KU Tribal Law and Government Conference 2017
Basics of Indian Gaming in Kansas

- Each of the four tribes in Kansas have individually compacted with the State for Class III gaming.
- As a side note, three of the four tribes with reservations in Kansas still operate class II facilities, as does the Wyandotte Nation from Oklahoma on trust land it has in the Kansas City area.
- Although each compact is tribe specific, the compacts and their terms are nearly identical.
- Each can be found at the Kansas State Gaming Agency’s (KSGA) website: www.accesskansas.org/ksga/Compacts.htm
Basics of Indian Gaming Kansas Compacts

• The compacts “govern the licensing, regulation and operation of all Class III gaming conducted by the Tribe(s) as authorized under this Compact(s).” Compact Sec. 2(E).

• The compacts define authorized and prohibited games. Compact Sec. 3(A) and (B).

• Established procedures for KSGA concurrence of new games. Compact Sec. 7(B)(3).

• Tribe’s Gaming Commission is primary regulator. Compact Sec. 10(A). KSGA has oversight responsibilities. Compact Sec. 12
Basics of Indian Gaming Kansas Compacts

- Criminal jurisdiction. Compact Sec. 13.
- Section 13: Criminal Enforcement.

  (A) Indians. Pursuant to 18 U.S.C. Sec. 1166, in enforcing this Compact, the State shall exercise criminal jurisdiction over Indians, provided, that nothing in this Compact shall be construed to diminish the criminal jurisdiction of the State under 18 U.S.C. Sec. 3243 or the concurrent criminal jurisdiction of the Tribe.

  (B) Non-Indian. In enforcing the terms and provisions of this Compact the State shall exercise exclusive criminal jurisdiction over non-Indians in accordance with 18 U.S.C. Sec. 1166 and 3243.

  (C) Federal Jurisdiction. Nothing contained in this Compact shall deprive the federal courts of any jurisdiction which they might otherwise have.
Basics of Indian Gaming Kansas Compacts

- 18 U.S.C. Sec. 3243 is known as the Kansas Act, originally enacted by Congress in 1948. It states: “Jurisdiction is conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State. This section shall not deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.”
Civil jurisdiction. Compact Sec. 14.

Section 14: Civil Enforcement.

(A) Tribal Civil Jurisdiction. In enforcing this Compact with respect to all transactions or activities which relate to Class III gaming on the Reservation, the Tribe shall exercise civil jurisdiction over Indians and non-Indians.

(B) No Waiver of Sovereign Immunity. Nothing in this section shall be deemed to be a waiver of the sovereign immunity of the Tribe or the State.
Basics of Indian Gaming Kansas Compacts

- KSGA background investigations and Tribal Gaming Commission licensing of employees. Compact Section 16.
- (A) License Required of Gaming Employees. Every gaming employee and Tribal Gaming Inspector who participates in any Class III gaming pursuant to this Compact must be licensed by the Tribe.
- (B) The Tribe, prior to hiring an applicant for a position as a key or standard gaming employee, shall obtain a release, utilizing the privacy notice required by regulations of the Indian Gaming Commission, and other information from the applicant to permit the State to conduct a background investigation upon the applicant.
Basics of Indian Gaming Kansas Compacts

• KSGA background investigations and Tribal Gaming Commission licensing of Management Contractors, Primary Management Officials and Manufacturer/Distributors. Compact Section 17.

• Denial of License Application for Cause.
  • Compact Section 21. The Tribe shall deny a license to any applicant whenever the applicant or any person with a 5% or more ownership interest therein:
    (A) Has withheld pertinent information or has made false statements on the gaming license application;
    (B) Has attempted to bribe a Council member, Tribal Gaming Commission member or any other person in an attempt to avoid or circumvent tribal law or any other applicable law;
Basics of Indian Gaming Kansas Compacts

(C) Has offered something of value or accepted a loan, financing or other thing of value from a Tribal Gaming Commission member, a subordinate employee or any person participating in any gaming activity;
(D) Has knowingly promoted, played or participated in any gaming activity operated in violation of tribal law;
(E) Has been knowingly involved in the falsification of books or records which relate to a transaction connected with the operation of gaming activity;
(F) Has been convicted of, or has entered a plea of nolo contendere to, any crime involving gaming or embezzlement;
Basics of Indian Gaming Kansas
Compacts

