

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 14, 2004 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Russell Mills, Legislative Research
Dennis Hodgins, Legislative Research
Theresa Kiernan, Office of the Revisor
John Beverlin, Committee Secretary

Conferees appearing before the committee:

Tracy Diel, Executive Director, Kansas Racing and Gaming Commission
Tom Groneman, Executive Director, Alcoholic Beverage Control, Department of Revenue

Others attending:

See Attached List.

Chairperson Brungardt began the meeting by announcing a medicaid forum on Wednesday 21, 2004, at 11:30 a.m. for all committee members. He then welcomed Tracy Diel, Executive Director of the Kansas Racing and Gaming Commission.

Mr. Diel provided an agency overview of the Kansas Racing and Gaming Commission (Attachment 1).

Chairperson Brungardt asked the committee for questions.

Senator O' Connor asked about the purpose of the Tribal Gaming Fund on the Racing and Gaming Commission Fund Activity sheet included in the testimony from Mr. Diel.

Mr. Diel answered by stating that by statute, the State Gaming Agency is part of the Kansas Racing and Gaming Commission. He further stated that the agency's budget is approved by the commission.

Senator O' Connor asked about the Horse Fair Racing Benefit Fund and its administrative costs increase of 129.9 percent.

Mr. Diel answered by stating that 2002 was the first year that the commission charged all costs for running the race meets to the benefit fund.

Senator Vratil asked Mr. Diel why he was not continuing to perform the duties of the State Gaming Agency and why the Kansas Racing and Gaming Commission was formed.

Mr. Diel explained that a separate agency was created in July of 1996. He further explained that in December of 1996 he was hired to run the State Gaming Agency. In September of 2000, upon the retirement of the executive director of the Kansas Racing and Gaming Commission, the Governor's office asked Mr. Diel to direct both agencies until a decision was made about the future of the two agencies. Mr. Diel continued explaining by stating that 3 years later it was decided that two individuals were needed to run the agencies. The Governor asked him to direct the Kansas Racing and Gaming Commission.

Senator Vratil asked why the gaming agency was not listed on the organization chart contained in the testimony from Mr. Diel.

Mr. Diel explained that as a general rule, the commission attempts to keep the racing side separate from the gaming side.

Senator Vratil asked to whom Mr. McElroy reported.

Mr. Diel stated the Governor.

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Senator Vratil stated that he thought the State Gaming Agency was a subdivision of the Kansas Racing and Gaming Commission.

Mr. Diel explained that prior to July 1, 1996, the Gaming Agency was a part of the Department of Commerce and Housing. He further explained that the Governor, at that time, did not want to add a separate agency. The Legislature, in the Tribal Gaming Oversight Act of 1996, took the State Gaming Agency and moved it to the Kansas Racing Commission and changed the commission's name to the Kansas Racing and Gaming Commission. He further explained that the act made the gaming agency responsible to the Kansas Racing and Gaming Commission for its budget, personnel, and arbitration authorization.

Chairperson Brungardt asked for additional questions and thanked Mr. Diel. The Chairperson then welcomed Tom Groneman, Director of Alcoholic Beverage Control.

Mr. Groneman presented an oversight of the Alcoholic Beverage Control (Attachment 2).

Chairperson Brungardt asked whether Mr. Groneman anticipated any changes with regard to the Alcoholic Beverage Control.

Mr. Groneman stated that he did not think the Alcoholic Beverage Control would have any new initiatives this session.

Chairperson Brungardt asked if there was an enforcement response to the issue of uniformity in liquor laws.

Mr. Groneman stated that currently new charter ordinances were being reviewed by the department, and unfortunately, they have not been able to go over the details of the ordinances.

Chairperson Brungardt asked committee members for questions.

Senator O' Connor stated that Leavenworth was experiencing difficulty with its charter. She stated that if the charter did not receive substitute language, Leavenworth could end up going dry. Senator O' Connor asked for the reason behind this problem.

