

MINUTES OF JOINT HEARING

SENATE AND ASSEMBLY JUDICIARY COMMITTEE

MARCH 9, 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 8:00 a.m.
For further discussion on these matters, see minutes of joint hearings for January 21, January 27, and March 8, 1977.

AB 398 Clarifies relation of public policy to regulatory procedure in gaming and prohibits foreign gaming by Nevada licensees.

PHIL HANNIFIN, Chairman, Gaming Control Board: With respect to section 1, we feel that is good language; a strong statement of public policy and could very easily be utilized within AB 355.

SENATOR CLOSE: Are you suggesting that that language be used as additional language?

MR. HANNIFIN: Yes. The balance of AB 398, however does not materially add anything to 355. In view of the Rosenthal decision, this last section is absolutely unnecessary and if adopted, would undo everything that was accomplished by that court decision and everything that has been accomplished by state legislators since 1955. With the exception of the declaration of state policy, the gaming commission and control board would not recommend your consideration of any other portions of AB 398.

AB 355 Makes administrative revisions to gaming control statutes.

MR. HANNIFIN: You directed the board and counsel for the various organizations in the gaming industry to meet yesterday. On a conceptual basis, there was disagreement only on section 5, that has to do with the costs of subsequent investigations after licensing. That will be a "take it or leave it" decision for you. There is basic agreement on concept on all other sections.

BERNARD SEGELEN, Corporate Secretary, Metro-Goldwyn-Mayer, Inc. and Counsel to the MGM Grand Hotel, Las Vegas: One of the points we made with Mr. Hannifin was that section 5 goes far beyond

AB 355 the audit of out-of-state markers. In subparagraph (a), the section comences with making some very broad preliminary findings about both the corporate licensees and their publicly-owned parents. Subparagraph (c) says it is necessary to investigate the business activities of the publicly-owned parents. In the case of the MGM, does that mean they are going to investigate how we make our movies and why we can't have more networks? Subparagraph (d) says it is necessary to make audits and then they use the word "investigative audit." What is the difference between a regular audit and an investigative audit. Section 2 says that after licensing, a licensee must pay the cost of "any investigation" including audit, that is made out of state. This could include the investigation of a parent as well as a corporate licensee. There really is no distinction as to why the state of Nevada should be prepared to pay for an in-state investigation buy not for one out-of-state. We encourage people to come from out-of-state to gamble and then we have to go chasing them around the country to collect. We feel this cost should be born by the state. There is no limit on the amount that can be spent; there is no limit on the number of investigators that the state can hire and charge us for; there is no limit on where these investigator can go. The commission is asking you for a blank check. There are other compelling reasons why section 5 should be deleted. Present NRS 463.330 provides that the cost of administration shall be paid out of the general fund and I submit to you that audits are administration. There isn't any other agency in the federal or state government that charges for administering or collection of taxes. We also think it is equitable for the commission to pay for any cost of investigation or audit work it wants to do. We pay over 65% of the total gaming taxes in this state. If there is any reason to bear the cost, the state, at this point, should bear that cost. We also think this whole thing is unnecessary. Present laws are very adequate to take care of the problem that Mr. Hannifin raises. NRS 463.157 gives the commission the power to require licensees to set up a system of internal audit and the commission enacted Regulation 6 in 1974 which consists of a comprehensive and detailed system of accounting and internal audit procedures that we are required to follows. There is another set of controls that exist. Each of these publicly-owned companies has independent auditors. They look very carefully at all the uncollected markers and review our reserves for uncollectibility and they look at copies; they don't need to look at original markers. NRS 463.1591 gives the commission the power to impose penalties for non-compliance with its regulations. If for any reason the commission found that a licensee was not maintaining proper records; that the licensee was trying to do something to cheat the state out of gambling taxes, it has all the power that it needs. It can impose penalties, including the cost of sending its investigators to whatever cities it feels are necessary.

