

# FOREWORD

By Bob Faiss

Welcome to the 2014 edition of *Nevada Gaming Lawyer*. It is a great honor for me to be authoring the Foreword in this year's *Nevada Gaming Lawyer*. As our state celebrates its sesquicentennial, many will look back at our first 150 years of statehood and point to leading the world in establishing a legal and regulated legitimate gaming industry as one of the most significant contributions our state has made to the nation and the rest of the world.



However, as we all know, gaming and taking risks on the outcome of chance events is an indelible part of the human experience. Archeologists have found gaming boards and instruments in ancient digs. Many ancient texts and even some religious texts mention gambling and gaming, even if not in a favorable light. Some of our own modern gaming related laws in the U.S. come from pre-colonial British law that itself can be traced back to Roman law. Gaming is woven into the fabric of the human experience and, it has been so long before the study of the topic began.

What Nevada uniquely added to gaming was a regulatory framework to legitimize and control an activity that its predecessors often criminalized or marginalized. Nevada's experience, prior to 1931, like much of the nation, was to go through periods of tolerance and prohibition. Though even through prohibition, efforts to enforce were ineffective and only moved the activity out of the light and into areas where it was shaped and controlled by criminal elements. In 1931, facing economic crisis, the state moved to "wide open" gaming with limited oversight provided primarily by local law enforcement.

Nevada moved toward ever increasing levels of regulation from 1931 through 1959 until Governor Grant Sawyer established the current two agency regulatory model. The focus at the time was to eliminate the criminal element from gaming as expressed in this section of the policy statement in Nevada statutes "To ensure that gaming is conducted honestly, competitively and free of

*criminal and corruptive elements...*” At this time, Nevada stood alone as the only U.S. jurisdiction in which casino style gambling was legal and regulated, while such activity remained criminalized in every other state and territory. It was the beginning of an era, it marked the beginning of strongly regulated wide-open gaming as a legitimate governmental regulatory endeavor and it marked the beginning of the march toward legitimacy for a new industry that was a criminal endeavor everywhere in the nation outside of Nevada.

The Nevada experiment proved successful and Nevada engaged on a cycle of continuous enhancements to its regulatory system. In addition to being the first jurisdiction to regulate wide-open gaming using a two agency regulatory model, Nevada was the first jurisdiction to dedicate agencies to the regulation of gaming. Nevada was also the first jurisdiction to regulate corporate gaming and issue corporate gaming licenses. Nevada again led the way with licensing publicly traded companies, and new entity forms such as hedge funds and sovereign wealth funds. Where Nevada led, through the hard work of diligent members of the legislature, regulators, and attorneys, and others followed.



During the last few years there have been many misleading news stories about Internet gaming. Notably, during the last two legislative sessions there were stories about whether Nevada or New Jersey or some other state would be the first to enact enabling legislation for online gaming. However, such news stories were the result of inaccurate reporting as Nevada led the way in 2001 with AB466, as this enabling legislation permitted the Nevada Gaming Commission to issue regulations and licenses for interactive gaming, which includes Internet gaming. Therefore, the news stories in 2011 and 2013 were wrong about the race to be the first state to enact enabling legislation for online gaming, as Nevada was already 10 years ahead of other U.S. jurisdictions. Again, where Nevada leads, others follow.

Today, we are a long way from the days when Nevada was the only state with legal and regulated casino gaming. According to the most recently published State of the States Report issued by the American Gaming Association, some form of regulated

casino style gaming can be found within the borders of all but 11 states of the United States.

The original fight for legitimacy for land-based gaming is over. Gaming is a legitimate contributor to the economic foundations of many states and many governments world-wide. Gaming companies face more regulation, audits, and oversight than companies considered essential for national security and those considered vital to the national economy. Look no farther than the growth of organizations such as the Gaming Law Section of the Nevada Bar, the International Masters of Gaming Law, and the International Association of Gaming Advisors as additional proof that leaders of industry, attorneys, regulators, public officials, and scholars are all playing key roles in the development of this legitimate industry.

While the industry is legitimate, the need for Nevada and members of our bar to lead is not over. There are still significant issues that face this industry that will need to be addressed.

The topic du jour is Internet or interactive gaming. The first thing to remember is that it is here and it isn't going away. The choices are the same today as Nevada had in 1931. We will either have ineffective prohibition relegating the industry to shadows where it will be shaped by those deemed criminals, or regulation of legitimate operators to ensure online gaming is regulated as reliable as land-based gaming and that it does not tarnish the reputation of gaming as an industry.

