

MINUTES OF JOINT HEARING
SENATE AND ASSEMBLY JUDICIARY COMMITTEE

JANUARY 21, 1977

SENATE MEMBERS PRESENT:

Melvin D. Close, Jr., Chairman
Richard H. Bryan
Carl F. Dodge
Margie Foote
Gary A. Sheerin
Mary L. Gojack
Keith Ashworth

ASSEMBLY MEMBERS PRESENT:

Robert R. Barengo, Chairman
Karen W. Hayes
James J. Banner
Steven A. Coulter
John Polish
Robert E. Price
Ian R. Ross
Nash M. Sena
Sue Wagner

The meeting was called to order at 9:00 a.m.

SENATOR CLOSE: This is the time set for the Joint Assembly and Senate Judiciary Committee hearing on gaming matters. This morning we have invited the Gaming Control Board and the Gaming Commission to meet with us and testify. I would state at the outset that it is our intent at this point, to remain independent of any discussion relative to the Rosenthal case because that matter is pending before the Courts and will be argued very soon in the Supreme Court. It is our feeling that we do not want to color or jeopardize any proceeding that might be held in the Supreme Court. For that reason we will delay any testimony that might relate to the Rosenthal case until after the Supreme Court has made its final decision and we have that in hand. However, there are certainly other areas that are material; that we feel should probably be examined and we can start that process this morning.

A great deal of our work is going to be involved in educating the two committees as to gaming matters. None of the members of the Committee have previously been involved in appearing before the Board or intimately involved in any of the matters that the Board would consider. Therefore we feel that it is very important at this point, that we have an educating process for both committees. So at this time we will turn the remainder of the time over to Mr. Echeverria, who will then determine what order the members of the Board and Commission are to speak.

PETER ECHEVERRIA, CHAIRMAN OF THE NEVADA GAMING COMMISSION: Senator Close, ladies and gentlemen of the Joint Committee, I appreciate very much the opportunity to be here with you. Our format is very much as you suggested Senator Close. What I propose to do is give you a general overview on what our thoughts are on gaming control; what the functions are; and how it has been doing. Then I will

turn you over to the Board and let Mr. Hannafin and their technicians start. We sort of characteristically like to indicate that the five members of the Commission are the amateurs; we don't get paid. The Board is the pro; they are full-time employees. You are going to hear your technical information from them but we do want to give you some general overviews. The members of the Commission that are present this morning are Commissioner Claire Haycok, the red-haired Arab who has the Standard Oil Distributorship; Commissioner George Swarts, a Certified Public Accountant from Clark County; Commissioner Jack Walsh, the operator of the Algier Hotel in Clark County and a long-time resident of the state of Nevada; and Commissioner Walter Cox, who I don't see here this morning, and who is from Yerington and a retired newspaper man. I also want to, at the outset of these remarks, echo the sentiment expressed by the Governor in his admiration for the legislative process and for the people who are in the legislature. I have been privileged to be seated where you folks are seated and it was a high honor in my life. It is a hard job and I know the seriousness and the dedication that you people in the legislature undertake and I want to pledge to you our total and complete cooperation. I also want to indicate to you that I have great faith in the regulatory structure set up and established by previous legislatures in the state of Nevada. I don't share the general state of alarm that is expressed by some with regard to the urgent need for some sort of change. I also want to echo the thoughts of the Governor that we should await judicial interpretation, particularly in one case, before you make any big changes. Now just generally, I would like to give you a little overview of what the present regulatory structure is. I know most of you are very familiar with it but Senator Close has asked us to go over it in detail. First, we have the Gaming Control Board. These matters are all pretty well set up by statute and I am going to make some references to certain of these statutes.

NRS 463, starting in that particular area, are the ones that you will be most interested in. If you start with 463.021, on the composition of the Commission and the Board, you will see the two-tiered system of gaming control that has been established in the state of Nevada and of which I am a big believer. In my opinion, the administrative processes of no administrative agency in the United States of America achieves the success that we do in our gaming process and I have great faith in them. The Board is the front-line gunning unit. The Gaming Control Board is composed of three individuals who operate full-time: Philip P. Hannafin, Chairman of the Board and designated as such by the Governor, with an administrative background; Jeffrey A. Silver, who is present and who has a law enforcement background; and John H. Stratton, who has an audit and accounting background. The statute prescribes those three backgrounds. Those three individuals head those three departments of the Board. Mr. Hannafin administers and is the chief executive officer. Jeff Silver generally has charge

of the enforcement arm of the Board. Jack Stratton has charge of the audit arm of the Board. It is set up on a good, efficient, working basis on the Board level; full-time employees, all appointed by the Governor with provisions for their removal set forth in the statute. I also want to indicate at the outset that the responsibility for picking the Board and the Commission were assigned in 1959 when Carl Dodge and I were part of the formulators of this system. We expressed two divergent points of view on this matter. Once this matter was joined and settled, the legislature of our state has characteristically, since 1959, given this process tremendous support. It was our thought, and I think that this is something for your legislative consideration, that the responsibility for designating the Board and the Commission should be with the Governor. The Governor's responsibility is to the people, by way of direct election and the legislators are responsible because they are the voice of the people and at this particular time, expresses itself in the legislation that will be set forth. The three members of the Board are appointed by the Governor and the Governor is responsible. That is where the people can go for their answering. The Governor is really the responsible individual on gaming control. From the Board, we come to the Commission. The Board does all of the full-time investigative work and the Board has all of the full-time employees. They operate with about 100 agents and you will hear testimony with respect to that. Mr. Hannafin is much more skilled in this particular area and has much more precise, specific knowledge of the details. From the Board, the first front-line gunners, we come to the Commission. The Commission is composed of five individuals who are not full-time employees. The statute prescribes what their qualifications should be. If you will look at NRS 463.023, you will find the qualifications and eligibility of the members of the Commission. Statute indicates that it is the intention of the legislature that the Commission should be composed of the most qualified persons available, preferably no two of whom shall be of the same profession or major field of industry. No person actively engaged or having a direct pecuniary interest in gaming activities shall be a member of the Commission. We can't participate in political activities, which really disables me. I'm kind of a political warhorse and I have to stay away from those functions now. But my time is limited and I'll be back in the political arena as a spectator. No more than three can be of any one political party. Interestingly enough, at the present time three are Republicans and only two are Democrats. Walsh and I are the two Democrats and the other three are the Republicans. A Commissioner can be removed by the Governor with cause or can be removed without a statement of cause by the consent of the legislative commission. So the permission, the consent and the control over the Commission is pretty paramount. I am satisfied with the caliber of individuals

on the Commission. None of them would stand in the way of a request for resignation. I am satisfied that Governor O'Callaghan would have called any of the members of the Commission or they would resign if the present condition were requested because they are that dedicated. I want to tell you ladies and gentlemen, that I have been privileged to be in public service in this state for 18 consecutive years; four years in the Senate, 10 years on the State Planning Board, and 4 years on the Commission. I have never worked with a more dedicated, more finely atuned group than the present members of the Nevada State Gaming Commission. They are here now if you have any questions that you would like to ask of any of them. We have always, at the Commission level, tried to get a complete expression from all members of the Commission. One provision of this statute which you hear some talk about; there has been some discussion in newspapers and in certain groups, that the provision of this statute that says "no person actively engaged or having a direct pecuniary interest in gaming activities shall be a member of the Commission." That matter has received some kicking around. There has been some thought and some generation of ideas that maybe a member of the gaming industry should be a member of the Commission. I personally, am just old-fashioned enough that I can't quite atune myself to that thought yet but that is a legislative decision that you will have to make in that particular area.

There is a third group or agency that the legislature has created and that is the Governor's Gaming Policy Committee. The Governor's Gaming Policy Committee is an advisory committee so we really have three groups that deal with gaming: the Gaming Control Board; the Gaming Commission and the Governor's Gaming Policy Committee. The Governor is the Chairman of that Commission and the chairmen of the Control Board and the Gaming Commission also serve. There are two members of the industry, Billy Weinberger from Caesar's Palace down south and Warren Nelson from the Cal-Neva Club up north and two members from the general public. It is a seven person commission. The Policy Commission meets for the purpose of giving advice or hearing matters of general public interest with regard to gaming matters and refers those matters and makes recommendations back to the Gaming Commission which has the regulatory authority. Now the statutes in these particular matters is pretty darn good. We have a good legislative framework and I think that the studies and considerations that will be submitted to you should require that they be specific. In other words, somebody comes in with just a general criticism of gaming, or they have a personality problem - and some people have a personality problem with me which is hard for me to understand, but they seem to. I think the Chairman of the Gaming Control Board should be a tough individual. We are dealing with a tough business. We are dealing with a business where the inventory is cash. We are dealing with a business which is composed of very smart, very able individuals. We are dealing with a business in which