AB 355 But if we are complying, why should we pay for some investigator flying around the country. Last year the state attempted to impose on us the cost and expenses of sending an investigator to New York and collected these fees in advance. We filed a declaratory judgment action. That case is still pending and is now on appeal. The Eighth Judicial District Court in Clark County held in favor of the casino. What the state is now saying is that they don't have any confidence on getting their case reversed on appeal and they want to change the law. Paragraph 2 goes far beyond the auditing of markers. It could include the investigation of a publicly-owned parent. If a parent is violating its license there is a procedure for starting a revocation or disciplinary proceeding. But if we are not violating the law, we don't think that investigators should be allowed to go wherever they choose to examine our activities. We support strict regulations. We support these new proposals but we feel that the commission is trying to impose on us an unfair burden by asking for the payment of these fees.

SENATOR SHEERIN: There is a common interest in collecting these markers. The state wants their taxes out of it and I would think that the hotels want their money. Could we strike some kind of balance that these costs would come out of the money collected?

MR. SEGELEN: What you are suggesting is that the state receive more than their 5.5% of our revenue. We feel that the records that we have in Nevada fully demonstrate that the markers that are out-of-state have not yet been collected.

DON STEPHENSON, General Counsel, Del E. Webb, Corp.: We are not contesting the fact that they have the right to audit. What this section gets into is really a budgeting problem within the gaming control board. What we are dealing with is where Mr. Hannifin gets the money to do that audit. This is really a double tax. If the job of the department is to audit and control, it should not depend on the ability of the casino to pay for that audit. Their investigation does not help us collect that marker. It is to help them properly administer their department. We feel that this audit function should be paid totally from the budget of the gaming control board out of the tax revenues that are collected.

MR. HANNIFIN: If these businesses, which exist through the sufferance of the state of Nevada, choose to conduct a portion of that business outside the state where we can't control that, nor should we, then it has been our contention and philosophical belief that the cost of monitoring that activity, which is placed on us by law, should be born by that licensee.

AB 375 Regulates foreign gaming, changes composition of gaming policy committee and reduces requirements for commission to over-ride board recommendations.

MR. HANNIFIN: This bill was the result of several meetings of the gaming commission who felt there was a need for this type of legislation.

Section 7 has to do with altering the composition of the Gaming Policy Committee. They propose to add 2 legislative representatives. We have no objection to the addition of these however, this provision also deletes one member of the commission and one of the board and we do not feel that that is in the best interest of the state.

Section 8 has to do with altering the vote of the commission in overturning a board recommendation for denial. Currently, when the board recommends denial, it takes a unanimous vote of the commission to overturn that. That imposes certain requirements of due process at the board level. The result then, if we were to follow the law in that area, provides 2 essentially adversary hearings: one by the board when making their recommendation and one by the commission when they consider the board's recommendation. We don't believe this is necessary; it is just too much. By requiring an affirmative vote, we felt it would lessen that requirement, although due process provisions would still remain at the board level.

SENATOR DODGE: What are the mechanics of due process and notification to applicants about the things that they are going to be questioned on at the hearing?

JEFF SILVER, Gaming Control Board: As Mr. Hannifin indicated, the board views itself as an investigatory body and not as an adjudicatory one. In the normal licensing hearing, the party is given written notice as to when and where the hearing is to be held. The party is entitled to be present and represented by counsel. This is not a regulation nor is it in the statute. This is a practice that is followed by the board. The party has the burden of proof of suitability. The board asks a question or a series of questions that relate to the party's suitability and the practice has evolved that the board will advise that person of the areas of their concern. If there is a question or misunderstanding about something that the board has been informed about, the applicant is free to further develop that for the record. At the end of the questioning and review period, the board makes its recommendation to the commission.

SENATOR DODGE: Have you considered whether we ought to formalize these procedures in the statute?

MR. HANNIFIN: My answer would be no, they should not be formalized. In view of the decision by the court regarding Mr. Rosenthal, there is no current need. Also, due process is an ever-changing

AB 375 concept in law and it is not fully agreed upon by attorneys and courts and to attempt to adopt into statute some process may be putting an unnecessary burden on the state.

MR. ROSS: As I read this, if you had 3 members present, under existing law, if all 3 voted in favor of it, that would be a decision. The proposed amendment seems to say an affirmative vote of 4 members. If you don't have 4 members, you don't have a quorum. What is your position on making all decisions by the commission a simply majority of those present.