(G) Has been determined by the Tribal Gaming Commission, the Indian Gaming Commission or the State Gaming Agency to have present or prior activities, criminal record, if any, or reputation, habits and associations which pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices in the conduct of gaming, provided, that any conviction more than five years before the commencement of employment of the Tribe shall not be considered under this Subsection.
(H) Has denied the Tribe or the State access to any place at which gaming required to be licensed under this Compact is being conducted or who has failed to produce for inspection or audit any book, record, document or other item required by this Compact or any regulations promulgated pursuant to this Compact;

(I) Has Failed to pay any tribal taxes and additions to taxes, including penalties and interest;

(J) Has been found guilty of any violation or attempt or conspiracy to violate any law, rule or regulation pertaining to gaming in any jurisdiction for which suspension or termination of employment or a license might be imposed in such jurisdiction; or
Basics of Indian Gaming Kansas Compacts

(K) Has been suspended from operating any gaming in another jurisdiction or who has had a license to conduct such gaming canceled, revoked, suspended or limited for any reason.

If the Tribe declines to deny a license as required herein, the State may seek resolution of the matter pursuant to Section 31.
Basics of Indian Gaming Kansas Compacts

- Reporting responsibilities. Compact Sections 10 (Tribes) and 12 (State).
- Both the tribal Gaming Commission and the KSGA are mandated to report violations of the Compact and other applicable law to each other.
  - This has been a major area that I have been working on both within my agency and with the Gaming Commissions of each Tribe.
Basics of Indian Gaming Kansas Compacts

- State Assessment for Costs of Oversight. Compact Section 25.

- (A) Imposition of Assessment for State Regulatory Expenditures. The State shall annually make an assessment sufficient to compensate the State for the reasonable and necessary costs of regulating Class III gaming pursuant to this Compact. Reimbursable regulatory expenses under this Section shall include all necessary regulatory costs of the State Gaming Agency.

- No forms of revenue sharing are included in any of the Tribal Compacts.
Basics of Indian Gaming Kansas

Compacts

- Duration: Compact Section 9. This Compact shall remain in full force and effect until one of the following events shall occur:
  
  (A) This Compact is terminated by mutual consent of the parties;
  (B) This Compact is determined to be invalid pursuant to a final, non-appealable judgment by a court of competent jurisdiction; or
  (C) The Tribe duly adopts a resolution revoking tribal authority to conduct Class III gaming upon tribal land as provided for in the IGRA.

- None of the compacts have sunset clauses, they exist in perpetuity.
Basics of Indian Gaming Kansas Compacts

- Dispute Resolution and Arbitration. Compact Section 31.
  - (B) “…The arbitration decision shall be final and binding upon the Tribe and the State unless, during or following completion of the arbitration proceedings, the Tribe and the State have met and arrived at a different settlement of the dispute.”
  - (C) Allows for judicial enforcement, if necessary, of an arbitration decision.
  - (E) and (I) give limited waivers of sovereign immunity by both the Tribe and State regarding enforcement of arbitration awards.
Basics of Gaming in Kansas
State Agencies

- Peculiarities with Gaming in Kansas
  - The Kansas State Gaming Agency and the Kansas Racing and Gaming Commission. What are they?
  - State owned casinos, and the State following the tribal model.
“Greed is good.”

- Gordon Gekko
  Wall Street (1987)
Fraud and Abuse from Tribal Casinos

- Tribal Casino Gross Revenue

  FY 2015 — $29,900,000,000
  Loss % x 6%
  Estimated Loss $1,794,000,000
INDIAN GAMING ESTABLISHMENTS

• Internal Threats
  • Fraud
  • Counterfeit
  • Embezzlement
  • Theft

• External Threats
  • Cheating
    • Slots
    • Card Tables
  • Counterfeit
  • Theft
  • Trespass
  • False Identification
18 U.S.C. § 1167
Theft from Indian Gaming Establishments

(a) Whoever abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any money, funds, or other property of a value of $1,000 or less belonging to an establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission shall be fined under this title or be imprisoned for not more than one year, or both.

