

MINUTES

JOINT COMMITTEE ON STATE-TRIBAL RELATIONS

January 26, 2011
Room 144-S—Statehouse

Members Present

Senator Pete Brungardt, Chairperson
Representative Forrest Knox, Vice-chairperson
Senator David Haley
Senator Kelly Kultala
Senator Dennis Pyle
Senator John Vratil
Representative Tom Burroughs
Representative Phil Hermanson
Representative Lance Kinzer
Representative Ponka-We Victors
Caleb Stegall, Chief Counsel, Office of the Governor
Steve Phillips, Office of the Attorney General

Tribes Represented

Russell Bradley, Kickapoo Tribe
Twen Barton, Sac and Fox Nation of Missouri in Kansas and Nebraska
Steve Ortiz, Prairie Band Potawatomi Tribe

Staff Present

Dennis Hodgins, Kansas Legislative Research Department
Julian Efird, Kansas Legislative Research Department
Jason Long, Office of the Revisor of Statutes
Connie Burns, Committee Assistant

Conferees

Carol Foreman, Governor Parkinson's Designee
Russell Bradley, Chairperson, Kickapoo Tribe in Kansas
Twen Barton, Chairperson, Sac and Fox Nation of Missouri in Kansas and Nebraska
Steve Ortiz, Chairperson, Prairie Band Potawatomi Nation
Mark Gunnison, Legal Counsel, Iowa Tribe of Kansas and Nebraska
Mark Dodd, Legal Counsel, Sac and Fox Nation of Missouri in Kansas and Nebraska

Others Attending

See attached list.

The meeting was called to order by Chairperson Pete Brungardt. The Chairperson stated the meeting was convened to consider a compact with the Wyandotte Nation that was negotiated under Governor Parkinson. This is a joint Committee of the House and Senate, whose function is to analyze the compact and make recommendation to the Legislature. The Committee has the ability to reject the compact at this level and make recommendations to the Governor for re-negotiations, or to make to the Legislature as a whole, and to each Chamber, a positive, neutral, or negative recommendation. The Wyandotte Nation was not represented at this meeting but will provide testimony at the Committee meeting on February 9, 2011. Chairperson Brungardt welcomed representatives of the four tribes with each of which the State of Kansas has a gaming compact.

Carol Foreman, Governor Parkinson's designee to conduct negotiations on a gaming compact with the Wyandotte Nation, appeared before the Committee to discuss the proposed compact (Attachment 1). Ms. Foreman stated the Wyandotte Nation requested negotiations of a tribal-state compact with the State of Kansas for Class III Gaming at the Shriner's Masonic Temple in Kansas City, Wyandotte County, Kansas, on August 2, 2010. With this request, the Wyandotte Nation submitted a proposed compact almost identical to the four existing Indian Gaming compacts. The Wyandotte Nation was advised on September 14, 2010, that Governor Parkinson designated Carol Foreman to conduct negotiations on the compact. Negotiations between the state and the Wyandotte Nation commenced shortly thereafter and concluded, resulting in the proposed compact and the appendices to be discussed at this meeting.

The Indian Gaming Regulatory Act creates a duty on states to negotiate in "good faith" with Tribes. Kansas has four existing Indian Gaming compacts that are considered almost identical. Therefore, the duty to negotiate in "good faith" required the negotiated compact with the Wyandotte Nation to be very similar to the four existing Indian Gaming compacts. Ms. Foreman stated it was the collective opinion to enter into negotiations for a Class III Gaming compact for the Kansas City facility.

The Committee asked who contributed to the collective opinion; the answer was John Yeary from the Governor's Office and, Patrick Hurley from the Attorney General's office, and input from Patrick Martin from the Gaming and Racing Commission. The Committee asked if the collective opinion was based on case law in Kansas, the 10th Circuit, or any statutory law in Kansas. Ms. Foreman stated she could not definitively answer that question.

Issues considered and addressed in the proposed compact were the following:

- Park City—added language to clarify that the compact is not a binding precedent on any future request to negotiate a Class III Gaming compact and clarified the compact applies only to the Shriner Tract;
- Conversion—added language addressing conversion of Class II electronic gaming machines to Class III gaming machines;
- Assessment—modified language as to imposition of assessment for State Regulatory Expenditures to conform with current practice;
- Responsible Gambling—added language addressing Responsible Gambling; and

- Statutory—added language stating the Tribe is to be regulated and subject to the Tribal Gaming Oversight Act, KSA 74-9801 *et. Seq.*

Revenue sharing was addressed and, because the four existing compacts do not have revenue sharing, the collective opinion was that would have been in violation of the “good faith” duty to enforce revenue sharing in this compact.

The Committee asked if there was anything that would keep the Wyandotte Nation from pursuing additional gaming compacts. Ms Foreman stated there is nothing that would indicate it would not pursue further gaming compacts. Also asked if there was any discussion about the use of the term “reservation” and an expiration date, the Attorney General’s Office stated that, due to the federal court rulings, it is considered a reservation and the other compacts do not have an expiration date, so in “good faith” there was no pursuit of an expiration date on the proposed Wyandotte compact.

Chairperson Brungardt called upon Twen Barton, Chairperson, Sac and Fox Nation of Missouri in Kansas and Nebraska, to present her testimony (Attachment 2). Ms. Barton stated that her testimony was for the purpose of addressing concerns regarding the proposed agreement as currently written. The agreement would have a detrimental effect on her Tribe, and there are many statements made in the proposal that are not in accordance with facts.

