

MINUTES

JOINT COMMITTEE ON STATE-TRIBAL RELATIONS

September 27, 2002
Room 123-S—Statehouse

Members Present

Representative Tony Powell, Chairperson
Senator Lana Oleen, Vice Chairperson
Senator Mark Gilstrap
Senator David Haley
Representative Melany Barnes
Representative Becky Hutchins
Representative Bonnie Sharp, Ranking Minority Member
Natalie Haag, Governor's Office
Julene Miller, Attorney General's Office

Staff Present

Russell Mills, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Amy Kramer, Kansas Legislative Research Department
Theresa Kiernan, Revisor of Statutes Office
Judy Swanson, Committee Secretary

Conferees

Brian Johnson, Assistant Attorney General
David Prager III, Prairie Band Potawatomi Nation
Judy Zelio, National Conference of State Legislatures, Denver
Whitney Damron, Kickapoo and Sac & Fox Tribes
Bob Hoard, State Archeologist
Brad Hamilton, Kansas Office of Native American Affairs
Kerry Wedel, Kansas Water Office

Morning Session

The Joint Committee on State-Tribal Relations was called to order by Chairperson Powell at 10:15 a.m.

Brian Johnson, Assistant Attorney General, presented an overview of disputed lands in Wyandotte County in the legal action filed by the Wyandotte Tribe of Oklahoma. (Attachment 1). The Wyandotte Tribe's lawsuit in Kansas City is against a number of landowners. The tribe claims there are three sections of land that they owned previous to an 1861 secession. The Delaware Tribe sold them the land to set up their reservation. The Delaware Tribe also gifted them the three sections of land, and this is the land that is listed in the lawsuit. The treaty specifically stated the tribal chair and government official would plat and allot the land to individual tribal members. Mr. Johnson stated that he is confident the land in question was identified, properly disseminated under the treaty, and the Wyandotte Tribe has no claim to the land. Mr. Johnson testified the only reason they filed the lawsuit was to extort land for a casino. Within two months of filing their suit, they entered into an agreement to settle the lawsuit. Mr. Johnson stated that presently this case is moving slowly as lawyers are setting the case up. The State of Kansas has an interest because of the riverbeds that are owned by the State. The State is in the litigation for the duration. The defendants are the Unified Government and over 1,000 landowners. The unified government has hired outside counsel. Senator Haley said this land is in his district, and he is one of the defendants. He would like this matter resolved as quickly as possible.

Mr. Johnson stated that the landowners currently have a cloud on their property titles. There are instances where the sale or refinancing of properties has had problems.

Mr. Johnson briefly reviewed the issue of the Huron Cemetery which is in major litigation with the Department of Interior. The State of Kansas believes that the Wyandotte Tribe co-mingled their funds inappropriately. Mr. Johnson noted that the Wyandotte Tribe housed slot machines next to the Huron Cemetery, and Kansas successfully made them remove the machines. Mr. Johnson noted that, with the change of Governor and Attorney General, this litigation could be changed at the direction of the new officials. The resident tribes have not yet intervened in the latest Wyandotte Tribe land issue.

Mr. Johnson briefly discussed the Winnebago Tribe lawsuit which was initiated by request from the Department of Revenue. The tribe was delivering fuel into Kansas, and it failed to pay distribution tax. The State feels that the tribe needed to pay the tax and litigation is underway. The Federal court has prohibited Kansas from continuing this case; however, Kansas is vigorously fighting this ruling. Mr. Johnson stated that the Winnebago Tribe does not have their own refinery.

Mr. Johnson reviewed the tribal license plate case. Summary judgements have been filed, and hopefully it will go to trial within the next year. Inspections of vehicles in Kansas are done by the Kansas Highway Patrol. Tribal officials do not have the ability to do these inspections.

David Prager, representing the Prairie Band Potawatomi Nation, said that an accommodation in the license plate case could be made without litigation. He did not feel litigation was necessary. The tribe would invite the Kansas Highway Patrol to do inspections for vehicles. He stated that the tribe is not going to issue plates for assembled vehicles. The tag would be for a vehicle that has been purchased or a new vehicle only. He felt the chop shop issue was being used as a red herring. Mr. Prager stated that the tribal registration information will be made available on the computer. Mr. Prager said the State refuses to put registration data on the computer because the reservation is not another state. There would be about 400 Prairie Band tribal vehicles to get tags.

