



Second Meeting
2004 Interim
September 21, 2004

Rosebud Sioux Tribal Council Chambers
Rosebud, South Dakota

The second meeting of the 2004 interim of the Legislature's State-Tribal Relations Committee was called to order by Chair Representative Stan Adelstein at 1:35 p.m. (CT), September 21, 2004, in the Rosebud Sioux Tribal Council Chambers at Rosebud, South Dakota.

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

Staff member present was Doug Decker, Code Counsel for the Legislative Research Council.

(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.)

Opening Remarks

Chair Stanford Adelstein made opening remarks about the responsibility of the committee to study state and tribal issues. He also explained comments attributed to him regarding the legislative debate of the motor voter bill in a previous legislative session.

Acquisition of Lands by Tribe to be Placed in Trust

At the conclusion of his remarks, Chair Adelstein turned the meeting over to **Mr. Steve Emery**, an attorney for the Rosebud Sioux Tribe. Mr. Emery made a power point presentation to the committee regarding the acquisition of lands into trust. The presentation is entitled "Let's Talk About It" and is marked as **Document #1** for these minutes. Mr. Emery complimented the committee for taking on tough issues.

Mr. Emery identified 25 USC § 465 as the federal statute that regulates the placing of land into trust. He went on to explain the legal criteria under the statute necessary to place land into trust. Mr. Emery discussed the placement of land into trust of 91 acres of land near Oacoma, South Dakota.

Mr. Emery identified language from the 1868 Treaty that reserved land or such land as may be added to this reservation. He stated that Oacoma is a historic location of the Agency for the Lower Brule Sioux Tribe.

Mr. Emery identified 25 C.F.R. Part 151 as the federal regulations from the Department of Interior that regulate the placing of land into trust. Section 10 relates to the acquisition of land that is on the reservation, and section 11 deals with land that is off the reservation. The regulations identify that the Secretary of the Interior may acquire land for the purpose of providing land for Indians.

Mr. Emery then discussed the current status of the lawsuit between the State of South Dakota and the United States Department of Interior regarding the acquisition of land near Oacoma. This case started in March of 1990 when the Lower Brule Sioux Tribe asked the Secretary of the Interior to place the land near Oacoma into trust. This case is still active in the federal court system with the most recent decision in this litigation being issued in April of 2004. This latest decision was in favor of the Tribe, and the Court held that the Department of Interior had a rational basis to take the land into trust and that the statute authorizing the acquisition of land into trust was constitutional.

At this point, Chair Adelstein asked Mr. Emery what he would like for this committee to do regarding this issue. Chair Adelstein said that, as this case is a matter of federal law, the South Dakota Legislature does not have the authority to change federal law nor can the Legislature direct the actions of the Executive Branch of state government.

Mr. Emery responded that the Legislature has the power of discussion and that it can determine public policy for the State. He also commented that the committee could ask the State not to appeal the latest decision.

Representative Thomas Van Norman thanked the Vice Chair of the Tribal Council for the opportunity to meet with them in the Tribal Council chambers. He also thanked the members present. Representative Van Norman commented about the need for the committee members to listen to the concerns expressed by the tribal members. He emphasized the importance of this issue regarding the ability of the tribes to place land into trust.

Senator Michael LaPointe commented about the appeal of the Oacoma case. He expressed his disappointment that the State had chosen to appeal the decision. Senator LaPointe said that he is interested in hearing from the Attorney General regarding the rationale for the appeal. He said that he believes that the State and the Tribes can benefit from joint efforts to preserve resources. Senator LaPointe also recognized the concerns that local governments have when land is placed into trust, because it may result in increased taxes for the remaining land not in trust.

Representative Kent Juhnke commented about the land issue as it relates to the concerns of the local governments of Lyman County and the city of Oacoma.

Public Testimony

At this point, Chair Adelstein opened the meeting to comments from the tribal council or members of the public present at the meeting.

Mr. Rodney Bordeaux, Councilman, District 10, Rosebud Sioux Tribe, commented about the importance of the land issue. He stated that the Tribe is interested in getting its former lands back, including the Black Hills. He related that when the treaties were negotiated the Tribes were not sophisticated, and there is a desire to restore Indian lands.

Mr. Leonard Wright, councilman from Rosebud, said that he has questions about putting land into trust. He also commented about the practice of businesses in the Black Hills using the name of tribal members and Chiefs without compensation to the tribe. He thinks the Tribe should be compensated for the use of names related to the Tribe.

Mr. Emery commented about business possibilities and emphasized the need for more cooperation between governmental entities.

Mr. Rick Young, Councilman, St. Francis District 5, stated that he thought that the State-Tribal Relations Committee meeting here with the Tribal Council was a good thing.

The committee recessed at 2:40 p.m. and reconvened at 2:50 p.m.

Ms. Marleta Pacheco, member of the Rosebud Sioux Tribe and representing the Prisoner Support Group, had concerns about the treatment of Indians in state and federal prisons. She had concerns relating to the hardships suffered by families when they are separated by long distances. Ms. Pacheco said that it is hard for families to stay connected. Based on letters and other comments she has received, it is her opinion that the religious rights of the inmates are not being respected. Sentences under the federal sentencing guidelines are harsh. There is a need to bring the inmates closer to their families. It has been reported to her that Indian inmates are being mistreated for attempting to stand up for their religious rights.

Representative Jim Bradford commented that he is committed to helping those in prison. He worked last session on legislation to ease the reentry problem for inmates. During the 2003 session, Representative Bradford said that he sponsored legislation to permit tribal members to serve their sentences at detention facilities on an Indian reservation.

Senator LaPointe also commented on the legislation passed last year regarding the transfer of Indians to tribal detention facilities. He is interested in knowing how that program is working.

