

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Clyde Graeber at 1:30 p.m. on January 21, 1993 in Room 526-S of the Capitol.

All members were present except: Representative L. Candy Ruff, Excused

Committee staff present: Mary Galligan, Legislative Research Department
Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
June Evans, Committee Secretary

Others attending: See attached list

Conferees appearing before the committee: Robert L. Pirtle, Attorney, Washington State
Kip A. Kubin, Attorney

The Chairman called the meeting to order at 1:30 PM and handed out to committee members a letter received from the Attorney General saying he wanted to share its contents with the members because it brings to focus what is the issue the committee really needs to address. (See Attachment #1)

The Chairman further stated there are two people that would testify today, the first, Robert L. Pirtle, Attorney from Washington state and the reason it is felt he is a very important conferee is that he has been a practicing attorney and has represented many different Indian tribes in his career and he has tried 8 cases before the Supreme Court in regard Indian matters.

Mr. Pirtle stated the purpose of his testimony was to assist the Kansas Legislature in its consideration of proposed amendments to HB 2023, authorizing the state to enter into Tribal-State gaming compacts under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. S2701 et seq. Mr. Pirtle briefed the committee on the proposed amendments. (See Attachment #2)

Mr. Pirtle stated the purpose of IGRA is to provide for Tribes the ability to have casinos on/or adjacent to their reservations to create tribal employment and to generate money for the tribes and their government just like federal and state government. There are protections built in. This statute was designed for Indians to take care of their people.

Language in New Section 2. (f) -- there is reason for that language. In the Citizen Bank vs. Potawatomie case, the U.S. Supreme Court held with respect to the situation in Oklahoma, trust land owned by an Indian Tribe is equivalent to reservation land. Mr. Pirtle stated the danger was a creative Indian laywyer could argue a piece of trust land owned by a tribe in Kansas would be equivalent to reservation land in Kansas for gaming purposes. He thinks that is not the purpose of IGRA.

The Chairman asked staff if the Secretary of the Interior receives lands in trust for tribes located outside the territorial boundaries of Kansas, and it was Kansas land received in trust, an out-of-state tribe could use that land and come under current provisions of our consitution and allowing gaming and open a casino.

Staff stated, not sure, the Indian Gaming Regulatory Act does allow for gaming operations on trust lands but provision that says if they are acquired after a certain date the Governor has to find it in the best interest of the community.

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MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 526-S
Statehouse, at 1:30 p.m. on January 21, 1993.

A member stated the impact of Section (f) in many ways it is elusive, it simply says this negotiating procedure will not apply to non-resident tribes. Down the line if the Secretary of Interior approves land in trust, if the Governor deems appropriate for gaming under IGRA a non-resident tribe can request a compact and we are back here re-negotiating the procedure for the non-resident tribe.

Mr. Pirtle stated, that could be the case.

A member stated the only effect of this particular section is that we would be back here talking about a procedure for non-resident tribes.

Mr. Pirtle stated, yes. There is no way to stop that. The Secretary of Interior and Governor can stop that. It does say as the legislature you have authority, now at a future time legislature can consider policy of out-of-state tribe and may come up with different determination.

A member stated non-residents and residents should not be treated the same.

Mr. Pirtle stated the tribes suggest that the joint committee be reduced in size, the philosophy of the tribe being their experience is that the fewer people you negotiate with the better. The smaller councils are much more effective. The tribes also suggest the middle of page 2. 3. (b) (1) and (2) be stricken. The tribe feels public policy Class III gaming has been decided and there is no point in redoing it and the legislature should make their desires known to the tribes and negotiate with them. Public hearings don't have to be a part of this; most states do not have.

Mr. Pirtle stated he understands that Kansans are not happy with casinos on reservations but recognize that the Attorney General has said the Federal Judge has said he wants action here. He will make a decision by mid-April and has made it clear and it is important for the legislature to move.

The Chairman stated, I think you have summed up the feeling of the majority of the legislature who appear to have a problem with casino gambling in the state. They recognize the position we are in by reason of IGRA but at the same time I don't believe the legislature, at least in his opinion, is going to give up as you asked to have done here, input in regard public policy and gaming and gambling in the state of Kansas and your basically having legislation worded in such a way that the legislature would not be involved in the policy making framework and I don't believe the legislature is going to give that up.

Mr. Pirtle stated, the tribes are not asking that the hands of the joint committee be tied. They feel the houses of legislature should say we want the rules of the games posted. The rules will be posted. There will be no alcohol on the gaming floor. That will be in restaurants. This will protect both tribal members and Kansas. The tribes do not want a lot of public policy items be built in.

The Chairman stated he did not believe the legislature will give up freely their input as to public policy in regard gaming and gambling in this state.

A member asked about closure. What is your idea, Mr. Pirtle, of closure?

Mr. Pirtle stated the statute provides for negotiation process saying we would like a compact with the state and this begins the 180 day period. If within that 180 day period, there is not a final compact and closure, then the judge will appoint a mediator and have 60 days, at the end of that if not a final compact, the Federal Judge will make a decision. The 180 day period is gone. What about closure? It would be wise for the legislature to complete the compact within so many days. The tribe would like that as they want this to move along, possibly a 60 day closing period.

Mr. Pirtle stated the 180 days begins from the day the tribe makes the request.

A member stated, you imply that automatically at the end of 180 days if the compact is not signed, sealed and delivered it was bad faith, right?

Mr. Pirtle, stated that is correct.

A member stated, I thought the law read the state had to enter in that time and negotiating and if the state is actively dealing with the tribe and they have not completed all the business you say that is bad faith?

Mr. Pirtle, no it is prima facie fact.

