

GENTLEMEN'S CLUBS AND CASINOS IN LAS VEGAS

Flirting With the Possibility of a Sexier Strip



By Amy L. Baker

Most Las Vegas casinos are not shy when it comes to sex appeal and tend to adopt a “less is more” philosophy when it comes to promotions. With the abundance of provocative advertisements and the variety of sexually-charged entertainment currently offered at casinos, some may be surprised that no casino on the Las Vegas Strip¹ has a gentlemen’s club on its premises. For purposes of this article, a gentlemen’s club is an establishment where dancers or entertainers “arouse and excite the patrons’ sexual desires.”²

Nevada state law does not expressly prohibit

topless³ activities from taking place in casinos.⁴ In fact, several casinos have topless pools and topless revues. Due to the success of adult-themed entertainment, some gaming licensees have considered the addition of gentlemen’s clubs and have approached Nevada gaming regulators to see if and how this can be accomplished.⁵ For this reason, the topic has been under recent discussion among gaming regulators. However, there remain several issues surrounding the integration of the gaming industry and the erotic dance industry.

I. The evolution of Adult Entertainment on the Las Vegas Strip.

Topless shows have existed on the Las Vegas Strip since the 1950s.⁶ “Lido de Paris” was one of the first shows in Las Vegas that made the “showgirl” an icon and featured classically-trained ballerinas who performed topless.⁷ In the 1980s, during slow economic times, casinos struggled to afford the cost of elaborate topless shows.⁸ With the push toward a more family-oriented Las Vegas in the 1990s, many of the topless shows were cancelled.⁹ The current trend has shifted back toward a sexier Las Vegas, with even racier topless shows to appeal to the new image of “what happens here, stays here.”¹⁰

Another step Las Vegas casinos have taken toward topless entertainment is the concept of the “European pool.”¹¹ Caesar’s Palace was the first Las Vegas casino to open a topless pool in 1998.¹² While the pool was intended to appeal to the casino’s European clients, the concept took off and other casinos followed suit as they witnessed the marketing success and allure of topless pools.¹³ Existing Clark County laws permit a resort hotel¹⁴ to provide a specially designated portion of its swimming pool area where topless sunbathing is permitted.¹⁵ However, such an area must be separated from all other swimming pool and guest areas; be obstructed from the view of patrons in other swimming pool and common areas; be off-limits to all minors under the age of eighteen; and

cannot be used for any special events, contests or parties while any topless sunbathing is taking place.¹⁶

In 2008, the Rio Hotel and Casino was the first to take the topless pool to the next level.¹⁷ The Rio partnered with the Sapphire Gentlemen's Club to open a topless pool on the premises of the Rio.¹⁸ The Rio marketed the pool using Sapphire's logo and Sapphire dancers.¹⁹ While this partnership did not require approval from the Nevada Gaming Control Board ("GCB") and Nevada Gaming Commission ("NGC"), gaming regulators examined the relationship closely because the pool is located on the premises of a gaming establishment.²⁰ In July, 2009, the Rio voluntarily requested the Las Vegas Metropolitan Police Department ("LVMPD") to conduct a routine "integrity check" to ensure the Sapphire pool was being run in accordance with current laws and regulations.²¹ The Sapphire pool failed the integrity check, and although the LVMPD did not order or suggest Sapphire's pool be closed, Harrah's Entertainment, owner of the Rio, decided on its own to suspend operation of the Sapphire pool indefinitely.²²

Despite these issues, some gaming licensees have approached the gaming regulators regarding the possibility of operating a gentlemen's club on their premises. The current economic downturn and the ever-increasing popularity of adult entertainment likely contribute to the reasons that casino licensees are considering gentlemen's clubs. Prominent casino owners have "been amazed by observing the powerful allure of the topless clubs for hotel guests . . ."²³ Additionally, gentlemen's clubs can be a lucrative business. For example, Rick's Cabaret, a publicly-traded company that owns and operates 19 gentlemen's clubs throughout the United States, including one in Las Vegas, had a gross profit of almost \$37 million dollars in 2008.²⁴

