SENATE JUDICIARY COMMITTEE

PUBLIC HEARING ON S.B. #344

1-349

March 8, 1971

Chairman Monroe called the hearing to order at 9:00 a.m.

Committee Members Present: Chairman Monroe
Senator Close
Senator Dodge
Senator Foley
Senator Swobe
Senator Wilson
Senator Young

Others Present:
E. T. Applegate - International Leisure Corporation
Fred Benninger - International Leisure Corporation
R. E. Cahill - Nevada Resort Assn.
Nathan Jacobsen - Kings Castle Hotel
Les Kofoed - Gaming Ind. Assn. of Nevada
Floyd R. Lamb
Newell Hancock -C.P.A.- Harris, Kerr, Forster & Company
George M. Farrell - Harveys Wagon Wheel
Joseph W. McMullen - C.P.A. - Semenza, Kottinger & McMullen
James A. Hume - North Shore Club Hotel
Edward E. Bowers - Nevada Gaming Comm.
Joe Dieles - Nevada Resort Association
Jerry Higgins - Sparks Nugget
John Gianotti - Harrah's
Stuart E. Curtis - Nevada Gaming Comm.

S.B. #344 - Permits enforcement of drafts drawn on banks and given in connection with licensed gaming activity.
Senators Lamb, Gibson, Herr and Close

Chairman Monroe asked for speaker.

Fred Benninger, Chairman & President International Leisure Corp. This Corporation owns and operates the Flamingo Hotel and the International Hotel in Las Vegas. I am here principally to urge you to give favorable consideration to S.B. 344 which would permit the Nevada Gaming Industry and licensees the same rights enjoyed by other industries. At the present time we are unable to take legal action on any checks cashed at the casino cage whether or not the proceeds are used for gaming or any other purposes. It is almost impossible to obtain evidence to the effect that the proceeds were not used for gaming. The magnitude of this problem should not be underestimated. The International Hotel alone now holds over

$900,000 in bad checks delivered over an 18 month period. We are convinced that a very large portion of the proceeds of these checks were used for purposes unrelated to gaming. The status of the Nevada law is becoming more and more widely known and more and more visitors are thumbing their noses at our request for payment of bad checks. If S.B. 344 is passed, it would permit us to enforce checks from several of the larger states which presently deny us this right solely because our own state denies it.

Senator Wilson: Is it to your advantage to have to reduce every bad check to a judgement and execute on that judgement before you can write it off?

Fred Benninger: It is important for several reasons. First of all, if there is legal enforcement that is possible by having the threat of having that check enforced in a court of law, the chances are that 9/10's of the time the people will not give you a bad check in the first place, or they will make restitution before we have to seek a legal recourse. Secondly, from the income tax and IRS standpoint, before you can write off a bad check or bad debt, you have to first prove to the IRS that you have made all possible efforts to collect that particular check. To go to court and have it thrown out, which you know is going to be the foregoing conclusion, its wasting additional money to prove something that is now in the statutes.

Senator Dodge: We passed a law in the last session called "The Long Arm Statute" which provided that in any transaction which was accomplished in the State of Nevada, you could sue in the state against a defendent from another state, inserting by publication or by mailing to the last known address. Have you ever tried using this means of reducing a bad check to a judgement against somebody out of the state, or are you familiar with that statute?

Fred Benninger: I'm not too familiar with that.

Senator Foley: You mentioned $900,000 in bad checks and I believe you also said some of these related to items other than gaming, could you give us a breakdown of how much would be for other items.

Fred Benninger: I would say principally, just as an off-hand guess, half of that amount are checks cashed at the cage. You know and I know they have used that money for a show, eating, drinking, or for their room.

E. T. Applegate, Vice President of International Leisure Corporation. There were a number of law firms that have looked into this subject, one of them was Guild, Hagen and Clark who wrote the most complete memorandum that I have read. It sums up and sites all of the important reported cases. The firm of Jones, Jones, Close and Doubrey in Las Vegas wrote an opinion for the Nevada Resort Association which gives a general opinion based upon having researched all the cases. To sum it up very briefly, it comes down to a division among the other states on the subject of comity, not really full faith and credit which would apply to judgements being brought into

Nevada but the simple comity where they would recognize and give force to the Nevada law in their courts against their own residents.

That means a trial de novo. This is what we really want to use this statute for. Of approximately 35 states that have said something that would indicate how they would hold on this issue, a bare majority of 19 or 20 as I recall would permit a trial de novo if the Nevada statute permitted it. The lead case that goes this way is the Intercontinental Hotel case in New York, where a Puerto Rican gaming institute sued a New York resident in New York for gaming debt contracted in Puerto Rico and the suit was permitted, and judgement rendered and withheld by the New York Supreme Court. This is the so called "modern view".

We feel the odds are that California would also adopt the New York position where the Nevada statute changed. This would give us the two major states we have to deal with on that subject.

Senator Close: Would you object a great deal if we specifically excluded the long arm statute from the operation of this particular statute? This would require you to go into another state to get your judgement rather than suing here and getting a judgement.

E. T. Applegate: I can see some disfavor of the idea of suing somebody by publication.

Senator Dodge: Have you ever tried the long arm statute? What's wrong with the concept of the long arm statute?

E. T. Applegate: What we've been worried about on the use of the long arm statute is if its a suit concerning a matter which is against the public policy of most of the other states, that you are going to have to do everything absolutely perfectly before the other state is going to accept the Nevada judgement.

I understand that the Sahara Hotel uses a confesment of judgement which they then perfect in Nevada court and take to the other out of state court to enforce, but they don't use it very often. They also are very concerned about being able to enforce it because the court may find some way to find a defect in it and look behind it.

Robbins Cahill, Managing Director of Nevada Resort Association. This Association has 16 strip hotels in its membership and 11 downtown places as associate members. The association has given considerable thought to this legislation. We felt it was broad but decided to research the matter. We decided, on the basis that a person who gives a check for a debt of this kind is presumed to know what he's doing, he's making a representation that he has money in the bank and it isn't dissimilar at all of checks given in any other business or occupation. They did agree to endorse legislation that made checks given in payment of a gaming debt legal. However, the original legislation was drawn with the word "check". I can not represent to you that the entire association endorsed this bill in the form it is before you now, that is with the word "draft" substituted for "check".

Senator Young: Would there be any legal difference if the suit was on a draft or a marker?

Robbins Cahill: We felt there was a considerable difference, practical and emotional, between a person signing a marker and a check.

There is considerable more credit given by markers than by checks. Arrangements made for markers is made in advance, and this is very important especially on the strip because they do a great volume of credit business.

Senator Wilson: If checks were to become collectible, do you forsee a shift in practice whereby conventional marker as we know it would be replaced simply by a check which is held on deposit to cover a play.

Robbins Cahill: I don't know if it would be completely replaced, but in my opinion it would change credit practices. I think it would give them an outlet to use and if they don't care to use it and operate under markers, then that's their responsibility.

A lot of our losses are from professionals. People who recognize that they are not legally required to pay these debts.

Senator Dodge: Has anyone ever explored the possibility of setting up centralized credit check.

