SENATE JUDICIARY COMMITTEE

MINUTES

Meeting was called to order by Chairman Monroe at 9:30 a. m. on March 17, 1969.

Committee members present: Senator Monroe, Chairman
Senator Hug
Senator Dodge
Senator Bunker
Senator Christensen
Senator Young (In at 9:40)
Senator Swobe (In at 9:45)

Legislative Counsel present: Frank Daykin

Guests: Ed Bowers, Executive Secretary, Gaming Commission

Don Winne, Attorney for Gaming Commission

Jack Diehl, Member Gaming Commission

Chairman Monroe read the amendments on SB 181 as previously discussed.

Page 1, line 7, strike "the board shall" and insert "if the board decides to permit such broadcasting, the board shall:"

Page 1, line 11, add after broadcasting "A board of trustees may so award a contract for the broadcasting of a single event, a series of events or an entire season".

Page 1, line 14, insert after desire "if it decides to permit such broadcasting".

Page 2, line 1, insert after such board " if the board decides to permit such broadcasting,"

Page 2, line 7 and 8 to be deleted and insert" The board of regents may so award a contract for the broadcasting of a single event, a series of events or an entire season.

These changes were acceptable to all.

Amendment to SCR 21 was also read by Chairman Monroe.

Lines 16 thru line 20 to be striken and the following inserted in it's place, " gaming control board and their methods of control and enforcement of gaming laws and regulations to determine if such laws and regulations are adequate to insure proper and continued

supervision and control of gambling licensees in this state; and be if further"

This change was acceptable.

SB 353 - Amends law relating to corporate gaming licenses.

Frank Daykin remarked that SB 353 is merely a rewrite of SB 89 compiling the changes recommended after the first hearing of February 10th. The principal changes were: Giving the Gaming Board authority to relax any requirements that they considered impractical for the licensee. The previous requirement of hiring a Nevada Certified Public Accountant was changed to any qualified Certified Public Accountant; giving permission to the commission upon request, to obtain a copy of any document filed by the publicly traded corporation with the Securities and Exchange Commission and for anyone owning over 10% of stock. Several minor changes in wording were also made.

A letter from Richard Buxbaum, Professor of Law, University of California written to Howard McKissick commenting on AB 148 together with comments prepared by Frank Daykin as these points related to SB 353 were read and discussed. (Copy of each attached).

Mr. Daykin said there were no changes to be made in SB 353 to make it conform with Mr. Buxbaum's recommendations.

There is a slight change to be made on page 1, line 15. 463.630 whould be changed to 463.560. This was an error in drafting the bill.

Senator Young was concerned with Section 6, page 2.

He felt there would be no control over a many-tiered company as a "Holding company". He felt owns or controls as stated in this section could mean absolute authority.

Mr. Daykin advised the commission may if it sees fit set rules that would exclude the other tiers, but they did not want to exclude by statute. Technically the intermediary companies do come under the defination of the holding corporations.

Don Winne stated he would prefer that all of the definations be taken out. He felt the Gaming Commission should not be bound by a list. They had no flexibility when it came to modifying definations. He felt there would always be ways that an attorney could find ways to contest our interpretation and it might take two years to have it settled in court.

Senator Dodge mentioned the "holding company" was referred to throughout the bill so the term should be defined within it.

Frank Daykin said a subsidiary was owned by a holding or intermediary company and they would have the requisits for doing business in Nevada. If the commission did find a person unsuitable, no matter which tier he was associated with, you could cut them off by lifting the Nevada Corporation's license if they did not comply with the demand to get rid of the unsuitable person. He felt if you left the definitions to the regulation of the Gaming Commission instead of stating them in the statute the Courts would be free to construe their own definition and oould possibly determine there were less powers.

He would prefer to add a new definition to section 6 to say a holding company indirectly has the power if it does so through any interest in a subsidiary company however such subsidiary may intervene between the holding company and the applicant.

Mr. Daykin and Don Winne will get together and work out satisfactory wording on the definitions.

There was general discussion on Section 17 page 7 about "if any such officer or employee of a publicly traded corporation who is found unsuitable--".

It was suggested by Senator Young to change to "such officer or employee who exerts any control or influence".

Mr. Winne and Mr. Daykin will also work on this section.

Senator Dodge mention that in one of the preliminary discussions there was concern about a negotiable stock certificate without a restrictive endorsement on it being purchased, would the purchaser be aware of the controls and come under those controls?

It was stated that the American Stock Exchange would accept a restrictive endorsement on their stock certificates, however the New York Stock Exchange would not permit a control.

