



WISCONSIN LEGISLATIVE COUNCIL

STATE-TRIBAL RELATIONS

Lac Courte Oreilles Casino, Lodge and Convention Center
Hayward, Wisconsin

December 17, 2004
10:00 a.m. - 3:50 p.m.

[The following is a summary of the December 17, 2004 meeting of the Special Committee on State-Tribal Relations. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc/2004studies.htm>.]

Call to Order and Roll Call

Chair Musser called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Terry Musser, Chair; Sens. Ronald Brown and David Zien; Reps. Garey Bies, Mark Pettis and Gary Sherman; and Public Members Gary Besaw, Carol Brown, Jon Greendeer, and Mark Montano.

COMMITTEE MEMBERS EXCUSED: Rep. Terri McCormick; Sen. Spencer Coggs; and Public Members John Alloway, Vince Dela Rosa, Doug Huck, and Louis Taylor.

TRIBAL CHAIR PRESENT: Vicki Doud, Lac du Flambeau Band of Lake Superior Chippewas.

TECHNICAL ADVISORY COMMITTEE MEMBERS PRESENT: Jim Weber, Department of Health and Family Services; Reggie Newsome, Department of Transportation; Rachelle Ashley, Department of Workforce Development.

COUNCIL STAFF PRESENT: Joyce L. Kiel, Senior Staff Attorney; and David L. Lovell, Senior Analyst.

APPEARANCES:

Russell Barber, Tribal Vice-Chair, Lac Courte Oreilles Band of Chippewas; Laura Arbuckle, Administrator, Division of Intergovernmental Relations, Department of Administration; James Mohr, Judge, Lac Courte Oreilles Court; William Morrow, Chief, Lac Courte Oreilles Police Department; Charles Bressette, Chief, Red Cliff Police Department; and Ken Johnson, Chief, St. Croix Police Department.

Opening Remarks

Russell Barber, Vice-Chair, Lac Courte Oreilles Band of Lake Superior Chippewas, welcomed the committee to Lac Courte Oreilles. He introduced Jerry Smith who conducted a pipe ceremony and introduced the drummers who offered songs.

Chair Musser indicated that Russell Barber was sitting at Louis Taylor's place as Mr. Taylor was unable to attend the meeting. Chair Musser also indicated that Tana Aguirre was sitting at Vince Dela Rosa's place as Mr. Dela Rosa also was unable to attend the meeting. While they are unable to vote for the absent committee member, Chair Musser indicated that they could participate in discussion.

Chair Musser also recognized visiting dignitaries in the audience. Noting that they included representatives of the Sokaogon Chippewa Community and Bad River Band of Lake Superior Chippewa Indians, he encouraged those tribes to make nominations to the Joint Legislative Council of individuals to represent these tribes on the committee, as they are the only two tribes in Wisconsin currently not represented on the committee.

Approval of the Minutes of the October 19, 2004 Meeting of the Special Committee

Representative Bies moved, seconded by Representative Pettis, to approve the minutes of the October 19, 2004 meeting of the committee. The motion carried on a voice vote.

Description of Materials Distributed

Ms. Kiel briefly described the materials noted on the agenda that had been distributed to the committee members before and at the meeting.

In addition, Mr. Lovell indicated that three publications were being distributed to committee members at the meeting for background information: *Government to Government, Understanding State and Tribal Governments* (National Conference of State Legislatures (NCSL) and National Congress of American Indians (NCAI), 2000); *Government to Government, Models of Cooperation Between States and Tribes* (NCSL and NCAI, 2002); and *An Introduction to Indian Nations in the United States* (NCAI, 2004).