Ms. Barton stated the first major concern is that the proposed agreement states more than once that the Wyandotte Nation has a “permanent reservation” in Kansas; this is incorrect. This agreement’s language is similar, but not identical, to the language of the compacts of the four Tribes actually located in Kansas. The word “reservation” has legal meanings which could pose a problem for the State of Kansas in the future in dealing with other issues regarding the Wyandotte Nation. This error alone should be enough for this Committee to send this proposed agreement back to the Governor for renegotiation. Additionally, she stated there are several things stated in the Recitals and in Section 2: Policy and Purpose, which are inaccurate, given the differences between the Wyandotte Nation and the Kansas Tribes. The compact between the state and the Sac and Fox Nation contains an appendix with technical standards. The proposed compact, Ms. Barton noted, contains no technical standards. The tribal headquarters of the Wyandotte Nation is located in Oklahoma, not Kansas or the location of the Gaming Commission, which could lead to problems, she stated. The proposed compact contains nothing about sufficient law enforcement to be located at the casino, which has not been an issue with the Kansas tribes, since they are located in the state and have citizens to serve as well. Additional details should be added to the compact to take into account the actual location of the Wyandotte Nation, and the issue that comes with being located out of state.

Ms. Barton stated the Sac and Fox Nation’s biggest concern is how the proposed compact places an unfair burden on all four tribes in Kansas. Section 25 addresses State Assessment for Costs of Oversight; the largest cost associated with this responsibility is the start-up cost to get an individual licensed and machines in place that meet technical standards. As written, this proposal will require the four tribes to pay for part of the Wyandotte Nation’s start-up cost. Ms. Barton stated this is inequitable and unjust and the provision should be renegotiated.

Ms. Twen stated she appreciated the opportunity to present her Tribe’s views. There are concerns regarding the proposed compact as currently drafted, and she urged the Committee to send the proposed compact back to the Governor for new negotiations that address the concerns raised.

Russell Bradley, Chairperson, on behalf of the Kickapoo Tribe in Kansas, provided input on the proposed compact ([Attachment 3](#)). He stated the Kickapoo Tribe was not aware that the former Governor was negotiating a compact with the Wyandotte Nation, and the Tribe has always opposed the Wyandotte tribal gaming efforts in the Kansas City area. By passing the Expanded Lottery Act in 2007, the state put a high price on the casinos to operate in the state. This law limits gaming for twenty-five years at four locations and three race tracks. Mr. Bradley stated the question is how Kansas can enter into a compact with the Wyandotte Nation without violating the state's own law.

Mr. Bradley stated the current State-Tribal compacts limit the Kansas Tribes to only one casino; the question is how is the state going to handle the compact with the Wyandotte Nation when the Wyandotte Nation is proposing a second casino in the Wichita area. Because the four Kansas Tribes have invested millions of dollars in the day-to-day operations and assets of the State Gaming Agency, they feel it appropriate that the four Tribes should have been consulted. Assignment of oversight of Wyandotte gaming to the state gaming agency without financial compensation to the four Tribes for their past contributions would be very inappropriate and confiscatory.

Mr. Bradley stated that the State Gaming Agency's background and criminal investigations leave a lot to be desired, and take too long, and a system of temporary licensing should be established. The State Gaming Agency, which oversees tribal gaming, is within the Racing and Gaming Commission, which operates the competing state casinos. This creates a conflict of interest. Mr. Bradley extended an invitation to the Committee to visit the reservation in the near future.

Steve Ortiz, on behalf of Prairie Band Potawatomi Nation, submitted recommendations for revisions to the proposed Wyandotte Tribe of Oklahoma Tribal Gaming compact ([Attachment 4](#)):

- The compact be revised to provide a sunset clause of ten years, rather than the compact being in perpetuity;
- The compact be revised to provide that the Wyandotte Tribe pay its own gaming regulatory costs, especially the initial regulatory costs, and that such tribal regulatory costs NOT be shared with the four native Kansas tribes currently being assessed for gaming regulation costs. The Wyandotte Tribe of Oklahoma is NOT a native Kansas Tribe; its costs should be borne by that tribe, exclusively without any sharing with the four native Kansas tribes;
- The compact be revised to provide the Wyandotte Tribe of Oklahoma utilize a Kansas bank for depositing its revenues, so that the proceeds of the Wyandotte casino are not exported out-of-state to a non-Kansas bank;
- The compact be revised to require the Wyandotte Tribe of Oklahoma share revenue with the State of Kansas, as part of the privilege of the State of Kansas agreeing to a Tribal compact; and
- The compact be revised to provide a prohibition of the Wyandotte Tribe of Oklahoma entering into negotiations for, or engaging in, any activities seeking any other casino in the State of Kansas, whether such casino be a Class II or a Class III casino.

Mr. Ortiz provided a copy of the recommendations, which the Prairie Band Potawatomi Nation Tribal Council sent to the Governor's office regarding this issue.

Mark Gunnison appeared on behalf of the Iowa Tribe of Kansas and Nebraska regarding the proposed Class III Gaming compact with the Wyandotte Nation ([Attachment 5](#)). Exhibit "A" attached

to the testimony is a letter sent by Chairperson Tim Rhodd to the Governor setting out the Iowa Tribe's comments and objections to certain portions of the proposed compact.

