

**DEALING WITH JURISDICTIONAL AND OTHER ISSUES
IN A GOVERNMENT-TO-GOVERNMENT RELATIONSHIP**

**Final Report of the State-Tribal Relations Interim Committee
September 2008**

Prepared by Pat Murdo, Research Analyst

**State-Tribal Relations Interim Committee
2007-2008**

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Vice Presiding Officer

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Jeremy Gersovitz, Attorney
Eddy McClure, Attorney
Dawn Field, Secretary

Legislative Services Division

Susan Byorth Fox, Executive Director
Gregory J. Petesch, Director, Legal Services
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Overview

The State-Tribal Relations Committee (the Committee), authorized under 5-5-229, MCA, operates during the interim schedule between legislatures, serving primarily as a liaison between Indian tribes and the legislature. Background information on the Committee is in Appendix 1.

The liaison function does not mean unequivocated representation of Indian tribal concerns within the legislature. Committee members told representatives of Indian tribes to consider the Committee as "their" committee, an invitation that emphasized a forum for tribal concerns to be heard but not necessarily acted upon. Many of the issues raised during Committee meetings are themselves within the jurisdiction of another legislative interim committee. In some cases, resolution is more appropriate at the federal level rather than the state level. Hearing the concerns from one or more tribes, however, provides legislators and tribal members alike with a sense of how issues, and potential solutions, might affect tribes jointly or independently.

Among the topics that drew repeated interest at the Committee's 2007-2008 meetings were:

- cross-jurisdictional concerns involving the state and tribes, particularly law enforcement;
- gambling
- water issues, especially related to water compacts;
- revenue-sharing agreements, as related to oil and gas revenues; and
- social issues, such as compacts for foster care, treatment of addictions, including methamphetamine, and domestic violence.

Of the Committee's six meetings, three were in Helena, two were on reservations, and one was in Great Falls with the state-recognized Little Shell Tribe of Chippewa Cree. Summaries of the meetings are in Appendix 2. This final report will review the topics listed above and provide summaries of the out-of-town visits with the Crow Tribe, the Little Shell Tribe of Chippewa Cree, and the Confederated Salish and Kootenai Tribes.

Section 1: Topic Discussions

I. Cross-Jurisdictional Issues

Jurisdiction in a government-to-government relationship depends on various factors, including whether federal law creates dual jurisdiction or assigns jurisdiction primarily to tribes or to the state in conjunction with tribes. On some issues the Flathead Reservation, termed a Public Law 280 tribe, has an agreement with the state under which the state exercises jurisdiction on some issues that on other reservations are the sole domain of the tribe. For this reasons, generalizations are difficult if not misleading.

Law enforcement issues raised at committee meetings ranged from racial profiling to issues related to corrections.

A. Racial Profiling – In response to HB 781, enacted in 2007, the Attorney General’s office developed tickets for use by law enforcement officers that allow officers to check whether the person being charged is white, Native American, Hispanic, black, Asian, Middle Eastern or "other", based on observation but not questioning. The effort is intended to determine whether any particular officer is targeting more than a certain percentage of any particular race. As part of the implementation of HB 781, the Sheriffs and Police Officers Association contacted all police and sheriff offices in Montana's 56 counties to answer questions about use of the tickets and provide training information.

The Committee also heard from sheriffs in four counties near reservations and from others at its August meeting regarding racial profiling.

B. Corrections – At its first meeting in June 2007, the Committee heard from two representatives of the Sacred Web Recovery and Four Nations Warrior Down project who mentioned problems that inmates had in obtaining identification cards upon getting out of prison. ID cards are critical for many social services. A representative of the Department of Corrections (DOC) sent information to the Committee that discussed DOC's efforts to provide inmates with adequate identification upon their release from either the men’s or the women’s prisons.¹

¹Staff attorney Eddy McClure contacted the Department of Corrections (DOC) regarding the concern among Indian inmates obtaining IDs. A September 7, 2007, memo from DOC communications director Bob Anez included the following points for both the men’s prison and the women’s prison:

- Department of Corrections admissions officers provide every male and female inmate with an ID card upon arrival at the prison.
- The Montana State Prison system also creates an “exit ID card” for male inmates at the time of admission, containing name, offender number, date of issue, prison address and photograph, date of birth, height, weight, hair color and eye color. “This card is given to each inmate upon his release from the state prison, the private prison in Shelby or the regional prisons in Great Falls and Glendive.” Department policy says a prison inmate ID card is sufficient proof of identity for obtaining a Montana identification card through Department of Justice (DOJ) driver licensing offices. Also needed for the DOJ ID is proof of residency and \$8 for a fee.

