



Legislative
Research
Council

MINUTES

State-Tribal Relations Committee

**Fourth Meeting – Flandreau Santee Sioux Tribe
Thursday, August 14, 2008**

**Royal River Casino
Flandreau, SD**

The fourth meeting of the Legislature's State-Tribal Relations Committee for 2008 began at the Royal River Casino in Flandreau with the Flandreau Santee Sioux Tribe at 9:30 am.

Opening Remarks

Representative Kent Juhnke, Chair, called the meeting to order. Representative Juhnke welcomed everyone to the meeting and thanked the Flandreau Santee Sioux Tribe for hosting this meeting. An opening prayer was offered.

A quorum was determined with the following members answering the roll call: Senators Cooper Garnos, Tom Katus, and Theresa Two Bulls; and Representatives Jim Bradford, Kent Juhnke, and Keri Weems.

Staff member present was Tom Magedanz, Principal Research Analyst, Legislative Research Council.

(**NOTE:** For the sake of continuity, the following minutes are not necessarily in chronological order. All referenced documents are on file with the Master Minutes.)

REPRESENTATIVE TOM KATUS MOVED, SECONDED BY REPRESENTATIVE KERI WEEMS, THAT THE MINUTES OF THE JULY 11-12, 2008, MEETING OF THE STATE-TRIBAL RELATIONS COMMITTEE BE APPROVED. The motion prevailed on a voice vote.

President Josh Weston, Flandreau Santee Sioux Tribe, welcomed the committee and gave a presentation on the history and current status of the Flandreau Santee Sioux Tribe. He also answered questions from the committee on topics related to the tribe and its activities. He stated that the tribe has 800 enrolled members, including 300 adults and 100 children who live on the reservation. The reservation consists of checkerboard land holdings within Moody County and includes 2500 acres of trust land and 2500 acres in fee title. **Representative Jim Bradford** asked about the operation and funding of the Flandreau Indian School. President Weston stated that the school is run by the Bureau of Indian Education (BIE), although it may change to a grant school. **Representative Keri Weems** asked whether the tribe is involved with the management of the school; President Weston stated that the tribe is not on the board of the school and is not involved in school operations.

Representative Juhnke asked about the tribe's economic and unemployment situation. President Weston stated that he does not have unemployment data, but the tribe does make an effort to provide employment for its members. He said that the tribe's Royal River Casino is its biggest employer, and the tribe operates two other corporations in addition to the casino: Prairie Junction Truck Stop and Smith Publishing. **Senator Cooper Garnos** asked about the impact of the casino and hotel on the tribal economy and about possible future expansion. President Weston responded that the casino is the largest employer in Moody County and employs 300-350 people, including people from Madison, Sioux Falls, Brookings, and Minnesota, as well as tribal members and other local people. He stated that the tribe would like to expand the casino and hotel operations as well as adding other amenities such as a golf course and water park. He also stated that better infrastructure is needed in order to implement these proposals. **Senator Tom Katus** asked where the other tribal members reside who are away from the reservation and what percentage of casino employees are tribal members. President Weston stated that approximately twenty-five percent of employees are Native American, including some who are members of other tribes.

Mr. Gary Kills a Hundred, Flandreau Santee Sioux Tribe, discussed issues and concerns facing the tribe. He stated that action is needed on children's issues and poverty, and he asked, in reference to the gaming compact and the limit on slot machine numbers, why the tribe has to ask the state for permission to let the tribe's casino business grow. Senator Katus agreed that the state is preventing tribal economic growth and opposes the cap on slot machine numbers.

Ms. Eloise Drapeau, Council Member, Flandreau Santee Sioux Tribe, stated that the tribe is a small one and that their hands are tied on many issues related to economic growth. She noted that gaming revenues are used for health care, elderly, welfare, and economic development, among other things. She stated that health care is a problem and that health funding continues to be cut. She also noted that the tribe is looking at a joint agreement with the Indian Health Service (IHS) that could expand the IHS facility and provide 35-40 new jobs in the clinic. Representative Bradford asked about the status of the Indian Health Service and care for the elderly in Flandreau. Ms. Drapeau responded that there are two doctors (one part time and one full time), three nurses, and one lab technician. She said that there are long waiting times and that improvements in health care are needed. She reported that the tribe has received grant money from the Shakopee Tribe in Minnesota for a senior center and that there are two off-reservation nursing homes in the town of Flandreau, but that cultural differences cause difficulties for elders in non-Indian nursing homes. She said there is also a need for care for the disabled elderly population.

