



## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

TO: MEMBERS OF THE SPECIAL COMMITTEE ON STATE-TRIBAL RELATIONS

FROM: Joyce L. Kiel, Senior Staff Attorney

RE: Issues Suggested for Committee Study

DATE: October 11, 2004

The Special Committee on State-Tribal Relations is directed by statute to study issues related to American Indians and American Indian tribes and bands in Wisconsin and to develop specific recommendations and legislative proposals to address those issues. Following the appointment of the 2004-06 Special Committee, Chair Terry Musser wrote to committee members, tribal chairs, and members of the committee's Technical Advisory Committee requesting suggestions of issues to study.

To date, suggestions have been received from: (1) Louis Taylor, Chairman, Lac Courte Oreilles Tribal Governing Board; (2) James H. Schlender, Executive Administrator, Great Lakes Indian Fish and Wildlife Commission (GLIFWC); (3) Tana Aguirre, Oneida State Representative, Oneida Tribe of Wisconsin; (4) Joan Delabreau, Tribal Chair, Menominee Indian Tribe of Wisconsin; and (5) Larry Balber, Tribal Planner, Bad River Band of Lake Superior Tribe of Chippewa Indians. In addition, a suggestion made to the 2002-04 Special Committee by John Wilhelmi, Attorney, Menominee Indian Tribe of Wisconsin, has been renewed.

The suggestions received to date (followed by the name of the person making the suggestion) are as follows:

### **LAW ENFORCEMENT AND JURISDICTION**

1. Establishment of a formal retrocession process. (Taylor) (This refers to establishing a process by which, under certain circumstances, the state may, with respect to a reservation, retrocede to the federal government criminal and civil jurisdiction that was transferred to the state by Congress under Public Law 280. (Public Law 280 jurisdiction does not apply on the Menominee Reservation.))
2. Tribal law enforcement funding for responding to activities of a criminal nature on a reservation. (Taylor)

3. Retirement benefits for tribal law enforcement officers. (Taylor)

4. Interjurisdictional law enforcement issues in the territory in northern Wisconsin ceded by the Chippewas in treaties (ceded territory), particularly the role of GLIFWC conservation wardens while in the ceded territory. Suggested examples of issues to study include: providing mutual assistance in times of public emergency; the authority of a GLIFWC warden if the warden observes a serious crime in progress; use of state and county law enforcement radio frequencies; and recognition of a GLIFWC warden as a law enforcement officer for purposes of the state crime of assaulting a law enforcement officer. (Schlender) (See enclosed letter for additional information.)

5. Enforcement of state fishing regulations on the Menominee Reservation. (Delabreau) (See enclosed letter for additional information.)

### **TRIBAL-STATE RELATIONS**

1. Formal recognition by the state of tribal identification cards. (Taylor)

2. Tribal representatives in the Wisconsin Legislature. (Taylor)

3. Under state lobbying laws, treat tribal officials the same way elected state and local officials are treated. (Aguirre) (Under s. 13.621 (3), Stats., certain aspects of the lobbying law (licensing, registration, filing authorization, and recording time and expenditures) do not apply to elected state and local officials when the official is acting in an official capacity.)

### **TAX**

1. Provide for similar tax treatment between state governmental activities and tribal governmental activities. (Taylor)

2. Assign staff in the state Department of Revenue to address tax issues involving tribes, tribal members, and companies conducting business with a tribe or tribal member. (Taylor)

3. Specify that land that is owned by a tribe (that is, land that is not held in trust) and used for governmental purposes is exempt from property tax. (Aguirre)

### **GAMING**

1. Indian gaming. (Aguirre)

2. Clarification of "home rule" with regard to enforcement of illegal gaming machines. (Aguirre)

### **TRIBAL SCHOOLS**

1. Make available to tribal schools the benefits currently available to private schools and private school pupils under state statutes, such as: requiring school boards to transport private school pupils under certain circumstances; excepting private school pupils from the definition of "dropout;" allowing admission to public high school on certification by a private school superintendent that a pupil has

completed an elementary course of study; providing special education related services to a private school pupil with a disability under certain circumstances; providing school lunch and breakfast programs in private schools; recognizing teaching experience in private schools for the purpose of teacher licensing; allowing certain disclosures by child welfare agencies to private schools; and coordinating and providing telecommunication access to private schools. Also, review the Wisconsin statutes for other examples. (Wilhelmi) (See enclosed letter for additional information.)

2. Include tribal schools in the funding formula for public schools. Consider the Minnesota statute under which state aid is provided to tribal schools in Minnesota. (Wilhelmi) (See enclosed letter for additional information.)

### **MISCELLANEOUS**

1. Impose state sanctions on attorneys, judges, state agencies, and private agencies for violations of the federal Indian Child Welfare Act. (Taylor)

2. Road jurisdiction within reservation boundaries. (Aguirre)

3. Land into trust. (Aguirre)

4. Alcohol licensing. (Aguirre)

5. Examine whether existing state laws appropriately reduce the risks associated with potential pathways by which chronic wasting disease could spread into the ceded territory in which the Chippewa tribes have treaty rights to hunt, fish, and gather on off-reservation public lands. (Schlender) (See enclosed letter for additional information.)

6. Provide for direct distribution of state and federal funds to the Menominee Tribe for child welfare and child protective services provided to American Indian children in Menominee County. (Delabreau) (See enclosed letter for additional information.)

7. Study transportation issues, including treatment of tribes as municipalities, state transportation aid or revenue sharing, federal transit aid to tribes, and development of coordinated transportation systems. (Balber)

8. Protecting and preserving sacred places and repatriation of historic tribal artifacts. (Balber)

9. Locating polling sites on reservations. (Aguirre)

More detailed information about several of the suggestions are included in the enclosed documents:

1. November 18, 2002 letter from John Wilhemi, Attorney, Menominee Indian Tribe of Wisconsin.

2. August 31, 2004 letter from James H. Schlender, Executive Administrator, GLIFWC.

3. October 6, 2004 letter from Joan Delabreau, Tribal Chair, Menominee Indian Tribe of Wisconsin.

As noted in Chair Musser's letters, the agenda for the October 19, 2004 committee meeting includes presentations on several of the above issues. In addition, the agenda includes time to briefly discuss the other suggested issues and time to make other suggestions of issues to study.

JLK:tlu

Enclosures