On another front, the committee explored parole and probation jurisdictional issues raised during a visit to the women's prison in October. One of the women incarcerated there told about her problems in obtaining parole status, both because of limited jobs on her home reservation and the fact that a parole officer would have no jurisdiction on the reservation. For her to visit the parole officer, she would need to travel more than an hour by car to the nearest city off the reservation. But she had no car. So, instead of getting paroled, with the support systems that parole offers, she decided it was easier to serve her time. Compacts to allow the state to have jurisdiction for parole purposes are not in effect for any of the reservations, according to the Department of Corrections. However, the Flathead Reservation under Public Law 280 agreements with the state has cooperative roles for parole and probation purposes.

II. Gambling

The Indian Gaming Regulatory Act, 25 U.S.C. 2701 et seq., establishes three classes of gaming in Indian country. Although reference is made in Montana statutes to exclude the types of games known as Class I gaming or note that no permit is needed for Class I gaming, the classes are not otherwise used in Montana statutes.² Thus, what tribes know as "Class III gaming" may be in place elsewhere in Montana. Both on and off reservation, there is a ban on illegal games or illegal gambling devices, such as roulette

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- The ID card issued to inmates on admission to the Montana Women's Prison (MWP) does not accompany the inmate when she leaves. "MWP encourages all female inmates to request assistance in obtaining identification." Assistance in obtaining birth certificates and Social Security cards is available for inmates who fill out the necessary paperwork. "Prison staffers also escort inmates across the street to help them obtain a state identification card from the driver licensing office."
 - "We are discussing with the Department of Justice possible alternative procedures that would allow Montana State Prison to issue a state ID card, rather than corrections ID card, to inmates as they are released."

²The definition of gaming in Montana states in 23-5-112, MCA, (relevant words in bold): "(11) (a) "Gambling" or "gambling activity" means risking any money, credit, deposit, check, property, or other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise.

(b) The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(c) **The term does not include social card games played solely for prizes of minimal value, defined as class I gaming by 25 U.S.C. 2703.**" The other statutory reference is in 23-5-306, describing permits and fees for live card game tables. Relevant language of 23-5-306, MCA, is: "(1) (a) A person who has been granted an operator's license under 23-5-177 and who holds an appropriate license to sell alcoholic beverages for consumption on the premises, as provided in 23-5-119, may be granted an annual permit for the placement of live card game tables.

(b) **A permit is not required for social games played for prizes of minimal value, defined as class I gaming by 25 U.S.C. 2703.**"

machines.³ Under the Indian Gaming Act, tribes that might want those types of games would have to work out a compact with the state and receive permission to include those types of games. But Montana statutes currently ban them.

The following gaming descriptions come under the Indian Gaming Regulatory Act:

- ⊕ Class I: Social games with prizes of minimal value or traditional games used in connection with tribal ceremonies. Tribes have exclusive control over Class I gaming.
- ⊕ Class II: Bingo and certain nonbanked card games, like poker, if those games are otherwise permitted in the state within which the Indian gaming occurs and only if the games are played in strict conformity with state law. The state does not regulate these Class II games, however. The National Indian Gaming Commission jointly regulates with the tribes.
- ⊕ Class III: All other forms of gaming. As stated above, the other forms of gaming have to be jointly allowed by both the state and a tribe. Montana's Constitution under Article III, Section 9 prohibits all gaming except that authorized by the legislature or by initiative or referendum. So, while federal law requires a state and a tribe to negotiate a compact for Class III gaming, there are constraints depending on the state. According to information from the Montana Department of Justice: "A state is required to negotiate in good faith with a tribe that requests negotiations for a compact to govern Class III gaming, and must negotiate for games that

³The definitions of illegal gambling device and illegal gambling enterprise, under 23-5-112, MCA, are:

(17) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes: (a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, craps table, or slot machine, except as provided in 23-5-153.

(18) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in Title 23, chapter 4, and parts 2, 5, and 8 of this chapter;

(d) credit gambling; and

(e) internet gambling."

the state otherwise permits for any other person, organization, or entity (and not prohibited by federal law)." ⁴

The following reservations have Class III compacts:

- Crow's compact is in the process of being amended and renegotiated. The compact currently in effect allows 100 machines per tribally licensed premise, with a maximum payout of \$1,500 at each machine. The compact also says that the Crow Tribe may provide other gaming as permitted elsewhere in the state and as specified in the compact.
- Fort Belknap, which has a Class III compact signed in 2007 that allows up to 400 video gambling machines, each of which may pay out up to \$2,000. The Tribes may conduct other forms of gaming legal in Montana.
- Fort Peck's Class III compact provides for no more than 100 machines for each casino, each limited to \$1,500 payouts.
- Northern Cheyenne's Class III compact, signed in 2007, allows a total of 400 machines each with a maximum prize of \$2,000. The compact also allows other forms of gambling that are legal in Montana.
- Rocky Boy's, which has no more than 400 Class III machines on the reservation with a maximum prize for each machine of \$2,000. The compact also allows any form of gambling that is legal in Montana.

