NEVADA GAMING LAWYER

A.G. Burnett
Chairman, Nevada
Gaming Control Board

SEPTEMBER 2015
Official Legal Publication of the
State Bar of Nevada
GAMING LAW SECTION

Strength in Numbers

Saluting Chairman Burnett's Achievements!

More than 140 member companies from 21 countries
Nearly $14 billion in direct revenue • 32,900 employees
14 publicly traded companies • ONE POWERFUL VOICE

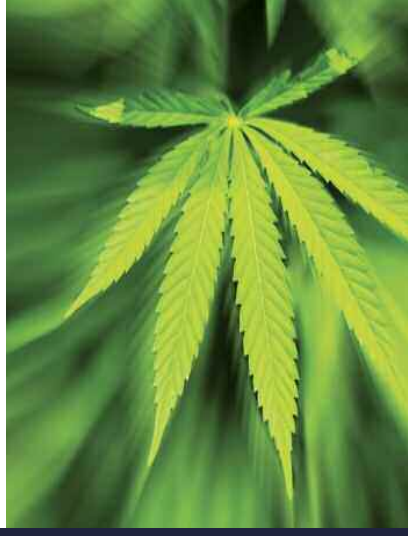
Address worldwide industry regulatory and legislative issues • Discounts on major trade show booth space
Promote responsible gaming initiatives • Updates from influential global industry leaders
Advertising discounts in leading industry publications • Educational partnerships benefiting students and members
Visibility in AGEM's print advertisements • Exposure for publicly traded companies in the monthly AGEM Index

Join AGEM today and work together with the world's leading gaming suppliers.

Marcus Prater, Executive Director +1 702 812 6932 • agem.org@cox.net
Tracy Cohen, Director of Europe + 44 (0) 7970 833 543 • tracy.cohen@agem-europe.com
Connie Jones, Director of Responsible Gaming +1 702 528 4374 • connie.jones@agem.org

AGEM.org





NEVADA GAMING LAWYER

CONTENTS

Official Legal Publication of the
State Bar of Nevada
GAMING LAW SECTION

On the cover: A.G. Burnett,
Chairman, Nevada Gaming Control Board

State Bar of Nevada Gaming Law Section Purpose

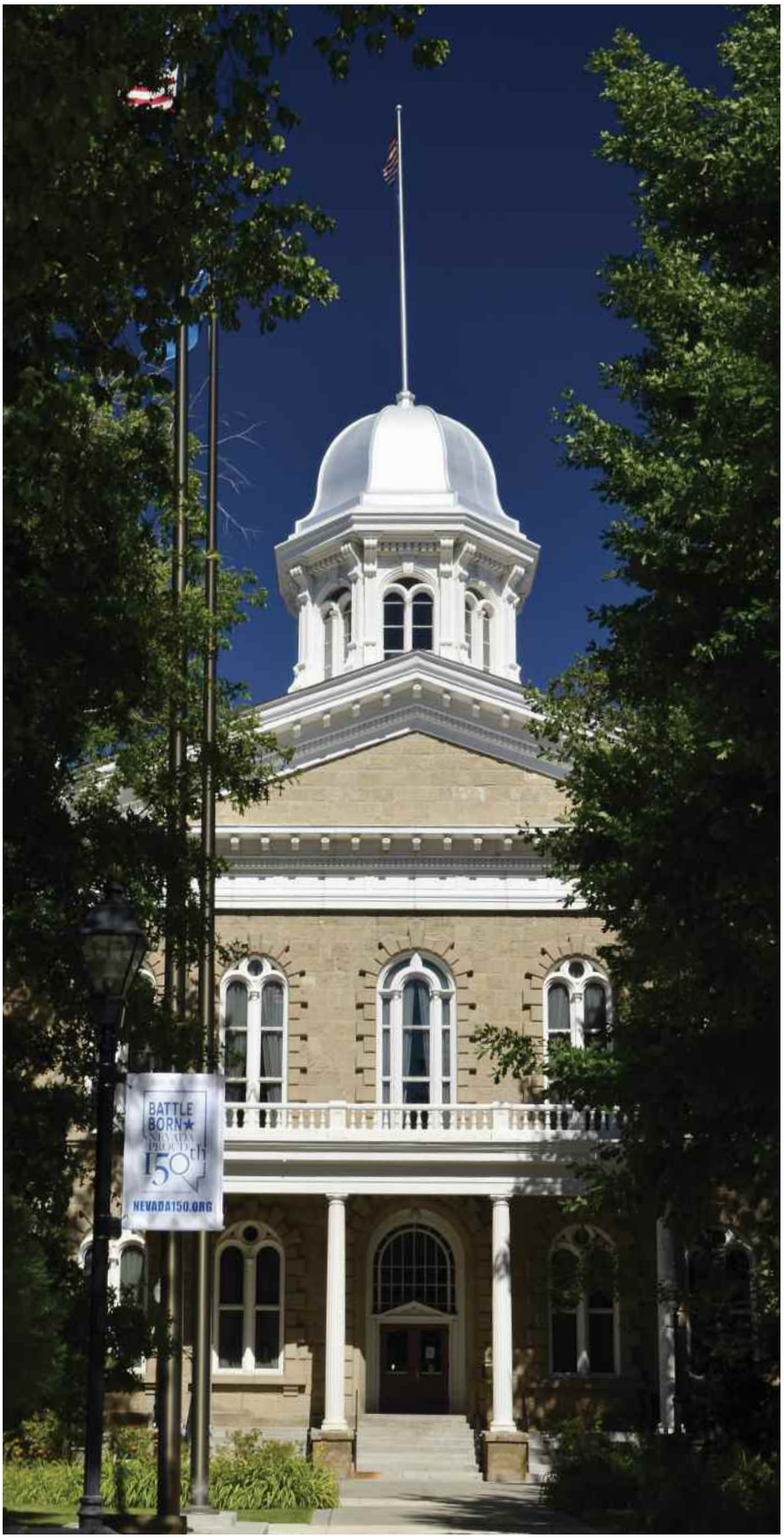
First, to enhance the role and skills of lawyers engaged in the practice of gaming law through study, collection, development and dissemination of material on subjects of interest to the gaming practitioner. Secondly, members assist, when called upon by the Board of Governors of the State Bar of Nevada, in formulating, administering and implementing programs, forums, and other activities for the education of members of the State Bar of Nevada in matters pertaining to gaming laws and regulation. Thirdly, members act upon all matters germane to its purposes as so described or referred to it by the Board of Governors.

For more information on the Gaming Law Section, please visit:
http://www.nvbar.org/sections/Sections_Gaming_Law.htm

Gaming Law Section, State Bar of Nevada
Attn: Lori Wolk, Programs & Services Manager
3100 W. Charleston Blvd., Las Vegas, NV 89102
Phone: 800.254.2797 loriw@nvbar.org

FOREWORD

By A.G. Burnett, Chairman, Nevada Gaming Control Board



Welcome to the 2015 edition of *Nevada Gaming Lawyer* magazine. I would like to commend the ongoing work of the State Bar of Nevada's Gaming Law Section for its continued efforts in bringing the gaming bar this valuable resource. I keep every issue of the *Nevada Gaming Lawyer* after reading it thoroughly. I find that I often go back to it to consult what the authors of particular articles had to say about specific subjects. The strength of this magazine is that each issue contains informative articles written by the best "gaming law" minds in the world.

This year's issue contains such articles written by such authors. You will find a valuable legislative update provided by State Senator Greg Brower. Much of the action this year was a bit subdued as far as gaming goes—there were multiple gaming related bills, but none had that controversial ring to them as in sessions' past—and he will let you know which ones merit your attention. Mark Lerner and Lars Perry are two excellent attorneys who have specialized in the area of gaming law related to manufacturers of gaming products. They will update you on matters related to that segment of the gaming industry.

Board Member Terry Johnson has prepared an article on the legislators' and regulators' take on the newly revised Live Entertainment Tax (LET). His article explores recent efforts to streamline the LET and why they were necessary. Member Johnson was tasked with working with the legislators on behalf of the Board as legislation was considered and eventually adopted to simplify the LET.

Gaming Commission Chairman Tony Alamo, Jr. will also detail the hot topics before the Commission. Chairman Alamo has years of experience watching gaming attorneys work, and now, as the Commission Chair, he brings a unique perspective as both a regulator and a physician.

We will also see a piece written by Chief Deputy Attorney General J. Brin Gibson and Senior Deputy Attorney General Michael Somps introducing you to the new Gaming Division of the Office of the Nevada Attorney General. Brin has recently taken the helm at the Attorney General's Gaming Division under new Attorney General Adam Laxalt. Brin and I have met many times and I am excited to welcome him as the Chief Deputy representing the Gaming Control Board; he has taken on the role with vibrant optimism and is doing a great job. Attorney General Laxalt takes a historic look back at the Corporate Gaming Act of 1969 that was signed into law by his grandfather, Governor Paul Laxalt.

Former Board Member Scott Scherer has spearheaded the Gaming Law Section's development of a pro bono program for indigent individuals seeking to appeal objections to their gaming employee registrations. Scott brings a broad range of experience having served two terms in the Nevada State Assembly, as well as worked as both General Counsel and Chief of Staff to the late Governor Guinn not to mention his years of experience as a gaming executive and now private practitioner. He has worked closely with Board Members Shawn Reid and Terry Johnson to bring this program to fruition and he provides you with the latest information. In the past, gaming employees were unaware that they could secure pro bono assistance in their appeals under NRS 463.335 and Regulation 5.109. At the suggestion of the Gaming Law Section, the Board made some simple changes to the objection letters that registrants receive regarding their ability to obtain free legal assistance. In turn, we are now seeing members of the gaming bar representing persons who wish to appeal the denial of their gaming employee registrations. You will have the benefit of reading the details on how this came about and what it means for you as a gaming practitioner should you wish to add some gaming-related pro bono work to your schedule.

Of special note is a piece that Geoff Freeman has authored regarding that the time is now to shut down illegal gambling across the country and for the gaming industry to highlight the benefits of a

BY THE NUMBERS . . .

15. The total number of individuals who have been appointed since 1959 to serve as Chairman of the Nevada Gaming Commission (the Commission was created in 1959 with the passage of the Gaming Control Act).

16. The total number of individuals who have been appointed since 1955 to serve as Chairman of the Nevada Gaming Control Board (in 1955 the Legislature created the State Gaming Control Board as an entity within the Nevada Tax Commission).

208. The total membership of the Gaming Law Section for the period ended July 31, 2015, including 178 members in Clark County, 18 in Washoe County, 3 in Carson City and 9 from out-of-state. Nine members work for government agencies, 88 are employed in-house and 111 are in private practice.

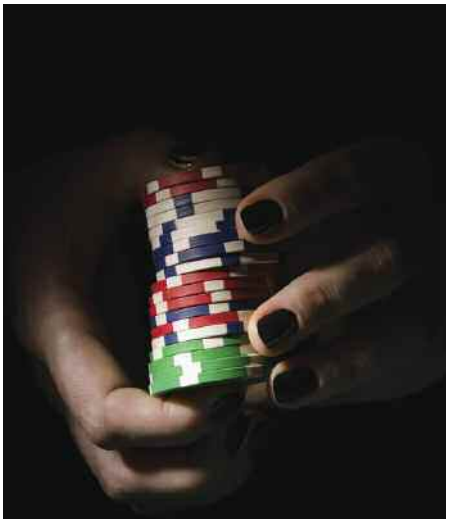
1985. The Board of Governors of the State Bar of Nevada approved the formation of the Gaming Law Section on February 22nd and appointed the following members to serve on the initial ten-member Executive Committee: A.J. "Bud" Hicks, Chairman; Grant Sawyer, Vice Chairman; Robert D. Faiss; Bruce Aguilera; Raymond Pike; Samuel McMullen; David Russell; Frank Schreck; Mike Sloan; and Gregg Nasky. Julian Sourwine served as the ex-officio member from the Board of Governors. The Board of Governors authorized annual section dues of $25.00 per member.

CONT. ON PAGE 4

2000. On May 10th, after having been inactive since 1994, the Board of Governors revived the Gaming Law Section by appointing the following members serve on the ten-member Executive Committee: Jeffrey R. Rodefer, Chairman; Mark A. Clayton, Vice Chairman; Michael G. Alonso; A.G. Burnett; Anthony N. Cabot; Lou Dorn; Michael F. Dreitzer; Keith E. Kizer; Lisa S. Miller-Roche; and Kimberly Maxson-Rushton. The Board of Governors also authorized a "welcome back" one-hour CLE lunch that would be free to all who were members of the Gaming Law Section in 1999 and 2000. On August 4th, then United States Senator Richard Bryan gave a "Capitol Hill Update" for the keynote address that drew an overflow crowd to the Paris Las Vegas Hotel Casino. The annual section dues of $25.00 per member remained (and have not changed in the intervening 15 years).

2,452. As of June 30, 2015, the total number of gaming licenses issued in Nevada (a 0.2% decrease over the same period in 2014), including 458 nonrestricted (up 1.6% over 2014) and 1,994 restricted (down 0.6% from 2014).

6,689. As of June 30, 2015, the total number of games in Nevada (increase of 1.67% from 2014), including, 869 poker tables and two interactive games.



legal, regulated gaming industry. Geoff, as all of you know, is now leading the American Gaming Association as it attempts to educate our federal representatives on Capitol Hill about gaming around the country. One of Mr. Freeman's biggest challenges, I am sure, involves educational efforts that show that the gaming industry is not the hotbed of potential money laundering activity that some may think it is. In fact, Mr. Freeman is pushing the notion that gaming in the United States is one of, if not the most, heavily regulated industries in the country.

That goes directly to a topic that will be addressed by Jeff Setness, that of Anti-Money Laundering Compliance, or "AML," and where the federal authorities are focusing their current enforcement efforts. This topic has come to the forefront in the last several years. FinCEN has recently issued guidance regarding AML procedures, and gaming companies have been extremely active in understanding and abiding by that guidance.

Sean Higgins delves into the ongoing discussion about restricted gaming and, in particular, provides an update on tavern gaming. Restricted gaming licensing requirements for taverns has undergone changes in the last several years, and Mr. Higgins will let you know what has occurred recently, not just at the state level but at the local levels as well.

The Boyd School of Law has created an LL.M program that could be an educational game changer in the world of gaming law. The first ever Masters of Gaming Law will be described in this issue, and we will see how Boyd School of Law intends to make UNLV the intellectual world capital of gaming law.

You have in your hands a magazine that contains a plethora of information not just for the gaming law practitioner, but for your clients. Those who have contributed their talents to this month's issue have given you something you can hold on to and consult as time goes on. I am appreciative of everyone who has written for this month's magazine and I look forward to reading about their thoughts and experience. The Gaming Law Section continues to be an invaluable resource and I look forward to many issues of the *Nevada Gaming Lawyer* magazine to come.

A.G. Burnett is the Chairman of the Nevada Gaming Control Board. He was appointed to this role by Governor Brian Sandoval in October 2012, and then reappointed to serve another term in January 2015. Prior to serving as Chairman, he was a Member of the GCB, appointed by Governor Sandoval in January 2011. Before being appointed to the Board, Chairman Burnett served as Deputy Chief of the Corporate Securities Division for the GCB. In that position, he handled legal matters that came before the Division and oversaw regulatory and investigative activities. He worked extensively with emerging gaming jurisdictions in their efforts to regulate gaming, and oversaw the compliance activities of publicly-traded Nevada licensees. Prior to his time at the Board, Chairman Burnett was a Senior Deputy Attorney General in the Gaming Division of the Nevada Attorney General's Office, representing the Nevada Gaming Control Board, the Nevada Gaming Commission, and the Nevada Commission on Sports. From 2012 to 2015, he served as a Trustee and the Treasurer for the International Association of Gaming Regulators. He also sits on the William S. Boyd School of Law Gaming Law Advisory Board. Chairman Burnett also served on the Executive Committee of the State Bar of Nevada's Gaming Law Section from 2000-2006, and served on the Bar's Functional Equivalency Committee from 2001-2005. He has spoken and testified extensively on the issues of gaming regulation and regulatory compliance in numerous seminars and continuing legal education classes, including guest lectures at UNLV and UNLV's Boyd School of Law.

44,225. Per the 2014 Gaming Abstract, the total number of casino department employees in the state (a 4.4% increase over 2013).

174,548. As of June 30, 2015, the total number of slot machines in Nevada (down 0.87%), including 155,681 in nonrestricted locations (down 0.97%) and 18,867 in restricted gaming establishments (down 0.04%).

427,873. Per the Reno Sparks Convention and Visitor Authority, the total visitor volume for Reno, Sparks and Lake Tahoe areas year to date for May 2015 (a 3.4% decrease over the same period in 2014).

17,456,127. Per the Las Vegas Convention and Visitor Authority, the total visitor volume in Las Vegas year to date for May 2015 (a 1.2% increase over the same period in 2014).

$130,846,679.
For Fiscal Year 2015, total live entertainment tax revenues generated from gaming facilities (up 2.0% over the same period in 2014).

$698,698,798.
For Fiscal Year 2015, the total amount paid in gross gaming revenue fees (down 5.97% from 2014).

Statistical information for gaming licenses, games and slot machines compiled by Michael Lawton, Senior Research Analyst for the Nevada Gaming Control Board.

Available for Purchase December 2015 (Pre-orders coming soon)

NEVADA GAMING LAW

Practice and Procedure Manual

Presented by the State Bar of Nevada - Gaming Law Section

Table of Contents

Authors

Michael J. Bonner, Anthony N. Cabot, Mark A. Clayton, Louis Csoka, Lou Dorn, P. Gregory Giordano, Terry Johnson, Chad Lengsavath, Glenn J. Light, Kade D. Miller, Dennis Neilander, Vernon Nelson, Bob L. Olson, Lars Perry, Jennifer Roberts, Jeffrey R. Rodefer, Karl F. Rutledge, Scott Scherer, Carol Wetzel and Pat Wynn

The Year in Review: GLS UPDATE

By Jeff Rodefer, Chairman, Gaming Law Section

Welcome to the 2015 edition of the *Nevada Gaming Lawyer*. The Gaming Law Section's Executive Committee said goodbye two of its longtime members this year. In May, Dennis Gallagher and Lars Perry stepped down. Dennis has served since 2006 and Lars since 2009. Both contributed significantly to the GLS through the golf tournament, the *Gaming Law Conference*, and this annual publication, as well as being speakers, authors, and event sponsors. They leave big shoes to be filled by A.C. Ansani, Senior Director and Assistant General Counsel with Scientific Games Corporation, and Michael R. Brunet, Vice President and General Counsel for the Palms Casino Resort. A.C. and Michael were appointed by the Board of Governors in July to serve three-year terms.

On June 18th, the GLS held the "2015 BSA Conference" at Paris Las Vegas Hotel Casino with sponsorship from Thomson Reuters, UNLV's International Gaming Institute, the American Gaming Association (AGA) in Washington D.C., as well as FinScan, Casino Essentials, Ernst & Young, ACAMS (Association of Certified Anti-Money Laundering Specialists), and Sematic Research. The conference drew 413 registrations….the second most attended CLE in the State Bar's history (the "2014 Bank Secrecy Act Conference" drew 440). The attendees hailed from 25 states and tribal jurisdictions, including one foreign country. Stephanie Brooker, Director of the Enforcement Division for the U.S Department of Treasury's Financial Crimes

- Jonathan Solomon, Senior VP & Global Chief Compliance Officer, Las Vegas Corporation
- Gregory Lisa, Chief - Money Services Businesses & Casinos Section, Enforcement Division, FinCEN
- Paul Camacho, CPA, VP of AML Compliance, Station Casinos, LLC

DID YOU KNOW … ?

Did you know that these celebrities have been licensed, found suitable, or at least started the Nevada gaming investigation process?

Andre Agassi

Jimmy Buffett

Wayne Newton

Donald Trump
(for the Riviera, not the non-gaming Trump Hotel)

Frank Sinatra

Grace Hayes
son Peter Lind Hayes, and daughter-in-law Mary Healy (all film actors)

Debbie Reynolds

Rupert Everett
(of the TV show Survivor for a game approval)

Max Baer, Jr., sought to open a casino in Carson City.

Johnny Carson almost made it, but lost in a bid against Wayne Newton and his partner.

If you know of others who are not on the list, please contact Jennifer Roberts at jroberts@duanemorris.com for inclusion the next year's Nevada Gaming Lawyer."

Special thank you to the following contributors: Marie Bell, Executive Secretary, Nevada Gaming Control Board and Nevada Gaming Commission; Eric Nelson, Sunshine Litigation Services; and Jeffrey A. Silver, Of Counsel, Dickinson Wright, PLLC.


FinScan Networking Break

Enforcement Network (FinCEN) in Washington, D.C., gave the keynote opening address. M. Kendall Day, Chief of the Asset Forfeiture & Money Laundering Section of the U.S. Department of Justice in Washington, D.C., was the keynote lunch speaker. The panels included discussions regarding "Wish List of BSA Changes to Benefit the Gaming Industry and Government," "Gaming Industry Best Practices," "Know Your Customer Expectations and Vetting High Rollers," "What to Expect in a BSA Audit: How to Prepare?" and "Hot Topics in IRS Examinations." The conference also provided attendees with the option of also attending the "BSA 101 Breakfast" where Kevin Rosenberg, General Counsel with Goldberg, Lowenstein & Weatherwax, LLP in Los Angeles (former U.S. Attorney that prosecuted the Las Vegas Sands case) and Jeff Setness, Shareholder with Fabian & Clendenin, P.C. in Las Vegas (also a former U.S. Attorney) gave a 90-minute introduction to the Bank Secrecy Act. The success of the event is due in large part to Jim Dowling of the Dowling Advisory Group in Pasadena, California; Kevin Rosenberg; Stephanie Hirsch of the State Bar of Nevada's CLE Department; Elizabeth Cronan with the AGA; and Dr. Bo Bernhard and Nakia Jackson-Hale of UNLV's International Gaming Institute. The "2016 BSA Conference" is already in the planning stages.


