Legislative Research Council
SouthDakota

# MINUTES
## State-Tribal Relations Committee

**Second Meeting**
**2009 Interim**
**June 9, 2009**

**Room 412**
**State Capitol Building**
**Pierre, South Dakota**

**Tuesday, June 9, 2009**

The second meeting of the Legislature's State-Tribal Relations Committee was called to order by Senator Jim Bradford, Chair, at 9:10 a.m. June 9, 2009, in Room 412 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Jim Bradford, Dan Ahlers, Craig Tieszen, Ryan Maher, and Russell Olson; and Representatives Kent Juhnke, and Kevin Killer. Excused were Representatives Carol Pitts, Ed Iron Cloud lll, and Dean Wink.

Staff members present were Tom Magedanz, Principal Research Analyst, Legislative Research Council and Reta Rodman, Legislative Secretary.

(**NOTE:** All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). For the purpose of continuity, these minutes are not necessarily in chronological order. This meeting was webcast live. The archived webcast is available at the LRC web site at http://legis.state.sd.us under "Interim Information – Minutes and Agendas.")

A prayer was offered by Anthony Wounded Head, Sr., Oglala Sioux Tribe.

**REPRESENTATIVE KENT JUHNKE MOVED, SECONDED BY SENATOR RYAN MAHER, TO CORRECT THE MINUTES OF THE MARCH 30, 2009, MEETING BY CHANGING ALL REFERENCES TO "REPRESENTATIVE RUSSELL OLSON" TO "SENATOR RUSSELL OLSON".** The motion prevailed on a voice vote.

**SENATOR DAN AHLERS MOVED, SECONDED BY SENATOR RUSSELL OLSON, THAT THE AMENDED MINUTES OF THE MARCH 30, 2009, MEETING OF THE STATE-TRIBAL RELATIONS COMMITTEE BE APPROVED.** The motion prevailed on a voice vote.

### Opening Remarks

**Senator Jim Bradford**, chair, thanked everyone for attending the meeting and reminded them to be sure to sign in. He said that the meeting would be open and positive in nature and anyone who wanted to present testimony was welcome to do so. Senator Bradford gave personal recognition to his newest grandchild, Zander Ali Plenty Arrows.

**Roger Campbell**, Director, Office of Tribal Government Relations, discussed the history and mission of the Tribal Government Relations Office and explained that his office was established to aid in securing and coordinating federal, state, and local resources to help solve Indian problems, and to serve as an advocate of the Indian people. He said the office was originally titled the Office of Indian Affairs and was established in 1949 in SDCL 1-4-1. The office is currently located in the Department of

Tourism and State Development. He said that the office is involved with the 2010 Initiative – Goal 4E which includes the following:

- Improve cooperative efforts with the Native American tribes
- Establish lasting tribal partnerships:
  Comprehensive Tax Collection Agreements
  TERO/TECRO Agreements
  Gaming Compacts.

- Assist in developing business infrastructure with the tribes, when invited:
  Assist the GOED Sales and Community Development Manager (Jeff Brusseau) with Indian Country Contracts

- Continue to improve rural tourism efforts with the tribes:
  State-Tribal Tourism Roundtable discussion held three times a year
  Input from roundtable group for Tourism Conference and Great Sioux Nation publication
  Travel to reservations to show Tourism Office hospitality programs to business owners and managers

- Engage in a summit process with tribes, as invited:
  Indian Education Summit
  Governor's Interstate Indian Council

- Increase staffing of the Office of Tribal Relations
- Promote the establishment of cultural, noncompetitive exchanges between reservation and nonreservation schools, if invited.

Senator Bradford asked Roger Campbell whether he was involved in the negotiations in the gaming compacts. Mr. Campbell responded that he does not participate in the compact negotiations and that since 2004 the Governor or his representative negotiates with the tribes on the gaming issues.

Representative Kent Juhnke asked whether there is a possibility of the nine tribes moving towards more unified and cohesive joint efforts rather than working individually. Mr. Campbell responded by stating that it is possible but noted that the tribes generally work individually with the state and are autonomous entities. Mr. Campbell also distributed three documents entitled "Indian Education Act" **(Document #1)**, "Accomplishments in Indian Education" **(Document #2)**, and "Department of Human Services" **(Document #3)**. He informed the committee of recent activities of the Office of Indian Education. He also discussed efforts by the committee, his office, and other groups leading to the accreditation of tribal alcohol and drug counselors.

**K C Russell**, Director, Governor's Indian Health Care Initiative, discussed the initiative and related issues. He said the initiative's goal is to lessen the disparity between Native Americans and non-Natives in the area of health and health care. Mr. Russell reported that the death rate among Native Americans is 1500 deaths per 100,000 Indians compared to 760 deaths per 100,000 non-Natives. He said some areas that he has been working on are: nutrition, screenings, medical grants, and mobile health clinics for children and new mothers, veteran's health, and suicide prevention. He discussed the suicide rate on the reservations and the Suicide Prevention Forum subcommittee. He also informed the committee about the proposed assisted living center at Pine Ridge and difficulties encountered in applying for funding for the project.

