

MINUTES

JOINT COMMITTEE ON STATE-TRIBAL RELATIONS

July 13, 2001
Room 514-S—Statehouse

Members Present

Senator Lana Oleen, Chair
Representative Tony Powell, Vice Chair
Senator David Haley
Senator Nancey Dean Harrington
Senator John Vratil
Representative Melany Barnes
Representative Becky J. Hutchins
Representative Doug Mays
Representative Bonnie Sharp
Natalie Haag, Governor's Office
Julene Miller, Attorney General's Office

Members Excused

Senator Mark Gilstrap

Staff Present

Russell Mills, Kansas Legislative Research Department
Deb Hollon, Kansas Legislative Research Department
Theresa Kiernan, Revisor of Statutes Office
Judy Swanson, Committee Secretary

Conferees

Brad Hamilton, Kansas Office of Native American Affairs
Tracy Diel, Kansas Racing and Gaming Commission
M. J. Willoughby, Assistant Attorney General
Charlie Lehman, Counsel for the Kickapoo Tribe

Trista Beadles, Assistant Legal Counsel, Governor's Office
Nancy Bear, Kickapoo Tribal Chair
Cathy Tucker-Vogel, Kansas Water Office
Kimberly Oldham, U.S. Corps of Engineers
Gary Mitchell, Vice Chairman of Potawatomi Nation
David Prager, Counsel for Potawatomi Nation

Chair Oleen called the meeting of the Joint Committee on State-Tribal Relations to order on July 13 at 10:15 a.m. She reviewed the agenda for the meeting and welcomed new members to the Joint Committee.

Brad Hamilton, Director of the Kansas Office of Native American Affairs, updated the Committee on the activities of the Office. He presented the Committee with brochures which describe the responsibilities of the office (Attachment 1). Mr. Hamilton said that he has been making a variety of presentations to groups throughout the state. He reported that, on September 27, the staff will be working with a Native American Law Symposium, and in August of 2002, the Governor's Interstate Indian Council will be held in Kansas. Mr. Hamilton reported that he attended the National Congress of Native American Indians in May. He said much time was spent at the Congress on state-tribal relations. He reviewed the upcoming Native Nations Law Symposium in response to the Committee's request. The purpose of this conference is to help awareness of Indian legal and sovereignty issues. He invited Committee members to attend the law symposium.

Russell Mills, Kansas Legislative Research Department, reviewed the state-tribal relations bills considered during the 2001 Session (Attachment 2). He noted that only one bill and two resolutions were enacted by the 2001 Session. SB 75, which was enacted, clarifies the law which created the Joint Committee on State-Tribal Relations. A resolution (SCR 1611) expressing the Kansas Legislature's opposition to proposed amendments to the federal Indian Gaming Regulatory Act was approved. Also approved was a resolution (HR 6005) congratulating and commending Dr. Karen Swisher, President of Haskell Indian Nations University.

Representative Hutchins reviewed the action on SB 74, concerning tribal law enforcement powers, during the 2001 Session. Tracy Diel, Executive Director of the Kansas Racing and Gaming Commission reviewed the Legislature's actions on HB 2216. He felt that there was too much confusion when the bill was discussed in the House, and therefore it did not pass. Representative Mays concurred with Mr. Diel's remarks that the bill had been the subject of some confusion in the House when it was discussed on General Orders. Representative Hutchins suggested that several of the provisions of HB 2216 be removed, and the remaining provisions be considered for passage next session.

Senator Vratil said that his Committee just ran out of time to work SB 76, concerning agreements between the Governor and the resident tribes. Natalie Haag, Governor's Office, said that the Governor can currently negotiate any compacts, but the amended bill would limit the types of issues with which the Legislature could become involved. Senator Vratil

said that the bill could still be acted on early in the next session, and he was hopeful that any differences could be resolved.

Senator Harrington felt that HB 2224, concerning the procedure for approval of gaming compacts, was put on hold at the end of the 2001 Session because of other gaming issues, but that the bill could be worked early in the next session.

Deb Hollon, Kansas Legislative Research Department, reviewed pending federal legislation that could impact Kansas or that would be of interest to the Committee (Attachment 3). Chair Oleen announced that this was Ms. Hollon's last meeting with this Committee, and she commended Ms. Hollon on her work with the Committee.

M. J. Willoughby, Assistant Attorney General, reviewed several recent 10th Circuit U.S. Court of Appeals decisions (Attachment 4). The first decision concerned the Miami Tribe of Oklahoma and the tribe's efforts to establish a gaming facility in Miami County.

Ms. Willoughby reviewed another recent decision which held that the Huron Cemetery is not a "reservation" for the purposes of the Indian Gaming Regulatory Act (Attachment 5). Kickapoo Tribe Counsel Charlie Lehman concurred with Ms. Willoughby's remarks about the impact of this decision relative to the Wyandotte Tribe of Oklahoma.

An article from the June 8, 2001, *Topeka Capital Journal* was presented to the Committee by staff. The article concerns a lawsuit by the Wyandotte Nation which is seeking 1, 920 acres of land north of Kansas City, Kansas (Attachment 6). Ms. Willoughby stated that the tribe is claiming that the land was improperly seized by the federal government. Ms. Willoughby said that the Delaware Tribe is not a party to this lawsuit. She briefly reviewed the on-going lawsuit concerning the issuance of motor vehicle license plates by the Prairie Band Potawatomi Nation.

Trista Beadles, Assistant Legal Counsel to the Governor, presented an update on land to trust applications in Kansas (Attachment 7). She stated that there has been land taken into trust in the past four years, but no firm tax information for those parcels is available. Julene Miller said that there are some new federal regulations in process considering land being taken into trust.