Gaming and gentlemen's clubs are not necessarily "inconsistent businesses".²⁵ In fact, there currently are a few gentlemen's clubs throughout Las Vegas that hold restricted gaming licenses.²⁶ This is mainly the result of a loophole that once existed in the law that permitted an establishment that was granted a restricted gaming license to change its business without having to undergo any further licensing approval.²⁷ Thus, a

business that started as a restaurant with gaming could change to a gentlemen's club and retain the gaming operations without any approval or review. However, the law has since been changed and businesses must now seek approval from gaming regulators if they want to change their primary business.²⁸

The Topless Girls of Glitter Gulch, a downtown Las Vegas strip club, was the first gentlemen's club to apply for a restricted gaming license since the law was changed that prevented restricted gaming licensees from morphing into other business forms without having to get approval from Nevada gaming regulators.²⁹ During the course of investigations through "covert observations," undercover gaming agents were solicited for prostitution on at least one occasion, solicited to purchase illegal narcotics, and witnessed occasions where dancers were violating local municipal codes in respect to their dancing activities.³⁰ The GCB brought these issues to Glitter Gulch's attention to give them time to remedy these areas of concern. While gaming regulators recognized that the Glitter Gulch had "made huge strides . . . reacting to the concerns [by the GCB] that were brought to its attention . . .," they ultimately referred its application back to staff³¹ and did not recommend approval of a gaming license at that time.³²

II. Problems that must be overcome to make gentlemen's clubs a component of casino resorts.

Although integration of gaming and erotic dancing on the Las Vegas Strip is possible, there are several issues that must first be addressed. Some people



believe that Nevada gaming regulators would never allow such an integration. However, the Nevada gaming regulators do not necessarily believe that gaming and erotic dance entertainment are necessarily inconsistent activities, since topless dancing and topless pools already exist on the premises of casinos.

However, while topless dancing is permitted on the premises of casinos, there are specific regulations that go along with it. Pursuant to the Clark County Code, the performers must remain on the stage at all times they are topless; the performers must, at all times they are topless, have no physical contact with patrons; and the performers cannot be viewed by patrons located outside of the showroom when they are topless.³³ In addition, the showroom must have theater-style or cabaret-style seating where patrons are assigned to specific seats or where seat attendants direct patrons to their seats.³⁴ Also, any form of tipping for the performers is prohibited in all areas of the showroom.³⁵ Clearly, these regulations would need to be changed for a casino to offer entertainment involving interaction and contact with the dancers that gentlemen's clubs offer.

Clark County zoning ordinances further restrict where gentlemen's clubs can be located. These areas do not overlap with the area known as the Las Vegas strip.³⁶ Additionally, pursuant to the Clark County Code, an establishment may be considered an "unsuitable location" for gaming if it is within 250 feet of an adult-oriented business.³⁷ Furthermore, gentlemen's clubs fall within the definition of an adult entertainment cabaret,³⁸ which are only permitted to be located in what is referred to as the "adult-use overlay district."³⁹ The purpose of the adult-use overlay district is to "establish safe and appropriate locations for adult uses, to minimize the possible adverse effects of adult uses on nearby public and private property, and to protect existing communities from incompatible uses."⁴⁰ The majority of the area of land known as the Las Vegas

Strip is not in the adult-use overlay district.⁴¹ No variances or waivers are permitted for adult-oriented businesses to exist outside the adult-use overlay district. Therefore, pursuant to current ordinances, a gentlemen's club can only be located in the adult-use overlay district. In order for a casino on the Strip to operate a gentlemen's club, the Clark County Board of County Commissioners would have to modify existing ordinances that currently prevent gentlemen's clubs from operating in a casino on the Las Vegas Strip.