Mr. Chuck Jones, Flandreau City Administrator (and also a member of the Flandreau Santee Sioux Tribe) briefed the committee on relationships between the city and the tribe. He noted that they are in a unique situation because part of the reservation lies within Flandreau city limits. He stated that the casino is a major benefit to the city and the surrounding community. In answer to a question by Representative Bradford, Mr. Jones said that the tribe, the city, and the county have entered into a county-wide law enforcement joint powers agreement that has been very successful.

Mr. Gordon Jones, Flandreau Santee Sioux Tribe, described his career with the tribe and discussed current issues. He has served as former tribal chair, tribal judge, gaming commission member, tax commission member, tribal historian, and school board member, as well as serving as a consultant at the national level on gaming operations and regulation of casinos. He discussed the gaming compact and machine numbers and stated that machine numbers should be market-driven rather than subject to an arbitrary limit. He also discussed other problems for Native Americans and noted that lack of trust is a basic problem that must be overcome. He said that “living in two worlds” is a difficult task.

2010 Census Presentation

Ms. Vicki McIntire and Ms. Angela Padilla of the Denver Region of the U.S. Census Bureau gave a presentation for the committee and for tribal members about the upcoming 2010 Census. They stressed the need for full counting, particularly on Indian reservations, in order for residents to qualify for full federal benefits, which are often based on population. They described some of the methods they will use in attempting to improve population counts on reservations and in other areas. They distributed a packet of information entitled “United States Census 2010” (**Document #1**), and they reported that the 2010 Census operation will attempt to canvass every residence and housing structure in the United States. They are making additional efforts in Native American areas to achieve a full counting and are working with tribes and tribal officials. In 2006, they conducted a test operation on the Cheyenne River Reservation, and they showed the committee a video of the activities at Cheyenne River. They noted that there is a trust issue that can make people reluctant to participate and that this must be overcome in order to obtain a thorough counting of residents. A Census office will be opened in Rapid City in October of 2008 and in Sioux Falls in October of 2009.

Gaming Issues Presentation

Mr. Jeremiah M. Murphy, representing the Great Plains Indian Gaming Association, discussed gaming issues with the committee and explained the activities of the association. The Great Plains Indian Gaming Association represents twenty-eight tribes from four states and includes all nine South Dakota tribes. Mr. Murphy discussed the 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 addressed numerous issues and concerns about Indian gaming. He noted that even though the term “limited gaming” is used in South Dakota, the limits are on individual operators so that gaming and machine numbers in Deadwood have been able to increase and recent legislative changes to liquor laws will in effect enable an increase in video lottery establishments. He noted that Deadwood currently has more machines than all nine South Dakota Indian tribes combined are allowed under the current gaming compacts.

Mr. Murphy discussed several issues related to South Dakota’s Indian gaming compacts. He stated that the four-year term limit for the compact is too short and makes it difficult for tribes to acquire financing, as lenders generally want longer-range information on which to base lending decisions. The number of slot machines allowed for each tribe under the compacts is 250, which severely limits expansion by certain tribes. He feels that the cap should be

eliminated and that a market-driven system for determining machine numbers would be more equitable and would offer serious opportunities for expansion and economic development for the tribes. He stated that increased tribal gaming would not be a threat to the state's video lottery operators or to Deadwood gaming, and that expanded tribal gaming would increase employment and tax revenues, as well as providing other economic benefits. Most of the surrounding states use a market-driven approach to allow the tribes to determine the number of machines they will use, and tribes will not incur expenses to expand beyond what the market will bear. Mr. Murphy also described a leasing system used in Washington State and Arizona in which machine numbers are limited for individual tribes, but tribes are allowed to acquire machine licenses from other tribes that may not wish to use their full machine allocation.

