



**First Meeting  
2003 Interim  
July 28, 2003**

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

The first meeting of the 2003 interim of the Legislature's State-Tribal Relations Committee was called to order by Chair Representative J.E. "Jim" Putnam at 9:10 a.m. (CT), July 28, 2003, in Room 412 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Patricia de Hueck, Gil Koetzle, and Michael LaPointe; and Representatives Stanford Adelstein, Jim Bradford, Kent Juhnke, J.E. "Jim" Putnam, and Thomas Van Norman. Senators Brock Greenfield and Sam Nachtigal were excused.

Staff members present included Tom Magedanz, Principal Research Analyst, and Teri Retrum, Senior Legislative Secretary.

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

### **Election of State-Tribal Relations Committee Chair and Vice Chair For the 2003 and 2004 Interims**

**REPRESENTATIVE JUHNKE MOVED, SECONDED BY SENATOR DE HUECK, THAT REPRESENTATIVE STAN ADELSTEIN BE NOMINATED AS CHAIR OF THE STATE-TRIBAL RELATIONS COMMITTEE FOR THE 2003 AND 2004 TERM.**

**REPRESENTATIVE BRADFORD MOVED, SECONDED BY REPRESENTATIVE JUHNKE, THAT NOMINATIONS CEASE AND THAT A UNANIMOUS BALLOT BE CAST FOR REPRESENTATIVE STAN ADELSTEIN AS CHAIR OF THE STATE-TRIBAL RELATIONS COMMITTEE FOR THE 2003 AND 2004 TERM. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

(NOTE: Representative Adelstein assumed the Chair.)

**REPRESENTATIVE PUTNAM MOVED, SECONDED BY SENATOR DE HUECK, THAT SENATOR MICHAEL LA POINTE BE NOMINATED AS VICE CHAIR OF THE STATE-TRIBAL RELATIONS COMMITTEE FOR THE 2003 AND 2004 TERM.**

**REPRESENTATIVE JUHNKE MOVED, SECONDED BY SENATOR DE HUECK, THAT NOMINATIONS CEASE AND THAT A UNANIMOUS BALLOT BE CAST FOR SENATOR MICHAEL LA POINTE AS VICE CHAIR OF THE STATE-TRIBAL RELATIONS COMMITTEE**

**FOR THE 2003 AND 2004 TERM. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

**Overview of the Office of Tribal Government Relations**

Mr. Roger Campbell, Commissioner, South Dakota Office of Tribal Government Relations, gave an overview of the office's programs and priorities. Mr. Campbell said that he began his duties on April 5, 2003. He said that the Office of Tribal Government Relations was relocated as part of the Governor's reorganization and is now housed in the Department of Tourism and State Development. Mr. Campbell said that staff currently consists of him and one assistant; however, the resources of the Department of Tourism and State Development also are available to his office. He said that the Governor has directed him to work with the tribal governments on tax collection agreements as well as gaming compacts. Mr. Campbell said that he also is working with the tribes on education concerns expressed by tribal members, along with homelessness and chronic disease on the reservations. He said that the Governor also has directed him to pursue and maximize any economic development opportunities on the reservations.

Responding to Chair Stan Adelstein, Mr. Campbell said that he wants to work on building a relationship with the tribes and to listen to their concerns. He said that the state would like to enter into tax collection agreements with the tribes.

In response to Representative Jim Bradford, Mr. Campbell said that he has spoken to Mr. Tim Reisch, Secretary of the Department of Corrections, concerning problems with the correctional system in the state, as expressed by tribal members, but has not yet spoken to the Governor about the concerns.

Representative J.E. "Jim" Putnam recommended that the committee revisit the issue of Native American incarceration.

Mr. Campbell said that he will become more familiar with those concerns as well.

Responding to Senator Patricia de Hueck, Mr. Campbell said that currently the state has tax collection agreements with the Oglala Sioux Tribe, Rosebud Sioux Tribe, Cheyenne River Sioux Tribe, and the Standing Rock Sioux Tribe. He said that he hopes to renew their contracts with the state and perhaps reach agreement with others.

Also responding to Senator de Hueck, Mr. Campbell said that the state has had gaming compacts with eight of the nine tribes and that Cheyenne River does not have a gaming compact with the state and does not have gaming on their reservation. He stated that the compacts have expired.

Chair Adelstein asked about the status of a nursing home on the Cheyenne River Reservation. Mr. Campbell responded that he does not know but will find out the status.

Senator Michael LaPointe asked Mr. Campbell to continue to provide the committee with updates on the gaming issue.

Senator de Hueck asked Mr. Campbell to provide continuing information on the status of the nursing home issue.

### **Recent State-Tribal Taxation Decisions and Issues**

Mr. Gary Viken, Secretary, Department of Revenue and Regulation, discussed recent state-tribal taxation decisions and issues. Mr. Viken said that the four tax agreements the state has with the tribes are very old and were last updated in 1990; they have virtually expired. He said that the state collects a lot of money from the four tribes that are still compacting with the state. Mr. Viken encouraged the state and tribes at least to reopen the dialogue. He said that one area that needs to be addressed is the taxation split between each tribe and the state. Mr. Viken said that the split is based upon census data, but because the agreements have not been updated, they reflect old census data.