(b) Whoever abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any money, funds, or other property of a value in excess of $1,000 belonging to a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission shall be fined under this title, or imprisoned for not more than ten years, or both.
Elements of § 1167

1) The defendant knowingly abstracted, purloined, willfully misapplied, or took and carried away;

2) with intent to steal;

3) the moneys, funds and other property;

4) of a value in excess of $1,000;

5) from a gaming establishment on Indian land; and,

6) that said gaming establishment is operated by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission.
18 U.S.C. § 1168

Theft by Employees from Gaming Establishments on Indian Lands

(a) Whoever, being an officer, employee, or individual licensee of a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value of $1,000 or less … ;

(b) Whoever, being an officer, employee, or individual licensee of a gaming establishment operated by or for or licensed by an Indian tribe pursuant to an ordinance or resolution approved by the National Indian Gaming Commission, embezzles, abstracts, purloins, willfully misapplies, or takes and carries away with intent to steal, any moneys, funds, assets, or other property of such establishment of a value in excess of $1,000 …
Elements of § 1168

1) Whoever, being an officer, employee, or individual licensee of a gaming establishment

2) operated by or for or licensed by an Indian tribe pursuant to an ordinance or Resolution approved by the National Indian Gaming Commission,

3) embezzles, abstracts, purloins, willfully misapplies, or takes and carries away

4) with intent to steal,

5) any moneys, funds, assets, or other property of such establishment

6) of a value in excess of $1,000.
Punishments: 1167 & 1168

- **1167 – Theft from a Gaming Establishment**
  - If less than $1000, not more than one year imprisonment.
  - If more than $1000, not more than ten (10) years imprisonment and/or $250,000 fine.

- **1168 – Theft by Officer or Employee**
  - If less than $1000, not more than five (5) years imprisonment and/or $250,000 fine.
  - If more than $1000, not more than twenty (20) years imprisonment and/or $1,000,000.
Examples of Indian Gaming Thefts from Oklahoma

• United States v. Lancaster (2010)
  • Counterfeit poker chips

• United States v. Lee (2007)
  • Gaming server manipulation by technician

• United States v. Click, Knighton, Bailey, and Cornog (2008)
  • Conspiracy to steal monies by employees and customers
United States v. Lancaster (2010)

Man sentenced in gambling scam

• He gets probation for turning 25-cent chips into $500 chips and then playing them.

BY DAVID HARPER
World Staff Writer

A Missouri man was sentenced Thursday to five years of probation after he pleaded guilty to stealing from an Oklahoma casino by creating counterfeit gambling chips.

William Reece Lancaster, 50, also was ordered by U.S. Chief District Judge Claire Eagan in Tulsa to pay $70,000 in restitution to the Seneca Cayuga tribe.

Lancaster, who will serve the first six months of his probation on home detention, pleaded guilty Dec. 15. He admitted bleaching 25-cent chips and dying them to match the Seneca Cayuga Grand Lake Casino's $500 chips.

Lancaster would then take the counterfeit chips to the casino, near Grove, and play them at a blackjack table or exchange them for cash, his plea agreement states.

Casino security officials eventually noticed a significant increase in the number of $500 chips in circulation and used surveillance to identify Lancaster as the culprit, Assistant U.S. Attorney Trent Shores said.

An analysis of the casino's $500 chips showed nearly 40 percent of them to be counterfeit, he said.

Lancaster agreed to give up any claim to $6,924 in currency and more than $1,600 in legitimate chips he possessed when confronted by law enforcement. Those funds will go toward his restitution.

Lancaster blamed his conduct on gambling addiction. Among the conditions of his probation are that he receive treatment for the problem, refrain from gambling and stay out of gambling establishments.

The Webb City, Mo., resident would face as much as 10 years in prison if his probation were revoked. He could have been sentenced to one year in custody under sentencing guidelines.

The casino has taken steps to prevent similar fraud from recurring, Shores said.

Retrial in woman’s murder case

• His conviction and death sentence were overturned on appeal.

BY BILL BRAUN
World Staff Writer

A Tulsa County judge has scheduled an Oct. 11 jury retrial for a man whose death sentence and murder conviction for a woman's 1991 hanging was overturned on appeal.

Lonnie Wright Richie, an inmate at the Oklahoma State Penitentiary in McAlester, was transported to the Tulsa Jail on Wednesday and appeared in District Judge Kurt Glassco's court Thursday.
LEFT COLUMN – Unknown chips determined to be counterfeit

MIDDLE COLUMN – Top three chips are known legitimate chips

RIGHT COLUMN – Unknown chips determined to be counterfeit

LANCASTER 163
One of these chips is a legitimate $500 . . . Which one???

Notice the tip of the crown on the two outer chips. They’re the fakes!

External Threat:

In October and November, 2006, Lee, posing as a computer technician, fraudulently gained access to secure areas in the Peoria Tribe’s Buffalo Run Casino in Miami, Oklahoma. Lee then covertly accessed the main computer server of the casino and manipulated the value of cash-out tickets resulting in the theft of more than $70,000.
United States v. Click, Knighton, Bailey, and Cornog (2008)

During closing arguments, Johnson, which it accom- reversed the damage.