Kip Kubin, Attorney, representing the Miami Tribe of Oklahoma, was the next to testify as a proponent of

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Indian gaming and as a supporter of nearly all of the proposed bill. However, the Miami Tribe of Oklahoma must take exception to one provision which is a proposed amendment to HB 2023, that being Section F.

The Miami Tribe is in agreement with majority of the legislation, but feels we should amend sub-section (f). We have strong exception because of a violation to IGRA. (See Attachment #3).

The Chairman stated, in reading it does not say state "must" enter into negotiations, it says "may request" the state. There is a difference.

A member questioned, if you represent the Miami Tribe of Oklahoma, this tribe has property in Miami County, is anyone residing on it or how long has it been since people have lived on it.

Mr. Kubin stated no people live on the land.

It was asked where the properties were located?

One strip of land is in Southeast Kansas; 90-97 acres in Western Johnson County; one is the Black Snake ground in Wyandotte County and the other is the 36 acres in Miami County.

A member asked if Oklahoma has pari-mutuel betting; do they have casinos, aren't they eligible?

Mr. Kubin stated that Oklahoma has different rules. All tribes are looking at it economically

The meeting was adjourned at 3:00 PM and the Chairman announced the Agenda would be revised and there would be a meeting on Monday, January 25, to continue committee discussion on HB 2023.

Date: 1/21/93

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
LEON CAMPBELL	IOWA TRIBE	
STEVE MC GIFFERT	ATTORNEY FOR IOWA TRIBE	OP, KS
JIM GORDONO	KS LOTTERY	TOPEKA
Ralph Decker	Kansas Lottery	Topeka.
Dave Schneider	Kansans For Life At Its Best	Topeka
Emery Nogensott	Kickapoo Nation	Horton
Greg Mosher	Pat Hubbell & Assoc.	Topeka
Brian Nankin	Pat Hubbell Assoc.	Lawrence
Michael Giesten	K. Gov. Consulting	Topeka
Christine Huhn	Intern for Rep. Bricker	Lawrence
Joe Hale	Potawatomie Tribe	Magetta, KS.
Floyd LaChapin	PRAIRIE BAND POTAWATOMI TRIBE	TOPEKA
John McGinnis	LBBI	Topeka
Ted Clark	TBI	Topeka
Patrick Hurley	McGee Assoc	Topeka

Date:

1/21/93

FEDERAL and STATE AFFAIRS COMMITTEE

NAME	ORGANIZATION	ADDRESS
Rob McKnight	The Ceres Group	Overland Park
Jim Conant	Ks. ABC	Top.
Bob Sherburne	Ingreshaw	Top
Nancy Bear	Treasurer - Kickapoo Tribe in Kansas	PO Box 271 Horton, KS 66439
Grace Wahwasuck	Tribal Secretary Prairie Band Potawatomi	Rt. 2 Box 50 A Mayetta, KA. 66509
Ralph Leumann	Provis Board Potawatomi Tribal Council member	R-2 Box 50-A Mayetta KS 66509
Fred Thomas	Kickapoo Tribe (KS) Councilman	P.O. Box 271 - Horton KS 66439 486-2131
LaRene Thomas	Prairie Band Potawatomi T.C.	Mayetta, KS.
Mary Wabnum Mitchell	" "	"
Ruth Wahwasuck	" "	" "
Brian Eckman	Intern-Lynch	513 Sunset Manhattan, KS 66502
John Thomas	Kickapoo Tribe	HORTON, KS. SOD. E. 13 & 4
Sally Howard	Intern-Lynch	Lawrence, KS
Ernest R. Boykin	Indepent Lobbyist	Topeka, KS.



STATE OF KANSAS

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ROBERT T. STEPHAN
ATTORNEY GENERAL

January 11, 1993

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The Honorable Clyde D. Graeber
State Representative, District 41
State Capitol
Topeka, Kansas 66612

Re: Indian Gaming Legislation

Dear Representative Graeber:

As the 1993 Legislative Session begins, I would like to bring you up to date on Indian gaming in Kansas and the urgent need to adopt legislation to provide our state with a framework through which to negotiate and adopt appropriate compacts with Indian tribes and nations. It is important to state at the outset that to adopt a framework to negotiate and approve compacts is not a positive or negative expression of your sentiments on Indian gaming. It is simply necessary for Kansas to have such a framework in place to protect the state's best interests as well as to protect the policy-making role of the Legislature to the greatest extent possible. The Legislative Coordinating Council (LCC) agreed to draft such legislation, and I ask that you make adoption of a procedure one of your earliest legislative priorities. To this end, I was pleased that the House has scheduled hearings to begin this week on the LCC proposal.

In 1988, Congress passed the Indian Gaming Regulatory Act (IGRA). The act sought to provide order and regulation to what it was believed would otherwise be the unfettered and unregulated proliferation of casinos and gaming on Indian lands throughout the country. There is a great deal of disagreement and uncertainty as to the actual affect of the act and as to its interpretations. However, in Kansas, because the State Constitution was amended in 1986 to allow for a relatively unrestricted state lottery, IGRA provides Indian tribes and nations with the right to operate gaming, including casinos, on certain Indian land.

Last year, the Governor attempted to unilaterally enter into compacts required by IGRA for Indian tribes to proceed with gaming in Kansas. In an effort to protect the Legislature's role in the compact process, I filed suit before the Kansas Supreme Court challenging this unilateral action, and the Secretary of Interior withheld his required approval of Kansas compacts until the issue was resolved. July 11, 1992, the Kansas Supreme Court unanimously upheld my opinion that the Governor could not enter into such

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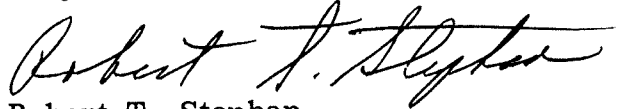
compacts alone and the Court set forth the role of the Legislature in the process.