Jason Carmen, IRS, BSA Casino Group Manager

The pro bono program started by Executive Committee member Scott Scherer to assist applicants appealing objections to their gaming employee registrations continues to grow. Nevada Gaming Control Board Member Shawn Reid has ensured that the Board's objection letters provide applicants with information about the GLS pro bono service. For information about the program, please see Scott Scherer's update in this issue.

With editing and formatting assistance from Mark Lerner, the GLS was able to submit the long-awaited draft of the "Nevada Gaming Law Practice & Procedure Manual" to the State Bar in March to begin the publishing process. This first of its kind reference book, being coordinated by Vice Chairman Greg Giordano, covers 18 chapters written by various gaming lawyers and regulators. The *Manual* will include an overview and "how to" information in the areas of licensing, corporations and other business entities, financings and restructurings, transfers of interest, race books and sports pools, compliance reporting, gaming debt collection and patron disputes, regulation of third parties, disciplinary actions, accounting and audits, gaming taxes and fees, lotteries and promotions, internet and interactive gaming systems, publicly traded companies and private equity, gaming employees, gaming devices and related systems, cashless wagering and associated equipment, and the List of Excluded Persons and doing business with denied applicants. It is expected that the State Bar will start accepting pre-orders shortly. The *Manual* will be published in the fourth quarter of 2015 in both hardcopy and electronic format.


Elanie Wynn, President, Nevada State Board of Education and Punam Mathur

On November 7, 2014, the "2014 Gaming Law Conference" was held at Red Rock Casino Resort Spa with LexisNexis sponsoring the lunch with keynote speaker, Elaine Wynn, President of the Nevada State Board of Education and then director of Wynn Resorts. The


Christina M. Mills, Senior Counsel, Aruze Gaming America, Inc.; Katie Fellows, VP & General Counsel, Hard Rock Hotel & Casino; Katie Lever, General Counsel, Senior VP of Legal and Compliance, Bally Technologies; Lora K. Picini, Associate Chief Counsel-Regional Operations, Caesars Entertainment, Inc.; and Phyllis Gilland, General Counsel, American Casino & Entertainment Properties

Left to Right:
- Tick Segerblom, Nevada State Senator (D-District 13)
- Greg Brower, Nevada State Senator (R-District 15)
- William C. Horne, Nevada State Assembly (D-District 34)
- Mark A. Lipparelli, Nevada State Senator (R-District 6)
- Peter C. Bernhard, Of Counsel, Kaempfer Crowell

Left to Right: A.G. Burnett, Chairman, Nevada Gaming Control Board
Dr. Tony Alamo, Chairman, Nevada Gaming Commission

conference drew 153 attendees and featured panels concerning "Women's General Counsel Roundtable," Problems Gambling and the Law: Implications for Clients, Companies and Others," "AB360 Interim Legislative Committee," "Regulators Roundtable," and two-hours of ethics with Stuart Tiecher, Esq., the "CLE Performer," presenting "Technethics: The Ethics of Social Media."

The "2015 Gaming Law Conference" will be held on Friday, November 6th at Red Rock Casino Resort. In its 14th year, the conference promises to again bring together leading experts to discuss many of the topical issues facing the industry and the practice of gaming law. The panels will include the popular "Regulators Roundtable" with Dr. Tony Alamo, Chairman of the Nevada Gaming Commission, and A.G. Burnett, Chairman of the Nevada Gaming Control Board; an update on the 2015 Legislative Session with State Senators Greg Brower (R-15, Washoe County) and Mark Lipparelli (R-6, Clark County); as well as Gaming Enforcement Issues with Board Member Shawn Reid and Karl Bennison, Chief of the Board's Enforcement Division; and Information Risk Management: Providing Effective Counsel to Your Company. The seminar will again feature Stuart Tiecher, Esq., presenting two hours of ethics on "The Fear Factor: How Good Lawyers Get Into Bad Trouble." Online registrations are available for this event at http://nvbar.org/cle/liveseminars. For more information about this year's conference, please see the full-page ad inside the back cover of this publication.

This past year, the GLS proudly co-sponsored two important events. On September 28, 2014, the International Association of Gaming Advisors (IAGA)/G2E held an opening night reception at The Palazzo in the Lavo restaurant to honor longtime gaming lawyers (and members of the GLS) Patricia Becker and the late Robert D. Faiss for the induction into the Gaming Hall of Fame. In June 2015, the GLS helped sponsor the *Power of Love* Gala that honored former Nevada Gaming Commission Chairman, Peter C. Bernhard, with the "Keep Memory Alive Special Community Leader Award."

Also, in June, the GLS Executive Committee awarded the first "Gaming Law Section Scholarship" to Jordan Scot Flynn Hollander. Jordan is a member of the inaugural class of the LL.M. program in Gaming Law and Regulation at the William S. Boyd School of Law at UNLV. The $5,000 scholarship will become, as funds permit, an annual scholarship awarded by the Executive Committee to a student it selects from the new LL.M. program.

On behalf of the Executive Committee, we hope that you enjoy this year's issue of the *Nevada Gaming Lawyer*.

Jeff Rodefer is the General Counsel and Chief Compliance Officer for Golden Entertainment, Inc. (NASDAQ: GDEN). He has been the Chairman of the Gaming Law Section since 2000. For more information about the Gaming Law Section, please visit http://www.nvbar.org/content/gaming-law-section.

THE 2015 SESSION OF THE NEVADA LEGISLATURE:

A Step Forward for Gaming

By Greg Brower

Introduction

The 2015 regular session of the Nevada State Legislature was remarkable for many reasons, including the sheer volume of legislation considered and passed, as well as the relatively fast pace with which these bills were processed. The session was also notable for the groundbreaking education policy reforms that were passed and, not without some controversy, the new tax revenue that was approved to fund necessary government functions including public education. When it came to gaming legislation, however, controversy was virtually non-existent as compared to past sessions that saw battles pitting one segment of the gaming industry against another. This article will provide a brief overview of several bills that will have an impact on the gaming industry in our state.[1]

GAMING BILLS THAT BECAME LAW

SB 9 - The New Frontier

At the urging of the Association of Gaming Equipment Manufacturers ("AGEM") and with the blessing of the Nevada gaming regulators, SB 9 was introduced to address what appears to be an increasing demand for skill-based casino games. The bill essentially requires the Nevada Gaming Commission ("NGC" or "Commission"), with the advice and assistance of the Nevada Gaming Control Board ("GCB" or "Board"), to adopt regulations that encourage manufacturers to develop and deploy gaming devices, associated equipment, and various gaming support systems that incorporate an element of player skill.

The idea of skill-based gaming was the impetus behind a legislatively-sponsored committee that was tasked with conducting an interim study concerning the impact of technology upon gaming. That committee met throughout 2014 and ultimately recommended the concept that became SB 9. It is generally thought that this new concept will present an important opportunity for the gaming industry to make slots more closely resemble the video games that millennials have grown up playing. This new idea is also likely to include the concept of variable payback percentages that could allow skilled players to increase a game's payback if the player is especially skilled. The Board has already commenced the rule-making process and games that incorporate this new technology are likely to make it to the casino floor by the beginning of 2016.

SB 443 and SB 445 - Increasing the Handle and Managing the Risk

Together, these bills changed Nevada gaming law in a way that presents significant new opportunities for race and sports books in our state. SB 443 will allow Nevada business entities to

be formed for the purpose of betting at legal sports books. The new law will essentially allow for legal sports betting investment funds that are registered and managed in Nevada. The registration will be with the Nevada Secretary of State's office and the business entity will be required to maintain an account with a bank or other financial institution in Nevada. Anyone entitled to profits from the entity's wagers must be at least 21 years of age and must provide certain information to ensure accurate identity and age verification. Of course, sports books will not be required to accept such bets and each will have to evaluate its own appetite for this new type of risk. SB 445 requires the Commission to adopt regulations relating to global risk management of sports wagering among various jurisdictions where sports betting is legal. The new law essentially clarifies that licensed bookmakers in Nevada can manage sports books in other legal jurisdictions around the world subject to regulations that will address minimum internal and operational control standards.

These bills are intended to have the effect of both preserving Nevada's global position when it comes to legal sports betting and sports betting management, and increasing the "handle" or amount wagered in our state. Similar concepts already exist under the laws of other jurisdictions around the world, and the bills' proponents clearly intended to allow Nevada to be the most robust, competitive, and transparent legal sports betting market in the world.

SB 38 - Associated Equipment and Charitable Lotteries

This bill was introduced at the request of the GCB and was intended to simply revise the definitions of the terms "gaming employee" and "manufacture" for the purposes of the statutory provisions governing the licensing of manufacturers of associated equipment. The final language of the bill removed the licensing requirement for persons who provide certain intellectual property or information via a database or customer list. The bill also authorized the Commission to provide by regulation governing associated equipment, including prescribing the requirements for registration and the fees for the application for and issuance and renewal of a registration to manufacture and distribute associated equipment.

Before final passage, SB 38 was amended to incorporate a separate concept suggested by a group of students from a gaming law course at Boyd Law School. The Boyd students' amendment was intended to clarify that certain alumni organizations and state or local bar organizations are authorized under NRS 462 to operate charitable lotteries and to make certain technical changes governing the same.

SB 40 - Illegal Bookmaking

This was another GCB "clean-up" bill and was intended to clarify that it is unlawful for an unlicensed person to accept or facilitate a wager on a race or sporting event, or to receive any compensation for accepting or facilitating such a wager. In other words, SB 40 was intended to codify the crime of "illegal bookmaking." Prior to the enactment of this bill, bookmaking activities conducted without a license were illegal under NRS 463.160. However, no specific illegal bookmaking statute was on the books. Testimony suggested that this new law would assist state authorities in prosecuting illegal bookmaking operations whether sophisticated offshore operations or local street bookies.

SB 124 - Transfer of a Gaming License Under Special Circumstances

Prompted by the continuing expansion of the Creech Air Force Base just north of Las Vegas, this bill was intended to allow for the transfer of a gaming license under certain circumstances not contemplated by then existing law. While NRS 463.302 had long allowed the Board to allow a licensee to move the location of its establishment and, in connection therewith, transfer its restricted or

nonrestricted license to the new location, the expansion of a military installation by the federal government onto the location of the establishment was not one such circumstance. SB 124 added this additional circumstance to the list of those allowing the Board to approve a transfer.

SB 409 - Credit Reporting Transparency

This bill changed the state law that prohibited a credit reporting agency from disclosing in the credit report of a person certain information related to a bankruptcy filing that is more than ten years old and certain other negative credit information that is more than seven years old. With the enactment of SB 409, state law now includes an exception for a credit report prepared for a gaming licensee in connection with the employment of an individual whose salary will be greater than $75,000. The bill also removed the statutory prohibition against disclosing a record of conviction of a crime which is more than seven years old, thus removing any limitation of time for such disclosures under state law.

SB 266 - Live Entertainment Tax Fix

After many attempts over several sessions, a Live Entertainment Tax ("LET") reform bill was finally passed. In what turned about to be an almost universally agreed to approach, SB 266 clarifies what is and what is not "live entertainment" and will simplify the tax for both payors and collectors. Basically, the bill creates a nine percent tax on tickets to events featuring live entertainment in venues with more than 200 seats. Of course, there are exceptions for certain events sponsored by non-profits, high schools, universities, etc., but the confusion over what constitutes "live entertainment" that was so vexing to casinos and tax collectors alike should largely disappear because of this bill.

AB 40 - GCB: Open Meeting Law and New Name

At the request of the GCB, this bill clarified that the provisions of the Nevada Open Meeting Law do not apply to any action or proceeding by the Board that is related to investigations of applicants or licensees. AB 40 also officially changed the name of the State Gaming Control Board to the "Nevada Gaming Control Board."

GAMING BILLS THAT DIDN'T QUITE MAKE IT TO THE GOVERNOR

SB 450 - The Strip vs. DirecTV

In light of a then on-going dispute between many of the Strip's sports books and DirecTV which provides the popular "Sunday Ticket" NFL broadcast, some sports book operators suggested the creation a "Sports Pool Telecast Access Committee," which would have had the exclusive right to

negotiate with any cable operator or provider of direct broadcast satellite service an agreement for the telecast of a package of sporting events for which sports books in Nevada accept wagers. The concept was introduced in the form of SB 450 amidst negotiations between the principal antagonists. Ultimately, a deal was reached between the negotiating parties and the bill died without a hearing.

AB 414 - Interactive Gaming or Internet Poker?

In the context of the ongoing national debate about internet gaming, AB 414 was introduced and would have codified in statute

that interstate agreements entered into by Nevada with other states would allow for patrons in the signatory states to participate in Internet poker only. The bill passed the Assembly, but with opposition from most of the gaming industry and little interest on the part of Nevada's gaming regulators, this bill died in the Senate without a hearing.

OTHER BILLS OF INTEREST

SB 160 - Trespasser Liability for Property Owners

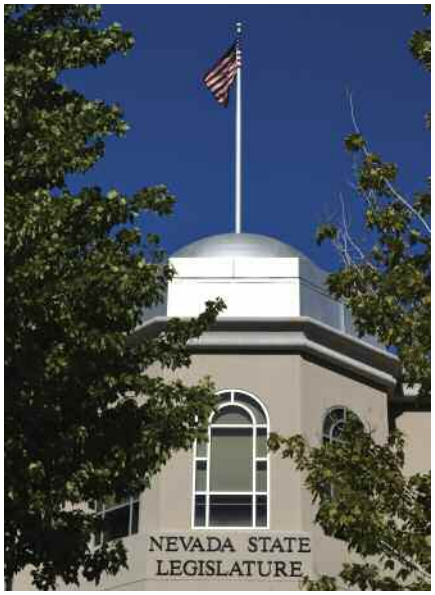
This bill essentially codified the common law approach that limits the duty owed by owners/occupiers of property to trespassers who are injured on the premises.

SB 193 - Employee Overtime

After many unsuccessful attempts in past sessions, this bill to remove the existing provisions under Nevada law that require payment of overtime for hours worked in excess of eight hours in any workday, while retaining the provisions that require payment of overtime for hours worked in excess of 40 hours in any work week, was passed and signed by the Governor.

SB 329 - Partnership by Estoppel

Under existing law, a person or company who is not an actual partner of a partnership may nevertheless be held liable as a partner under circumstances as a result of the words or conduct of the person, including certain words used in the marketing or advertising context. This bill clarifies that this exception does not apply to a person or company who announces an association for the sole purpose of a business development so long as a the business development is undertaken by one or more corporations or limited-liability companies.



Conclusion

All in all, the consensus seems to be that it was a pretty good session for gaming. A couple of major concepts were put into law. A few other minor "clean up" bills were passed. One big problem was fixed. An unnecessary fight was avoided. And, a potential bullet was dodged. In addition, several other bills that will generally be good for all businesses, including those in the gaming industry, were also enacted. Overall, gaming more or less came together and focused its collective energy and influence on advocating for the adoption of policies aimed at preserving and enhancing our state's most important industry.

Greg Brower represents Washoe County in the Nevada State Senate where he serves as Chair of the Senate Judiciary Committee, which has jurisdiction over gaming law. He is also a partner in the law firm of Snell & Wilmer, practicing primarily in the areas of regulatory and administrative law and civil and white collar criminal litigation. He is a member of the board of trustees of the International Association of Gaming Advisors. He also serves an adjunct professor at UNLV's Boyd Law School and is a member of its Gaming Law Advisory Board. He received his undergraduate degree from the University of California, Berkeley in 1986 and served as an officer in the U.S. Navy before receiving his law degree from the George Washington University Law School in 1992.

[1] Unless otherwise noted, each of the bills discussed in this article became effective upon approval by the Governor.

Hot Topics in Gaming: a **Chairman's** and **Physician's Perspective**

By Tony Alamo, M.D., Chairman, Nevada Gaming Commission

It is both an honor and ironic that I have been given the privilege of writing in this law periodical. It is rare for a physician to be asked and not be addressing legal malpractice issues. At first glance one might wonder how a physician comes to be the Chairman of the Nevada Gaming Commission, thus making it the second non-lawyer ever in the history of Nevada (and the only one in the last 50 years) to serve as Chairman. To answer that you must know my background. I will also address some of the "hot ticket" items which I believe will have the most impact now and in the coming few years.

CHAIRMAN'S HISTORY:

I grew up in the gaming industry to a father who worked in the industry for 45 years. He started working in the cage and moved up through the industry to finish his career as a senior executive to the third largest gaming company at that time (2005): Mandalay Resorts Group. I recall all the issues, problems and adjustments that he would go through as the industry changed and matured to what it is today. As a young man, I would wear a hard hat as my father showed me the hotel casinos that he was building from foundation to finished product. He kept me very close and involved in his career.

My Nevada regulatory experience started with an appointment to the Nevada Athletic Commission for seven years and finishing as its Chairman. We were responsible for the regulatory oversight and the health and safety of the fighters.

My six years as a gaming commissioner was an invaluable tenure prior to becoming Chair. During that time, Las Vegas suffered its worst economic downturn in its history. I have been part of 17 different non-restricted properties bankruptcies, reorganizations, debt to equity swaps, and other types of financial adjustments and permutations that where done in an effort to right an economically troubled industry. Those actions needed regulatory oversight and approval and it has been a privilege to help the industry through those times.

MEDICAL DEGREE FINDING ITS WAY INTO GAMING REGULATORY OVERSIGHT, THE MARIJUANA INDUSTRY:

The recent state legalization of medical marijuana put me front and center again; this time as a physician and regulator. Let me start by saying I believe there is a need for medical marijuana. The need is small but the want is large. Unfortunately, I am disappointed in the way that medical marijuana has propagated through the country, including Nevada. It did so without the cooperation and supervision of our medical boards and current medical standard of care. The FDA and traditional tertiary care research and medical schools have not been the guiding force in the propagation of its current use. Medical marijuana needs to go down the same path of all our other great medications that have been discovered, used, changed and/or removed from our medicines we use today to treat disease and illness.

Now, let's bookmark my physician hat and put my regulator hat on: bottom line: marijuana is illegal in the eyes of the federal government!

It is a schedule 1 drug that the federal government has stated has addictive potential and made it illegal to possess, distribute, manufacture, cultivate and prescribe.

To maintain the integrity of gaming in the state we cannot allow our gaming licensees to participate in a federal illegal action. It stands to bring federal scrutiny into our state over an industry that we have proven our knowledge and regulatory experience is above reproach.

We are not saying that people cannot participate in the marijuana industry or that they cannot participate in the gaming industry; they just can't do both. They have to make a business decision and pick one or the other.

Unless the federal government changes their direction, the Board and Commission has made that policy clear.

STATUS AND FUTURE OF ONLINE GAMING:

The legislature, Board and Commission responded to the industries wishes of moving forward with online gaming. The federal government was moving in that direction, looking to remove the interstate ban and thus allow all states to participate. The Board and Commission with Herculean effort and the help of the industry, our Technology Division and many others, put in place, tested platforms, found licensees suitable and made ourselves prepared for the federal government to turn the key. It never happened. Three companies went forward with operational platforms and nearly 12 others have stopped the process and are now in the waiver provision status (NGC Regulation 4.080).

Things are so pessimistic that one of the three internet operational companies closed their doors (Ultimate Gaming), leaving only 888 and Southpoint to continue operation for now.

NEW FRONTIER SKILL-BASED (HYBRID) GAMES:

There appears to be an appetite in the industry for skill-based gaming. I am 51 years old and my generation and the one behind me have grown up with skill-based games from little sophistication (Pong) to what we see now with Xbox, PlayStation, and Wii, just to name a few. If you want to attract these people to come into the casino, the games need to relate to what they remember. The machines that exist now, short of their displays, still run and pay off on a theory of chance based on a chip with random generator technology that truly has not changed in decades.

This legislative session proved my assumption that an appetite existed. SB 9 (technical standards for hybrid games) was passed and now the daunting task of workshops, hearings and regulation creation are to begin. This is the chance to help the industry bring some of these innovations to the forefront in hopes of attracting and growing a new market of players.

THE ONGOING RISE IN NON-GAMING REVENUE:

Until 1998, gaming revenue always surpassed non-gaming revenue in our gaming establishments. After 1998, the ratio reversed.

At first glance, one might say "whatever, it doesn't make a difference as long as revenues are increased whether it's gaming or non-gaming". The problem is to increase non-gaming revenue, a property must infuse a significant investment, a huge expense. It takes billions of dollars to have the required major amenities, such as luxurious rooms, spas, nightclubs, day clubs, restaurants, shopping, etc., so as to continue to drive revenues. Gaming revenues tended to be a low hanging fruit requiring less investment and higher returns.

The best case scenario would be that we could increase BOTH gaming and non-gaming revenues and the industry is constantly thinking about ways to do that.

Again, the legislature with the creation of SB 38 (nightclub industry), still sees the importance of gaming regulatory oversight on a non-gaming aspect. Nightclubs and other non-gaming elements at licensed establishments still having a significant impact on the integrity of gaming and thus keeping the Gaming Control Board and Commission involved is essential.

ILLEGAL SPORTS WAGERING:

Today there are four states with legal sports betting (Nevada, Delaware, Oregon, and Montana.)

This next Super Bowl is expected to have 3.8 billion dollars worth of illegal bets and only 100 million dollars in legal bets. In other words, the illegal market is 38 times greater than the legal one.

Betting is occurring and making it illegal didn't stop it. Sports betting is part of a direct revenue stream for sports and one must wonder what the viewership would be like if betting wasn't occurring.

There has been a definite change in the direction and attitude of sports betting on professional and amateur athletics.

The NBA's and NFL's past and present leadership is now beginning to get comfortable with the idea of legalizing betting. The International Olympics

Committee has come out and said they would be amenable to legalized betting on Olympic Games. The Board and Commission finalized regulations to allow Olympic bets in Nevada this year.

Illegal, unregulated, and unsupervised sports betting does have the potential to promote growth of organized crime, money laundering, and other nefarious actions. Regulated sports wagering is embraced by all parties. Of course, I may be biased but our State of Nevada is very much prepared and experienced to do the federal and interstate oversight. I am not assured that other entities could do as good a job. As in online gaming, the federal government will have to decide.