Treatment of Tribal School in Wisconsin Statutes; Staff Update

Ms. Kiel noted that presentations had been made at the last committee meeting about the recommendations made by the Menominee Indian Tribe of Wisconsin that: (1) the Wisconsin statutes

relating to private schools be reviewed to determine if they should be amended to provide comparable treatment for tribal schools; and (2) state funding be provided to tribal schools. Staff had been instructed to work with interested parties to develop a proposal for consideration by the committee. At the previous meeting, Representatives Bies and McCormick had volunteered to participate in this effort. She said that the Department of Public Instruction has assigned staff to help with the project and that she had contacted the three tribes in Wisconsin with tribal schools funded by the Bureau of Indian Affairs (BIA) (Menominee, Oneida, and Lac Courte Oreilles) regarding whether they are interested in designating staff to work with an ad hoc working group. She said that Menominee and Oneida have designated staff and that Lac Courte Oreilles has expressed interest but not yet informed her of who may be designated. She added that if other committee members want to participate, they should contact her. Ms. Kiel indicated that she has compiled the statutes relating to private schools and obtained information from the BIA about funding. She indicated that an ad hoc working group likely will review these statutes in January and develop a proposal for the committee.

Speaking from the audience, Vicki Doud, President, Lac du Flambeau Band of Lake Superior Chippewas, indicated that there is a small alternative school on the Lac du Flambeau Reservation operated by the Lakeland Union High School District that needs additional funding. Ms. Kiel noted that this is a public school, and the recommendation for study thus far involved only tribal schools.

Role of Great Lakes Indian Fish and Wildlife Commission Conversation Wardens; Staff Update

Mr. Lovell indicated that, following presentations made at the last committee meeting about the authority of Great Lakes Indian Fish and Wildlife Commission (GLIFWC) wardens, staff had been directed to identify statutes that by their treatment of GLIFWC wardens or by their failure to address such wardens, may impede the work of the wardens or their ability to assist state law enforcement and to develop a proposal for consideration by the committee that would remove such impediments. Mr. Lovell reported that a preliminary meeting had been held with staff from GLIFWC, the Department of Natural Resources, and the Department of Justice (DOJ) to discuss the matter.

Executive Branch Activities to Improve Communications With Tribal Governments

Laura Arbuckle, Administrator, Division of Inter-Governmental Relations, Department of Administration, described efforts in that division to improve communications between the state and tribal governments, including her visits to tribes, developing a mission statement, and meeting with tribal officials about the Governor's budget proposal. She said that future efforts may involve developing educational materials about tribal governments for executive branch agencies and providing information about tribes on the State of Wisconsin website. She also noted that executive branch agencies are responsible for implementing Executive Order No. 39, issued by Governor Doyle February 27, 2004, and have begun developing consultation policies. Ms. Arbuckle also introduced her assistant, Dawn Vick.

Chair Musser and Ms. Brown indicated that they are pleased that the Governor has begun efforts to improve communications.

Exemption for Certain Tribal Officials Under the State Lobbying Law

Mr. Lovell reviewed WLC: 0058/1, relating to an exemption for certain tribal officials under the lobbying law. During the committee's discussion of the draft, James Zorn, Attorney/Policy Analyst, GLIFWC, was recognized from the audience and expressed concern that the draft did not include staff of tribal umbrella organizations such as GLIFWC or the Great Lakes Inter-Tribal Council, even if the staff are not employed principally to influence state legislative or administrative action. However, he also added that his view is that discussions between GLIFWC staff and state officials in connection with Chippewa treaty rights are not subject to the state lobbying law. Following further discussion:

Representative Sherman moved, seconded by Representative Bies, that the committee recommend WLC: 0058/1 to the Joint Legislative Council for introduction in the 2005-06 Legislature. The motion passed on a vote of Ayes, 9 (Reps. Musser, Bies, Pettis, and Sherman; Sens. Brown and Zien; Public Members Besaw, Greendeer, and Montano); Noes, 0; Not Voting, 1 (Public Member Brown); and Absent, 7 (Sen. Coggs; Rep. McCormick; and Public Members Alloway, Bichler, Dela Rosa, Huck, and Taylor).