Senator Katus stated that North Dakota's system would be a good model for South Dakota to follow concerning tribal gaming. North Dakota compacts with five different tribes, but does not limit machine numbers and does not obtain revenues from tribal casinos, although economic development does occur in the area as a result of casino operations. He said that North Dakota's Indian gaming is market-driven and that limits on machine numbers in South Dakota amount to a "false cap" on gaming. Mr. Murphy stated that Indian gaming in South Dakota provides \$35 million in payroll and 1800 jobs in South Dakota, which stimulates further economic growth in the state. Representative Juhnke asked whether machine numbers and gaming operations in Deadwood are maxed out; Mr. Murphy stated that gaming in Deadwood can still grow, depending on market conditions. Representative Bradford asked whether there are regulations governing how "tight" slot machines are for payoff amounts. Mr. Murphy said that the winning percentage on machines can be adjusted, but this is closely regulated and regulations are the same for tribes as for Deadwood. He said that most operators tend to keep their machines "looser" because more people will come and participate.

Public Testimony

Mr. Rolly Samp, Tribal Attorney, Flandreau Santee Sioux Tribe, discussed gaming issues related to the Flandreau tribe. He stated that he opposes a leasing or pooling of machine numbers among tribes because there is still an arbitrary cap on the number of machines, and market conditions are not considered. He also discussed a proposed large, upscale casino to be located in Larchwood, Iowa, a short distance from Flandreau. The proposed \$98 million Larchwood facility would include a hotel, golf course, water park, and casino with 3000 machines. He stated that the Larchwood casino would be a huge threat to Flandreau's Royal River Casino. He noted that Flandreau's casino attracts more out-of-state people than all of South Dakota's nonresident hunting. He stated that the tribe's casino operation enhances South Dakota's economy, and South Dakota's Indian gaming should be based on market-driven principles. He also stated that the current administration is not dealing fairly with the tribes and the state needs to think about where we need to go with Indian gaming. He said that the state must allow the tribes to advance their economic development efforts on their own. He also discussed the distribution of tribal revenues and noted that the tribe has helped the Flandreau community financially, including paying for some facilities in the community. Senator Katus asked about the history of the cap on machine numbers, and Mr. Samp replied that the cap originated under the Mickelson administration when the first compacts were

established. He also noted that the four-year limit on the term of the compact causes difficulties for the tribe in obtaining financing because lenders want evidence of a predictable revenue stream.

Mr. Bill Schumacher, Flandreau Santee Sioux Tribe, distributed a CD entitled “Flandreau Santee Sioux Tribe: A Unique People” (**Document #2**) to the committee and provided testimony on his own behalf. He was a tribal chair during the 1990s and said that the cap on machine numbers was based on the situation in Deadwood at the time, but it has been impossible to get it changed. He said that other states have unlimited machine numbers and urged South Dakota to untie the tribe’s hands in this area. He also noted that he hopes the Legislature will address the Larchwood casino proposal and said that the Flandreau Santee Sioux Tribe already has plans in place to upgrade its casino to a destination resort, but it needs machine numbers based on market conditions to be able to do this. He also discussed the joint powers law enforcement agreement between the tribe, the city, and the county.

Mr. Lorin Pankratz, Sioux Falls, clarified some issues related to tribal gaming and Deadwood gaming and said that federal law prohibits tribal gaming revenues from being shared with the state, except in states that do not have other gaming activity. In response to a question by Senator Garnos, he described the differences between Class 1, Class 2, and Class 3 machines and noted that the cap applies to Class 3 machines, usually slot machines. Class 2 machines are based on bingo game principles, but the public seems to prefer to play Class 3 machines. Mr. Murphy stated that with respect to machine leasing or pool agreements between tribes, his organization has no position, he was simply informing the committee of this option in his earlier testimony.