Representative Van Norman commented further that the legislation allows that prisoners may be transferred to tribal facilities under a contractual arrangement. He commented that county corrections officials were not cooperating.

Chair Adelstein commented that a letter may be sent from the Committee to county law enforcement to inquire about the implementation of the legislation sponsored by Representative Bradford. (See SDCL § 24-11-3.) Tribal government and B.I.A. jail officials should be included in the inquiry. The Chair also recommended that the Committee write a letter to the Director of Federal Prisons regarding the placement of Indian prisoners under this legislation and to inquire about the recognition of prisoner's rights.

Mr. Wayne Boyd spoke to the committee regarding hunting and fishing issues. He commented about non-tribal members hunting within the exterior boundaries of the reservation. He briefly discussed a current problem regarding the issuance of certain depredation permits for certain Rosebud elk in Todd County. **(See Document #2--letter to Cliff Stone from Secretary John Cooper.)**

Mr. Darrel Marcus, Councilman District 4, offered his comments regarding economic development. The Tribe is interested in developing a second Casino site. He was interested to know how the Committee could support this effort and would it be able to help with other tribal gaming issues and the development of a new gaming compact.

Mr. Marcus also was interested in export and import opportunities that may be available with other nations including tax or duty free marketing to U.S. corporations. He wanted to know what could be done to improve cooperation between the state and the tribes in the area of economic development.

Senator LaPointe recommended that the tribe work with the Governor's 2010 Initiative. Regarding a new gaming compact, the senator urged the tribes to conduct an economic analysis of the expansion of tribal gaming because the State will have their own economic analysis. The State is ready to discuss new gaming compacts. If tribal gaming expands through the offering of more gaming devices then we will need to know what the impact will be on state revenues.

Representative Van Norman stated that there are competing studies regarding the economic impact of expanded Indian gaming.

Senator LaPointe emphasized that each entity, the State or the Tribe, should conduct its own studies regarding economic impact so that each is prepared to fully discuss issues related to gaming.

Mr. Marcus raised the issue of racial profiling in the context of traffic offenses through the use of license plate identification by highway patrol officers in the Carter and Winner areas.

Representative Juhnke offered to follow-up on the complaint, referring to the Highway Patrol targeting tribal members.

Tribal Councilman Eric Nixon raised the issue of humane farming activity. He was critical of the farming practices at the Bell Farms on the Rosebud Reservation and the Attorney General's inspection of the farm. He attempted to read a statement to the committee, but the Chair ruled the topic outside the scope of the committee's study area. However, the Committee accepted the written document into the record for this meeting **(Document #3)**.

Tribal Councilman Rodney Bordeaux asked the committee to support the various tribal initiatives that are being considered by Congress, particularly the funding from Congress that the Tribe needs.

Ms. Mary Ann Bear Heels McCowan, representing First Voices, thanked the committee for the opportunity to discuss issues such as racial profiling, legislative redistricting, and the Indian Child Welfare Act (ICWA) at this committee meeting and during the legislative session. She commented about a recent editorial in the *Sioux Falls Argus Leader* that was critical of efforts of people who oppose efforts to solve the problem of racial profiling. Ms. Bear Heels McCowan said that she is working to address the problem and would like to see it corrected. She also commented about legislative redistricting and stated that the recent federal opinion about redistricting is an example of the need to address these issues. She went on to comment about the ICWA and said that this is another issue that needs to be addressed. Ms. Bear Heels McCowan said that the Tribes and the State have common interests regarding adoption and foster care, but the tribes need to have a voice in solving these problems. She said that "First Voices" will be involved in presenting issues before this committee and the Legislature. Ms. Bear Heels McCowan concluded by commenting that they will be hosting Native American Day January 18, 2005, at the beginning of next legislative session.

Representative Van Norman also commented about the recent federal court opinion which struck down the State's most recent effort at redistricting.

Ms. Bonnie Hairy Shirt of St. Francis outlined her problems with placing land into trust. In addition to her personal testimony, she submitted written testimony (**Document #4**). Senator LaPointe discussed the issue and offered various possible solutions related to placing an individual lot into trust.

Miss Crow Dog offered her comments about the work of the committee and the issue presented to it by members of the tribe and paid particular attention to the problems associated with the implementation of ICWA.

Mr. Vernon "Ike" Schmidt provided testimony relating to child protective services. He commented that there is no formal compact similar to the gaming compacts that are in place regarding child placement. He was critical of the current state of affairs between the state and the tribes. He identified that some states have agreements in place regarding ICWA matters. Mr. Schmidt offered the statement that the Tribe is attempting to build infrastructure regarding foster care placement. He has listened to the ICWA Commission when it held its meeting in Rosebud. Mr. Schmidt said that he believes that relative placement for foster care is important, and he identified some of the problems with the current practices regarding child placement. Mr. Schmidt concluded his remarks by stating that he was encouraged by the efforts of the ICWA Commission and the State-Tribal Committee.

Adjournment

Chair Adelstein noted that it was 4:30 p.m. and that this was the time noted on the agenda to adjourn. He thanked the Tribal Council for the opportunity to conduct this meeting in the chambers of the Tribal Council.

Following a concluding prayer, **REPRESENTATIVE VAN NORMAN MOVED, SECONDED BY REPRESENTATIVE BRADFORD, THAT THE MEETING BE ADJOURNED. The motion prevailed unanimously on a voice vote.**

The committee adjourned at 4:35 p.m.



All Legislative Research Council committee minutes and agendas are available at the South Dakota Legislature's Homepage: <http://legis.state.sd.us>. Subscribe to receive electronic notification of meeting schedules and the availability of agendas and minutes at **MyLRC** (<http://legis.state.sd.us/mylrc/index.cfm>).