there are very experienced, tough people that come from one direction and if they don't make it work from that direction then they come from another direction. They are versatile and they have built in this state, the most dynamic, the most interesting, the most exciting business that has been created in the history of man. The world's focus is on the state of Nevada right now because of these items of foreign gaming and all of these matters that are bubbling in all different directions. All the states are interested in it, in that it is a fantastic way to raise money painlessly. People come from other directions, drop their money and then hurry back home again and that is the general attitude that prevails. But it is the toughest, regulatory control business in the world. We must make no mistake about the fact that it has got to be considered as a tough assignment and, in my opinion, it must always be considered as a privilege. I think the responsible members of the industry will come before you also recognizing that this must be tightly concerned and tightly regulated and should be considered as a privilege. We set this up in 1959 and I just as solidly, if not more so, subscribe to the notion that gaming in the state of Nevada should be a privilege. It isn't an unusual concept. Those who say everybody should have rights are disregarding these facts of life that exist in our society today. I can't admit my friend Jeff Silver to St. Mary's Hospital and take out his appendix because I don't have the qualifications and the training and the privilege of having a license to practice medicine. And many of you can't take me across the street to a courtroom and defend me in court because you don't have the training and the qualifications and the privilege to practice law. I can't design your home or design your office building because I don't have the qualifications or the privilege to be an architect and I don't know what it would take to make that house stand up. So this notion that people think that gambling should be treated like any other industry is wrong, in my opinion. I think a gambler is a skilled individual who must know his business and how to handle his business. He must be able to control his money on the inside of the house from the house standpoint and from the outside because thieves are not restricted in the operation of gambling establishments to any particular location. Thieves are in all directions and stand on every side of that dollar and they seek to get at it at all stages. Gaming control must recognize thievery at any direction. You must recognize that a gambler must have a tremendous amount of integrity: to report to his customer, to his help, to his employees, to his social organizations and to his state, accurately and honestly the results of his monies. If there is any reflection upon his integrity, upon his accuracy, upon his association, or upon the nature of the money that he has in his establishment, those are matters of tremendous concern to the people of the state of Nevada; to you. These are the things that exist in gaming control that don't exist in a lot of other businesses. In my opinion,

under the legal definition of sui generis, gambling is unique. We can have privileged status and assign responsibilities to lawyers and doctors and architects and accountants and a great field of activity because of their training and qualifications and background. I can't get out and do a lot of things, with respect to the courts and speak about the courts, that a layman can do. I'm bound by professional ethics and professional requirements not to criticize openly the court or to act improperly or inconsistently as an officer of that court. I have responsibilities and disabilities that the general public doesn't have and I assume those because I have a privilege to practice law. In my opinion, there is no difference between that and a license to gamble. If the state of Nevada is to actively control gambling, it should do it just exactly that way. A gambler should be considered and licensed and recognized as a unique individual who commands particular skills. He is assigned a privileged license and status and must abide the responsibilities of that privilege. I don't see how we can run it anyother way. This general talk that everybody has a right to have a gambling license, I think, is as inconsistent as it is with the idea that everybody has a right to admit somebody to the hospital for surgery. Now I think another area that you are going to hear about is the list of excluded persons. We used to have a book we called the Black Book. The Black Book was a book that was originally authorized by this legislature and was composed of those listed individuals whose backgrounds or associations we felt were inimicable to the best interest of gaming control in the state of Nevada. The type of guy who, when he came in a joint had such connections or such muscle or such authority that he might be able to impose upon others or he might just generally bring a state of disrepute to the state of Nevada. We started out historically calling it the Black Book. About two years ago I received a very nice letter from a gentleman in Clark County who indicated that he took some umbrage in the fact that we called it a Black Book. He said he was a black man and that he felt it was offensive to his race. I wrote him a letter and told him that I never had considered it that way and I didn't think the labeling of the Black Book had any racial connotations. But it wasn't sufficient that I wasn't offended; it was that he was and so we changed it. We don't call it the Black Book anymore, we call it the list of excluded persons and that's really what it is. We call it that in our regulations. Now, you are going to hear a lot about the list of excluded person because it is being contested in court. We've got a lot of court matters going right now and I think that your legislative inquiry is going to have to concern itself with some of the questions that are being raised. I think most of these questions will be raised if you try to take gaming out of the privileged status and put it in the status of driving a car or doing something that is an ordinary activity of society. I think you will lose a large part of this battle. And so I think the legislative declarations that

we have made in the past in the state of Nevada should be, perhaps reaffirmed by this legislature and perhaps strengthened. I think this legislature, and these are all my personal views, could be well-advised or could well consider the thoughts of setting out more firmly than ever before, the legislative declaration and legislative intent that you want your Commissions to set forth. Bear in mind that all we do out there on that firing line is try to enforce the law as your arm. When I read in this law that this is a privilege, that's the way I conduct myself as Chairman of that Commission. I don't think because a newspaperman tries to convince me that it's a right and not a privilege that I have any right to go around your law. Your law says it's a privilege and I have, for four years, attempted to follow that law. I've taken that position and I think it's right and I think it should be as we set forth in the administration of this particular act. I have said here that the burden of proof is always upon the applicant. That is in the law. We have attempted, with people that have come before our Commission to say "look, if you don't persuade us that it is in the best interest of this state for you to have a license, we will deny your license because you haven't established the burden of proof." That's the law. That is what is in this book today and that is what we try to enforce as your arm; acting as the Commission. Now, other areas that you are going to hear some legislative discussion about are confidential reports. When the Board submits to us, summaries and confidential investigative reports about what somebody's background may have been; you've got to appreciate that in law enforcement, in this modern society, a lot of the information that comes to law enforcement officials, gaming and everybody else is hearsay. They're observations; surveillance reports where somebody was assigned to follow this guy and this fellow went over and met this unsavory individual and then they went over here and met this guy and came back or he flew into Las Vegas at 11 a.m. and had a black suitcase with him and he flew out at 2 p.m. and he didn't have a black suitcase when he left. Now, it really doesn't prove a hell of a lot, except to a suspicious mind like mine. I think if somebody goes to Las Vegas at 11 o'clock in the morning and leaves at 2 o'clock in the afternoon, he's not there for the recreational activities of Las Vegas. I think if he has only spent three hours in town, I don't think he has really himself of the Chamber of Commerce's enticements.

SENATOR DODGE: Maybe he lost all his money.

MR. ECHEVERRIA: Carl, to tell you the truth, that becomes a part of my suspicion because he didn't take the black bag with him on the way back out. I think he lost his money, but I don't think he lost it at the tables. Now, when these things come to our attention, how do you go to court and prove that the guy did something wrong? But, if you've got a pattern, and if some agent can sit down and tell you that, that pattern goes to this pattern and that some informant has advised him that this and this has happened and if that's the basis of a

police report, that's what law enforcement decisions are made of. We've got a real problem, legally and constitutionally. It's not the kind of evidence that will stand up for a conviction in court. These are things that you're going to have to consider. We've done the best we can with the laws you've written so far. I think that anything you can do to protect the source of information, the informants and their cover, would be good. We have a lot of undercover agents who assist us in gaming control and if we blow their cover, they lose their effectiveness.

I'll give you a little illustration. On December 27, three years ago, Howard Hughes was indicted for the Air West situation. I called a special meeting of the Commission. Hannifan called a special meeting of the Board and journeyed to Las Vegas. We met in Las Vegas to consider the alternatives or the requirements of what might happen. You will hear a lot about telephone conferences. We never deliberate on the telephone. I called the Commissioners all the time. The Commissioners must be constantly apprised of what's going on. It is an absolute, total requirement that you stay on top of all the information all the time. We went to Las Vegas and we had our meetings.

As a matter of fact, I think Mr. Greenspun testified at one of the closed sessions of those meetings. We were trying to get as much input as we could to get ourselves ready for any decision that may have to come up as a result of that indictment. During the time we were there, Hannifan and I stayed at Mr. Walch's Algiers Motel and we walked across the street to the Sand and had breakfast. We were walking out of the casino and there was a crap game going on; a big exciting crap game. I don't know much about table gambling. I know a lot, I think about gaming control through four years. If I didn't, I couldn't have absorbed very much, because we're very close to it. But, as we came out, this crap game was going on. It was a very hot and heavy game and we stopped to look at it and there was a guy sitting there in the kookiest looking outfit you ever saw. He had a suede jacket on with a great big plastic red rose and a pork-pie hat on. I sat and watched the crap game for a little while. I turned to go and as I went by him, he said, "Happy New Year to you Mr. Echeverria." and we walked on by. We got about half way to the door and I said to Hannifan, "Is that one of ours?" and, he said, "That's one of the best ones we've got." So, don't disparage too much the appearances of some of these people that are in the establishments. They may be ours.

This is the type of thing that goes on in gaming control and it goes on all the time. If you blow that man's cover, you take off his plastic rose and his kooky looking outfit, they're going to spot him. So, bear in mind that if you can do anything in the Legislature to protect that absolutely necessary process in gaming control, then we certainly must do that.

Now, generally, those are the overall views that I have. I'm not going to take all the time, but I want you to know this; if anyone comes to you with any complaints about the handling of any particular matter, I have no hesitancy of explaining before your Commission, your Joint Committees or anyone else, every vote I've ever made on the Gaming Commission in four years. I'm not ashamed of any vote I've made. I will explain and bring forth and tell you our reasons behind every vote I've ever made. There's been no hanky-panky in your Gaming Control. Your Gaming Control has been blessed with integrity. The only criticism that's existed in your Gaming Control is it has been firm. That kind of criticism I enjoy because it has been firm. You can't be delicate with some of these situations because they're situation that if you're delicate you are just going to be had. When you say "no", you have to say it in pretty definite terms. And, if you have to say, "I would advise you to abandon that procedure", sometimes it's not that delicate and it has to be a tough control. My tenure is limited. I will leave on midnight, April 27 and you probably will still be working here when I go out of office. At any rate, I speak to you as a lame duck, but I speak to you as one who is absolutely dedicated to the proposition that this State must firmly, totally and completely control gaming. The Commissioners are here. If you have any questions of me, or any of them, please feel free to ask them. They're damn well apprised and they call their own shots. This is not a one man Commission.