**Darin Bergquist**, Secretary, Department of Transportation, presented an overview of SB119 which was passed by the Legislature in 2009. The committee discussed issues related to the Allen Road in Bennett County. Mr. Bergquist said that many issues come into play regarding the Allen Road and its

repair and that SB119 has issues that are unresolved. One issue is that SB119 did not address jurisdiction when a road has been transferred. Representative Killer asked whether the same jurisdiction principle wouldn't apply to Indian roads as jurisdiction between states. Secretary Bergquist responded by stating that the Attorney General's office would have to respond to that question and also the issue of the jurisdiction on the Allen Road. The committee also discussed similar issues with a road in Mellette County. Mr. Bergquist noted that the Allen Road situation involves state, tribal, county, BIA, and federal entities and is a difficult issue.

**Laurie Feiler**, Deputy Secretary, Department of Corrections, presented a power point presentation discussing the department's mission and programs, particularly with respect to Native Americans **(Document #4)**. The Mission Statement for the Department of Correction includes the following: To protect the citizens of South Dakota by providing safe and secure facilities for juvenile and adult offenders committed to our custody by the courts, to provide effective community supervision to offenders upon their release, and to utilize evidence-based practices to maximize opportunities for rehabilitation.

Ms. Feiler explained that public safety is behavior change. She said of the 3,021 males incarcerated in a state prison 27% are Native American, and of the 385 female population 38% are Native American. She reported that 40.5% of youth offenders under the jurisdiction of the Department of Corrections are Native Americans.

Ms. Feiler discussed activities and programs in the Department of Corrections that address Native American inmates. These include: cultural awareness group, tribal liaisons, staff training, cultural activities, and culturally specific treatment. The correctional facilities provide for pipe ceremonies, sweat lodges, Pow Wows, tobacco ties, drum group, and access to medicine men for the Native American prison population. In 2003 guidelines were changed to allow inmates to leave the correctional facility for bedside trips and funerals. Ms. Feiler gave an overview of the specific chemical dependency treatment program that is partnered with the Department of Human Services.

Senator Tieszen said that the prison being built in Rapid City will allow the inmates to be close to families who live in the area. He also stated that sovereignty and jurisdiction issues are important and have many policy ramifications.

Representative Killer asked about the reentry into the community and juvenile retention. Ms. Feiler stated that the Reentry Initiative has a Reentry Council established by Governor Rounds. She said recidivism reduction is the key to reducing numbers along with multilevel and cross agency focus – collaboration to reduce recidivism.

In response to a request from Senator Ahlers regarding the breakdown of crimes from June-03 to May-09, Deputy Secretary Feiler emailed documents entitled "Breakdown of Crimes of South Dakota Inmates" – June-03 **(Document #5)**, "Breakdown of Crimes of South Dakota Inmates" – May-09 **(Document #6)**, and "Breakdown of Crimes of South Dakota Inmates" – June-06 **(Document #7)**.

**David Wiest**, Deputy Secretary, Department of Revenue and Regulation, gave an overview of Tax Collection Agreements between the state and the Tribes. He said that some transactions can be taxed by South Dakota and some transactions cannot. Mr. Wiest stated that the state and the tribes can enter into agreements to collect taxes together. The first tax collection agreement between the state and a tribe was the cigarette tax based on legislation passed in 1974 (SDCL 10-12A). He reported that the list of taxes available for agreement is provided by the Legislature, and once a tax collection agreement has been finalized it is filed with the Secretary of State. Mr. Wiest said that tribes are not required to enter into tax collection agreements even though the taxes are on the list. There is not a tax collection agreement with any tribe for the motor vehicle excise tax. He stated that numerous tax

collection agreements are in place between the state and several South Dakota tribes and that the agreements make it easier for both parties to collect taxes.

**Larry Long**, Attorney General, gave an overview and brief history on gaming. He said that the first territorial legislature prohibited gaming, but in the1930's horse racing was legalized. In 1947 Deadwood gambling was shut down by the Attorney General. However, in 1986 scratch and match games were made available to the citizens of South Dakota, and in 1988 Deadwood gaming was authorized. Indian gaming was legalized for tribes in 1988. He said the federal Gaming Indian Regulatory Act divided gaming into three classes:

- Class 1 – Traditional Indian gaming, which is not regulated;
- Class 2 – Bingo and similar games (no compact needed with the state), and
- Class 3 – Casino type gaming with a legalized compact between the state and the tribes.

Attorney General Long reported that in 1990 the Flandreau Santee Sioux Tribe signed the first gaming compact with the State of South Dakota. By 1993 all South Dakota tribes had signed compacts, although the Cheyenne River Sioux Tribe has never operated a casino.

**Ms. Meghan Dilges**, Office of the Attorney General, distributed a document entitled "Gaming Compact between the Standing Rock Sioux Tribe and the State of South Dakota" **(Document #8)**. She discussed gaming compacts with the tribes in South Dakota and explained that the various Indian reservations' gaming compacts vary in length of time starting with two year compacts and the Standing Rock gaming compact having a 10 year term with the option to renew another 10 years. She said this compact also has a $1 million public liability policy.