Under IGRA, the state is required to negotiate in good faith and enter into compacts with tribes. If the state does not, IGRA may be interpreted to allow the federal courts to establish the rules for Indian gaming within a state with little or no state input. In October, 1992, two Kansas Indian tribes, the Potawatomi and the Kickapoo, filed suit against the state, attempting to force the adoption of compacts so they could open casinos. I am defending the state in these actions. While there are defenses I will assert in these cases, I believe the best means for the state to assure the ultimate protection of all of our citizens' interests is to establish a process to negotiate and approve these compacts. No such process now exists.

The Federal judge to which these cases are assigned is moving them on a fast track. He has scheduled a status conference for February 12, at which time it is clear he will assess the progress the state has made in developing a compact negotiation and approval process. I believe the state would be best served by that process being in place by that time.

I will be available to assist with this legislation in any way possible. If you have any questions, please contact me or Deputy Attorney General Julene Miller, the head of my Civil Division, and we will attempt to answer them. I will appreciate your consideration in making this issue an early priority of the 1993 Legislative Session.

Very truly yours,



Robert T. Stephan
Attorney General

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TESTIMONY OF ROBERT L. PIRTLE BEFORE
THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE
REGARDING HB 2023
JANUARY 20, 1993

I am Robert L. Pirtle of Pirtle, Morisset, Schlosser and Ayer, attorneys for the Prairie Band of Potawatomi Indians, and offer this testimony on behalf of the Potawatomi tribe in support of House Bill 2002.

Introduction

The purpose of this testimony is to assist the Kansas Legislature in its consideration of proposed amendments to HB 2023, authorizing the State to enter into Tribal-State gaming compacts under the Indian Gaming Regulatory Act(IGRA), 25 U.S.C. §2701 et seq. A copy of the proposed amended HB 2023 is attached to this testimony for reference and is in "legislative format"-that is, language proposed to be stricken is shown crossed through and language proposed to be added is shown in hatch marks.

The proposed amendments to HB 2023 have been thoroughly discussed by all Kansas tribes and their attorneys and are agreed upon. The philosophy underlying the proposed amendments is diverse and needs to be understood by the Legislature as designed to solve minor problems posed by HB 2023 as originally written. Some proposed amendments are designed to make HB 2023 comport more closely with the IGRA and federal congressional Indian policy; some proposed amendments are designed to make the compact procedure more efficient and more functional; some proposed amendments are designed to minimize expense to Kansas tribes and the State; and

some proposed amendments are designed to make tribal casinos on or adjacent to Kansas reservations more fiscally responsible and better protected for the benefit of the State and the tribes.

1. The Federal Legislative Purpose Behind the Indian Gaming Regulatory Act

The Kansas tribes deem it appropriate to remind the Kansas Legislature that the purpose of the IGRA is to promote tribal economic development, tribal self-sufficiency and strong tribal government for Kansas tribes. The legislative history of the IGRA is replete with references to the lack of economic opportunities on Indian reservations and high unemployment rates with their accompanying social ills such as high rates of alcoholism, teenage suicide, divorce, despair and hopelessness. In crafting the IGRA, Congress built upon the decision of the United States Supreme Court in California vs. Cabazon Band of Mission Indians, 480 U.S. 202 (1987), which held that if Class II gaming (bingo and related games) did not violate a state's public policy, Indians were free to operate high stakes bingo games on their reservations free of any state interference or regulation. The Cabazon decision led Congress to condition the rights of Indian tribes to engage in Class III (casino style gaming) on their reservations upon whether such gaming violated a state's public policy.

The intent of the IGRA was not to convert the State of Kansas into a state-wide Las Vegas; had it been so, Congress would have defeated its very purpose because obviously multi-million dollar casinos in downtown Wichita, Topeka, and Kansas City would result straightaway in the destruction of Class III gaming facilities and

opportunities on or adjacent to the reservations of Kansas tribes. It goes without saying that such a result was not what Congress intended in the passage of the IGRA.

In passing the IGRA, Congress did intend that the State of Kansas—because its public policy encompasses Class III gaming activities—negotiate in good faith with Kansas Indian tribes with respect to the establishment of Class III gaming casinos on their reservations or on lands held in trust by the United States for the tribe or tribal members on October 17, 1988, the date of passage of the IGRA. This is made clear both in the definition of "Indian land in 25 U.S.C. §2703(4) and in 25 U.S.C. §2719(a)(1), the section providing for gaming on lands acquired in trust after October 17, 1988.

2. Amendments Regarding the Compact Procedure

Proposed amendments regarding the compact procedure are analyzed below by reference to specific sections of the proposed legislation:

New Sec. 2(a): The Kansas tribes suggest that the philosophy of the Legislature be to move the compact procedure along as expeditiously as possible inasmuch as it is, in essence, a contract negotiation between two equal governmental bodies. Accordingly the Kansas tribes suggest that the Governor be required to submit a completed compact within seven days of its completion to the joint committee on gaming compacts for approval or modification. All language of "rejection" is proposed to be stricken because the governor cannot realistically be expected to negotiate a Tribal-

State compact in the expectation that it could be rejected by the joint committee. Similarly, on the joint committee's part, its obligation should be either to approve such a negotiated compact or to propose its modification, but not its rejection or renegotiation of a new compact.

