



## Reflections on The Past As Chairman

By A.G. Burnett

The beginning of my term as Chairman of the Nevada Gaming Control Board (“Board”) was consumed by two things: (1) the 2013 Nevada State Legislature and (2) the advent of interactive poker. Both were right on my doorstep when I walked in. I recall the intensity of discussions with Board staff regarding our budget and various bill draft requests when I began my work on the legislative session. There were multiple pieces to the Board’s budget and multiple gaming-related bills to analyze, including our own. The process was extremely beneficial to me, since it forced me to truly learn the state budgetary and legislative process from the inside, on my own, without anyone else running point. I recall many weekends spent at home reviewing binder after binder of materials on the budget, the gaming industry’s financials as a whole, and the research related to the bills that were out there.

Being Board Chairman during a session is a challenging task. You are the Board’s point person on all legislative matters, and, by default, the point person for the State of Nevada and its gaming interests. While you cannot “lobby,” you are the lone representative of the regulatory system in

Nevada. One must work with legislators, lobbyists, and legislative staff on complex gaming related issues. I found it extremely interesting and enjoyable.

The internet gaming push had consumed all of us for nearly two years. Looking back on it now, I am completely satisfied with the results. I think a regulatory scheme was crafted then that can be used now and, in the future, not just for internet gaming but for mobile sports wagering and other technological advancements in gaming that may come in the future. I have also found that the rules we crafted, and the experiences we had, have assisted a multitude of other jurisdictions in their efforts, both for internet gaming and for sports wagering. We proved that internet-based gaming can be safe and well-regulated. I’m very proud of those facts.

After internet gaming, we realized at the Board that technology was going to lead the future in gaming and gaming regulation. Investigations of applicants and companies would of course continue, but technology was going to increase at a rapid pace in the gaming sphere.

To that end, I am proud of the approach both the Board and Nevada Gaming Commission (“Commission”) took towards technology in the 2015 legislative session and beyond. That push began with the Interim Committee to Study the Impact of Technology on Gaming. Sitting alongside then-Commission Chairman Pete Bernhard, I recognized immediately that the regulators would be tasked with policy changes that would continue Nevada’s lead in gaming regulation. On a night flight from Las Vegas to Reno, it struck me how we were so definition-driven in our regulatory scheme. Much of gaming regulation is found solely in the definitions section of Nevada Revised Statutes (NRS) Chapter 463; one need only look at the definitions at times to see how and whether a particular item or issue might be regulated. It further struck me that a simple definitional change might be all that it takes to cause a seismic shift in gaming regulation.

It seemed to me that all we had to do was add a new category of gaming device to our current regulatory definitions. We could simply amend definitions to add or change what we wanted to allow. It seemed that we could perhaps add terms like “skill-based game” and “hybrid game” to the statutes and let the regulations and standards flow from there. Why not just add those new definitions to “gaming device” and let the rest take care of itself? Of course, it was not that easy, because new laws and regulations would be required. The very next day, I called staff of

the Board's Technology Division and they were fine with the idea. I then called AGEM, which was also fine with the idea. Importantly, after some discussion, AGEM endorsed the idea. Carrying a bill into the legislative session with both an industry trade group and the regulator aligned eases what can be a sometimes-rough process. It worked, and I am hopeful that it gave the industry another option or another tool in its toolkit to use in the future.



After the 2015 session, the Board and Commission embarked on a course of history-making regulatory changes. I lost count of the number of regulation changes we were making, and at one point I had one industry representative actually ask us to slow down. It seemed as if in those days we were constantly holding regulation workshops and hearings. They seemed to come in an endless stream. This was a good thing in my mind, and I was very proud to be a part of it. I am thankful for staff's effort, and I hope everyone understands what a team approach it was. You often hear of regulators being slow or unwilling to change, but, in virtually every case, I witnessed a willingness on the Board's part to move ahead with changes.

Being appointed Chairman after over a decade of being a gaming regulator prepared me well. I had seen many things and encountered many issues on my way to that chair. However, one thing I never would have anticipated was that I would be involved somehow with the marijuana industry. This took me completely by surprise. I think this took all of us by surprise. I will not

rehash all of the issues and nuances of what we dealt with when first medicinal—and then, secondly, recreational marijuana—was allowed in the state. I will say that while the legal analysis was easy—that marijuana remains to this day an illegal substance under federal law—I was impressed by the myriad scenarios we encountered, and the multitude of gaming impacts that were involved. The regulators were caught between a rock and a hard place with the imposition of state marijuana laws. I believe we made the right decisions and came to the correct conclusions. What happens from here is still a work in progress.

Contrary to what I hear as I travel from state to state now, we never “kicked Daily Fantasy Sports (DFS) out of Nevada.” I laugh when I hear that. The DFS folks were the creators of an exciting product that many people enjoyed, including many of my own friends. They still have such a product. When I tasked Board staff, and then the Attorney General's Office, with the duty of conducting an analysis of that product, I was not surprised with the result. I had done my own research and determined that most likely DFS was “gaming” in Nevada. Again, as above regarding skill and hybrid games, much of that determination hinged upon definitional sections in the NRS. Arguments of skill vs. chance that had been made so many times shriveled in the cold hard light of a statutory analysis. This was a form of gaming. The DFS companies were asked to cease and desist until they obtained the requisite licenses to continue. I actually held out hope that we might receive applications, although I knew deep down we likely would not. Contrary to what some asserted, this was not done at the behest of the gaming industry and it was certainly not done to protect any industry players. This was done to protect the regulatory regime and the state. I could not see how a regulatory system could continue legitimate



regulation of one piece of the gaming industry and yet leave another untouched or unregulated, because they were different, or as the term was used, “disruptors.” This was not a tenable position in my opinion. We either regulate all of gaming or none of it. Period.