- Reservation designation—the Shriner Tract is NOT the reservation of the Wyandotte Nation, as the Tenth Circuit Court of Appeals has previously ruled that the Huron Cemetery (which is contiguous to the Shriner Tract) is not a reservation of the Wyandotte Nation; it is simply land that the United States holds in trust for the Wyandotte Nation;
- State Assessment for Costs-Section 25—it is respectfully submitted that the four Kansas tribes should not be obligated to pay any portion of the Wyandotte Nation's start-up expenses; and
- The Wyandotte Nation should be required to abandon Park City, Kansas. A Class III compact should be conditioned on the Wyandotte Nation abandoning its application to have the Park City, Kansas, land taken into trust for gaming. It is not fair that the Wyandotte Nation be allowed potentially two casino locations that are hundreds of miles from its Oklahoma reservation in the two largest metropolitan areas in Kansas.

Mark Dodd, General Counsel to the Sac and Fox Nation of Missouri in Kansas and Nebraska, spoke on issues regarding the use of the term "reservation" and whether the requirement in the Indian Gaming Regulatory Act (IGRA) of "good faith" negotiations requires the compact with the Wyandotte Nation to be virtually the same as the compacts with the four Kansas Tribes (Attachment 6). The other issue is the requirement of the state to negotiate in "good faith." Nowhere in the IGRA does it make such a requirement; further, IGRA actually allows for differences based on the circumstances of different groups and the time at which the compact is negotiated, among other things.

There were many circumstances pointed out by other presenters that addressed the difference between the Wyandotte Nation and the four tribes in Kansas that would necessitate changes in the compact.

Chairperson Brungardt stated the Committee had several things brought to its attention: the significance of "reservation" and the language in the current compact, the possibility of revenue sharing and other restrictions, as well as the regulation expenses that apparently have to be shared by the four existing Tribes and compacts. The Wyandotte Nation will be in attendance at the next meeting.

The Committee requested a write up on State Assessment for Costs of Oversight with the four Tribes and information on what adding the Wyandotte Nation would change. The Committee asked whether the State of Kansas currently deposits all its assets in Kansas banks and whether there is a requirement to do so. The Committee also requested information on IGRA, what the state's options are on negotiations, and what the alternative is if the state takes no action.

The meeting was adjourned. The next Committee meeting is February 9, 7:30 a.m.

Prepared by Connie Burns
Edited by Dennis Hodgins

Approved by the Committee on:

June 1, 2011
(Date)

GUEST LIST

DATE _____

[illegible]

Testimony Regarding
Gaming Compact
between the
State of Kansas and Wyandotte Nation

Before the
Joint Committee on State-Tribal Relations
January 26, 2011

Mr. Chairman, members of the Committee, my name is Carol Foreman, Governor Parkinson's designee to conduct negotiations on a gaming compact with the Wyandotte Nation.

Thank you for the opportunity to appear before you today to discuss the proposed compact.

Background

The Wyandotte Nation requested negotiations of a tribal-state compact with the State of Kansas for Class III Gaming on the Shriner's Masonic Temple in Kansas City, Wyandotte County, Kansas on August 2, 2010. With that request the Wyandotte Nation submitted a proposed compact almost identical to the four existing Indian Gaming Compacts. The Wyandotte Nation was advised on September 14, 2010 that Governor Parkinson designated Carol Foreman to conduct negotiations on the Compact. Negotiations between the State and the Wyandotte Nation commenced shortly thereafter and concluded resulting in the proposed Compact and its Appendices being discussed today.

Good Faith Principle

The Indian Gaming Regulatory Act creates a duty on states to negotiate in good faith with tribes. Kansas has four existing Indian Gaming Compacts that for all practical purposes are considered almost identical. Hence the duty to negotiate in "good faith" required the negotiated compact with the Wyandotte Nation to be very similar to the four existing Indian Gaming Compacts.

Issues Considered and Addressed in Proposed Compact

- Park City
- Administrative
 - Advanced technology
 - Responsible gaming
 - Assessment
 - Conversion
- Subject to Tribal Gaming Oversight Act

Issues Addressed in Compact

Park City

- Page 3, Section 1(F)(1)(2)
Added language to clarify this Compact is not binding precedent on any future request to negotiate a Class III Gaming Compact
- Page 5, Section 3(F)
Clarified compact applies only to the Shriner Tract

Conversion

- Page 12, Section 7(A)(3)
Added language addressing conversion of Class II electronic gaming machines to Class III gaming machines

Assessment

- Page 30-31, Section 25(A)
Modified language as to imposition of assessment for State Regulatory Expenditures to conform with current practice

Responsible Gambling

- Page 34, Section 26(F)
Added language addressing Responsible Gambling

Statutory

- Page 42, Section 38
Added language stating Tribe is to be regulated and subject to the Tribal Gaming Oversight Act, K.S.A. 74-9801 et. seq.



Sac and Fox Nation of Missouri in Kansas and Nebraska

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TESTIMONY BEFORE THE JOINT COMMITTEE ON STATE-TRIBAL RELATIONS TOPEKA, KANSAS

By

Twen Barton, Chairperson

Sac and Fox Nation of Missouri in Kansas and Nebraska

January 26, 2011

Senator Brungardt and members of the committee, good morning and thank you for holding this hearing and allowing the Sac and Fox Nation of Missouri in Kansas and Nebraska to participate and comment on the proposed "Tribal State Gaming Compact Between the Wyandotte Nation and the State of Kansas". Our Nation is pleased to be an ex-officio member of this committee and we believe that this committee can and should play an integral part in understanding and solving issues that jointly affect the State and the four Tribes located in Kansas.