Robbins Cahill: I think it has been discussed. A lot of times there is no question that their credit is good, but after they get out of the state they say, "sorry, you can't collect on this".

Fred Benninger: May I elaborate on one thing I think is important as far as the committee is concerned so they understand. Most gambling is not done with cash in the pocket. Now, there are two differences of understanding as far as ring play is concerned. One might be whereby if they lose they sign a marker or an IOU that they may take 30 days, 60 days, or 90 days, to pay. That is what the marker means to day. But there is a great majority of playing whereby the man has the understanding that when he gets through playing, whether its an hour, two hours or one day, he settles up with a check for his losses at that point. That is where the greatest amount of losses occur. If you do not accept a check for that type of play, you probably destroy 40 to 50% of the play that presently exists.

Robbins Cahill: Sometimes there is confusion as to which is a check and which is a marker. The understanding was that there would be no markers taken that could be confused with checks, if checks were allowable in this fashion.

Nathan S. Jacobsen, President of Kings Castle Hotel.
Senator Wilson, I was cautioned by you about my long speech several weeks ago and I only took a minute and a half.

Senator Wilson: For the record, I saw you in the hall and made the observation, "I hope today's speech is shorter than the last one."

Nathan Jacobsen: I know time is of the essence and I will try to keep it as short as possible.

Markers are temporary records of a man's play that are ultimately reverted into a check. Some people have gotten to the point where they wise themselves up to the fact that they don't have to pay these debts. I don't think we should be talking about public policy, we should keep the conversation to gaming, and the enforcibility of gaming debts. The gaming industry is legal, and it is denied the enforcibility or due process of law for credit. Its a tremendous denial of the rights of the industry. I can assure you that the major casinos dealing in credit do a tremendous amount of research. We have centralized agencies, we check with the banks, we check with other casinos.

Senator Swobe: Mr. Benninger stated that 30 to 40% of their business is settled up at the end of the day or at the conclusion of a persons play. What percentage of your business is done that way?

Nathan Jacobsen: 80 or 90%.

Senator Swobe: 80 or 90% at the end of the day or when he leaves, what percentage of that goes uncollected.

Nathan Jacobsen: 33% of the outstanding or 4% of issued credits go bad.

Senator Swobe: It seems when you aren't collecting 1/3 of what you've got out, you ought to tighten up your credit.

Nathan Jacobsen: I agree with you. Most of the decisions are justifiable, but the enforcement is not there.

Chairman Monroe asked who was present to oppose the bill.

Joe McMullen, C.P.A. with Semenza, Kottinger & McMullen. We are auditors and service some 11 or 12 casinos in Northern Nevada. We do not, on the basis of our audit procedures in following through on return checks, believe that there is a substantial loss from people who skip or refuse to pay a debt. We think its more in the nature of peoples inability to pay rather than an unwillingness to pay. I believe that enforcement in other states would not improve the image of the gaming industry in the State of Nevada. I believe further that the passage of this legislation would encourage poor credit policies in the industry. I believe it would encourage it to the extent that when a risk was apparent in a debt and the industry had the vehicle and the means to enforce it through a court procedure in another state, they would be less likely to judiciously look at the credit granted to the player.

Senator Wilson: What is the effect of this bill with respect to the

writing off of what might be a loss unless this check were to be reduced to a judgement and could be enforced.

Joe McMullen: In my experience I would say that the IRS would have a much better leg to stand on in disallowing debts that are written off against gaming revenue if you had this possibility of enforcing the collection of them.

Senator Dodge: Are you writing them off now?

Joe McMullen: Yes, they are being written off against revenue now and we have not had any problem writing them off in the 27 years I have been practicing.

Senator Close: You don't mean to imply that 99% of the credit the casinos submitted was to people who could not afford to pay their gambling debts?

Joe McMullen: Yes, that's what I'm saying, this was the information that was furnished to me.

Edward E. Bowers, Nevada Gaming Commission.
I'm not here to testify pro or con, I'm here merely to point out the fiscal impact of such legislation if it became law. We have done an analysis of what this particular bill if adopted would produce. In the year 1966, gaming bad debts written off by all licensees totaled 3.2 million. This represented 1.4% of the revenues from gaming and there were 118 casinos reporting at that time; 36 of which were considered to be Group I licensees, or casinos having in excess of $1 million in gross revenue annually. In 1967 the total written off was 5.5 million; this represented 2% of gaming revenues and this was a report by 137 licensees of which 41 were considered to be major. In 1968 the gaming bad debts written off were 6.5 million, or 1.6% of revenue by 147 licensees of which 45 had gross revenues in excess of a million dollars. In the year 1969, 10.6 million was written off representing 2.2% of revenues by 163 licensees of which 57 were considered major. It should be pointed out and as commented upon here today, that the perponderance of gaming credit is done on the strip in Las Vegas and as for an example of the 3.2 million in 1966, 1.2 million of that occurred on the strip. In 1967, 4.3 million of the 6.4 was strip business, and in 1969, 8.8 million of the 10.4 resulted from credit play on the strip.

Senator Dodge: Were there 2 or 3 casinos on the strip that had larger bad debts than the balance that were on the strip? If they were greater, would this indicate there were some management problems connected with it?

Edward E. Bowers: There were about 4 or 5 that would be considered higher than others. I can get this information for the committee.

John Gianotti, representing Harrah's.
We are opposed to S.B. #44. We think the people in the industry feel that the losses are due to weak credit practices more than

any other factor. We think this measure before you today may become an attempt to make legitimate by legislative act poor credit practices.

I would like to point out for the record that over a five year period all uncollectible checks of our organization, Harrah's, has had approximately 1.20 over a 5 year period. This amounts to approximately 82% of our gross revenue in credit business.

Les Kofoed, Gaming Industry Association of Nevada.
We spent a lot of money researching this and we asked for an unbiased opinion of this problem. We wanted all reasons to push for it and oppose it. The Association is so completely undivided on this issue that it has no stand. But I did feel in fairness and because of all the work that went into that research that I would like to leave that report with each of you and a supplement which gives you the anti-gambling laws and the collectibility of checks in other states. Attachment 1.

George M. Farrell, Harveys Wagon Wheel.
Our experience in the past years has shown that of all the checks we cash, approximately 5% to 6% return originally, but less than 1% remains uncollectible. A great proportion of these checks are relatively small. Also in support of the statement that most of these checks are not collectible because of inability to pay, having the ability to go to court would accomplish nothing. In fact the litigation would probably far exceed the cost of the check being written off. If we were to legalize collecting of checks, it would not help the image of gaming. I think it would damage it because people would miscontrue it outside and say Nevada's cracking down and will take you to court everytime you write a check. I also think it would either discourage people to come to Nevada, or at least not make them feel as friendly when they do come. The statistics that were brought up this morning support the fact that over the past years you have over a 3% increase in bad checks, and over 80% of it is on the strip. We agree with the guess, at this point, of 4 or 5 casinos causing it and I think the facts will support it. Its a credit problem and we don't feel its necessary for the state to pass legislation for relatively few when it's really not going to do much for the majority. We do have laws now to protect us against bad debts in hotels, food and beverage; Innkeepers law, long arm law mentioned this morning, although its new to us.