New Sec. 2(b): The Kansas tribes suggest that the Governor be required to resume or complete negotiation on a compact returned to the Governor by the joint committee within five days and that, on its part, the joint committee be required to complete its duties after such gubernatorial renegotiation within thirty days.

New Sec. 2(c): The Kansas tribes propose adding language to make clear that the State Attorney General shall act as legal counsel for all phases of the compact procedure inasmuch as federal Indian law is extremely complex and legal in nature.

3. The Out-of-State Tribe Problem

As indicated, the purpose of IGRA was to provide a compact mechanism between states and their tribes, not to invite all tribes in America to come to any one particular state as a safe haven for Class III gaming. Mr. Robert Stephan, State Attorney General, has advised the Legislative Coordinating Committee that the Legislature may legally exclude non-Kansas tribes from the compact procedure. The Kansas tribes wholeheartedly agree and the Legislature is advised that, should an out-of-state tribe attempt to acquire trust land in Kansas on which to establish a Class III gaming facility in or near a major Kansas metropolitan area, the Kansas tribes would oppose its establishment in every way possible because it would

obviously open the door to additional out-of-state tribes and the end result would be the bankruptcy of the casinos and economies of the Kansas tribes. Thus the incursion of out-of-state tribes in Kansas would clearly defeat the federal purpose in the passage of the IGRA.

Furthermore, because of the trust responsibility of the federal government to the Kansas tribes and because 25 U.S.C. §2719 (b)(A) requires that the Secretary of the Interior consult with "officials of other nearby Indian tribes" before taking new land into trust for gaming purposes under the IGRA, it seems quite clear that the Secretary of the Interior would not approve the taking of any such land in trust not the establishment by a non-Kansas tribe of a Class III casino in the State under any circumstances.

Nonetheless, the Kansas tribes deemed it appropriate to insert language in the proposed legislation to make it clear that the legislative purpose of the Kansas Legislature is congruent with that of the Congress and therefore propose a new subsection (f) to New Section 2.

New Section 2(f): Proposed New Section 2(f) makes clear that the delegation of authority from the Legislature to the Governor, the Governor's designated representatives, the joint committee, the President of the Senate and the Speaker of the House, does not include authority to negotiate Tribal-State gaming compacts with out-of-state tribes. The description of an out-of-state tribe as "any tribe which was not historically located within the boundaries of Kansas and the governing body of which was not located within

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the boundaries of Kansas on October 17, 1988" is carefully designed to prevent any non-Kansas tribe, one of whose enrolled members owns one acre of land in Salina, Kansas from claiming to be entitled to establish a Class III casino in downtown Salina. This descriptive language, rather than the seemingly more appealing simple reference to "Indian tribes with current reservations in Kansas" is made necessary by the decision of the United States Supreme Court in Citizen Band of Potawatomi Indians vs Oklahoma, in which the Supreme Court held that tribal trust in Oklahoma—albeit not officially designated as a reservation—is equivalent to a reservation for tax immunity purposes. Arguing analogically from this principle that trust land in Kansas is also equivalent to a reservation for gaming purposes, an out-of-state tribe could argue that its one acre of trust land in Salina constituted a Kansas reservation, and that, therefore, under the IGRA, it is entitled to establish a Class III gaming casino in downtown Salina.

The Kansas tribes do not believe that to be the law nor to be consistent with the congressional purposes of the IGRA, particularly in view of the requirement of Congress in 25 U.S.C. §2703(4)(b) that Indian gaming be limited to off-reservation trust land over which a tribe exercises governmental power. The Kansas tribes firmly believe that no non-Kansas tribe exercises governmental power over any trust land inside Kansas. Nonetheless, the Kansas tribes believe the language of proposed subsection 2(f) is necessary to protect both their prospective casinos and the State.

It should be added that the language in proposed new subsection (f) was carefully collected in a single subsection for severability purposes and that the proposed addition of a severability clause as New Section 11 is designed to preserve HB 2023 in the unlikely event that a Federal Court in the future found subsection 2(f) somehow to violate federal law. The severability issue is discussed more fully below.

4. Considerations regarding the Joint Committee on Gaming Compacts

New Section 3(a): The Kansas tribes suggest that the joint committee be reduced in number from ten to four, comprising two senators and two representatives. The philosophy underlying this proposed amendment is that the procedure is, after all, a contract negotiation between two sovereign governments and that the fewer parties involved in any contract negotiation the better, both from the standpoint of time and expense. The Kansas tribes feel that each house of the Legislature should be able to make its policies and contract proposals known to its two representatives and that those representatives should be able to carry out the objectives of that house effectively in the negotiation procedure which will thus be facilitated.

New Section 3(b)(1): The Kansas tribes suggest that subsection (b)(1) be stricken because the basic gaming policy of the State of Kansas has already been decided: the Legislature has authorized lottery, bingo, parimutuel betting on horse and dog races and on-line keno games. Decisions of the State Supreme Court and opinions of the Attorney General make it clear that, as a

matter of state policy, these provisions essentially authorize the Legislature to engage in any Class III gaming activity as defined in the IGRA. The Kansas tribes urge that further refinements in specific compacts should be left to the negotiation procedure inasmuch they will probably require tailoring to each specific tribal casino, depending upon the number of machines authorized, hours of play, enforcement mechanisms, sharing of jurisdiction, etc.

New Section 3(b)(2): The Kansas tribes suggest that the public hearings procedure be deleted in its entirety. The philosophy behind this proposed amendment is that it is almost impossible to negotiate contracts by a "public hearing" method. Just as the State of Kansas would not contract for the building of a new state prison by the "public hearing" method, the Kansas tribes urge that it should not negotiate tribal state gaming compacts by that method. The feeling of the Kansas tribes is that such public hearings can only furnish forums for anti-tribal feeling, moral grandstanding and publicity opportunities—with resulting delay and needless expense both to the State and to Kansas tribes.