My name is Twen Barton. I am the Chairperson for the Sac and Fox Nation and I appear here today on the Nation's behalf. My testimony today is not to take sides on whether or not the Wyandotte should be allowed a Class 3 Casino in Kansas but to address concerns

we have with the proposed agreement as currently written. This agreement will have a detrimental effect on our tribe and there are many statements made in the proposal that are not in accordance with facts on the ground.

The first major concern is that the proposed agreement states in multiple locations that the Wyandotte Nation has a "permanent reservation" in Kansas. This is incorrect. This language, like much of this agreement, is similar, if not identical, to the language of the compacts of the four Tribes actually located in Kansas. Federal Courts have held that the Wyandotte do not have a reservation in Kansas. The word "reservation" has legal meanings which could pose a problem for the State of Kansas in the future in dealing with other issues regarding the Wyandotte Nation. This error alone should be enough for this Committee to send this proposed agreement back to the Governor for renegotiations.

Additionally, there are several things stated in the Recitals and in Section 2: Policy and Purpose which are inaccurate given the differences between the Wyandotte Nation and the Kansas tribes. These need to be looked at more carefully to ensure accuracy.

Although it seems that this agreement tried to copy the other Kansas Tribes' agreements, it is missing important information that should be included. The compact between the State and the Sac and Fox Nation contains an appendix with Technical Standards. This compact happens to neglectfully be without any Technical Standards.

The tribal headquarters of the Wyandotte Nation is located in Oklahoma, not Kansas. There is nothing in this proposal requiring the Gaming Commission to be located here, which could lead to many problems. There are no requirements for sufficient law enforcement to

be located at the Casino. This has not been an issue with the Kansas tribes since we are located in this State and have citizens to serve here as well. Additional details should be added to the compact to take into account the actual location of the Wyandotte Nation and the issues that come with this.

The Sac and Fox Nation's biggest concern is how this proposed compact places an unfair burden on us and the other tribes in Kansas. Section 25 addresses State Assessment for Costs of Oversight. The largest cost associated with State Oversight responsibilities is the start up cost to get individual licenses and machines in place that meet technical standards. As written, this proposal will require the four tribes to pay for part of the Wyandotte Nation's start up cost. This is inequitable and unjust. At another occasion we would be more than happy to discuss more reasonable options. But for now, this provision should be renegotiated.

Again, I appreciate the opportunity to present these views on behalf of the Sac and Fox Nation of Missouri in Kansas and Nebraska. The Nation has very serious concerns regarding the proposed compact as currently drafted. This agreement is not in the best interest of the State of Kansas and is not fair in its treatment to the four tribes actually located in Kansas. We urge the Committee to send this proposed compact back to the Governor for new negotiations that address the concerns raised here today. Thank you.



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**Testimony re: Proposed Wyandotte Tribe Gaming Compact
State-Tribal Relations Committee
Presented by Russell Bradley, Chairman, on behalf of
the Kickapoo Tribe in Kansas
January 26, 2011**

Good morning. My name is Russell Bradley and I am currently Chairman of the Kickapoo Nation located in northeast Kansas. We have 1,650 members and have been located in northeast Kansas since 1832.

We appreciate the fact that you are meeting today on the issue of gaming and have invited us to have input on the proposal being presented. The Kickapoo Tribe was not aware that the former Governor was negotiating a compact with the Wyandotte Tribe.

The Kickapoo Tribe has successfully operated a casino for the past 14 years. We have always opposed the Wyandotte tribal gaming efforts in the Kansas City area. As it turned out, the Kickapoo and Sac & Fox gaming proposals became the basis for the Kansas Oversight Act in 1996.

By passing its Expanded Lottery Act in 2007, the State put a high price on the casinos to operate in the State. This law limits gaming for twenty-five years at four locations and three race tracks. How can you enter into a compact with the Wyandotte without violating your own law?

The current state-tribal compacts appear to limit the Kansas Tribes to only one casino. How is the State going to handle this compact with the Wyandotte when they

propose a second casino in the Wichita area?

Because the four Kansas Tribes have invested millions of dollars in the day-to-day operations and assets of the State Gaming Agency, we feel it appropriate that the Tribes should be consulted with. Assignment of oversight of Wyandotte gaming to the State Gaming Agency without financial compensation to the four Tribes for their past contributions would be very inappropriate and confiscatory.

The four Tribes in Kansas who have been operating under compacts also have a serious question over how the State Gaming Agency has been assessing the Tribes for its operating funds. The State Gaming Agency's budget is always increasing. Its budget should be subject to the same constraints and reductions as required of other state agencies.

We feel that the State Gaming Agency background and criminal investigations leave a lot to be desired. Background investigations take far too long, and a system of temporary licensing should be established. Because the state-owned casinos are competing with tribal casinos, how can we be sure the State will not suppress our casinos. The State Gaming Agency which oversees tribal gaming is within the Racing and Gaming Commission, which operates the competing state casinos. This creates a conflict on interest.

We would like to take the opportunity to invite this committee to visit our reservation in the near future.

This concludes my testimony for the Committee. Thank you for your time and consideration of the Kickapoo Tribe's comments.

Testimony re: Wyandotte Tribe of Oklahoma Tribal Gaming Compact
Joint Committee on State-Tribal Relations
Presented by Steve Ortiz
on behalf of
Prairie Band Potawatomi Nation
January 26, 2011

Mr. Chairman, Members of the Committee:

My name is Steve Ortiz, and I am Tribal Council Chairman for the Prairie Band Potawatomi Nation. The Prairie Band Potawatomi Nation is one of the four Kansas Native American Indian Tribes.

