

## IDAHO COUNCIL ON INDIAN AFFAIRS

Tuesday, February 18, 2003

3:00 p.m. - 5:00 p.m.

Senate Majority Caucus Room

State Capitol, Boise, Idaho

The meeting was called to order by Vice Chairman Ernie Stensgar, Coeur d'Alene Tribe, at 3:00 p.m. Other Council members present were: Senator Joe Stegner; Senator Marti Calabretta; Representative Hilde Kellogg; Representative Joe Cannon; Jake Whiteplume, Nez Perce Tribe; Nancy Murrillo, Shoshone-Bannock Tribes; Gary Aitken, Sr., Kootenai Tribe; and Terry Gibson, Shoshone-Paiute Tribes. Kathy Ruffalo, Office of the Governor, was absent and excused.

Others present were: Jerry Deckard, Jason Lehosit, Lee Griffin, Randy Teton, Wesley Edmo, Blaine Edmo and Steve Westerberg, Shoshone-Bannock Tribes; Joe Haynes, Local Highway Technical Assistance Council; Moon Wheeler; David Kerrick, Melissa Farnsworth and Marley Hochendoner, Nez Perce Tribe; Chuck Matheson, Alice Koskela and Bill Roden, Coeur d'Alene Tribe; Emmett Hall and Florine Thomas, Shoshone-Piaute Tribes; Russell Westerberg, Kootenai Tribe; Corey Taule, Idaho Falls Post Register; Chuck Oxley, Associated Press; Mark Echohawk, Sho-Ban Tribal Special Counsel; and Derek Santos, Department of Financial Management. Staff members present were Caralee Lambert and Toni Hobbs.

After introductions were made, the Council reviewed the bylaws and determined that no changes were currently needed. In response to a question from **Ms. Murrillo, Ms. Lambert** stated that the duties and powers of the Council are set forth in statute.

The next item of business was the election of officers. **Senator Stegner** nominated **Representative Kellogg** as Chairman. The motion was seconded by Gary Aitken and passed unanimously by voice vote. Mr. Stensgar nominated **Nancy Murrillo** as Vice Chairman. The motion was seconded by **Mr. Gibson** and passed unanimously by voice vote.

The next item for discussion was **HB135**, which if enacted would impose a tax on certain cigarette sales on Indian reservations. **Mr. Stensgar** stated that he believed the bill was not researched properly and that he was not satisfied with the facts presented in the bill. He believed there were discrepancies in the administration of the bill and suggested that a study be done to examine how Indian retailers affect other retailers in Idaho.

**Mr. Stensgar** reminded the Council that the tribes were given the reservations by federal executive order and that the tribes needed to be dealt with as a government. As sovereign nations, Indian tribes have the same responsibility to their people as the state does to Idahoans and must find ways to fund education, health care and social services. The revenue earned from the sales of cigarettes on reservations is currently used to fund these programs. **Mr. Stensgar** asked that the Council recommend that the House Revenue and Taxation Committee hold the bill until further study can be completed.

**Mr. Terry Gibson** agreed with **Mr. Stensgar** in that some type of cost analysis needs to be done before the bill should be considered. In his opinion, **HB135** is an attempt by the state to get something back from the Indians as a result of the passage of the gaming initiative. He stated that there needs to be some showing of how much the state would gain by imposing this cigarette tax on the tribes and how much the state would be willing to give back to the tribes.

**Vice Chairman Murrillo** echoed the comments expressed by **Mr. Stensgar** and **Mr. Gibson**. She said the tribes use the funds from cigarette sales to keep tribal members employed, to help fund the tribal newspaper, the post office, a museum and law enforcement. She then asked **Mark Echohawk** to explain the Master Settlement Agreement.

**Mr. Echohawk** explained that in 1998 a number of states settled lawsuits against tobacco manufacturers. The Master Settlement Agreement (MSA) defined how much tobacco manufacturers must pay to the states based on total tobacco sales in each state. In Idaho there were approximately 14 million cartons of cigarettes sold last year. This resulted in Idaho receiving \$29.5 million from the MSA. Idaho's market share is 36/100 of 1% of the total national sales volume. Tribal sales in Idaho account for about 36% of Idaho's total sales or roughly 1/3 of all cigarette sales in the state. If that amount decreases, Idaho's market share would also decrease, thus the amount the state would receive from the MSA would decrease.

**Mr. Wesley Edmo**, Shoshone-Bannock Tribes, added that the tribes felt this legislation was premature and that the state needs to work together with the tribes to do a more thorough analysis of the issue.

**Senator Calabretta** asked if the tribes impose their own tax on cigarette sales. **Mr. Wesley Edmo** answered that the Shoshone-Bannock Tribes charge \$1.00 per carton; this generates about \$400,000 of revenue per year to be used for education, medical research, health care and other social services. This money also supplements government programs and is used to help repair reservation roads. **Mr. Edmo** added that the reservation roads are used by nonreservation farmers who lease land from the tribes. Without the additional revenue from cigarette sales, the tribe would be forced to impose some sort of fee or tax upon these farmers to keep the roads passable.