SENATOR CLOSE: Any questions? I might state that the Commission and the Board are both going to be appearing before us on other occasions and so we will have other chances to ask questions of them as well as today. This is not our last opportunity. Are there any questions?

SENATOR BRYAN: Pete, by way of prefacing my remark; I'm glad you and Phil have been tough, but I've got a couple of questions which don't prejudice any conclusions which I've reached, which I'd like to raise. First of all, you've indicated that one recommendation that you'd make to us is a reaffirmation of the policy which we set forth in 1959; the privilege vis-a-vis the right. Is there any other recommendation that you would make based upon your observations of the functions of the Commission and the Control Board concerning the regulatory structure that you would ask us to include?

MR. ECHEVERRIA: Yes.

SENATOR BRYAN: Aside from any implications of litigation in which you're involved?

MR. ECHEVERRIA: I think one thing you ought to think about, Senator Bryan, is NRS 463.130; that is, a statement of policy concerning

gaming in the State of Nevada. I think it would be of assistance in judicial constructions to determine legislative intent. If you make it clear, just come right out and say, "This legislature intends that gaming shall be considered unique." I would think that where it says, "shall be the public policy of the State of Nevada that all licensees 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 of the policies of free competition in the State of Nevada." I read that, from my historical background, and I think that means "hang in there and do it for the State of Nevada." I think maybe you could beef that one up a little bit and beef up that legislative declaration. I think you could also add to that some recognition that gambling is unique in the entire world. No society in the history of man has tried to control gambling to the extent the State of Nevada has, and succeeded. I think that could be uniquely pointed out that it is that type of an activity.

Now, on the removals, I think the removal provisions are good, but I think they should be absolute. I think you have to lay this on one guy (the Governor) because when you're not in Session, the executive remains and there must be somebody who has the absolute total power. Since 1931 we have not had a breath of scandal in gaming control. That's a remarkable record. It's a record I don't think any other state will ever easily achieve. The removal provision should constantly be there. They are there now, by the integrity of the individual.

Another area, Dick, that I would like to see beefed up is on the powers and duties of the Board and Commission under 463.140, subsection 3, "The board and commission and their agents, inspectors have the authority..." Those are pretty broad. Make them specific. Today a lot of the attack that's being made on the constitutional provision is that the law is vague and ambiguous and not clear and definitive. We'll have to await this decision, perhaps, to see if we get any expression from our Supreme Court.

Another section I have given some thought to is the general powers and authority, NRS 463.143, wherein the "Commission may exercise any proper power and authority necessary to perform the duties assigned to it by the legislature and, is not limited by the enumeration of powers in this chapter." This has been attacked on being too much of a delegation of legislative authority to the Commission. If you could, put some muscle in there and make sure that it is clear. Gaming control has to be authoritative and you have to depend upon the integrity and the good judgment of certain individuals. In this particular situation, we're the individuals at the scene but we are temporary and transitory. There'll be others, but it has to depend upon somebody calling a shot. That's just the way it has to work. I can't see it any other way.

SENATOR DODGE: Could I ask question apropos of that Pete? Are you saying that we ought to beef that up as far as general delegation of authority? How do you beef a thing up that way? Or are you saying that we ought to more specifically delineate.

MR. ESCHEVERRIA: That's right, Carl. That's been attacked on the grounds that it's vague and ambiguous and an undue delegation of authority. I think it ought to be more specifically enumerated and indicate, that may regulate in many areas. If you were to set up standards of suitability, list every damn one you think would be conceivably coming in, and then underneath say "and anything else they may think about".

SENATOR ASHWORTH: Pete, if we did delineate those duties and responsibilities, don't you feel that by delineating them without giving them broad powers that if we missed one, and something comes along, that the lawyers will come in and say that the legislature didn't list that so, therefore, you don't have that power?

MR. ESCHEVERRIA: By all means, Senator Ashworth. I would suggest that you put the old catch-all in there "and anything else they may think about." The delegation of authority under 163, where it says anything we may think proper, I concede is a wide delegation, and I can see that a court could consider it that way too. So, I think if you list them, and then give us something that says any damn thing else you guys think of. It's got to be run this way. It's not because I have any love for this job because, I'm pretty anxious to go fishing. It's just because this is the way the State of Nevada is going to have to run it.

MR. PRICE: On that same subject, in our labor contracts we generally list them and say, "but not limited to". That opens the door. Also, there's been some criticism over the past years, about individuals that are perhaps at a lower level in the gaming industry but are not licensed. Is there any need to expand the licensing?

MR. ESCHEVERRIA: I am very happy you brought that up. We have a procedure for what we call "licensing key employees", and we've been moving in this area this way. If we see an individual in the operation of the gaming establishment that we think is effecting the employment practices, decisions, calls of discretion and things of that type, we call him in for licensing. We consider that he is of sufficient importance to the operation of that establishment that he should be called in for a license. Many of those individuals that we have called in have been periphery for esample, we called in a maitre'de in a particular establishment because he was approving credit, and issuing comps of substantial proportions and doing the sort of thing that an executive in that establishment should do. We called him in for licensing and he left town because he couldn't submit to the licensing. That is how we pick up some of those guys that are on the periphery. Your're not dealing with sissies in this business. These guys are tough and they're hard and they're experienced and they come form backgrounds that have made them sharp.

He's good. And, you'd better not get a bunch of dummies sitting on our Board and Commission because they are not dealing with dummies. They're dealing with real sharp individuals and alot of them are very nefarious.

SENATOR DODGE: Apropos of that, if you have somebody that has a work card in a casino and he works himself up and he gets to the point where an application is made as a key employee and as a result of your investigation you turn him down, do you wipe him out completely or is he still able to earn a living at some lesser job in the casino?

MR. ESCHEVERRIA: You put your finger, on a very sensitive area that was determined in this lawsuit in Clark County and Mr. Hannifan is going to discuss that with you. It's the Rocheid case. In that case, Rocheid was employed under a work card, and came in on a key employee, because he wanted to take over a card room. We denied him on the key employee and found him unsuitable and said, "Now, that moves you out of the whole business." Judge Goldman indicated in that case that our removal of his work card did not satisfy the requirements of due process. I think you are going to be requested to do something in that particular area. The reason that that happens is because we don't really get a chance to pass on alot of peoples suitability at the work card level. We don't make the same intensive investigation on the work card. The Sheriff issues the work card and sends us a list of all the people he's issued work cards to. The volume gets pretty heavy. Out people look at them, and we have 30 days to make an exception to the work card. If we excepted the work card, the Sheriff issuing the temporary jerks it and they come to us for a hearing. They go before the Board, and the Board decides whether or not they're going to issue the work card. They get a sort of preliminary investigation and then if the person wants to appeal they come before the Commission. That is a very critical area and one that is going to be discussed in our legislative package.

SENATOR DODGE: In any event, your present procedure is that if a person is unsuitable when they come before you on the key employee deal that their whole future in the gaming industry rests on that.

MR. ESCHEVERRIA: That was our procedure util Judge Goldman indicated that he didn't think it was very nice and we stopped it. Now we're going back into another procedure, but we do want to establish a procedure for doing that. You see, there are lots of guys working on a work card that will never be licensed, but their accessibility ot the opportunities for devious procedures are not as great. When they get into higher levels, then this opportunity becomes richer. And, so do they.

SENATOR ASHWORTH: Pete, I've talked with alot of small operators out in the smaller counties in our state, and possibly you'll want Mr. Honnifan to answer this, but, in your judgement do you feel that the legislature should make some kind of division some place on the size of an operation in the unrestricted license category.

Reg. 6 has created a problem over the past year or more since we have adopted it, seems to be creating a problem with the smaller operators. They won't issue more markers in a year than one of the large hotels in Las Vegas will in two hours on a Saturday night and, it's creating in their judgement, an undue expense to them. Do you feel that we should address ourselves to that problem and give some direction to the Board and Commission as to Reg. 6?