The Prairie Band Potawatomi Nation has generally opposed out-of-state Tribes being able to establish or operate casinos in Kansas. The State has not been able to prevent the Wyandotte Tribe of Oklahoma from being able to establish a property in Kansas which has now been determined to permit them to operate a gaming facility in this state. The State of Kansas has the sovereign authority to enter into a compact for such purposes pursuant to the federal Indian Gaming Regulatory Act (IGRA). This process also provides for the Native American Indian Tribes in Kansas to submit our input into this compact issue.

The compact with the Wyandotte Tribe of Oklahoma has been negotiated by former Governor Mark Parkinson, and has since been submitted to the 2011 Legislature, and specifically to this Joint Committee on State-Tribal Relations for input with regards to possible revisions to the compact.

The Prairie Band Potawatomi Nation therefore submits the following recommendations for revisions to the proposed Wyandotte Tribe of Oklahoma Tribal Gaming Compact.

1. That the Wyandotte Tribe of Oklahoma Tribal Gaming Compact be revised to provide for a Sunset Clause of 10 years, rather than the compact being in perpetuity.
2. That the Wyandotte Tribe of Oklahoma Tribal Gaming Compact be revised to provide for the Wyandotte Tribe of Oklahoma to pay for their own gaming regulatory costs, especially the initial regulatory costs, and that such Tribe's regulatory costs NOT be shared with the four native Kansas Tribes currently being assessed for gaming regulation costs. Currently, all Kansas Tribes, the Prairie Band Potawatomi, the Kickapoo, the Sac and Fox, and the Iowa are assessed collectively for state regulatory costs for gaming, but since the Wyandotte Tribe of Oklahoma is NOT a native Kansas Tribe, their costs should be borne by them exclusively without any sharing with the four native Kansas Tribes.
3. That the Wyandotte Tribe of Oklahoma Tribal Gaming Compact be revised to provide for the Wyandotte Tribe of Oklahoma to utilize a Kansas Bank for depositing their revenues, so that the proceeds of the Wyandotte casino are not exported out of state to a non-Kansas bank.
4. That the Wyandotte Tribe of Oklahoma Tribal Gaming Compact be revised to provide for the Wyandotte Tribe of Oklahoma to share revenue with the State of Kansas, as part of the privilege of the State of Kansas agreeing to a Tribal compact with them. Such revenue sharing provision should be established in whatever manner the state of Kansas feels is appropriate, and at a level of percentage that is in keeping with the amount of revenue being shared with states by other Tribes who have recently entered into compacts with other states in the United States. This casino would be in direct competition with the State-owned casinos established in 2007, and thus a fee to reimburse the state for their lost revenue is appropriate.

5. That the Wyandotte Tribe of Oklahoma Tribal Gaming Compact be revised to provide for a prohibition of the Wyandotte Tribe of Oklahoma being permitted to enter into negotiations for, or to engage in any activities seeking any other casino in the state of Kansas, whether such casino be a Class III or a Class II casino. This is a reasonable expectation for the compact to enable the Wyandotte to secure a casino in Wyandotte County.

On behalf of the sovereign Prairie Band Potawatomi Nation, we very much appreciate this committee considering the views of our Tribal Council on this important issue.

I have attached to my testimony a copy of the recommendations which the Prairie Band Potawatomi nation Tribal Council has sent to the Governor's office regarding this issue.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.



Prairie Band Potawatomi Nation
Government Center

January 19, 2011

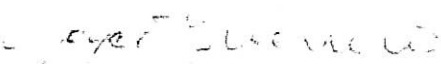
Mr. Landon Fulmer, State Policy Director
Governor's Office
300 SW 10th Street 2nd Floor
Topeka, KS 66612-1504

Dear Mr. Fulmer:

The Prairie Band Potawatomi Nation submits the following recommendations for revisions to the proposed Wyandotte Tribal Compact which has been submitted to former Governor Mark Parkinson, and which Compact has been submitted to the 2011 Legislature. These recommendations are being submitted to Landon Fulmer, State Policy Director for Governor Sam Brownback.

1. That the Wyandotte Compact be revised to provide for a Sunset Clause of 10 years, rather than the compact being in perpetuity.
2. That the Wyandotte Compact be revised to provide for the Wyandotte Tribe to pay for their own gaming regulatory costs, especially the initial regulatory costs, and that such Tribe's regulatory costs NOT be shared with the four Kansas Tribes currently being assessed for gaming regulation costs. Currently, all Kansas Tribes, the Prairie Band Potawatomi, the Kickapoo, the Sac and Fox, and the Iowa are assessed collectively for state regulatory costs for gaming, but since the Wyandotte Tribe is NOT a native Kansas Tribe, their costs should be borne by them exclusively without any sharing with the four native Kansas Tribes.
3. That the Wyandotte Compact be revised to provide for the Wyandotte Tribe to utilize a Kansas bank for depositing their revenues, so that the proceeds of the Wyandotte casino are not exported out of state to a non-Kansas bank.
4. That the Wyandotte Compact be revised to provide for the Wyandotte Tribe to share revenue with the State of Kansas, as part of the privilege of the State of Kansas agreeing to a Tribal compact with them. Such revenue sharing provision should be established in whatever manner the State of Kansas feels is appropriate, and at a level of percentage that is in keeping with the amount of revenue being shared with states by other Tribes who have recently entered into compacts with other states in the United States.
5. That the Wyandotte Compact be revised to provide for a prohibition of the Wyandotte Tribe being permitted to enter into negotiations for, or to engage in any activities seeking any other casino in the state of Kansas, whether such casino be a Class III or a Class II casino. This is a reasonable expectation for the compact to enable the Wyandotte to secure a casino in Wyandotte County.