Mr. Groneman explained that if Leavenworth chartered out, the county would no longer have a state license. Therefore, he explained, distributors would not be able to deliver into those cities and essentially they would go dry. Mr. Groneman explained that the problem could be interpreted differently, but that it was being reviewed.

Senator O' Connor asked if there was an effort to work with distributors in the local area to make sure that they are aware of the problem.

Mr. Groneman answered that there has been communication between the Alcoholic Beverage Control and the distributors.

Senator Gilstrap asked for the definition of "off premise."

Mr. Groneman answered that an example of "off premise" is a retail liquor store. He explained that "off premise" is a location that sells alcoholic beverages, but you do not consume the beverages on the premise.

Mr. Groneman addressed Senator Teichman about a question she asked on January 13th concerning cooperation between the Alcoholic Beverage Control and the Fire Marshal. He explained that there was communication between the agencies concerning fire violations. He stated that in 2003, there were 12 instances where Alcoholic Beverage Control agents contacted the Fire Marshal concerning fire violations. Chairperson Brungardt thanked Mr. Groneman and welcomed Theresa Kiernan to present an overview on uniformity in state laws.

Ms. Kiernan presented an edited memorandum that Mike Heim had prepared for the interim tax committee, that defined home rule (Attachment 3).

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Chairperson Brungardt asked the committee for questions.

Senator Barnett asked how the home rule charter works when the license is directed to the establishment and not to the city or county.

Ms. Kiernan stated that Senator Barnett's question is the basic question before the Supreme Court. She explained that the state made several arguments, and that the court resolved three of the arguments. Ms. Kiernan stated that the state made an argument, that regardless of the fact that the act is nonuniform, the act does apply to cities; and they cannot, therefore, opt out of that provision. She further stated that this was the argument that is now up to the Supreme Court.

Senator Barnett asked if there was any history.

Ms. Kiernan said there was a case, and she referred to the second memorandum and the Brewster case on page five ([Attachment 4](#)).

Ms. Kiernan presented her second memorandum to the committee. She stated that she prepared the memorandum for the interim Judiciary Committee.

Chairperson Brungardt asked what it was about the Liquor Control Act that makes it nonuniform.

Ms. Kiernan stated it was the provisions that classify cities into class.

Chairperson Brungardt asked whether the act had to be uniform or whether it needs to be declared uniform.

Ms. Kiernan answered that the act has to be uniform. She further stated that the interim Judiciary Committee introduced Senate Bill 305 which is uniform and preemptive.

Senator Barnett asked if there were other statutes that could be at risk or subject of home rule.

Ms. Kiernan answered that anything that is not uniform is at risk. Including, she stated, campaign finance, nonuniform gaming bills, retail sales tax, and the municipal court act.

Senator Barnett asked whether strong preemptive language was necessary.

Ms. Kiernan answered no, that preemption would prevent cities and counties from doing things in addition. She explained that there have been several liquor cases where cities have made the rules more strict. She further explained, she thought, Sunday sales were the first issue where cities have made things easier.

Senator Barnett asked for the reason behind the preemptive provision.

Ms. Kiernan deferred the question to Senator Vratil.

Senator Vratil stated that he chaired the committee this summer that dealt with preemption. He further stated that it was his perception of the committee's intent that preemptive provision be added to make it clear to any local government that they cannot vary from the liquor control act.

Ms. Kiernan stated that the provision does resolve any doubt about whom is in control of the Liquor Control Act.

Senator Vratil stated that it was the intent of the committee to indicate that the legislature has exclusive control over the act.

Chairperson Brungardt asked if it was known when the Kansas Supreme Court would make its decision concerning home rule.

Don Moler, who was sitting in the audience, answered that he thought there would be a decision out of the

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Supreme Court in January or February.

Senator Vratil stated that the interim committee sent a message to the Supreme Court stating the legislature would appreciate an early decision.

Chairperson Brungardt asked the committee members for further comments. None were made.

The meeting was adjourned at 11:45 a.m. The next meeting is scheduled for January 15, 2004, at 10:30 a.m. in room 231-N.