MR. ESCHEVERRIA: I'm going to answer your question and my answer may be different than Hannifan's. I want to say this about the people I work with on the Board and Commission both. These guys on this Board are fantastic people in my book. I don't always agree with them and you seldom see more definitive head-on collisions than you do between Hannifan and me, because we have some good ones. But, I've never had a division of opinion with Hannifan on any matter of morality or integrity on his decisions. We disagree sometimes on how we think something should be done. I have a tremendous respect for these guys and the State of Nevada should have also. In answer to that question, Keith, I do think so. I get out in the cow counties because I'm a cow county boy. When I talk to guys in Elko and Winnemucca, they think that Reg. 6 is onerous. They think that Reg. 6 is for the benefit of the rest of you. Reg. 6, is our regulation on internal accounting procedures in the licensed establishment. We worked long and hard on Reg. 6. It is a very unique type of internal accounting responsibility and I think it is a hell of a good regulation. It allows the licensee to submit to us their suggestions on internal control and if it meets our structure and standards, then they can go with it. We don't require every licensee to operate the same way, because, as Keith has pointed out, these people are different. They operate differently and they've got different types of personnel. They've got different habits; different backgrounds; they handle their markers differently; they handle their flow of cash different in their establishments and there is no reason we ought to make everybody get together like a grocery store. These joints aren't run like grocery stores. Everyone one of them is unique. Reg. 6 recognizes that uniqueness. I think from what I hear from the little guys out in the cow counties, that Reg. 6 requires them to get an accountant to come in, make an approval, make an audit recommendation and everything. I think it costs those boys a little bit of money. Now, one of my cow county friends tells me that it costs him so much money. I won't mention any figures here because when you mention figures in the gambling business, when you mention a hundred bucks in Winnemucca and a hundred bucks in Las Vegas you get laughed at in Las Vegas and you get awed in Winnemucca. You know what I mean. It's a different kind of a program. No, not Winnemucca, because they're pretty flashy, Tonnepah maybe, or Ely during the strike, those type of things. It's a different program. It's all relative. But, I do think that maybe there's some thought to be given this.

SENATOR CLOSE: Pete, one of the concerns I have and certainly one of the things facing us in the next couple of months is the question of foreign gaming.* I'd like you to briefly comment on that if you could, to give us kind of an overview as to what the Board's and the Commission's position is.

Maybe at a later meeting we will go into it in more depth.

MR. ESCHEVERRIA: *Yes. I'll go very briefly on foreign gaming. We have before us now hearings on a proposed regulation 3.060. Our regulation 3.060, prohibits a licensee in the State of Nevada from operating in foreign jurisdictions. For the purposes of this discussion, foreign means another state. We can't operate even in another state. Now we don't allow our licensees to operate in another state. We've had some requests because gambling, once again, has achieved such world wide interest and world wide speculation and people all over the world are interested in gambling. Had alot of interest in this area. We have had hearings, we have had extensive hearings. We had hearings before the Gaming Commission in Carson City twice, in Las Vegas two separate occasions, then we referred it, the commission referred it to the Governor's Gaming Policy Commission for futher input. The Governor's Committee had hearings in Clark County, hearings in Carson City. And we heard alot on constitutional arguments. Now, you asked for my view, my view is, I would like to keep all the Nevada licensees in Nevada. And, I wouldn't like to see them go anywhere else. And, if somebody's got a gambling house somewhere else, I wouldn't like to see them come to Nevada. I'm a country boy and that's my hick attitude. When I'm told that the constitution of the United States of America, and I know this, under the Commerce clause doesn't permit that type of activity, "No state shall pass any legislation that impedes interstate commerce". So, if we pass a regulation or a law that prohibits or impedes in any way interstate commerce, we've got a constitutional problem. So, if we pass a regulation like 3.0609 which in its present form, I think, is subject to attack. And, I think it does impede interstate commerce. So, we had our hearings on other possible suggestions. Now, the reason I'd like to see all our gaming (and I see Chuck Munson wince, even through the back of my head) is because Harrah's is talking about going to Australia, and I know that alot of my good freinds in the gambling, I want to keep them here. But, they don't want to stay here, I mean they want to stay here. I don't say to them and my philosophy, you can't go anywhere else and stay here. Cause my concern, really, and this is my fundamental concern, is control. I don't see how we can, I can see how we can, but I can see alot of problems in trying to control a licensee in the State of Nevada who has any sort of an operation and have him have a big operation somewhere else. I don't see what you're going to do with internal markers. I can see lots of problems with markers. Say a customer goes into Alabama, I'm going to use Alabama because I haven't heard anybody from there talking about gambling, and has a hundred thousand marker. Alabama's state tax is 3%, and he has a hundred thousand dollar marker in the same licensee's establishment in Nevada and we have a 5.5% tax.

Now if the licensee is going to compromise that marker he'll say, "Well, why don't you forget the one in Nevada and pay me the one in Alabama", because he pays only 3% in Alabama. Now, that's just an illustration. Say in Nevada, we say this guy can't have a work card because he's too fast with that deck and when he turns that deck nobody sees him, but, he gets by in Alabama. Now these are just little things that come up. Say the accounting procedures are different and I have absolutely no confidence that today any state in the union or any country in the world can control gaming with the effectiveness that we do here in Nevada, that's my present, absolute conviction, and I hear the New Jersey people and they've been out and I've spent hours talking with them and they've come to my office and talked a long time about it and when I hear their areas of inquiry, I realize how absolutely naive and what a small beginning they really have in this real problem in gaming control. And, when I remember that New Jersey is a hotbed or organized crime And, when I hear them talking in New Orleans about paying for that Super Bowl they've got down there, that big beautiful building with the great big mortgage, big ugly mortgage on a big beautiful building, and they're going to talk about paying that with gambling revenues, and I read and hear and know Carlos Marcello from the Mafia and some of his activities and organized crime activities in New Orleans, I shudder to think that we would even have anybody in that neighborhood. So, these are the things that concern me. Our present posture on foreign gaming, Senator Close, is that the revenue agents on the Governor's team of policy upon my motion. That we allow the licensee to go into another jurisdiction or come into this jurisdiction only when we are satisfied that their regulatory structure is comparable to ours. Now that's the reason I made the motion is because I have to recognize the commerce clause of the Constitution. But, I really want this control in the picture. Right now, you'd have a hell of a time convincing me that anybody's got any regulatory control, even England. I've been to England and I've gone through their establishments and I just don't think they could touch us. Hannifan has a little greater appreciation for them, I don't. The Bahamas, I think, is just ripe. I've been to the Bahamas. (At my own expense.)

SENATOR SHEERIN: Is there any way that some kind of a compromise on the situation? One of the arguments against the foreign situation is the Nevada Capitol leading Nevada. Is it possible to have by regulation whatever, maybe allowing parent corporations to have a subsidiary indicating that this subsidiary is a Nevada Harrah's, just for an example, has got to keep all of its control and all of money and all of its capital here and that they, the subsidiary wants to go in the Bahamas, they can have a complete different corporate structure. Is there a potential means of compromising there?

MR. ESCHEVERRIA: I think we could say that, but, I don't think it would be worth a damn. Because, we say that now, we say that now in our present regulation 3.60060 that one of the criteria, Senator Sheerin, is that if it effects cash flow in the state of Nevada, but you see, they've had to operate under a different subsidiary because, as you remember, we require on public corporations that they operate in Nevada only through a gambling operating company. We wouldn't allow that gambling operating company to be the entity somewhere else. So let me just use, the ABC Corporation, a publicly traded, New York Stock Exchange company, for an example. If they have an operating company in the state of Nevada and they get a location in Alabama, they're going to have another operating company in Alabama. Now, when they make a loan, the pledge of that credit is the papa corporation, there's no question about that and the way of raising it would be the papa corporation. So really, I don't think that would be an effective control. And, that's another thing about our gaming control, this isn't a money committee but when you get to the money committees, remember that our audit people and our SEC people, we have a, let me do a littel himpin' for the regulatory parites, our respect with the SEC Corporation is great. The New York Stock Exchange thinks our regulatory control is so good that when Balley Manufacturing Company wanted to list on the Big Board, The New York Stock Exchange, they required that as a condition predendent to their listing in New York, they be licensed in Nevada. And, that's high praise. For their respect for what the Nevada regulatory authorities do. The Securities and Exchange Commission which is deemed by many people to be one of the most sophisticated financial regulatory structures in the world leans heavily and comes frequently to our state for advice and for help and for co-work. We do that with them all the time. Our regulatory structure has matured and it is respected. And so, when they come before the money committees for good auditors, good assistants of that type and I'm not bound by the Governor's Budget because I'm an amateur, I think the state of Nevada has it in their best interest to pay alot of heed to those requests. Cause we need good people in this business because we're competing with good people. Jesus, I hear lawyers in front of us that are just incredibly good. We hear accountants and auditors that are just fantastic. It's just been a stimulating experience for me. We didn't have them that good out in Ely. And, it's been exciting, it's been very exciting.

SENATOR BRYAN: Pete, to change the subject for a moment, am I correct in one procedure which has drawn some comment. That is, that the gaming control board recommends for denial it requires a unanimous vote of the commission. If I am correct in that assumption, do you favor retention of that provision?

MR. ESCHEVERRIA: All right, let me say Dick, I'm glad you brought that up because, that is the bone of contention and it concerns me.

SENATOR BRYAN: It concerns me too.

MR. ESCHEVERRIA: When the present gaming control board makes a recommendation for denial, in other words, the board doesn't vote on the license, they make a recommendation, they investigate and they recommend. When they complete their investigation and have their hearing, they make a recommendation to the commission. If the recommendation is approval, it only requires three votes of the five man commission to grant the license. If the board recommends a denial, maybe a two to one vote at the board level, if they recommend a denial, it requires a unanimous vote of the commission to overturn that recommendation of a denial. So we say in the statute, that the commission is the licensing authority. But, that hamstring a licensing authority and I think to that extent, you may give some thought and I am sure you're going to get some requests, to changing that on the recommendation of denial. Now, Carl, you and I fathered that, you know, . . .