Even if ordinances were changed so that a gentlemen's club could legally operate within a casino on the Las Vegas Strip, another area of concern includes the perceived reputation for the association of organized crime with strip clubs, and concern of failure to follow applicable laws and regulations. Nevada Revised Statutes Section 463.167 permits gaming regulators to require anyone doing business on the premises of a licensed gaming establishment to be found suitable.⁴³ In *Nevada v. Glusman*, the Nevada Supreme Court ruled this to be a permissible and constitutional law.⁴⁴ Since *Glusman*, there has not been an instance where gaming regulators required a business on a casino's premises to be found suitable, but *Glusman* demonstrates that this is a permissible action that the regulators can take if they desire.⁴⁵



Most importantly, independent of a finding of suitability, casinos must make sure that the businesses on their premises are run in a way that does not reflect poorly on the gaming industry and the state of Nevada. If gaming regulators find that an unsuitable activity is going on, it is grounds for discipline including fines and limiting, suspending, or even revoking a gaming license.⁴⁶ This applies even if the licensee does not operate but is merely the landlord of a business located on its premises.⁴⁷ A licensee can be punished for tolerating any unsuitable method of operation that is taking place

on its premises.⁴⁸ Specifically, licensees may be punished for failing to exercise discretion to prevent incidents that might reflect on the reputation of the state, associating with persons of notorious or unsavory reputation, and failing to comply with all federal, state, and local laws and regulations.⁴⁹

Many issues involving entertainment in casinos have been areas of recent concern for the GCB.⁵⁰ In April 2009, GCB member, Randall Sayre, issued a letter to all unrestricted licensees warning them about several issues regarding activities going on in nightclubs, ultra lounges, and European pools.⁵¹ The letter listed complaints relating to these venues including, but not limited to, excessive inebriation, overt sexual acts in public places, drug use and distribution, date rape, acts deemed lewd, indecent or obscene, and prostitution.⁵² The letter stressed,

[W]hether venues are licensee owned and operated, licensee owned and subcontractor operated, lessee owned and operated, lessee owned and third party operated or any other variation in joint venture owned and operated, it is the Nevada gaming licensees' responsibility to ensure operations conducted within the boundaries of their property are run in accordance with all laws and regulations and in a manner that does not reflect badly on the State of Nevada or its gaming industry.⁵³

The letter concluded, "indifference to illegal acts or unsuitable business practices within your properties . . . will not be tolerated and may be considered an unsuitable method of operation."⁵⁴

Since the GCB issued its warning letter, Nevada gaming regulators have been taking a serious look at such businesses operating in casinos. In July, 2009, the GCB filed a complaint against OpBiz, the then-owner of the Planet Hollywood casino, as a result of an investigation that found Planet Hollywood was not properly overseeing activities taking place in the Privé nightclub, one of the nightclubs operating on its premises.⁵⁵ Planet Hollywood accepted responsibility for failing to maintain sufficient control over Privé, which leased the space from Planet Hollywood. Planet Hollywood and the GCB ultimately came to a stipulation and agreement, where Planet Hollywood accepted responsibility for allowing illegal and improper activities to take place at the club, and paid the GCB a fine of \$750,000.00.⁵⁶ Planet Hollywood also renegotiated its lease with Privé to allow hotel-casino personnel to enter the nightclub without having to be escorted by Privé's security. The new lease also gave the hotel-casino authority to terminate the nightclub's lease if there were similar problems in the future.

Although the GCB has not publicly addressed expectations relating to operation of gentlemen's clubs, the April 2009 letter and the disciplinary action taken against Planet Hollywood would most definitely be the starting point as to what the GCB would expect in the operation of a gentlemen's club located in a casino.⁵⁷

III. Will we ever see the integration of gaming and gentlemen's clubs?

As gentlemen's clubs continue to be profitable businesses, adult entertainment continues to be

desirable, and competition for customers continues to be aggressive, the possibility that a casino will attempt to operate a gentlemen's club on its premises may soon be coming.

