

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 29, 2009, in Room 136-N of the Capitol.

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

Dale Goter, City of Wichita
Thomas Groneman, Alcoholic Beverage Control
Tuck Duncan, Distilled Spirits Council of the United States
Maggie Childs, Kansas Equality Coalition
Mike Leitch, Deputy Civil Litigation Attorney General's Office
Peter Ellenstein, William Inge Center for the Arts
Marcia Cebulka, Kansas Playwright
Larry Baer, League of Kansas Municipalities

Others attending:

See attached list.

Introduction of Bills

Senator Morris requested two bill introductions. The first bill introduction is regarding planning and zoning, dealing with certain easements.

Senator Morris moved that this request should be introduced as a committee bill. Senator Owens seconded the motion. The motion carried.

The next bill introduction is regarding regulating traffic; concerning driving in the right lane.

Senator Morris moved that this request should be introduced as a committee bill. Senator Reitz seconded the motion. The motion carried.

Dale Goter, City of Wichita, requested a bill introduction that would allow public consumption of alcohol during a special event.

Senator Faust-Goudeau moved that this request should be introduced as a committee bill. Senator Francisco seconded the motion. The motion carried.

Thomas Groneman, Alcoholic Beverage Control, requested a bill introduction that would allow the governing body of a city or county to request a hearing on whether a license should be issued, renewed, suspended, or revoked at any time.(Attachment 1)

Senator Owens moved that this request should be introduced as a committee bill. Senator Abrams seconded the motion. The motion carried.

Tuck Duncan requested a bill introduction for Whitney Damron, Distilled Spirits Council of the United States (Attachment 2) that would allow retail liquor dealers in our state to provide tastings of their products to consumers in their stores.(Attachment 2)

Senator Ostmeyer moved that this request should be introduced as a committee bill. Senator Owens seconded the motion. The motion carried.

Maggie Childs, Kansas Equality Coalition, requested a bill introduction concerning the Kansas act against discrimination; relating to sexual orientation; gender identity.(Attachment 3)

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Senator Owens moved that this request should be introduced as a committee bill. Senator Reitz seconded the motion. The motion carried.

Mike Leitch, Deputy Civil Litigation Attorney General's Office, provided the committee with an update on the Tribal Litigation in Wyandotte County. (Attachment 4) The 7th Street Casino is owned by the Wyandotte Tribe of Oklahoma. The land used for that casino is known as the Shriner Tract; and 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 three 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 (10th 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 on 1855 the tribe was dissolved and all that land was ceded to the U.S., with the exception of what is now know 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 ever since.

In 1984, Congress enacted Public Law 98-602, which provided compensation for the Wyandottes for various land ceded to the U.S. 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 includes a provision disallowing gaming on trust land acquired after 1988, with a few exceptions. Exceptions would:

1. 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."
2. 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"; it is .52 acres adjacent to the Huron Cemetery containing an old Shriner Temple. The Tribe maintains it was purchased solely with Public Law 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.

In November 2007 district court - Judge Rogers - was asked to reopen the first case; the case was reopened and in September 2008, on a motion of the federal government, he dismissed it. Judge Rogers ruled that because the Department of Interior had already taken the land into trust, the court lacked jurisdiction to consider challenges to it; and based this ruling on a federal law called the Quiet Title Act. This means that there still has yet to be a final determination by the Court of Appeals that only Public Law 98-602 funds were used in the purchase. The State of Kansas, the Iowa Tribe, and the Sac and Fox Tribe have jointly appealed Judge Rogers' decision. The AG's office has submitted its brief and is waiting on the federal government to submit its brief. The court will likely set the case for oral argument sometime later this year.

SB 1 - William Inge Theatre Festival designated as the official theatre festival of the state.

Chairman Brungardt opened the hearing on **SB 1**.

Senator Derek Schmidt gave a brief overview of the bill and introduced the first speaker.

Peter Ellenstein, William Inge Center for the Arts, appeared in favor of the bill and provided a history of the Center. (Attachment 5)

The bill would make the William Inge Theatre Festival the official State Theatre Festival of Kansas. In 1982, Margaret Hoheen, Inge's longtime friend and theatre instructor at Independence Community

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College (ICC), partnered with the great playwright Jerome Lawrence, and they decided to salute the legacy of William Inge by honoring a great American playwright each year with the *Distinguished Achievement in the American Theatre Award*. Starting with a half-day event, it has grown over two decades into a four-day festival filled with performance, educational workshops and a scholars' conference. Now in its 28th year, the William Inge Theatre Festival has welcomed to Kansas nearly every major American Playwright of the last half of the 20th century.

Marcia Cebulka, Kansas Playwright, spoke in favor of the bill. (Attachment 6) Ms. Cebulka stated that the William Inge Theatre Festival brings everyone together, lets them be accessible to one another, whether they be student or honoree, workshop attendee or movie star, Kansas playwright or L.A. screen writer; we are there together, townspeople, theatre friends and colleagues, working, meeting, and learning from one another. The William Inge Theatre Festival is a national phenomenon and a state treasure.

Chairman Brungardt closed the hearing on **SB 1**.

SB 53 - Licensure of cereal malt beverage retailers.

Staff provided an overview of the bill and a balloon that revises the bill to the action that was taken by the Senate Fed & State committee in the 2007 Legislative Session and the amended bill was then passed by the Senate 40-0. (Attachment 7)

Chairman Brungardt opened the hearing on **SB 53**.

Jason Gage, Salina City Manager, provided written testimony in support of the bill. (Attachment 8) The specific request is that the local licensing authority be granted reasonable discretion with regards to CMB license issuance, suspension and revocation actions; to ensure the penalty applied is fair and equitable with regard to the violation of the license holder.

Larry Baer, League of Kansas Municipalities, (LKM) appeared in favor of the bill as it is written, but requested some changes. (Attachment 9) The League supports this proposed change in current law; but would like to request two changes: 1) only cities and counties issue CMB licenses, the Director is not involved in the local CMB licensing process. Substituting "governing body of the city" correctly designates the parties that approve and issue CMB licenses. 2) delete the last sentence of subsection (a) including the proposed new language, and insert "or the governing body of the city" to the new language proposed in subsection (b): LKM believes that this correctly reflects the intent of proposed legislation and presents a bill that is more easily read.

In response to Committee discussion the Chairman requested staff to provide a balloon when the bill is worked.

Chairman Brungardt closed the hearing on **SB 53**

Final Action:

SB 3 - Senate confirmation oversight committee; membership.

Senator Owens moved to pass SB 3 out favorably. Senator Faust-Goudeau seconded the motion. The motion carried.

SB 29 - Board of technical professions; relating to licensure.

Staff provided an amendment on page 3 lines 26 that would strike *planning, mapping* on line 26 and insert *planning, mapping and* after *the* on line 25 and striking *fixed* and inserting *engineering* on line 38. (Attachment 10)

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Senator Abrams moved the amendment. Senator Ostmeyer seconded the motion. The motion carried.

Staff provided a balloon from the Board of Technical Professions that is an administrative amendment for the Board, on page 12 lines 16 - 25 striking redundant language that was added in regarding the information the Board requires from a business entity that is applying for a certificate of authorization.(Attachment 11)

Senator Ostmeyer moved the amendment. Senator Owens seconded the motion. The motion carried.

Senator Abrams moved to pass **SB 29** out favorably as amended. Senator Ostmeyer seconded the motion. The motion carried.

The next meeting is scheduled for January 31, 2009. The meeting was adjourned at 11:47 am