Newell Hancock, C.P.A. - Harris, Kerr, Forster & Company.
The larger credit operations do not believe in cashing a check at the window, giving the cash to a person and letting him take it to a table. The credit clearance in these casinos is greater than it is in a regular mercantile business. They do utilize central credit. I think that if you take the casinos with major losses, and took their percentage of credit loss to the actual credit exposure, the percentage is even lesser than some of the figures that have been exposed.

The State of Nevada has a 5 1/2% interest in every bad debt written off. If you can give them some tools to collect it, I do think it would be an advantage to everyone and I do not believe it would create any different image.

The hearing adjourned at 11:00 a.m.

Respectfully submitted,

Eileen Wynkoop

Eileen Wynkoop, Secretary

Approved: _____

MEMORANDUM

TO: GAMING INDUSTRY ASSOCIATION OF NEVADA, INC.

ATT: LES KOFOED, EXECUTIVE DIRECTOR

RE: Proposed Legislation Providing for Collectibility of Gambling Debts

Recently there has been revived a proposal to press for adoption of legislation which would make gambling debts collectible in Nevada. A memorandum on this subject was sent to your association January 24, 1967. In that memorandum we stated that it was our position it was a matter of policy whether to take action in regard to attempting to get such legislation passed and not really our function to decide questions of policy. Our position in that regard remains the same.

However, at your request, this memorandum is written to express our thoughts concerning this proposal and to make suggestions for your guidance.

This memorandum will, of necessity, repeat some of the material found in the earlier memorandum but is intended to expand on the thoughts expressed therein. Reference is made to the 1967 memorandum and you are urged to re-read it.

Some assumptions are being made for purposes of this memorandum. These are that a major problem facing the Nevada gaming industry in connection with gambling debts is the cashing of checks in gaming establishments, and, further, that most of these checks are negotiated by out-of-state residents. While these are the basic underlying assumptions, the general principles discussed herein apply to all wagering contracts.

The principal legal problems as distinguished from the policy questions appear to be:

1. If a statute is passed in Nevada providing for collectibility of gambling debts, would the proprietor of a

Nevada gaming establishment be able to file suit against a non-resident in his state of residence and procure a judgment for recovery of the debt?

2. If a statute is passed in Nevada providing for collectibility of gambling debts, would the proprietor of a Nevada gaming establishment be able to file suit against an out-of-state resident in the court of Nevada and procure a valid judgment against the non-resident?

3. If such a judgment were procured in Nevada, would the proprietor be able to go to the state of the non-resident, sue on that Nevada judgment and procure a judgment in that other state so as to be able to levy on assets of the non-resident in his home state?

These problems will be discussed in detail later in this memorandum.

The Alternatives

The alternatives open to the Legislature in this field are:

1. Do nothing, thus leaving the situation as it now exists, that is, gambling debts are not collectible.

2. Enactment of legislation giving licensed gaming operators a right of action to collect gambling debts.

3. Enactment of legislation giving both the licensed gaming operators and the patrons of gaming establishments a right of action to collect gambling debts.

Summary of English Common Law and Early English Statutes

There is some uncertainty expressed in the American cases as to whether wagering contracts in general were valid at common law. However, the English case decided in 1907, Moulis vs. Owen, 1 KB 746, 4 BRC 352, seems to state the prevailing view as to just what the common law on the subject was. In this case, the court said:

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> "Neither games nor gaming were in any wise illegal at common law, and a bet was in olden times a valid contract and would be enforced by the Courts. Juridically speaking, there is no reason why this should not be so. The reciprocal liability of the parties constitutes good consideration both on the one side and on the other, and differs in no substantial respect from the reciprocal liability arising from a wager on a past event the result of which is unknown to the parties wagering. . . The ground for treating gaming contracts in an exceptional way is to be sought in reasons of public policy and not in any defect in the essential qualities of the contracts themselves, and it is clear that the necessity for so doing was not felt in the ages during which our common law was formed, so that the disabilities under which such contracts labour are entirely derived from statute law."

The Nevada Supreme Court indicated its feeling as to the early common law and what changed it in substantially the same fashion. In Evans vs. Cook, 11 Nev 69 (1876), at page 74, the court said:

> "As to whether contracts of wager in general were valid at common law, there is some conflict of opinion disclosed by the American cases, but the weight of authority is so decidedly in favor of their validity that I think there ought never to have been a doubt of it. The ancient common law, however, was altered in respect to this matter by numerous English statutes. . ."

English statutes gradually modified the common law on the subject of gambling. In 1541, Statute 33, Henry VIII, c. 9, made it unlawful to maintain a house or place of dicing, table or carding or other gambling. Section 12 of this same act repealed all other prior gambling statutes.

Statute 10 and 11, Will. 3 C 17 (c) enacted by parliament in 1710 declared that all lotteries were common nuisances.

In 1721, parliament provided for further penalties for conducting lotteries and also provided for certain other enforcement remedies in Statute 8, George 1, c. 22 S.S. 36, 37.

In 1722, under Statute 9, George 1, c. 19, certain prohibitions against foreign lotteries were provided.

Insofar as Nevada is concerned, probably the most important gambling statute adopted in England is the one known as the Statute of Anne. Section 1 of this Act reads:

". . .that all notes, bills, bonds. . . given. . . by any person or persons whatsoever, where the whole or any part of the consideration shall be for any money or other valuable thing whatsoever, won by gaming. . . shall be utterly void, frustrate, and of none effect, to all intents and purposes whatsoever. . ." (quoted in Evans vs. Cook. 11 Nev 69 @ 74)

In addition, the Statute provided that any person who had lost at gaming could, within three months of the date of such loss, maintain an action to recover the loss, plus costs, and in the event the loser failed to commence such an action, it could be brought by any one for treble the amount lost, plus costs. It also provided for corporal punishment for any person winning at gaming through fraud. The Act did not provide for the licensing of any gambling, but it did permit unlicensed gambling by the royal family for ready money only, apparently, on the theory that the Ten Commandments stop at the royal door.

Summary of Nevada Statutes

In 1865, shortly after statehood, Nevada adopted a statute prohibiting gambling within the state. Then, in 1869, a statute was passed allowing gambling within the state if properly licensed. It was provided that the license made one immune from prosecution for gambling.

In 1879, the statute was amended containing substantially the same provisions and continuing the immunity provision noted above.

From 1909 to 1915 there was a period of extreme conservatism in this state toward gambling and that period a series of anti-gambling statutes were enacted. In 1909 a statute was adopted entitled, "An Act prohibiting gambling, providing for the destruction of gambling property and other matters relating thereto."

In 1915 a gradual change could be noted in the public policy with the Legislature enacting a statute permitting some games described therein. In 1931 public opinion changed toward

liberality in regards to gambling and the so-called open gambling law was enacted. This was entitled, "An Act concerning slot machines, gambling games, and gambling devices; providing for the operation thereof under license; providing for certain license fees and the use of the money obtained therefrom; prohibiting minors from playing and loitering about such games; designating the penalties for violations of the provisions thereof; and other matters properly relating thereto.

Note that the statute of 1931 provided that gambling should be unlawful unless properly licensed. It omitted the immunity from prosecution provision contained in the 1869 and 1879 statutes, but it did state that only the games described in the license could be played in the place described in the license.