Sincerely,


Joyce Guerrero
Prairie Band Potawatomi Nation
Tribal Council Vice Chair

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**Testimony of Mark Gunnison on behalf of the Iowa Tribe of Kansas and Nebraska
regarding the proposed Class III Gaming Compact with the Wyandotte Nation**

To the Joint State-Tribal Relations Committee:

Thank you for the opportunity to testify on behalf of the Iowa Tribe of Kansas and Nebraska regarding the proposed Class III Gaming Compact with the Wyandotte Nation. This proposed Compact pertains to the Wyandotte nation's site in Kansas City, Kansas that will be referred to as the "Shriner Tract".

The members of the Executive Committee of the Iowa Tribe had a previous commitment and regret not being able to be in attendance this morning. However, I have been authorized to offer the following comments on behalf of the Iowa Tribe. In that regard, I have attached as Exhibit "A" to my testimony a letter sent by Chairman Tim Rhodd to the Governor setting out the Iowa's Tribes comments and objections to certain portions of the proposed Compact.

On behalf of the Tribe, I offer the following testimony on the issues raised by the Iowa Tribe:

"Reservation" designation in the proposed Compact

In multiple places in the proposed Compact, there is a stipulation that the Shriner Tract in KCK is the "reservation" of the Wyandotte Nation. This stipulation appears to have been copied from the existing compacts of the four Tribes with reservations in Kansas as it appears in the same place in the proposed Compact.

This provision should be in the Wyandotte Nation's proposed Compact. First and foremost, the Shriner Tract is NOT the reservation of the Wyandotte Nation. There has never been a declaration by the Secretary of Interior pursuant to 25 USC § 467 that the Shriner Tract is the reservation of the Wyandotte Nation. The Shriner Tract does not meet the Secretary's definition of a "reservation" set forth in 25 C.F.R. § 292.2. The Shriner Tract is not used for the residence of tribal members. The Wyandotte Nation has its designated reservation in Oklahoma (hundreds of miles from the Shriner Tract), where its governmental, residential and cultural centers are located.

At least for purposes of the Indian Gaming Regulatory Act ("IGRA"), "...Congress envisioned that each tribe would have only one reservation for gaming purposes." *Sac and Fox Nation of Missouri v. Norton*, 240 F. 3d 1250, 1267 (10th Cir. 2001), *cert. denied*, *Wyandotte Nation v. Sac and Fox Nation of Missouri*, 122 S.Ct. 807 (2002). The mere fact that the Shriner Tract is held in trust for the Wyandotte Nation by the federal government is no consequence as IGRA clearly "distinguishes between the 'reservation' of an Indian tribe and lands held in trust for the tribe by the federal government. *E.g.*, 25 U.S.C § 2719(a)(1)-(2), (b)(1)(B)." *Id.*

Indeed, the leading treatise on Indian law indicates that during the "1850's, the modern meaning of Indian reservation emerged referring to land set aside under federal protection for the residence of tribal Indians, regardless of origin. By 1855, this meaning was firmly established in law. F. Cohen, *Handbook of Federal Indian Law* at 34-35 (1982 edition). In determining that the Huron Cemetery (situated next to the Shriner Tract in Kansas City, Kansas) was NOT the reservation of the Wyandotte Nation, the Tenth Circuit noted that the Huron Cemetery has not been used by the Wyandotte Nation "for purposes of residence. Rather, the tract, which is now separated by a significant distance from the actual reservation of the Wyandotte Tribe in Oklahoma, has consistently maintained its character as a public burial ground." *Sac and Fox Nation of Missouri*, 240 F. 3d at 1267.

Likewise, the Shriner Tract has at all times consistently maintained its character as a casino and has not been used as a residence for tribal members.

If such an erroneous stipulation were to remain in the proposed Compact, it could be a stepping stone to future attempts by the Wyandotte Nation to expand its gaming operations at the Shriner Tract by acquiring land next to it. There are potentially other ramifications of allowing the Shriner Tract to be designated as the Wyandotte's Nation's "reservation".

It respectfully submitted that the designation of the Shriner Tract as constituting anything other than land that is held in trust for the Wyandotte Nation is beyond the power of the Governor to accomplish, is best left to the federal authorities and could have unintended, negative consequences to the State and other interested parties.

These "reservation" references are found at the following locations in the Compact:

- p. 1;
- p. 5, sec. 3(F);
- p. 7, sec. 5(I);
- p. 10, sec. 5(W);
- p. 21, sec. 14(A);
- p. 40, sec. 32(B)

The language fix is easy to resolve this. For example, on page 1, the recital can read:approved by the Secretary of Interior who holds land in trust for the benefit of the Wyandotte Nation on Kansas City, Wyandotte County that is hereafter referred to as the "Shriner Tract".

On p. 5, it could simply refer to the "Shriner Tract". The same is true for the reference on p. 7.

The reference to "reservation" in the definitional section on p. 10 can be deleted.

On p. 21-just refer to the Shriner Tract.

On p. 40-just refer to the Shriner Tract.

The Wyandotte Nation Should be Required to Abandon Park City-and Any Other Gaming Activities in Kansas Beyond the Shriner Tract.