SENATOR DODGE: I'd like to ask just one further question apropos of that particular subject. Is the procedure any different for a person already licensed, who's got the investment and the question is some disciplinary action by way of a fine or the most drastic thing, the removal of the license. Is the procedure the same on the voting?

MR. ESCHEVERRIA: No, the process changes a little bit, Carl, in this respect. When a man comes in for licensing, and the reason we went for the unanimous vote of the commission was because we always considered the burden of proof is on the applicant and the applicant had to make this showing and if the board recommended a denial we were negative, all the time Dick, the reason this was set up at the beginning was all the time this should be a negative process. In other words, when he sells himself, then he granted a license. So, at that stage we thought, "Well, maybe the commission is going to be a little easier than the board. If the board recommends a denial we're going to require the commission to go full time. And we had an amateur, but, I think today it could be different. Now, to get to the disciplinary procedure, Senator Dodge, in that particular respect, we shift the burden. At the licensing procedure the burden of proof is on the applicant. In the disciplinary procedure, the burden is upon the board. The Board brings an action against the licensee and they come before us and the burden of proof is different. We don't have the unanimous vote rule on the licensing procedure. It's actually a contest. That's a complaint on the disciplinary procedure. One other thing if I can . . .

SENATOR DODGE: That's a majority vote on the disciplinary thing.

MR. ESCHEVERRIA: Yes sir. (See he's always arguing with me. He never pays any attention to anything I say, arguing with me all through - - (said to Mr. Hannifan).

SENATOR DODGE: Then, I am correct that our structure does recognize by these procedures, by the shifting of the burden of proof a difference in status between the guy who has never attained this state in the industry and one who has, right?

MR. ESCHEVERRIA: Yes, sir, absolutely. And that's an important distinction, Senator Dodge. And, that is one that I hope we can delineate and that is a very important decision, because, even though our statute says, and we say this in our statutes, "the acquisition of a license to gamble is not as the acquisition of a property right. And, nothing should be construed thereunder." We really must recognize that perhaps that wouldn't stand the judicial test and so we have recognized, in our procedures and in our approaches and all, that when he gets a license, when he comes in as a licensee on an application, the burden is on him, he has to establish suitability is with him and everything. Once he gets a license, just in the since of fairness, he's got an investment, he's got a going business, maybe we ought to have the burden of proving that he's improper and throw him out. Now, that brings me to one other area, however. When we call in a man for license we've got a gray area right now. Phil will go into this a little more, I think, too. This is what we were talking about yesterday. When we call in a guy, say we've got Al Capone's grandson, I don't know that he had any kids, at any rate, say we had a uh, -- (Sam Giancana was suggested from the floor) yeah okay, off to the side. And we called him in for licensing, it's not now clear that the burden is upon him at that time to prove his suitability or whether the state has the burden. I think the burden should be on him. I think we're back on the licensing procedure again and it's not now clear as to who pays for that licensing. Now, we've got that in the Sinatra case with Del Webb. And, that's a corporate matter you people are going to have to handle here. And it's a knotty little problem, because here's a public corporation, here's my view on it, God, I could do this all week, I guess. My view is simply this: If a public corporation, and I'll use Del Webb, because I've been quoted on this in public, they're on the Big Board, the New York Stock Exchange and they list their board and I can go back and buy stock and so can Sam Giancana and so can Carlos Marcello so can Myer Lansing buy stock in Del Webb Corporation right now. When they buy that stock, then the state of Nevada has a concern about when are they going to get into something with respect to the gaming operation. Even though we got an operating company out here in Nevada that is owned by Del Webb Corporation. Sinatra and Rudden acquired something in excess of 6% of that stock.

We decided that that was sufficient after our hearings, to determine that it may effect control. We said come in for licensing. Now, certain knotty questions are raised, who pays for it and that's one question that's going to be raised in the case and that's going to be decided and it's good. I'm glad we're in court on that. Maybe you'll want to pass some legislation in that respect. But, it's a knotty problem. We gotta get them in, don't slow is up on the process. Because, if you slow this process down in any way, another thing I urge you to do, and I'm a lawyer and I read the book on delay and dilatory tactics as much as anybody else, keep it out of the courts as much as you can, because it slows down. And, I will say this with my black robed friends present.

MR. PRICE: I'd like to regress back a little bit to two other subjects. I apologize for lack of knowledge on some of this, but, going back to the foreign gaming, you said that you are going to be considering this and that it's in the process. It somewhat boggles my mind to imagine how, if an associations and origin of monies, those types of things are matters of concern to us, how in the world that we could, within some framework of expenses, follow this down in foreign countries or foreign states or so forth. But, would we have an opportunity in some point in time to consider some of the, you said there are some things that you're going to have to consider. What types of rules those are to look at them . . .

MR. ESCHEVERRIA: Yes, Bob I've gone a little fast and let me tell you this. We have at the December meeting, because of the advent of the legislature coming up, we continued our consideration of foreign gaming regulations and are sending it to your committee.

MR. PRICE: Oh, good.

MR. ESCHEVERRIA: And, the transcripts of the testimony of all the meetings will be available to you and we'll bring all this stuff to you. And, if you want to look at foreign gaming, have some hearings on it, make some decisions on it, fine. Because, you know, this is your baby. If you want to say, well kick it back to us because, we'll do it. But, we're ready to act on foreign gaming now. And, I'll tell you my vote would have to be pretty much right now, I think, for what the gaming policy committee recommended, when we're satisfied another foreign jurisdiction comes up to our standars. That's about where I stand now. But you folks tell us.

MR. PRICE: The other question goes back to the work card. The work card is a county regulation?

MR. ESCHEVERRIA: Yes, county and state.

MR. PRICE: I thought there were some counties in Nevada that did not have the work card. Do they all have work cards by county ordinance?

MR. ESCHEVERRIA: The Sheriff in each county.

MR. PRICE: The Sheriff in every county, I'm sorry, I thought that there were some counties that it was not required.

MR. ESCHEVERRIA: 3.35 is your section, Bob.

MR. PRICE: And they all forward even though it's probably small volume, they do forward them to you.

MR. ESCHEVERRIA: Right. If you want to come over here and take a look at it. That'll be your section, right here.

SENATOR CLOSE: Yesterday, we talked with Mr. Escheverria and asked him if he thought two hours would be enough for our overview this morning. I think we were mistaken. We may have to come back again, but, we appreciate the overview he has given to us. I might mention that Mr. Cox, a member of the commission, has come in now and he has joined us. Who would be addressing us next?

MR. ESCHEVERRIA: Commissioner Hickock would like to speak now. I want you to know this, that our commissioners express themselves and we don't always, and we don't deliberate in advance, and when we have closed hearing, when we have a closed hearing on financial affairs or internal financial affairs or backgrounds of an individual, we have a court reporter. At every closed hearing we have, every meeting we have is recorded by a court reporter and those matters are all there and they're available to you. Thank you.

MR. HICKOCK: Thank you very much.

MR. ESCHEVERRIA: This is the red-headed Arabian who runs the Standard Oil Company part-time.

MR. HICKOCK: I have some notes on the back of an envelope and Jeff Silver said that's how Abraham Lincoln got started. I am not an attorney, I will try to keep this very brief. I would like to say that some opinions that I will state may or may not be opinions of other members of the commission. I would like to recognize someone that came in after Mr. Escheverria got started. He would not have overlooked introducing her when he mentioned the Governor's Policy Committee, the two people from the general public area Mr. Robinson, from North Las Vegas and a very lovely lady from Reno, Mrs. Jean Stokes has come into the room from the Policy Committee. I have just two or three things that I would like to address to this group, by the way this is the first time I've ever appeared before a legislative committee, and I am very impressed. I am very honored.

Two or three things that have bothered me a little. One of them is, indemnification of people such as ourselves that serve on this and, of course, gaming probably gives you the greatest exposure of any commission in the state. I am presently being sued as a member of the commission and individually for seven million dollars. Now, that's kind of flattering. I think there would be a little trouble executing a judgement in that amount. But, nevertheless, it is a very serious thing. We have been in the habit of my wife helping the church, if they execute that judgement the church is going to have to help my wife. And, I think, that it would be incumbent upon the legislature to take a look at this very, very serious problem. There are probably others in the state. To be sure of some indemnification. This suit is a result of a vote I made on the commission. A vote that I would make again under the exact same circumstances. What I feel was an absolute correct vote. A vote in the best interests of the people of the state of Nevada. And, I'm being sued for this amount. I am exposed for this amount. I think it's important that we look at it. Along with this, some of the things you might suffer along with it, and a thing that just happened yesterday, brought it up so much, Mr. Escheverria in a remark in a licensing procedure, said to a gentlemen, Mr. Loomis from the Suma Corporation, he said, "Good luck, in your suit.". He was referring to a suit to make Nevada the domicile of Mr. Hughes, which has a great effect and a great interest to all of us. It was reported in the paper that he was referring to the suit that Mr. Greenspun had in Elko. A little thing like that where the exposure you might have as a result of the position you take . . . I tried to soothe them with Kipling's words . . . If you can bear to hear the truth you've spoken, twisted by knaves to make a trap for fools and see the things you've gave your life to, broken and stoop and build them up, if we're not tools?, we hope we don't see these things and have to go back. Another thing I would like to mention is this key employee . . .