In 1947 this statute was amended but only to provide for an increased percentage for the license fees to be paid to the state.

The present statute, Nevada Revised Statutes, Chap. 463, contains an elaborate scheme for the licensing and control of the gaming industry. It creates a Gaming policy board, the Nevada gaming commission, and the State gaming control board. The Commission is given the power to adopt and repeal regulations, and the Commission and the Board are given the power and duty to investigate applicants for licenses, to supervise licensees, to inspect and investigate licensed premises, and to inspect and audit books and records of licensees. It contains criminal penalties for any violations and civil sanctions for such violations in the form of license suspensions or revocations. One important ground for suspension or revocation of a license or for refusal to issue a license is unsuitability of the person licensed or to be licensed or unsuitability of the premises where gaming is operated

The policy of the state concerning gambling is set forth in Nevada Revised Statutes 463.130:

> "It is hereby declared to be the policy of this state that all establishments where gambling games are conducted or operated or where gambling devices are operated and manufacturers, sellers and distributors of certain gambling devices and equipment in the State of Nevada shall be licensed and controlled so as to protect the public health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada, and to preserve the competitive economy and the policies of free competition of the State of Nevada."

Review of Leading Nevada Cases

The first case involving the question of collectibility of a gambling debt in Nevada was Scott vs. Courtney, 7 Nev 419, decided in 1872. Here, plaintiff kept a public gaming room in Pioche City and was licensed to play faro there. Defendant lost $2,100 and failed to pay. The trial court held for defendant, and the Supreme Court affirmed, holding the operator of the establishment could not collect the debt from the patron. At page 421, the Court said:

> "Although at the common law, gaming, when practiced innocently and as a recreation, the better to fit a person for business, was not in itself unlawful, still, the reluctance and loathing of the English judges to sustain even contracts growing out of such gaming is manifest in every decision announced upon the subject; and the result is, that the right of recovery is burdened with so many restrictions, that at present it can hardly be said the right exists at all. In the United States, wagering and gaming contracts seem to have met with no countenance from the courts, and consequently in nearly every state they are held illegal, as being inconsistent with the interests of the community, and at variance with the laws of morality.
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> "But at common law all public gaming houses were nuisances, not only because they were deemed great temptations to idleness, but also because they were apt to draw together great numbers of disorderly persons. It would therefore seem to follow, that money won in such house by the keeper could not be recovered, because everything connected with or growing out of that which was illegal partook of its character, and was tainted with its illegality. So gaming, which might be innocent itself if carried on elsewhere, would become illegal by being conducted in a place which was condemned by the law. This is an undoubted principle, applicable not only to cases of this nature but to all cases of analogous character. . ."

The Court nowhere mentioned the Statute of Anne as one of its grounds for its holding. This statute became important in later cases. It relied, instead, on its interprétation of the common law policy that gambling was not moral, would lead to idleness and disorderly conduct, and particular leaned on the provision in the 1869 Statute of Nevada which protected the keeper of the public gaming house from criminal prosecution when a proper license was procured. This, the Court said, was a limitation on the powers of a licensee, did not constitute any grant of the power to maintain such an action, and does not change the old law of unenforceability of gambling debts.

This was a two to one decision with Justice Garber writing a dissent. The dissent, of course, is not law but contains interesting points which could be used in an argument for making gambling debts collectible. The dissent pointed out that the only ground on which this action could have been defeated at common law was illegality of the transaction. But with enactment of the Nevada Statute of 1869, the illegality had disappeared. The legislature is the final arbiter on questions of policy and morality, and the statute does away with the only objection to plaintiff's right of recovery. The statute of 1869 provides the license shall by its terms authorize the licensee to carry on the game, so such a license confers on and gives the licensee authority and right to do the very thing the Court is being asked to hold is contrary to policy.

Then, at page 426, Justice Garber said:

> "The idea seems to be that the statute grants a sort of secular indulgence - that the game, though licensed, is still illicit; that the licensee has paid the state a handsome bonus for permission to violate the law; but that the act is as illegal as ever, the only effect of the statute being that it cannot be punished criminaliter. And the result is, that the landlord, whose tenant the licensee becomes, the employees who assist him, and the tradesmen who sell to him articles to be used in carrying on a business which he has purchased a right to carry on, must refuse him credit or rely on his word for payment."

The next case, in 1876, was Evans vs. Cook, 11 Nev 69, in which the Court relied on the Statute of Anne for its holding. Defendant was sued as surety on a note. It was conceded the note was given for a gambling debt. It was held that defendant should be allowed to set up the defense that the note was given for this consideration.

The Court, at page 74, said:

> ". . . The ancient common law, however, was altered in respect to this matter by numerous English statutes, and it has been held by this court that English statutes in force at the date of American independence and applicable to our situation, are a part of the common law which we have adopted. (citing Ex parte Blanchard, 9 Nev 105)
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> "It follows, therefore, that we have adopted the common law upon the subject of wagers as altered by the statute of 9 Anne, c. 1f. . ."

The Court then goes on to quote section one of the Statute of Anne, set forth hereinabove in this memorandum.

West Indies vs. First National Bank, 67 Nev 13 (1950) is perhaps the leading case in this state on the subject. It discusses and analyzes the prior Nevada cases, the English common law and statutes, the Nevada statutes, and considers the contentions of the parties.

The sole question presented to the Court for decision was: "May a gambling house or the proprietor thereof maintain an action at law for the collection of money won at a duly licensed game?"

The Court first takes up Scott vs. Courtney, supra, which was the first pronouncement of this Court on this question. This Court mentions that in that case there was no declaration that Nevada had adopted the Statute of Anne and theorizes that probably this was because that precise question was not raised in that case. The Court said the Scott court was primarily persuaded by the immunity clause in the 1869 which protects the licensee against criminal prosecution, that this led that court

to the conclusion that the license was by the statute limited and losses were not collectible.

At page 19, in the West Indies case, the Court said:

> "In the United States, wagering and gaming contracts seem to have met with no countenance from the courts, and consequently in nearly every state they are held illegal, as being inconsistent with the interests of the community and at variance with the laws of morality."

The Court then goes on to say that the common law of England, so far as not repugnant to or in conflict with the constitution and laws of the United States or the constitution and laws of this state are the rule of decision in courts of this state. It cites with approval the holding in Ex parte Blanchard, 9 Nev 101, wherein it is said that included English statutes in force at the time of the Declaration of Independence. It also cites with approval Evans vs. Cook, 11 Nev 69, which decided that there had been an adoption of the applicable portions of the Statute of Anne. It approves Burke vs. Buck, 31 Nev 74, which also held the Statute of Anne had been adopted in this state, and approves Menardi vs. Wacker, 32 Nev 169, which held a check given for a gambling debt is void under the law of this state, and there being no valid obligation there could be no lawful consideration for the security as a pledge.

The Court admits that certain portions of the Statute of Anne are at variance with the structure of American government. However, the sections of that statute are severable, the Court said, and since section one is severable from the remainder, section one, at least, is part of the law of Nevada. That section is the one providing that gambling debts are not collectible.

