



Latest Developments on the Shawnee Indian Mission

For previous announcements about the Shawnee Indian Mission, [click here](#).

Last week, the City of Fairway learned bills were introduced in the Committee on Federal and State Affairs for both the Kansas House of Representatives and Senate. The bills authorize the conveyance of the Shawnee Indian Mission from the State of Kansas to one of three present-day Shawnee Tribes. The three Shawnee Tribes are known today as the Shawnee (formerly Loyal Shawnee), Absentee Shawnee and Eastern Shawnee and all are successors to the historic Shawnee Tribe.

The City has shared numerous concerns about a potential conveyance of the land, both to the residents of Fairway and to several state and local officials. We continue to stand with our partners, the Kansas Historical Society (KHS) and the Shawnee Indian Mission Foundation (SIMF) in opposing a transfer of the site to any third party. The significance of the Shawnee Indian Mission State Historic Site extends beyond any single moment in history, and as such, public ownership of the site should continue.

In our last Special Announcement, dated 1-23-2023, we showed how the official documents of the Shawnee Tribe significantly differ from what Chief Barnes and his communications team are saying regarding jurisdiction and sovereign authority. We also touched on some of the complicated legal issues surrounding this topic. We would like to take this opportunity to expand on these issues.

Case law precedent. Several court cases, dating as far back as the 1860s and as recently as 2004, have ruled that the Shawnee Tribes have no property interest in what was previously part of their 1.6 million acre reservation in Kansas. The Shawnee are not aboriginal to Kansas and the Federal Government established several reservations in Kansas as a part of the Treaty of 1825. Courts repeatedly ruled that because the Shawnee Tribe was compensated when it sold the entire reservation back to the Federal Government in the treaty of 1854, they forfeited any claims to the property. In addition, the courts stated that because the entirety of the reservation was included in the transaction, it showed the government's intent to terminate the reservation status of the land.

Legal and Jurisdictional Facts. A few recently published news stories might lead readers to believe that should the Shawnee Indian Mission be conveyed to the Shawnee Tribe, state and local authorities would maintain local jurisdiction over land use. A review of case law regarding jurisdictional issues and tribal nations tells a starkly different story. As was previously stated, the City has commissioned a comprehensive review of laws and court cases to determine potential implications of conveyance. That research was then independently reviewed specifically in the context of Native American Law and Federal Law. The collaborative legal opinion is clear: **Should the State convey the land to the Tribe, state and local authorities could lose nearly all jurisdiction over the site.** Regardless of what language is included in a conveyance bill, local and state authorities likely could be limited in any state or local efforts to prevent the Shawnee Tribe (now or in the future) from changing the use of the land.

Does prohibitive language in the bill matter? We understand that supporters of the bills have communicated to legislators and the media that if a bill contains language prohibiting a potential

use of the site for a casino, it would prevent the Tribe from engaging in such endeavors. However, our legal analysis contradicts this notion. If fee title to the site were conveyed to the Tribe from the State of Kansas, it is possible the Tribe could then seek to establish both civil and criminal jurisdiction over the land by seeking to establish tribal sovereign authority under the Indian Reorganization Act (IRA). Such an action by the Tribe could call into question the validity and/or enforceability of any legislative prohibition or private restrictions on gaming placed on the site.

Furthermore, a private use restriction or restrictive covenant prohibiting casino gaming on the site would not guarantee the site could not be used for gaming. A private use restriction is an interest in real property. As such, the restriction could be extinguished by exercise of eminent domain by the Tribal government. As sovereign nations, Indian tribes may take private property without consent just compensation is paid to the owner. A restrictive covenant is an interest in real property and, similar to any other interest in real property, such as fee title, an easement or a lease, may be taken through the exercise of eminent domain. In addition, any attempt to enforce a private restrictive covenant could introduce complicated choice of law issues (federal, state or tribal law) and enforcement challenges (i.e., in general, courts strictly construe restrictive covenants in favor of the free, unrestricted use of the land). Enforcement of any such restriction could be a challenge as the applicable law (state or tribal law) and the proper venue for any lawsuit to enforce the use restriction (federal, state or tribal court) would be at issue.

Two pertinent cases in Kansas. Under the IRA, the U.S. government may acquire non-Indian land (by voluntary transfer) and convert it to Indian land by taking the land into trust for the benefit of the Tribe. In so doing, the U.S. government partially removes the land from the jurisdiction of the state, which can make certain activities, such as casino gambling, possible on such land under the Indian Gaming Regulatory Act (IGRA). A similar process was used to establish the 7th Street Casino in Kansas City, Kansas and the CrossWinds Casino in Park City, Kansas (both operated by the Wyandotte Tribe of Oklahoma). Regarding both casinos mentioned above, the State of Kansas argued that its regulations pertaining to gaming and land use should apply. However, in both circumstances, the courts ruled the state had no jurisdiction and the lands uses were under the jurisdiction of the Tribe and the Department of Interior which is the federal agency that oversees both the IRA and the IGRA.

To be clear, the City of Fairway has never publicly stated that Chief Barnes and the Shawnee Tribe intend to immediately pursue gaming on the site. However, we have communicated that if the Shawnee Tribe were to acquire the site, state and local jurisdiction could be severely limited, and in some circumstances, extinguished all together. Furthermore, we have communicated that should the Mission be conveyed to the Shawnee Tribe, the State of Kansas could be giving away a significant public asset and an important piece of its history – a history the people of Kansas have preserved for nearly 100 years through public ownership of the site. The history of this site belongs to all of us. As such, the site should be maintained as a public asset where all Kansans will have an opportunity to have their stories told.

In its current status as a state historical site, the important history of the Mission has the opportunity to be told and the site preserved. Once ownership is transferred, there are no guarantees this historic public asset will be preserved for all Kansans. There are no guarantees the Shawnee Tribe will continue to make the Mission publicly accessible nor consider its location in a primarily single family, residential community. There are no guarantees state and local authorities will have any governance on how the tribe chooses to use the land both now and in the future.

We have shared this information with several members of the Kansas Legislature and we are optimistic they will recognize what many saw nearly 100 years ago when the state acquired the site...its whole story impacts far more than just one population. All of Shawnee Indian Mission's stories must be told and preserved for generations to come.

Stay tuned for more information to come.

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