New Section 3(b)(3): In keeping with the proposed amendments of New Section 2(a), the Kansas tribes feel that the obligation of the joint committee is to approve or recommend modification of proposed compacts and, therefore, the language of "rejection" should be deleted.

New Section 3(d): In keeping with the philosophy of the

Kansas tribes that the joint committee should be limited to four members, the tribes propose that a quorum of the joint committee be reduced to three.

5. Considerations Regarding the Government-to-Government Relation of Kansas Tribes and the State

New Section 4(b)(2): The Kansas tribes deem it appropriate to remind the Legislature that the IGRA requires an annual financial audit of each tribal gaming operation and that such audits be submitted to the International Indian Gaming Commission. Accordingly, the Kansas tribes urge that subsection (b)(2) be amended to provide that copies of such annual audits be furnished to the State Director of Gaming rather than requiring tribes to undergo the expense of additional and unnecessary audits.

New Section 4(c)(3): The IGRA requires that each "primary management official" and "key employee" be fingerprinted and investigated before he may act as an employee in a tribal gaming operation. Accordingly, the Kansas tribes feel that the language of subsection 4(c)(3) be amended to correspond precisely with that of the IGRA.

New Section 4(d)(3): Because of the prohibition of employment in any Indian gaming operation by 25 U.S.C. §2710 (b)(2)(F)(ii)(II) of any person "whose prior activities, criminal record, reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods and activities in the conduct of gaming", the Kansas tribes urge the addition of a new subsection (3) to provide for disclosure to the

tribes pursuant to their gaming compacts of the results of any background investigations carried out by the Kansas Bureau of Investigation or other criminal justice agencies. The tribes need this information for two reasons: (1) the IGRA provides penalties against a gaming contract management company which employs any person who does not meet the federal standards, and (2) the National Indian Gaming Commission is authorized to suspend temporarily or permanently any tribal gaming operation which employs any person who does not meet the federal standards. Therefore, it is crucial that tribes share in such background investigation reports.

New Section 5(a): For the same reasons discussed above, the Kansas tribes urge that they be provided copies of periodic reports of monitoring activities of the Kansas Bureau of Investigation.

New Section 5(c): The Kansas tribes urge the Legislature to leave the issue of the hours of access by agents of the Kansas Bureau of Investigation in its monitoring activities to provisions of individual gaming compacts of the Kansas tribes.

All of the above proposed amendments are designed to facilitate the working relationship between Kansas tribes and the State in its monitoring of tribal casino activities.

New Section 11: As indicated above, the purpose of severability clause is to protect Kansas tribes, the State of Kansas, tribal state compacts negotiated under HB 2023, and Kansas tribal casinos established pursuant to such compacts in the unlikely event that a Federal Court declares in the future that New

Section 2(f) somehow violates Federal law. Kansas law provides that where the will of the Legislature can be carried out despite excision of a unconstitutional and severable provision, the statute will be saved. The severability provision is added for that specific purpose.

Conclusion

The Kansas tribes appreciate the efforts of the Legislature in seeking legislation which will establish a compact procedure for Tribal-State gaming compacts pursuant to the IGRA. The Kansas tribes believe that, properly amended and enacted, and subsequently pursued in good faith negotiations between the State and Kansas Indian tribes, HB 2023 will succeed in fulfilling the federal purposes behind the IGRA. The Kansas tribes stand ready to assist the Legislature in that endeavor and look forward to a long and prosperous government-to-government relationship with the State in their determined drive for economic and political self determination.

HOUSE BILL NO. 2023

By Legislative Coordinating Council

AN ACT concerning gambling; providing procedures for negotiating and entering tribal-state gaming compacts ; relating to implementation of such compacts; amending K.S.A. 21-4302 and K.S.A. 1992 Supp. 21-4306 and 21-4307 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. As used in sections 1 through 6:

(a) "Class III gaming" has the meaning provided by the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(b) "Gaming compact" means a tribal-state compact regarding class III gaming as provided by section 11 of the Indian Gaming Regulatory Act (25 U.S.C. 2710).

(c) "Gaming operation" means an enterprise operated for the conduct of class III gaming.

(d) "Manager of a gaming operation" means any individual or entity managing a gaming operation under a management contract approved pursuant to the Indian gaming regulatory act (25 U.S.C. 2701 et seq.).

New Sec. 2. (a) The governor or the governor's designated representatives are authorized to negotiate gaming compacts. Upon completion of negotiation of any gaming compact, the governor shall within seven days submit the proposed compact to the joint committee on gaming compacts for the committee's approval, or recommendations for modification ~~or rejection~~. If the committee approves the proposed compact, the governor is authorized to enter into the compact on behalf of the state. If the committee recommends modification of the proposed compact, the governor or the governor's representatives shall resume negotiations in accordance with the committee's recommendations and the modified proposed compact shall be submitted to the committee in the same manner as the original proposed compact. ~~If the committee rejects the proposed compact, the governor or the governor's representatives shall renegotiate a compact.~~

(b) If the governor fails or refuses to resume negotiations within five days or renegotiate a compact when required by subsection (a) within thirty days, the joint committee on gaming compacts shall perform the duties of the governor under subsection (a) and the president of the senate and the speaker of the house of representatives jointly are authorized to enter into the compact on behalf of the state.

(c) The attorney general shall be the legal counsel for the governor, ~~or the governor's representatives, the joint committee on gaming compacts, the president of the senate and the speaker of the house~~ in negotiating a gaming compact under this section.