If a casino wanted to include a gentlemen's club on its premises, the first and possibly most difficult step would be to push for a change in the applicable Clark County ordinances. One of Las Vegas' best-known casino developers, Steve Wynn, has been interviewed on the topic of gentlemen's clubs and has reportedly stated that "while he won't be the one to lead the charge for county licensing changes that would allow



gentlemen's clubs to be owned and operated by the major hotel-casino companies, he admits that he will be cheering for restrictions to be lifted.⁵⁸ Even if the laws and regulations were changed to permit the integration of gaming and exotic dancing, public opinion could play a huge role in whether a change in the existing laws would actually work. For example, in 2009, the marketing manager of two Las Vegas gentlemen's clubs began operating a "Stripper-mobile," a truck that drove up and down the Strip with girls pole dancing inside a large, clear Plexiglas box on the truck, in order to promote the clubs.⁵⁹ The girls did not actually strip, but performed pole dance routines in provocative clothing.⁶⁰ While the concept is arguably not illegal, and the club operators checked with the LVMPD to make sure it would not violate any laws, it caused several complaints from the public and ultimately the clubs stopped operation of the Stripper-mobile out of "fear of reprisals" from local authorities.⁶¹

If the local ordinances were changed and there was no significant public backlash, the next crucial step would be to bring an extensively thought-out plan and proposal to the GCB. This may include evidence of a compliance plan that has been operative and effective for at least a 12-month period. Although a preliminary proposal to the GCB is not mandatory, it would be highly recommended. Additionally, although gaming regulators have yet to force another business operating on a casino's premises to go through a finding of suitability since *Ghusman*, they have this power, which would apply to any gentlemen's club operated by a third-party tenant on a casino's premises.

Because licensees must make sure the businesses on

their premises are run in a way that does not reflect poorly on gaming in Nevada, casinos take on a significant degree of risk when they lease part of their premises to businesses in which they have no ownership rights. If a licensee wanted to enter into a lease with a business that was going to operate a gentlemen's club on its premises, it would be critical to include lease provisions that would give the licensee broad authority to enter the business as necessary in order to monitor its activities. Additionally, the lease must contain a provision that would give the licensee the right to terminate the lease if it found unsuitable conduct was taking place. Licensees are ultimately responsible for all

activities that take place on their premises and can face serious consequences if unsuitable methods of operation are taking place in any business operating on the casino's premises, including large fines or even revocation of their most valuable asset, their gaming license. A licensee operating a gentlemen's club on its premises would need to follow all federal, state, and local laws, and anticipate that the operations would be heavily scrutinized and monitored by the GCB and local licensing authorities.

Competition for customers in the gaming industry is fierce and demands that every gaming licensee compete for what is currently selling, and a big part of that is undoubtedly sex. However, licensees must keep all laws in mind and understand that their gaming license is a privilege that could easily be taken away.⁶² While gaming regulators understand the

need to bring in revenue and tourists, they also have the overriding responsibility to see that whatever is done by gaming licensees is legal and does not reflect poorly on the state of Nevada.⁶³ This is the primary concern for gaming regulators in Nevada and it will be a matter of whether or not these principles can be complied with under these circumstances before we will ever truly see "stripping on the [S]trip."⁶⁴

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¹ The “Strip” is the area of Las Vegas Boulevard roughly between Sahara Avenue and Russell Road, a distance of 4.1 miles (6.6 km), where the major casinos in Las Vegas are located and where the majority of tourists stay when they visit Las Vegas. Most of what is referred to as “the Las Vegas Strip” is not located in the city of Las Vegas, but is located in the unincorporated area of Clark County. See, Nevada Road and Recreation Atlas, Benchmark Maps, 90-91 (2007).

² See, Clark County Code § 6.160.030(d) (defining “erotic dance establishment”). Gentlemen’s clubs are also commonly referred to as “strip clubs” and are places where erotic activities such as pole dancing and lap dances occur. The term “gentlemen’s club” or “strip club” will be used instead of “erotic dance establishment”

³ See, Clark County Code § 6.160.110, “Topless” means the showing of the female breast below a point immediately above the top of the areola with less than fully opaque covering. “Fully opaque covering” does not include pasties, latex paint, or hair pieces.