MY THOUGHTS ON COMMISSION THUS FAR:

It is an honor and a privilege to have such a position. I do not take it lightly and devote much of my time to it. They call the chairmanship a part-time job, and I can tell you I don't see it as one. I see it as one of my primary responsibilities that I must devote a significant amount of my waking hours' time, effort and study to do my very best for the state of Nevada, the state in which I was born and raised. I see the Commission as a bridge between the regulatory process and the industry, to facilitate innovation, help foster new ideas, help the industry grow, but always under the watchful eye of the Nevada Gaming Control Board and Gaming Commission, so as to maintain the integrity of gaming for our state.

THE VALUED GAMING ATTORNEY:

The key to the entire process is the invaluable help that each and every gaming attorney brings to the table. The gaming attorney is the conduit that the industry uses to speak to the regulators; you help craft regulations with the Board, Commission and Attorney General's Office. Not only do you represent the licensee but you are many times the authority that helps them comply with Nevada gaming laws. A good gaming attorney is a licensee's biggest critic as well as facilitator. I have always been impressed with all those that have come before us. It becomes obvious which gaming attorneys hold high the respect for the integrity of gaming, the entire industry and its people. At the end of the day, we all must take pride in what is the life blood of our State: The Gaming Industry.

Dr. Alamo is the only person in Nevada's history to have served as both Chair of the Athletic and Gaming Commissions. He is a graduate of the University of Nevada, Las Vegas and the University of Southern California School of Medicine. Dr. Alamo founded and currently practices Internal Medicine at The Alamo Medical Clinic (a multi-physician group). He has had a 17-year relationship with the Las Vegas Metropolitan Police Department (LVMPD SWAT-SAR) as a Tactical Physician and is a past recipient of the LVMPD's medal for Valorous Conduct. Dr. Alamo is also a Commercial Pilot and an avid aviator.

LEGISLATORS, REGULATORS TAKE ON

Live Entertainment Tax in 2015

By Terry Johnson, Esq., Member of the Nevada Gaming Control Board

The oft-maligned Live Entertainment Tax ("LET") has been a topic of major discussion in 2015, both at the 78th Session of the Nevada Legislature as well as amongst Nevada's gaming regulators. No less than a half-dozen bills were initially introduced at the 2015 legislature concerning the LET statutes, Chapter 368A of NRS. Also, for the first time since the LET regulations were adopted for gaming facilities, the Gaming Control Board ("Board") conducted rulemaking workshops in early 2015 to review and determine whether regulation revisions were necessary. It would thus appear that 2015 would be the year that structural and other changes were made to the LET statutes and regulations. Accordingly, this article explores recent efforts to streamline the LET and why they are necessary.

Implementing the LET has long been a source of heartburn for both regulators and the regulated alike. For gaming regulators, the LET statutes are replete with broad and ambiguous provisions. For starters, "live entertainment" means "any activity provided for pleasure, enjoyment, recreation, relaxation, diversion or other similar purpose by a person or persons who are physically present when providing that activity to a patron or group of patrons who are physically present."[1] There are no minimum amounts of time in which the entertainment "activity" must occur, for example. Absent rulings by the courts or gaming policymakers, or statutory revisions by legislators, as to any parameters that might govern, regulators must interpret the statutes as currently written and try to determine when "any activity" is live entertainment or not.

In addition to the sheer breadth of the live entertainment statutes, there are a number of ambiguities. For example, current law provides that a performance by a disc jockey is not subject to the LET if the disc jockey "generally limits" their interactions with patrons to certain activities.[2] Also excluded is music in a restaurant or lounge, provided the music does not "routinely" rise to the volume that interferes with "casual" conversation.[3] Other examples of ambiguities include references to live entertainment that is "incidental,"[4] and seating that may or may not be within the "immediate area"[5] of performers for purposes of the LET. In each of these examples, there is little statutory guidance as to how these terms are to be interpreted. Ordinarily, one would review the legislative record to divine the intent of the legislature to aid in interpreting statutory provisions. However, where the LET is concerned, the prior legislative record is scant, further compounding LET administration for gaming regulators.

For regulators, the LET's provisions can also be time consuming. Typically, a gaming licensee, unclear as to the applicability of the LET in a certain circumstance, will contact the Board for an advisory opinion. If the available information does not readily lend itself to a determination on whether the LET applies, professional staff from the Board, up to and including supervisors, the division chief, and occasionally a Board member, will visit the anticipated site of the live entertainment to assess firsthand whether the contemplated activities are within the ambit of the live entertainment tax. In some cases, Board staff will visit and observe the actual entertainment in an effort to see if the LET applies.

As demonstrated in the above examples, the Board can spend a disproportionate amount of time reviewing scenarios and determining the degree to which the LET will apply. In each case, the Board considers the information available, including input from the gaming licensee, and endeavors to make determinations

consistent with the statutory scheme and the intent of the legislature (where discernible).

For gaming licensees, LET compliance presents its share of challenges as well. Licensees have complained that some Board determinations are more subjective than less. For example, at what point does "[a]cting or drama provided by one or more professional or amateur actors or players"[6] become live entertainment? Does a tour guide wearing a costume and verbally describing the exhibits at an attraction engage in "acting or drama" for purposes of the LET? Does a disc jockey "generally limit" his or her interactions with the audience to certain permissible activities when they engage in cake throwing or crowd-surfing using an inflatable raft? Do those activities by the disc jockey constitute a "show or production" that could trigger the LET under NRS 368A.090(2)(a)(8)? In each of these types of instances, the Board has to make the best determinations possible in light of the governing statutes and regulations.

Given the longstanding concerns of regulators and the regulated alike concerning the LET, on June 1, 2015, the legislature enacted significant changes to the tax provisions. Senate Bill ("SB") 266 from the 2015 legislative session was co-sponsored by Senator Mark Lipparelli, R-Las Vegas, and Assemblywoman Marilyn Kirkpatrick, D-Las Vegas. The cornerstone of the measure is to limit imposition of the LET to instances where an admission charge is levied. Additionally, LET would no longer be imposed on sales of food, beverages, and merchandise sold in conjunction with live entertainment. Currently, these items are taxed at a rate of 10 percent at facilities with a maximum occupancy of less than 7,500 persons.[7] This results in double taxation when these transactions are also subject to sales tax.

In addition to removing the double taxation of food, beverages, and merchandise, other significant changes to the LET under SB 266 include:

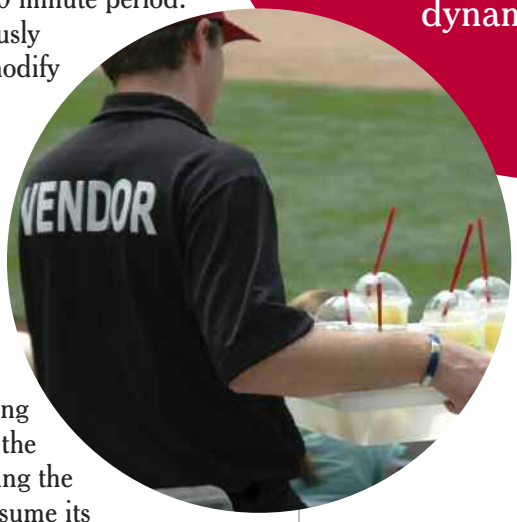
- Establishing a single rate of 9% instead of the previous rates of 5% or 10%, depending on the size of the facility
- Excluding from taxation a table reservation fee or charges to access a particular table, seat, or lounge in a facility if the charges are in addition to the admission charge
- Removing from LET assessment activities currently considered live entertainment, such as go-go dancing, uncompensated "spontaneous" performances, and other activities that do not constitute a "performance," including so called "ambient" entertainment
- Imposing LET on admission charges to facilities, including nightclubs, where a disc jockey presents recorded music

With all the changes to the LET, the shift to an admission charge-based tax system should provide greater predictability and ease for compliance and enforcement for both regulators and the regulated. The fact that an admission charge must first be levied to trigger the LET will prevent licensees from receiving unexpected tax bills after the fact for live entertainment that occurred on their premises. This is especially important since the "look back" period for an LET assessment is five years.[8] While there may be remaining debates that occur in instances where an admission charge is levied but there is an assertion that an activity does not meet the definition of "live entertainment," given the revisions to the LET statutes and regulations a determination of live entertainment should be more readily ascertainable.

One other significant new addition to LET administration from this year's legislative session deals with scenarios where the amount upon which a tax assessment must be based is "vague or subjective, not capable of reasonable determination or is the subject of a dispute that cannot be proven to the reasonable satisfaction of the

[Nevada Gaming] Commission."[9] In such scenarios, the Gaming Commission will be able to establish the LET amounts due "by multiplying the number of admissions to the facility where the live entertainment was provided by an amount not to exceed $50."[10]

In addition to the legislature's statutory changes, the Board also recently discussed possible changes to the LET regulations. Many of the clarifying definitions the Board had previously considered to address the ambiguous provisions in the statutes have now been largely rendered unnecessary with the enactment of SB 266. For example, SB 266 incorporated the Board's prior conceptual language from its rulemaking workshop that quantified certain limited entertainment as "not longer than 20 minutes during a 60 minute period." And though the Board had previously considered a recommendation to modify or delete provisions that would tax sales of food, beverages and merchandise where the underlying transactions had occurred after the live entertainment, this too has been rendered moot with the provisions of SB 266 that negate LET on these items.



The Board suspended its rulemaking workshops in January 2015, given the start of the 2015 Legislature. During the balance of 2015, the Board will resume its review of the LET regulations to determine the need for any remaining regulation changes. For example, the Board may consider whether a definition of "performance" is needed for purposes of the live entertainment tax. The Board had also previously considered the necessity of regulations addressing the refunding of any overpayment of taxes. Along with other "clean up" work to be done with the LET regulations, the Board will likely consider these topics in rulemaking workshops in the coming months.

In sum, recent changes to the LET should benefit both those subject to it, as well as those that must enforce it. Given the sheer breadth of the LET laws and some ambiguities therein, it was imperative that certain parameters be established and clarifications made. The fact that an admission charge will need to be collected first before establishing LET liability will provide much needed boundaries and guidance as to the intended scope and reach of the law. Further, by either eliminating or defining certain terms, all parties will be on better notice of the expectations of them under the law.

Simply put, better written laws and regulations will lead to better levels of compliance and enforcement. In a state that is home to the "Entertainment Capital of the World," it is only fitting that our state's live entertainment tax laws meet the current and future needs of such a dynamic entertainment environment.

Terry Johnson was appointed to the Nevada Gaming Control Board by Governor Brian Sandoval in 2012 and supervises the Board's Audit and Tax & License Divisions. He previously served in Governor Sandoval's cabinet as the State Director of Business & Industry.

[1] NRS 368A.090(1) (emphasis added)
[2] NRS 368A.090(2)(a)(9)
[3] NRS 368A.090(2)(b)(1)
[4] NRS 368A.200(5)(l), (q)
[5] NRS 368A.090(2)(b)(4)
[6] NRS 368A.090(2)(a)(3)
[7] NRS 368A.200(1)(a)
[8] NRS 463.3881(3)
[9] Senate Amendment No. 1045 to Sen. Bill No. 266, 78th Session of the Nevada Legislature (2015)
[10] Id.

STANDING ON THE SHOULDERS OF GIANTS:

Governor Paul Laxalt and the Corporate Gaming Act of 1969

By Adam Paul Laxalt, Attorney General of Nevada

I appreciate the opportunity to introduce myself to those members of the gaming law bar who I have not had the opportunity to meet. This group provides critical guidance to our state's premier industry and functions as part of the apparatus that ensures the gaming industry is vibrant, competitive, and remains the standard of excellence around the world.

I look at the profound success of Nevada gaming with a sense of great personal pride. My grandfather, Paul Laxalt, was elected Nevada governor in 1966. He recognized that for the gaming industry to attract new investment—which would ultimately further Governor Grant Sawyer's "hang tough" directive of ridding the gaming industry of organized crime—Nevada must reform its regulatory structure to accommodate corporate gaming ownership. As the *1970 Report of the Legislative Commission Subcommittee for Study of Gaming* (the "1970 Study") articulated:

> By 1969 it had become clearly evident that broadening of the investment base in the gaming industry was absolutely essential to the continued growth of the industry. Funds necessary for the construction of new establishments or expansion of those existing were simply not available from conventional sources in the form of loans. Reputable financial institutions were unwilling to lend the huge sums to a small group of investors and there were very few individuals who could afford the heavy personal investments necessary. With this source of money no longer available the danger of hidden interests of unsuitable persons was constantly increasing. [1]

The 1970 Study also suggests that, "[t]he problem was to devise a means to provide equity capital and wider investment participation and still maintain the necessary controls over the operations of the gaming establishments."[2] The answer, the Legislative Commission Subcommittee maintained, was "the 1969 corporate gaming law."[3] This groundbreaking provision allowed for:

> [I]ndirect investment participation by large numbers of persons in one or more holding companies but centers responsibility for operations of the licensed corporation in a small group who are thoroughly investigated and strictly controlled, whether they be officers and directors of the licensed corporation or of the holding company. [4]

The Corporate Gaming Act of 1969, passed under the leadership of Governor Laxalt, provided the practical solution of limited licensure for key executives of corporations rather than licensure of each shareholder. It was a transformative amendment to the Gaming Control Act. Governor Laxalt, together with prominent banker Parry Thomas and the Nevada legislature, solved a critical state issue by pursuing the two-part goal of ensuring the competitiveness of the Nevada gaming industry while also protecting the integrity of the regulatory structure. Shortly thereafter, Reno casino operator William Harrah took his company public in 1971, and had it listed on the American Stock Exchange in 1972. In 1973, Harrah's became the first casino company to be listed on the New York Stock Exchange. Since that time, ownership of Nevada gaming companies has grown to include publicly traded companies, private equity firms, and even sovereign wealth funds.

In addition to changing the Gaming Control Act in a way that has opened the door to vast amounts of new capital investment and a great diversity of legal entity types owning the interests, Governor Laxalt also worked to attract respected business people into the gaming industry. His goal was to push out organized crime and to improve the reputation of the industry and, ultimately, of the state. Texas millionaire Howard Hughes moved to Las Vegas the year my grandfather was elected Governor (1966). He was already a well-respected owner of an oilfield supply company and the owner of RKO Studios and TransWorld Airlines. Hughes' first casino purchase was the Desert Inn, followed by the Sands and New Frontier properties. Hughes went on to buy the Castaways and Silver Slipper in Las Vegas and Harold's Club in Reno. Governor Laxalt worked to fast-track Hughes' purchases, which initially caused some consternation. Governor Laxalt defended this action on the grounds that Nevada needed people like Howard Hughes and the legitimate capital he was willing to invest.

History has proven Governor Laxalt's support of Hughes to be a wise decision for the state. Hughes changed the face of Nevada forever, leaving behind the Howard Hughes Medical Institute and the master-planned Summerlin community, among other important contributions. In partial achievement of Governor Laxalt's goal, Hughes did much to professionalize the gaming industry and to improve its reputation.

Others of similar quality as Howard Hughes entered the Nevada casino market during this same period. In 1967, pilot and investor Kirk Kerkorian built The International and purchased the Flamingo. Kerkorian then built the MGM Grand, which opened in 1973. Many other brilliant and creative people entered Nevada's gaming industry in the wake of Howard

Hughes and Kirk Kerkorian. I am proud that my grandfather had the foresight to understand the need to modernize the capital structures of Nevada casinos and to work to attract the very best people to our state.

Since the passage of the Corporate Gaming Act of 1969, Nevada's casino resorts have spread from the borders of Nevada to nearly every quarter of the globe. At the same time, technology has transformed the gaming industry. With the Nevada legislature's recent passage of Senate Bill 9, championed by Governor Brian Sandoval with support from Nevada Gaming Commission Chairman Tony Alamo and Gaming Control Board Chairman A.G. Burnett, the gaming industry is set to see major innovation through the introduction of skill-element game device technology, which may appeal to an entirely new generation of Nevada visitors. My office will work under the direction of the State Gaming Control Board and Nevada Gaming Commission to draft regulations for this exciting evolution in slot technology.

At the core of the success of Nevada gaming are the foundations of integrity and the rule of law. Illegal gambling undermines the success of the Nevada gaming industry and of the all-important regulatory process. Criminal networks rely on funds derived from illegal gambling. These funds fuel organized crime, human trafficking and other societal ills.

For my office, defending Nevada's worldwide reputation as the "Gold Standard of Gaming Integrity" is a paramount concern. This same concern is shared by gaming regulators, the tens of thousands of Nevadans employed by the gaming industry, and the tens of millions of visitors to Nevada each year. To this end, in collaboration with investigatory partners at the State Gaming Control Board, my office recently announced a prosecution against an individual accused of operating an unlicensed interactive gaming website. The investigation and prosecution set an important precedent. Gaming regulatory authorities believe it to be the first state-level Internet gaming prosecution in Nevada's history. It also marks the first instance of state-level criminal prosecution in Nevada of an illegal Internet poker site using Bitcoin as currency.

I am honored to be Nevada's new Attorney General. Together with Governor Sandoval, the Nevada Gaming Commission and the State Gaming Control Board, I will work diligently to protect the integrity of the gaming industry and, as my grandfather did before me, to solve problems and continue to move Nevada forward.

Attorney General Adam Paul Laxalt is a fourth-generation Nevadan who previously served as a Navy and Federal Prosecutor and Judge Advocate General in the U.S. Navy. While serving in Iraq, Attorney General Laxalt assisted with the detention and prosecution of thousands of war criminals and terrorists. After serving in the Navy, he practiced as a private attorney in Nevada before being elected as Nevada's 33rd Attorney General.

[1] Id. at 11-12.
[2] Id. at 12.
[3] Id.
[4] Id. (emphasis in original).

Introduction to the Gaming Division,
Office of the Nevada Attorney General

By J. Brin Gibson, Chief Deputy, Gaming Division, Office of the Attorney General and
Michael P. Somps, Senior Deputy, Gaming Division, Office of the Attorney General

The Attorney General and his or her deputies serve as legal counsel to the Nevada Gaming Commission ("Commission"), Gaming Control Board ("Board"), and Gaming Policy Committee. The Gaming Division of the Office of the Nevada Attorney General ("Gaming Division") is tasked with providing this legal representation. In this article, we will introduce the Gaming Division through a brief discussion of its structure, its clients, and the manner in which issues and matters are assigned and staffed.

Gaming Division Composition

The Gaming Division is comprised of four full-time attorney positions and one part-time attorney position and is assisted by three support staff. Currently, Chief Deputy Attorney General Brin Gibson and Deputies Attorney General Edward Magaw and Darlene Caruso, supported by Jennifer King, are located in Las Vegas. Senior Deputies Attorney General Michael Somps and John Michela, supported by Melissa Mendoza and Rebecca Zatarain, are located in Reno.

Gaming Division Clients

The Gaming Division provides legal representation to the Board and the Commission, as well as the Gaming Policy Committee. The Board and Commission are separate agencies of the State of Nevada and both are charged with administering the Nevada Gaming Control Act (NRS Title 41), as well as the regulations of the Commission. The Gaming Policy Committee is convened at the pleasure of the Governor to discuss matters of gaming policy.

The Board, which is comprised of three individuals appointed by the Governor and who devote their full time and attention to the business of the Board, is the primary agency tasked with the regulation of the gaming industry. The Board's job is to protect the stability of the gaming industry through investigations, licensing, and enforcement of the Gaming Control Act, to ensure the collection of gaming taxes and fees, and to maintain public confidence in gaming. The Board has a staff of approximately 400 employees in six divisions: Enforcement Division, Investigations Division, Tax & License Division, Audit Division, Technology Division, and Administration Division. Among other things, the Board initiates discipline against gaming licensees, investigates applicants for gaming approvals, and makes recommendations on applications to the Commission.

The Commission, which is comprised of five individuals appointed by the Governor and who maintain separate occupations besides serving as Commission members, is tasked with acting on recommendations of the Board in licensing matters and adjudicating disciplinary matters and tax disputes. The Commission is the final authority on licensing matters, having the ability to approve,

restrict, limit, condition, deny, revoke, or suspend any gaming license. The Commission also is charged with adopting regulations to implement and enforce the gaming laws.

The Gaming Policy Committee, consisting of the Governor and 11 additional members designated by statute, meets at the pleasure of the Governor. The Gaming Policy Committee meets to discuss matters of gaming policy.

General Duties of the Gaming Division

In assisting the Board, Commission, and Gaming Policy Committee in fulfilling their statutory duties, the Gaming Division provides the following:

- Legal opinions
- Legal advice and representation in gaming licensee disciplinary matters
- Legal advice and representation in tax disputes between the Board and gaming licensees
- Legal advice and representation in nominating and including individuals in Nevada's list of persons who are to be excluded or ejected from licensed gaming establishments
- Legal advice and representation when either the Board or Commission is a party in state or federal court
- Legal advice and representation when either the Board or Commission is the subject of a subpoena or a public records request
- Legal counsel during Board and Commission meetings
- Legal advice and representation to the Gaming Policy Committee when convened by the Governor
- Legal advice and representation in the adoption of regulations
- Legal advice and representation concerning Indian gaming compacts
- Legal advice and representation relating to contracts for services
- Legal advice regarding gaming employee registrations
- Legal advice and representation regarding personnel issues including employee disciplinary matters, disciplinary review hearings, and Equal Employment Opportunity Commission proceedings.

Gaming Division Operations

As a general practice, requests from the clients on all matters including opinion requests, requests for a legal analysis, requests for regulation drafting, and requests to initiate discipline are presented to the Chief Deputy Attorney General ("Chief"). The Chief then assigns matters as he deems appropriate to one of the attorneys in the Division. Assignments have historically been made based on workload and a particular expertise or skill set that an attorney may have.

Currently, Ms. Darlene Caruso serves as Commission counsel. She represents the Commission during all of its meetings and will typically be the attorney who initially receives any request for legal assistance from the Commission. Ms. Caruso is also tasked with handling all subpoenas and public record requests made to the Board and Commission.