Mr. Viken said that the state is encouraging the tribes to charge their own motor fuel tax at the same rate as the state's twenty-two cents a gallon charge. Doing so, Mr. Viken said, would be a substantial revenue source for the tribes. He said that a letter was sent to each Tribal President or Chair asking each to impose such a tax.

Mr. Viken discussed the February 2003 decision of the South Dakota Supreme Court in *Pourier v. South Dakota Department of Revenue* in which the Court held that motor fuel bought by tribal members on their own reservations is not subject to the state motor fuel tax. He said that the state asked for a hearing on how to handle any resulting refunds due to the Court's ruling. Mr. Viken said that the state hopes to receive a ruling on this issue this summer and that the state will uphold exactly the decision of the Court. He said that the dialogue with tribal leaders concerning this issue has been very cordial.

Responding to Senator LaPointe, Ms. Deb Hillmer, Department of Revenue and Regulation, estimated that the amount of the motor fuels tax in South Dakota counties that include Indian reservations would be \$4.3 million. Further responding to Senator LaPointe, Ms. Hillmer said that the Oglala Sioux Tribe has requested a discussion on the refund process; however, they understand that the state needs some guidance from the Court regarding the refund process.

Senator LaPointe said that any revenue that might be gained from the tribes implementing such a tax should be used to maintain tribal roads and infrastructure.

Representative Thomas Van Norman said that it is important that the state and the tribes continue open dialogue and work to get this issue resolved even while awaiting the Court's decision.

Representative Van Norman distributed copies of a letter and supporting documents sent from Mr. Jim Cournoyer, General Manager of the Fort Randall Casino and Hotel, to Mr. Steve Emery, Emery Law Firm, White River, South Dakota, regarding taxation of tribal vehicles by Charles Mix County (Document #1). In the letter, Mr. Cournoyer states: "The Casino has incurred significant costs due to unlawful taxation of tribal vehicles."

Mr. Viken said that it is the intention of the state, and the state will do everything possible, to abide to the letter with the Court's decision.

### **Public Testimony on Possible Study Topics for the Committee**

Mr. James (JC) Crawford, Tribal Chair, Sisseton-Wahpeton Sioux Tribe, testified that the Sisseton-Wahpeton Sioux Tribe processes motor fuel on the reservation, so an agreement with the state regarding a motor fuel tax would be problematic because the tribe currently receives the total economic benefit from this resource. He said that the tribe does use the revenue collected to rebuild the tribe's infrastructure and to provide maintenance on township roads in Roberts County. He said that the situation is unique in South Dakota and that the tribe would like to work with the state government on this issue and on other items of concern to each entity.

Chair Adelstein asked Chair Crawford to prioritize a list of possible study topics he would like the committee to study this interim.

Chair Crawford said that problems with the treatment of Native Americans in the state's correctional institutions, including juvenile detention centers, and health care on the reservations need to be addressed. He said that the tribal governments can be an asset to South Dakota and expressed a desire to work with the state on issues of mutual concern.

Ms. Germaine E. Means, Cheyenne River Sioux Tribe, requested that the committee consider a study of grandparents' visitation rights. She said that Lakota grandparents have been denied visitation rights with their grandchildren in the custody of the state's court systems. Ms. Means said that studying this issue would show the committee's willingness to work cooperatively with the tribes on this issue. She said that, in her opinion, selecting this topic as a study topic would go a long way toward improving state and tribal relations.

Ms. Means distributed a letter to committee members from Mr. Kevin C. Keckler, Chair of the Law and Order Committee, Cheyenne River Sioux Tribe, requesting that the committee study grandparent visitation (Document #2). In the letter, Mr. Keckler said that a study of this issue would consider the vital role that Lakota elders fulfill in child-rearing.

An unidentified woman, Ridgeview, South Dakota, said that the state and the tribes should have common law to support each other regarding child visitation. She said that 62 percent of all juveniles in the state's custody are Native American and that it is an institutional problem. She said that she has had no contact with her only great grandchild in four years.

Ms. Mary Ann Bear Heels McCowan, Pierre, South Dakota, testified that she will continue to work on racial profiling and racial inequities issues. She said that passing the nursing home legislation in the 2003 Legislative Session showed that the state and the tribes can work together in a cooperative manner.

Responding to a question posed by Chair Adelstein regarding the status of the nursing home on the Cheyenne River Reservation, Representative Van Norman informed the committee that the architectural plans are ready for bids and that the process is underway.

Mr. Tim Cournoyer, Rosebud Sioux Tribe, said that the tribe is concerned about signing a tax agreement with the state when they cannot even get a Tribal Employment Rights Office (TERO) agreement signed. He listed use of the Indian preference law, the percentage of semi-skilled labor on the reservation, and the TERO tax among the items to be resolved before an agreement can be signed.

Mr. Duane Martin, Sr., Rapid City, South Dakota, said that improvements need to be made to the segregation unit of the Jamison Annex of the State Penitentiary. He said that "the language base needs to be improved" and that continued efforts on correction problems are needed.

