



Nevada Supreme Court's Landmark Cases in Gaming

By Jennifer L. Carleton and Jeffrey R. Rodefer

Over the years, the Nevada Supreme Court has issued some landmark rulings that have strengthened and further refined our strict regulatory structure. The case law has been profound in delineating the parameters for the gaming application process and the rights of applicants versus those of licensees in a disciplinary setting. No year was more crucial for gaming law than 1982. In this one year, the Court further defined the method for calling individuals forward for findings of suitability, the treatment of irregular markers for purposes of calculating gross revenues and established the criteria for placing an individual on Nevada's List of Excluded Persons, more commonly known as the Blackbook.

Cases that Framed the Gaming Application Process

A strict regulatory environment, as you undoubtedly know, has fostered, and in many instances sustained, Nevada's gaming industry over the past few decades. Legalized gaming in Nevada created jobs, triggered new infrastructure, increased tourism and led to an unprecedented population explosion for the state. This, in turn, has made Nevada's influence even stronger, especially in Washington, D.C. The gaming industry's contributions to Nevada's overall commerce are immeasurable. Yet, it is important to remember that the purpose of licensed gaming is to generate tax revenue for the state.

Hughes Properties, Inc. v. State,

100 Nev. 295, 298, 680 P.2d 970

(1984). In order for licensed gaming to be

a legitimate and lawful enterprise, the

Legislature intended for such gaming to

be free of the criminal and corruptive

elements that had historically infiltrated the

industry. *Nevada Tax Comm'n v. Hicks,* 73 Nev. 115,

118-121, 310 P.2d 852 (1957). To this end, there have

been some key Nevada Supreme Court (the "Court") cases

that have been fundamental in establishing our strict

regulatory framework, most notably in the gaming

application process.

In 1977, during the last vestige of organized crime influence,

the Court held, in a well-known case involving Frank "Lefty"

Rosenthal, that a gaming license is nothing more than a

revocable privilege in which the holder does not acquire any

vested rights. *State v. Rosenthal*, 93 Nev. 36, 40, 559 P.2d 830 (1977). In turn, the applicant bears the full burden of proving his or her qualification or suitability to hold a gaming license. *Id.* at 44. The state has a compelling interest in subjecting applicants, including persons and entities engaged in business on the premises of a licensed gaming establishment to a suitability investigation, as well as requiring the disclosure of personal and financial information to advance its review. *State v. Glusman*, 98 Nev. 412, 425-426, 651 P.2d 639 (1982).

In further framing the application process, the Court held that an applicant has no right to discovery of the State Gaming Control Board's (the "Board") investigative reports. *Resnick v. Nevada Gaming Comm'n*, 104 Nev. 60, 65, 752 P.2d 229 (1988). The Resnick decision preserved the confidentiality of the Board's investigative files and ensured a free flow of information to the Board and its agents without fear of discovery by the applicant or third parties.

Following the Board's recommendation on an application, the Nevada Gaming Commission (the "Commission") has the full power to approve the application, approve it with conditions and/or limitations, remand it back to the Board for additional review or deny the application. NRS 463.220(3), (4). No right to judicial review exists from the Commission's order to deny a gaming application; the Commission's decision is final. *Resnick*, 104 Nev. at 63, n. 4.

Granted these decisions have made admission into Nevada's gaming industry difficult and, at times, probably even burdensome and oppressive to applicants, they have nevertheless ensured that the bar is set very high for only the most qualified individuals and entities to enter this highly regulated industry whose integrity is a cornerstone of its continued success and a long established policy of this state. NRS 463.0129(1). As Governor Brian Sandoval has said many times, it is this regulatory framework that has been the model for other jurisdictions and kept Nevada as unquestioned worldwide leader and "gold standard" for gaming regulation.

1982: Pivotal Time for Nevada Gaming Law

All Nevada gaming lawyers know that anyone who operates a business on the premises of a Nevada gaming licensee may be called forward by the Commission for a finding of suitability, even if that business is completely unrelated to gaming. While we in Nevada take this rule for granted, in 1982 this premise was untested.

Fred Glusman owned and operated retail clothing shops on the premises of the Las Vegas Hilton and Stardust hotels. The Commission issued an order directing Mr. Glusman to apply to the Board for a finding of suitability to be associated with a gaming enterprise. Rather than file an application for a finding of suitability, Mr. Glusman filed a complaint for declaratory and injunctive relief in a Nevada district court and argued that NRS 463.160(8)(a), (now codified at NRS 463.167(2)), the Nevada statute that authorized the Commission to call forward anyone who "does business on the premises of the licensed gaming establishment," was unconstitutional.