All other legal matters are handled by the Gaming Division's other attorneys. Over the course of a year, Board meetings are equally divided between the attorneys, including the Chief. The Division attorney assigned to a particular meeting will act as counsel for the Board during those meetings and for agenda meetings and RUMP sessions leading up to the Board meetings. Generally, the Division Chief's workload includes administrative matters, in addition to writing legal opinions, taking on an occasional disciplinary or tax-related case, and overseeing cases that present the possibility of litigation. The Chief's duties also include handling day-to-day legal advice, reviewing trust documents pursuant to NRS 463.172, and managing Indian gaming compacts.

Conclusion

It is an honor for members of the Gaming Division to provide legal support to Nevada's gaming regulators. The goal of our Division is to provide accurate and timely legal advice to our clients to ensure that they are able to perform their critical gaming regulatory functions.

Brin Gibson is Chief of the Gaming and Government Affairs Bureau in the office of the Nevada Attorney General. He practiced gaming and regulatory law with Lionel Sawyer & Collins through December of 2014.

Mike Somps is a Senior Deputy Attorney General in the Gaming Division of the Nevada Attorney General's Office. He has been with the Attorney General's Office for 16 years.

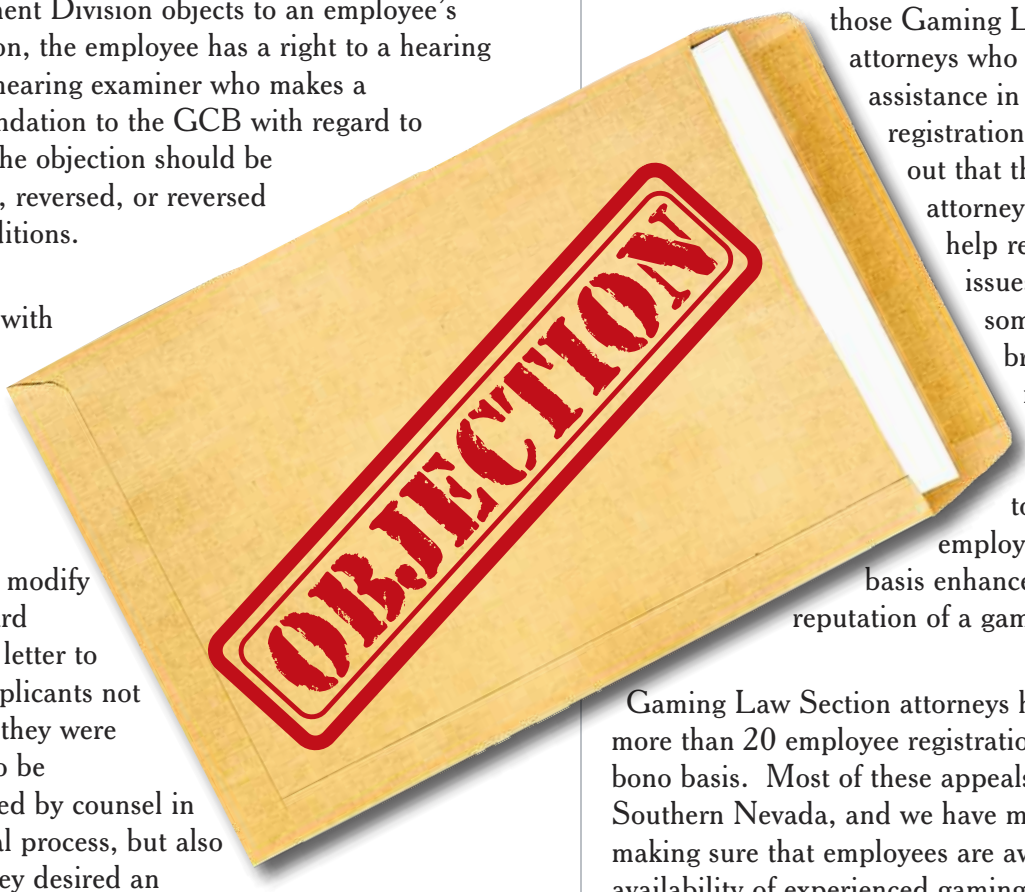
GLS Pro Bono Gaming Employee Registration Program

By Scott Scherer

A couple of years ago, the Gaming Law Section began working on a new program to offer pro bono legal assistance to gaming employees who have had objections to their employee registrations lodged by the Enforcement Division of the Nevada Gaming Control Board ("GCB"). Formerly known as "work permits" or "sheriff's cards," employee registrations are required for all gaming employees (as defined in NRS 463.0157) pursuant to NRS 463.335 and Regulation 5.101.

CONT. ON PAGE 28

The Enforcement Division conducts a background investigation of each applicant for registration and may object to the registration of a gaming employee based upon the criteria set forth in NRS 463.335(12) and Regulation 5.104. If the Enforcement Division objects to an employee's registration, the employee has a right to a hearing before a hearing examiner who makes a recommendation to the GCB with regard to whether the objection should be sustained, reversed, or reversed with conditions.



Working with GCB Member Shawn Reid, the GCB originally agreed to modify its standard objection letter to advise applicants not only that they were entitled to be represented by counsel in the appeal process, but also that, if they desired an attorney but could not afford to retain counsel, they could contact the State Bar of Nevada's Lawyer Referral Service. More recently, GCB Member Terry Johnson expressed support for the program and worked with GCB Member Reid to further modify the standard objection letter to specifically provide contact information for the various pro bono agencies in the State, including Legal Aid Center of Southern Nevada, Washoe Legal Services, Nevada Legal Services, and Volunteer Attorneys for Rural Nevadans.

Each of the pro bono agencies agreed to screen applicants to determine whether they qualify for pro bono representation, and the Gaming Law Section agreed to provide the attorneys to represent the qualified applicants. We believe that this is a great way for Gaming Law Section members to provide pro bono service. In addition to providing needed advice and assistance to gaming employees, the involvement of Section members has the potential to streamline and improve the administration of justice in the gaming employee registration process.

In a recent discussion with GCB Member Johnson, he expressed his appreciation for the assistance of those Gaming Law Section attorneys who agreed to provide assistance in employee registration appeals, pointing out that the volunteer attorneys have been able to help refine and focus the issues on appeal and, in some cases, have brought up issues that no one else had raised. In his view, a willingness to represent gaming employees on a pro bono basis enhances the image and reputation of a gaming lawyer.

Gaming Law Section attorneys have now handled more than 20 employee registration appeals[1] on a pro bono basis. Most of these appeals have been from Southern Nevada, and we have more work to do in making sure that employees are aware of the availability of experienced gaming attorneys to assist them throughout the process. If you are interested in participating in the program, please contact Gaming Law Section Executive Board Member Scott Scherer at sscherer@hollandhart.com.

Scott Scherer is a partner in the law firm of Holland & Hart, practicing primarily in the area of regulatory and administrative law with special emphasis on gaming regulatory matters and legislative affairs. Scott's career highlights include serving as a Supervising Deputy Attorney General in the Gaming Division of the Nevada Attorney General's Office, General Counsel and Chief of Staff to the Governor, two-term Nevada Assemblyman and member of the Nevada Commission on Ethics. At the request of the Mississippi Attorney General, Scott assisted the Mississippi Legislature in drafting the Mississippi Gaming Control Act. He also served four years as a member of the Nevada Gaming Control Board. Scott's corporate experience includes serving as Associate General Counsel and Executive Director of Corporate Development for International Game Technology (IGT) and Acting Managing Director of IGT Africa.

---

[1] Special recognition goes to Gaming Law Section members Jeff Silver and Jennifer Roberts, who have led the way in the number of employees represented.

Manufacturers Consolidation: Effects on the Gaming Industry

By Lars Perry

After years of calls for consolidation of the gaming equipment manufacturers by the investment community, the dominos fell in rapid succession. In January 2013, Scientific Games announced plans to acquire WMS Industries, Inc., for $1.5 billion in an effort to create a combined supplier of lottery equipment and slot machines. In July 2013, Bally Technologies, a manufacturer of slot machines and casino systems, agreed to buy SHFL Entertainment for $1.3 billion to expand its operations into the table game market. Then, merger and acquisition activity really started heating up. On July 6, 2014, Australian-based Aristocrat Leisure, in an effort to expand its North American business, announced the purchase of Video Gaming Technologies, Inc., for $1.3 billion. Less than two weeks later, GTECH Holdings, the world's largest lottery company, rocked the gaming community by announcing it had entered into a merger agreement with the world's largest gaming equipment supplier, International Game Technology, for $6.4 billion. Not to be outdone, Scientific Games announced by the end of July it would be acquiring Bally Technologies for $5.1 billion. Only a month later, Global Cash Access, a provider of cash systems, announced its foray into the gaming machine market with its plans to acquire Multimedia Games ("MGAM") for $1.2 billion.

These moves were enthusiastically welcomed by investors as the acquired companies received a premium price for their shares. The purchase price of SHFL, at $23.25 a share, was 24 percent higher than SHFL's closing price at the time of announcement. The Scientific Games solicitation of $26 a share was 59 percent higher than WMS's share price the previous day. Global Cash paid a 31 percent premium for MGAM. While the shareholders of the selling companies received a tidy cash payout, the industry is waiting to see what the long-term impacts will be.

The case for acquisitions stem from the business theory that certain combinations of companies will have a net benefit when joined. Overall, the process is pretty consistent: the acquiring company integrates certain resources from

the acquisition into its existing or expanding business model and may discard components which are either redundant or outside its model. Increased value is derived from using the acquired company's resources in such a way that the acquisition is accretive to the purchasing company's financials. However, acquisitions of this nature are not without risk. The Harvard Business Review places the failure rate of mergers and acquisitions meeting their objective to be in excess of 70 percent.[1]

With interest rates at their current lows, the financing of these acquisitions may have been the easy part. The real challenge begins with the actual integration of what may be vastly different cultures and organizations into one cohesively run company. Initially, the focus will be on "synergies," the term applied for overlapping costs in personnel, development, and other areas to streamline efficiencies. For gaming equipment manufacturers, this can be achieved through such examples as consolidation of regulatory functions and merging of common platforms. Many of the companies have already written off restructuring costs as part of this initial step.

The merger fever is occurring at a time when the casino industry is facing numerous challenges. Operators have been experiencing flat demand for traditional gaming products due to changing customer demographics. At the same time, competition for consumer dollars has increased from areas beyond traditional gambling, from product offerings such as social games, home video gaming, and fantasy sports that have all captured the attention of younger consumers. Industry pundits are now wondering how the consolidation will impact markets like Nevada as they strive to adapt to changing consumer demands.

From a regulatory perspective, all of the mergers have been approved by the jurisdictions in which the entities are licensed. As noted by Nevada Gaming Control Board Chairman A.G. Burnett, "One of our main concerns during industry consolidation is whether there are potential antitrust implications. During earlier casino operator consolidations, the potential impact to limit competition in a local market was clear. However, the equipment manufacturers are global businesses and antitrust is not as much of a concern." He adds, "Going forward, our interests are, what is the impact on Nevada, including its operators, employees and customers whom our industry serves? For example, how will the mergers lead to improved numbers for casinos?"

"Going forward, our interests are, what is the impact on Nevada, including its operators, employees and customers whom our industry serves? For example, how will the mergers lead to improved numbers for casinos?"

Chairman Burnett explains, "From a compliance standpoint, while we will necessarily have fewer programs to monitor, the scope has increased in terms of how big the programs are and the amount of time staff will invest in routine audits of the compliance functions. Also, of course, the programs will necessitate much more work on the part of compliance teams within the companies."

Of particular interest to Chairman Burnett is the potential impact of the consolidations on Senate Bill 9. Chairman Burnett has been supportive of this measure in response to Nevada operator concerns regarding changing player demographics. This legislation authorizes the Nevada Gaming Commission to adopt regulations relating to the development of newer, more innovative technology in gaming, including gaming devices that incorporate an element of skill. "While there may be fewer manufacturer voices following the consolidation, it will hopefully allow for a more cohesive voice and healthier organizations which can provide a greater product focus to serve changing consumer preferences."

John McCafferty, Business Operations Officer for Umpqua Indian Development Corp., oversees casino operations at the Seven Feathers Casino Resort. He views consolidation of the equipment manufactures as a double-edged sword. "In the short term, operators may slow purchases from the companies involved in the mergers. We will want assurances that products are not going to be obsolete after the mergers are complete."

> ***"In the short term, operators may slow purchases from the companies involved in the mergers. We will want assurances that products are not going to be obsolete after the mergers are complete."***

Over the long term, McCafferty is optimistic the consolidation will be a benefit to operators. "We will get the best of the best as a result of consolidation. Economies of scale will create lower prices, one stop shop, and greater connectivity." However, he does have concerns. "Will the ability to get good pricing go away? Overall, when the dust settles, I believe that operators will end up with better products and enjoy a one stop, maybe two, experience that will offer the operator variety without having to deal with multiple vendors."

One possible side effect raised by McCafferty is that innovation may be less important to the larger manufactures. As a result, he sees opportunities for some of the smaller, emerging companies. "Smaller companies will have an opportunity to take advantage of the market during re-organization of the merging companies. The companies that are merging are large and re-organization will not be easy. At first, they may not be as quick to market with new product as they were prior to the merger. Smaller companies that have a good reputation with operators may be in a position to take advantage during a period of uncertainty following the first few months of the mergers."

Bob Luciano has experienced integrations first-hand, most notably as founder and CEO of Sierra Design Group, a gaming company acquired by Bally Technologies in 2004. He became CTO for Bally Technologies following the purchase and has directly participated in these types of acquisitions. "Initially, it can be a hard process. The acquirer has to integrate technologies, cultures, and personnel. Often the success can only be measured years later and depends extensively on the executive team's ability to be clear and concise internally in implementing the necessary organizational changes, and putting the right people in the right positions. It will be fun to watch which of the teams from the various companies are able to carry this out."

Luciano also sees industry opportunity in the consolidations. "Short term, there may very well be fewer products offered. Synergies are often promoted in these acquisitions, and the first steps are usually cost cutting measures which may involve the reshuffling of internal teams or development resources. While the larger companies are grinding through their reorganization, they need to focus on the larger, more established markets and products, which generate the most money. However, this also provides an opportunity for more nimble companies to exploit new and emerging opportunities and establish a market presence before the larger consolidated companies can react."

For the time being, it appears merger fever has cooled down while the new consolidated companies refocus their efforts from acquisition to integration. The success or failure of the companies now rests squarely on the executive teams and their ability to quickly and effectively revamp and retool their organizations. Ultimately, the winners and losers will only be known several years from now once the market weighs in on the products and services the consolidated manufacturers provide.

Lars Perry, Esq., is the founder of Perry Advisory Group, Chtd. He served as Vice President of Intellectual Property for Bally Technologies from 2005-2014 and as General Counsel for Sierra Design Group from 2000-2004 following ten years in private practice.

[1] Clayton M. Christensen, Richard Alton, Curtis Rising, & Andrew Waldeck, The Big Idea: The New M&A Playbook, HARV. BUS. REV. (Mar. 2011), available at https://hbr.org/2011/03/the-big-idea-the-new-ma-playbook

SCIENTIFIC GAMES

Bally WMS Shuffle MASTER

STRONGER TOGETHER

SCIENTIFICGAMES.COM

SUBMIT, TEST, APPROVE:

Rethinking the Regulation of Gaming Devices

By Mark Lerner

Perhaps no segment of any industry is more extensively regulated than manufacturers of slot machines and other gaming devices and equipment. One way to appreciate the extent to which gaming manufacturers are regulated and to consider the effect this has on gaming technology is to imagine the same regulatory framework being applied to another technology: smart phones. If iPhones and Android phones were regulated in the United States the same way slot machines are:

- Phone manufacturers would have to get the phones approved by one or more government agencies in each state where they want to sell phones. Approvals for new products could take many months and cost thousands of dollars. Approvals for subsequent modifications would take anywhere from a few weeks to a few months and cost anywhere from a few hundred dollars to several thousand dollars. The procedures for getting approval would vary from state to state, and failure to follow the proper procedures could result in delays. Most submissions would eventually be approved, but some products would not be approved for use in all jurisdictions.
- A government agency in each state would establish specifications for the phones. These mandatory technical standards would vary from jurisdiction to jurisdiction. To comply with those standards, manufacturers would have to develop and manufacture dozens or even hundreds of different versions of each phone to satisfy the requirements of all the different jurisdictions. Before manufacturers could implement any technological innovations that contradict or are just not addressed by the standards, the standards would have to be amended, a process that would vary from jurisdiction to jurisdiction, that could take months or even years, and that in some cases would require regulatory and even statutory changes.
- Before shipping a phone from its manufacturing plant to another jurisdiction, the manufacturer would have to notify a government agency in the destination jurisdiction. The notification procedures and requirements would vary from jurisdiction to jurisdiction, resulting in dozens of different regulatory processes to adhere to.

Failure to comply precisely could delay deliveries. Some jurisdictions would prohibit shipping the phones directly to customers but would instead require that they be shipped to the regulatory agency for inspection first; some would require that manufacturers disassemble the phones and ship the phone software to the regulatory agency and the rest of the phone to the customer for reassembly after the agency has authenticated the software. These and other shipping rules would delay delivery to customers and increase shipping costs.

- Before doing any of this, the phone manufacturing companies—Apple, Samsung, LG, etc.—and their officers, directors, major shareholders, and key employees, as well as any distributing companies and their officers, directors, shareholders, and employees, would have to apply for and obtain licenses from government agencies in each of the states where they want to sell phones. The companies and their principals would have to submit detailed information about their personal backgrounds and finances for investigation by the agencies. The investigations and approvals would take anywhere from a month or two to a year or more and cost tens of thousands—in some cases hundreds of thousands—of dollars. In most jurisdictions, this process or a variant would have to be repeated annually.
- Much of the same would apply to apps and peripheral equipment developed for use with the phones, as well as to the networks that enable them to communicate. Different requirements, procedures, and standards would apply in each of the jurisdictions and would have to be complied with before the apps and equipment were shipped and used there.
- For the consumer, a phone purchased for use in one jurisdiction could not be used in other jurisdictions. In fact, it could be a crime even to take a phone from one jurisdiction to another. The consumer would have to get a different phone (and different apps and different peripherals) for each jurisdiction where the consumer wants to use a phone.

What results could we expect if this system were imposed on smart phones and their manufacturers? Few manufacturers would even try to enter the market, and some already in the market might leave, reducing competition and product variety, and increasing prices. Further price hikes would result from the regulatory costs for those manufacturers that did enter and remain. The phones would take much longer to get to market, and innovations and advanced features would take even longer and in some jurisdictions might not be allowed at all. The technology and features in smart phones would always lag behind the technology and features customers see in other consumer products not subject to the same regulatory framework.

This smart phone comparison is reality for gaming equipment manufacturers and their casino customers. Most jurisdictions subject gaming equipment manufacturers to the process described above or a variation of it. First, manufacturers and their principals must be investigated and licensed in some fashion, with most jurisdictions requiring the investigation and licensing to be repeated and renewed at some interval - annually being the most common. In most jurisdictions, this process mirrors the process applied to casinos. But while a casino company is only required to undergo licensing in the jurisdiction where its casino is located, manufacturers must go through this process in every jurisdiction where they market products. For manufacturers operating throughout the U.S. and the world, that is more than 300 jurisdictions.

Second, gaming manufacturers must get their products approved. Manufacturers' products must be developed in accordance with standards developed by government agencies, and the products must be tested by game laboratories operated by the agencies or by private labs approved by the agencies. If the lab finds that a product does not comply with the agency's standards, the manufacturer must modify and resubmit the product until the lab and agency are satisfied that the product does comply. For some products, some jurisdictions require a field trial in which the manufacturer must find a willing casino to operate a few of the machines for a month or two. Finally, the jurisdiction approves the

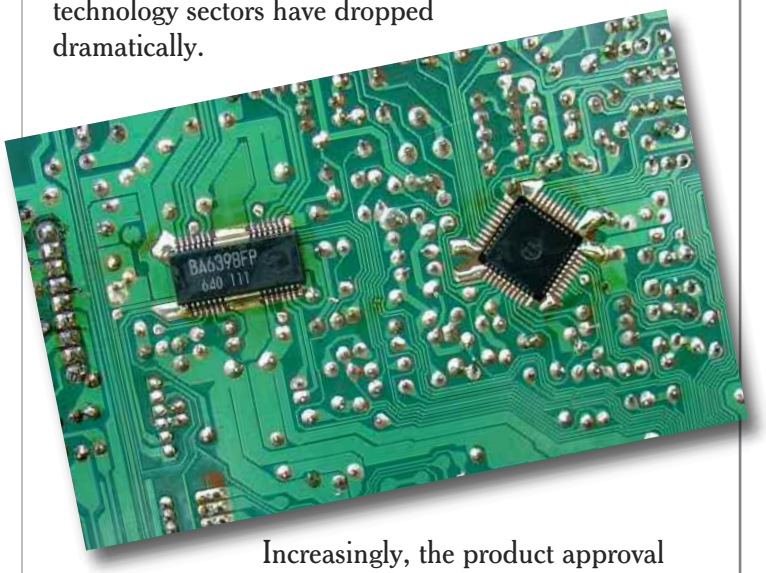
product for use in that jurisdiction. A similar process must be repeated in each jurisdiction where the manufacturer wants to distribute the product.

The product approval model was first developed in Nevada in the 1960s and 1970s when slot machines were operated legally only in Nevada and accounted for a small percentage of overall gaming revenue. There weren't that many slot machines on casino floors, the machines lasted for years, and new models and technologies were not often developed or submitted for approval. Slot machines were mostly coin-operated, mechanical devices with spinning reels that started and stopped by physical means and were vulnerable to manipulation and theft. They were standalone devices, with no network systems monitoring and recording accounting data, player activity, or security information. As other jurisdictions legalized slot machines, first in 1978 in New Jersey and continuing in other jurisdictions beginning in 1989, they tended to reflexively adopt the same prior approval model.