Committee Discussion

Senator Theresa Two Bulls suggested that the committee send a letter of support endorsing the Flandreau Santee Sioux Tribe’s proposed joint venture with the Indian Health Service. Representative Juhnke noted that many committee members will not be returning for the next legislative session, and he is reluctant to introduce committee legislation under those circumstances. Senator Two Bulls said that the issues do not go away and stated that the committee has had some significant accomplishments and that some of this material should be forwarded on to future committees. **Tom Magedanz**, committee staff, distributed several items for review by the committee before the next day’s session. These included the following items:

“June 12, 2008 Meeting Summary of the Part 3 HIS Regulations for Determining Deemed Status Approval” - **Document #3A**

Draft - “A concurrent resolution supporting the use of restorative justice concepts for juvenile offenders.” - **Document #3B**

Draft - “An Act to provide for the refund of tuition for certain Native American teachers.” - **Document #3C**

Draft - "A Concurrent Resolution Commending Mr. Ray Hillenbrand of the Prairie Edge Trading Company and Galleries in Rapid city for his cultural sensitivity and good faith with respect to South Dakota's Native American community." **Document #3D**

Draft - "A Concurrent Resolution supporting alternative and charter schools for the benefit of Native American students." - **Document #3E**

Draft - "An Act to authorize a pilot program for the establishment of charter schools. - **Document #3F**

"The Final Report of the South Dakota Task Force on Indian-State Government Relations, June 30, 1975." - **Document #3G**

"The 1974 Report of the South Dakota Task Force on Indian-State Government Relations, June 30, 1974. - **Document #3H**

"State Agency Report on Federal Programs." - **Document #3i**

The committee recessed at 4:30 pm until Friday, August 15, 2008, the following day.

**Yankton Sioux Tribe
Fort Randall Casino
Pickstown, SD
Friday, August 15, 2008**

The State-Tribal Relations committee reconvened at 9:15 am with the Yankton Sioux Tribe at the Fort Randall Casino near Pickstown, South Dakota. Committee Chair Representative Juhnke welcomed tribal officials, members of the public, and committee members to the meeting. An opening prayer was offered.

Ms. Angela Padilla, Denver Region of the U.S. Census Bureau, gave a presentation for the committee and for tribal members about the upcoming 2010 Census. She stressed the importance of accurate census counts in obtaining federal benefits on reservations. **Ms. Frances Hart**, Tribal Secretary, Yankton Sioux Tribe, discussed previous census work in their area and stated that census workers should be local people because residents know them and will be more willing to participate.

Public Testimony

Mr. William Weddell, Yankton Sioux Tribe Economic Development Director, discussed numerous issues and concerns affecting the tribe. He discussed casino operations and stated that the Fort Randall Casino is the largest employer in Charles Mix County. He said that the cap on slot machine numbers should be lifted and that developers need to have the ability to have more machines. He stated that land along the Missouri River was recently given to the state of South Dakota by the Corps of Engineers, but he feels that this should have gone to

the tribe and noted that he would like to be able to develop a casino along the river. He also discussed the state-run Low Income Energy Assistance Program (LIEAP) and questioned the disparity between the amount of assistance that people in Lake Andes get under the program (approximately \$1000) compared with the amount that people in Marty receive (approximately \$450). Representative Bradford stated that a similar situation with LIEAP arose in Martin and Pine Ridge and that the tribe should contact the Department of Social Services on this matter. Mr. Weddell discussed the tribe's agricultural operations and stated that the tribe has applied for grant funding from the federal Economic Development Administration for a project on the tribe's 700 acre farm for equipment and personnel. He requested that the committee send a letter in support of the grant application. He stated that gaming is the tribe's number one economic activity, and agriculture is number two. Senator Garnos asked whether the tribe has had contact with the Governor on gaming issues, and Mr. Weddell stated that they need more action from the Governor and that it is difficult to contact the Governor. He also discussed a possible ethanol plant and the need for improved rail transportation in conjunction with such a project.

Mr. Wesley Hare, Jr., Yankton Sioux Tribe, discussed the controversial hog confinement facility or concentrated animal feeding operation (CAFO) that is being constructed nearby and asked the committee's help in stopping the development of this project. He said that a general permit for the facility was approved by the Department of Environment and Natural Resources, but an additional water permit is also needed and this permit needs to be stopped. He said that the road leading to the CAFO has been maintained by the BIA and should be under tribal jurisdiction, but the county assumed jurisdiction. He stated that water runoff from the CAFO drains into the community of Marty and poses a health threat to that community. He said that the state is trying to take tribal rights away. He said that both non-Indian farmers and tribal members are concerned about the health and environmental threats caused by the project. He also expressed concern about state taxation policies on tribal land and said that the state is assuming jurisdiction that it does not have.