The Committee recessed at 11:55 for lunch and reconvened at 1:15 p.m.

Nancy Bear, Kickapoo Tribal Chair, updated the Committee on the Pikitanoi/Northeast Kansas water project. She stated that the project was started as a long-term project to supply adequate water to the Kickapoo Reservation and other areas in Northeast Kansas. She stated that the only source of water for the Kickapoo Tribe now is the Delaware River, which is actually a small stream. Last year, the tribe experienced a severe drought. The tribe met with several agencies to secure additional emergency water and they worked with the Kansas Water Office and did some test drilling for water. She said there was not enough water found to warrant the drilling of any wells. Ms. Bear stated that a reservoir which would help was approved by the U.S. Congress, but no funding was allocated for the project. She stated that there are approximately 700 residents living on the Kickapoo Reservation. The

casino needs are also a part of their water drain. She stated that the proposed wholesale water district would encompass the Northeast part of Kansas.

Cathy Tucker-Vogel, Kansas Water Office, presented a review of the Pikitanoi project and related background information ([Attachment 8](#)). The Kansas Water Office supports and has provided some funding for a comprehensive study to evaluate the current and future water supply needs of the region.

Kimberley Oldham, Civil Engineer/Native American Coordinator, Kansas City District, U.S. Army Corps of Engineers, presented a summary of the proposed Pikitanoi/Northeast Kansas Water Supply Study to be done by the Corps of Engineers ([Attachment 9](#)). She also reviewed the Department of Defense American Indian and Alaska Native Policy ([Attachment 10](#)). The costs of the Phase 1 study are estimated at \$92,000, with roughly half of this sum provided by the Kansas Water Office and the Public Wholesale Water Supply District 21.

The need for clarification regarding tribal payments to the state was discussed. Currently, the tribes divide the cost on equal one-fourth shares. Mr. Diel stated that the compacts are not clear on the method for assessment of the fees. He stated that all tribes are current in their payments.

Gary Mitchell, Potawatomi Nation, said that he does not understand the concern over the assessments ([Attachment 11](#)). He stated that the current system of computing tribal payments is working fine.

David Prager, Counsel for Potawatomi Nation, presented information concerning the lawsuit about the issuance of tribal license plates ([Attachment 12](#)). He noted that other states allow tribal tags and that Oklahoma permits the use of tags everywhere in their state. He stated that Kansas recognizes Oklahoma tribal tags as being legal in Kansas, however does not accept tags from the four resident tribes in Kansas. Committee discussion followed. Mr. Prager said that the issue is that the tribes want to issue their own license plates under tribal law. The tribes would only issue them to tribal members living on the reservation and to tribal vehicles. Mr. Prager said there are six or seven other states which allow tribal license plates. He felt that Oklahoma would recognize tags issued by tribes in Kansas. He said that he thought that they were looking at possibly 700 vehicles. Chair Oleen would like an estimate as to how much the state has spent in litigating this issue and also how much the tribe has spent to date litigating this issue. She said there was concern that tribal license plate information would not be readily available to law enforcement officials. Mr. Prager said that the tribe will provide this information to the state, but so far the state has refused to allow the tribes to provide this information to the state computer system.

Chair Oleen requested that staff find out if Oklahoma has tribal plate information listed on their Department of Revenue computer system. Chair Oleen said that the personal property tax issue is a real sticking point. Julene Miller said the Department of Revenue feels it is following the statute as it defines "state" in the statute.

Representative Powell requested that, if the Committee visits Wichita, the Committee visit the Mid American Indian Center and the Wyandotte Tribe's Park City property. Senator

Vrtil would like the Committee briefed on the types of governmental services offered to tribes by the state and whether or not fees are charged for those services.

Julene Miller requested a report, table, or chart indicating every tribe which has approached the state about gaming. She mentioned a letter from the U.S. Department of the Interior requesting comments about the federal Indian Arts and Crafts regulations being used to seek comments; the questionnaire is to be returned by August 20.

The legality of bottle rocket sales on a reservation was discussed. A newspaper article reviewing the Attorney General's statement that such sales are illegal was presented by staff (Attachment 13). Chair Oleen stated that the sheriff met with the vendor, and the vendor withdrew the sale of bottle rockets. Mr. Prager said that the sales ceased. Mr. Prager presented copies of a letter to the editor from Tribal Chairman Badger Wahwasuck on the issue (Attachment 14).

Representative Barnes said she felt the state and tribes should work out issues as often as possible without litigation. She also said Indian crafts are important to tourism and commerce.

Representative Mays would like a presentation on the demographic trends of Native Americans in Kansas, *i.e.* where do they live, their general status in Kansas, economic development, etc.

Staff distributed a memorandum entitled "Four Tribes Joint Resolutions Opposing Gaming Within the State of Kansas by Out-of-State Indian Nations" (Attachment 15).

Excerpts from the gaming compacts concerning the state assessment for regulatory costs for the casinos were given to Committee members (Attachment 16).

Chair Oleen said that there is a new trend across the country for state and tribal governments to work together more effectively. She presented background information on why this Committee was formed. She stated that an update from Kansas University on the Tribal Law Center would be scheduled for the Committee, and the Committee will tour one or more of the reservations. Chair Oleen announced that the next meeting will be at 10:30 a.m. on August 21.

Nancy Bear asked about tribal participation in Committee meetings. She would like to have tribal members participate in Committee discussions. Chair Oleen invited the four resident tribal chairs to sit with this Committee and be a part of the discussion at the future Committee meetings during the term she serves as Chair of the Committee.

The meeting adjourned at 3:00 p.m.

Prepared by Judy Swanson
Edited by Russell Mills

Approved by Committee on:

October 30, 2001