MR. HANNIFIN: Personally, it doesn't really bother me to have them affirm or deny our recommendations on merely a majority basis.

SENATOR BRYAN: Procedurally, prior to the board hearing, is any kind of discovery provided to the applicant; any kind of indication as to what areas he is going to be questioned on?

MR. HANNIFIN: Nor formally. During the course of the investigation, the agents assigned to the case will sit down with the party, in interview after interview, going over certain material. That material which is repetitively discussed is obviously causing the party problems.

SENATOR BRYAN: Under the present law, after the board makes its recommendation to the commission, is there any documentation, report or information provided directly from the board to the commission that the applicant is not privy and if so, what is the justification.

MR. HANNIFIN: Yes. That is called the summary of investigation. Within that, there is material provided by informants, law enforcement personnel and court records; many things that are privileged.

SENATOR BRYAN: It seems to me that you might fact some vulnerability in that area if the applicant is not aware that there is something in there that someone may have said, which may in fact be totally false, and which the board in good faith believes to be true.

MR. HANNIFIN: We recognize that problem. The board has been in the process of changing the format of what is called the summary of investigation. Our ultimate hope is that at some point in the future, that which goes to the commission is merely a repetition of routine facts, an articulation of grounds for concern and then a series of documents upon which those areas of concern are predicated. In that form, that could be provided to the applicant because at that stage there would not be any privileged or confidential information.

MS. WAGNER: At an earlier hearing you had suggested that there might be problems with administration in a foreign country.

MR. HANNIFIN: Any time you ask the state of Nevada to monitor the activities in a foreign country, there are unique problems. The major concern we have to have is, does this other jurisdiction have good controls so that Nevada will not be embarrassed by something that takes place and that implies that we are going to have to look at what has transpired there to some degree. That is a burden for us to have to do that.

MS. WAGNER: Is it true that we may be forced into this situation because of inter-state commerce?

MR. HANNIFIN: To my understanding, that is a true statement. The commerce clause of the constitution would stand in our road if we attempted to insulate ourselves and presumed to keep all of the current licensees confined here within our borders by not allowing them to engage in gambling in any other location.

MR. BARENGO: On page 1, section 2, line 40, what does that mean with regard to manufacturers?

MR. HANNIFIN: Our current understanding of the definition of licensee is one who conducts gaming activities or paramutual wagering. We do not consider a distributor or a manufacturer to be a gaming licensee. I think there should be some additional language in that definition to clearly state that by licensee, we mean a person engaged in gaming and would exclude the manufacturer or distributor.

SENATOR DODGE: On page 2 in which you outline the factors in which you consider granting or denying the approval to conduct a foreign operation, I don't notice anything in there about monitoring the capital flow which might occur in these types of expansions out of Nevada into other jurisdictions. I can conceive that these matters are probably pretty substantial expansions for any licensee. Is there any danger of siphoning off capital from operations in Nevada which might weaken the Nevada operation?

MR. HANNIFIN: That particular kind of activity is precisely the one that I have been advised would most flagrantly fly in the face of the commerce clause.

SENATOR SHEERIN: For the benefit of our record, is it your opinion that the idea of prohibiting foreign gaming for the reason of capital leaving Nevada, is it your opinion that if the legislature took that policy position, that it would be unconstitutional?

BUD HICKS, Deputy Attorney General, Gaming Control Board: It was our office that originally advised the gaming commission that we felt there were some problems with the current regulation which speaks precisely to that issue. It is not a clear issue and in view of the Rosenthal decision and the Supreme Court's state-

AB 375 ment about the Tenth Amendment, the issue is really up in the air. It would appear, and we believe, that it would be an unconstitutional exercise for either the commission, in regulator form or for the legislature to adopt a flat prohibition against involvement in foreign gaming, which was based upon economic considerations.

SENATOR DODGE: I wasn't talking about a flat prohibition. I was just talking about a monitoring of capital flow.