If a Class III Compact is to be negotiated to completion with the Wyandotte Nation, the execution and approval of such a Compact should be conditioned on the Wyandotte Nation abandoning its application to have the Park City, Kansas land (or any other land in Kansas) taken into trust for gaming. The Wyandotte Nation, through the mechanism of a federal appropriations statute, Pub. Law 98-602, chose to purchase the Shriner Tract (in the largest metropolitan area in Kansas) and then mandate that the land be put into trust under that statute.

The Wyandotte Nation is now attempting to go to the well a second time under PL 602 with regard to land in Park City, Kansas, near the Wichita/Sedgwick County metropolitan area. While this may be a tortured effort, the fact remains that it is fundamentally unfair (from a competitive standpoint and otherwise) that the Wyandotte Nation be allowed potentially two casino locations in the two largest metropolitan areas in Kansas that are hundreds of miles from its Oklahoma reservation.

Certainly the Iowa Tribe did not have the luxury of seeking to situate its gaming facility in such metropolitan areas. The time, expense and effort invested by the Iowa Tribe, as well as the other Indian Nations with gaming facilities in Kansas, to the development of their facilities should not be eroded by the Wyandotte Nation attempting to expand gaming beyond the Shriner Tract.

Accordingly, should a final Compact be negotiated with the Wyandotte Nation for Class III gaming at the Shriner Tract, it is respectfully submitted that a condition be negotiated in any such Compact that the Wyandotte Nation immediately withdraw its currently pending application with the Department of Interior to have the Park City land taken into trust for purposes of gaming. Likewise, the Wyandotte nation should be required to stipulate that the Shriner Tract will be its only casino location in Kansas.

This would implicate p. 3, Sec. 2(F). There, a stipulation can be provided that the Wyandotte Nation immediately and permanently withdraw its application to have the Park City land taken into trust, at least for gaming purposes, and that it agrees to seek nor conduct any other gaming operations in the State of Kansas as a condition to execution and approval of a Class III Compact for the Shriner Tract.

The language on p. 40, Sec. 32(A) (B) should likewise be modified to reflect this stipulation.

State Assessment for Costs-Section 25.

This section addresses the State assessment for costs. While it is somewhat difficult to interpret, it appears as if it could result in the four Tribes with reservations in Kansas each paying a pro-rata share of the Wyandotte Nation's Class III start-up costs. This could be a significant expense. It is respectfully submitted that the four Kansas Tribes should not be obligated to pay any portion of the Wyandotte Nation's start-up expenses. This would be an unfair and inequitable cost assessment to the four Kansas tribes-and a windfall to the Wyandotte Nation.

Moreover, we do not believe the four Kansas Tribes should be burdened with any of the Wyandotte Nation's costs at its casino at the Shriner Tract. The Wyandotte Nation should pay its own costs under this Section 25 of the proposed Compact throughout the operation of its Shriner Tract casino. There are many reasons to distinguish the Wyandotte Nation's situation from the four Kansas Tribes. One of the more significant ones is the location of the Wyandotte Nation's proposed Class III casino. As noted above, the Wyandotte Nation has its reservation, governmental and cultural center in Oklahoma. Through the mechanism of Pub. Law 98-602, the Wyandotte Nation specifically sought out the Shriner Tract location in Kansas City, Kansas because of its close proximity to the largest metropolitan area in Kansas-a benefit none of the four Kansas Tribes share.

The four Kansas Tribes should not be forced to increase their costs simply because the Wyandotte Nation voluntarily chose to situate their casino in Kansas City, Kansas.



Iowa Tribe of Kansas and Nebraska

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The Honorable Sam Brownback
Governor of the State of Kansas
Capitol, 300 SW 10th. Ave., Ste. 241S
Topeka, Ks. 66612-1590

RE: Comments of the Iowa Tribe of Kansas and Nebraska to proposed Class III Gaming Compact with the Wyandotte Nation

Dear Governor:

The Executive Committee of the Iowa Tribe of Kansas and Nebraska has had an opportunity to review the proposed Class III Gaming Compact with the Wyandotte Nation for its site at what is commonly referred to as the Shriner Tract in Kansas City, Kansas. I have been authorized to offer the following comments on behalf of the Iowa Tribe:

1 Reservation designation. In multiple places in the proposed Compact, there is a stipulation that the Shriner Tract in KCK is the reservation of the Wyandotte Nation. As was apparently done with much of the Compact, this stipulation appears to have been copied from the existing compacts of the four Tribes with reservations in Kansas. However, we do not believe such a provision should be in the Wyandotte Nation's proposed Compact. First and foremost, the Shriner Tract is NOT the reservation of the Wyandotte Nation. Just as the Tenth Circuit Court of Appeals has previously ruled that the Huron Cemetery (which is contiguous to the Shriner Tract) is not a reservation of the Wyandotte Nation, there is no basis to conclude that the Shriner Tract is a reservation of the Wyandotte Nation. It is simply land that the United States holds in trust for the Wyandotte Nation.

If such an erroneous stipulation were to remain in the proposed Compact, it could be a stepping stone to the Wyandotte Nation expanding its casino by acquiring land contiguous to its "reservation" or even expanding the casino to the Huron Cemetery since that land would be contiguous to its "reservation". There are potentially other

EXHIBIT "A"

ramifications of allowing the Shriner Tract to be designated as the Wyandotte's Nation's "reservation".

These "reservation" references are found at the following locations in the Compact:

- p. 1;
- p. 5, sec. 3(F);
- p. 7, sec. 5(I);
- p. 10, sec. 5(W);
- p. 21, sec. 14(A);
- p. 40, sec. 32(B)

The language fix is easy to resolve this. For example, on page 1, the recital can read:approved by the Secretary of Interior who holds land in trust for the benefit of the Wyandotte Nation on Kansas City, Wyandotte County that is hereafter referred to as the "Shriner Tract".