Two ex-casino workers, customer admit scam

- They engaged in theft of “free play” cards and shared winnings.

BY DAVID HARPER
World Staff Writer

Two former employees and a customer of a Miami, Okla., casino have pleaded guilty in a conspiracy to bilk the casino of about $193,000 worth of free gambling cards.

Diahann Rae Click, 35, admitted Wednesday that she engaged in the plot with her fellow former Buffalo Run Casino employee Kara Jo Bailey and customer Robert Ivan Knighton, 39.

Knighton also pleaded guilty Wednesday, stating that he won about $4,000 using about $30,000 in “free play” cards.

He said Click gave him one of the cards for his birthday in September 2006. By mid-October of that year, he had received more than 20 of the cards, he admitted.

Knighton said Click told him that she had found a “glitch” that allowed the casino’s card system to be manipulated.

Click said in a court document that she later received cash from co-conspirators as compensation.

Bailey, 23, pleaded guilty to the conspiracy charge earlier this week. Besides cash, she received concert tickets for her role, a court docu-

ment says.

Bailey said in her plea agreement “that approximately $193,000 in free play was illegitimately given out to co-conspirator customers, named and unnamed in the indictment.”

Assistant U.S. Attorney Trent Shores said at least two other people were involved and that more charges are possible.

Shores said the casino has fixed the flaw that allowed its system to be exploited.

Click and Knighton will be sentenced Jan. 9. Bailey’s sentencing hearing is slated for Jan. 14. All are free on bond.

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Examples of Indian Gaming Thefts from Kansas

  - Conspiracy to steal monies by employee and customers

  - Conspiracy to steal monies by employee and customers
United States v. Redmon (2014)

- On or about May 9, 2010, and continuing through October 16, 2012, the defendant, MONA M. REDMON, did embezzle, steal, knowingly converted to her use or the use of another, willfully misapplied and willfully permitted to be misapplied money, funds, credits, assets, or other property belonging to an Indian tribal organization, and knowingly allowed others to use, counterfeit “players cards” having a value of approximately $67,302.00, to play various casino games at the Golden Eagle Casino of the Kickapoo Tribe.
Beginning on approximately February 26, 2014, and continuing until March 25, 2014, Donald M. Collins was employed by the Sac and Fox Casino as a Players Club Associate, he manufactured counterfeit player cards which could be used at the Sac and Fox Casino. The Collins played the counterfeit player's cards and also provided them to other individuals for their use. The total value of the counterfeit player cards which were manufactured by Collins and which were played at various games at the Sac and Fox Casino was $13,326.00. The "play" of these cards generated winnings of approximately $17,400.00. The total loss sustained by the Sac and Fox Casino was $30,726.00; the value of the counterfeit cards played at the Casino and the winnings which occurred during the use of said cards.
Recent Slot Machine Cheats:
Russia

• Russians Engineer a Brilliant Slot Machine Cheat—And Casinos Have No Fix, by BRENDAN I. KOERNER at www.wired.com
Wyandotte Nation vs. Kenneth Salazar and State of Kansas (2013)

- “Park City” Land-Into-Trust case. Filled by the Wyandotte Nation (WN) to compel agency action under both APA 5 U.S.C. Sec. 706(1) and the Mandamus Act, 28 U.S.C. Sec. 1361, by the Assistant Secretary of Interior to make a final determination on its Park City application.

- Issues:
  - Whether the Secretary has a clear, non-discretionary duty to accept the Park City Land in trust under Public Law 98-602.
  - Whether the Secretary’s failure to act in the face of this clear obligation amounts to an unreasonable delay of agency action.
Wyandotte Nation vs. Kenneth Salazar and State of Kansas (2013)

- APA precludes the Nation’s alternative request for a writ of mandamus.

- Court analyzed the request under § 706(1) of the APA, which “empowers a court only to compel an agency ‘to perform a ministerial or non-discretionary act’ or ‘to take action upon a matter, without directing how it shall act.’” In this case, the Nation’s Complaint seeks an order compelling the Secretary to accept the land in trust under § 706(1) of the APA.
“In order to obtain such relief, the Nation must establish that (1) the Secretary owes it a clear duty; (2) the duty is mandatory, rather than discretionary; and (3) the right to relief is clear. The Nation cannot make this showing.”
The court retained jurisdiction over this proceeding after the decision requiring update reports be filled every 90 days.

Dept. of Interior made its decision on July 3, 2014. DOI denied the trust acquisition application for the Park City Parcel.

