

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on March 4, 2004 in Room 231-N of the Capitol.

All members were present except:

Senator James Barnett- excused

Committee staff present:

Russell Mills, Legislative Research
Dennis Hodgins, Legislative Research
Theresa Kiernan, Revisor of Statutes' Office
John Beverlin, Committee Secretary

Conferees appearing before the committee:

Garry Winget, Kansans For Addiction Prevention
Norm Jennings, Kansas Grape Growers and Wine Makers Association
John McElroy, Executive Director, Kansas Gaming Commission

Others attending:

See Attached List.

Chairperson Brungardt called the meeting to order. He told the committee that they would be continuing discussion on **SB 402, Farm wineries; rights of licensees; fees; ownership restrictions**. He welcomed Garry Winget to the podium.

Mr. Winget was unable to provide testimony to the committee at the previous meeting because of a funeral. He presented testimony against **SB 402**.

Chairperson Brungardt thanked Mr. Winget. He told the committee that he felt like there was interest in the topic, but the unanticipated problems and unresolved issues will prevent the committee from taking further action on the bill at the time being.

Norm Jennings asked the committee to oppose any bills that would allow for the shipping of unavailable wine to customers in the state because of the unfair advantage those wines would have over Kansas made wines.

Chairperson Brungardt stated the committee would take Mr. Jennings' suggestion into consideration. He then asked Russell Mills to provide an overview of **SB 533, Racing and gaming commission, authority to appoint additional assistant attorney general**.

Mr. Mills presented a Senate Subcommittee Report on **SB 533 (Attachment 1)**.

Chairperson Brungardt asked if it was standard for attorneys to come from the Attorney General's office.

Mr. Mills stated it was standard practice.

Senator Clark asked whether there was a specific number of Assistant Attorneys General that had to be assigned according to statute or if there was an allowance of Assistant Attorneys General.

Mr. Mills explained that it was common for the statutes to allow a number of Assistant Attorneys General, but he could not say how many statutes and how many numbers of assistants were allowed.

Senator Vratil stated he was concerned with the idea of the Attorney General appointing an attorney for the Agency. He stated he did not believe that it was the Governor's intention. He explained that the situation poses ethical difficulties for the attorney who is employed by the Attorney General, but works for a separate agency. He stated it was a problem of trying to figure out who is the master.

Senator Teichman asked Mr. Mills why a third Assistant Attorney General was needed for the Racing and Gaming Commission.

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Mr. Mills differed the question to John McElroy.

Mr. McElroy explained that it was too much for him to act as both a lawyer and run the Gaming Agency. He stated that when things got busy, in the past, the Agency has had to borrow an Assistant Attorney General from the racing side of the Racing and Gaming Commission.

Senator Teichman observed that there are two attorneys in the Racing and Gaming Commission.

Mr. McElroy explained that they were both on the racing side of the Commission.

Senator Vratil asked Mr. McElroy which he would prefer, the ability to appoint his own attorney or to have one appointed for him by the Attorney General.

Mr. McElroy stated that he would prefer to appoint his own attorney.

Senator Vratil asked why Mr. McElroy wants to appoint his own attorney.

Mr. McElroy explained that an attorney who is hired by him would have to answer to him. He explained the attorney would not have to serve two masters.

Senator Clark asked Mr. McElroy about the number of FTE positions in the Subcommittee Report presented by Mr. Mills.

Mr. McElroy explained that there was a mistake made, but the Division of Budget corrected the mistake.

Senator Clark asked how many FTE positions would be authorized.

Mr. McElroy stated that there would be 24 FTE positions authorized.

Senator Vratil stated he would like to offer an amendment to **SB 533** adding language to authorize the Kansas Gaming Agency to employ an attorney in an unclassified position without increasing the number of authorized FTEs.

Senator Vratil made a motion to amend SB 533. The motion was seconded by Senator Teichman.

Senator Clark observed that it was a different procedure than what is done by the Racing Agency.

Senator Vratil stated that if he had the opportunity to change in totality, he would change the Racing Agency too.

Senator O' Connor explained that the Attorney General represents the state, and the Gaming Agency is supposed to comply with state laws. She stated that she was unable to see the conflict observed by Senator Vratil.

Senator Vratil explained that situations may arise where the Attorney General disagrees with the interpretation of a statute rather than a state agency. He further explained that you would not want to put an attorney in that position.

Chairperson Brungardt asked whether the committee would be doing something unprecedented by allowing the agency to hire its own attorney.

Senator Vratil explained that it was not uncommon. He further explained that the Governor has hired her own counsel and that both methods are employed.

Chairperson Brungardt called for other discussion on the amendment.

Senator Clark stated he would like to offer a substitute motion. He stated that he would prefer the Attorney

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General to appoint an Assistant Attorney General for the Gaming Agency with the approval of the Director of the Gaming Agency.

Chairperson Brungardt asked the committee to first vote on Senator Vratil's motion.

The amendment failed. The bill was not amended.

Senator Clark made a motion to amend **SB 533** to allow the Attorney General to appoint an Assistant Attorney General for the Gaming Commission with approval of the Director of the Gaming Agency. The motion was seconded by Senator Lyon.

Senator Vratil stated he appreciates Senator Clark's amendment, but that it does not solve the conflict of interest problem.

Senator Lyon stated that it seemed like the practice was a broader issue.

Chairperson Brungardt asked the committee to vote on Senator Clark's amendment.

The motion to amend **SB 533** passed.

Senator Clark made a motion to recommend **SB 533** favorable for passage as amended. The motion was seconded by Senator Teichman. The motion to recommend **SB 533** favorable for passage as amended passed.

Chairperson Brungardt asked the committee for further business.

Senator Gilstrap asked the committee to introduce a bill relating to a city's quarterly report to the Treasurer's office.

Senator Gilstrap make a motion to introduce the bill. The motion was seconded by Senator Lyon. The bill was introduced.

Chairperson Brungardt thanked the committee.

The meeting was adjourned at 11:30 a.m. The next meeting is scheduled for March 9, 2004, at 10:30 a.m. in room 231-N.