SENATOR SHEERIN: Excuse me, before you do that, may I ask that in your lawsuit, who defends you, the gaming . . .

MR. HICKOCK: The Attorney General is defending us in this particular suit.

SENATOR SHEERIN: So, your not in a position of paying council fees, or
or

MR. HICKOCK: I understand, however, legally, correct me Mr. Escheverria if I'm wrong, this is a civil rights matter and the state does not necessarily have an obligation to defend us.

MR. ESCHEVERRIA: Yes, that's right. They can disavow this, but, Chirba I spent hours and hours and hours on the case because the Attorney General's office is really bogged down. They've got so much litigation going and we've been working on the case. We spent hours and hours free on it.

MR. HICKOCK: I've just got two other quick points to make. One of them is they brushed on this key employee thing. And, I want to tell you, we are being attacked on our key employee reg. at the present time. I've been conducting hearings as a hearing officer in a matter with the Alladin Hotel and the man who runs their theater of the performing arts. We must have this flexibility on our key employee regulation and it must be protected for there is an actual case where the attempt often is made to hide a key employee. They might bring him back as one case is, and they say, "No, no, no, he's a legal council, and you don't license legal council." But, if a legal council is running a casino, it is my opinion that he is a key employee and should be ... And, I think, it is very emcumbent on this group to protect our ability to call in people who actually are found by audit divisio in their processes or someone else, that they are key employees, that we do have this ability to call them in regardless what name they put on them. Certain people, you can look around and you know they're going to be key employees . . . Yes, sir.

SENATOR DODGE: Can I ask a question apropos to that? Is that, is the key employee in any way defined in the statute or did that evolve in your regulations?

MR. HICKOCK: Originally, in statute, but there is a regulation that is concerned with it.

SENATOR DODGE: Well, if it's not in the statute, my second question then would be, if it's not in statute are you suggesting that we put a pretty broad and flexible definition in the statute on key employees?

Mr. HICKOCK: Well, the thing that I was bringing up was the fact that it is one of our areas that is under attack presently, at this moment by a particular attorney. And, I feel it is one that we must protect very strenuously to be sure we do keep this flexibility.

SENATOR ASHWORTH: I think that it evolved that about two or three years ago that the, by regulation, the gaming control board and the commission changed the method of requiring a key employee licensing. Prior to that time, the establishment who they wanted to license, which, obviously, wasn't a good operation. So, the gaming control board and commission developed a list of criteria that the establishments have to answer periodically to determine to send in the list of all of those people who meet that criteria Then they determine whether that person is in a key position and there are about eight or ten questions they ask of the employee. And, I think it's a good operation, but I, and a good procedure and I would suggest that maybe we give it sanction in the law because it certainly isn't in the law. It's only been developed in the last two or three years.

MR. HICKOCK: The problem is, if you make the guidelines absolutely firm, such as salary, he has to be making forty thousand salary, you can subvert it so easily by paying him thirty thousand and then you can do something else to augment it maybe in another direction which would not be pay.

What I'm saying is these are the areas that must be protected so that we actually are able to bring these people in if they are, indeed functioning as a key employee.

SENATOR ASHWORTH: Commissioner, I think is either forty or they have credit or they have or supervise more than so many people in the gaming, or

MR. HICKOCK: There are several . . . There's a lot of different criteria but, I'm very familiar with this cause I'm involved in a case right now of whether or not we're going to decide whether a man is a key employee based on that criteria. The only other thing is, which I feel that this commission has been attacked in the press on that if there is any question I would like to clear it up from my standpoint and I believe from every other commissioner standpoint and that is the question, some reference that we do not believe in constitutional law. If our laws are unconstitutional I can assure you we must change them. And, there is no man on this commission that wants unconstitutional laws or regulations in this. Thank you very much for your time.

GEORGE SWARTS: Ladies and Gentlemen I too feel it a pleasure to be here. I want to speak to you this morning on the subject of accounting and auditing. I am very impressed with the things that have been said here this morning and I want you to know, that I too, support very strongly the constitution of the United States and do not want in any way to aggregate that constitution. But I love Nevada, I have lived here all my life and my mother and father before me. I am very concerned about some of the problems we have today. I want to kind of narrow my scope down now, Chairman Echeveria has talked in very broad terms and I will just narrow down to the area of accounting and auditing. First of all Chairman Echeveria made some remarks about Reg. 6 in response to a question, I would like to start off by respectfully disagreeing with the chairman I think Reg. 6 is one of the most important and necessary regulations that we have in operation today. I think if anything is done to the regulation is to strengthen it. I believe if you were to question the gambling authorities who have been around for a number of years, in particular you might talk to Jack Straton who has been involved in gambling control in Nevada for quite some time, I think he could tell you some rather dramatic facts related to the increased accounting controls and what has happened to tax revenues after each new set of controls has been put in. I think we can not even forget that these controls are not just beneficial to the State of Nevada and of course they are beneficial to us because we derive a large source of income from the taxation of gambling, but there are also very beneficial to the individual business man. How many of us have seen ...

MR. ESCHEVERRIA: George, so long as we don't go afield here. I never opposed Reg. 6, I talked about Keith's illustration on some of the small operators. But Reg. 6 is great, and needed.

GEORGE SWARTS: The only area in which I was disagreeing was in the area of the small operators even, and that is what I am going into now. I know the chairman is very much in favor of it for the large operators. I want to point out to you that I think it is beneficial to the small operator. I think many small operator and many small business people make the mistake when they start their business when they get started, in that they do not set up the proper accounting and regulations systems within their own businesses. Many of them go broke because of this and I'm not talking just in the area of gambling. I am talking in the area of business in general. We find that people go into business they don't know where they are, they don't know what's happening, they don't control that money at the source, they don't have somebody watching those deposits going going into the bank or the flow of money from the first receipt on in. In the gaming business this becomes a very, very sensitive area, because you don't have a cash register ringing, you don't have a sales invoice that's been written up that an auditor can come back and audit. What do you have? You've got money going into a drop box. Now if you are in Winnemucca or Hawthorne and you've got money going into a drop box I submit that it's important to that operator to have a control system that has integrity. A control system that he can record the first, that he can make that first recording of cash and have confidence in it's integrity. And that is what Reg. 6 does. It does a lot of things, but it controls that flow and it gives us something to look at and it gives them some rules to go by that really gives them some strict guidelines. And it's good. When a man follows this and get's his procedures installed in his business it's not bad for him. If it costs him a thousand dollars, if it costs him ten thousand dollars, depending on the size of his operation. I submit to you that in the long run it does not cost him money but saves him money because of the lost revenues that he would have had. And let's face it in the gaming industry that initial control of cash, as we all know, has been a key issue from the very beginning. Now to shift off the Reg. 6 area.

SENATOR ASHWORTH: May I ask a question right here Mr. Chairman, Mr. Swarts then in that capacity as a auditor then do, I tend to agree with you I'm in an accounting background myself and an auditor, do you believe that as an auditor proceeds and makes an audit then of those books and does find errors in procedure and so forth, that the ownership of that business because he's paying for that auditor, should have the benefit of having the finding of that audit to correct before it's reported to the gaming commission and gaming control board?

MR. SWARTS: You mean, I'm a little bit confused about exactly ..

SENATOR ASHWORTH: If they find something wrong do you think the operator should have the opportunity to clean it up before it's reported to the gaming control board? Procedural error. By an independent auditor required under Reg. 6.

MR. SWARTS: Oh, I think if an independent auditor discovers an error it is his duty to report that error, first to his client and then the client needs to take the proper steps to clear that error up. Now then it becomes his duty to take the error and let the control board know about it and make remuneration for it if there is monetary difference or whatever.

SENATOR ASHWORTH: Do you think the licensee should do that or the auditor should report that error?

MR. SWARTS: Well I think first of all if the auditor finds the error then it's his responsibility to tell the client about it. I would think the primary reporting responsibility to the board however, still rests with the licensee, that's my feeling on this. Now to get away from the Reg. 6 and into the area of audits. You're going to hear a lot about audit, we hear a little bit about it, we have some who don't particularly think audit is a very good idea. And I'm talking about audits made by the gaming control board. This is an area that has an increasing importance and responsibility in Nevada. There are several reasons for this one is the increased sophistication of our licensees. We must become increasingly sophisticated ourselves in our audit needs, so in order to keep that up of course we must continually strive to increase the quality of our staff. This is an area I know that isn't particularly relevant to the Judiciary Committee, but while I am here I wanted to mention to you a problem that I feel the audit division has at this point. As far as parody goes in the audit business, governmental auditing, I believe and I want to make myself a little vocal about it, that our people are underpaid. I think if you compare it to the IRS and the other regulatory agencies that the Federal Government and other State Governments, you will find this to be true and they are the most important auditors to the State of Nevada. I think that if you look into the past that you will find that the gaming control audit division has become a training ground in essence for young accountants that come in and learn the ropes and then get out where they can make a little money and make a living. And I wanted to point that out to you even though it's not so relevant to the Judiciary function. The other area I wanted to get into with you and I got sidetracked, is the area of audit itself. As you consider any changes in our gaming law I would urge you to never compromise but only to strengthen the ability to audit. I have found in my business experience that those businesses that do neglect their accounting and audit functions are extremely susceptible to fraud. I think that most of you have seen that in your experience in life. We would like to think, after licensing our people in the State of Nevada, that we would have integrity and honesty in all dealings with the State and with the public. But we know from all experience that that is not the case and that we must be diligent and vigilant and watch over our interests. The audit function becomes increasingly important as the licensing procedures that we follow become more difficult.