In reply to a question posed by Senator Bradford, Ms. Dilges said that the Governor or the Governor's representative and a representative of the tribe will meet in a hearing process and the US Department of the Interior has the final approval. She explained that tribes have 250 machines and unlimited blackjack and poker tables. The committee discussed issues related to machine numbers and how these limits compare with Deadwood gaming as well as other gaming issues.

Attorney General Long distributed a letter he wrote to the Bennett County Commissioners regarding jurisdiction over the Allen road **(Document #9).** He also distributed a map entitled "South Dakota Indian Reservations" **(Document #10)**. He said that before statehood Bennett County was part of the Pine Ridge Indian Reservation. In 1912 the surplus (unallotted) land in Bennett County was purchased by the United States Government from the Oglala Sioux Tribe and opened for non-Indian homesteading. He said as a result, South Dakota generally has jurisdiction over all crimes committed in Bennett County except those crimes committed on allotted land (Indian Country). Attorney General Larry Long reported that Bennett County is commonly known as a "checker board" area because the allotted lands (Indian Country) are interspersed with deeded land. Therefore, Bennett County does not have the power to change or transfer jurisdiction, and by the same token the tribe could not transfer jurisdiction either. He said that the tribe, state, federal, and county must all agree. One problem in the Allen Road situation is that the road bed needs major reworking which would involve the condemnation of property, and no entity has condemnation power over all of the categories of property along the road.

Attorney General Long and the committee members held a short discussion regarding the smoking ban which was passed during the 2009 Legislative Session. He said there are issues regarding this new law that must still be addressed.

## Public Testimony

**Mr. Anthony Wounded Head, Sr.**, Oglala Sioux Tribe, Porcupine District Representative, clarified that there is one Lakota Nation in South Dakota and that the tribes are all bands within this nation. He explained that Lakota language is spoken in all of them. Mr. Wounded Head said that he felt the Native Americans are given the run around by the State of South Dakota. With reference to the Allen Road in Bennett County, he said that because of the safety issues all individuals involved should sit down and final results should be achieved.

**Marcida Eagle Bear**, Executive Director, Rosebud Drug and Alcohol Treatment Program, testified as to the remaining barriers that she has had to overcome when dealing with the State of South Dakota to achieve state accreditation even though the issue was thought to have been resolved with the Department of Human Services.

**Mary Ann Bear Heels McCowan**, Rosebud Sioux Tribe. She is the Disparities Coordinator with St. Mary's Hospital and is working with seven tribes regarding the All Women Count program which deals with breast and cervical screenings. She said it has taken her ten years to accomplish her goal.

**Representative Larry Lucas** asked the committee to consider a visit to the Rosebud Reservation. Representative Juhnke responded that the policy of the State-Tribal Relations Committee has been to only visit a reservation if the committee has been invited. Senator Bradford informed the committee that former Representative Paul Valandra would be sending the committee an invitation to visit the Rosebud Reservation. Representative Lucas said that there are many pertinent issues in the Rosebud area that the committee could review. One particular issue involves the provision of county services between Todd and Shannon counties.

**Kathy Lucas**, citizen lobbyist, testified that communication between the State of South Dakota and the tribes is very important, and when in doubt, contact your legislator by email, letter, or telephone call or contact the Governor.

**Mr. Jeremiah M. Murphy**, Great Plains Indian Gaming Association, discussed gaming issues with the committee. He said there are economic benefits of Indian gaming to the tribes and to the surrounding communities and noted that a large percentage of gaming employees are not tribal members. He stated that we have missed opportunities for jobs and economic development in South Dakota because of some of our restrictions on Indian gaming. The machine number issue is particularly important.

**Chairman Michael Jandreau**, Lower Brule Sioux Tribe, discussed the need for communication and cooperation between the state and the tribes and stressed the need to work together. He noted that usually when we make progress, it is on an issue that impacts both the state and the tribe. He has devoted his efforts to making life better on the reservation.

## Committee Discussion

**Senator Tieszen** said that it is a good idea for the State-Tribal Relations Committee to establish relationships with the tribes of South Dakota and one way to do this is to visit the reservations.

**Senator Bradford** read a letter he received from Rodney M. Bordeaux, President of the Rosebud Sioux Tribe **(Document #11)** extending an invitation to the State-Tribal Relations Committee to visit the Rosebud Indian Reservation during one of the committee's future meetings. Senator Bradford suggested that the Legislative Research Council staff, Tom Magedanz, contact the committee members and schedule the next meeting either late August or early September.

**SENATOR CRAIG TIESZEN MADE A MOTION, SECONDED BY SENATOR RYAN MAHER, TO HAVE THE NEXT MEETING OF THE STATE-TRIBAL RELATIONS COMMITTEE ON THE ROSEBUD RESERVATION.** Motion prevailed on a voice vote.

## Adjournment

**MOTION BY REPRESENTATIVE KEVIN KILLER, SECONDED BY REPRESENTATIVE KENT JUHNKE THAT THE MEETING BE ADJOURNED.** Motion prevailed on a voice vote

The meeting adjourned at 4:15 pm.

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