

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 23, 2008 in Room 526-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Melissa Doeblin, Revisor of Statutes Office  
Theresa Kiernan, Revisor of Statutes Office  
Connie Burns, Committee Assistant

Conferees appearing before the committee:

Mike Leitch, Office of the Attorney General  
Heather Morgan, Juvenile Justice Authority

Others attending:

See attached list.

Mike Leitch, Deputy Attorney General, Civil Litigation Division, provided an update on the Wyandotte County Tribal Litigation. (Attachment 1) The Civil Litigation Division defends the state when it is sued for constitutional violations, civil rights violations, other general tort claims, and also handles litigation with Indian tribes. The 7<sup>th</sup> Street Casino is owned by the Wyandotte Tribe of Oklahoma, and the land used for that casino is known as the Shriner Tract. The building that now houses the casino is a former Masonic temple and has been listed on the National Register of Historic Places since 1985. The state of Kansas has been involved in litigation over that casino since 1996, and the Tenth Circuit noted two years ago, "For ten years, the Wyandotte Nation, the State of Kansas, and the United States have been locked in litigation in multiple fora over the fate of the shriner Tract, ... This long battle has produced a procedural history as complex as a random maze." *Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1249 (10<sup>th</sup> Cir. April 7, 2006).

The Wyandotte Tribe is not originally from Kansas, but in the mid 1840s they were given 23,000 acres at the junction of the Missouri and Kaw Rivers, and in 1855, the Tribe was dissolved and all that land was ceded to the U.S., with the exception of what is now known as the Huron Cemetery in KCK. The Huron Cemetery is owned by the U.S. Government for the Wyandottes - and has been since 1855. When the Tribe was dissolved, one group of Wyandottes refused to accept the federal government's citizenship offers and moved to Oklahoma where it was reconstituted as a tribe in 1867, and has remained there since. In 1984, Congress enacted Public Law 98-602, which provided compensation for the Wyandottes for various land ceded to the US in the 1800s. Pub.L. 98-602 included a provision that "a sum of \$100,000 of such funds shall be used for the purchase of real property which shall be held in trust by the Secretary for the benefit of such Tribe".

In 1988 Congress passed the Indian Gaming Regulatory Act, (IGRA) which included a provision disallowing gaming on trust land acquired after 1988, with a few exceptions. One exception would allow gaming on after-acquired land if the "lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988"; another exception was for land taken into trust "as part of a settlement of a land claim. (See 25 U.S.C. 2719 (b) (1)(B)(I).

In 1995 the Wyandottes agreed to purchase what has become known as the "the Shriner Tract," .52 acres adjacent to the Huron Cemetery, containing an old Shriner Temple; the Tribe maintains it was purchased solely with Pub.L. 98-602 funds. In 1996 the Department of Interior decided to take the Shriner Tract in trust for the Wyandottes and to allow gaming on it, reasoning that the Huron Cemetery was a "reservation" and the Shriner tract was immediately adjacent to it.

Three of the four State's resident tribes, along with the State of Kansas, filed suit in federal court on July 12, 1996, to challenge the Department of Interior's decision, and obtained a temporary restraining order preventing the Department of Interior from taking the Shriner Tract into trust; the Wyandottes intervened and appealed to the Tenth Circuit, alleging that the purchase of the Shriner Tract would fall through if it was not allowed to go into trust immediately. The Tenth Circuit modified the TRO allowing the Dept. of Interior to take the property into trust and to obtain a judicial review of all issues raised whether gaming should be

## CONTINUATION SHEET

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permitted. The Department of Interior again determined that only Public Law 98-602 funds were used, and succeeding challenges be brought in a separate suit.

The second lawsuit was in 2003; Judge Julie Robinson held that only Public Law 98-602 funds were used in the purchase and rejected the Plaintiffs' argument that the purchase price was \$325,000, and thus could not have been purchased with Public Law monies because the realtors commission of 6% in the amount of \$19,500 was paid at closing, which amounts to a \$325,000 purchase price. It was appealed, but the Tenth Circuit failed to reach the issue.

Last November district court Judge Roger was asked to reopen the first case; the motion is fully briefed and is awaiting a ruling. While the litigation was ongoing, the Wyandottes brought two mobile homes to the site and commenced a casino operation. On April 2, 2004, with a state court approved search warrant, KCK Police and the KBI raided the casino and confiscated the gaming machines, and seized a bank account owned by the Wyandottes. The Wyandottes sued and Federal Judge Julie Robinson held that because the land was in trust pursuant to the IGRA, Kansas had no jurisdiction to regulate gaming, only the Federal Government did and ordered the property returned; the injunction was upheld on appeal to the Tenth Circuit.

Since that order the Shriner building has been remodeled and the Wyandottes have opened a casino there; the gambling operation is limited to Class II gaming, bingo and similar games played against other players and not the house. The Tribe has to negotiate a compact with the state in order to conduct Class III gaming, and requested that the Governor begin negotiating a compact; she has declined to begin those negotiation until the legal issue involving the property have been addressed; therefore, the State plans to continue the litigation until at least the Court of Appeals can review whether the Tribe used the right funds to buy the land, and thus whether gambling there is legal.

A history of the Court Decision and Litigation was provided.

Staff provided the committee an overview on **SB 410** and a balloon with the technical changes (Attachment 2).

### **SB 410 - Technical changes regarding Kansas juvenile correctional complex**

Chairman Brungardt opened the hearing on **SB 410**.

Heather Morgan, Director of Public and Legislative Affairs, Juvenile Justice Authority appeared in favor of the bill. (Attachment 3) The bill cleans up existing statutory language surrounding the four current juvenile correction facilities and allows for the appointment of Deputy superintendent at each of the juvenile correctional facilities. The bill also eliminates the statutory reference to having an attorney employed at the Kansas Juvenile Correctional Complex; this position has not been filled for a number of years and any legal issues involving the facility can be taken care of by legal staff housed in the JJA Central Office.

Chairman Brungardt closed the hearing on **SB 410**.

The meeting was adjourned at 11:05 am. The next scheduled meeting is January 24, 2008.