At page 30, the Court in West Indies says:

> We are now confronted with the question of whether any of the gambling statutes enacted from the date 1931 have in legal effect repealed by implication the first section of the Statute of Anne. Such repeal would necessarily be by implication for there is nothing in any of the statutes

repealing it directly, i.e., there is no provision in any of the statutes to the effect that money won by the establishment at a licensed game may be collected by suit at law."

And at page 32, quoting from 15 C.J.S., Commerce, sec. 12, page 620, the court stated:

"Although the common law may be impliedly repealed by a statute which is inconsistent therewith, or which undertakes to revise and cover the whole subject matter, repeal by implication is not favored, and this result will be reached only where there is a fair repugnance between the common law, and the statute, and both cannot be carried into effect."

The Court then holds that the Statute of Anne has not been repealed by implication by Nevada statutes licensing gambling, saying that statutes in derogation of common law are strictly construed, that statutes granting special privileges to a group of persons who are in no particular need may be strictly construed against the beneficiaries, giving as an example laws granting special franchises and privileges.

The contention was raised that Nevada statutes permit the giving of checks in gambling games. However, the Court brushed this contention aside saying that in all the statutes the word "checks" appears, that the statute is prohibitive rather than permissive in that it is unlawful for anyone to carry on certain games for property of all kinds unless properly licensed. The Court concluded that just because there is a grant of authority to take checks in properly licensed games, it cannot be inferred that there is a corollary power granted to maintain an action to collect on the checks.

The Court then drew a distinction between liquor and gambling industries and what it called "useful trades." Citing with approval State ex rel Grimes vs. Board of Commissioners, 53 Nev 364, at page 33, the Court said:

"We think the distinction drawn between a business of the latter character and useful trades, occupations, or businesses is substantial and necessary for the proper exercise of the police power of the state. Gaming as a

calling or business is in the same class as the selling of intoxicating liquors in respect to deleterious tendency. The state may regulate or suppress it without interfering with any of those inherent rights of citizenship which it is the object of government to protect and secure."

It was argued by the appellant that since the state accepts a percentage of the gross income of gaming establishments as a license fee, this in effect makes the state a partner and gives the licensee the right to maintain an action for winnings. The Court mentioned that there has always been a financial interest of the state and county in the success of gaming operations, and the fact that the interest is now higher means only that this is a distinction of quantity and not quality. The raising of the percentage paid to the state did nothing to change the Court's conclusions.

Finally, it was contended that omission of the immunity from prosecution provision in the 1931 Statute was sufficient to make the earlier holdings of this Court of no more force. The Court in answer said that such an immunity clause is unnecessary to protect the licensee from prosecution since when a license tax is imposed on a particular form of gambling, it is clear that one who pays the tax cannot be prosecuted. Under the earlier statutes the license protected the licensee from prosecution by express language of the statute. Under the 1931 Statute the license entitles the holder of the license to carry on the game for which the license is issued. This merely substituted another limiting clause for the former immunity clause. Omission of the immunity clause, the Court said, probably was only for the purpose of removing surplusage.

At page 34, the Court said:

"Considering the limitations placed by law upon the license, the special class of industry licensed and its deleterious effect, the fact that it is in contravention of the common law, the fact that it is a statute granting special privileges, we entertain no doubt but that the statute is one meriting strict construction against the licensee, and must therefore conclude from the application of the rule

of strict construction, that the omission of the immunity clause in the statute of 1931, does not in legal effect grant the right to maintain an action for winnings at a duly licensed game."

Nevada Tax Commission vs. Hicks, 73 Nev 115 (1957) involved a proceeding to revoke a gambling license. Its precise holding is not relevant here, but the Court's statement at page 119 is helpful in understanding the reasons generally given for the licensing and control of the gaming industry.

> "We note that while gambling, duly licensed, is a lawful enterprise in Nevada, it is unlawful elsewhere in this country; that unlawfully followed elsewhere it tends there to create as well as to attract a criminal element; that it is a pursuit which, unlawfully followed, is conducive of corruption; that the criminal and corruptive elements engaged in unlawful gambling, tend to organize and thus obtain widespread power and control over corruptive criminal enterprises throughout this country; that the existence of organized crime has long been recognized and has become a serious concern of the federal government as well as the governments of the several states.
>
> "Throughout this country, then, gambling has necessarily surrounded itself with an aura of crime and corruption. Those in management of this pursuit who have succeeded, have done so not only through a disregard of law, but, in a competitive world, through a superior talent for such disregard and for the corruption of those in public authority.
>
> "For gambling to take its place as a lawful enterprise in Nevada it is not enough that this state has named it lawful. We have but offered it the opportunity for lawful existence. The offer is a risky one, not only for the people of this state, but for the entire nation. Organized crime must not be given refuge here through the legitimatizing of one of its principal sources of income. Nevada gambling, if it is to succeed as a lawful enterprise, must be free from the criminal and corruptive taint acquired by gambling beyond our borders. If this is to be accomplished not only must the operation of gambling be carefully controlled, but the character and background of those who would engage in gambling in this state must be carefully scrutinized.
>
> "This court has already had occasion to note that the control and licensing of gambling is a duty demanding special knowledge and experience in matters of personnel, operation, and finance, as related to this type of enterprise. The risks to which the public is subjected by the legalizing of this otherwise unlawful activity are met solely by the manner in which licensing and control are carried out. The administrative responsibility is great."

The case of Weisbrod vs. Fremont Hotel, 74 Nev 227 (1958 is a particularly important one to the gaming industry in connection with the problem under discussion here. Prior to this case, the question was always whether the proprietor of the gaming establishment could collect gambling winnings. This case, however, was an action by a patron against the licensee to collect.

Plaintiff alleged he was a patron at a gaming establishment, purchased a $3.50 keno ticket, held the winning ticket entitling him to $12,500, but that the gaming establishment refused to pay. The trial court gave judgment for the gaming establishment and the Supreme Court affirmed this judgment.

The Court pointed out that in 1872 it was established as the law of this state that an action does not lie for collection of money won in gambling. (citing the cases discussed above)

Plaintiff, however, contended that the rule applies only to the proprietors and not against the patrons since the rule exists only for the protection of patrons.

At page 229, the Court said:

> "Both Scott vs. Courtney and West Indies vs. First National Bank involved instances of a proprietor permitting, if not encouraging a patron to gamble upon credit. It may well be that the rule there announced was founded to some degree upon a recognition of the obvious evils inherent in such practices. So long as such practices remain lawful, however, the rule must be held to apply equally to all lawful gambling transactions. It must, then, cut both ways. If money won at gambling is not recoverable through resort to the courts it is not because of who has won it but because of the nature of the transaction itself."

The Court emphasized that the patron is not without remedy. He has his administrative remedies. The state has an interest in seeing that its licensees honestly and honorably respect their gambling obligations, and repudiation of such obligations by licensees might very well reflect upon the licensee's suitability to hold a license. The Court said that no licensee

would be likely to place his license in jeopardy through his refusal to pay a gambling debt found to be properly due. The Court also said that factual truth probably could be more expertly and surely ascertained through administrative inquiry rather than through judicial inquiry.