At the Committee's October meeting on the Crow Reservation, a presentation on gaming raised the issue of disparities between the number of machines allowed under the compact with the Crow (100) and the number in nearby Hardin (125). Overall, the number of machines licensed in Montana is more than 18,000. The Crow emphasized the expectation that gaming would promote economic development on the reservation. (Other tribes, particularly Fort Peck Tribal Council members who attended the Committee's January meeting, similarly have focused on the economic development aspect of gaming.) The Crow presentation in October also noted that video gaming taxes yielded \$58 million statewide out of more than \$1.082 billion wagered in 2006. The presentation further suggested that compacts negotiated between the state and tribes "lack realistic competitive advantage to draw clientele to tribal gaming facilities". ⁵ Another concern raised at the Crow October 16 meeting related to a one-size-fits-all approach to negotiating compacts with tribes when proximity to larger cities and whether a reservation allows alcohol at casinos vary from reservation to reservation.

Another issue that tribes have raised at various Committee meetings involved apparent frustration because tribes have specific limits on the number of casinos or machines

⁴Communication from Sarah Bond, Montana Department of Justice, 8/19/2008.

⁵Heather Whiteman Runs Him, "Indian Gaming in Montana", October 2007. Available at: http://leg.mt.gov/content/committees/interim/2007_2008/st_trib_rel/meeting_documents/Gaming_Crow10_16_07.ppt

that they can sponsor while a well-known casino under the same brand name operates throughout Montana and owns a combined number of machines without the need for any type of compact.

III. Water issues, especially related to water compacts

Discussions on water compacts at the Crow Reservation in October and the Flathead Reservation in June sandwiched the January meeting reviews of water compacts and related projects on all the reservations in Montana. As requested by the Crow leaders at the Committee's October meeting, the Committee drafted a letter to Montana's Congressional delegation urging action on State-Tribal water compacts and other water projects associated with reservations and nearby areas. The committee adopted a letter at the January meeting. That letter is available at

IV. Revenue-sharing agreements, as related to oil and gas revenues

V. Education

VI. Social issues, such as compacts for foster care, treatment of addictions, including methamphetamine, and domestic violence.

Foster care - The state successfully concluded foster care compacts with all the tribes during the 2007-2008 period.

Treatment of addictions - Concerns about addictions, particularly those involving methamphetamines, ranged from prevention to treatment and included tribal interactions with the Department of Public Health and Human Services and the Department of Corrections.

At the Committee's January meeting staff from the Confederated Salish and Kootenai Tribes' Human Resources and Tribal Health Departments outlined their concerns with preventing methamphetamine abuse and dealing with the effects in children born to meth-addicted mothers (and fathers).

Domestic violence - At a January meeting in Helena a member of the Fort Peck Tribes asked the Committee to look into the issue of domestic violence. The June 2008 agenda included presentations from three tribes on how their communities handle domestic violence offenders.

Section 2: Visits to Tribal Communities

Crow Reservation

Little Shell Tribe of Chippewa Cree

Flathead Reservation

Section 3: Work Plan Issues

Visits to Reservations

See Section 2.

Member Issues mentioned in the work plan

Many of the following issues were incorporated into meetings. Not all were, however. These issues may be topics that future State-Tribal Relations Committee members may want to address in some depth.

- Review of fee lands within the boundaries of Indian reservations. Staff is attempting to locate maps that graphically depict fee lands within the boundaries of Indian reservations. Such a map is available for the Flathead Reservation. As others become available, they will be included in this section.
- Gambling on reservations. This has been addressed during Committee meetings. See Section 1.
- Education on reservations and money spent. This was addressed at various Committee meetings. See Section 1.
- Compacts. Water compacts, oil and gas revenue-sharing compacts, and gaming compacts all have been discussed at Committee meetings. See Section 1.
- Social and economic issues. Various social and economic issues were discussed at Committee meetings. See Section 1 and Appendix II.
- Reservation access issues. This was not discussed during any Committee meetings. Future Committees may want to take this up. A recent district court ruling addressed access in terms of hunting.
- Indian Education for All. This was addressed at various Committee meetings. See Section 1.
- Role of Reservations. This was not discussed during any Committee meetings, except as evident from the role that Tribal Governments exercise in the lives of tribal members who live on a reservation. Future Committees may want to take this issue up.

Staff recommendation – Update Tribal Nations Report

The update to the Tribal Nations Report fell victim to the need for new staff members to get up to speed on the issues reflected in the report. The update remains a long-term goal of staff.

APPENDIX I:

History of Committee

The current form of the State-Tribal Relations Committee took shape in the 2001 Session with passage of Senate Bill No. 10, which made significant changes to the legislative interim committee structure. The new State-Tribal Relations Committee was assigned the following responsibilities under 5-5-229, MCA:

- ▶ to act as a liaison with tribal governments;
- ▶ to encourage state-tribal and local government-tribal cooperation;
- ▶ to conduct interim studies as assigned; and
- ▶ to report on its activities, findings, recommendations, and any proposed legislation.