(d) A gaming compact negotiated on behalf of the state under this section shall contain:

(1) A provision recognizing the right of each party to the compact, including the legislature by concurrent resolution, to request that the compact be renegotiated or replaced by a new

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compact and providing the terms under which either party, including the legislature, may request a renegotiation ~~or the negotiation of the new compact~~; and

(2) a provision that, in the event of a request for a renegotiation or a new compact, the existing compact will remain in effect until renegotiated or replaced.

(e) The governor, or the governor's designated representatives, and the attorney general shall report to the joint committee on gaming compacts, at such times as requested by the committee, regarding gaming compacts negotiated and prospective negotiations.

(f) Nothing in this act shall authorize the governor, the governor's designated representatives, the joint committee on gaming compacts, the president of the senate and the speaker of the house to negotiate a gaming compact with any tribe which was not historically located within the boundaries of Kansas and the governing body of which was not located within the boundaries of Kansas on October 17, 1988.

New Sec. 3. (a) There is hereby established the joint committee on gaming compacts, which shall consist of ~~two~~five senators and ~~two~~five members of the house of representatives. Of the senate members, ~~one~~three shall be appointed by the president of the senate and ~~one~~two by the minority leader of the senate. Of the house of representative members, ~~one~~three shall be appointed by the speaker of the house of representatives and ~~one~~two by the minority leader of the house of representatives.

(b) The joint committee on gaming compacts shall:

~~(1) Establish and transmit to the governor guidelines reflecting the public policies and state interests that gaming compacts must address;~~

~~(2) review and hold public hearings on proposed gaming compacts submitted to the committee by the governor; and~~

~~(3) approve, or recommend modification of or reject any proposed gaming compact submitted to the committee by the governor. The committee shall notify the governor, in writing, of the committee's action on the proposed compact within thirty days of its receipt from the governor. If the committee recommends modification of rejects the proposed compact, the notice to the governor shall include the reasons therefor for rejection of the compact.~~

(c) The president of the senate shall designate a senator member to be chairperson of the committee on gaming compacts in even-numbered years and the vice-chairperson in odd-numbered years. The speaker of the house of representatives shall designate a representative member to be chairperson of the committee in odd-numbered years and the vice-chairperson in even-numbered years. The vice-chairperson shall exercise all of the powers of the chairperson in the absence of the chairperson.

(d) A quorum of the joint committee on gaming compacts shall be ~~three~~six. All actions of the committee may be taken by a majority of those present when there is a quorum.

(e) The joint committee on gaming compacts may meet at any time and at any place within the state on the call of the chairperson.

(f) The provisions of the acts contained in article 12 of chapter 46 of the Kansas Statutes Annotated, and amendments

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thereto, applicable to special committees shall apply to the joint committee on gaming compacts to the extent that the same do not conflict with the specific provisions of this act applicable to the joint committee.

(g) In accordance with K.S.A. 46-1204 and amendments thereto, the legislative coordinating council may provide for such professional services as may be requested by the joint committee on gaming compacts.

(h) The joint committee on gaming compacts may introduce such legislation as it considers necessary in performing its functions.

New Sec. 4. (a) There is established, within and as a part of the department of revenue, a division of Indian gaming, the head of which shall be the director of Indian gaming. The secretary of revenue shall appoint the director of Indian gaming, subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto, and the director shall serve at the pleasure of the secretary of revenue. The director of Indian gaming shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of revenue and approved by the governor.

(b) The director of Indian gaming shall:

(1) Carry out all duties imposed upon the state by any gaming compact;

(2) obtain a copy of the annual audit of each gaming operation as required pursuant to federal law ~~conduct or cause to be conducted an annual financial audit of each gaming operation and~~ provide a copy of such audit to the Kansas bureau of investigation; and

(3) perform such other duties as provided by law.

(c) The director of Indian gaming shall require fingerprinting of: (1) Any officer or director of any gaming operation or of any manager of a gaming operation; (2) any individual having an ownership interest of 3% or more in any gaming operation or in any manager of a gaming operation; (3) each primary management official or key supervisory employee, as defined by the Indian Gaming Regulatory Act, of any gaming operation or of any manager of a gaming operation; and (4) any other individuals as provided by any gaming compact. The director shall submit such fingerprints to the Kansas bureau of investigation and to the federal bureau of investigation for the purposes of verifying the identity of such individuals and obtaining records of criminal arrests and convictions.

(d) The director of Indian gaming may receive from the Kansas bureau of investigation or other criminal justice agencies such criminal history record information (including arrest and nonconviction data), criminal intelligence information and information relating to criminal and background investigations as provided by any gaming compact. Upon the written request of the director, the director may receive from the district courts such information relating to juvenile proceedings as provided by any gaming compact. Disclosure or use of any information received by the director pursuant to this subsection, or of any record containing such information, for any purpose other than that provided by this subsection is a class A misdemeanor and shall constitute grounds for removal from office, termination of employment or denial, revocation or suspension of any license

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issued under this act. Nothing in this subsection shall be construed to make unlawful: (1) The disclosure of any such information by the director in a hearing held pursuant to a gaming compact; or (2) negotiation by the director with the subject of such information regarding such information; (3) ~~or the disclosure of any such information by the director to a tribe pursuant to its gaming compact.~~ 1984 Arizona

(e) The secretary of revenue shall adopt such rules and regulations as necessary to implement the provisions of this section.