Don Winne advised there would be no way to get at the individual stock holder except thru the Nevada Corporation by shutting down the Nevada Gambling Corporation unless they complied with the demands of the Commission.

Frank Daykin advised the provisions of the control were a part of the Corporate Charter of the Company doing business in Nevada.

A person buying a share of the Company's stock would be restricted by the controls placed in the charter of the Company. This would apply to one share as well as many shares.

It was agreed by the gentlemen representing the Gaming commission present that SB 353 was a much better bill than anything that had been previously presented and suggested that in as much as a complete study of the Gaming industry as well as the Board and it's powers was to be done, they pass a bill with as much power and control as possible and proceed cautiously for the next two years and then see where it could be strengthened with regard to the corporate licensing. It was stated there would always be problems arise but with the power to restrict the license of the Nevada Corporation involved in gambling they would have some control over most any situation.

Sub-section 3 of section 11 was discussed which requires an unsuitable person to offer his security to the issuing corporation or any dividends or interest payments on such securities could be withheld.

Mr. Diehl felt it should be mandatory that he be forced to sell his stock. It was not enough that the dividends and interest be withheld.

Mr. Daykin advised this would have to be done by the Commission. He had gone as far as he could in the statutes and any further action along this line would have to be done at the discretion of the Commission.

Senator Dodge asked if the Corporation could be mandated to buy the stock back.

Mr. Winne wanted this done two years ago however the cash in the Corporation might not be sufficient to purchase the stock.

Senator Dodge said if the cash balance was that low he felt their license should be pulled as they were not a stable corporation.

Mr. Daykin will prepare an endorsement mandating the Corporation to buy back the stock.

Members representing the Gaming Commission left the meeting

Senator Dodge had a matter to discuss that he considered an emergency. He understood the Supreme Court was going to be petitioned to grant a stay of execution for Morford who was to be executed for murder on April 1st. He felt SB 409 - (Disqualifies judges from hearing capital cases if they are opposed to death penalty) should be passed as an emergency measure as it was on record that Judge Zenoff and Judge Thompson were opposed to the death penalty.

Senator Christensen moved to make this an emergency measure and to recommend "do pass".

Senator Swobe seconded the motion.

Motion carried unanimously.

There being no further business the meeting adjourned at 11:00 a. m.

Respectfully submitted,

Jeanne M. Smith, Secretary.

Approved:_____

RUSSELL W. McDONALD
DIRECTOR

FRANK W. DAYKIN
DEPUTY DIRECTOR

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March 17, 1969

Comments on Buxbaum letter of March 11 (numbered to correspond to his points) as it would relate to Senate Bill No. 353

(1) No. NRS 463.570-463.640 are repealed.

(2) Not applicable to S.B. 353.

(3) Under S.B. 353, natural persons who own an interest in a corporate gaming licensee are subject to control by virtue of NRS 463.510. In view of the broad provisions of S.B. 353 for adding or relaxing controls, reference to "intermediary company" seems preferable to its omission.

(4) Under S.B. 353, the requirement of suitability does extend under section 12 to officers, directors, etc., and the prohibition of remuneration to owners does extend under section 11 (subsection 4) to payments by a holding or intermediary company.

(5) The disclosure requirements with respect to the corporate licensee itself are contained in NRS 463.520 (subsection 5).

(6) Each holding and intermediary company is required to disclose remuneration from itself, and the corporate licensee discloses under NRS 463.520 (subsection 6). The dollar amounts are different.

(7) Not applicable to S.B. 353. See section 15.

(8) Under S.B. 353, this extension can be made by the Nevada gaming commission either generally or selectively where appropriate. Subsection 4 of section 16.

(9) Under S.B. 353, this is covered by the provision for selective exemption under section 15 and by the cited subsection 4 of section 16.

In summary, no change in Senate Bill No. 353 is indicated from these comments.

RUSSELL W. McDONALD
Legislative Counsel

By: Frank W. Daykin
Frank W. Daykin
Chief Deputy

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SCHOOL OF LAW (BOALT HALL)
BERKELEY, CALIFORNIA

March 11, 1969

Howard F. McKissick, Jr., Esq.
Speaker of the Assembly
Nevada Legislature
Capitol Building
Carson City, Nevada

Dear Howard:

Re: A.B. 148 & SB69

(1) As noted in my letter concerning A.B. 254, line 3 of this bill should be amended to change "463.560" to "463.620".

(2) On page 1, lines 8-9, I see no reason to except from the definition of control that control power which is solely the result of an official position with the corporation. It seems to me that this will only create a difficult regulatory situation for the commission, which conversely should have no trouble in separating control exercised in the normal corporate officer sense from the control with which it is concerned.