Ms. Charmaine White Face, Rapid City, South Dakota, urged the committee to monitor the state's use of the Community Development Block Grant (CDBG) money that it receives from the United States Housing and Urban Development (HUD) program. Ms. White Face referred to the shooting range that the City of Sturgis proposes to build four miles from Bear Butte with CDBG money administered by the state. She said that Bear Butte is a sacred place to the Native Americans not only in South Dakota but also throughout the nation. Ms. Whiteface maintained that a shooting range in close proximity to Bear Butte would be a desecration of a sacred and religious site for Native Americans.

Ms. White Face questioned what laws are in place to protect traditional cultural properties and distributed a sample of a petition to ask the Governor to stop the construction of a shooting range near Bear Butte (Document #3).

Representative Bradford said that there also needs to be protection of old cemeteries on reservations and that the state should disallow hunting on Bear Butte.

Senator Gil Koetzle asked if there is a map available denoting where there might be a sacred site. Ms. White Face responded that the affected tribes are often aware of such sites, as well as the State Historic Preservation Office. She noted that there are potential problems in publicizing the locations of the sites because of possible vandalism and exploitation.

Mr. Jim Mintz said that many letters have been sent to them requesting protection for Bear Butte. He said that the site is sacred because the four rules by which the Cheyenne should live were passed down on Bear Butte.

Ms. Nancy Fleming, Rapid City, South Dakota, spoke on corrections issues. She also said that the committee should review the state's practice of placing children out of the family when relatives of the children are not being sought for placement of those children. Ms. Fleming said that the committee should explore ways to gain more power so that the "people have somewhere to go."

Representative Putnam said that the committee was formed to be a sounding board between the state and tribal governments so that tribal members could express their concerns, and the

committee could review those concerns in regard to any possible help that the Legislature could offer.

Ms. Donna Rae Petersen, Ridgeview, South Dakota, spoke of her interest in Native American art and its promotion. Ms. Petersen said that she also is trying to promote tourism on the reservations. She favors adopting a seal of authenticity for Native American art and crafts.

Mr. Steve Emery, White River, South Dakota, spoke on his concerns regarding the motor fuel tax and the cost incurred by the Fort Randall Casino due to taxation of tribal vehicles.

Ms. Marletta Pacheco, Rapid City, South Dakota, spoke as an advocate of the South Dakota Prisoner Support Group. Ms. Pacheco said that there are problems in the state's prisons. As some examples, Ms. Pacheco said that inmates receive only two meals per day; the heat due to no air conditioning is harmful to those individuals who have diabetes or asthma or other illnesses; and poorly trained prison staff. Ms. Pacheco said that she wants families to be allowed back into prison pow wows. She also favors the creation of a citizen review committee or ombudsman on corrections issues who can act without fear of retaliation.

Ms. Lucinda Ellert, Rosebud Sioux Tribe, said that South Dakota needs to work on bringing the state into the twenty-first century regarding matters of concern to Native Americans. She said that laws are not applied equally and related several personal experiences with the legal system.

Ms. Twylla Turney, Pine Ridge, South Dakota, told about her experience at one of the pow wows at the Jamison Unit. Some of the concerns related to her were bad medical service, not enough calories for meals, being charged more for postage than at the post office, overcrowding, sexual abuse, and a desire to let families back into pow wows. Ms. Turney also noted that she has begun a survivors of suicide program, along with the Bill Turney Suicide Prevention Program that is already in place.

A copy of an article from *The Native Voice for all our Relations* newspaper, Volume 1, Issue 15, July 26 – August 8, 2003, titled "Sacred Bear Butte Near Sturgis, SD, Threatened by Development" was distributed (Document #4).

At the request of Chair Adelstein, Mr. Viken distributed copies of the letter sent to each tribal chair regarding the state motor fuel taxation (Document #5) and a copy of a draft Tax Collection Agreement (Document #6).

The committee recessed at 12:30 p.m. and reconvened at 2:45 p.m.

Responding to concerns expressed during the morning, Ms. Hillmer said that the Department of Revenue and Regulation issues approximately 350,000 titles statewide a year and that the department grants exemptions to tribal vehicles. She said that the department will grant exemption to casino vehicles that meet the criteria of tribal vehicles.

### **Committee Discussion**

With the consensus of the committee, Chair Adelstein set the committee's next meeting dates as Monday, September 29, and Tuesday, September 30, 2003, and outlined the agenda for that meeting as follows:

September 29

- One hour to one and one-half hour discussion on corrections;
- One hour to one and one-half hour discussion on health care, including Representative Bradford's suggestion to coordinate Indian Health Services with local services;
- Five hours to learn about and review positive models of education on the reservations;

September 30

- Look into ways to create jobs on reservations and financing business opportunities
- Public testimony.

Also, the committee members agreed that there is nothing to prevent them from meeting several times during the legislative session to continue dialogue.

Representative Van Norman asked the Chair to write a letter to the prison inquiring about the climate control at the prison—for instance, “people with asthma on the third floor of the prison.”

A prayer was given by a member of the audience.

**Adjournment**

There being no further business, Chair Adelstein adjourned the meeting at 3:30 p.m.



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