New Sec. 5. (a) The Kansas bureau of investigation shall monitor class III gaming conducted pursuant to any gaming compact to ensure compliance with the provisions of the compact. The bureau of investigation shall provide to the director of Indian gaming ~~and to the appropriate tribal gaming agency~~ periodic reports of the bureau's monitoring activities pursuant to this section and the results of such monitoring activities.

(b) Agents of the Kansas bureau of investigation shall have reasonable access to all areas of any place where class III gaming is conducted pursuant to a gaming compact. Such access shall be in a manner that does not interfere with the normal operation of such gaming.

(c) Agents of the Kansas bureau of investigation shall have access, ~~pursuant to any gaming compact during normal business hours,~~ to all records of class III gaming conducted pursuant to a gaming compact.

New Sec. 6. (a) There is hereby created in the state treasury the Indian gaming fund.

(b) All moneys payable to the state or to any subdivision of the state pursuant to any gaming compact shall be paid to the director of Indian gaming. The director shall remit all such moneys to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the Indian gaming fund. All moneys credited to the fund shall be expended or transferred only for the purposes and in the manner provided by this act and by gaming compacts entered pursuant to this act. Expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of revenue or a person designated by the secretary.

(c) Except as otherwise provided by this act, all operating expenses of the division of Indian gaming, all expenses incurred by the state in carrying out duties imposed by a gaming compact or in monitoring class III gaming activities pursuant to a gaming compact and all moneys payable to subdivisions of the state under a gaming compact shall be paid from the Indian gaming fund. Whenever another state agency assist the division of Indian gaming in carrying out such duties or monitoring such activities and incurs costs in addition to those attributable to the operation of such agency, such additional costs shall be paid from the Indian gaming fund. The furnishing of assistance shall be a transaction between the division and the respective agency and shall be settled in accordance with K.S.A. 75-5516 and amendments thereto.

(d) On the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the Indian gaming fund, the amount of money certified by the pooled money

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investment board in accordance with this subsection. Prior to the 10th of each month, the pooled money investment board shall certify to the director of accounts and reports the amount of money equal to the proportionate amount of all the interest credited to the state general fund for the preceding period of time specified under this subsection, pursuant to K.S.A. 75-4210a and amendments thereto, that is attributable to money in the Indian gaming fund. Such amount of money shall be determined by the pooled money investment board based on:

(1) The average daily balance of moneys in the Indian gaming fund during the period of time specified under this subsection as certified to the board by the director of accounts and reports; and

(2) the average interest rate on repurchase agreements of less than 30 days' duration entered into by the pooled money investment board for that period of time. On or before the fifth day of the month for the preceding month, the director of accounts and reports shall certify to the pooled money investment board the average daily balance of moneys in the Indian gaming fund for the period of time specified under this subsection.

(e) Any appropriation or transfer of state general fund moneys for the operation of the division of Indian gaming or for any other expenses incurred by the state in carrying out duties imposed by a gaming compact or in monitoring class III gaming activities pursuant to a gaming compact shall be considered a loan and shall be repaid with interest to the state general fund in accordance with appropriation acts. Such loan shall not be considered an indebtedness or debt of the state within the meaning of section 6 of article 11 of the constitution of the state of Kansas. Such loan shall bear interest at a rate equal to the rate prescribed by K.S.A. 75-4210 and amendments thereto for inactive accounts of the state effective on the first day of the month during which the appropriation or transfer takes effect.

(f) At the time of repayment of a loan pursuant to subsection (e), the director of Indian gaming shall certify to the director of accounts and reports the amount to be repaid and any interest due thereon. Upon receipt of such certification, the director of accounts and reports shall promptly transfer the amount certified from the Indian gaming fund to the state general fund.

Sec. 7. K.S.A. 21-4302 is hereby amended to read as follows: 21-4302. (1) A "bet" is a bargain in which the parties agree that, dependent upon chance, one stands to win or lose something of value specified in the agreement. A bet does not include:

(a) Bona fide business transactions which are valid under the law of contracts including, but not limited to, contracts for the purchase or sale at a future date of securities or other commodities, and agreements to compensation for loss caused by the happening of the chance including, but not limited to, contracts of indemnity or guaranty and life or health and accident insurance;

(b) offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such a contest;

(c) a lottery as defined in this section;

(d) any bingo game by or for participants managed, operated or conducted in accordance with the laws of the state of Kansas by an organization licensed by the state of Kansas to manage, operate

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or conduct games of bingo;

(e) a lottery operated by the state pursuant to the Kansas lottery act; or

(f) any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or

(g) Indian gaming activities.

(2) A "lottery" is an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance. As used in this subsection, a lottery does not include:

(a) A lottery operated by the state pursuant to the Kansas lottery act; or

(b) Indian gaming activities.

(3) "Consideration" means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant.

Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration.

As used in this subsection, consideration does not include:

(a) Sums of money paid by or for participants in any bingo game managed, operated or conducted in accordance with the laws of the state of Kansas by any bona fide nonprofit religious, charitable, fraternal, educational or veteran organization licensed to manage, operate or conduct bingo games under the laws of the state of Kansas and it shall be conclusively presumed that such sums paid by or for such participants were intended by such participants to be for the benefit of the sponsoring organizations for the use of such sponsoring organizations in furthering the purposes of such sponsoring organizations, as set forth in the appropriate paragraphs of subsection (c) or (d) of section 501 of the internal revenue code of 1986 and as set forth in K.S.A. 79-4701 and amendments thereto;

(b) sums of money paid by or for participants in any lottery operated by the state pursuant to the Kansas lottery act; or

(c) sums of money paid by or for participants in any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or

(d) sums of money paid by or for participants in Indian gaming activities.