(3) In the definition of section 6, lines 20-24 of that first page, I am not sure I understand why natural persons should not be included as "holding companies". They are not subject to control in A.B. 254, unless, in accordance with my suggestion, the old version of NRS 463.510(1) is retained (see page 4, lines 46-50, and page 5, lines 1-2 of that bill). Admittedly subsection (2) of that section of A.B. 254 (page 5, lines 3-8) does control natural persons in part, but not to the extent they would be covered by A.B. 148. In any event, if they are included, then the word "person", should be added to line 20 of page 1, and line 28 of page 2, and similar language added in subsections (2.) and (3.) of section 11 on page 2; and of course the phrase "other than a natural person" should be deleted from line 21. It is not necessary to make this change in the definition of the "intermediary company", which is defined in section 7 (page 2, lines 1-3), since by definition an intermediary organization has to be a form other than a natural person so that it can be owned by a grandparent company.

Incidentally, I am not completely certain that it is wise to have separate definitions of holding companies and intermediary companies, where all that is being attempted is the avoidance of indirect corporate control of a Nevada gaming licensee. By being so specific, do you not run the risk that a three-tier corporate structure would be immune under this control provision? The very specificity of the two-tier

regulatory coverage proposed in this section might lead some court to that negative inference. It might be better simply to define "holding company" by stressing even further the "directly or indirectly" language, so that no matter how many tiers are used to separate actual controlling ownership from the Nevada company they would be subject to Nevada's regulatory jurisdiction. I merely raise this as a suggestion for the counsel for the commission and for yourselves, I have no particular expertise as to the way this is normally done.

(4) The definition of unsuitability in section 11(3) (page 2, lines 35-43) might well be expanded to cover not only 10% owners but also directors or officers, since presumably there is some similar fear of control by them. Of course the sanction for unsuitability or temporary unsuitability now specified in that subsection would not be appropriate; however, the sanction of subsection 4.(c) (lines 1 and 2 of page 3) would be perfectly appropriate and could be brought right back into this original subsection 3. The very fact that remuneration as expressed inthat subsection (c) is of concern to the bill drafters indicates that directors and officers might be equally subject ot this control. Incidentally, should not this remuneration subsection include such emoluments as come not only from the Nevada corporation but from the holding and intermediary companies?

(5) I presume that the section 12(5) refers to "officers, directors and underwriters of the licensed Nevada corporation"; if so this might be spelled out (page 3, line 22).

(6) In section 12(6), (page 3, lines 26 and 27) would it be appropriate to provide that information as to remuneration means remuneration from any of the three relevant sources; i.e., from the Nevada corporation or from the holding or intermediary corporation. This might be specified in line 27.

(7) In section 14 (page 4, lines 3-7) would it not be appropriate to define the publicly traded corporation in terms of the definitions of sections 6 and 7; i.e., not as one which "owns in whole or in part, or which controls" a licensed Nevada corporation, but rather as one which "directly or indirectly owns, controls or holds with power to vote 10% or more of the outstanding voting securities" of such a corporation. This could be short-cut merely by stating, in line 4, "a publicly traded corporation which is a holding company or intermediary company as herein defined" and then continuing with "shall comply with ..." of lines 6-7.

(8) In section 15 2(e) (page 4, lines 36-41), it might be appro priate to specify that the required information extend to persons holding "beneficially or of record" (line 38) the 10% blocs.

(9) As you know from the discussion at the hearing, the most important distinction made between the regulatinn of a publicly traded corporation directly or indirectly owning a Nevada corporation, and a private company in such a position, is the relatively less significant supervision provided by section 16 (page 5, especially lines 24-31) when compared with that of section 11 (page 2, especially lines 31-43). If the philosophy behind this distinction is that adequate control of this sort is exercised by the SEC over publicly traded corporations, this is not so. As mentioned at the hearing, that control is mainly financial in nature and does not go to the "suitability" of persons connected with these corporations. The burden imposed by the more stringent requirements of section 11 to the publicly traded corporations, in lieu of the lesser requirement of section 16, is not too severe, since in fact the persons to whom this control is to be applied are not all shareholders but only those owning controlling blocs in that parent or grandparent corporation. Thus the average shareholder of a company which holds controlling interest in the Nevada licensee would not be affected by this supervisory regime; only the controlling persons would be.

As you know, regulation 15 of the Gaming Commission at present does provide for this kind of more detailed control even over the controlling persons of the publicly traded corporation. To this extent, the bill as presently drafted is a material diminution of that supervisory power.

Sincerely,

Richard M. Buxbaum
Professor of Law

cc: Mr. Wood