The prior approval model may have made sense when it was first adopted, but time and technological advances have made it increasingly unworkable and costly in terms of money, time, and effects on innovation. Slot machines are now operated in hundreds of casinos in hundreds of states and Native American jurisdictions as well as other countries throughout the world. The number of slot machines on casino floors has multiplied exponentially, and revenue from slot machines and similar gaming devices now accounts for the majority of revenue in most domestic jurisdictions where they are legal. Because of demand by casinos and their customers for greater variety, as well as other competitive pressures, machines and games have shorter average floor lives, and to keep up with demand manufacturers submit thousands of applications for approval of new devices and modifications to previously approved devices each year. This increases the burden on the regulators to keep up with the approvals.

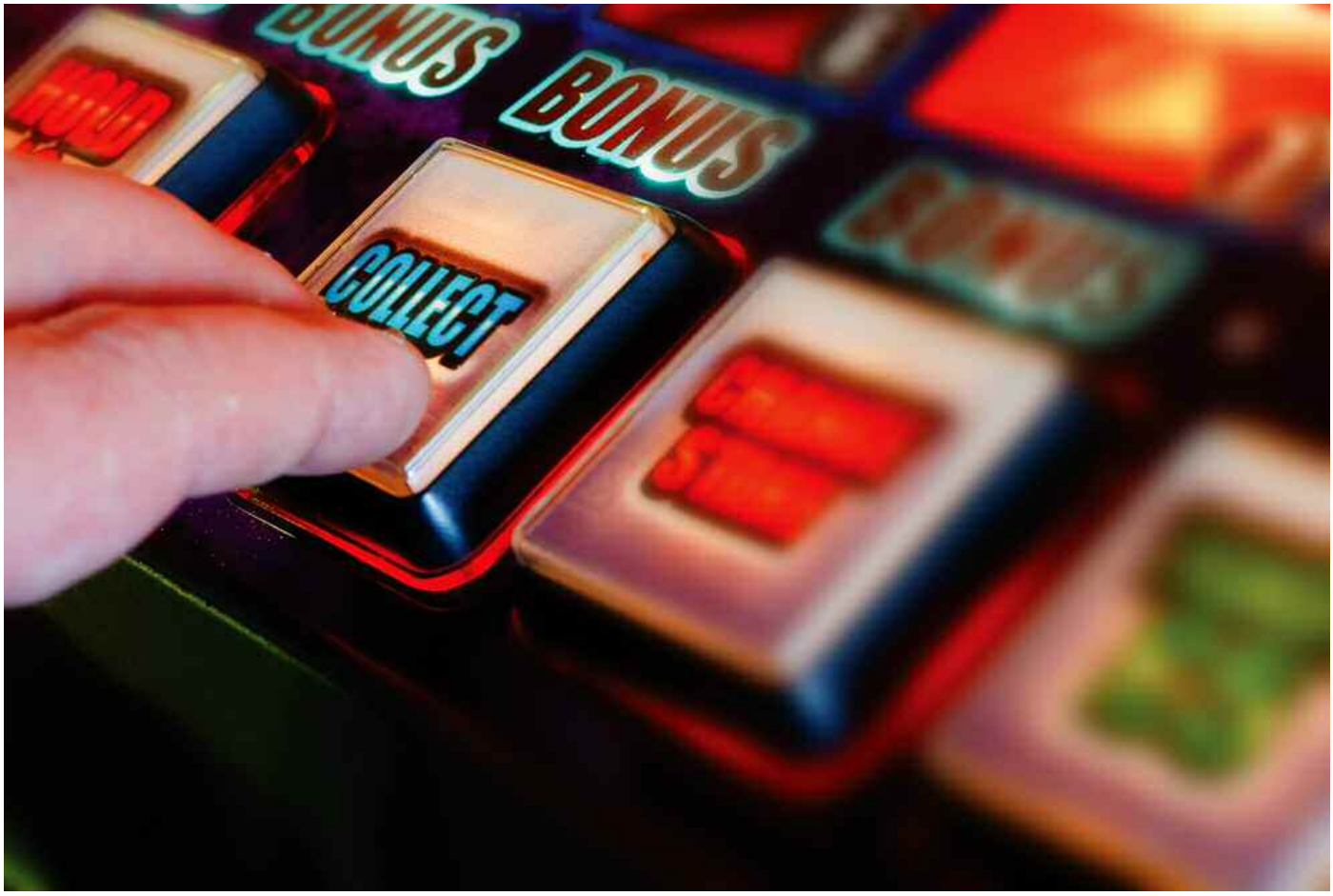
Amending regulations and even statutes to accommodate advances in technology can take months or even years and prevent regulators and manufacturers from responding nimbly to advances in technology.

The inevitable result is a technology lag, where gaming products in casinos are always using technology that is a few years older—some industry executives have publicly said five or even ten years older—than that used in other consumer products. At the same time, the regulatory burden on manufacturers adds to the costs of production, in an era when costs and prices in other technology sectors have dropped dramatically.



Increasingly, the product approval process is unnecessary to achieve the objectives for which it is intended. Today's machines are electronic, computer-based devices that reliably randomize outcomes and ensure honest games. Reels are started and stopped by computer-controlled stepper motors or are virtually created on video display monitors. Coins and coin-handling mechanisms have been replaced by ticket-in-ticket-out technology, bill acceptors, and other ubiquitous, reliable money-handling mechanisms used in ATMs, kiosks, vending machines, and other familiar devices widely used in commerce and finance. Machines are networked to systems that track accounting, player, and security data; that guard against unauthorized access, theft, and cheating; and that let operators and manufacturers know if payouts and holds are not tracking mathematical expectations, in which case manufacturers and regulators can be notified and can respond accordingly. Casino surveillance systems can focus special attention on large-jackpot machines.

Other regulatory processes and economic pressures likewise help achieve regulatory objectives. Licensing manufacturers and their principals and employees serves as a barrier against bad actors. Once licensed, manufacturers' self-interest in maintaining their licenses,



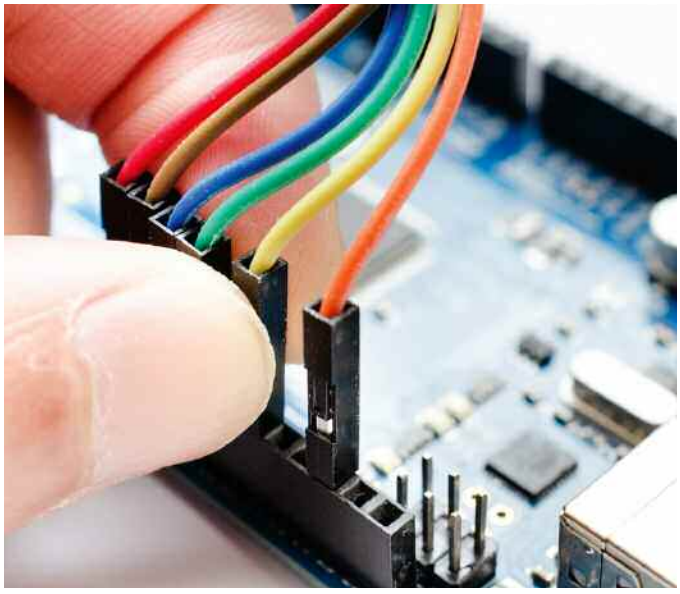
good customer relations, and their places in a profitable, selective market provides further protections, as do encryption and version control software and similar systems used by programmers and other technology manufacturers. Casino operators, too, watch for anomalies in machine operations. If a particular machine or model pays out too much or too often, operators quickly notice and let the manufacturer know about it. Players furnish an additional check. If a machine doesn't pay out, they don't play it as much, and operators notice. If a machine doesn't operate as advertised, players are not shy about telling the casino operators, who in turn notify the manufacturer and regulators. A machine that causes an excessive number of disputes or other problems is quickly recognized and is either corrected or removed.

Thus, economics, technology, and other existing regulatory mechanisms furnish protections that the submit-test-approve model is intended to provide. It is reasonable to surmise that many, perhaps most, of the regulatory objectives of submit-test-approve could be achieved just as well by sample testing after machines are placed in the field, similar to the way casinos are audited. Regulators do not review every casino cage transaction ahead of time. Instead, regulators perform periodic audits, starting with small but statistically significant samples of material transactions. If the samples turn up no anomalies, the audit ends. If anomalies appear, the auditors expand the sample sets. If a wider audit turns up significant problems, they are corrected and the licensee can be disciplined.

A similar model could be applied to gaming equipment manufacturers. Regulators would continue to investigate, license, and re-license manufacturers and their principals. Manufacturers would still be required to build their products in compliance with jurisdictional technical standards, perhaps certifying that they have

done so when notifying regulators of new products deployed in their jurisdictions. Products placed in the field would be subject to inspection and testing on a sample basis, and manufacturers would be subject to discipline for products found to be out of compliance. Newly licensed manufacturers, as well as manufacturers who fail too many inspections, could be required to submit products for prior approval until they establish or re-establish a record of consistent compliance. But otherwise, manufacturers would operate the same as other technology providers, developing products using available technology and distributing them as they become available.

This relatively small modification to the regulation of manufacturers would be expected to yield effects like those seen in other consumer electronics fields, with new technologies and designs being developed and brought to market faster and being tested and refined in real-world crucibles that cannot be duplicated in labs. The casino floor would become more attractive to innovative developers. Manufacturers would be better able to experiment with innovations if the investment of money and time needed for approvals were reduced. At the same time, regulators would maintain control over manufacturers and their products more efficiently through licensing, technical standards, and auditing.



Labs, both government and private, would remain important components of the process, by expanding the use of the labs' brainpower and expertise in what are now frequently secondary functions. Labs would remain instrumental in developing technical standards for gaming equipment, and could expand their important efforts toward standardization across jurisdictions. They would continue to test machines against those standards, although in post-distribution audits rather than pre-distribution testing. Labs would also continue to furnish their expertise to regulators in examining new technologies and assisting regulators, legislatures, and the public in understanding the integrity and trustworthiness of games that implement them. Private labs could also offer testing and certifications to manufacturers who want to outsource compliance functions or add insurance against noncompliance with jurisdictional technical standards.

While in some jurisdictions eliminating prior approvals for gaming products or some subsets of products may require statute changes, Nevada would need at most a regulatory change, since the Nevada Legislature left the decision whether to require prior approval of gaming devices to the discretion of the regulatory agencies.

Changing the timing of product reviews for qualified licensees would hardly diminish regulatory control over the gaming manufacturing sector while bringing the regulation of manufacturers a modest step closer to being in line with the regulation of casinos. Because of the combined requirements for getting products approved and having to get licensed in hundreds of jurisdictions, the costs of regulatory compliance for manufacturers are glaringly disproportionate to those for casinos, especially when one considers that the gross revenue of a major manufacturer may not surpass the revenue of one good-sized casino. Lab and other product approval fees alone for a major manufacturer can easily reach into the tens of millions of dollars annually.

Under these circumstances, the possibility of opening up gaming technology to the rapid innovation witnessed in other technology sectors justifies giving change a try.

Mark Lerner's career as a gaming lawyer includes serving as Deputy Attorney General for the Nevada Gaming Control Board and the Nevada Gaming Commission, private practice at Jones Jones Close & Brown (now Fennemore Craig) representing gaming licensees and applicants, and in-house as general counsel for Becker Gaming Group and Bally Technologies. He also served as Chairman of the State Bar Committee on Ethics and Professional Responsibility and as an officer of the Association of Gaming Equipment Manufacturers (AGEM), and is a frequent speaker at law schools and gaming industry conferences.

The "Primary Business" Conundrum: State of Restricted Gaming Laws in Nevada

By Sean Higgins

Unlike most states around the country that limit gaming to casinos, lotteries, or some combination thereof, Nevada has long allowed "restricted" gaming in smaller businesses throughout the state. Over the years, the types of businesses where gaming has been permitted have changed somewhat, but today there are five types of establishments which are recognized: taverns, grocery stores, convenience stores, drug stores & liquor stores.

[1]NRS 463.0189 defines a restricted location as follows: "'Restricted license' or 'restricted operation' means a state gaming license for, or an operation consisting of, not more than 15 slot machines and no other game or gaming device, race book or sports pool at an establishment in which the operation of slot machines is ***incidental to the primary business of the establishment.***" (Emphasis added)

For most of the enumerated businesses, the statutory language is straightforward and easily applied when an applicant appears before gaming regulators. The Regulations of the Nevada Gaming Commission ("NGC Reg."), define each of the businesses with the exception of a tavern.[2] Moreover, these businesses also pass the visual test. Meaning, "I know what it is when I see it." Additionally, the Gaming Control Board and the Nevada Gaming Commission review the factors in NGC Reg. 3.105(2)(a)-(g), when licensing all restricted establishments. The licensing of these defined businesses types has changed very little over the years and the statutes, regulations and ordinances dealing with these businesses have remained relatively unchanged for over 15 years.

Unfortunately, the same may not be said about the licensure and regulation of taverns. It is generally agreed that a "tavern" is an establishment at which alcohol is sold by the drink to the general public. Beyond that, there has been great debate as to what constitutes a tavern for purposes of obtaining a

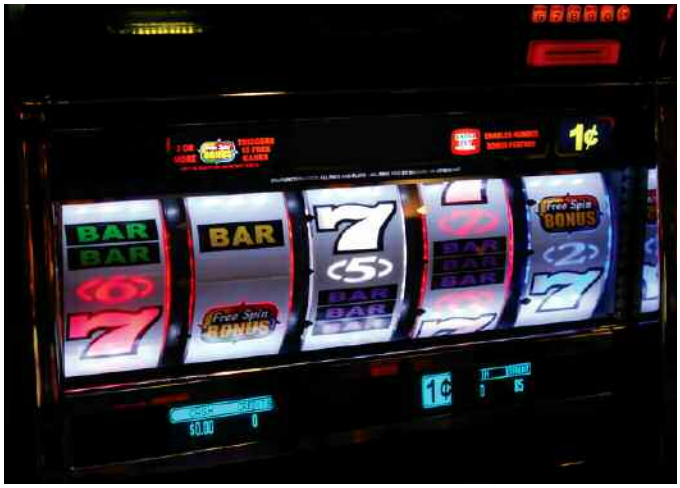
restricted gaming license. The seminal questions are (i) what is a "primary business," and (ii) what does it mean for gaming to be "incidental" to that primary business. The NGC Reg. 3.015(2) factors are considered during an applicant's initial licensing process before the Gaming Control Board and therefore may not always be an accurate method of determining what an establishment's primary business is or if gaming is incidental to that primary business. The past several years have seen a litany of revisions to: (i) the Nevada Gaming Commission Regulations; (ii) local ordinances dealing with taverns; and (iii) the Nevada Revised Statutes. These multiple amendments have tried to answer these questions. Many would argue that these attempts have by and large failed to provide any clarity to the two questions above.

The reason for this heightened interest in defining a tavern is the proliferation, real or imagined, of the slot parlor, or slot arcade, model. While some variation of these businesses have been in operation since the 1990's, it was not until after the 2006 passage of the Nevada Clean Indoor Air Act that these businesses became the favored model in the tavern market. There were 18 of these types of businesses in operation in 2006 and by 2014 there were 101.[3]

The movement to better define what a tavern is, and what such an establishment must provide to its patrons, started in earnest in 2010. Since that time, there have been at least 5 attempts made to set some level of minimum standards and guidelines that a tavern must meet should it want restricted gaming in its establishment. The April 2011 amendments to the Clark County Code, the August 2011 amendment to NGC Regulation 3.015, and the 2013 legislative amendments to NRS 463.161(4), all set forth similar minimum requirements.[4] These included: minimum square footage in public areas, minimum restaurant seating, minimal operational hours of a kitchen, and a physical bar with a minimum number of seats at that bar. None of these requirements has slowed the progression of slot parlors. The operators have simply applied creative solutions in an attempt to minimally comply with the new requirements set out in each of these amendments.

Henderson decided it needed to go further with its amendment to the Henderson Municipal Code in December 2013.[5] In addition to the requirements implemented by NRS 463, Henderson required: (i) a 75 seat restaurant; (ii) an expanded definition of "meals," and (iii) 2 employees present during all hours of operation. Since this code revision was implemented, there has not been a new single slot parlor model opened in that jurisdiction.

Clark County, although it had just amended its code in 2011, felt compelled to again amend its code in 2014, due to the fact that slot parlor operators continued to purchase existing taverns and convert them to their models. The revisions added a definition of "grandfathered taverns," which were taverns in operation prior to the effective date of the Nevada Clean Indoor Air Act. These grandfathered taverns were allowed to continue to operate as they always had operated. All taverns opened after that date would either have to operate a "bar," employ a dedicated kitchen employee at all times the kitchen was operational, and serve hot meals that were not pre-packaged. If a tavern did not comply with those requirements, it would have to demonstrate that it received not more than 50% of its revenue from slot machines. If it could not satisfy this 50% threshold, the number of slot machines would be reduced to a maximum of 7 machines.[6] Taverns will have to report their compliance with these requirements in January 2016, at which time it can be determined whether these ordinance revisions are effective. The Clark County ordinance is the first attempt to measure whether a tavern has a primary business after such a business has been operating. This sets a new standard in regulation of taverns holding restricted gaming licenses.



Sean Higgins is an attorney licensed in the State of Nevada since 1990. He is the principal of STH Strategies, a government affairs and administrative law firm. Prior to this, Mr. Higgins served as general counsel at Herbst Gaming for 17 years. Mr. Higgins has been involved in nearly every legislative and regulatory revision dealing with restricted gaming in Nevada for the past 25 years.

[1] NGC Regulation 3.015.3(a)-(e).

[2] NGC Regulations 1.075; 1.101; 1.130 & 1.141.

[3] State of Nevada GCB Listing of Locations Sorted by Primary Business Name.

[4] CCC 8.20.020.385; NGC Regulations 3.105(2) (h)(1-4), (9)(a)-(c), (10), (11), and (14); and SB416 & AB360 from the 77th Session of the Nevada Legislature.

[5] HMC Title 4.32; 4.36; & 19.5.5.

[6] CCC 8.20.020.023, .024, .385, .387, and .388.

Time to Shut Down Illegal Gambling, Highlight Benefits of Legal, Regulated Gaming Industry

By Geoff Freeman

For decades, long before legal, regulated casinos contributed billions of dollars in tax revenues and created tens of thousands of jobs and generated billions of dollars to the local economy, illegal gambling operations ran rampant in Biloxi, Mississippi. So it was a fitting locale to speak before attorneys general – the top law enforcement officers in each state – from around the country to launch a new initiative to crack down on illegal gambling in all 50 states.

Attorneys general have no shortage of law enforcement priorities demanding their time and stretching their already-overstretched resources. Yet we made the case for why illegal gambling – an underground industry that fuels criminal networks and large criminal enterprises that profoundly harm states, schools and consumers—should be right at the top of the list.

In stark contrast to the companies the American Gaming Association (AGA) proudly represents, which are some of the most heavily regulated companies in America and whose employees provide fingerprints and background information on their finances, career path and criminal history, or lack thereof, illegal gambling operations siphon valuable dollars away from education and public safety; they are neither licensed nor subject to criminal background checks, and they prey on the vulnerable, including children.

And they serve as a breeding ground for a host of violent criminal activities, such as human and drug trafficking, money laundering schemes and other large criminal enterprises.

Illegal gambling comes in four major forms. One is illegal sports betting. Conservatively, illegal sports

betting in the U.S. is a $150 billion enterprise – but some estimates put it as high as half-a-trillion dollars. Illegal operators are free to cheat and skim, pay no taxes and their proceeds can fund violence. This market thrives in the shadows. During the Super Bowl, about $120 million was wagered legally in Nevada sports books. We estimate that $3.8 billion was wagered illegally.

Another form of illegal gambling is black market machines. Slots, video poker and blackjack are commonly found in bars and taverns, managed by the bartender, and presented with the disclaimer, "For amusement only." Who verifies the fairness of these black-market machines? Who owns them? Where does the money go? In a recent New York Times article, it was estimated that up to 150,000 of these illegal machines proliferate across an underground $1.9 billion industry in Texas.

A third form of illegal gambling is Internet sweepstakes cafes (ISCs), which can be found in storefronts, gas stations and convenience stores in more than a dozen states. These modest operations together represent a criminal Fortune 500. As many as 5,000 storefronts rake in an estimated $10 billion a year. In Ohio, a Cuyahoga County prosecutor reported that a single ISC vendor earned almost $50 million in proceeds.

They take advantage of state sweepstakes laws by purporting to sell unwanted products, such as Internet time or long-distance telephone minutes. The customer receives a supposed bonus of "entries" in the sweepstakes to be redeemed in online games indistinguishable from gambling, games such as "Pot of Gold Poker." ISCs are flourishing, even in Utah, the most anti-gambling state in the nation.

Finally, there's illegal online websites that rake in $4 billion a year from Americans. These websites – operating out of Central America or the Caribbean – are easy to mistake for a legal operation and they look legitimate, with a sleek, corporate presentation. Yet if a customer finds his or her online account cleaned out, there is no one he or she can turn to for assistance.

The public needs to be warned about illegal gambling. They need to be protected and illegal operations need to be shut down. Thanks to strong action of attorneys general, district attorneys, sheriffs and police chiefs around the country, we are seeing progress.

Our large, comprehensive and forceful public initiative, called "Stop Illegal Gambling --Play It Safe," is a full-fledged effort to partner with law enforcement and public officials to protect consumers, communities and the vital public services that depend on tax revenue. Through the initiative, we will launch groundbreaking research to dig into the roots of this problem, identify clear criminal patterns, look for ties to criminal enterprises and clear trails of illegal activity; and we will develop actionable intelligence to attack the central hubs of illegal gambling.

We will also create cutting-edge online tools, including a comprehensive, central repository for illegal gambling resources – a one-stop shop for law enforcement and the public, including ways to refer tips to law enforcement and provide capacity-building resources. It will also include an interactive map and a real-time illegal gambling ticker that provides the latest legislative updates and breaking news.