With regard to the first choice, we can learn from history that prohibition is unlikely to work. In the U.S., we currently live in a general state of prohibition and it does not work. Many offshore sites take wagers from U.S. players in violation of U.S. law and many of these sites are under indictment, but enforcement is nearly impossible as the sites and their personnel are beyond the physical personal jurisdiction of law enforcement. They have operated for years under indictment, and despite the good intentions of those that seek to tighten laws to clarify the illegal activity of such sites, adding charges to such indictments will do nothing to slow down the growth of the illegal operators or bring them into compliance with U.S. law. Such a prohibition will ensure that the U.S. market is, and remains, a market ripe for such operators without interference from legitimate regulated competition.

However, there is still an opportunity to shape the online market in a meaningful way. Nevada sought to do this in 2001 when it enacted its interactive gaming statutes. By way of reference, in 1997, Nevada statutorily outlawed online gaming, both the supply side and the demand side in NRS 465, but found enforcement nearly impossible. Faced with a growing sector of the market that was increasingly influential and likely to impact its primary industry, in 2001 Nevada chose to change course by seeking to shape and influence the sector through regulation rather than merely prohibiting it. Unfortunately, federal authorities took a different view and Nevada ceased its interactive regulatory efforts until recently.



The question is not online gaming – yes or no; it is, who will shape it and who will influence it? It is my hope that as students and practitioners of gaming law that we, Nevada’s gaming lawyers, will help guide efforts to shape and influence online gaming and to bring online gaming into the regulated light, rather than pushing it into the shadows where it is likely to be shaped and influenced by those that could never even pass a cursory investigation to participate in regulated terrestrial gaming.

The next issue facing the future of the domestic gaming industry is perhaps even more controversial than online gaming. As I mentioned, the fight for legitimacy and the efforts in Nevada to eliminate the criminal element from gaming was a primary focus for our state’s regulation of the industry. In the past, Nevada had to focus on this as a paramount problem because it was the first to offer an air of legitimacy to an activity that was criminalized elsewhere and as such it was attracting those that sought to legitimize their criminal activities elsewhere by moving to Nevada. That focus remained relevant so long as illegal operators were prevalent and sought to legitimize their activities by plying their trade in one of a few legitimate jurisdictions. However, today, with interconnected financial networks, connected criminal databases and legitimate gaming in most states, the specter of an illegal operator trying to legitimize their activity by moving their trade to Nevada, while a concern, is unlikely to be a common occurrence or paramount concern. The world has changed since 1959.

Yet, everyone of significance, every significant capital investor and every potential significant participant enters the system through a regulatory screening process designed to weed out unsuitable criminals. In other words, in 2014, we are often treating gaming applicants and significant capital investors like criminals from the 1950s and 1960s. The time has come to rethink the model to address the issues of today rather than the issues of yesterday.

This is not a challenge concerning ongoing compliance and regulation, but about initial licensing and suitable relationships. It may be time to revisit what information is really needed at the outset to determine whether someone is suitable to participate in the legitimate gaming industry. It may also be time to revisit how investigations are conducted and whether all non-restricted investigations require the same level of comprehensiveness.

When I mentioned that the world has changed, I mean that the world of the gaming industry has changed. When Nevada embarked on the current model of regulation, gaming was dominated by individuals and corporations that could not be licensed, the business was a cash business that relied on manual counts, and gaming devices lacked automated or connected accounting mechanisms. Today, the gaming industry has matured into a global industry dominated by publicly traded corporations. Gaming systems are automated and interlinked. Gaming devices can be, and often are, connected to accounting systems and comprehensive information systems. When Nevada embarked on its current model of regulation, gaming was viewed by other jurisdictions as a criminal activity authorized and permitted only in one rogue jurisdiction in the Wild West. Today, gaming is widely viewed as a legitimate form of entertainment available in all but two states of the U.S.

To stay competitive with other industries, gaming companies will need to attract top talent and capital investments and be able to form joint ventures and partnerships as participants in competing industries often do. Current regulatory frameworks that add significant time and cost to attracting talent, capital investment and cooperative ventures to address problems largely confined to the past will ensure that gaming lags behind competing industries and that cannot be good for an industry that we know is legitimate and competent.



Just as Nevada was the first to introduce the modern system of gaming regulation in the later half of the twentieth century that helped legitimize the industry, Nevada must be the jurisdiction that leads in the modernization of the regulatory model that will help sustain the legitimate industry as a competitive component of the entertainment sector of the national economy. Modernization should look for ways of streamlining the process, minimizing the initial information required from applicants and tailoring the investigative process to match the level of influence the individual will have over gaming operations and decisions.

It is my hope that members of our bar will lead in the next phase of legal developments for the industry, just as we were leaders in the phases of the legal developments that helped legitimize the industry.

Thank you for this opportunity.  
Bob Faiss

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