(4) A "gambling device" is a contrivance which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

(5) A "gambling place" is any place, room, building, vehicle, tent or location which is used for any of the following: Making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling devices. Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was

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frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.

(6) "Indian gaming activities" means gaming activities that are conducted on Indian lands and are lawful pursuant to the Indian gaming regulatory act (25 U.S.C. 2701 et seq.).

Sec. 8. K.S.A. 1992 Supp. 21-4306 is hereby amended to read as follows: 21-4306. (1) Dealing in gambling devices is manufacturing, transferring or possessing with intent to transfer any gambling device or subassembly or essential part thereof.

(2) Proof of possession of any device designed exclusively for gambling purposes, which device is not set up for use or which is not in a gambling place, creates a presumption of possession with intent to transfer.

(3) Dealing in gambling devices is a class E felony.

(4) It shall be a defense to a prosecution under this section that the gambling device is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or the defendant's possession. A slot machine shall be deemed an antique slot machine if it was manufactured prior to the year 1950.

(5) It shall be a defense to a prosecution under this section that the gambling device or subassembly or essential part thereof is manufactured, transferred or possessed by a manufacturer registered under the federal gambling devices act of 1962 (15 U.S.C. 1171 et seq.) or a transporter under contract with such manufacturer with intent to transfer for use:

(a) By the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;

(b) by a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission; ~~or~~

(c) in a state other than the state of Kansas; or

(d) in Indian gaming activities.

Sec. 9. K.S.A. 1992 Supp. 21-4307 is hereby amended to read as follows: 21-4307. (1) Possession of a gambling device is knowingly possessing or having custody or control, as owner, lessee, agent, employee, bailee, or otherwise, of any gambling device.

Possession of a gambling device is a class B misdemeanor.

(2) It shall be a defense to a prosecution under this section that the gambling device is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner's or the defendant's possession. A slot machine shall be deemed an antique slot machine if it was manufactured prior to the year 1950.

(3) It shall be a defense to a prosecution under this section that the gambling device is possessed or under custody control of a manufacturer registered under the federal gambling devices act of 1962 (15 U.S.C. 1171 et seq.) or a transporter under contract with such manufacturer with intent to transfer for use:

(a) By the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;

(b) by a licensee of the Kansas racing commission as

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authorized by law and rules and regulations adopted by the commission; ~~or~~

(c) in a state other than the state of Kansas; or

(d) in Indian gaming activities.

Sec. 10. K.S.A. 21-4302 and K.S.A. 1992 Supp. 21-4306 and 21-4307 are hereby repealed.

Sec. 11. If any part of this act is found to be unconstitutional or in violation of applicable law, whether on its face or as applied, the remaining provisions of this act shall remain in full force and effect and to such end this act is declared to be severable.

Sec. 12. This act shall take effect and be in force from and after its publication in the Kansas register.

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January 21, 1993

Committee on Federal & State Affairs

Members of the Committee:

On behalf of the Miami Tribe of Oklahoma we submit the following testimony regarding House Bill 2023 now pending before your committee.

The Miami Tribe of Oklahoma comes before you today as a proponent of Indian gaming and as a supporter of nearly all of the proposed bill. However, the Miami Tribe of Oklahoma must take exception to one provision which is a proposed amendment to House Bill 2023.

That section is new section 2(f). Subparagraph (f) purports to give no authority to the governor to negotiate with any tribe that did not have its governing body located in the boundary of Kansas on October 17, 1988. Such a limitation is clearly prohibited by the Indian Gaming Regulatory Act 25 U.S.C. § 2701 et seq.

As the committee has heard voluminous testimony, the Federal government has occupied the field on the conduct of gaming on Indian lands. However, through the Indian Gaming Regulatory Act, the Federal government has given to the states the ability to negotiate compacts with Indian tribes.

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The specific section that is violated by new paragraph (f) of House Bill 2023 is 25 U.S.C. § 2710(d)(3)(A). That section provides:

"Any Indian tribe having jurisdiction over Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the state in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. . . ." (emphasis added).

The Indian Gaming Regulatory Act clearly foresees that any Indian tribe meeting the requisites of the Indian Gaming Regulatory Act, whether or not it's governing body is located in the State or not, is a proper party for negotiation of a Tribal-State compact.

The restriction of subparagraph (f) is plainly contrary to the language of the Indian Gaming Regulatory Act.

That is further illuminated by looking at the definitional section located at 25 U.S.C. 2703 where it defines the term Indian tribe in (5) as any Indian tribe, band, nation or other organized group or community of Indians which is recognized by the United States, and possesses the power of self-government. The Miami Tribe of Oklahoma meets both of those requisites.

Clearly new section 2(f) is in violation of the Indian Gaming Regulatory Act, and should be deleted from House Bill 2023.

The other point which the Miami Tribe of Oklahoma wishes to make is not one of opposition, but merely one of clarification. New section 4(c) calls for certain investigation and reporting requirements for individuals owning an interest of 3% or more in any gaming operation or in any manager of gaming operation. The Miami Tribe of Oklahoma simply suggest that this provision might be more consistent with SEC reporting requirements if it were changed to 5%. The Miami Tribe fully agrees with the intent of new section 4, and offers it's suggestion only for purposes of consistency.

In regard to the other aspects of the bill, the Miami Tribe of Oklahoma supports House Bill 2023 with those minor changes.

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The Miami Tribe urges deletion of new section 2(f), and the minor consistency change, and then quick action by this committee and the full house.

Respectfully submitted,

A handwritten signature in dark ink, appearing to be 'Kip A. Kubin', written in a cursive style.

Kip A. Kubin

ATTORNEY FOR MIAMI TRIBE OF
OKLAHOMA

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