⁴ Interview with Mark Clayton, former member of the Nevada Gaming Control Board (March 5, 2009).

⁵ Interview with Randall Sayre, member of the Nevada Gaming Control Board (May 4, 2009).

⁶ *Step, Kick, Step, Kick, Twirl Into History*, Los Angeles Times (December 2008).

⁷ *Id.* See also, Donald D. Spencer, *Mid Century Vegas: 1930s-1960s* (2009).

⁸ *Step, Kick, Step, Kick, Twirl Into History*, *supra* n. 74.

⁹ *Id.* See also, Sheehan, *supra* n.

13 at 13, 14; describing a 1994 issue of *Time* magazine with a cover story titled “Las Vegas: The New All-American City.” The article depicted photos of a young father carrying an infant through a casino stating “The general Las Vegas marketing spin today is that the city is fun for the whole family.”

¹⁰ *Id.*

¹¹ European-style pool generally is not defined specifically, but refers to topless sunbathing.

¹² Sonya Padgett, *Sun Worshippers: No Tan Lines Allowed*, Las Vegas Review Journal (July 24, 2005).

¹³ Interview with Mark Clayton, *supra* n. 5.

¹⁴ In Clark County, in order to hold an unrestricted gaming license (more than 15 slot machines and/or live table games) the establishment must be a resort hotel. See, Clark County Code § 8.04.310. See, Clark County Code § 8.04.90.145 for requirements to qualify as a resort/hotel.

¹⁵ Clark County Code § 8.20.570(i)(1).

¹⁶ *Id.*

¹⁷ Dan Whitcomb, *Strippers by the Pool: Vegas Casinos Getting Sexier*, Reuters (September, 2008).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Interview with Randall Sayre *supra* n. 7; Interview with Mark Clayton, *supra* n. 5.

²¹ Las Vegas Review Journal, (July 28, 2009).

²² *Id.* The Rio did not comment on the specific findings of the LVMPD investigation.

²³ *Id.* at 296; referring to Sheehan’s interview with Steve Wynn.

²⁴ See, Rick’s Cabaret, Int’l, Inc. NASDAQ: RICK, <<http://www.google.com/finance?client=ob&q=NASDAQ:RICK>> (last visited May 31, 2009).

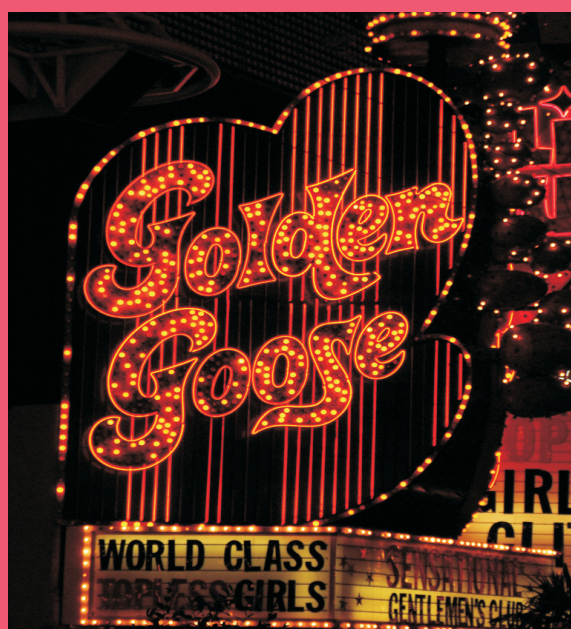
²⁵ Interview with Mark Clayton, *supra* n. 5.

²⁶ A “Restricted license” is defined by NRS § 463.0189 and means a state gaming license for, or an operation consisting or, not more than 15 slot machines and no other game or gaming device at an establishment in which

the operation of slot machines is incidental to the primary business of the establishment. 8 gentlemen’s club locations in Las Vegas currently have restricted gaming licenses.