Las Vegas Hacienda vs. Gibson, 77 Nev 25 (1961) was an action by a golfer to recover a prize offered for making a hole in one. Although not necessary to its decision, the court affirmed the rule, saying at page 27:

> "Although gambling duly licensed, is a lawful enterprise in Nevada, an action will not lie for the collection of money won in gambling."

Here, the Court held this was a valid contract enforceable at law, being essentially different from the typical wagering contract.

Cases from Other States

Gaming contracts in England and the United States are quite generally regarded as subject to restrictions if not as actually void on the ground that the public policy so demands.

In the vast majority of cases in which the question has arisen it has been held or recognized that where one loans money to another to be used by the borrower in gaming the lender is not entitled to recover the amount of the loan from the borrower. (see cases in Arkansas, California, Colorado, District of Columbia, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, England, discussed and cited in annotation in 53 ALR 2d 345)

A distinction has been drawn between the making of a loan to be used by the borrower in gambling, and mere knowledge on the part of the lender that the borrower expects to use it for

such purposes, the rule generally followed being that under the latter circumstances, the lender has the right to recover the amount of the loan from the borrower. (see cases in Georgia, Illinois, Indiana, Maine, Missouri, New York, Pennsylvania, Texas, Canada, collected in annotation 53 ALR 2d 345)

The fact that money was borrowed for gambling purposes does not prevent recovery by the lender, if he was without knowledge of the purpose of the loan. (cases from California, Idaho, Illinois, New York, Texas, and Virginia collected in annotation 53 ALR 2d 345)

Patrons of gambling establishments often borrow money from the proprietor or secure cash or chips from him by giving a check or other instrument so as to take part in the game. It is generally recognized that under such circumstances the properietor, who is regarded as a participant in the game, cannot recover on the check or other instrument if it has been dishonored.

To this effect see Hamilton vs. Abadjian, 30 Cal 2d 49, 179 P 2d 804 (1947). Here, the owner of a gambling house in Nevada honored a check for the purpose of providing a prospective customer with funds with which to play blackjack. The check was drawn on a California bank. The court held that it refused to lend its processes to recover losses in such a gambling transaction, even though the state of Nevada licenses gambling. The California court emphasized that even in the state of Nevada, the same rule prevailed, that is, that such a debt was not collectible.

Conclusions Thus Far

Certain propositions emerge from the foregoing:

1. The operator of a licensed gaming establishment cannot recover on a gambling debt in the State of Nevada, and the same rule applies in most states.

2. The patron of a gaming establishment cannot recover on a gambling debt.

3. The courts of Nevada, even though gaming , if licensed, is lawful in this state, have articulated a policy condemning gambling as immoral, leading to idleness, attracting disorderly persons, attracting the criminal element, etc.

4. In seeming contradiction to the proposition set forth just above, the courts of Nevada state that public policy and public morals is a matter for the Legislature.

5. The courts of this state have held gambling debts uncollectible, not on constitutional grounds, but rather on the basis of public policy and English common law as modified by English statutes, and the absence of any clear repeal of such law and such policy by the Legislature.

6. The Legislature of this state has the power to change the present existing law and provide that gambling debts are collectible, but it must do so clearly and expressly. Any attempt to repeal the present law by implication would probably not be recognized by the Nevada court in view of its past decisions.

Enforceability of Gambling Debts in Other States

A serious problem may still remain even though the proposed legislation under discussion were passed and adopted by the Nevada Legislature.

In the event the proposed legislation were passed, and suit were brought against the debtor in some other state, the question is whether the debt would be collectible in that other state even though the obligation is valid and collectible in the State of Nevada, the state where the obligation was created.

The general rule is that a contract, if valid where it is made or to be performed, will be enforced in the courts of another state without regard to whether it would have been valid

by the law of the forum (the state where suit is brought) if it had been made or performable in the forum state. However, there is an exception for contracts valid by the law of the place of making, where the enforcement of such a contract would be against the public policy of the forum state or would prejudicially affect the rights of the citizens of the forum state.

The prevailing view seems to be to regard statutes which declare gambling contracts and transactions as illegal or void as embodying a distinctive public policy which requires the court of the state in which they are enacted to refuse to recognize or enforce any contract or transaction in violation of the terms of such statutes even though such a contract or transaction may have had its origin outside the forum. (see annotation in 173 ALR 695 and cases cited therein)

There are some decisions which allow enforcement at the forum of gambling contracts valid by their governing law even though the making of such contracts is prohibited or declared invalid by the law of the forum. However, it should be noted that in many of these cases the result was reached on a theory that the forum had no established public policy (or one not strong enough) against the making or enforcement of such contracts, at least if they were made in another state. Such decisions in other cases have been predicated on the favorable position which a bona fide holder without notice of negotiable paper occupies, as contrasted with the original parties. In still other cases, the ground for enforcing the agreement was that it was not actually a wagering contract involved but a collateral agreement. (see 173 ALR 695)

It is instructive to review legislation passed in the various states. Analysis reveals that there are four main categories of such legislation:

1. Statutes which provide that conducting gaming-houses or games or participating in such games is a crime, the severity of punishment varying from state to state, varying as to the particular conduct, varying according to the number of convictions for certain offenses.

2. Statutes providing that promises, agreements, notes, bills, bonds, contracts, judgments, mortgages, leases, securities, conveyances, or the like, are void. The list of these evidences of indebtedness varies from state to state.

3. Statutes which give the loser in a gambling game the right to recover his losses from the winner, from the stakeholder, or from the owner of the premises where the game was conducted.

4. Statutes which give such a right of action against the winner to someone other than the loser if the loser fails to bring action within a certain limited time. The other person authorized under such statutes to bring such action may be just any other person, a police officer, dependents of the loser, wife or children of the loser, the loser's executor or administrator, or creditors of the loser.

It is believed that a review of the gambling legislation of other states would be helpful. Such a review will be furnished to you within a few days as an appendix or supplement to this memorandum.

It is our opinion that it is probable that if the operator of a licensed gaming establishment in Nevada had to file his suit to collect the gambling debt in a state which had legislation making it a crime to engage in gambling, such debt would not be collectible in such other state even if the Nevada Legislature were to adopt the proposed legislation under discussion here.

It is our further opinion that if suit were filed to collect a gambling debt in a state which declares by its legislation that such a contract is void, it would be a virtual certainty that the debt would not be collectible even though the Nevada Legislature were to adopt the proposed legislation under discussion here.

These opinions are based on the rule that such statutes establish a strong public policy against the making or enforcing of gambling contracts.

Possibility of Suit against Out-Of-State Residents in Nevada Court

If the Nevada Legislature should adopt the statute under consideration making gambling debts collectible, and if the operator of the gaming establishment could file suit to collect such debt in this state and secure a valid personal judgment against the debtor, the difficulties suggested in the foregoing section of this memorandum would be eliminated.

This brings us to a general discussion of the subject of jurisdiction. In this connection, please see our memorandum heretofore sent to you entitled "Amenability of Gaming Operators in Nevada to Service of Process from Courts Outside the State of Nevada" particularly that portion of that memorandum labeled "Terminology" which contains definitions of terms which will be used herein.