In response to Ms. Haag, Mr. Prager said that it is true that the tribal council can change their tribal code at any time. Ms. Haag said the tribe wanted complete control over the data entry, and the State did not agree to that. She further stated there were compromise offers early, however they were not accepted. The State offered to do a designer tag for the Tribe, and that offer was rejected. Ms. Haag stated that the dispute is not about the tag, but it is about jurisdiction.

Julene Miller, Deputy Attorney General, reviewed recent Appellate Court decisions relating to state-tribal relations for the Committee (Attachments 2, 3, and 4).

Russell Mills, Kansas Legislative Research Department, entered into the record a portfolio of information from the National Congress of American Indians (Attachment 5). Due to budget cuts by the Congress, there were no travel expenses available for a representative of the National Congress to appear before the Committee.

The Committee recessed at 11:45 a.m. for lunch and reconvened at 1:30 p.m.

Afternoon Session

Judy Zelio, National Conference of State Legislatures, presented a comparison of tribal gaming revenue sharing among several states (Attachments 6 and 7). She stated that there are 23 states that have valid compacts with tribes and one state with an invalid compact. There are two states where gambling is totally prohibited. Six states and one local government (New Orleans) have state-tribal gaming revenue sharing procedures. The six states are: Connecticut, Michigan, Wisconsin, New Mexico, California, and New York. She noted that each compact is different in the various states. Committee discussion followed.

Ms. Zelio noted that most compacts provide for funds to pay for the regulatory costs. In California, she noted, tribes that have casinos share their funds with tribes that do not have casinos. California has 107 recognized tribes. Some states have implemented revenue sharing as a part of their gaming compacts, and other states have it as part of an addendum to their compacts. The Department of Interior reviews the actual compacts as well as side agreements.

Whitney Damron presented a letter from the Kickapoo Tribe and the Sac & Fox Nation of Missouri and Kansas regarding the proposed new casino in Wyandotte County (Attachment 8). Committee discussion was held concerning the letter.

Senator Oleen said there has been a strong signal from Wyandotte County to the Legislature for years saying that they want gaming. Representative Sharp said the Wyandotte County initiative was for gaming in general to save the Woodlands, not just to get Indian gaming. Senator Haley said that Wyandotte County is competing for revenue now being spent in Kansas City, Missouri. Ms. Haag said the Governor's office had three criteria for negotiations regarding gaming in Wyandotte County:

- The proposal would have to be approved by the Unified Government;
- The two tribes would have to close existing casinos in Northeast Kansas;
and
- There would be a need for consideration in the form of revenue sharing.

Bob Hoard, State Archeologist, discussed the work of the Unmarked Burial Sites Preservation Board, and reviewed the powers of the Board (Attachment 9). Discussion followed his presentation. Mr. Hoard stated that there are no provisions in the current Kansas law that need to be amended. He has never found a direct conflict between the state law and federal law. He had no recommendations for the Legislature. The Board is going very well. He noted the only problem is that out-of-state tribes have been concerned they have not been represented, but he has invited them to attend the Board's meetings. Four tribes responded to his invitation.

Brad Hamilton, Director of Kansas Office of Native American Affairs, presented a review of the 2002 Governors' Interstate Indian Council Conference (Attachment 10). He was elected vice-president of the Governors' Interstate Indian Council. There were 24 official delegates in attendance. He thanked the Committee for its support and participation in the conference. He reported that the third annual Native Nations Law Symposium was held on August 29.

Kerry Wedel, Kansas Water Office, briefed the Committee on the Northeast Kansas/Pikitanoi Public Water Supply Study (Attachment 11). The Phase I study was completed in September 2002 and concluded that:

- Projected shortfalls in water supplies were identified;
- Current estimates show sufficient raw water to satisfy projected demands;
- Raw water sources recommended for further consideration; and
- Treated water sources recommended for further consideration.

Mr. Wedel stated that the Kansas Water Office does not have funding available for Phase II of the feasibility study.

Committee discussion was held concerning future Committee work. Chairperson Powell would like the Committee to meet with Tribal Chairs as equals before the end of the year. Senator Oleen said she does not think of this Committee as an advisory committee to the Governor. She felt a site outside of a government building would be good for a meeting with the tribes.

Staff was instructed to contact Committee members about possible meeting dates in October.

The Committee approved the minutes of the August 26 Committee meeting without objection.

Ms. Haag said she wanted the Committee to be aware that the Bureau of Indian Affairs had a request from the Miami of Oklahoma for the return of 1.6 million acres, but would take 9,000 acres of the Sunflower Ammunition Plant in lieu of that land.

The meeting adjourned at 3:25 p.m.

Prepared by Judy Swanson
Edited by Russell Mills

Approved by Committee on:

November 1, 2002