²⁷ Olympic Gardens and Play it Again Sam’s gentlemen’s clubs were a Greek restaurant and a supper club, respectively, when they were granted gaming licenses and then subsequently became gentlemen’s clubs. Mark Clayton, former member of the Gaming Control Board, guest lecturer at the William S. Boyd School of Law gaming law course (Fall 2008).

²⁸ Clark County Code § 3.015(10).



²⁹ Interview with Mark Clayton, *supra* n. 5.

³⁰ Before the State Gaming Control Board, *Hearing Minutes, Granite Gaming Group, LLC dba Girls of Glitter Gulch*, application for restricted license along with a finding of suitability (Sept. 5, 2008).

³¹ "Referred back" is a courtesy the GCB gives an applicant if the applicant has not met its burden of proof to receive a recommendation for approval by the gaming regulators. The application is referred back to staff to give the applicant time to address the issues the GCB had concerns with and can be reconsidered come at a future date when the issues have theoretically been fixed. (Interview with Mark Clayton, May 30, 2009).

³² Hearing Minutes, Granite Gaming Group, LLC dba Girls of Glitter Gulch, *supra* n. 66.

³³ Clark County Code § 8.20.570(i)(3).

³⁴ *Id.*

³⁵ Clark County Code § 8.29.020.350.

³⁶ Clark County Code § 30.48.530.

³⁷ Clark County Code § 8.04.070(A)(5).

³⁸ Clark County Code § 8.20.020.001; "Adult entertainment cabaret" means an establishment that offers topless dancing, performing or entertaining by a cabaret entertainer; that is licensed pursuant to Clark County Code Section 6.95.010(c); that is subject to the erotic dance establishment regulations contained in Clark County Code Chapter 6.160; and that must also be licensed for the service of alcoholic beverages. *See also*, Clark County Code § 30.08.030; Typical production shows offered by resort hotels that include topless entertainers shall not be considered an adult entertainment cabaret provided that a separation and/or barrier that prevents physical contact between performers and customers is maintained at all times during each performance.

³⁹ Clark County Code § 30.08.030.

⁴⁰ *Id.*

⁴¹ *Id.* See table for specific boundaries of the adult use

overlay district.

⁴² Clark County Code § 30.48.500(c).

⁴³ NRS § 463.167.

⁴⁴ *Nevada v. Glusman* 98 Nev. 412, 651 P.2d 639 (1983).

⁴⁵ Interview with Randall Sayre, *supra* n. 7, Interview with Bill Bible, *supra* n. 99.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ NGC Regulation § 5.010(2).

⁴⁹ *Id.*

⁵⁰ Interview with Randall Sayre, *supra* n. 7.

⁵¹ Randall Sayre, *Letter to All Nonrestricted Licensees and Interested Parties. Re: Nightclubs, Ultra Lounges, European Pools, and Similar Venues* (April 9, 2009).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*



⁵⁵ See, State Gaming Control Board v. OpBiz d/b/a Planet Hollywood Casino, Complaint (July 9, 2009).

⁵⁶ See, State Gaming Control Board v. OpBiz d/b/a Planet Hollywood Casino, Stipulation for Settlement and Order (July 9, 2009). Pursuant to the Stipulation for Settlement and Order, OpBiz was required to pay a \$500,000.00 fine up front and execute a confession of judgment for the remaining \$250,000.00. If the GCB does not file a similar complaint against OpBiz prior to August 1, 2011, the remaining \$250,000.00 will be forgiven.

⁵⁷ Interview with Mark Clayton, *supra* n. 5.

⁵⁸ *Id.* at 296.

⁵⁹ Steve Freiss, *Stripper-Mobile Comes to a Bump-and-Grinding Halt*,

<<http://www.aolnews.com/natio>

n/article/strip-er-mobile-comes-to-a-bump-and-grinding-halt/19262329>(last visited May 9, 2010)

⁶⁰ Steve Freiss, *supra*, n. 60

⁶¹ *Id.*

⁶² Interview with Randall Sayre, *supra* n. 7.

⁶³ *Id.*

⁶⁴ *Vegas Retro*, <<http://www.vegasretro>