Additionally, we're coalescing experts on a new advisory board that will guide our strategy. The board

will be composed of subject matter experts with experience in every level of law enforcement, including former FBI and ICE agents, attorneys general, district attorneys, U.S. Attorneys, police chiefs, and sheriffs - and we'll be collaborating with criminologists and other third parties.

Finally, we've already begun vigorously advocating for change. No organization will be more outspoken on the illegal gambling problem than the AGA. We're using our position in the industry to call attention to the issue and to push lawmakers to dedicate the resources needed to take down illegal gambling operations.

The industry and law enforcement must work together to solve this problem that is anything but a victimless crime. People across the country have lost their life savings from being ripped off by an illegal gambling operation and being left with no recourse. Communities are being wrecked by drug trafficking. Children are getting caught up in human trafficking rings. Illegal gambling operators are the authors of these heartbreaking stories.

Gaming has grown, matured and prospered as result of its lawful, regulated status. Legal gaming now supports more than 1.7 million American jobs and generates $38 billion in tax revenues to local, state and federal governments. Gaming tax revenues go to education, public safety, infrastructure and other critical areas.

The illegal gambling that is rampant across our country is a completely different story. Through our "Stop Illegal Gambling – Play it Safe" initiative, we will take steps towards shutting down shady operators and highlighting the benefits of legal, regulated gaming in communities across the country.

Geoff Freeman is President and CEO of the American Gaming Association (AGA). In his role as chief executive of the AGA, Geoff is the leading advocate for the casino gaming industry and is responsible for positioning the association to address regulatory, political and educational challenges and opportunities.

Prior to joining the AGA, Geoff was Chief Operating Officer and Executive Vice President for the U.S. Travel Association, the nation's leading voice for increasing travel to and within the United States. Under his strategic leadership, the travel industry enacted the Travel Promotion Act, derailed an assault on corporate meetings and events, and began the march to building an army of one million employee activists. During his tenure, U.S. Travel doubled its resources.

He has led a variety of complex and successful issue campaigns during his more than fifteen years in Washington. Previously, Geoff was a Vice President with APCO Worldwide, a global public affairs firm, where he led the highly visible Partnership for Prescription Assistance (PPA). The PPA, supported by America's pharmaceutical companies, was the largest effort ever created to connect uninsured Americans with free prescription medicines.

Previously, he was the Director of Government Relations and Strategic Outreach for Freddie Mac and Director of Strategic Initiatives for the American Association of Health Plans, the leading representative of the managed care industry.

For the latest AGA news, follow @AmerGamingAssn on Twitter.

Casino Anti-Money Laundering Compliance in 2015

Where the Feds are Focusing Their Enforcement Efforts

By Jeffrey B. Setness

INTRODUCTION

In various public pronouncements from 1984 through 2012, the Department of the Treasury and, later, the Financial Crimes Enforcement Network ("FinCEN") have made it very clear that they believe casinos are vulnerable to money laundering.[1] However, these pronouncements did not appear to be backed up by substantial and sustained criminal investigations and prosecutions, thus potentially giving federal law enforcement the appearance of a dog whose bark was worse than its bite.

However, in late 2012, ominous warning signs were developing that would lead one to conclude that the days when casinos would face only civil money penalties for failing to maintain effective anti-money laundering ("AML") programs may be over.[2] Then, in August 2013, the casino industry was awakened to a new reality that federal law enforcement did indeed have fangs and was willing to use them. Looking back, the August 26, 2013, Non-Prosecution Agreement ("NPA") entered into between United States Attorney's Office for the Central District of California ("USAO") and the Las Vegas Sands Corporation (the "Sands") appears to have signaled the beginning of a new era in which federal criminal investigations of casinos relating to anti-money laundering compliance have become increasingly common.

This article will examine the actions taken by the federal government since 2013, which may provide the reader with some indications to casinos on where they may want to focus their anti-money laundering compliance efforts in the years to come. While many of the government's actions since 2013 appear to have targeted the largest casinos, a casino need not have multi-million dollar players to suffer the potentially devastating consequences of a criminal investigation by the Department of Justice or substantial civil money penalties imposed by FinCEN.

FEDERAL ACTIONS AND PRONOUNCEMENTS FROM 2013 TO THE PRESENT

August 26, 2013 - Sands Non-Prosecution Agreement

On August 26, 2013, the USAO and the Sands entered into a NPA in which it was generally agreed that that the USAO would not bring any criminal or civil case against the Sands or any of its representatives or employees relating to the activities of Zhenli Ye Gon. According to the NPA, "Zhenli Ye Gon's total gaming losses at . . . multiple casinos between 2004 and 2007 exceeded $125 million, which included over $84 million in losses at the Venetian."[3] As part of the NPA, the Sands ". . . voluntarily agreed to return the sum of $47,400,300 to the United States Treasury, which represents funds accepted by the Company from or on behalf of Zhenli Ye Gon."[4]

In the NPA, the USAO took the position that compliance personnel did not adequately investigate Ye Gon and attach appropriate suspicion to Ye Gon's actions. Specifically, the NPA stated as follows:

> The USAO also believes that after October 19, 2006 the compliance personnel at the Venetian-Palazzo did not:
>
> a. adequately investigate Ye Gon, his respective companies, or his source(s) of funds;

c. attach appropriate suspicion, if any, to Ye Gon's use of multiple third-party fund sources;

e. attach appropriate suspicion, if any, to the fact that the Venetian's internal due diligence investigations could not link Ye Gon to nearly all of the companies he professed to own and/or controlwhich originated wire transfers of funds to the Venetian; . . .[5]

As justification for entering into this NPA, the USAO noted the voluntary disclosure and cooperation by the Sands. Specifically, the NPA stated that:

> The USAO enters into this Non-Prosecution Agreement ("Agreement") based, in part, on the following factors: (a) the Company's voluntary and complete disclosure of the conduct, beginning in 2007 and continuing through the present; (b) the Company's extensive, thorough, and real-time cooperation with the Department of Justice and USAO, including conducting an internal investigation, voluntarily making current and former employees available for interviews, making voluntary document disclosures, and making multiple presentations to the USAO on the status and findings of the internal investigation; . . .[6]

Thus, cooperation appears to have played an integral role in the government's willingness to enter into an NPA with the Sands. Former federal prosecutor Kevin Rosenberg, lead prosecutor in the Sands case and current Chair of Government Investigations and White Collar Litigation Group at the Los Angeles law firm of Lowenstein and Weatherwax, observes "recent settlements involving financial institutions make it clear that the government continues to value timely and full cooperation.…Casinos under criminal or civil investigation would be very wise to carefully consider the benefits of complete cooperation with the government." According to Rosenberg, "doing so demonstrates that the casino is genuinely interested in addressing any potential deficiencies and doing better in the future, factors the government considers in deciding how to proceed against companies involved in potential wrongdoing." To be sure, Assistant Attorney General Leslie Caldwell gave several speeches earlier this year extolling the virtues of cooperating with the government and providing specifics of what constitutes full cooperation and what does not.

As discussed more fully below, this NPA provides a wealth of information and insight in to what the federal government believes is important in casino anti-money laundering compliance and where casinos may want to focus some of their compliance efforts including:

1. Knowing their customers and knowing their sources of funds;
2. The level of investigation and due diligence required for "high rollers"; and
3. The value of a casino conducting an internal investigation, making voluntary disclosures, and cooperating with the government at an early stage.

September 14, 2013 - FinCEN Director Shasky Calvery's Remarks at the Global Gaming Expo

On September 24, 2013, at the Global Gaming Expo, FinCEN Director Jennifer Shasky Calvery made the following statement regarding casinos knowing their customers:

> Knowing your customers is something that casinos do very well. In fact, it can be argued that casinos in many cases have vastly more information on their customers than any other financial institution. . . And these same sophisticated systems and controls can and should be used to also protect our financial system, our national security, and our people. You ask your customers many questions about their preferences; you can and should get information about their sources of funds to meet your obligations to identify and report suspicious activity. . . .[7]

At first blush, a lay person may think that such complimentary statements by a high-ranking government official should be taken as high praise. However, those who may have a skeptical nature may view these statements as a clear indication that any claim by a

casino that they did not know that a particular high roller's money came from an illegal source may fall on deaf ears. FinCEN has set the bar high on what it expects from casinos – will the casinos live up to these lofty expectations?

As discussed more fully below, this speech by Director Shasky Calvery provides clear and unequivocal guidance that FinCEN expects the casinos to take those actions necessary to ensure that they know their customers and their sources of funds.

October 11, 2013 – Caesar's Investigation

On October 11, 2013, Caesar's Entertainment Corporation filed their Form 8-K with the Securities and Exchange Commission that stated, in pertinent part, that:

> . . . On October 11, 2013, a subsidiary of the Registrant received a letter from the Financial Crimes Enforcement Network of the United States Department of the Treasury ("FinCEN"), stating that FinCEN is investigating the Registrant's subsidiary, Desert Palace, Inc. (the owner of Caesars Palace), for alleged violations of the Bank Secrecy Act . . . Additionally, the Registrant has been informed that a federal grand jury investigation regarding these matters is on-going. . . .[8]

On April 15, 2015, a Reuters article titled *Caesars nears deal over anti-money laundering lapses* was published and stated, in pertinent part, that "The U.S. Treasury Department's anti-money laundering unit may soon issue a civil penalty to Caesars Entertainment Corp over anti-money laundering lapses . . . The investigation stemmed in part from failures to properly police sports book activity and prevent wagers being placed by illegal betting rings, one of the sources said."[9]

Such an investigation would lead one to conclude that the federal government has concerns that some of the individuals who are actually placing bets at the sports books are merely acting as conduits for the real bettors, thus preventing the casinos and the federal government from knowing whose money is actually being bet at the sports books.

June 12, 2014 - FinCEN Director Shasky Calvery's Remarks at the *2014 Bank Secrecy Act Conference*

On June 12, 2014, at the *2014 Bank Secrecy Act Conference*, FinCEN Director Shasky Calvery focused a considerable amount of her speech on the risks associated with overseas junket operators. Specifically, Shasky Calvery made the following suggestions to the casinos regarding overseas junket operators:

> Think about what it means when you are dealing with money that comes to you from overseas. This happens, for example, when you are affiliated with or have relations with a casino in an overseas jurisdiction, such as Macau, or when you are receiving patrons through overseas junket operators. . . . In particular, you should be paying attention to:
>
> - Source of Funds: Where precisely are the funds coming from? . . .
> - International Money Transfers: How are customers or junket operators moving the funds to and from the United States? . . .

> A casino is required to implement procedures for identifying the junket representative and each member of the junket, obtaining other information on these individuals, and conducting due diligence, for front money accounts.[10]
>
> In addition, Director Shasky Calvery reminded casinos that they are financial institutions and that it is advisable for them to start thinking more like other financial institutions when it comes to anti-money laundering compliance. Specifically, she stated that ". . . casinos . . . are complex financial institutions with intricate operations that extend credit, and that conduct millions of dollars of transactions every day. They cater to millions of customers with their bets, markers, and redemptions. And casinos must continue their progress in thinking more like other financial institutions to identify AML risks."[11]

From this speech, casinos representatives may want to: (1) examine what procedures they currently have in place to identify the junket operator and each member of

the junket; and (2) accept the fact that they may be more like banks than they may like to admit.

August 2014 – Normandie Investigation

On May 22, 2015, a Reuters article titled *Feds probe L.A.-area casino over cash transactions* was published and stated that "[a] federal grand jury is probing a Los Angeles-area casino following allegations by state authorities the business allowed some players to evade transaction reporting requirements and possibly launder money, a source said." The report went on to state that "Lauren Miller, general manager and spokeswoman for Normandie Casino, said in a written statement that federal prosecutors in Los Angeles informed the casino it was under investigation in August 2014 . . . ."[13]

In light of this report that federal government was investigating a California-based casino/card club, any notion that the federal government will only investigate the large casinos who cater to players who win and lose millions of dollars should be dispelled.

INVESTIGATION INVOLVING WYNN RESORTS

On November 21, 2014, an article in The Wall Street Journal titled *Wynn Resorts Probed on Money-Laundering Controls* was published and stated that "Federal authorities are investigating whether casino operator Wynn Resorts Ltd. violated money-laundering laws, according to people familiar with the matter."[14] The article went on to report that ". . A letter sent . . . by the IRS criminal investigation division in August requested information on Wynn's U.S. and foreign clients . . ." and that "The letter . . . asked the casino for a list of its biggest customers from 2011 through 2013, requested a list of Wynn's top 100 patrons from North America as well as its top 50 in each of three other regions: Asia, Europe and Latin America . . ."[15]

Such a request by the Internal Revenue Service should be a clear indicator to all casinos that the government is focusing some of its efforts on "high rollers" and that it would be advisable for all casinos to conduct the appropriate level of due diligence regarding their high rollers and have a clear understanding of their sources of funds.

December 24, 2014 - FinCEN Correspondence to American Gaming Association

In correspondence dated December 24, 2014, from FinCEN to the American Gaming Association, FinCEN explained their concerns and expectations relating to sports books as follows:

> It has come to the attention of the Financial Crimes Enforcement Network ("FinCEN") and its law enforcement and regulatory colleagues that increases in sports betting conducted on behalf of third parties are facilitating criminal activity and posing a money laundering risk to the U.S. financial system. In connection with this, it has also come to our attention that casinos may be under the impression that unless specifically directed to do so, a casino never has to ask a patron whether he or she is betting on his or her own behalf or on behalf of another party. We are communicating directly with your organization to correct any such misperception . . . . [16]

Such correspondence should encourage casinos to carefully examine what procedures they have in place to ensure that the individuals who are actually placing the bets are not acting as conduits for others.

June 3, 2015 – FinCEN Assessment of Civil Money Penalty Against Tinian Dynasty Hotel & Casino

On June 3, 2015, FinCEN assessed a civil money penalty in the amount of $75 million against Hong Kong Entertainment (Overseas) Investments, Ltd., doing business as the Tinian Dynasty Hotel & Casino of the Northern Mariana Islands, for "willfully violat[ing] the BSA's program and reporting requirements from 2008 through the present."[17] A FinCEN press release stated that "Tinian Dynasty didn't just fail to file a few reports. The casino operated for years without an AML program in place. It failed to

file thousands of CTRs and its management willfully facilitated suspicious transactions and even provided helpful hints for skirting and avoiding the laws in the U.S. and overseas. Tinian Dynasty's actions presented a real threat to the financial integrity of the region and the U.S. financial system."[18]

Again, the federal government assessment of such a substantial penalty against a casino in the Northern Mariana Islands should make clear that smaller casinos are not immune to the scrutiny and enforcement actions that many of the larger casinos are facing.

WHAT LESSONS CAN BE LEARNED FROM THESE RECENT FEDERAL ACTIONS AND PRONOUNCEMENTS?

Lesson No. 1 - Feds Want Casinos to Know their Customers and their Sources of Funds

Essential to every effective anti-money laundering compliance program are the diligent and concerted actions of casino personnel to know their customers and their sources of funds. Casino representatives can assure themselves that, in any IRS examination or criminal investigation, the government will assess what actions the casino has taken to get to know their customers and find out where their customers' money is coming from.

As explained above, at the September 2013 Global Gaming Expo, Director Shasky Calvery, in not so subtle fashion, made it clear that she believes that the casinos already know their customers very well.

Finally, nine months later, in order to ensure that casinos got the message, Director Shasky Calvery stated at the *2014 Bank Secrecy Act Conference*, "Under a risk-based approach, these situations represent times when you may need to learn more about your customer and his or her source of wealth to identify suspicious activity."[19]

There is no indication that government's expectations along these lines in any way depends upon the size of the player. Indeed, none of the federal actions described above were likely simply a product of the amount of money involved. According to Rosenberg, these federal actions "likely involved inadequate corporate governance/responsibility, incomplete or inconsistent customer due diligence and source of funds analysis, a lack of internal controls and testing, or inadequate communication across casino and corporate departments. … These situations can arise whether a casino's players wager millions or hundreds of dollars." As a result, casinos should continue to conduct thorough risk assessments and ensure that proper procedures are in place to sufficiently know their customers and source of funds.

Lesson No. 2 - Feds Are Focusing Some of Their Efforts on "High Rollers"

Common sense tells us that the casinos should expect that federal investigators and prosecutors to focus some of their time and effort on what is referred to in gaming circles as "high rollers." With limited resources, federal law enforcement cannot investigate and prosecute every possible violation of the law so they must focus their attention on those cases where "you can get the most bang for your buck."

One needs to go no further than the Sands NPA to find proof that the federal government has some interest in a casino's high rollers. The Sands NPA stated, in pertinent part, that "During his patronage, Zhenli Ye Gon lost a total of $90,125,357 at Venetian- Palazzo . . . Ye Gon's losses at the casino tables were so extraordinary that the Venetian classified him as an 'outlier' in company earnings graphs and charts . . ."[20]

Finally, as explained above, at least one casino was recently asked to provide a list of its biggest customers in North America, Asia, Europe, and Latin America.[21] It would be a mistake for casinos to take a "this won't happen to me" attitude.

Lesson No. 3 – Feds are Looking at Third-Party Betting at Sport Books

The investigations referred to above, as well as FinCEN's December 24, 2014, correspondence, make it clear that casino sports books are under scrutiny and that casinos should institute procedures to determine if their patrons are betting on behalf of themselves or betting on behalf of others.

Lesson No. 4 – Casinos Need to Scrutinize Money from Overseas and Junket Operators

FinCEN Director Shasky Calvery's prepared remarks at the 2014 Bank Secrecy Act Conference were approximately 4½ pages in length and she devoted approximately ½ of a page to overseas junket operators. The devotion of a significant portion of her speech to reminding the casinos of the money laundering risks associated with overseas junket operators is a clear indication that this is a subject of great concern to FinCEN which may translate into enforcement actions and investigations.

Lesson No. 5 – Feds Want Casinos to Start Thinking Like Banks

As set forth above, in her remarks at the 2014 Bank Secrecy Act Conference, Director Shasky Calvery stated that "Casinos must continue their progress in thinking more like other financial institutions to identify AML risks."[22] Such a statement should send a clear signal to those in the casino industry that FinCEN does not buy into the argument that casinos are that much different than banks and that casinos should not be held to the same anti-money laundering standards.

Lesson No. 6 - Casinos Should Strongly Consider Disclosure and Cooperation Once the Investigation Starts

In Kenny Rogers' 1978 hit "The Gambler," he sang "[y]ou've got to know when to hold 'em [and] [k]now when to fold 'em, . . ."[23] Attorneys who represent casinos should take these lyrics to heart when confronted with a casino client who informs you of potentially criminal conduct or you receive word that a federal criminal investigation is underway.

At the outset, the attorney who represents a casino must appreciate that he or she represents the entity and not the individuals who may have been involved in the alleged criminal conduct. Second, what is in the best interest of the casino may not necessarily be in the best interest of the individuals who work at the casino. For example, in hopes of convincing the prosecutors not to charge the entity, it may be in the best interest of the casino to make a voluntary disclosure to federal authorities or cooperating with the government once the investigation starts.

The rewards and benefits of disclosure and cooperation are spelled out in the very name of the agreement that the Sands entered into with the USAO–Non-Prosecution Agreement. Given the potential catastrophic consequences of a criminal investigation and prosecution, casinos and their counsel would be well advised to consider disclosure and cooperation at a very early stage.

CONCLUSION

The actions and pronouncements of the Department of Justice and FinCEN since August 2013 provide clear signals as to where the federal government is likely to focus their enforcement efforts in the near future. Casino representatives should take heed of these actions and pronouncement and always be mindful of Edmund Burke's famous quotation, "Those who don't know history are doomed to repeat it."

Jeffrey B. Setness is a shareholder with the law firm of Fabian & Clendenin, P.C. in Las Vegas, Nevada. Jeff represents individuals and entities who are under investigation or have been charged with criminal offenses, including criminal violations of the Internal Revenue Code, money laundering, and structuring. Jeff also conducts corporate internal investigations and drafts and implements corporate compliance programs including anti-money laundering compliance programs. Prior to entering private practice, Jeff was a trial attorney with the U.S. Department of Justice Tax Division - Criminal Section in Washington, D.C., and later served as an Assistant United States Attorney with the U.S. Attorney's Office in Las Vegas and Reno. As a federal prosecutor, Jeff investigated and prosecuted a variety of offenses, including criminal violations of the Internal Revenue Code. Mr. Setness can be reached at jsetness@fabianlaw.com.

The author thanks Kevin Rosenberg for his contributions and insights for this article.

[1] Jeffrey B. Setness & Leonard C. Senia, Why The Federal Government Believes That Casinos Are Vulnerable To Money Laundering, Nevada Gaming Lawyer (Sept. 2013)

[2] Id.

[3] Non-Prosecution Agreement dated August 26, 2013 between the United States Attorney's Office for the Central District of California and the Las Vegas Sands Corp., Attachment A – Statement of Facts, p. 4, ¶ 9

[4] Id. at 3

[5] Id. at 2-3, ¶ 7

[6] Id. at 2

[7] Prepared Remarks of Jennifer Shasky Calvery, Director, Financial Crimes Enforcement Network, Global Gaming Expo, Sept. 24, 2013, available at:http://www.fincen.gov/news_room/speech/html/20130924.html

[8] United States Securities and Exchange Commission Form 8-K dated October 21, 2013, filed by Caesar's Entertainment Corporation, p. 2

[9] Brett Wolf, Caesars nears deal over anti-money laundering lapses - sources, Reuters, Apr. 15, 2015, available at: http://www.reuters.com/article/2015/04/15/gambling-moneylaundering-idUSL2N0XC1LS20150415

[10] Prepared Remarks of Jennifer Shasky Calvery, Director, Financial Crimes Enforcement Network, 2014 Bank Secrecy Act Conference, June 12, 2014, p. 3, available at: http://www.fincen.gov/news_room/speech/html/20140612.html

[11] Id. at 2, available at: http://www.fincen.gov/news_room/speech/html/20140612.html

[12] Brett Wolf, Exclusive: Feds probe L.A.-area casino over cash transactions", Reuters, May 22, 2015, available at: http://www.reuters.com/article/2015/05/22/us-usa-casinos-normandie-idUSKBN0O708G20150522

[13] Id.