MR. HICKS: I might say an unreasonable prohibition. That is subject to interpretation. We have reviewed all of the United States Supreme Court cases relating to state regulatory bodies in measures against industry and we feel that this regulation and that statute that it was drafted under, could be sustained in the courts. We felt very comfortable with it. We are not comfortable with the current regulation and we would not be comfortable with anything less than this.

SENATOR SHEERIN: The legislature then really doesn't have the authority to absolutely prohibit gaming because of the probability of that being unconstitutional. Then going back to Senator Dodge's question about trying to use it as part of the regulation in foreign gaming, is it your opinion that that too is probably unconstitutional?

MR. HICKS: Prohibition based upon economic considerations in regulation form?

SENATOR SHEERIN: Not the prohibition. In your laundry list on page 2 of the bill, indicating the considerations that the board is going to take in determining whether or not one of our corporations can go into a foreign operation, are you saying that we cannot add to that laundry list the idea of capital leaving Nevada as being one of the considerations that we can undertake.

MR. HICKS: It could be a consideration although it would not be well-founded if the commission denied permission to go out of state solely on that consideration alone.

MR. HANNIFIN: Under the example which both you and Senator Dodge seem to be driving at, the board does monitor the financial health of current licensees. Were a current licensee placed in financial jeopardy by reason of large expenditures outside of the state, I think we would have grounds to move, without reference to this particular portion of the regulation or statute.

SENATOR DODGE: But what would you do. They have themselves in a committed position as far as capital needs and all of a sudden we wake up to the fact they they are over-expanded.

MR. HANNIFIN: We are talking about jeopardy as opposed to potential for expansion. I am speaking only to the jeopardy side of it. If they place themselves in financial jeopardy, I think the state has jurisdiction. If we are only talking about whether or not, in our view, they have sufficient funds left in Nevada for expansion or growth, I don't know that we have that kind of jurisdiction.

SENATOR DODGE: Is there any formula approach by which, in light of the size of the operation, you would require certain cash reserves?

MR. HANNIFIN: We talk about bank roll requirements but that only goes to the operation of the casino. That does not go to the reserve that you would ordinarily envision for a large hotel casino.

MR. HICKS: It has been the commission's experience that gaming licensee who fall upon hard financial times are very often the victims of persons we consider to be undesirable. If a Nevada company, in going out of state, over extended itself to such a degree as to seriously weaken itself then there is a control problem that we have to face and not necessarily just the fact that we would like them to keep their money in Nevada. It would however, have to be limited along those lines.

MEAD DIXON, Harrah's: This is legislation that has reflected long work on a proposed regulation. We have no quarrel with that aspect of 375. There is an aspect which Senator Dodge was touching upon that causes me concern as it relates not only to foreign gaming but as to other matters and that is on page 4, line 9 requiring unanimous commission action at present, or affirmative action by 4 members as proposed, to change a board recommendation. I think it is extremely important to note that the board does not act as a judicial body or as a hearing body. It is a policeman and investigator. It performs certain functions that is not intended to take the place of a due process hearing for an applicant. Yet acting in its role as policeman, the board can weight the decision factors which the commission should properly reserve to itself. I can conceive of this being appropriate in initial licensing but I cannot conceive of that as being appropriate for any action that requires commission approval. The difficulty we have is that the current sections of the bill are all conceived on the licensing concept but as structured, any commission approval without a board recommendation must be by this particularly weighted vote. It seems to me that if commission approval is required, approval to be granted to an existing licensee, that approval should be by the ordinary process of a majority vote. That is the amendment we requested for 375. I asked Phil this morning if he would quarrel with the proposition of a majority vote on the issue of foreign gaming and he told me that in that respect, he wouldn't.

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MR. HICKS: I just want to make one point clear. Any commission approval and an approval to conduct or be involved in foreign gaming is subject to all the other provisions of the statute, particularly NRS 463.310 and .312. Under those provisions there has to be notice and hearing before a revocation of that approval. Those sections would apply if the foreign gaming statutes are adopted.

The meeting was adjourned at 11:00 a.m.

Respectfully submitted,


Cheri Kinsley, Secretary, Senate

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN

ASSEMBLYMAN ROBERT R. BARENGO, CHAIRMAN