Prior to 2001, the Legislature addressed the government-to-government relationship with tribal communities first through the Committee on Indian Legal Jurisdiction, which was created in 1977. The Committee on Indian Legal Jurisdiction Committee had as its purpose to meet with Indian tribes in Montana to identify common bonds between Indians and non-Indians and to propose legislation for the mutual benefit of all concerned. The Indian Legal Jurisdiction Committee's major recommendation to the 1979 Legislature was the creation of a select committee on Indian affairs. A further recommendation was for the 1981 Legislature to create a permanent Indian affairs committee if the select committee successfully bolstered Indian/non-Indian relations.

Between 1979 and 1989 the Legislature created and then reauthorized in each session a Select Committee on Indian Affairs. In 1989 the Legislature recognized the value of having a liaison by establishing the Committee on Indian Affairs as a permanent statutory committee. That situation existed for another 10 years. In 1999, a reorganization of the interim committee structure under Senate Bill No. 11 resulted in elimination of the Committee on Indian Affairs and the inclusion of its responsibilities into the new Law, Justice, and Indian Affairs Committee (LJIAC). The reorganization recognized that many of the issues affecting state-tribal relations often were heard by the House and Senate Judiciary Committees, whose members made up the LJIAC interim committee. A concurrent proposal by the Coordinator of Indian Affairs to create a Commission on Indian Affairs attached to the Executive Branch ended up as a study resolution assigned to the LJIAC. The study resulted in no general support for a Commission on Indian Affairs attached to the Executive Branch but, as an alternate approach, the LJIAC recommended to the Legislative Council and the 57th Legislature that a separate State-Tribal Relations Committee be created to assume state-tribal liaison responsibilities.

For specifics on the histories, see Final Reports available under the individual interim committees, accessible at: <http://leg.mt.gov/css/Committees/Interim/default.asp>.

Appendix II.

Summary of Committee meetings:

June 15, 2007 - At the first meeting, the Committee elected as its presiding officer Senator Frank Smith and as its vice presiding officer Senator Don Steinbeisser. The Committee also discussed procedural issues, topics of interest for the interim, and the proposed work plan, including which reservations to visit. For more information on this and other meetings, see the committee website:

http://leg.mt.gov/css/Committees/Interim/2007_2008/st_trib_rel/meeting_documents/materials.asp

October 16, 2007 - This meeting included a visit to the Crow Tribe and on October 17 a visit to the Crow Legislature then a trip to Billings for a tour of the Women's Prison. Issues raised at the meeting on the Crow Reservation included:

- ▶ Gaming Compacts
- ▶ Taxation and Revenue Sharing Litigation and Activities
- ▶ Water Compacts
- ▶ Land Issues
- ▶ Health Care on Reservations

January 16-17, 2008 - This agenda-packed meeting in Helena covered a range of topics from the State Reserved Water Rights Compact Commission to marketing of Indian art. Representatives from the Department of Public Health and Human Services discussed Medicaid, substance abuse, foster care, and the Children's Health Insurance Program activities on reservations. A representative from the Department of Labor and Industry provided an overview of the Jobs for Montana Graduates Program. Representatives of the Office of Public Instruction updated the Committee on implementation of Indian Education for All. A representative from the Attorney General's office showed the committee the newly created tickets being provided to the Montana Highway Patrol and other law enforcement officers that reflected data collection efforts requested to stem racial profiling under HB 761. representatives of the Division of Disaster and Emergency Services reviewed how cooperative agreements are used to respond to disasters across reservation boundaries.

April 19, 2008 - A meeting at the offices of the Little Shell Tribe of Chippewa Cree provided the Committee with an opportunity to visit the Morony Dam site (before a blizzard hit the area). Under House Bill No. 284 the Montana Department of Fish, Wildlife, and Parks was to negotiate on a lease for the Little Shell to use a building located at the dam site. The meeting also included information on substance abuse grants and statistics and treatment programs at the Department of Corrections for drug abuse offenders.

June 23-24, 2008 - The Confederated Salish and Kootenai Tribes provided its offices in Pablo for the first day of this meeting. The second day featured tours of a new tribally run health care facility in Elmo, the Kerr Dam outside of Polson, the SK Housing

Authority, the Salish Kootenai College, and S&K Electronics. The meeting included presentations from the Board of Pardons and Parole, discussions of domestic violence, all-beverage licensing on reservations, and water compacts.

August 21, 2008 - This wrap-up meeting in Helena featured a review of education on Indian Reservations and examples of tribal histories developed by the tribal governments in Montana. Also on the agenda was a discussion on racial profiling and oil and gas compacts.