If under in the future, we are forced by any set of circumstances to relax some of our standards in licensing, the audit function is going to become more important and I hope that will be kept constantly in mind. The audit function is not a function to be feared and to be shrunk from by our licensees. Those who are honest and do their job and report to us in a manner that is proper have absolutely nothing to fear. Those who make the most noise about the audit function are the ones who have something devious in mind. It's been a great pleasure for me to be here today, I've really enjoyed meeting with you and I feel it an honor and I hope that if you have any questions you'll ask them and I will sit down and let someone else take over.

SENATOR CLOSE: Any questions? Mr. Price.

MR. PRICE: Are either the independent and/or corporate auditors regulated or licensed in any manner, other than the state.

MR. SWARTS: The outside auditors?

MR. PRICE: In other words what I'm asking is do we have any regulation in checking, that require that the gaming commission approve independent auditors who on behalf of the company are in doing the audit. I'm not talking about our own auditors, but I'm talking about the private people.

MR. SWARTS: The auditors must be licensed to practice before the gaming commission, in addition to that there are some other requirements in order for them to become licensed to practice. Now, not licensed to practice but they must enrolled to practice.

MR. PRICE: As attorneys are?

MR. SWARTS: Yes. In order to be enrolled all they have to do is write us a letter and ask to be enrolled. If they are licensed public accountants in the State of Nevada.

MR. PRICE: And does that apply to the corporate auditors that are employees of, as well as the independents that they may call in for an independent audit? In either case.

MR. SWARTS: In either case.

MR. PRICE: Would there be any need to even consider strengthening any of those regulations, other than simply saying if, recognizing if you were a licensed state auditor then it's okay for you to go in and audit the books here.

MR. SWARTS: I think that some consideration could be given to that in this respect. We could have a situation where auditors do not conduct themselves in a proper manner, and it may be that the Legislature might want to give consideration to some form of disciplinary action which could be handled by the commission and the board. And so that could happen.

Now since I have been on the commission I have seen a couple of cases where professional people representing gaming licensees or applicants have conducted themselves in a manner that was improper in my opinion. We really don't have any good procedures to follow.

SENATOR DODGE: Can't you complain to the state board of accountancy?

MR. SWARTS: Yes, I'm sure we could do that.

MR. PRICE: You would be removing the authority from the control of the gaming commission to some other agency, if you were going, what I'm saying if we were even considering that closer controls or more attention should be given by the board or commission to the auditors then I don't think we would want to transfer that even if we had the concept.

MR. SWARTS: Well now remember that my answer to you is in response to your question. I'm not necessarily recommending that it be done.

MR. ASHWORTH: If I may Mr. Chairman, I think I can clear up for Mr. Price the establishment of any unrestricted license can have whoever accountant they want to have but regulation 6 requires that they have an annual audit by outside auditing firm, licensed to do business in the state of Nevada, and I don't believe we could pass any laws for the moral and ethical conduct of anybody, that's what the professional accountants society or lawyers society or the bar and the medical association, that's what they are there for. If they are unethical in their practices as an outside auditor for the annual report to be presented to the commission, then that should be reported to the association. As Senator Dodge was pointing out. But the point that I was getting to is that there is about three levels of accountant and there is all kinds of auditors and accountants in every gaming establishment and business. I don't think we need to create more auditors I think, it's getting to where you have to schedule them to look at your books so you can make entries in them once in awhile yourself.

SENATOR CLOSE: Any other questions?

MR. HICKOCK: Let me just make a comment on Assemblyman's Price's remarks about the auditors. Currently regulation 10 of the regulations provides for enrollment of all auditors submitting official data to the gaming control authorities for their consideration, payment of taxes and so on. There is no requirement that individual corporate auditors within the licensing structure be found suitable according to that regulation or to be licensed for that matter. The enrollment process is merely a registration process and somewhat perfunctory at this point. There is no qualifications other than a valid standing with the State society or the bar association if they are an attorney.

You might consider in your legislative package placing this enrollment of auditors and accountants and give it to some statutory authority as opposed to some regulation, because if an accountant or auditor were found lacking in some material respect with the submission of their reports then the gaming commission could issue a suspension or prohibit that auditor from engaging in activities. Which suspension could be subject to challenge in courts because of the fact that there is no statutory basis for forbidding a man to practice in front of the commission.

MR. PRICE: That was my general line of thought.

SENATOR ASHWORTH: Are you referring to the internal auditor, the corporate auditor or are you referring to the external auditor?

MR. HICKOCK: I am referring to the independent accountant that must be a certified public accountant in order to submit the financial statements.

MR. SILVERS: That was kind of along the line I was thinking, because it would seem to me, and I don't know accounting and I don't know auditing, but I've always assumed that either good or bad auditors either way, could either purposely or unintentionally do their job in a manner that might be difficult or even questionable as to the results. So if we were to license the key personnel it would seem to me that another area, would be the auditors.

MR. SWARTS: I think Mr. Silvers articulated this, but speaking for myself, I would like to have the ability as a commissioner to examine the situation where an auditor has, an auditor or an attorney, has intentionally violated the statute. I would like to have that opportunity available to us to suspend his enrollment to practice and then have something to back us up, and that would take Legislative ability.

SENATOR CLOSE: Any other questions? Does any other member of the commission desire to speak to us? Mr. Hannifin. I might mention to the members of the committee that we have to be both in the Assembly and Senate in session at 11 o'clock. We will adjourn at 5 minutes to 11.

MR. HANNIFIN: Ladies and gentlemen, for many years I've appeared before your committees, so most of you know me. And I think that those of you who have been here in prior sessions are generally familiar with the functions of the gaming control board and the structure. I've been in the gaming control business now for some six years and I don't think I know very much about it, and I don't know how in the world I'm going to tell you about it in the next half hour or the next 30 days. It's going to be an incredibly difficult task from an educational point of view. I think Pete ran into that problem, he got to talking so fast, because there is just so much you absorb and it's down within you and you don't know where to begin the process in trying to explain it to someone.

And ordinarily I fall back on, well you ask me the question and I'll try to respond. However, that may not be successful if you don't have a basis from which to frame your question, so I'm just going to kind of launch somewhere into the middle of this thing, and hopefully what you have heard today, and perhaps what you've garnered on your own, what you may acquire from other parties you'll be able to frame if not questions at least the request for certain kinds of information which we will then provide to you, which in turn may give you a basis for forming questions which I can then respond to at some later date, with greater definition. Mr. Ashworth asked a question of Mr. Swarts having to do with shouldn't the independent auditor tell his client about an accounting violation prior to the time he tells the board, and I might read you from regulation 6.040, sub-section 4, this is merely to answer that question, "The Commission and Board when deemed necessary may request additional information from either the licensee or its independent accountant through the licensee, regarding either the financial statement, the audit or both, in addition copies of all letters from the independent accountant to the licensee regarding internal control matters, that is weaknesses and suggested corrections must be forwarded to the audit division within 30 days of receipt by the licensee". And I think inherent in there you understand is first notification to the licensee and subsequent notification to the board as to that form of communication. As many of you may know Mr. Silver is not only an attorney, he's a certified public accountant, and he is certainly capable of discussing with you in detail regulation 6 and audit procedures and some of the demands made by the American Institute of Certified Public Accountants which is the guiding body for all accountants, as well as regulation 6, and also some general tax statutes. I can bring audit staff here certainly, for any complex discussion you'd like to get into. And, I have some very good ones, Dennis Gomes, who is a very young man who is the head of our audit division, I think I would be able to match his education, and his experience, and his competence with anyone whether he's from a big eight firm or whether he's privately employed. I would be proud to do that if you want to match up. In general I might say that with respect to audits, regulation 6 no one likes the tax collector. It has not been my experience anybody likes a tax collector. We are tax collectors. And, as a part of collecting that tax, it's necessary to do a thorough audit. We talked a little bit Bob, here, about the independent auditor. We find also if there is wrong-doing, it is going to be in the financial area. In this day and age you don't find illegal activity being broadcast. You don't find a bad guy by sending the fingerprints to the FBI in Washington. In this business most specifically, you find the bad guy by following the money because that is the motivation. Just generally with respect to some thoughts that occurred to me as Pete Escheverria talked to you, it's been my ...

SENATOR SHEERIN: Before you leave here, we talked about auditing, is there any need for regulation or statutory changes in the area of audit. I don't know that anybody is making any overtures of saying "let's do away with the audit or let's lessen our procedures or whatever." The question I have - are you people coming and saying we need more statutes and more regs in the area of audit?

PHIL HANNIFIN: I have not had the thought Senator Sheerin until the last few days of any need in the audit area, precisely. But I have had, by rumor or inuendo, information reach me that that would be a topic of conversation between us. I am a little up here on the edge because I don't know what the conversation is really supposed to focus about. I just leave it to you folks. If you want to raise the questions then I will try to respond in that area.

