

Approved: 2-7-06
Date

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 12, 2006 in Room 231-N of the Capitol.

All members were present except:

Senator Anthony Hensley- excused

Committee staff present:

Athena Andaya, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Connie Burns, Committee Secretary

Conferees appearing before the committee:

James Bartle, General Counsel, Kansas Dept. Of Revenue

Others attending:

See attached list.

James Bartle, General Counsel, Kansas Department of Revenue, provided an explanation and implications of the U.S. Supreme Court decision on the motor fuel tax case. (Attachment 1) The United States Supreme Court's Decision in *Wagon, Secretary, Kansas Department of Revenue v. Prairie Band Potawatomi Nation* and its potential impact on other pending cases. There is currently pending a petition for rehearing that has been filed by the Tribe and the Court is scheduled to consider this petition at its conference on January 20, 2006. In this case Kansas sought to tax a non-tribal motor fuel distributor on its off-reservation receipt of fuel. The distributor later transported the fuel to the Potawatomi reservation where it was sold to retail customers at a tribally-owned facility. The Tribe sued in Federal District Court to enjoin the tax as a violation of its tribal sovereignty. The court declined to issue an injunction, holding that the balance of state, federal and tribal interests favored the State. On appeal, the Tenth Circuit Court of Appeals reversed, holding that the balance of interest favored the Tribe. On December 6, 2005, the Supreme Court not only reversed the Tenth Circuit and upheld the tax, it also declared the interest balancing test set forth in *White Mountain Apache Tribe v. Bracker* to be inapplicable when a state taxes non-Indian, off-reservation transactions. The Court distinguished this case from those in which a tribe or its members were being taxed and found that the legal incidence of the Kansas tax was on the non-tribal distributor, and the tax arises as a result of the distributor's receipt of the fuel, which occurs off-reservation.

The Court rejected the contention that the tax is unlawfully discriminatory because the statute provides an exemption for fuel sold to the Federal Government and for fuel exported to other States but not for fuel sold to Indian Tribes. Discrimination is the basis for the Tribe's petition for rehearing and it is currently pending.

Mary Torrence, Revisor of Statutes Office, updated the committee on the Joint Committee on State-Tribal Relations dealing with SB 9 from 2005 Legislature. The question arose if the tribe had complied with a provision in the bill that requires liability insurance coverage by the tribes to be subject to verification by the Attorney General. The controversy arose because of a provision dealing with reporting requirements, specifically if the tribes needed to submit their insurance policies to the Attorney General's Office or if the Attorney General's Office needed to contact the tribes to verify the policy was in place. The committee passed a motion requiring the tribes to submit verification of insurance to the Attorney General's Office.

Dennis Hodgins, Legislative Research Office, provided information on the status of the Native American Gaming Compact and the implications of Senator John McCain's 2005 amendment to the Indian Gaming Regulatory Act. The bill clarifies that the National Indian Gaming Commission (NIGC) has authority to promulgate and enforce Minimum Internal Control Standards as to Class III gaming; this amendment makes clear that NIGC continues to have the authority it has exercised until now to issue and enforce

MICS, including the ability to inspect facilities and audit premises in order to assure compliance; extends NIGC approval to all significant gaming operations related contracts, so that the Indian gaming industry remains free from unsuitable and unscrupulous contracts and requires all tribes to pay fees to the NIGC. The bill will ensure fairness in the regulation of Indian gaming by assuring all tribes bear their share of the cost of regulations so the industry continues to prosper.

The meeting was adjourned at 11:30. The next scheduled meeting is January 17, 2006.