They stated, “We are forced to conclude, based on the record before the Department, that the Nation could not have used 602 Funds alone to acquire the Park City Parcel.”
In 2006, the Quapaw purchased a 124-acre tract of land in Cherokee County, Kansas. It is directly adjacent to the Kansas-Oklahoma border and entirely within the historic boundaries of the Quapaw’s reservation—i.e., the Quapaw Strip.

In 2008, the Quapaw opened the Downstream Casino Resort on its Oklahoma trust land, just south of the Kansas-Oklahoma border.

On April 25, 2011, the Quapaw notified the State of Kansas that it had filed an application with the DOI to have the Kansas Land taken into trust. The Quapaw titled the notice a “Notice of (Gaming) Land Acquisition Application.”
On February 6, 2012, Kansas Governor Sam Brownback received a similar notice from the BIA, informing him that the Quapaw had filed a “land into trust” application. The BIA titled its notice a “Notice of (Non-Gaming) Land Acquisition Application.”

The State submitted objections about the Quapaw’s application to the BIA on March 5, 2012. The State based its primary objection “on a concern that [the Kansas Land] would be used for expanded gaming operation[s].”
The State attached a copy of the Quapaw’s April 25, 2011 notice—titled a “Notice of (Gaming) Land Acquisition Application”—to its objections and also opined that “[i]t would seem, based on this letter’s express reference to ‘gaming,’ that expanded gaming on this parcel is indeed possible.
The BIA took the Kansas Land into trust on June 8, 2012. The BIA concluded that the Quapaw’s “request adequately describe[d] the purpose for which the land will be used.” In response to the State’s objection about the application being an “on-reservation” request, the BIA concluded that 25 C.F.R. § 151.3(a)(1) permitted the BIA to take the land into trust because it was “contiguous and adjacent to the historic reservation boundaries of the [Quapaw] Tribe.” The State did not appeal the BIA’s decision.
In early 2013, the Quapaw asked the Office of General Counsel (OGC) for the National Indian Gaming Commission (NIGC) to issue an advisory opinion addressing whether the Kansas Land satisfied the “last recognized reservation” exception to the IGRA’s prohibition against gaming on trust lands acquired after October 17, 1988. See 25 U.S.C. § 2719(a)(2)(B).
This exception provides:

(a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless-- . . .

(2) the Indian tribe has no reservation on October 17, 1988, and—

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe’s last recognized reservation within the State or States within which such Indian tribe is presently located.
• OGC sent a letter to Kansas Attorney General Derek Schmidt “Kansas AG” notifying him of the Quapaw’s request and soliciting his comments.
• Kansas AG responded on June 21, 2013 and advanced two arguments against the capacity of the Kansas Land to qualify under the IGRA’s last recognized reservation exception.
• First, because the Quapaw had placed the Kansas Land in trust for non-gaming purposes, the Kansas AG asserted that the Quapaw should be “equitably estopped from putting forth this parcel as one appropriate for gaming.”
Second, the Kansas AG contended that the Quapaw’s presence in Kansas did not satisfy the exception’s requirement that it be “presently located” within the state. The Kansas AG noted that only one case had interpreted the term “presently located,” as used in § 2719 of the IGRA.

One case interpreted the term “presently located,” as used in § 2719 of the IGRA. See Wyandotte Nation v. NIGC, 437 F. Supp. 2d 1193 (D. Kan. 2006). According to the Kansas AG, the Wyandotte Nation decision held that a tribe is “presently located” in a state where it has a population center and a “major governmental presence.”
The OGC issued an advisory opinion on November 21, 2014. In it, the OGC opined that the Quapaw’s Kansas Land was eligible for gaming under the IGRA. The OGC also opined that the Quapaw was “presently located” in Kansas under the terms of 25 C.F.R. § 292.4(b)(2), a DOI regulation implementing the IGRA.

- This regulation—enacted two years after Wyandotte Nation—provides that an Indian tribe without a reservation on October 17, 1988, satisfies the last recognized reservation exception if its land is “located in a State other than Oklahoma and within the tribe’s last recognized reservation within the State or States within which the tribe is presently located, as evidenced by the tribe’s governmental presence and tribal population.” 25 C.F.R. § 292.4(b)(2) (emphasis added).

- Kansas then filed this lawsuit on March 9, 2015.

- Defendants filled motions to Dismiss which were granted by the Court on Dec. 18, 2015.

- The State appealed to the 10th Circuit and the case was heard three weeks ago.

- Possible issues:
  - Back door for trust land to skip gaming application process?
  - “Final Agency Action”?
QUESTIONS?
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