After the district court rejected his declaratory relief claim, Mr. Glusman appealed the decision to the Nevada Supreme Court. In *Glusman*, 98 Nev. at 421, the Court held that NRS 463.160(8)(a) is "precise" in its meaning and application. "It is clear that the purpose of the statute is to provide a basis for investigating and qualifying or disqualifying as suitable, persons and businesses who choose to conduct non-gaming business operations on the premises of a gaming establishment. This purpose is both legitimate and reasonable. Human experience has shown gaming to be like quicksilver, and unless controls are complete and resourceful, the industry will be fraught with conditions of potential threat to its continued existence." *Id.* The Court also rejected Mr. Glusman's contention that NRS 463.160(8)(a) was overbroad because it applied to all types of businesses irrespective of any nexus with gaming operations, finding that



Mr. Glusman failed to demonstrate that the statute had an impermissible impact on his constitutional freedoms. *Id.* at 423. The Court further rejected Mr. Glusman’s claim that the Commission’s selection of him for an application for a finding of suitability out of the host of similarly situated individuals and entities violated his right to equal protection of the laws, and noted that “[g]aming control would be intolerably burdened if selective investigation were disallowed.” *Id.* at 427.

The Court, however, found that Mr. Glusman should not be responsible for the costs of the investigation into his suitability. Under NRS 463.331, an applicant was subject to the payment of all investigative costs incurred by the state. The Court held that the combined effect of NRS 463.160(8)(a) and NRS 463.331(1) constituted “an unreasonable and fundamentally unfair burden” on Mr. Glusman. *Id.* at 424. “It is one thing to charge investigatory costs to those who are seeking licensure in the gaming industry; it is altogether different to subject one who, at least ostensibly, has no relationship to gaming beyond that of sharing space with a gaming enterprise, to potentially prohibitive costs of investigation as a condition precedent to the continuance of a non-gaming business.” *Id.* Since the *Glusman* decision, it has been the rule in Nevada that anyone who operates a business on the premises of a Nevada licensee may be called forward by the Commission for a finding of suitability, but unlike most Nevada gaming investigations, the costs of the investigation are not borne by the applicant.

One of the attorneys representing the Commission at oral arguments before the Court in the *Glusman* matter was then Chief Deputy Attorney General, Patricia Becker. Those familiar with the history of Nevada gaming law will recall that this was not the only case addressing Nevada gaming laws pending before the Nevada Supreme Court in 1982. In the same calendar session that *Glusman* was argued, Chief Deputy A.G. Becker also argued a case before the Court involving the method by which a licensee can permissibly calculate its gross revenues. In 1981, the Board conducted an audit of Summa Corporation dba Desert Inn. *Summa Corporation v. State Gaming Control Board*, 98 Nev. 390, 649 P.2d 1363 (1982). The Board’s audit found instances where a so-called “irregular marker,” had not been included in

the calculation of the Desert Inn’s gross revenues. *Id.* at 391. Commission Regulation 6.080 provided that an unpaid marker could be excluded by the licensee in determining gross revenue. However, the Board took the position that an “irregular marker” issued in violation of the licensee’s internal control systems or applicable gaming regulations should be included in the licensee’s calculation of gross revenues.

The Court agreed, holding that irregular markers should be included in the determination of gross revenue “if the licensee fails to rebut the presumption that the markers were issued for non-gaming purposes.” *Id.* at 392. Incredibly, Chief Deputy A.G. Becker successfully argued a third case on behalf of the Commission in the same Court session. On December 7, 1978, Anthony John Spilotro was placed by the Commission on a list of persons to be excluded or ejected from licensed gaming establishments throughout Nevada. *Spilotro v. State*, 99 Nev. 187, 190, 661 P.2d 467, 469

(1983). Mr. Spilotro petitioned for a judicial review of the Commission’s order placing him on the excluded persons list and challenged the constitutionality of the Nevada statutes authorizing the Commission to place someone on that list. *Id.* at 190. Additionally, Mr. Spilotro alleged that his placement on the excluded list violated his rights of association, travel, access to public places and due process. *Id.* at 195. The Court upheld the constitutionality of the state’s exclusionary process and its application to Mr. Spilotro. *Id.* The Nevada Supreme Court remanded the case to the Commission for findings of fact to support its conclusion that Mr. Spilotro “possessed a notorious and unsavory reputation, had been convicted of several crimes that would be felonies if committed in Nevada or under federal law, and was a person whose presence in a licensed gaming establishment would be inimical to the interests of the State and the licensed gaming industry.” *Id.* at 191.

As these cases illustrate, 1982 was a pivotal time for Nevada gaming law. In the span of one Court session, some of the basic tenets of Nevada gaming practice were established.