With the advent of night and day clubs in Las Vegas, there came other issues to deal with. After discussing potential safety risks and going through the process of unfortunately disciplining licensees for things that took place in these clubs, we decided more needed to be done. Therefore, in the 2015 legislative session, both the Board and Commission worked with nightclub operators and gaming licensees to bring enabling legislation that brought club venues under a form of regulation. The Board and Commission enacted regulatory provisions that required certain nightclub operators, their employees, and their promoters to be registered with, and monitored by, the Board. This was meant to avert a news-making tragedy that might affect the reputation of the state. So far, I believe it has helped.

Unfortunately, not all tragedies are avoidable. We dealt with major tragedy in 2017. As you know on Sunday night, October 1, 2017, a gunman opened fire on the crowd at the Route 91 Harvest music festival in Las Vegas. Without warning, the gunman killed 58 people and wounded nearly 900 from his vantage point in a room on the 32nd floor of the Mandalay Bay Resort and Casino. The victims were attending the Route 91 Harvest Festival in a lot just north of, and directly across the street from Mandalay Bay.

The Board's Enforcement Division regularly attended task force briefings regarding potential risks to Las Vegas.



I would receive regular updates on these meetings. It was always impressive to me to see the planning and coordination between the stakeholders. I am hopeful that out of this tragedy comes a stronger unified community in the form of regulators, law enforcement, and gaming licensees that can do whatever it can so that this never happens again. There is likely no solution; only unified efforts by all can alleviate the risks we all live with.



I think the greatest challenges, and perhaps the most interesting parts about my job were (1) the constant download of information, and (2) you never know what you are going to encounter each day. After about a year, I became comfortable with the notion that, as I walked into my office, there would be a new challenge, a new issue, a new intellectual puzzle to figure out. In order to keep up with the constant influx of information, I truly reverted back to my law school days: Time management became the most important tool I had. The Board has six divisions, and all of them are busy. All of them have information that is generated and ends up coming to the Chairman. Every day, letters to the industry coming from one of the six Divisions must be signed, responses received, and further answers sent.

Additionally, a majority of the issues and licensees you deal with quite frankly have more money than you do. You regularly sit across the table from counsel and applicants that make your yearly salary on a monthly basis. The strength of the regulatory system is that the law is what matters, not the money someone makes. That is a concrete foundation that should never be shaken. It gives the regulator, and the state, the power it needs to make decisions that

do not just benefit one licensee with short term benefits, but helps the state as a whole in both the long and short terms.

And that is just interactions with the industry. There is also an agency with 400 persons to run. One can imagine that, with all those people, there are administrative tasks to work on every day as well. In my opinion, the system within the Board for handling all of these things is a good one, and I would say it made it as easy as possible. But decisions have to be made, don't they? Final say must be given on who to hire and, unfortunately sometimes, final say had to be given on terminations and discipline. Those decisions were not always easy and sometimes they weighed heavily on my mind.

This all while having a rolling monthly calendar of hearings. I cannot exclude this as perhaps my favorite part of the job. Running Board meetings and hearings was a complete pleasure. It was never easy, and the amount of hard work can be compared to preparing each month for the bar exam or for a trial. As Chairman, I developed an internal policy, or perhaps more of a "goal," to never deny an applicant a fair hearing. I know that this led sometimes to long hearings, but I never wanted an applicant to walk out of his or her application hearing thinking he or she did not get enough time or a full chance to state his or her case; further, I did not want my fellow Board members, or even the Commission (who would be reading the transcript) to feel they had been denied the opportunity to ask questions, get answers, and fulfill their own sworn duties. This was simultaneously thrilling, challenging, fulfilling, and completely exhausting. I will never forget the feeling I had each Thursday when all of our Board meetings had concluded and I was free to enjoy a few days off.

But of course, I will never forget the feeling I had when, just a few weeks later, new binders with investigative materials would arrive and I would have to once again begin pouring through thousands of pages. I knew this feeling would come, as I had heard about it from Board Members over the years. Once a hearing is done, you have only a week or two until the next set of reports comes in and the process starts again.



That week or two is filled with getting back to the things you needed to do while not in hearings.

The truth is this: If we sat down, over the course of several hours, I could tell you a million stories. I could tell you a million stories about the thousands of licensees the Board regulates; I could tell you about the nearly 100 licensing and regulatory hearings the Board held, the challenges, the issues, and the people. But because of confidentiality, we cannot do that. It must suffice for me to tell you that it was the most challenging, intellectually demanding position of a lifetime. It was the most thrilling, time-consuming and worthwhile thing I have ever done – and it was worth every second. My thanks to all of you reading this for your help in making it so great.

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A.G. Burnett is a partner in the Gaming & Administrative Law Group with McDonald Carano. A.G. most recently served as the Chairman of the Nevada Gaming Control Board (Board) from 2012 through 2017 and as a member of the Governor's Gaming Policy Committee. Prior to serving as Board Chairman and as a Board Member, A.G. was employed by the Board as Deputy Chief of the Corporate Securities Division, where he oversaw regulatory and investigative activities concerning publicly-traded companies and lenders involved in the gaming industry. During his service with the Board, he worked extensively with the regulators of other gaming jurisdictions on matters of shared interest relating to the gaming industry and its growth throughout the world. Prior to his employment with the Board, A.G. served as Senior Deputy Nevada Attorney General representing the Board, the Nevada Gaming Commission, and the Nevada Commission on Sports. During that time, he handled litigation matters on behalf of Nevada's regulatory authorities including disciplinary actions, tax disputes, and disputed licensing matters. From 2012 to 2015, he served as a Trustee and the Treasurer for the International Association of Gaming Regulators. He also serves as a member of the William S. Boyd School of Law Gaming Law Advisory Board.