Jurisdiction is essential to a court's ability to render a judgment that will be recognized and enforced in the state of rendition and all other states. Jurisdiction is commonly divided into two parts: subject-matter and over the person or thing.

Through its constitution or its statutes, a state distributes among its courts authority to decide various types of cases likely to arise. A court given the authority to decide a specific type of case has subject-matter jurisdiction over such cases.

A federal prerequisite for the acquiring of jurisdiction over the person is a relationship between the state and the person that makes exercise of jurisdiction by the state reasonable. A second federal prerequisite is that adequate notice providing the opportunity to be heard be given the person.

Adequate notice, providing an opportunity to be heard, is that notice which is "reasonably calculated, under all the circumstances, to appraise interested parties of the pendency of the action and afford them an opportunity to present their objections." (Mullane vs. Central Hanover Bank & Trust Co., 339 U. S. 306)

When personal service within the state is achieved, this satisfies both the basis of jurisdiction requirement and the notice requirement. Personal service outside the state usually fulfills the notice requirement, but if a basis of jurisdiction is lacking, a judgment rendered may be subject to attack.

This portion of this memorandum will consider only in personam judgments, that is, the power of the court, consistent with the due process clause of the 14th amendment of the United States Constitution, to render a judgment binding on all the parties and a judgment entitled to full faith and credit if sued on in another state. The extent to which a court may reach property in the state belonging to an absent defendant will not be considered.

We are assuming for our purposes that the court is competent to act in the sense of having subject-matter jurisdiction. It is further assumed that the statutory provisions applicable for service of process have been complied with and the defendant has received reasonable notice and been given an adequate opportunity to appear and defend.

We are still making the factual assumption that the major problem as to collectibility of gambling debts is the cashing

of checks, later dishonored for one reason or another, by patrons with the gaming establishment, and the further assumption that most of these checks are cashed by out-of-state residents.

Since 1878 when the United States Supreme Court rendered its decision in Pennoyer vs. Neff, 95 U. S. 714, it has been settled law that the due process clause of the 14th amendment imposes certain constitutional limitations on the courts of a state in their exercise of jurisdiction over persons absent from the state. The Pennoyer case held that only if the defendant were personally served in the forum state or voluntarily submitted himself to the court's jurisdiction did the state court obtain jurisdiction over the absent defendant's person.

The Supreme Court has gradually liberalized this restrictive decision. The list of permissible bases of jurisdiction has been lengthened by including a defendant who has his domicile within the state (Milliken vs. Meyer, 311 U. S. 457), a tort arising out of a defendant's operation of a motor vehicle on a state's highway (Hess vs. Pawloski, 274 U. S. 352), the doing of business by a defendant within the state (Doherty & Co. vs. Goodman, 294 U. S. 623).

In International Shoe Co. vs. Washington, 326 U. S. 310, the Supreme Court adopted a different technique for defining constitutional boundaries of a state court's in personam jurisdiction. The Court announced that a state court may exercise jurisdiction over nonresident defendants whenever, under the facts of the particular case, the defendant has "certain minimum contacts with (the forum state) such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." (at page 316)

Prompted by this decision, many state legislatures have recently enacted so-called "long-arm" statutes more comprehensive

in scope than they have been in the past.

Since the International Shoe case, the Supreme Court has decided other cases of considerable significance. These are:

Travelers Health Ass'n vs. Virginia, 339 U. S. 643

Perkins vs. Benquet Consolidated Mining Co., 342 U. S. 437

McGee vs. International Life Ins. Co., 355 U. S. 220

Hanson vs. Denckla, 357 U. S. 235

From these four decisions, three propositions are established: (1) International Shoe was concerned with corporations, but it is not limited to corporations. The minimum contacts doctrine applies to individuals and partnerships, as well. No later case has doubted this extension. (see Restatement of Conflicts, Second, Sec. 854); (2) When the minimum contacts doctrine is invoked as the sole basis for jurisdiction, the claim sued on must arise out of those contacts of the defendant with the forum that are asserted as furnishing the jurisdictional basis; (3) The minimum contacts doctrine supplements and does not supersede presence and doing business. These last two doctrines still have life, so if presence or doing business is the basis for claimed jurisdiction, the claim sued on does not have to arise out of activities in the forum state.

In this memorandum we are mainly interested in contract cases, so we shall confine the remainder of our discussion on jurisdiction to that type of case.

The leading contract case involving the jurisdiction problem is McGee vs. International Life Insurance Co., 355 U. S. 220 (1957). Defendant was a Texas life insurance company not qualified to do business in California. It reinsured the life of a California resident. The only activities linking the company with California were those as to the one insurance policy involved in the case. The company mailed the certificate

of insurance to the insured in California, the insured mailed his premium payments from California to the company in Texas. The company maintained no office and had no agents in California. It was doubtful whether the company was doing sufficient business in California so that it could be regarded as present in California.

At page 223, the Supreme Court said:

> ". . . it is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that state."

Among the contacts found sufficient to support jurisdiction were: (1) The contract was delivered in California; (2) Premiums were mailed from California; (3) The insured was a resident of California; (4) California has a manifest interest in providing an effective means of collection of insurance policies insuring its residents - especially when claims are so small in amount as to make it scarcely worthwhile for the plaintiff to try to collect by suit in a distant state.

It might be argued that this is not a typical contract case since the subject matter was an insurance policy in which a state has an unusually strong interest in regulating. However, the Court's language was general, and not limited to insurance contracts. Further, see Restatement of Conflicts, Second, Sec. 36, comment e at 190-91, which says:

> "It is reasonable that a state should exercise judicial jurisdiction over a nonresident individual as to causes of action arising from an act done, or caused to be done, by him in the state for pecuniary profit and having substantial consequences there even though the act is an isolated act not constituting the doing of business in the state."

A contract may be analyzed as involving three activities: (1) Preliminary negotiation; (2) Formation; (3) Performance.

Our assumed check cashing situation can be analyzed in the same fashion. The preliminary negotiations occur when the customer offers to write and deliver the check to the

proprietor in return for money. The proprietor will, after making certain procedural checks of the patron's crediting rating, signify assent.

The offer is made when the patron completes the check, delivers it to the proprietor, which acts constitute a promise by the patron to pay the amount indicated on the check. The proprietor accepts by paying the sum over to the patron. Thus, this particular contract would be formed. It would be what is called a unilateral contract.

Performance by the patron in the check cashing situation occurs when the check is presented to the drawee bank and paid by it. Performance by the proprietor occurs when he pays the money for the check.

When preliminary negotiations are the sole connection between the defendant and the forum state and the contract is made and to be performed elsewhere, there probably is no sufficient basis for jurisdiction. In Panamerican Consulting Co. vs. Corbu Industrial, S.A., 219 Md. 478, 150 A 2d 250 (1959), some preliminary negotiations took place in Maryland, but the contract was accepted, hence formed, in Mexico. The court denied jurisdiction, but it may have based its decision on the Maryland statute which confers jurisdiction over foreign corporations on contracts made within the state.