Mr. Benedict Gonzales, Yankton Sioux Tribe TERO Officer, discussed issues related to land policy and trust land. He said there is a double standard in land policy toward Native Americans and non-Indians. He said that non-Indians sometimes get paid to not use land, while Native American land is taken away if it is not used. He also pointed out problems related to trust land policy and said that when land is taken out of trust it comes under state jurisdiction and is taxed. He also expressed concerns about the negative health and environmental impacts of the proposed hog confinement CAFO.

Mr. Richard Leisure, Yankton Sioux Tribe Environmental Protection Office Director, stated that the tribe was not informed about plans for the hog confinement CAFO, and he discussed the picketing incident in April concerning the CAFO. He said that the road where the incident occurred was a BIA road maintained with federal money, and the tribe believed they had jurisdiction over the road. He said that 52 state Highway Patrol cars were sent and snipers were positioned in the area, and he believes that this was a dangerous overreaction by the state, particularly since there were children and elderly present. He discussed actions and misunderstandings by local officials that may have contributed to the problem, particularly with regard to jurisdiction over the road leading to the CAFO. He discussed other issues related to

the CAFO, including environmental concerns, odor problems, and negative impacts on tourism. He is working with federal agencies to establish monitoring wells for the CAFO but would also like state help with this. He discussed the permitting process for the CAFO and wants the state to require an individual permit rather than a general permit for the facility. He feels that development of the CAFO is detrimental to South Dakota and to the local area.

Mr. Leisure also would like help from the state with recreational areas along the Missouri River and pointed out problems related to fluctuation in water levels. He is also involved with the Intertribal Bison Association and would like the state to work more on supporting bison meat products and to assist in the marketing of bison. Other environmental problem areas for the tribe are waste tire disposal or recycling and the need for recycling of computer components. Mr. Leisure also brought up the issue of state recognition of tribal identification cards and referred to Montana's policy of accepting tribal IDs. Senator Two Bulls expressed interest in legislation based on Montana's practices.

Mr. Clarence Montgomery, Yankton Sioux Tribe Health Director, discussed health care issues and problems that have arisen since the HIS hospital was changed to a clinic in 1992. The clinic was supposed to be a specialty clinic, but funding that was promised did not come through. He said that the federal government continues to reduce funding for the Indian Health Service, and this will affect counties and the state because someone will eventually have to pay for health care when individual people are provided health and medical services.

Mr. Jody Zephier, Yankton Sioux Tribal Council Member, discussed several issues, including disparities in the LIEAP program, the hog confinement CAFO and picketing incident in April, and gaming issues. He said that there really aren't very many state-tribal relations and that it does not seem like a partnership between the state and the tribes. He also discussed trust land issues and said that it is very difficult and time consuming to get land into or out of trust status.

Mr. Mark Winckler, Yankton Sioux Tribe Endangered Species Technician, stated that he would like to have the state honor tribal fishing and hunting licenses on Corps of Engineers land along the Missouri River that was recently given to the state. He said that in North Dakota there is a memorandum of understanding (MOU) to allow tribal members to hunt on such land. Senator Katus discussed Missouri River take land settlements and said that he would be interested in seeing a copy of the North Dakota MOU.

Ms. Frances Hart, Yankton Sioux Tribe Tribal Secretary, thanked the committee for coming and stressed the importance of promoting a good relationship between the state and the tribe.

Committee Discussion

Senator Katus stated that he is interested in expanding the committee to include tribal representatives as committee members, possibly tribal council members. He asked that letters be sent to the tribes asking their input on how to structure the committee.

Adjournment

MOTION BY SENATOR TWO BULLS, SECONDED BY SENATOR KATUS THAT THE MEETING BE ADJOURNED. The motion prevailed on a voice vote.

The meeting was adjourned at 12:15 pm.



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