On p. 5, it could simply refer to the "Shriner Tract". The same is true for the reference on p. 7.

The reference to "reservation" in the definitional section on p. 10 can be deleted.

On p. 21-just refer to the Shriner Tract.

On p. 40-just refer to the Shriner Tract.

Those are all the "reservation" references we caught. If there are others, they should be corrected as well.

2. State Assessment for Costs-Section 25. This section addresses the State assessment for costs. While it is somewhat difficult to interpret, it appears as if it could result in the four Kansas Tribes each paying a pro-rata share of the Wyandotte Nation's Class III start-up costs. This could be a significant expense. It is respectfully submitted that the four Kansas Tribes should not be obligated to pay any portion of the Wyandotte Nation's start-up expenses. This would be an unfair and inequitable cost assessment to the four Kansas tribes-and a windfall to the Wyandotte Nation.

Moreover, we do not believe the four Kansas Tribes should be burdened with any of the Wyandotte Nation's costs at its casino at the Shriner Tract. The Wyandotte Nation should pay its own costs under this Section 25 of the proposed Compact throughout the operation of its Shriner Tract casino. There are many reasons to distinguish the Wyandotte Nation's situation from the four Kansas Tribes. One of the more significant ones is the location of the Wyandotte Nation's proposed Class III casino. The Wyandotte Nation has its reservation, governmental and cultural center in Oklahoma. However, through the mechanism of Pub. Law 98-602, the Wyandotte Nation specifically sought out the Shriner Tract location in Kansas City, Kansas because of its close proximity to the

largest metropolitan area in Kansas-a benefit none of the four Kansas tribes share. The four Kansas Tribes should not be forced to increase their costs simply because the Wyandotte Nation voluntarily chose to situate their casino in Kansas City, Kansas.

3. The Wyandotte Nation Should be Required to Abandon Park City. If a Class III Compact is to be negotiated to completion with the Wyandotte Nation, the execution and approval of such a Compact should be conditioned on the Wyandotte Nation abandoning its application to have the Park City, Kansas land taken into trust for gaming. It is not fair that the Wyandotte Nation be allowed potentially two casino locations that are hundreds of miles from its Oklahoma reservation in the two largest metropolitan areas in Kansas.

This would implicate p. 3, Sec. 2(F). There, a stipulation can be provided that the Wyandotte Nation immediately and permanently withdraw its application to have the Park City land taken into trust, at least for gaming purposes, as a condition to execution and approval of a Class III Compact for the Shriner Tract.

The language on p. 40, Sec. 32(A) (B) should likewise be modified to reflect this stipulation.

We appreciate the opportunity to provide you our comments and for taking the time to consider them. Should you have any questions, please feel free to contact me.

Sincerely,



Timothy N. Rhodd, Chairman
Executive Committee of the Iowa Tribe of Kansas and Nebraska.

TESTIMONY BEFORE THE
JOINT COMMITTEE ON STATE-TRIBAL RELATIONS
TOPEKA, KANSAS

By

Mark Dodd, General Counsel

Sac and Fox Nation of Missouri in Kansas and Nebraska

January 26, 2011

Senator Brungardt and members of the committee, good morning and thank you for holding this hearing on the proposed "Tribal State Gaming Compact Between the Wyandotte Nation and the State of Kansas". My name is Mark Dodd. I am General Counsel for the Sac and Fox Nation. Most of the items of disagreement have been covered by other presenters so I will not take too much time to go over those issues again. I have worked on Federal Indian law issues for some time and would like to briefly comment and expound on a few points raised.

I will speak about issues regarding the use of the term "reservation" and whether the requirement in the Indian Gaming Regulatory Act (IGRA) of "good faith" negotiations requires the compact with the Wyandotte Nation to be virtually the same as the compacts with the four Kansas tribes.

The word "Reservation" has particular legal meanings. It is often defined in statutes and you have to look at the particular statute you are dealing with to see how it is used in order to know what it means. There is open debate on whether all Indian lands in trust are a reservation or if the particular statute or circumstance you are looking at is controlling. The Federal Courts have already ruled that land of the

Wyandotte Nation in Kansas is not a "reservation" for one purpose. If the State of Kansas stipulates in this document that it is a reservation there will likely be unforeseen consequences. In his testimony, Mark Gunnison representing the Iowa Tribe, suggested language to fix this problem. His recommendations should be followed. The only way to change this is to send this compact back to the Governor to be renegotiated. The issue of using the word reservation to describe the land owned by the Wyandotte Nation is reason alone to send the proposed compact back for new negotiations.

The other issue I want to shed some additional light on is the requirement of the State to negotiate in "good faith". The State's negotiator suggested that the collective agreement of those involved in the negotiations was that good faith negotiations required that the compact with the Wyandotte Nation be basically the same as the other four compacts with Kansas Tribes. Nowhere in IGRA does it make such a requirement and I know of no case law that says that either. Further, IGRA actually allows for difference based on the circumstances of different groups, the time at which the compact is negotiated, among other things. In my opinion, they have misinterpreted what "good faith" requires from the State.

There clearly are many circumstances pointed out today by others that shows the difference between the Wyandotte Nation and the four tribes in Kansas that would necessitate changes in the compact. To not do so would be irresponsible to the citizens of the State of Kansas and to the four Tribes located here.

Thank you for the opportunity to testify today and I would be happy to answer any question or provide additional information upon request.