[14] Kate O'Keeffe, Rachel Louise Ensign & Christopher M. Matthews, "Wynn Resorts Probed on Money-Laundering Controls," The Wall Street Journal, Nov. 21, 2014, available at: http://www.wsj.com/articles/wynn-resorts-probed-on-money-laundering-controls-1416512645

[15] Id.

[16] FinCEN Correspondence dated December 24, 2014, to Geoff Freeman, President and CEO, American Gaming Association

Highlights from the

2015 BSA Conference

Presented by the State Bar of Nevada Gaming Law Section

Coming Next Summer
2016 BSA Conference!

M. Kendall Day, Chief
Asset Forfeiture & Money Laundering Section
U.S. Department of Justice
Keynote Lunch Speaker

Stephanie Brooker, Director - Enforcement Division
FinCEN
Keynote Opening Address

Fran Gates, Regional Compliance Manager
Penn National Gaming

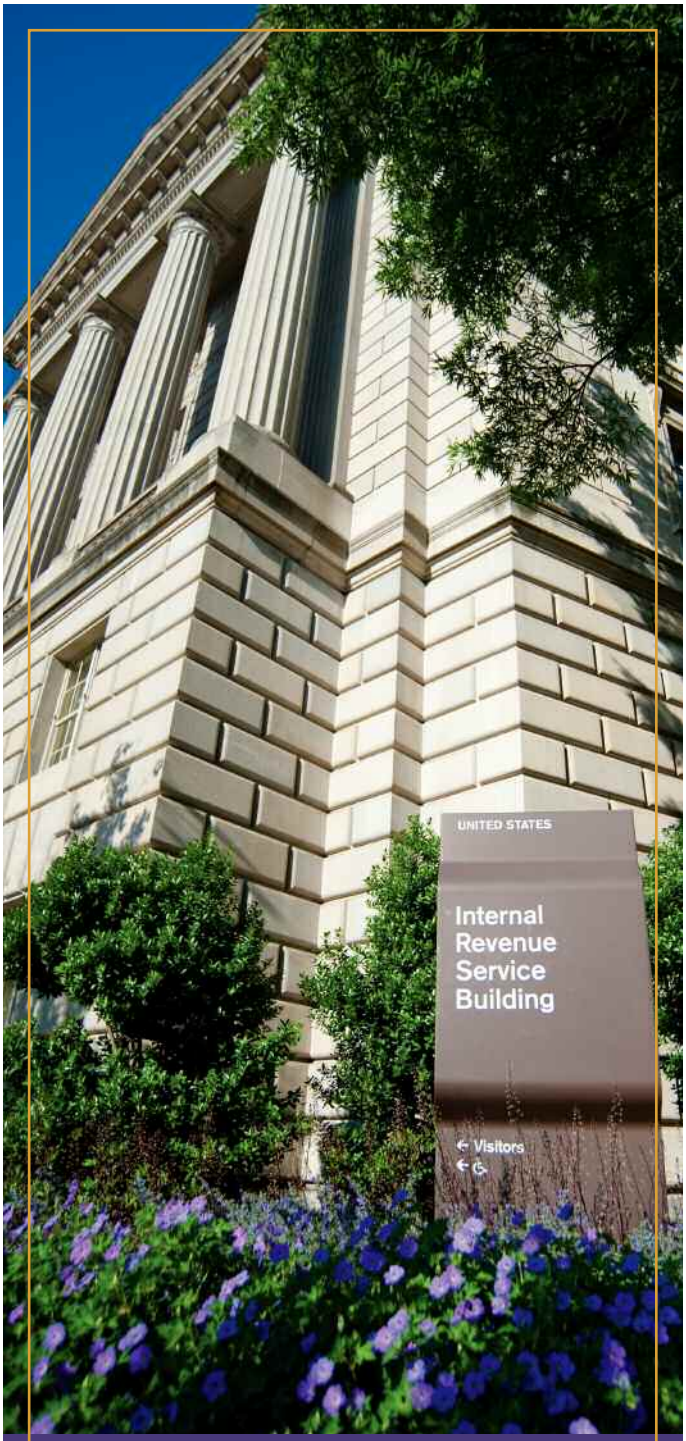
Peggy Jacobs, VP of Gaming Compliance
MGM Resorts International

Jim Dowling
Dowling Advisory Group

Kevin Rosenberg, General Counsel
Goldberg, Lowenstein & Weatherwax, LLP

Elizabeth Cronan
Senior Director
Gaming Policy
American Gaming Association

Left to right: Jonathan Solomon, Senior VP & Global Chief Compliance Officer, Las Vegas Sands Corporation; Gregory Lisa, Chief - Money Services Businesses & Casinos Section, Enforcement Division, FinCEN; and Paul Camacho, VP of AML Compliance, Station Casinos, LLC



The **Taxation** of **Individual Gambling Winnings** and the **Proposed IRS Amendments** to **Reporting Thresholds**

By Mark Lerner

The Internal Revenue Service ("IRS") is proposing to increase the number of reports of the amounts won by individuals gambling at a casino. The IRS might be better asking whether individual gambling winnings should be taxed at all.

Under current IRS regulations, casinos are required to collect and submit, on a Form W-2G, customers' names, addresses, social security numbers, and signatures for each slot machine payout of $1,200 or more and each keno or bingo payout in excess of $1,500. Amendments proposed by the IRS would lower the thresholds for reporting slot machine, keno, and bingo winnings to $600.

These changes would significantly increase the reporting burden on casino operators and customers without significantly benefiting the national treasury. The changes may even reduce the amount of taxes properly collected.

Reporting individual gambling winnings is incredibly complicated. You cannot simply net your losses against your winnings at the end of the year and report any positive difference. An individual must report winnings and losses separately, reporting winnings as "other" income and claiming losses (up to the amount of winnings) as an itemized deduction.

To be deducted, losses must be documented with meticulous specificity. The IRS expects gamblers to produce records that not only include just the amounts won or lost, but the dates and types of gambling, including slot machine and table game numbers, the names and addresses of the gambling establishments, the names of other persons present, and so on.

Record keeping is complicated by the fact that winnings and losses are determined on a session-by-session basis. Sessions begin when a player buys in and end when the player cashes out. The proposed amendment would also end any session and begin a new one at the end of each calendar day. The session concept does not simplify record keeping; it adds yet another factor of which the casual gambler must keep track. Under the proposed amendment, it would become even more complicated whenever an individual's gambling straddles midnight—hardly an unusual occurrence among gamblers in 24-hour casinos with busy swing and graveyard shifts. These are not records likely to be kept by casual, recreational gamblers. While someone who scores a W-2G-worthy win early in the year may be able to document offsetting losses later in the year, those who have a major win near the end of the year may not.

The result is people owing tax even though they don't end up winning any money to pay it. Furthermore, people who do not itemize deductions can only report winning sessions and, therefore, are more likely to owe taxes on their "winnings" even though they have a net loss for the year. Since lower-income taxpayers are much less likely to itemize deductions than higher-income taxpayers, the result is not just a tax on non-existent gambling income but a regressive tax that affects lower-income people disproportionately. The regression would only worsen under the proposed amendments as the amounts reported are halved and affect more people.

All of this is an incentive not to report winnings and, if winnings result in a Form W-2G, to be creative about documentation of offsetting losses. And for what? Taken as a group, individual gamblers show a net loss every year. Taken individually, the overwhelming majority of gamblers show a net loss every year. Those who do manage to show a win as of the end of the year mostly win very little, and those who continue to gamble are likely to lose it back the following year. In theory, the amount of individual gambling winnings available for taxation is zero. For individual gamblers, casino gambling is a less than zero-sum game. On average, gamblers show a net loss for the year. That's why there are casinos.

So how much money can the treasury possibly net each year in taxes on individual gambling winnings? How much would that amount change if the proposed amendments go into effect? To answer these questions, we need to know how much money the IRS actually collects and how much the IRS should accurately collect in these taxes and how much it spends to collect them. Whatever the IRS spends administering the tax, the amount would increase under the proposed amendments as the IRS works to process twice as many W-2Gs. At the same time, the amount likely to be collected will not increase in proportion. Not only are the amounts in question smaller, but the lower reporting threshold makes it more certain that winnings will be offset by actual losses during the year and that taxes will not actually be owed.

We also need to know how much tax revenue from tax-paying casinos is lost when the casinos shut down games and players to issue W-2Gs? Whatever that amount is now, it has to increase under the proposed amendments, since the number of W-2Gs would presumably double. Taxes on casino income are also reduced through increased payroll and other business expenses as casinos process more W-2Gs, not to mention the enormous cost of refitting slot machines and keno and bingo systems to lock up at the lower amounts. The taxes paid by casinos are not insubstantial. The total amount of taxes collected by all U.S. jurisdictions in 2013 totaled $38 billion; the total amount of federal taxes collected was $17.3 billion. Thus, even a small dip in taxable casino

income caused by increased numbers of W-2Gs and other associated expenses is likely to have a significant effect on tax collections. Furthermore, from the tax collector's point of view, compared to the complexities of administering taxes on the small amounts individual gamblers contend with, taxation of casinos is relatively simple. Most are taxed, audited, and heavily regulated by local jurisdictions, so most of the work needed for federal tax purposes is already being done at no federal expense.

It just doesn't seem likely that the lowered thresholds would yield enough additional tax revenue to justify the added burden on the individuals, casinos, and the IRS. Even with the thresholds at their current levels, the return doesn't appear to justify the investment.

Most countries, it seems, have sensibly concluded that taxing individual winnings from casinos does not make sense, economically or as a matter of policy. It appears that most other countries do not tax individual winnings from casinos; this includes most European Union countries, the United Kingdom, Canada, and Australia.

The IRS shouldn't be lowering the reporting thresholds. It should be eliminating the individual tax and the reporting altogether and focusing on the relatively easy money to be collected from the only real winners, casinos. Unfortunately, eliminating the tax on individual gambling winnings cannot be done by regulation; it seems a statutory change—literally, an act of Congress—is required. But until that happy day, the IRS should not exacerbate the inequities of the current system by decreasing the reporting thresholds.

[1] Form W-2G, http://www.irs.gov/pub/irs-pdf/fw2g.pdf.

[2] INTERNAL REVENUE SERVICE, *2015 Instructions for Forms W-2G and 5754*, at 4, http://www.irs.gov/pub/irs-pdf/iw2g.pdf.

[3] Howard Stutz, *IRS Suggests Dropping Casino Winnings Threshold To $600*, LAS VEGAS REVIEW-JOURNAL, Mar. 5, 2015 (http://www.reviewjournal.com/business/casinos-gaming/irs-suggests-dropping-casino-winnings-threshold-600); *Information Returns; Winnings From Bingo, Keno, and Slot Machines*, 80 Fed. Reg. 11600 (2015) (to be codified at 26 C.F.R. 1, 26) (proposed Mar. 4, 2015).

[4] IRS Publication 529 (http://www.irs.gov/publications/p529/ar02.html#en_US_2014_publink100027002).

[5] IRS Publication 529 (http://www.irs.gov/publications/p529/ar02.html#en_US_2014_publink100027002).

[6] Memorandum AM2008–11, Office of Chief Counsel, Internal Revenue Service (Dec. 12, 2008); Park v. Commissioner, 2013 U.S. App. LEXIS 13785 (D.C. Cir. July 9, 2013); Shollenberger v. Commissioner, 98 T.C.M. (CCH) 667, 2009 WL 5103973 (Tax Ct. 2009).

[7] CONGRESSIONAL RESEARCH SERVICE, *Itemized Tax Deductions for Individuals: Data Analysis*, http://fas.org/sgp/crs/misc/R43012.pdf (Feb. 12, 2014).

[8] Assuming the machines and systems can be refitted at all. Reprogramming the hundreds of thousands of slot machines located in the U.S. would be a monumental task, involving dozens of manufacturers, hundreds or even thousands of different code sets, and visits to each individual slot machine to install the new programs (online updating is not typically an available option for slot machines or casino gaming systems).

[9] AMERICAN GAMING ASSOCIATION, *Gaming's Quarter of a Trillion Dollar Impact on the U.S. Economy* (2014)(http://www.gettoknowgaming.org/sites/default/files/AGA_G2KG_Fact-Sheet_0.pdf).

[10] CASA, *Taxation of Gambling Winnings in European Countries* (Newsletter No. 23, June 2011) (http://www.casasa.org.za/CASA_Newsletter_Issue_23.pdf).

[11] TIM WORSTALL, *The Reason The UK Doesn't Tax Betting Is Because It Wouldn't Produce Any Revenue*, FORBES, Nov. 29, 2013 (http://www.forbes.com/sites/timworstall/2013/11/29/the-reason-the-uk-doesnt-tax-betting-is-because-it-wouldnt-produce-any-revenue/); Do I Have To Pay Taxes On Online Gambling Winnings?, http://www.cheekypunter.com/faq/do-i-have-to-pay-taxes-on-online-gambling-winnings/

[12] *Do I Have To Pay Taxes On Online Gambling Winnings*, http://www.cheekypunter.com/currency/canadian-dollar/.

[13] *Is Gambling Taxed In Australia?*, http://www.onlinepokiesaustralia.com.au/faq/is-gambling-taxed-in-australia.html.

[14] *See 26* U.S.C. § 61 (taxable income includes all income not expressly exempted); 26 U.S.C. § 165(d) ("Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.")

HOTEL SAFE-DEPOSIT BOXES AND UNCLAIMED PROPERTY

A CHANGE IN NEVADA'S APPROACH

By Andrew Moore and Jennifer Carleton

Nevada laws related to public accommodation liability are generally very favorable to hotels. Hotel[1] operators are exempt from liability for any property that a guest fails to deposit for safekeeping with the hotel unless the gross neglect of the hotel can be established, with the burden of proof resting upon the guest. In order for this exemption to apply, the hotel must provide a fireproof safe or vault in which guests may deposit property for safekeeping and give notice of this service either by telling the guest of the service or by posting notice in the office and the guest's room.[2] The hotel is not obligated to receive property exceeding $750, unless the hotel consents to do so in a written agreement in which the guest specifies the value of the property.[3]

Bailment and Safes in Hotel Rooms

A "bailment" is created when a hotel receives something of value on behalf of a patron and agrees to keep it for the patron. In *Kula v. Karat*,[4] a patron deposited $18,300 with a cashier in the casino at the Stardust Hotel. The Nevada Supreme Court found that "[w]here a bailee, either for hire or gratuitously, is entrusted with care and custody of goods, it becomes his duty at the end of the bailment to return the goods or show that their loss occurred without negligence on his part. Failing in this, there arises a presumption that the goods have been converted by him, or lost as a result of his negligence, and he is accountable to the owner for them."[5] If a hotel provides a safe in which guests may deposit property for safekeeping and the hotel accepts the property and deposits it on behalf of the patron, a bailment is created and the patron may demand return of his or her property at any time.

The Kula case did not address the situation in which a patron deposits his or her property in a personal safe located in a hotel room. With a personal safe in the guest's room, the hotel is not directly

receiving goods from the guest. The guest is depositing the goods directly in the safe and the hotel is not entrusted with care or custody of the goods while the guest is staying at the hotel. The hotel does not have access to the safe because the key is held by, or the digital access code is only known to, the guest. In the event that a hotel guest leaves the hotel without retrieving goods that he or she has deposited directly into the safe in the hotel room, those goods are deemed left by the guest and may be sold by the hotel.[6]

If a guest owes money to the hotel at the time of departure, any of the guest's property left at the hotel may be sold by the hotel after 60 days. "All baggage or property of whatever description left at a hotel, inn, motel, motor court, boardinghouse or lodging house for the period of 60 days may be sold at public auction by the proprietor or proprietors thereof as provided in NRS 108.500."[7] If a hotel elects to sell such goods, sale of such goods must be by public auction after notice, which includes (a) a description of the property to be sold, (b) the time and place of the sale, (c) the name of the hotel at which the property or baggage was left, (d) the name of the owner of the property, if known and (e) the signature of the person conducting the sale. If the residence of the owner of the property is known, a copy of the notice should be sent to the owner.[8]

Abandoned Property

In Nevada, property is considered abandoned when there has been no activity or contact with an owner for a specific period of time. The property type will determine the abandonment period; however, it is typically three years. "When a holder's attempts to locate the rightful owner have been unsuccessful, the assets must be 'escheated' to the Nevada State Treasurer's Office, which, in turn, holds the assets in perpetuity. The law requires the state to advertise the rightful owners' names in an effort to return the assets. Once the assets are reported to the state, the holder is released from any liability."[9]

Some resort hotels in Nevada offer their guests safe-deposit boxes that guests may use during their stay,

in addition to the safes provided in guest rooms. Prior to the adoption of AB 419 in the 2015 Nevada legislative session, Nevada's unclaimed property statute would have prevented a hotel from selling the property left in a safe-deposit box or the safe in the guest room. NRS 120A.510 provides that "tangible property held in a safe-deposit box or other safekeeping depository in this State in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law are presumed abandoned if the property remains unclaimed by the owner for more than 3 years after expiration of the lease or rental period on the box or other depository." The Nevada Treasurer's manual related to unclaimed property notes that gaming establishments are subject to the same escheatment laws as any other business in Nevada. Guidance published by the Nevada State Treasurer related to safe-deposit boxes notes that such guidance applies to banks, other financial institutions, and casinos and details that the property left in safe-deposit boxes would need to be inventoried on forms provided by the Nevada Treasurer. Under the applicable provisions in NRS 120A, the property in the safe-deposit box would need to be held for three years by the hotel and if the owner never claimed the property, the property would be provided to the State Treasurer as abandoned property. "Front Money (cash deposited with a casino that the owner withdraws for gambling), hotel safe deposit boxes (with or without rental payments), registered hotel in-room safekeeping, boxes and property, are subject to escheatment to Nevada Unclaimed Property."[10]

AB 419, however, added the following section to Chapter 120A – "The provisions of this chapter do not apply to tangible property held in a safe-deposit box or other safekeeping depository which is not maintained by: (1) A bank or other financial institution; or (2) A safe-deposit company." The explanation of the purpose of the bill reads: "This bill clarifies that the provisions of the Uniform Unclaimed Property Act do not apply to tangible property held in a safe-deposit box or other safekeeping depository, which is not maintained by a bank or other financial institution." The Nevada Resort Association ("NRA") amended the bill after it was originally introduced to include subsection (2) which provides that the unclaimed property provisions apply to safe-deposit companies in addition to banks. The NRA noted that this provision was necessary because Nevada statutes refer to "safe-deposit companies." In its explanation for the amendment, the NRA noted that its intent "is to include companies that are in the business of providing for safe-deposit [boxes], and not include entities that are not in the business of leasing safe-deposit boxes, such as hotels." Lorne Malkiewich of the Nevada Resort Association testified before the Nevada Senate Judiciary Committee on May 12, 2015, regarding the effect of AB 419 and the question of whether a safe in a hotel room is considered a safe-deposit box or other safekeeping depository: "The statute provides that property in a safe deposit box is presumed abandoned if it remains unclaimed for more than 3 years after the expiration of the lease or rental period. The concept 'lease or rental fee' makes no sense applied to a safe in a hotel room. A presumption of abandonment after 3 years makes perfect sense for safe deposit boxes but would be insane applied to a hotel safe. For example, if a family stayed in a hotel and Junior thinks it would be interesting to put his teddy bear in the safe, the hotel would be required to keep the teddy bear for 3 years and then turn it over to the Unclaimed Property Division." AB 419 was signed by Governor Sandoval into law on May 21, 2015 and became effective on July 1, 2015.

Resort Casino Safe-Deposit Boxes

It is clear that after the Nevada Legislature amended Chapter 120A, the property that is left by a patron in a hotel room safe is no longer subject to the unclaimed property provisions of the Nevada code. However, it is not as clear whether a resort casino that provides a safe-deposit box to a patron is a "financial institution" subject to those same provisions. AB 419 did not define the term "financial institution." Even though casinos are defined as a financial institution under the Bank Secrecy Act (31 U.S.C. § 5312(a)(2)(X)), the various definitions of "financial institution" under Nevada law do not include casinos in the definitions. The following provisions in the NRS define "financial institution": NRS 363A.050, 111.711, 600.045, 239A.040, 657.160. The only one of these various definitions in Nevada law that could arguably include a casino is NRS 657.160 because it defines financial institution with reference to a depository institution. But the definition of depository institution in NRS 657.037 requires that the institution be chartered as a financial institution in Nevada, in another state or by the federal government. Therefore, it does not apply to casinos and resort hotels.

Given AB 419's effective date of July 1, 2015, all property that has been housed in safe-deposit boxes at a Nevada hotel for a period of three years or longer, as of July 1, 2015 should be escheated to the State of Nevada as unclaimed property. For property that has been left in a safe-deposit box or a hotel safe for a period less than three years (as of July 1, 2015), Nevada hotels can now dispose of the property because AB 419 clarified that Nevada's unclaimed property requirements do not apply to safe-deposit boxes or any other safekeeping depository provided to guests in Nevada hotels.

Andy Moore is a shareholder in the Las Vegas office of Brownstein Hyatt Farber Schreck. Andy is experienced in assisting clients with gaming regulatory matters before the Nevada Gaming Commission and Nevada Gaming Control Board. Additionally, he has assisted clients with numerous and varied liquor and other business licensing matters in local jurisdictions throughout Nevada, including matters in Clark County, Las Vegas and Henderson.

Jennifer Carleton is a shareholder in the Las Vegas office of Brownstein Hyatt Farber Schreck. She has spent the last 18 years of her career in gaming, first as in-house counsel for an Indian casino and now as an adviser to the premier public and private gaming companies in the United States. She has developed a unique multi-jurisdictional gaming practice, assisting clients with casino operations in numerous U.S. states, advising investors in gaming companies that hold licenses worldwide, and facilitating negotiations with Indian gaming operators.

[1] While the term "hotel" is used in this article, the same analysis applies to inns, motels, motor courts, boardinghouses or lodging houses under NRS 651.010.