Property Tax Exemption for Certain Tribal Governmental Properties

Ms. Kiel reviewed WLC: 0069/1, relating to creating a property tax exemption for real property owned by an American Indian tribe or band and used exclusively for governmental purposes. She noted that land that is held in trust for a tribe or tribal member is exempt from property tax under federal law but that land held in fee by a tribe is not exempt under current law and the draft relates to the latter type of land.

She also noted that the representative of the Department of Revenue (DOR) on the Technical Advisory Committee, Tom Ourada, was not able to attend the meeting but had arranged for comments on the draft from DOR's Office of General Counsel which were included in the memo to Mr. Ourada from Lili Best Crane (December 10, 2004), a copy of which was provided to committee members at the meeting. Ms. Kiel noted that DOR had expressed concern about the provision in the draft requiring that the property not be used for pecuniary profit of the tribe or any other person and stated in the memo that it may be possible to define "pecuniary profit" as monetary gain after all operating expenses have been met, even if a business undertaking were trying to make a profit. However, Ms. Kiel noted that the expression "not for pecuniary profit" is currently in nine of the property tax exemptions under s. 70.11, Stats., and that she had asked DOR for additional information as to whether, in the past, this phrase has been interpreted in the way described in the DOR memo. She said that DOR had not yet provided that information.

Kris Goodwill, Attorney, Lac Courte Oreilles, was recognized from the audience and observed that a tribe will sometimes hold land in fee because there can be a backlog to get land placed into trust or because the tribe does not apply to have land taken into trust for various reasons, including the need to use the property for collateral. Some committee members thought that the statutes should be amended to provide that all land held by a tribe in fee should be exempt from property tax, regardless of its use because the tribe would use any profits earned from the property to provide services to tribal members. Other committee members expressed concern about such a broad exemption. Chair Musser and Representative Sherman indicated that they would introduce legislation under their own names to add

real property owned by a tribe, without reference to the use of the property, to the exemption in current law that applies to municipal property.

Some committee members said that the phrase “exclusively for governmental purposes” in the draft could be interpreted too broadly unless it were defined. It was noted that the Oneida Tribe had suggested the issue for study because a tribal police station was on fee land and, thus, subject to property tax. The consensus of the committee appeared to be that the draft be revised to delete the phrase “exclusively for governmental purposes and not for pecuniary profit” and replace it with reference to specific uses followed by a catchall phrase referring to similar governmental facilities. Specific uses suggested were: police stations, fire stations, medical facilities, day care centers, and academic educational facilities. Committee members were instructed to provide staff with any other specific examples that they want to recommend for inclusion in the revised draft.

As for other questions set forth in the comments in the draft, committee members agreed that a tribe should be exempt from reporting requirements that apply to certain tax exempt entities and that the exemption should apply both on and off a reservation.

Law Enforcement in Indian Country; Invited Speakers, Staff Briefing, and Committee Discussion

Ms. Kiel reviewed Memo No. 3, *Criminal Jurisdiction in Indian Country*, and Memo No. 4, *Authority of Tribal Law Enforcement Officers to Enforce Criminal Laws* to provide background information. Mr. Lovell provided information about the county-tribal cooperative law enforcement grant program administered by DOJ and the tribal law enforcement grant program and county law enforcement grant program for counties bordering reservations, both of which are administered by the Office of Justice Assistance. He also highlighted state statutes that facilitate tribal law enforcement operations; provide for reciprocal use of county and tribal jails; provide full faith and credit to tribal court orders and legislative acts under certain circumstances, tribal court protection orders, and tribal vital records; and factor in convictions in tribal court for traffic violations in determining eligibility for a state driver’s license. Mr. Lovell additionally provided information about tribal police forces and tribal courts in Wisconsin.