SENATOR BRYAN: Phil, to nail this down, you are saying then presently as far as your statutory authority with respect to audits, that you feel it is adequate.

PHIL HANNIFIN: As far as I can tell at this moment in time. Now there have been a couple of rumbles - they don't particularly relate directly to audit. For example the incident at the Sahara-Tahoe where two auditors attempted to go into the count room to initiate an audit and that is standard. The first step is to go in on the surprise count. As they attempted to gain entry, there was an administrative snafu within the location which precluded there immediate entry. If you don't have immediate access you don't know what transpired while you were waiting to go in. We thought this was serious enough to file a complaint to get some definition. That matter is pending in court now. But that is not precisely an audit matter but it does have some, perhaps reflect to you depending on what happens in the courthouse again, perhaps a need for some definition as to what constitutes immediate access and under what circumstances. I have just as a matter of information to you, suggested to people in the industry, when an auditor shows up and wants to go into the count room - by the way, they all have credentials, they all have badges and identification, pictures like that - if you still don't believe that he or you are uncertain that he is a member of the Gaming Control Board, take your security people and take him into the count room anyway and lock him in there with you until you can check. You can do it at your leisure. But don't deny that immediate access because I don't know what has happened when you keep me out here and you're doing something in there.

Again, some random thoughts here. I have received the impression over these six years, slowly in the beginning and with more escalation in the last few years, that there are those who would attempt to set, in licensing matters, a standard of proof for denial that is very similar to that which is required in criminal matters. We don't think we are conducting criminal proceedings in licensing. We think it is an administrative licensing matter and we think the burden is and should remain, upon the applicant.

We don't think that this burden should be shifted from the applicant to the State so that the State must somehow prove that he is unsuitable. This goes to a lot of due process questions which may be best spoden to later but due process is not one simple idea. It is a large idea with many elements. It is an elusive idea and the state of the issues of due process vis-a-vis administrative hearings, is unsettled nationwide. It is not a unique phenomenon with respect to gaming or with respect to Nevada.

There is another school of thought I have encountered quite frequently and that is that we should have tough laws. We want tough gaming control in appearance but for God's sake don't enforce it. Because by enforcement you create problems and you have to go into the courthouse. I don't want to be a part of some cosmetic application. If you are going to give me a tough law then I am going to enforce it in a tough manner because that's what I believe you intent is. I am your creation; I am your arm. What it is you want, I am going to do. I think you want tough gaming control. I don't think you just want the appearance. I think you want strong enforcement and until you tell me differently that's what I am going to deliver to the best of my ability. That idea, by the way, also of don't enforce it strictly leads to inconsistency. It leads to unfairness and it leads inevitably to corruption because you enforce it against this man and you don't against that man and what is the motivation for the distinguishment It can all too often be an improper motivation. I think also I should remark because perhaps today we only have time to set a stage that my personal view of gaming control and the regulatory process is that there are many areas of cooperation and I have received much cooperation form people in the industry over these years. And I think in turn I have cooperated with them. But I think it is inherent in that relationship, between the regulator and the regulatee, that it is essentially an adversary relationship and must remain that. It doesn't mean that we don't talk to one another. It doesn't mean we can't find common grounds and common goals but it does mean, to me, that I am not a part of the industry that I am there to regulate the industry and I can never forget that that is my mission and that is my goal. And I do not want to have the confussion always introduced that I should be doing this or that to mitigate my role as a regulator. I think the Board should maintain and I think we have tried to maintain a "show me" attitude - demonstrate it, verify it, prove it - because that is the role of the regulator. There has been a mention of key employees earlier and I think there possibly is some need in here for some legislative work, perhaps in the definition of the term applicant, to be certain that we encompass the person who is a key employee and who is called up by the state, who does not come in and say I want to buy a place but is called in by the State. I think we ought to encompass very clearly that circumstance in legislation in the definition.

I think we should make very clear in legislation what the intent of the state is with respect to key employees in terms of the functions they fulfill; when do they cross that threshold and become a key employee; what authority does the state have with respect to licensing them and under what circumstances. I think that is all important.

There was also a mention made about, I think Senator Bryan brought it up, the unanimous vote required by the Commission to overturn a recommendation of denial by the Board. Now keep in mind that that only applies in a licensing matter, only in licensing. Because it applies, there are a number of respected legal minds who believe that requirement creates, at the Board level in its hearing, some kind of adjudicatory process which should be cloaked with due process. I think probably it is a correct view but I don't believe that the Board, which is primarily in these instances an investigative agency, should be burdened with all of this due process in trying to conduct its investigation. In order to avoid that problem - that trap- I think you should give serious consideration to removing that unanimous vote requirement. Perhaps it could go back up on a four out of five must vote for the issuance of a license.

SENATOR BRYAN: Phil you are saying that by doing that you are preempting the adjudicatory argument. You are clearly in the investigatory field.

PHIL HANNIFIN: And whatever other method you may be able to devise to make it clear that at that level, all of the due process burden does not fall. It should properly, in my opinion, fall at the hearing conducted before that Commission and not in front of that Board. I have been struggling with that morass of problems for six years. We have, I don't want this, there has been sometimes some conversations about this, when I first came into this Gaming Control situation, I found there was no due process. It wasn't needed. The legislature said you didn't have to have any of that nonsense. You go down there and be tough. Well obviously there was a need for some and over the years we have introduced certain elements of it. We probably haven't moved as fast as maybe the courts have moved in this direction but it is because looking to the legislature, we have never seen clearly where their intent is in this thing but in order to remove that problem, I think you remove the unanimous vote problem and that at least is one singular stroke to solve that question.

SENATOR DODGE: Along that line I have talked to some attorney's who, and I don't know whether this is true or not, but I feel that one of the exposures to legal attack that we may have is because you are an investigator and a judge too. In other words you make the investigation and then by virtue of your own hearings and recommendations you become the judge, that we will say at the lower court level, which is the whole concept of the two tier system that we set up. Is there any alternative, and I'm not suggesting this I'm just asking is there any alternative.

Whereby you did not make recommendations to the commission, you gave them the evidence.

PHIL HANNIFIN: Well certainly. I haven't polled my colleagues on that particular suggestion. I don't think they would object to that because that's how we conceive of ourselves as doing investigation and providing that information to the commission and we hold that hearing in front of the board. We hold that hearing for the purpose of providing full notice to the applicant as to what in the world is wrong. And that's what we do at that hearing

SENATOR DODGE: All right then my next question is this. Assuming that you were the investigator and you submitted your evidence as the Sheriff or Chief of Police would the Gaming Commission could we then better defend the unanimous vote required of the commission or does that bear on the subject?

PHIL HANNIFIN: I don't think so Senator Dodge, I think any time you inhibit that commission by any action by the board then you have the situation that I'm confronted with.

SENATOR DODGE: No but you wouldn't inhibit them in this situation, as I see it, because you are not making any recommendations. I'm saying if you had a system where you did not make any recommendations to the board simply said that in order to be licensed you had to have them all are we on more defensible ground if that were an alternative? Of that procedure where you just handed the information to the commission.

PHIL HANNIFIN: You know I'm not an attorney but I just love to talk about things like that because sometimes I think my opinion is just as valid as those I hear from the attorney's. I think given a set of circumstances you've just outlined that we don't have the due process problems on the board, number one and I think it's a very defensible legal position requiring unanimous vote.

SENATOR CLOSE: I anticipate that we'll have other meetings with your committee.

MR. POLISH: I just have one question. Where the responsibility was seeing that things were moved up or adjusted?

PHIL HANNIFIN: Well of course we work through the Budget Director and the Governor on that and they have tried to, within the big pie that they have tried to split up among everybody they have tried to do as well as they can. You've put me in an awkward position because I don't want to attack the Governor's budget.

SENATOR CLOSE: Mr. Echeveria I would request on behalf of the committee that you would provide us with any bills or information that you feel is appropriate for us to take action on. For example we are not that expertise in this area, therefore, we are required to rely upon the recommendations and we hope that as we progress in our hearings. Bill draft, can I have your attention please. That we can have the cooperation of your legal staff and our bill drafter to draft appropriate legislation. We at this point in time are searching to find areas that we think might be or might require ammendment, but we aren't sure. You people deal with things every day and certainly you are the logical ones to come to us and make recommendations to us I think, on areas that you think should be changed. It's difficult for us to search out those areas that need to be changed because we don't have that kind of expertixe. Therefore, we anticipate to rely upon you and upon the commission to recommend the changes that are needed. So that we would ask that you specifically keep that in mind in providing information. It is not our intent on this committee I'm sure or any member of it to weaken the power of our authority of the board or commission. However, we feel that we are now into the gaming area we want to strengthen the laws that you think you need to add control to the industry, we want to make sure that those laws meet the requirements of the constitution and we will require your help and the council's help to make sure we reach that goal. We would ask that you supply the committee, and I know that you have done that already with the limited committee we had originally, copies of your rules and regulations you might study those and any other information you think might be helpful. We will probably meet with you again during the coming week and I'll give it to you to make an appropriate time, I think that the commission will now be going back to their homes and you will be staying here and so we can get with you during the week for continuation of your testimony

Meeting is adjourned.

Respectfully submitted,



Cheri Kinsley, Secretary, Senate



Anne Pierce, Secretary, Assembly

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN