

MINUTES OF JOINT HEARING

SENATE AND ASSEMBLY JUDICIARY COMMITTEE

JANUARY 27, 1977

SENATE MEMEBERS 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: The meeting will please come to order. This is the time for Joint Assembly and Senate Judiciary Committee continued hearing on Gaming. We are going to have the Gaming Control Board speak to us this morning.

PHIL HANNIFIN: We just want to talk to you in general this morning about BDR 630 that has been prepared.

BUD HICKS: The first major section is a proposed new section and an amendment to the act which would, in effect, give the Nevada Gaming Commission, with the assistance of the Attorney General the authority to go into state district court to obtain civil injunctions, civil orders and to file civil suits to enjoin violations of the Gaming Control Act. This section was designed to solve two problems. We found that where there are people who are operating in an unlicensed fashion that is very difficult to get a criminal prosecution. Under this proposed section, we would have the civil powers to go and file a civil lawsuit against that person to enjoin him from violating the gaming laws. This is also a very effective tool in fighting organized crime. If there are hidden interests, instead of pursuing it criminally we can go about it in an investigative tool. File a civil lawsuit, use civil discovery and obtain appropriate court orders to civilly enjoin. This would be in addition to the criminal powers and the administrative powers of the Gaming Commission.

The next major amendment would be an amendment to the definition of the term applicant. NRS 463.0102 which would change that definition to state that an applicant is "any person who for himself or on behalf of another files an application." To be quite frank, this definition is being sought to be changed because we have many licensed corporations in this state who file applications on behalf of their employees, their directors and their stockholders and the practice has always been that the applicant in effect is the person; but in reality the applicant is the corporation seeking the approval of this person.

It is also given to the payment of fees; who will have to pay those investigative fees. Under this proposed change, it would bring the corporation into the definition of applicant because our jurisdiction in reality is over the corporation and not over the stockholder who might live in New York or elsewhere.

SENATOR CLOSE: Is there any way, Mr. Hicks, that the applicant be made to pay the fee if he buys more than 5% of a corporation and say if 7 or 8 people did that that would be extremely expensive for the corporation. Is there any way you can compell the applicant to pay those fees?

BUD HICKS: Well, we've tried to handle this problem. Like I've said our jurisdiction is over the corporation in this state and I know this is going to be one of the questions that will concern the legislature this session. But if we have a publicly traded corporation and they are registered with the Gaming Commission and there is a person who acquires more than 5% or several people who acquire more than 5% and they live out of state, our only alternative at this current time, if those people will not come forward for licensing, and in fact the corporation may not be able to force them to come forward for licensing, but if those people do not come forward and we have an indication that they are unsuitable or even if we do not have that indication that they are unsuitable or even if we do not have that indication but they just won't come forward and they control that corporation our only alternative is to revoke the gaming license. I don't think any one wants that final result to happen with some of our publicly traded companies in this state. What we are trying to do here is state that - it doesn't require the corporation to pay, it doesn't preclude the corporation from seeking damages or repayment from the stockholder but it just says that if there is an investigation to be done, it will be done and it will be paid for and it will be up to those people, the corporation and their stockholder to decide who is going to pay it among the two of them.

SENATOR CLOSE: Have you analyzed whether or not it is possible to put in the charter of the corporation or its by-laws the requirement that if someone owns more than 5% they have to pay for the cost of licensing or is that not a practical solution?

HANNIFIN: I think Senator Close that you get back to the idea that was one of the original ideas of public companies was to legend the stock certificates. What we have found, frankly as a result of attempting to legend stock certificates was that is severely reduced their marketibility and the public companies are, for that reason, quite opposed to any attempt to legend those certificates. What you are talking about is a thrust in that same direction and I don't think it would be any more effective than our first attempts where it did reduce the marketibility of the certificates.

SENATOR ASHWORTH: Is there anything in this BDR along with the 5% rule that there is no effective influence on the corporation or in the management of the gaming operation. I don't quarrel with the 5% rule. What my quarrel is is if a person has 5% and living in New York and never has any control or say so or remunerations or anything in the corporation, I think we have to look at what effect he has on there in addition to the 5%.

HANNIFIN: Right now, the question you pose vis-a-vis control is stated in such a way that it is left to the discretion of the gaming control agencies to determine what is control and whether a person with certain characteristics really is, in fact, a controlling party. Now, that is one way to go; to leave it discretionary. The other way to go is to take a particular cut-off point, 5% or 10% and by statutes say anybody who acquires more than that threshold is, for our purposes, presumed to have control and must come forward for licensing. Now that is a very clean cut way to do it it seems to me. Or you can leave it as it stands today where you have a judgmental factor by the Gaming agencies which must come in and it says in effect, if you have 5% you may be in control but then you have to go through the definition of control and see if that party really holds those characteristics. Now that leads sometimes to a disagreement within, internally, as to whether or not really there is control factors involved. And I think Mr. Ashworth you are aware that in one instance there has been some internal disagreement as to whether or not a person, under those set of circumstances even though 5% was acquired, really had control. What I'm posing to you are the two alternative and I think we need some guidance in that area too. Whether it should be a clean cut threshold dividing line or this discretionary area where it diffuses itself and it is always a little bit on uncertain ground.

SENATOR BRYAN: What is your preference?

HANNIFIN: Right now my particular tendency is to lean towards a clear-cut statutory threshold point. Five percent or 10%. Anything in excess of that would be for our purposes, presumed control.

SENATOR BRYAN: You're talking about an automatic triggering mechanism then at whatever threshold.

HANNIFIN: That's one of the arguments we have had posed by counsel, as a matter of fact, that this thing is too discretionary.

JEFF SILVER: The mechanism for triggering is derived from the SEC regulation which is what that portion of the Act is patterned after and the SEC requires that at this certain threshold point a report be made to them that the stockholder has this many shares. That is the same type of report that is made to us. At that point it becomes discretionary with the Commission, as it would become discretionary with the SEC as to whether or not this individual has to be formally part of the reporting structure of that corporation and this 5% is just a figure that the SEC has used

The definition of control - there is a long line of cases in the federal law that have interpreted what control was and I think if we follow generally that type of definition.

SENATOR BRYAN: It would seem to me that you would want to retain that discretion because if you have the automatic triggering mechanism there may be cases which internally, all of you may agree that this is not or did not meet the old criteria of control and yet you impose a substantial financial burden on someone if you lock that in.

HANNIFIN: Senator, just to comment on that, and of course I am probably in disagreement with my two colleageus here and I'm certain with you and some of your colleageus there. I find that that kind of discretion is a dandy revenue measure for attorneys.

SENATOR BRYAN: You are suggesting that it might be part of a self-help for the unemployed of the Bar Association?

SENATOR ASHWORTH: Should that clean-cut cut-off rule go to an individual or a group of individuals, an association of individuals? Should we address ourself to that?

HANNIFIN: Well the point being under SEC law, there are certain requirements when people act in concert they become known under the 1934 act as a "group" and when such a group is formed they must report the fact that they have joined together to the Securities Exchange Commission and then they are handled, for practical purposes, as one. A group seeking control. We essentially follow the same pattern. Now of course, if they are acting in concert and do not so report themselves to the SEC, they undertake some severe penalties. But that is the general area. We are quite cognizant of that kind of a problem and the SEC has been for years and it is covered both in our regulations and in the 1934 act of the SEC. The definition of control may be helpful.

HICKS: We have two definitions here. The first is of control, which means the "possession, direct or indirect, of the power to direct or cause the direction of management in policies of a person, whether through the ownership of voting securities by contract or otherwise." Then, the definition of controlling person with respect to a publicly traded corporations means "each person who controls a publicly traded corporation in fact. Each person who beneficially owns 5% or more of the voting securities of a publicly traded corporation until the Commission has specifically found an absence of control." I am sure you are all aware that in a publicly traded company, you don't need 51% of the company to tell the company what it is going to do. If the company is widely-held and the stock is dispersed throughout the country in relatively small stockholders, 1% of the ownership can be control of that company.

The group concept is important in that concept because one stockholder alone, who may own, say 4% or 4.5% may not have any effect but if you take two or three stockholders who between all of them own 12% and they form under a group under SEC rules and report as a group then that 12% may be able to put a couple of people on the Board of Directors and they may be able to direct management policies and they have a say.

HICKS: I think it is fair to say that by this proposed amendment to the act that we are inviting comment from the publicly traded companies and would be more than interested in having them address the issue. I know that they appreciate the problem. I know that they would not want to be saddled with the example you stated - 7 or 8 dissident stockholders and having to pay the cost of their investigations. We certainly do not have the same level of expertise as to the securities, regulations and laws or to the corporate laws of Delaware under which most of the publicly traded companies are incorporated. Who pays it is secondary but we have to have the ability to make somebody pay it and that is where we would certainly welcome comment by the publicly traded companies. The problem on this definition of applicant goes to the other corporations other than publicly traded companies. Privately held corporations. The practice has always been, when we called in an officer or director or key employee of privately held gaming corporations that the corporation would pay the cost of the investigation. It would be conceivable though if the cost appeared to be burdensome that the company just might refuse to - saying we are not the applicant, our key employee is the applicant, you have to collect from him. That poses a different problem.

SENATOR CLOSE: Do you require the applicant to put money up in advance before the investigation starts or do you bill him at the termination of the investigation?

HANNIFIN: Both. The statute calls for an initial deposit of \$250 that is filed with the application. As the application then goes through the processing, the schedule of travel is laid out and costs are estimated and the applicant is then sent a notice asking for additional deposits to cover whatever projected expenses there might be. That may happen two or three times in the course of an investigation. Finally, at the end of the investigation, there is a billing submitted to the applicant.

HICKS: We have some general clean-up language on NRS 463.140 which is one of the statutes which Judge Pavlikowski struck down as unconstitutional last month in Las Vegas but the language in that statute which we are seeking to clean up doesn't relate the licensing process, per se. We also have a proposed change in that statute where it states that the board members and agents are Police Officers, have police powers in this state.

The current statute limits their police powers to Chapters 463, 464, and 465. We are seeking an increase in their police powers to include crimes rising under Chapter 205 of the NRS insofar as it relates to crimes against the property of gaming licensees. Chapter 205 is the crimes against property statute. It covers embezzlement, robbery, larceny. We find that the board agents now are doing as much work involving embezzlement, larceny from casinos as they are with slot cheaters covered under Chapter 465. So this would expand their powers into that situation. It would also relieve the State from potential liability because at this time our board agents are called upon many times to arrest embezzlers, to arrest people to steal chips or money from the casinos and technically, under the statutes, they don't have the police powers to do that.

SENATOR BRYAN: Do the gaming control agencies feel it is part of their responsibility to help the casinos protect themselves from cheating and that sort of thing and if so, isn't that a departure from the historical approach towards this where the industry itself was charged with that responsibility as long as there is not any cheating or misrepresentation in terms of the casino itself and reporting what is properly the State's share of taxable gross earnings?

HANNIFIN: Depends on what you define as history. Since the time I've been here, I have considered the fact that any theft from a licensee is a theft from the State of Nevada. Everytime they steal a dollar, we lose a nickel. Actually, its about 8¢ on the effective tax rate. But if that is the case, we feel we have an obligation to go in and put an end to that kind of activity. Now its not just that simple, because many of these schemes, in order to be effective and to remain hidden, require the parties, the employees, to defraud or cheat a customer in order to hid the theft from the location which is passed off to another agent.

HICKS: Our gaming people, in addition to the traditional larceny, embezzlement crimes, we've run across a large scale credit scams that involves sometimes hundreds of thousands of dollars. Those would be covered under Chapter 205 and not under our gaming statutes and yet we are directly involved because our auditors generally detect them and these are credit scams against the licensees so it is in the licenses best interest that we assist them and it is in the state's best interest because as Phil pointed out, we lose 8¢ out of every dollar that is lost in some of those credit scams.

SILVER: As a practical example, when there is a crime detected the gaming control board agent can arrest only the outside man. For example if the dealer is pushing off chips across the table, we must make a citizens arrest of the dealer if we want to do an arrest at all.

Or call in another agency which ties up their manpower and their time. I think that it is really necessary to clean these things up as far as the authority to handle any type of gaming crime and include obtaining money under false pretenses and credit swindling and false representation for credit among the areas that we investigate.

SENATOR BRYAN: Just invest them with Police Officer powers at least for purposes of that Chapter or would you just categorize them as a peace officer under the statute generally.

SILVER: I think the same type of authority that we have under 364 and 365 you can include and limit to that very section of 205.

SENATOR BRYAN: We would want to be careful that we didn't get into the early retirement considerations.

HICKS: There are some distinctions between police officer and peace officers as you well know. The next proposed amendment to this act involves grounds directing the commission to adopt regulations. As you know we have a statute that states the commission shall adopt regulations covering the following subjects and it is currently A through K. We would add L and M or at least put this before the legislature for consideration. They relate to the applicant costs that we were discussing before.

- (1) Requiring any licensee other than one licensed to operate 15 or fewer slot machines to pay the costs of any investigation of the licensee after licensing, including audits, in the same amounts as are charged by expert consultants employed by the board or actual expenses incurred by the board members, its agents or representatives for investigations or audits conducted outside this state.
- (2) Requiring any holding company or publicly traded corporation registered with the commission to pay the costs or any investigation made after registration of any person having a material involvement with the registered holding company or publicly traded corporation, in the same amounts as are charged by expert consultants employed by the board, or actual expenses incurred by board members, its agents or representatives for investigations conducted outside this state.

This goes to that question about publicly traded corporations and the controlling stockholder who has to pay; it goes to the question of operating companies which send markers outside of the state for collection where we cannot audit them unless somebody pays the cost of the investigation. The statutes provide that the board and commission shall maintain surveillance of the licensees after licensing and conduct whatever subsequent investigations are necessary.

SENATOR FOOTE: I would like to ask if this were added to the list, is there any way the licensee or the person making application could be assured that there wouldn't be excessive costs in their investigation? Is there anything that you would be very cautious in your expenditures?

HANNIFIN: Generally, there are ways to limit the cost. The primary method is by not assessing the cost of the manpower time because you will find the bulk of the expense is in that area and not in transportation and per diem expenses. The bulk of those costs come in the assesment for the manpower time of our people. The legislative auditors, in the audit of the agency questioned this cost. They wanted us to do a cost study and the suspicion here is that that is going to force those costs quite high because they would like to see the time I devote to these investigations included and the clerical time included and so forth. Which if you are doing a true cost study that would all be included. Right now we are only charging the cost of the actual investigator. If we follow their recommendation, which of course their recommendation is made to you, that is going to force those costs up. As I said, there is a way to stop that and that is to assess only the actual out-of-pocket expenses and leave the manpower charges alone with respect to those parties already licensed.

SENATOR FOOTE: Do you send the person a pretty much itemized billing of the expenditures?

HANNIFIN: It could be more detailed. What we have said in all cases if if you want greater detail, ask. It depends on what people want, but we have always provided to them the opportunity if they want it because it is a public document.

SENATOR DODGE: Is it your idea that if you spell that out in the regulations about the payment of those costs that you are not going to have a problem about that in the future on the grounds that when the publicly traded corporation comes in and through its Nevada subsidiary is licensed, they know what the ground rules are, is that the rational?

HICKS: Well yes, we have some lawsuits going now and we maintain in those lawsuits that we have statutory authority to do it under the current statute. This would clearly set forth the statutory authority of the state of Nevada.

SENATOR SHEERIN: In those lawsuits that you just referred to, aren't the other people making the argument that the payment offess should come from the taxation of the department over gaming. And if that is the case, shouldn't we come up with some stronger language indicating that that is not where it is going to come from



HICKS: The decision has to be made, where it is going to come from. I am talking about the after the licensing, after the fact investigation. For example, the one lawsuit we have involves audits. It is a practice among some of the -asino operating companies - not the publicly traded companies but the operating companies - to send their markers out of state for collection. Now sometimes we have millions of dollars sitting in Miami and New York and our auditors feel that they cannot do a true and comprehensive audit without reviewing those markers. Some of the places have refused to mail them back because they are in on-going collection process so in the past we have sent auditors to Miami or New York or whatever to audit those markers. That is an expense to the state. We maintain that under our statutory authority and under the regulations that we currently have, that we have the authority to impose the costs of those audit investigations on the operating licensees. They contend that we do not and that the statutes instead provide that the state is to pay that out of their general revenues; the general fund, which funds the state gaming control board. Now whether they prevail or we do I don't know but someone is going to have to pay it or else there is going to have to be a determination that we don't want those audits.

SENATOR SHEERIN: We should make it crystal clear from the results of these deliberations as to who is going to pay it from a statutory standpoint and this is not an area where we have a constitutional problem.

HICKS: No, I don't believe we have a constitutional problem here.

ASHWORTH: What if the particular operation was on an accrual method of accounting and the state had already received their 5% on those markers. Then what you are alluding to is the write-off that they had written and sent out of town and reduced their revenue.

HANNIFIN: Given the facts now because they are all on a cash accounting system and not an accrual system. If it were an accrual system, and the tax obligation falls when the marker is written then there is no problem and no necessity for us to go to the audit of the markers out of state. But as it stands today, there is a definite need for that confirmation procedure.

ASHWORTH: Do you think you would ever come to the time where you would suggest that the markers not be allowed to be written off?

HANNIFIN: I took that position six years ago.

SENATOR SHEERIN: Do our regulations disallow the accrual method?

HICKS: No our regs, in effect, permit them to follow whichever system they want. It's a matter of history and accounting choice the industry follows the cash system. It has very wide ramifications which accounting system they go on. Particularly concerning federal income taxes. I'm sure that the industry would like to address themselves to that issue.

SENATOR BRYAN: Wouldn't you be reluctant in the statute, to dictate which of the two systems they should follow? Wouldn't you rather handle it, to set forth a clear declaration of policy as to who pays the cost of that audit?

HICKS: Well, I think so. Who pays it if there has to be an audit. If an establishment wants to go on an accrual system, let them go on it and then we don't have to worry about it. But if they don't then we need some direction as to who has to pay the cost of that audit.

SILVER: Well there will be a question when they try to write off their bad markers. It is far easier for us to have an accrual system because all we have to do is determine the reasonableness of the write-off that they take as percentage or however they determine it. Now, if an operation is going to choose the cash basis, it is the position of the board that there are certain penalties that they must pay for that option because it is more difficult. One of those penalties that is being suggested here is the fact that if we have to go else where to assure ourselves of these markers, that the cost of such an investigative trip be paid.

HANNIFIN: If there is a change to the accrual system, I can foresee the time, when in order to give credit for a write-off, the state is going to say "did you take it to court". For firm proof that a sincere effort of collection was made. If we come to that we are going to have lawsuits throughout this country on people who owe money and in my estimation, that is not in the best interests of the State of Nevada.

SENATOR BRYAN: Don't you run into the statute of Queen Ann problem there?

HANNIFIN: It has been our determination over the years that if this state makes those debts legally enforceable, that most of the other states will be long-arm.

DODGE: What we'll have to do is write into this statute, a definition of an indigent gambler.

SENATOR SHEERIN: Do you want us to change it so that they have to pay all cost plus the payroll of our people or are you willing to take the position that we will eat the expenses of our payroll and just charge them costs.

SILVER: Well I think that, as we previously stated, if they are a licensee we would be willing to go along with just per diem expenses and not charge the payroll for the employees.

SENATOR ASHWORTH: But you have been charging the payroll for the employees.

SILVER: We have been charging the payroll in the past but even with the payroll the amounts of money charged have been minimal. Maybe \$5,000 in one year for all of the licensees. There are 250 non-restricted licensees and that is for all of them. If we are talking about just the travel for the investigation of those markers.

HICKS: We will be asking for an amendment to the act concerning the provisions relating to the Black Book - the list of excluded persons. We have had some weaknesses in that statute. We will be asking that the statute (NRS 463.151 through 155). One amendment we will seek will be a clear definition of the applicability of those statutes to bar them from non-restricted premises. This would be consistent with the Marshall v. Sawyer decisions of the mid-60's. It also does away with a lot of constitutional problems. Right now if we seek to put a person in the black book, that means under the current statutes he can't go anywhere in this state where there is any licensed gaming. In addition to the traditional strip hotels, and the non-restricted establishments, he can't go anywhere that has slot machines and in the last 20 years, the number of licenses has tremendously expanded and today we are, in effect, infringing on the right to travel, or infringing on interstate commerce when he goes through an airport that has slot machines.

HICKS: A second amendment to that statute would expressly provide that for the purpose of these statutes, licensed gaming establishment would not include a railway, bus or air terminal where gaming is conducted and where the primary activity is the arrival and departure of passengers on common carriers engaged in interstate transportation. We will ask for an amendment to statute 463.310 Subsection 4(e). This is the section that deals with the fines to be levied on gaming licensees who are found to be guilty violating regulations and statutes. It currently provides that a gaming licensee, a licensed corporation may be fined on the first offense, up to \$100,000. An individual licensee may be fined up to \$50,000 for the first offense. On second and subsequent offenses it is virtually limitless. It states that any fine may be imposed that is deemed reasonable by the Commission. Now last session we talked about the need to have the ability to levy the \$1,000,000 fine instead of dropping the bomb. The bomb being license revocation. We will ask that on a second or subsequent offense that on a second or subsequent offense that the commission be directed to levy a fine no greater than \$250,000.00 for each violation. That is a big fine in anyone's book. The fine would be for each violation. So, there is a lot of flexibility there if it is needed, but, there is some guidance. Hopefully permissible delegation from the Legislature.

SENATOR DODGE: Well, could we say for example in the statute, that the amount of fine is determined by the control board or the commission or whoever makes the final decision shall be final and conclusive and not subject to review.

MR. HICKS: Yes, as long as there are adequate limits.

SENATOR DODGE: Do you have a provision such as I am suggesting in your BDR.

MR. HICKS: No, we do not. But I would be happy to work something out.

SENATOR BRYAN: What are the implications?

MR. HICKS: If the court determines that the fine was arbitrary and capricious; but on the other hand, a fine should have been imposed, that there was a violation; I imagine the rational thing to do would be to remand it back to the commission to impose a fine along the guidelines set by the court. If the Supreme Court disagrees with us, in every disciplinary case, we are going to be arguing if the amount of fine would be proper or not. I suppose if the court holds against us then the final decision will be made by the Supreme Court.

SENATOR DODGE: I guess we could go back to the old system when we didn't have any fines at all when it was "either", "or".

MR. BARENGO: Could it open up the judicial review though?

MR. HICKS: Well, yes, we can do some amendments to that judicial review statute that would be along the lines of what Senator Dodge suggested.

SENATOR BRYAN: But, I am not suggesting that the licensee should not be entitled to judicial review on the finding of the commission as to whether or not there is a violation. But, we do not allow the Court, for example, in the criminal jurisprudence system, to review whether the penalty was too great or the fine imposed by the Court was too great, we don't allow that in Nevada.

HICKS: We can put something in the statute to beef it up a little bit. The next major amendments that we will be seeking involves 463.335 which is the work permit issuance statute. It is believed that we need some guidance from the Legislature in the grounds which may be asserted by the State Gaming Control Board when they object to the initial issuance of a work card. As you know, there are two phases to a work card. When a person goes in and applies for a work card to work in a casino he fills out an application, a copy of that goes to the State Gaming Control Board and the Board then has thirty days to review that. The Board may object to the issuance of this new card or they may allow it to be issued. Once issued, that person goes to work and then the only way that we can terminate or the State can terminate his right to work, is to revoke his work card. Now, the revocation is statute 463.337. There has to be some standard set by the Legislature as to whether or not a person initially gets the work card & the grounds upon which the Board might object to that work card. The grounds are very extensive. The First ground would be the person could have his card objected to, that he never really gets it, if he has failed to disclose, misstated or otherwise attempted to mislead the Board with respect to any fact contained within the application for the issuance of a card.

SENATOR BRYAN: Are we talking about material fact? Suppose the guy lies about his age?

MR. HICKS: Well, I think that is a good point; I'll write that into my copy. Traditionally, on these work card applications, they just happen to forget the five or six arrests they had back East for bookmaking or for running an illegal crap game somewhere. The second grounds would be if they had knowingly failed to comply with the provisions of Chapters 463, 464, and 465 or the regulations of the Nevada Gaming Commission at any place of previous employment. c. If they have committed, attempted or conspired to commit any crime involving moral turpitude or embezzlement or larceny against an employer or any gaming licensee or involving any violation of the law pertaining to gaming. Again, this will keep the embezzlers out. D. Defied legislative investigative committees or other officially constituted bodies acting on behalf of the United States or any state, county or municipality. E. Been identified in the published reports of any federal or state legislative or executive body as being a member or associate of organized crime or as being of notorious and unsavory reputation. F. A person who is subject to the constructive custody of any federal, state or municipal law enforcement authority. We have had people come out here who are on bail, they are in constructive custody and they want a work card to work in the industry. Sometimes, they are on bail for crimes relating to gambling and yet they haven't been convicted yet. But, we should have the flexibility to keep them out of the industry until there has been some resolution. A person who has had a card revoked before or a person who has violated any of the provisions of 463.337, relating to revocations.

SENATOR BRYAN: Do you have prior criminal record in there?

MR. HICKS: Well, that would come under the "person who has committed any crime involving embezzlement, larceny against an employer or crime of moral turpitude or a crime involving gaming.

SENATOR DODGE: Suppose the guy committed murder; is that material?

MR. HICKS: We have a couple of convicted murderers with work permits in this state. It is not material if he has served his time and paid his debt. It might be material if it was a crime involving moral turpitude.

MR. HANNIFIN: What we have tried to do is exercise some discretion. For example, a person convicted of felony manslaughter by operation of an automobile would not necessarily be disabled from work permit or licensing. However, a person who committed embezzlement or perhaps, as you point out, a murder in connection with a particular activity, for example associating in some way with an organized crime activity in another state. Then, we would say no.

MR. JEFF SILVER: There is a similar section that I'd like to include in .335 that is already in .337 which is the revocation section. That section applies to persons who have a finding by the commission as to their eligibility to have a work permit, and then what results the final action of the commission would have on a subsequent application.

Currently, if an individual applies for a work card, say in a political subdivision like North Las Vegas and the Board objects to that and goes to a final hearing before the Commission and the Commission upholds the Board's objection, the man need only go to Clark County and get a work card over there and the whole process must begin anew. I would like to see some final determination made from the process of having gone through the Board and through the Commission.

MR. HICKS: We have a proposed amendment to .337 that would state "work permit shall not be issued by any authority in this state to a person whose work permit has previously been revoked pursuant to this section except with the unanimous approval of the Commission members". Currently the law states that there is a period before the language "except with the unanimous approval of the Commission members", the law literally reads now that once a work permit is revoked, no other authority shall issue ever to that person. We have seen cases where people have come forward and it has been several years and they have rehabilitated themselves and they have asked for cards and, as a matter of fact, the commission has approved cards for them. So, we are asking the Legislature to conform the statutes to the practice as we did last session on a couple of things to allow the Commission on unanimous approval requiring all five commission members to reinstate a work card after it has been revoked.

SENATOR BRYAN: Do you issue work cards to all the culinary people?

MR. HANNIFAN: No, we do not. We only issue and concern ourselves with work permits to those directly involved with gaming activities.

SENATOR BRYAN: Are you addressing the issue, which was raised and that is the automatic revocation provision without a hearing. Is that addressed in any of these changes?

MR. HANNIFAN: That particular regulation, we have already redrafted, but we didn't put it in the mill because it has some impact over here.

SENATOR DODGE: What about the situation where a work card has been issued to a man, he has been in the industry for a number of years, he is a 21 dealer and the firm makes an application for him as a key employee and he is turned down because of evidence which arises. As I understand it, if he is turned down, he is out of the industry.

MR. HANNIFAN: We believe that this should be cured and we think we can cure it with the redraft of that particular regulation. Our effort to redraft is complete, it has been introduced, but, they haven't acted on it. There is another area that is what do you do with a man who for good cause, dishonesty perhaps, is denied a license but the same employer now employs him in a lesser capacity. Do you believe that he is no longer a key person? I can point to you person after person that we have had difficulty with where we said, hey, you can't be involved with gaming and they turn around and give him a title of Public Relations assistant and he has never been in public relations in his life.

- MR. HANNIFAN: If nothing else, at least that he will not be employed by the same employer. He may go somewhere else and work in a lesser capacity. You really have some problems when you deny a key employee and all of a sudden somebody shrugs his shoulders and says, "Well, he'll just go back to dealing 21". I'm just a skeptic and I don't believe he is dealing 21.
- MR. HANNIFAN: If you have a man who is indicted by the federal government and the state then investigates the possibility of revoking his work permit, for perhaps some violation but, you can't obtain the evidence relating to that federal violation and you find that by reason of another court decision you really can't take him on a revocation; he goes to another location and goes to work as a public relations man and a year after that goes to work in a very minor functionary capacity in a pit; and then all of a sudden sky rockets to a control position within that location and about that same time another indictment comes down and when you attempt to call him in for licensing he and his attorneys raise the issue that you are being unfair to call him in now because he has the indictment pending and it will obviously color your thinking; and in an attempt to be equitable you don't take him up at that moment but give them the opportunity to get the indictment dismissed; and after that you take him up and get him denied and then they come back and argue with you why didn't you do it two years before.
- MR. SILVER: We have about 50 work card applications coming across our desk every day and on the basis we look at it and if there is a list of horrendous arrests we might take objection to it and have a board hearing. But normally speaking we wouldn't do anything like an in-depth investigation. We take a man and we uncover a lot of things that wouldn't normally appear on the surface, and though an individual may have operated without the knowledge of any wrongdoing by anyone, when he becomes exposed by way of an investigation all of a sudden things that are not savory become apparent to us and would prevent any confidence and trust in that individual for any type of job in gaming.
- MR. SILVER: We have proposed NRS 463.560, 463.595, and 463.637 which relates to key employees of holding companies. Our statutes provide that a person who is a key employee of a corporation, of a holding company, of publicly traded companies registered with the commission may be required to come in for licensing. We'll have a statute on operating licensees other than corporations, corporate licensees, holding companies and public traded companies, the key employees of those companies. In those statutes we will be asking for some additional amendments. If that person is determined to be unsuitable, we would ask for these provisions; beginning on date of notice to a corporation or an individual licensee which holds a state gaming license of a determination of unsuitability of a key executive or a key employee under the terms of this section the corporation may not pay any salary, wages, fees, compensation or remunerations to that person except in return for services rendered prior to the date of his required termination.

A corporation which holds a state gaming license may not employ a person who has been found unsuitable for licensing or failed to apply for a finding of suitability for licensing, when requested to do so by the commission without prior approval of the commission. We will also ask for another amendment that will state that any contract or agreement between a licensee or corporate holding company and an unsuitable person is void as being against public policy. As I have indicated to some of you individually we have nothing in our BDR which would go toward questions which might be addressed by the State Supreme Court in the case before them now. We have given some thought to these matters. We have some proposed drafts written, and are prepared to move if we have to. Hopefully we won't have to. But our BDR covers all the issues outside of that case as far as the state goes.

SENATOR ASHWORTH: Mr. Hannifin; if I may, you know the board and the commission changed the method in the past three years ago, is when you went to the questionair type. Do you feel from the other side of the fence, where we see people are moving up the ladder and getting into a position for a key employee, and we, management, would like to present that person to the gaming control board and commission for licensing as a key employee before they make that promotion. Under the present regulation, managment is preculeded from that procedure. We used to be able to do it on the theory that some operations would maybe bring a person in and try to run them through and try to clean them up in Nevada by giving them a Nevada license. I can understand that. But what's happening now is management is promoting the person and getting them into a key position, and they're not afforded the opportunity to license him and get him found suitable before they make that promotion until after they have done it. And then the gaming people call them in and say okay now he is in a sensitive position and so therefore we are going to call him in and license him and find him suitable; and then you find him unsuitable and it gets egg on the stat's face and egg on the management peoples face. And I think that some place along the line, and it may cost management and the operation a little more money, and more time and probably more investigators for the state. I think someplace along the line management should be given that opportunity to advise the gaming authorities that someone is moving up the ladder, or that they're thinking of putting them in a position which may be a key situation. Do you agree?

MR. HANNIFIN: Conceptually I have no argument with what you are saying, and it's a pretty good summation of the problem that does exist. There are however, some problems I think we will have vis-a-vis legislation and the language of it; because as you know we went back and drafted this key employee regulation working with the industry and the industry wanted to be somewhat certain of the definition of the threshold level upon which some one was going to be called up. I want to make a correction by the way, we did not make a change in that key employee operation a couple of years back. The practice used to be, and it was kind of by way of default on the part of the state I suppose, the location would bring a person forward and say please investigate this guy, we are thinking of giving him a good job and we want to make sure he is a good guy before we do that. And we became kind of a private investigative agency.



Then as business picked up and there was tremendous pressure on us to do equity investigations, I went back and looked very closely at the statute. I thought, hey it is not for them to bring him in, it's for us to call him in. That is the way the statute is, and that's when I changed it. I said we're going to follow the statute precisely and said we must call him in so we are going to have to make a determination is he a key employee. If a guy fit in the categorys we said he was, bring him forward.

SENATOR SHEERIN: There are two substitutive issues coming out of the Rosenthal case. One the threshold jurisdiction question, as to whether or not we should statutorily allow judicial review over the original licensee. And number two, whether or not we should fill this gap of suitability by making them the definitions in the statutes as opposed to the regulations. Now irrespective of whether or not you win or lose that case in this Supreme Court shouldn't we still go ahead and review those particular areas, because they have serious federal overtones to them and we better not get ourselves adjourned, sinedie here, and have the 9th circuit overturn you.

MR. HANNIFIN: You're right. I think that should be looked at. We have discussed it at board level, we're coming up with some different drafts, assuming that we are going to win there, which would better our position. It would be great to have a statute that clearly stated there is no judicial review of licensing determinations other than basic constitutional rights such as we argued yesterday. The gaming commission should not and cannot have the authority to deny someone a license on the basis of race, creed, color as their only criteria. As to everything else, as to those things that are not federally protected constitutional under the Bill of Rights that would be great to have a statute that says no judicial review on those decisions.

SENATOR CLOSE: I am confident that we will have sufficient time following the Supreme Court determination to make any changes we feel might be appropriate. However, I do want to steer away from consideration of any matters that might tend to reflect at all within the parameters of the Rosenthal case.

SENATOR ASHWORTH: Mr. Chairman, would that preclude the introduction of this BDR?

SENATOR CLOSE: I don't think so. I believe that this BDR, that you have now can be introduced, and can be considered. We would ask that you go back to the bill drafter and make the modifications after our discussions here. If you feel there are any amendments you want to make to it, we would like to have those made before the bill is introduced. We would like to have you go back as quickly as you can and get the bill redrafted to reflect any new thinking that you have as a result of our meeting today.

MR. HANNIFIN: Lets talk about the cost of investigations. There is a cost which is assessed against an applicant and that's one kind of a cost, a program as I see it, and then there is a cost for certain investigations levied against an already licensed party. I think there should be some statutory, the statute does not now provide for that, but I think there should be some way to distinguish between the two groups. Currently assesses everybody the same way, whether he is an applicant or a current licensee with the exception of audits. I set audits off to the side for the moment, special investigations let's call them. With respect to licensing investigations of any kind we currently assess everybody the same way and we bill them for the time of our manpower, of the investigators. And we bill them for the actual expenses; that is transportation, per-diem, and any expenses involved in the investigation such as copying work and work of that nature. The bulk of those expenses occur in the assessment of the time for the manpower. Now there is an argument, and I have heard it for many years, that those investigators are already state employees. They are already budgeted and paid for out of the general fund, why should somebody else pay for them. The theory has been that a person applying for the licensing is asking again for the privilege; and that the plumbers, and carpenters, and dishwashers in Reno and Pioche should not by reason of their tax dollars be paying for that investigation, and that he should pay for that. That would include the cost of the personnel. I do think that a case can be made on the other hand for a party already a licensee. You never know when you start into an investigation what the costs are going to be at the end. We don't care where that money comes from as long as we know it's available to conduct a thorough investigation. I submit to you that you can't do that by budgeting the funds from the general fund, because it will invariably occur that somewhere around April of a given budget year you're going to get a redhot investigation that's going to take a lot of funds and you're not going to have the funds so you're going to end up doing a mickey mouse job because you couldn't afford to do it. That is why I have always resisted an attempt to budget investigative funds. Now with respect to these audits we have talked about, traditionally, or the special investigations they're not always audits, we have assessed only the out-of-pocket expenses. If we send someone from Las Vegas to Cleveland to look at original markers held in Cleveland we only charge the licensee the transportation costs and the per-diem costs, we do not charge him for the time of the auditors.

SENATOR DODGE: Do you think you are entitled to make a defensible distinction between, like on your audit you use the markers as an example and we were alluding to this earlier about:  
1) The operation that elects to be on a cash basis and 2) elects to have those markers outside of the state of Nevada as against the operation that has the marker inside the state. Do you think you are entitled to make a defensible distinction on the grounds that if they elect to do these things they result in the incurrance of additional cost to you that they should pay for that as against the general run of auditing costs?

HANNIFIN: That is exactly the rationale I have used in discussion with industry people. They have been licensed here. They choose to conduct some parts of their business outside the state of Nevada. Having elected to do so, I think anything that puts then a burden on us, which we have the regulatory burden, to look at that out-of-state activity should be their responsibility not ours.

SENATOR DODGE: Now is that written anywhere or is that just your own rationale? Is it in a regulation?

HANNIFIN: Regulation six provides that a licensee may choose to maintain original records outside of the state of Nevada if he first acquires permission from the gaming control board to do so. I submitted to the industry a basic contract which would allow them to maintain original records outside the state of Nevada provided, in consideration, they would undertake the payment of all costs in connection with review of those records. That is the nuts of it right there. This is Regulation 6.020 "Unless the Board grants written premission to do otherwise, such records shall be retained for at least five 12 month fiscal years and shall be maintained within the state of Nevada and made available for examination and copying by the Board and Commission except there is no obligation to retain bar and restaurant partron tickets, nonwinning keno tickets, and winning keno tickets in the amount less than \$600 . ." So that's when I sent to the licensees a contract saying "fine you would like to keep them out of the state, you can. Provided you pay for the cost of reviewing them at that foreign location."

SENATOR DODGE: What I think might be a little informative to us is what are your cost allowances to your own employees when they do go out as far as travel and per diem.

HANNIFIN: There is a schedule for breakfast, lunch and dinner just as you have in state but its larger because we find the costs are larger. On hotel rooms its \$35 a night.

SENATOR DODGE: Do they submit actual cost or do they get a flat per diem per day?

HANNIFIN: They get a flat per diem but it must be within those limits. Unless they can justify additional. You will find that hotel costs when you get outside of Nevada, are unbelievable and we have motels in Winnemucca that are far better than major hotels in New York, or Washington, D.C. or Baltimore or Miami. It is true that on extended and long trips, in excess of 2,000 miles we will permit first class, particularly on the return or in new arrangements made from a foreign location.

SENATOR DODGE: Is the time of your people any more valuable than the time of public officials that are only allowed to travel coach?

HANNIFIN: Well, it's valuable to the licensing of the applicant because he is spending a day wasted, in effect, its costing more than the difference.

MR. SILVER: I know that for a fact, on a number of cases the first first class was chosen by the investigator, it was done for a reason of a stop-over on the way back for the allowable mileage at the recommendation of the travel agent for cost purposes.

SENATOR CLOSE: I think you can have flexibility.

HANNIFIN: The number of investigations that have gone over \$50,000 are probably no more than four or five. There are just not that many of that magnitude. A lot of the investigations will run in the area of \$10-15,000. I would suspect that if you are talking about a location somewhere less than 50 slot machines and no more than three tables, the average investigative cost there, I would wager would be around \$3,500.

To talk a moment about audit. We had some testimony last week with respect to audit and the intense necessity for audits. I want to launch into this to tell you that the first full year that I spent with the state in this capacity was 1971. So from 1971 through 1976, October 1st, the following are the collections made by reason of audit and audit adjustment. That is, funds collected after the licensee had already paid and audits were made additional funds paid by reason of the audit:

1971	\$40,192
1972	\$100,718
1973	\$148,438
1974	\$86,157
1975	\$202,284
1976	\$245,985

SENATOR CLOSE: How often do you audit a casino?

HANNIFIN: If you will recall at the last session we had what is called a records keeping statute of three years. The licensee did not have to keep longer than that. We asked to have it extended to five years. The implications thereunder is that we have five years in order to conduct the audit. The legislative audit group came in and took a look at the frequency of audits and they found:  
1) correctly that we are auditing the largest locations nearly to the exclusion of the small locations. We have 60 casinos in this state that produce 96% of the total revenues. I think rationally we concentrate on those casinos because that is where the bulk of our money is coming from. But we found that even doing those and those that are similarly large, that the frequency with which we were able to do those audits is far over the five years. If we attempted to not only cover all of the large but all the small, I would be duplicating an audit maybe once every 30 years.

SENATOR DODGE: I think it would be of interest to all of us, on your audits where you are recovering this additional money, is it your general conclusion that people are under reporting by design or inadvertence?

HANNIFIN: Well in those few circumstances where I thought it was by design we tried to do something about it. In most cases I think it is by lack of good internal controls, negligence in some cases; not very frequently it is by design.

SENATOR DODGE: Because of your own procedures and because of the internal controls in the casinos whereby absentee owners protect themselves against the siphoning off of money by the employees what would you conjecture to be the percentage of reporting on a self-reporting system now of gross tax.

HANNIFIN: Senator Dodge we have not done anything even remotely connected with that kind of a study. I wouldn't want to speculate on it.

SENATOR DODGE: Are you saying that you don't have any handle on whether or not these people are skimming money.

SILVER: Unless you put a cash register at the table and record every dollar that is taken in at the drop box, you never can be 100% sure.

HANNIFIN: What I have indicated to you in terms of dollar amounts are amounts that we found that were under paid. There should have been more money collected than was and that is what was revealed by the audit. I don't want to say to you that that was skimmed. It could have been a lack of good internal controls, it could have been negligence; it could have been reasonable mistakes. It is only when you come up with evidence that you can in my view, call it skimming and that doesn't come up very often.

SENATOR DODGE: Well, \$245,000 on how much are we collecting on the gross tax?

HANNIFIN: That would be a gross win of about \$6 million.

SENATOR DODGE: Well about how much total tax are we collecting on the gross tax per year in Nevada.

HANNIFIN: \$80 million.

SENATOR DODGE: You wouldn't have any figure in mind about what the percentage of reporting is self-reporting.

SILVER: I would just say that the self-reporting is excellent. If you want to go near 100% I would say it is very close to that. The internal controls are to a point now, the independent auditors have certified these statements; we have gone in and we haven't found anything inaccurately reported by those accounting firms. The gross revenue as reported is being reported to the state. There is no skimming and if there is skimming then we take the appropriate action and we find out exactly what the problem is. But there has been no major skimming instances that have gone uninvestigated once we were aware of them.

SILVER: There are losses that the licensee suffers every year from organized slot cheating rings; from collusion between employees that don't get reported to the State of Nevada.

SENATOR ASHWORTH: In the area of underreporting, do you find it more technical in the accounting of say, credit applications or is it right out in the counting room or where do you find it.

HANNIFIN: You very seldom find these things in the accounting room. What happens is that you find -- your certified outside independent auditor comes in and he looks at the keno game revenue so all he is looking for is whether the figure for that day balances against the tickets. When we go in we do something more akin to a fraud audit. We look at all the documentation underlying that posting of revenue. But keep in mind that the actual cash by then, is gone. What you are looking at is only the trail of documentation left behind. It is through that we find that people are claiming as an example, in a keno game it is rather common to have the game on a daily basis either over some amount or short some amount. Now we will find that management will say that all of the overage will not go into the gross win. But all of the shorts we will deduct against. It is that kind of treatment of income that reflects in these audits.

SILVER: Another major area has been the markers and the vast amount of assessments that have been uncovered by the audit division and eventually paid has been as a result of inadequate marker collection efforts or the issuance of the marker initially by the licensee has been so lax as to not comply with our required procedures and that marker has been disallowed. Although the licensee may feel, at the time that the marker is issued therefore not having any intent to defraud the state that the marker has been issued in a proper manner, the audit division has made a determination and that determination has been sustained by the Board that in fact there has been some dereliction of their duties as far as markers are concerned.

SENATOR ASHWORTH: Well that is where I sort of take a little exception for a marker that has, in effect, not been collected because of so-called judgment on the person who issued the marker in the first place because there is- we are in a situation not of selling a can of beans as maybe a rool of the dice. Unless you can come back and say it was a payoff to a third party, now that's a different situation.

SILVER: It just comes to a question of we don't know where this money went to. Whether it went out; whether it was paid back. If a licensee issues a marker under a name with no address, no supporting documentation and then we go and try to confirm this marker and we have no idea who this man is. He might even have come to the location under an assumed name.

SENATOR ASHWORTH: But in all defense of the industry, there is circumstances where that is done to the benefit of the state of Nevada - issue a marker to a Mr. Rock when his real name is Mr. Stone.

SILVER: As long as the licensee can come with the true name of the individual that can be confirmed, I have absolutely no problem with that. The problem arises where we ask the licensee who Mr. Rock is and he says well pit boss Joe over here said he was a good guy, he's okay and you ask Joe and he says well he came in with someone else, I don't know who he is. That is the problem. The laxity in the issuance of this credit that is the great concern of the state and it has resulted in the large number of the assessments that have been collected.

HANNIFIN: I am going to have to say very candidly to you Keith. First of all, when you are talking about these markers and the disallowance, you get into a pretty technical area of accounting. But we are not sending untrained, ignorant people out there to talk to the industry. We are sending some pretty highly trained people out to talk to them in their own language. And when they are disallowed, it is by reason of the establishments inability to professionally establish the integrity of their credit system. That is when it is disallowed. To accept as a disallowance every statement made by the licensee's is unreasonable and expensive.

SENATOR CLOSE: We would appreciate it if you would get that bill back to us as quickly as possible so that it may be introduced. Do I understand now that you will prepare your own transcript of the proceedings today as you did last time and you will give that to us. We have other meetings and if so we will be in contact with you.

The meeting is adjourned.

Respectfully submitted,

Anne Peirce, Secretary, Assembly

*Cheri Kinsley*  
Cheri Kinsley, (Secretary,) Senate

APPROVED: ..

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN

ASSEMBLYMAN ROBERT R. BARENGO, CHAIRMAN