[2] NRS 651.010(2).

[3] NRS 651.010(3-4).

[4] 91 Nev. 100 (1975).

[5] *Id.* at 104, citing *Mills v. Continental Parking Corp.*, 86 Nev. 724, 475 P.2d 673 (1970); *Alamo Airways, Inc. v. Benum*, 78 Nev. 384, 374 P.2d 684 (1962). Cf. *Traynor v. Carter*, 87 Nev. 281, 485 P.2d 966 (1971); *Donlan v. Clark*, 23 Nev. 203, 45 P. 1 (1896).

[6] See NRS 108.490.

[7] NRS 108.490.

[8] NRS 108.500.

[9] State of Nevada Office of the Treasurer, Unclaimed Property Holder Reporting Manual (Rev. 05/2015).

[10] *Id.*

Gaming Law Education Advances:

THE FIRST LL.M. IN GAMING

By Ngai Pindell, Vice Dean and Professor of Law, and Jennifer Roberts, Adjunct Professor

The William S. Boyd School of Law at UNLV (Boyd School of Law) will enroll the first class of students in a new LL.M. in Gaming Law and Regulation this fall. The LL.M. builds on the fourteen years of gaming instruction in the JD curriculum; long-standing, cross-campus partnerships with the William F. Harrah College of Hotel Administration; the International Gaming Institute; the Center for Gaming Research in the Lied Library; and Las Vegas' position as a global leader in gaming and gaming regulation.

Many law schools offer a large, general LL.M. especially popular with students and lawyers from outside of the U.S. In contrast, the LL.M. in gaming will be specialized and narrowly tailored, similar to other specialty LL.M. programs in tax, intellectual property, and health law to name a few examples. Students may complete the LL.M. program in one year as a full-time student or in two years as a part-time student.

The Boyd School of Law already provides the most extensive curriculum in gaming law and regulation courses in the country. As early as 2001, the law school offered students an overview of the world of regulated gaming with Introduction to Gaming Law. Now, fourteen years later, students learn more than the basics. They also receive instruction in Indian gaming law, laws affecting gaming resort properties,

the federal government's role in gaming, and the policy issues that affect the gaming industry. Students learn the breadth of the field, the cutting-edge debates that shape the industry, and have an opportunity to participate directly in creating gaming law and policy. During the 2015 Nevada state legislative session, for example, students created an amendment to charitable gaming laws, introduced it before the Nevada Gaming Control Board and the Nevada Gaming Commission, and testified before both the Assembly and the Senate. The bill was signed into law by Governor Brian Sandoval and continues the school's successful streak of student-led gaming legislation. The gaming law curriculum has a long tradition of combining high quality classroom instruction with hands-on experiences and "real-world" insights. Casino owners and operators, general counsels, regulators, and gaming law practitioners regularly guest lecture in classes to provide first-hand, inside perspectives about this regulated world. The LL.M. program will build on this long-standing tradition.

LL.M. students will be required to take the Introduction to Gaming Law course as well as a new course called Casino Operations and Management, a blend of the business and legal issues central to the internal workings of a gaming operation. Students will also be required to take a course on either federal gaming law or comparative gaming law, in addition to completing a drafting project or externship. Gaming specific electives include a course covering the laws and policies affecting gaming manufacturers and a course on technology and innovation. Non-gaming specific electives include courses in intellectual property, labor and employment, entertainment, international business transactions, and federal Indian law, among others. As gaming law practitioners fully understand, successful gaming attorneys must also be familiar with the many ways in which gaming intersects with other areas of law. The LL.M. curriculum is designed to allow students to dive deeply into gaming-specific courses while also having the opportunity to place gaming law and regulation within other legal frameworks.

LL.M. graduates will have a competitive advantage in the hiring market. Gaming companies and law firms will benefit from candidates who know the history of this regulated industry and the issues facing the gaming world today. Graduates will be able to "hit the ground running" and save employers the time and expense of teaching them the gaming business. Because regulated gaming is a global business that continues to see growth, there are many opportunities for students to work in new gaming markets - helping to develop gaming regulation and policy and adding immediate value to regulatory agencies, operators, law firms, and related industries.

Ngai Pindell earned his J.D. degree in 1996 from Harvard University, where he served as executive editor of the Harvard Black Letter Journal. After graduation, Vice-Dean and Professor Pindell practiced community development law in a nonprofit law firm in Baltimore, Maryland. He was later a Fellow and Visiting Assistant Professor at the University of Baltimore School of Law, where he taught the Community Development Clinic. Professor Pindell joined the Boyd School of Law in 2000. His research interests are in economic development and housing and he teaches Property, Land Use Regulation, Local Government Law, and Wills and Trusts & Estates.

Jennifer Roberts is a Partner in the Las Vegas office of the international law firm, Duane Morris. She practices in the areas of gaming licensing and compliance, alcohol licensing and control, land use and zoning, and other areas of administrative and regulatory law. She serves as counsel to gaming compliance committees and assists clients with liquor licensing and compliance issues at the federal, state, and local levels. Jennifer is an adjunct professor at the William S. Boyd School of Law, University of Nevada, where she teaches Introduction to Gaming Law, Gaming Law Policy, and Resort Hotel Casino Law courses. She was previously a Shareholder in the Gaming & Regulatory Department of Lionel Sawyer & Collins. She is a 2002 graduate of the University of Utah S.J. Quinney College of Law.

GLS AWARDS SCHOLARSHIP FOR NEW LL.M IN GAMING LAW AND REGULATION AT UNLV

In June, the GLS Executive Committee awarded the first "Gaming Law Section Scholarship" to Jordan Scot Flynn Hollander. Jordan is a member of the inaugural class of the LL.M. program in Gaming Law and Regulation at the William S. Boyd School of Law at UNLV. The $5,000 scholarship will become, as funds permit, an annual scholarship awarded by the Executive Committee to a student it selects from the new LL.M. program.

Jordan Hollander graduated from Rutgers University School of Law in Camden, New Jersey, summa cum laude, in May 2014 and is admitted to practice in both New Jersey and New York. After graduation, he clerked for the Honorable Francis J. Vernoia, Presiding Criminal Judge, in the New Jersey Superior Court, Monmouth County Vicinage. During law school, he completed an externship with the New Jersey Office of the Attorney General, Division of Gaming Enforcement in Trenton and Atlantic City, New Jersey. He has also published two articles in the Gaming Law Review and Economics journal – one on New Jersey's efforts to implement sports gambling and the constitutionality of the Professional Amateur Sports Protection Act and another on internet gambling and the United States' obligations to the World Trade Organization (republished in the Rutgers Journal of Law and Public Policy).

Blurred Lines or Bright Line Between Gaming and Medical Marijuana

By Kimberly Maxson-Rushton

Last year, when the song "Blurred Lines" blasted over the airways, no one, including the recording artists (at least they claimed) realized that lines had been blurred between the popular hit song and a song titled "Got to Give It Up" written by music sensation Marvin Gaye. However, as determined by a jury earlier this year, recording artists Robin Thicke, Pharrell Williams, and T.I. did in fact blur the lines when they produced their hit single without securing the legal rights to the song.

Interestingly, in 2014, Nevada experienced its own form of *blurred lines* relative to the anticipated approval and operation of medical marijuana establishments and gaming. By way of background, Nevada legalized gaming in 1931 and since that time its success has been largely attributable to the regulatory oversight of the industry, coupled with the obligation to ensure that gaming is free of criminal elements. NRS 463.0129. The policy that the Nevada gaming industry remain free from criminal elements isn't limited to those individuals included in Nevada's Black Book or to applicants with transgressions in their background, but instead it contemplates gaming licensees operating lawfully – meaning that they will not engage in business practices that are contrary to state and/or federal law. NRS 463.1405, NRS 463.151, 463.170 and 463.200.

In 1970, President Nixon amended the Public Health Service Act to create what is now known as the Controlled Substance Act (the "CSA"). The intent was to "provide increased research into, and prevention of, drug abuse and drug dependence; to provide for treatment and rehabilitation of drug abusers and drug dependent persons; and to strengthen existing law enforcement authority in the field of drug abuse[1]." Pursuant to the CSA, 21 U.S.C. § 802, marijuana[2] is identified as "all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any

part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin." Marijuana is further identified as a Schedule I substance despite the efforts of numerous cannabis groups to have it reclassified.

> [W]hen it comes to a drug that is currently listed in schedule I, if it is undisputed that such drug has no currently accepted medical use in treatment in the United States and a lack of accepted safety for use under medical supervision, and it is further undisputed that the drug has at least some potential for abuse sufficient to warrant control under the CSA, the drug must remain in schedule I. In such circumstances, placement of the drug in schedules II through V would conflict with the CSA since such drug would not meet the criterion of "a currently accepted medical use in treatment in the United States." 21 USC 812(b).

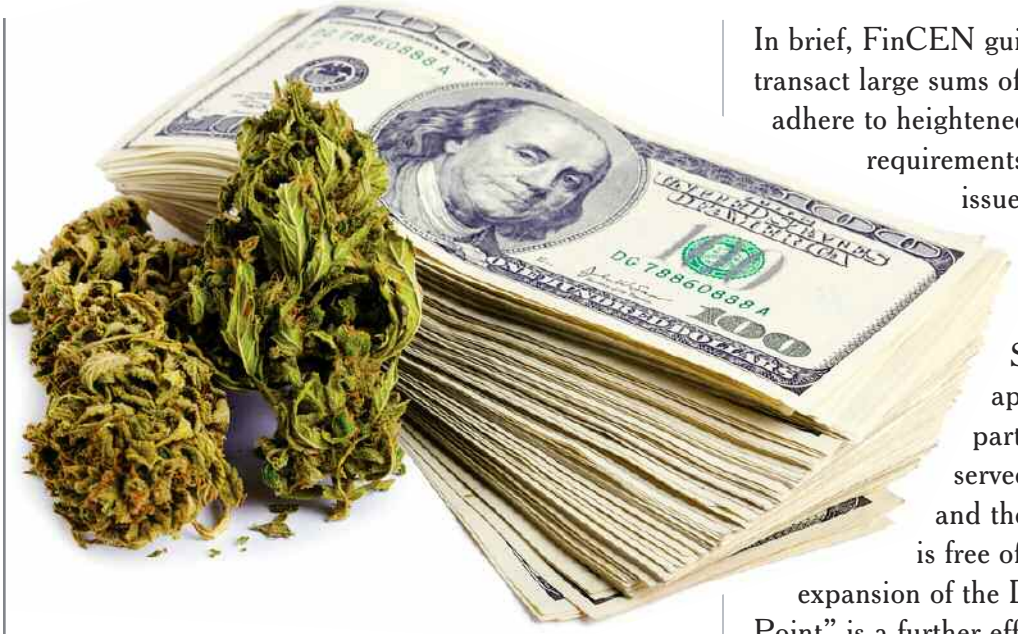
Drug Enforcement Administration, *Notice of denial of petition to reschedule marijuana* (2001).

However, with the proliferation of acceptance and approval of medical marijuana in twenty-three (23) states and the District of Columbia, the federal government has begun to relax its stance on marijuana when used for medicinal purposes. First, through the Department of Justice ("DOJ"), United States Attorney Eric Holder issued an opinion in October 2009 wherein he stated, "It will not be a priority to use federal resources to prosecute patients with serious illnesses or their caregivers who are complying with state laws on medical marijuana, but we will not tolerate drug traffickers who hide behind claims of compliance with state law to mask activities that are clearly illegal." Thereafter, the U.S. Department of the Treasury, Financial Crimes Enforcement Network ("FinCEN") issued "Banking Guidelines" in February 2014 regarding the federal government's expectations, under the Bank Secrecy Act, for financial institutions seeking to provide services to marijuana-related businesses. These guidelines expand and enhance financial services which can be offered to marijuana related businesses. Interested observers could construe this as a sign of the federal government's willingness to consider the medicinal benefits of marijuana, thereby providing a further opportunity to have it removed from the Schedule I category. It could also be a signal to Congress that their exercise of power, through the DEA and FDA, over marijuana treads close to the Tenth Amendment and the sovereignty of the states' rights to protect and govern its citizens. The latter is not likely considering the Supreme Court's holding in *Gonzales v. Raich*, 545 US 1 (2005), wherein the Court addressed whether the power vested in Congress by Article I, § 8, of the Constitution "[t]o make all Laws which shall be necessary and proper for carrying into Execution" its authority to "regulate Commerce with foreign Nations, and among the several States" included the power to prohibit local cultivation and use of marijuana in compliance with California law.

> The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail. It is beyond peradventure that federal power over commerce is "superior to that of the States to provide for the welfare or necessities of their inhabitants," however legitimate or dire those necessities may be. *Maryland v. Wirtz*, 392 U.S. 183, 196 (1968)(quoting Sanitary Dist. of Chicago v. United States, 266 U. S. 405, 426 (1925)).

The CSA still identifies marijuana, in any form and regardless of the intended use, as a Schedule I controlled substance. So where does that leave gaming? In jurisdictions such as Colorado, New Jersey, and California, the two industries and the respective licensees may coexist without prohibitions or restrictions on dual ownership/operations. Not so in Nevada. The Nevada Gaming Control Board ("NGCB"), pursuant to industry notice 2014–39, unequivocally stated that gaming and medical marijuana shall remain separate. This interpretation of the applicable provisions of the Nevada Gaming Control Act (NRS Chapter 463) was confirmed by the Nevada Gaming Commission ("NGC") and now stands as the bright line policy in Nevada. The NGCB's interpretation and the NGC's position were not surprising to members of the gaming industry and gaming practitioners as it is consistent with the position of the NGCB and NGC regarding internet gaming. As many in the gaming industry will recall, Nevada gaming officials clearly had the knowledge and tools to establish a regulatory scheme to oversee the licensure and operation of intrastate on-line gaming; however, until 2011, when the DOJ reversed its long-held interpretation of the Federal Wire Act,[3] the more prudent action was for Nevada gaming officials to continue to "study internet gaming." Thereafter, following the DOJ's opinion, Nevada, New Jersey, and Delaware quickly passed laws enabling internet gaming in each respective jurisdiction.

The decision by the NGC, as recommended by the NGCB, to prohibit gaming licensees from holding an interest in a licensed medical marijuana establishment falls squarely in line with the provisions of the Nevada Gaming Control Act and the legislative intent that gaming remain free of criminal elements. Considering that all aspects of gaming must be conducted in a lawful manner, involvement in the field of medical marijuana must be permitted by, and not contrary to, both state and federal law. Accordingly, the NGCB construes the violation of federal law, even if the activity complies with state law, to be unlawful under the ordinary meaning of the term. Thus, irrespective of whether Nevada authorizes medical marijuana, the federal government doesn't…..end of story!



Recognizing that the option of dual licensure/participation in both industries is prohibited, the question becomes just how far does that prohibition extend? Inquiries have been made by conscientious licensees as well as local officials; however, to many people those lines remain blurred. Accordingly, the intent of this article is to provide guidance to licensees and their counsel.

Starting first with the easy questions, may a gaming licensee transfer their interest in a medical marijuana establishment to a spouse, and thereafter continue to hold a gaming license? The answer, as previously held by the NGCB and NGC, is no. May a private equity or financial group, which holds a gaming license invest (not control) in a medical marijuana establishment? Ill advised. According to Gaming Control Board Member, Terry Johnson, ***"I would certainly caution against such an investment. The industry notice expressly opined that a gaming licensee's investment in a medical marijuana establishment was not 'consistent with the effective regulation of gaming.'"***

In addition to the enumerated concerns by the NGCB and NGC relative to marijuana, there are concurrent issues specific to how gaming and medical marijuana establishment's maintain oversight of cash transactions.

In brief, FinCEN guidelines require businesses that transact large sums of currency on a regular basis to adhere to heightened record keeping and reporting requirements. In February 2014, FinCEN issued guidelines specifically intended to assist the marijuana and banking industries in handling cash. Similarly stringent guidelines applicable to gaming and in particular internet gaming have served as a valuable tool to regulators and their efforts to ensure that gaming is free of corrupt elements. An expansion of the DOJ's "Operation Choke Point" is a further effort by the government to strangle providers of financial services in targeted industries in order to "choke off" the money needed for certain industries to survive. Now applicable to gaming, banks are not just required to know how casinos are getting their money but also how casinos customers are getting their money. Based on the spotlight the federal government has placed on financial transactions and the source of funds it is clear why the NGCB and NGC would have concerns with the relationship between casinos and marijuana businesses.

Considering the potential negative impact a federal investigation could have on a licensee as well as the state, the NGCB and NGC's clarification on the ability of gaming licensees being able to own and/or operate a medical marijuana establishment becomes crystal clear.

But what about the gaming licensee that owns separate property that will be used as a medical marijuana establishment, is the licensee subject to a call forward? According to Gaming Control Board Member, Terry Johnson, ***"Most definitely, a licensee in this scenario would be subject to a call forward under NRS 463.162(5). The Board examines, on a case-by-case basis, whether particular circumstances implicate the Board's interests in maintaining appropriate***

separation between gaming and medical marijuana and if so, whether to call a person forward." Are gaming establishments prohibited from employing an individual who has an ownership interest in a medical marijuana establishment? What if the individual is an officer, director or key employee? Considering that many officers and directors of licensed gaming entities are required to file an application for a finding of suitability, the NGCB's position that no gaming licensee be involved in an activity that would be a violation of the CSA would likewise suggest that such individuals are prohibited from holding any interest in a medical marijuana establishment. What if a gaming license has a business partner (in a non-gaming business/venture) who also has an interest in a medical marijuana establishment, should the licensee terminate the business relationship to avoid a call forward from the NGCB? NRS 463.167. Lastly, even though Nevada law does not require an employer to modify an employee's job or work conditions, the employer must attempt to make reasonable accommodations for employees who engage in marijuana for medicinal purposes.[4] So, may a gaming licensee allow an employee to work in a non-gaming capacity following verification that the employee holds a valid patient registration card, and confirmation that the employee's use of medical marijuana will not impact their work nor present any safety related issues? The law provides further coverage for gaming employers by clarifying that if the employee's use of medical marijuana imposes an undue hardship on the employer, then reasonable accommodations are not required. Additional guidance for employers can be found in *Coats v. Dish Network, LLC*, Colorado Supreme Court (June 15, 2015). In *Coats*, the Court held that it was not an unfair, discriminatory labor practice to discharge an employee based on the employee's "lawful" use of medical marijuana (outside of work) as the activity/use is "unlawful" under federal law.

The questions posed herein are but a handful of the potential issues gaming licensees may be confronted with as Nevada's newest industry gets set to launch. However, in reality the line between gaming and medical marijuana isn't all that blurry. Gaming licensees are expected to know their obligations as a privileged license holder and should a question arise whether an act may subject the individual or company to disciplinary action by the NGCB, the expectation is that the licensee will seek clarification from the NGCB. Thus, while the prudent action is for the gaming licensee to separate/divest their involvement with medical marijuana, there is no foul in bringing the matter to the NGCB and asking for clarification or an advisory opinion.[5] Understanding the basis for the NGBC and NGC's position on this topic provides both licensees and practitioners with a road map for navigating where the respective industries will or will not be able to co-operate in Nevada. Further issues regarding these two industries will arise as Nevada prepares for medical marijuana establishments to open and begin operating. However, the line between the gaming and marijuana industries must remain distinct, with no ***blurred lines***.

Kimberly Maxson-Rushton is the managing partner of Cooper Levenson's Las Vegas office where she specializes in Administrative Law matters. Prior to joining Cooper Levenson Kimberly served under Governor Kenny C. Guinn as the Chairman of the Nevada Transportation Authority. Additionally, Kimberly was a criminal prosecutor and Special Assistant to the Clark County District Attorney, as well as the Chief of the Las Vegas Nevada Attorney General's office where she was also served as legal counsel to the Nevada Gaming Control Board and Nevada Gaming Commission. Kimberly is a member of the International Association of Gaming Advisors. She is also a member of the Board and Past Chairman of the Law Related Education Committee of the State Bar of Nevada.

[1] Controlled Substance Act of 1970 – Long Title

[2] The federal Controlled Substance Act refers to cannabis as "marihuana" however, in this article the more frequently used spelling of the term "marijuana" is used.

[i] FinCEN's mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities. For additional guidance, see BSA Expectations Regarding Marijuana-Related Businesses, FIN-2014-G001 (February 14, 2014)

[3] "[W]e conclude that interstate transmissions of wire communication that do not relate to a 'sporting event or contest, 18 U.S.C. 1084(a), fall outside of the reach of the Wire Act." Memorandum from Virginia Seitz, Assistant Attorney General, U.S. Department of Justice, Office of Legal Counsel (September 20, 2011).

[4] NRS 453A.800

[5] NGC Regulation 2A

Gaming Law Conference

Friday, November 6, 2015 | Red Rock Casino Resort Spa

Presented by the State Bar of Nevada - Gaming Law Section

The following topics will comprise the 6-hour CLE:

(1 hour) Regulators Roundtable
Dr. Tony Alamo, Chairman, Nevada Gaming Commission
A.G. Burnett, Chairman, Nevada Gaming Control Board
P. Gregory Giordano, Partner, McDonald Carano Wilson LLP (Moderator)

(1 hour) Gaming Enforcement Issues
Shawn Reid, Member, Nevada Gaming Control Board
Karl Bennison, Chief, Enforcement, Nevada Gaming Control Board

(1 hour) 2015 Legislative Update on Gaming
Greg Brower, Nevada State Senate (R-15)
Mark Lipparelli, Nevada State Senate (R-6)

(1 hour) Information Risk Management: Providing Effective Counsel to Your Company
Kevin D. Leitão, Of Counsel, Ballard Spahr, LLP

(2 hours/Ethics) The Fear Factor: How Good Lawyers Get Into Bad Trouble
Stuart Tiecher, Esq.

Lunch with Keynote Lunch Speaker
Timothy J. Wilmott, President & CEO, Penn National Gaming, Inc.

For more information, please visit http://www.nvbar.org/cle/liveseminars

State Bar of Nevada
GAMING LAW SECTION