available now are in the compacts. He said it is a very complicated matter, and he is alarmed by this proposed legislation. The liability concern should also be settled at the local level. Chair Oleen said there are deputies who were serving under the former Jackson County Sheriff who were instructed not to call for tribal officials. Mr. Johnson said he is not trying to be impractical, but it is his job to represent the State against the Tribes. Representative Sharp said state policy should address this issue on a statewide basis.

Ilsa Smith, Kickapoo Tribal Attorney, said that the tribal officers supported the legislation so local and tribal officials can work together. She feels there was no reason not to share resources to benefit the people of Kansas.

Bruce Tomlinson, Jackson County Sheriff, testified he would work with the tribe on any legislation that is passed. If the bill were passed, it would save his officers some time. Liability is an issue with him. He said he did not want Jackson County to be liable for the tribal officers' action.

Mr. Johnson discussed some of the pending litigation. He said the Winnebago Tribe transports fuel to an off-reservation wholesaler, and an additive is added to the fuel. The State of Kansas' attempt to tax the delivery of the fuel has so far been unsuccessful. The Kansas Highway Patrol, at the direction of the Attorney General's Office, seized two trucks and jailed the driver. The Tribes filed a federal suit against Kansas. At this point, Kansas is under injunction. Mr. Johnson has no idea of the timeframe of the case, but said he will fight as long as he possibly can.

The litigation dealing with tribal license tags was discussed. David Prager said tribes do not have immunity off the reservation with a tribal license tag. Brian Johnson said the Potawatomi license tag brief is due on January 26. He lost his first pleading. He said there is no federal law that tells Kansas it must recognize tribal license plates. Mr. Johnson said the court decision says that the state's concerns are exaggerated. He felt the district court was faulty in its decision. There are no off-reservation license plates now. The Attorney General has instructed him to appeal this case to its end. The Department of Revenue has refused to accept the tribal tag information, according to Mr. Prager. Several Committee members questioned the reasoning of spending so much money to fight this when it is apparent the state will probably lose, plus very little money is at issue.

The Committee recessed for lunch.

Emily Conklin, Kickapoo Tribal Vice Chair, announced that on January 5, 2004, there would be a meeting between Governor Kathleen Sebelius and the four Indian tribes. Enhancement of economic development is the goal of the tribes. She stated that the tribes have more self-esteem and better economic development because of the Indian Gaming Regulatory Act. Ms. Conklin introduced numerous tribal officials who were in attendance at the meeting.

Whitney Damron, Counsel for Kickapoo Tribe and Sac and Fox Nation, gave an update of gaming facilities in Kansas (Attachment 8). He presented a summary of findings and draft recommendations of the Governor's Gaming Committee (Attachment 9). He also reviewed a report entitled, "Governor's Committee on Gaming/Additional Information to Consider Prepared and Compiled by: Kickapoo Tribe in Kansas, Sac and Fox Nation, Working Together As The Intertribal Gaming Management Consortium, November, 2003". Copies of this report are available from the Kansas Legislative Research Department. He stated the \$7 to \$11 million annually would be the profit if this project were developed. He said the tribes are keeping an open dialogue among the consortium, the Governor's Office, the Attorney General's Office, and members of the State Gaming Agency. He said the Bank of America gave the tribes a \$15 million line of credit for the purchase of property needed for a gaming resort. In the past, a lack of a feasibility study, appropriate funds, and other problems have been among the complaints against this project. This new analysis is a thorough report on the proposal.

Don Watkins, an attorney from Lawrence who works with tribes, reviewed Section 4 of the consortium's report. There are two models that are legal in Kansas: (1) Native Indian gaming and (2) state-owned casinos. He discussed which plan provides the most benefit to Kansas. He said the maximum benefit in the Kansas City area would come from a tribal consortium. He said the management costs would be lower with a consortium. All the revenue would stay with the State of Kansas and with the tribes themselves. He stated that slots at parimutuel tracks and video lottery are different from a casino in the way they operate and how they are controlled. The slots and video lottery machines require a much lower investment than a destination resort. A destination resort in Kansas City would have an excellent location near the Speedway. It would create about 1,300 jobs. He said that Indians would get expanded health, education, employment, and other benefits from a destination gaming facility resort. He said any location other than Kansas City does not make sense, because Kansas City is surrounded by other activities and services.

Paul Alexander, General Counsel for the Sac and Fox Nation, testified that the Governor must approve only land in trust for gaming. He said there are no legal impediments to this resort so he feels it should work, and that competition in the Kansas City area should not be a problem. A tribal casino would be of benefit to the tribe.

Bob Winter, Special Counsel to Kickapoo Tribe and former operator of a casino, said a state-owned and operated facility in Kansas would have to be staffed by state employees. He said that,

because of the complexity of a casino, this would probably not work because state employees would have to compete for jobs in Kansas City. There are many regulations by IRS, the federal government, etc.; therefore, there is a possibility that the state could be fined. He said he has not worked with state casinos.

Aviv Lawrence, Global Communications Group, reported that the Kickapoo and Sac and Fox have engaged Citi Group for the purpose of funding a gaming project in Kansas.

Alan Gordon, Bank of America, testified that both tribes meet their underwriting parameters.

Ron Hein said he has a copy of the gaming proposal, and will review whether or not it would have a negative impact on current gaming. He said the Department of Interior will also look at this proposal.

Senator Adkins said that expensive litigation is bad, and he urged other means of dispute resolution. The Committee expressed frustration with some of the on-going litigation. Some members would like the cost to the state of this litigation to be included in the Committee Report. Staff was directed to contact the Attorney General's Office and the Department of Revenue for expenditure data regarding this litigation.

Representative Sharp made a motion that the Committee not endorse the proposed amendments to House Substitute for Senate Bill No. 9. Representative Sawyer seconded the motion. The motion passed.

The Committee reached a consensus that the House Committee on Federal and State Affairs should continue to work House Sub. for SB 9 during the 2004 Session.

A copy of a letter from Jackson County Counselor Edward Dunn to Zachary Pahmahmie concerning House Sub. for SB 9 was entered into record (Attachment 10).

The draft of the Committee report was discussed (Attachment 11). The following changes and additions were agreed upon:

- Delete, "It appears that the interested parties have developed compromise language on the issue. The Joint Committee will introduce a new bill which incorporates the compromise position."
- Add, "The Committee commends the tribal law officers and wants them to know that they are valued and we should be proud to partner with them."
- In regards to the Baker Wetlands, the report should reflect that the Committee visited the site and has heard from the Wildlife Preservation Organization. The Corps of Engineers decision is complete and the Committee will monitor the project.
- A listing of the names of the conferees and their titles should be included in the report.
- Russell Mills, Kansas Legislative Research Department, will summarize today's meeting for the report.

- Staff will send an amended report to Committee members, and they will have seven days for comments before the report will be considered approved.

Representative Mason made a motion to approve the Minutes of the December 1 Committee meeting. Representative Hutchins seconded the motion. The motion passed.

It was announced that the Committee Chair would change in 2004, when a House of Representatives member will chair it.

The Committee adjourned at 3:30 p.m.

Prepared by Judy Swanson
Edited by Russell Mills and Dennis Hodgins

Approved by Committee on:

March 12, 2004
(date)