A contract is made in a state where the last act necessary to create a binding obligation occurs, which means it is made in whichever state acceptance takes place. Some states have enacted statutes conferring jurisdiction where the sole connection between the contract and the forum state is the making of the contract there. (see cases collected in Byham vs. National Cibo House Corp., 143 SE 2d 225) In most of the cases where long-arm jurisdiction has been based solely on the making of a contract in the forum, however, the making

of the contract was not in fact the defendant's sole connection with the forum. For example, in Compania de Astral, S.A. vs. Boston Metals Co., 205 Md 237, 107 A 2d 357, the contract was made or accepted in Maryland, but the court emphasized partial performance was also to take place in Maryland.

A conservative forecast would be: If the sole connection between the contract and the state is the fact that it was accepted there, then jurisdiction over a nonresident defendant may not be obtainable. However, if some part, however slight, of either party's performance was to be undertaken there, then exercise of jurisdiction would probably be upheld. (see Restatement of Conflicts, Second, Sec. 36, comment e, at page 193)

The cases, then, seem clear that when a contract is to be performed wholly or in part by either party within the forum, the requisite substantial connection exists and long-arm jurisdiction over the absent defendant may properly be assumed. The only apparent qualification is that expressed in Hanson vs. Denckla, 357 U. S. 235, where the court indicates that the defendant must have been able to foresee, at the time the contract was executed, that performance would take place within the state.

The Nevada Legislature in 1969 adopted a so-called "long-arm" statute. Our research discloses no case to date in Nevada dealing with this statute. Insofar as is pertinent here, that statute (NRS 14.065) provides as follows:

Personal service of summons upon a party outside this state is sufficient to confer upon a court of this state jurisdiction of the person of the party so served if service is made by delivering a copy of the summons, together with a copy of the complaint to the party. Such a party submits himself to the jurisdiction of the courts of this state when he transacts any business or negotiates any commercial paper within this state.

In our assumed check cashing situation, it is our opinion that the proprietor of a gaming establishment could file suit in Nevada against the patron who had cashed a check (subsequently dishonored and not paid), and successfully procure a valid and binding judgment against the patron, provided the proposed legislation were adopted by the Nevada Legislature making gambling debts collectible.

This opinion is based on the following reasons:

1. The Nevada long-arm statute (NRS 14.065) provides for adequate notice.

2. The negotiation of commercial paper in Nevada is a minimum contact and substantial connection between the patron and the State of Nevada.

a. Preliminary negotiations take place in Nevada.

b. The contract is made in Nevada.

c. Performance of the contract by the proprietor takes place in Nevada.

d. The patron is able to foresee that the proprietor's performance of the contract is to take place in Nevada.

e. Plaintiff-proprietor is a resident of Nevada.

f. Nevada has a manifest interest in providing an effective means for collection of such debts.

g. The claim sued on arises out of the contacts of the patron with Nevada which are asserted as the basis for jurisdiction.

If the nonresident had no assets in Nevada (which is likely), it would then be necessary to file suit on the Nevada judgment in the defendant's home state where he would have assets for the purposes of getting a judgment in his home state. Would the proprietor be able to sue on the judgment from Nevada and procure a judgment in the other state? We believe so.

In Harrah vs. Craig, 113 CA 2d 67, 247 P 2d 855, the action was based on a Nevada judgment. Plaintiff, owner of a gaming establishment had cashed a check for a customer. It was held that the California court had no authority to look behind a Nevada judgment to determine whether it was based on a gambling debt. It was pointed out by the court that the cashing of checks in a Nevada gambling house where there is no condition imposed that the proceeds must be used for gambling is not necessarily illegal.

We also believe, although this may be less clear, that the same result would obtain even in a state which had a statute providing that any judgment based on a gambling debt is void. It appears that such statutes apply to judgments from that state rather than other states. It would seem that under the full faith and credit clause of the federal constitution, the other state would be compelled to recognize the Nevada judgment and would not be entitled to look behind it.

Summary, Conclusions, and Suggestions

1. The present status of the law is clear, that is, gambling debts are not collectible by either the licensee or the patron.

2. The Legislature has the power to change the law and make gambling debts collectible but must do so by clear and express language.

3. If Nevada adopted a statute providing for collectibility of gambling debts, an original suit on such a contract filed in another state would not be enforceable in that other state, particularly if there were a statute in that other state making gambling a crime or providing that gaming contracts are void.

4. If Nevada adopted a statute providing for collectibility of gambling debts, a suit in Nevada against a non-resident pursuant to Nevada's long-arm statute (NRS 14.065) would

probably result in a valid judgment entitled to full faith and credit in other states.

5. Legislation permitting the proprietor to collect gambling debts but not the patron:

a. Would have the advantage of eliminating the possibility of unmeritorious and unfounded claims by patrons against establishments.

b. Might arouse public opinion against the gaming industry.

c. Publicity pointing out the administrative remedies available to patrons (see Weisbrod Case discussed above) and that a licensee is not likely to risk his license by repudiating his gambling obligations might counter any adverse public opinion.

d. Legislation allowing only the proprietor to collect might lead to an objection under the equal protection clause of the United States Constitution on grounds it is a discriminatory or arbitrary classification. Equal protection is a complicated subject, deserving of a separate memorandum, and we take no definite position on this point at this time.

6. Legislation permitting both the proprietor and patron to collect gambling debts:

a. Would possibly open the door to unmeritorious and unfounded claims.

b. Would eliminate the possibility of unfavorable public opinion on grounds the industry was seeking legislation to allow only the licensee to recover such debts.

c. Would eliminate any possible equal protection objections.

7. General arguments in favor of the proposed legislation:

a. The rule of equal protection should apply to all, that is, gambling, properly licensed, is declared lawful in

Nevada, so the gaming industry should occupy the same status as other lawful enterprises.

b. Nevada permits the business of gambling to function, but the courts of the state deny it legal remedies against those who abuse its confidence.

c. Such legislation would eliminate the anachronism presently existing in Nevada law where gaming is a lawful business, but the industry is unable to secure the assistance of Nevada courts in collecting gambling debts.

8. In the event the Association, in its judgment, made the decision to press for the proposed legislation, careful consideration should be given to the language of such legislation making certain that it repealed and superseded the existing law.

9. Attached to our memorandum of January, 1967 were forms of proposed bills, one, marked Exhibit A, providing for collectibility of gambling debts by the licensee, only, the other, marked Exhibit B, providing for collectibility by both licensee and patron. These suggested proposed bills still seem satisfactory to accomplish the purpose. However, consideration should be given to adding an additional section somewhat as follows:

> "Any and all laws, enactments, and statutes heretofore in effect in this state, including but not limited to the Statute of Anne, which are inconsistent in whole or in part with this act hereby are superseded and repealed to the extent of said inconsistency."

10. Thought should then be given to the desirability of including the above section to both proposed bills or only to the bill applying to both licensee and patron.

11. The equal protection objection, mentioned above, to passage of legislation allowing only the licensee to recover gambling debts might be overcome by the fact that the proprietor is licensed, subject to regulation, and the patron has adequate alternative administrative remedies available to him.

12. Apart from equal protection, if your Association decided to press for legislation authorizing only the licensee to collect gambling debts, careful thought should given to the language in the Weisbrod Case, ". . . It must then cut both ways. . ."

Dated: January 15, 1971.

Respectfully submitted,

Guild, Hagen and Clark

By _____