A panel consisting of Judge James Mohr, Lac Courte Oreilles Court; Chief William Morrow, Lac Courte Oreilles Police Department; Chief Charles Bressette, Red Cliff Police Department; and Chief Ken Johnson, St. Croix Police Department, provided information about tribal courts and tribal law enforcement. Judge Mohr indicated that two primary issues are: (1) the need to provide sufficient funding for tribal police departments; and (2) making clear that tribes have criminal jurisdiction concurrent with the state jurisdiction under Public Law 280 and resolving issues relating to concurrent jurisdiction. He suggested that the committee ask the Wisconsin Attorney General for an opinion about concurrent tribal jurisdiction. Representative Sherman indicated that, in general, courts agree with opinions of the Attorney General only about 50% of the time. Ms. Kiel noted that the issue of concurrent jurisdiction could only be definitively resolved by Congress or court decision. Chair Musser indicated that he would try to meet with the Attorney General about the issue and include Judge Mohr in the meeting.

The police chiefs generally noted that as the capabilities of tribal police departments have expanded and more tribal police officers are deputized by the county sheriff, county sheriffs generally provide fewer services on the reservation.

Comments about the cooperative tribal-county grant program included: (1) more funding should be provided for the grants (Mr. Greendeer suggested that the state should at least provide matching general purpose revenue and not fund the grant program exclusively with tribal gaming revenues paid to the state); (2) counties should be required to maintain law enforcement efforts on a reservation if a grant is received and not reduce services if the tribe adds services; (3) DOJ should monitor the services for which grant funding is provided including, at a minimum, requiring the report submitted to DOJ to include more detailed information about cooperative efforts; (4) county and tribal law enforcement officials should be required to meet several times a year to evaluate cooperative efforts as a condition of receiving the grant; and (5) the payee of a grant should be the tribe if the tribe has a law enforcement agency. Staff was directed to prepare a draft including the last three items. Chair Musser indicated that he would try to meet with DOJ officials about this grant program.

Several speakers commented that tribal law enforcement officers should be permitted to participate in the Wisconsin Retirement System (WRS) as they provide services to all citizens, not just tribal members. Mr. Lovell said that he is trying to determine if there are any existing models of an inter-tribal retirement pool for tribal police officers. Ms. Kiel noted that when the issue of inclusion of tribal law enforcement officers in WRS had been raised to earlier committees, the Department of Employee Trust Funds (DETF) had raised several technical concerns. Representative Sherman suggested that DETF staff be invited to come to a future committee meeting to answer questions.

Chief Bressette said that s. 165.92, Stats., relating to the authority of tribal law enforcement officers to enforce state laws under certain circumstances, should be reviewed, especially the provision relating to a tribal resolution waiving sovereign immunity. Mr. Lovell noted that there is an alternative provided in the statute and that DOJ had approved a resolution by the Oneida Tribe that provides for a \$1,000,000 liability policy. It was noted that a waiver of sovereign immunity up to the limits of the insurance policy would also be needed to provide protection. Staff was directed to prepare a draft providing the alternative of an insurance policy and waiver up to the limits of that policy.

Other Business

Betsy McDougall, President, and Agnes Fleming, Financial Aid Officer, Lac Courte Oreilles Ojibwa Community College, asked to present information to the committee about the college. They noted that the college serves both Indian and non-Indian pupils, and they requested that the state provide funding to the college. Ms. Fleming distributed a document, "Financial Aid Report 2004-05" that she had prepared about the amount and number of pupils who received funding under the Wisconsin tribal Wisconsin Higher Education Grant in school years 2002-03, 2003-04, and 2004-05.

Mr. Montano asked about the recommendations made by the 2002-04 committee, which, with one exception, were not enacted. Chair Musser indicated that he intended to introduce the proposals under his own name to the 2005-06 Legislature.

Plans for Future Meetings

Chair Musser indicated that the 2005-06 Legislature's calendar will be set in early January and needs to be reviewed before the next committee meeting can be scheduled. He said that the date of the next meeting will be announced later but likely will be in February.

Adjournment

The meeting was adjourned at 3:50 p.m.

JLK:tlu