**Mr. Blaine Edmo**, chairman of the Shoshone-Bannock Tribes, added that Idaho receives \$750,000 annually in fuel taxes from the Shoshone-Bannock tribes and of that amount, nothing comes back to the tribes to improve their roads or infrastructure. He commented that the tribes are concerned primarily with the lack of consultation that occurred with this legislation. The tribes want to be given the opportunity to discuss legislation of this type before it is introduced.

**Mr. Stensgar** said that the Coeur d'Alene Tribe imposes a 3.5 cent tax per pack that generates about \$270,000 per year. This money is used for education, health care, the tribal newspaper and other services.

**Mr. Whiteplume** stated that the Nez Perce Tribe charges a 4.5 cent tax per pack. These funds are used to support youth scholarship programs, social services, community and family centers and law enforcement.

**Mr. Aitken** stated that the Kootenai Tribe charges 5 cents per pack.

**Mr. Gibson** stated that the Shoshone-Paiute Tribes do not sell tobacco products in Idaho.

**Mr. Whiteplume** agreed with the earlier comments regarding the need for the tribes to be part of the discussion before legislation is passed. He also agreed that further analysis needs to be done regarding how much income this type of tax would generate for the state.

**Mr. Aitken**, Kootenai Tribe, stated that there seemed to be a rush to get this legislation through without studying the issue thoroughly. He cautioned that imposing this tax would also have an impact on the Idaho wholesalers from whom the tribes purchase their supplies.

**Senator Calabretta** informed the Council that legislation is generally initiated without consultation with those people that may be affected. The fact that this legislation was moving at its own pace is outside the control of the Council.

**Ms. Murrillo** asked what the possibility would be of completing an economic or cost analysis of the reservations and the impacts of the reservations' cash flow on the tribes as well as on the surrounding communities.

**Senator Stegner** said that such a study would broaden the state's knowledge and understanding of the various tribes. The only restriction, however, would be the cost of the study. **Senator Stegner** reminded the Council that it has limited power in terms of its ability to influence other committees. For instance, the Council cannot introduce legislation and it cannot demand a review of legislation prior to introduction.

**Mr. Stensgar** stated that much of the frustration the tribes feel is due to the fact that they learned about **HB135** over the phone. They had hoped that the Council would support holding **HB135** until more research could be done. He stated that the tribes met to discuss ways of delaying the introduction of the bill. In his opinion, the tribes have a responsibility to let the rest of the state know who they are and what they do. The tribes discussed the creation of an economic study committee. The consensus was that using the state universities to conduct such a study would be much less costly and that the tribes could pay 50% of those costs.

**Mr. Aitken moved that the Council go on record to recommend that HB135 be held in the Revenue and Taxation Committee and to proceed with a study committee. Mr. Gibson seconded the motion.**

**Mr. Wesley Edmo** suggested exploring the use of millennium fund money to finance the study. **Senator Stegner** said that recommendations for the appropriation of the millennium fund money had already been finalized. **Mr. Edmo** said that since the tribes pay into the fund but do not see any of that money returned, he would still like to explore that possibility.

**Senator Stegner** reminded the Council that there is nothing binding on the Revenue and Taxation Committee in terms of any actions the Council took. In his opinion, it would be more

beneficial for the Council to adhere strictly to the role set out in statute rather than to oppose individual pieces of legislation. He stated that he would vote "no" on the motion as a result.

**Representative Cannon** asked if the tribes would support **HB135** if, after a study was done, the legislation was reintroduced. He said he suspected that a study would only show that neither the state nor the tribes had any money.

**Mr. Gibson** agreed with **Representative Cannon** that neither side had any money and suggested that such information be relayed to the bill's sponsor. He continued by stating that he was concerned with **Senator Stegner's** comments regarding the Council's inability to take stands on specific legislation. If the Council cannot do this, they lose whatever authority they have. Asking the committee to hold **HB135** is not asking too much, he said. Conducting a study of how such a tax would benefit both the state and the tribes would be beneficial before introducing any type of legislation.

**Mr. Wesley Edmo** stated that Idaho has a chance to be a model for other states by working with the tribes to solve issues to improve the quality of life for everyone. Ninety percent of the income earned by Native Americans on reservations goes back into surrounding communities, he said. There is a need to educate Idahoans about the contributions that tribes make. A study such as the one being discussed would be proactive and well worth the cost.

**Moon Wheeler**, former chairman of the Council, stated that in the past data collection from the tribes was very difficult to gather due to confidentiality requirements. If data on financial matters can be gathered from the tribes, it would be beneficial to both the state and the tribes. He also suggested that since the state universities are funded by the Legislature, it should be possible to have them conduct a study without requiring additional funding.

**The motion carried with Senator Stegner voting no.**

**Chairman Kellogg** stated that she would carry the recommendation to the Revenue and Taxation Committee hearing on February 19, 2003, and that she would be in touch with the Council regarding the sales tax issue after seeing what direction the Revenue and Taxation Committee took on the cigarette tax bill.

The Council approved a suggestion that the chairman and vice chairman work together to form a study committee to evaluate the impact of cigarette taxes on the tribes and the state.

The next meeting was scheduled for May 6, 2003, in Pocatello, Idaho, from 3:00 to 5:00 p.m. The Council adjourned at 5:00 p.m.