MINUTES

ASSEMBLY JUDICIARY COMMITTEE
April 7, 1977

Members Present: Chairman Barengo
Assemblyman Hayes
Assemblyman Coulter
Assemblyman Banner
Assemblyman Polish
Assemblyman Price
Assemblyman Ross
Assemblyman Sena
Assemblyman Wagner

The meeting was called to order at 8:10 by Chairman Barengo to hear the bills regarding gaming which were subsequent to those heard in the Joint Gaming Hearings. Witnesses were sworn in.

AB 491: Deputy Attorney General, Bud Hicks testified on this bill and stated that this bill was one which had been prepared by his office for the Gaming Control Board and Gaming Commission.

He first explained that section 2 of the bill is what might be termed a "mini-declaratory relief statute". He stated that declaratory relief in the current law is only made up of one small paragraph and this bill would broaden and clarify declaratory relief and was brought up as a result of the Rosenthal case. He said that it had been the intent of the legislature, in the past, to limit the availability of the extraordinary writs to licensees and applicants who run afoul of commission's regulations, rules, or would otherwise interrupt the licensing process.

He stated that he had talked with Mr. Faiss and Mr. Faiss had recommended one change on section 2, paragraph 2, which he did agree with as being a good change. Line 10, page 1, the sentence should read"...plaintiff resides or the licensed gaming establishment with which the plaintiff is affiliated is located,..". He stated that this amendment was designed to accommodate the publicly traded companies which have license subsidiaries in different jurisdictions within the state.

He stated that on page 2, line 4 there should also be an amendment which he had also discussed with Mr. Faiss and it should read, "(a) Any applicant for licensing, finding of suitability or registration; or". He stated this would prohibit interruption of the licensing process. This would not effect subsection b.

He stated that section 3 is simply a policy statement and conforms practice to the law.

Section 4, he pointed out, would provide that any person seeking information deemed confidential under the Gaming Control Act would have to give written notice to the state, Attorney General and other persons involved, ten days notice. He stated that this information has been requested by persons who are not directly

related to the content of the reports and documents requested. This information includes personal and financial information and it also includes some information which might not be based on fact, but may be opinions or subjective observations of the person or persons the report was meant to investigate. He commented that as the law stands they do not have sufficient time to resist the use of this type of information even if the person whose records are requested is not a part to the action. He also stated that there are circumstances where, if they had sufficient notice, they would be willing to give out the information except that it is confidential by statute.

Section 5 adds the investigative summaries and reports which include information from informants as being privileged. And, that those reports which are prepared by the agents for internal use can be kept confidential and the board can refuse to produce such documents or reveal their content in any administrative or judicial proceeding. This would only apply to the material which was not sent on to the commission to be used for a basis of a decision regarding a licensee. The material which was sent forward to the commission would no longer be considered confidential.

He stated that he wanted to emphasize that it is not the intention of the board and commission to obtain, through a statute such as this one, the ability to deny gaming licenses or to base discipline actions upon confidential information and he felt that would be a violation of due process.

Section 6 is in the bill to delete the paragraph which referred to declaratory relief and it would be replaced by the material in section 2.

Mr. Bob Faiss was next to address this bill and his written statement is attached and marked Exhibit A. He stated that due to his meeting with Bud Hicks he had already discussed the two amendments which they had suggested.

Mr. Ross asked Mr. Faiss to comment on section 5, paragraph 2. He said his main concern would be if a report or memorandum was shielded by the gaming agencies, if that memorandum or report had been used to make a decision which is challenged in court. He said he felt that would be an improper action. He stated that he did agree with Mr. Hicks' concerns in this area. He said that if this section could be read that it would allow these reports to be shielded, then perhaps there should be some amendment which would prevent that shielding as a matter of public interest.

Chairman Barengo asked Mr. Hicks to comment on page 1, line 20, in reference to the term "appropriate terms". He said that this term would have to be related to each individual case because the factors that have to be considered vary, of course, in each case such as the differences between the Sinatra case and the Rosenthal case. He said that one of the things that they did not want to do was make any stay automatic, but that the stay should be discretionary.

Mr. Faiss stated that he felt the the stays have beed used wisely in his experience and he did not see a problem with this section. Discussion in this area followed briefly.

Mr. Mead Dixon, attorney representing Harrah's, next addressed this bill. His testimony is attached and marked Exhibit B. He stated that he agreed with the amendments which had been made to the bill and felt that the amendments took care of some of his comments in the written testimony.

Mr. Dixon stated that his main concern was that the information which is sent on, by the board, to the commission should be made available to the person applying for license or being passed on. He said that he feared that information which was sent to the commission by the board and not made available to the applicant might color the judgement of the commission and that applicant should be aware of the information so that they can answer to it. He stated that though Mr. Hannifin stated that that would not happen, he was not convinced that it would not happen.

Mr. Bud Hicks, at this time, pointed out what he felt was an analogy to this in the criminal law (NRS 174.245) regarding internal reports discovery and inspection. Discussion followed relating to this section. Mr. Hicks pointed out that the commission performs many different functions and this is where the problem arises. Mr. Hicks stated that he appreciated Mr. Dixon's concerns, however, he believed that, due to the nature of the material involved, this is some of the most critical and confidential information and the commission cannot function without this type of information.

In answer to a question from Mr. Ross concerning making an amendment to this section to spell out what is intended more clearly, Mr. Hicks stated that that would have to be drafted very carefully because what they did not want was unlimited rights of discovery. Mr. Dixon commented that their only concern was that the party directly connected with this information in the case should be able to have access to that information which was heard and considered by the commission in the decision making process in an adversary type proceeding. He said he would agree with the amendment proposed by Mr. Faiss in this regard.

Mr. Hicks stated that he did not, necessarily, agree with Mr. Dixon is this respect. He said, again, that his main concern was the investigative report prepared by the agents which may contain material which might not be factual, but opinionated based on rumor or speculation. He said that when the applicant goes befor the board for licensing, the board advises that person of the areas of concern by the questions that they ask the applicant. These are the same areas that the commission will be concerned with. He said he felt it would be a disservice to require full-discovery at that point. Mrs. Wagner asked why he felt that way. He said he felt it would be very difficult for the board to fulfil their investigatory capacity if that were required because of the complexity of the investigatory process. He said those points

which are brought out in the board's hearing do not include all the excess verbage and information which may be true, false or irrelevant. Mr. Dixon stated that it was not their intention to get to the board's complete files, it was only their intention to the information which goes to the commission and is used in the decision making process at the commission level. A brief discussion followed with no decisions made on this issue.

Mr. Frank Daykin, LCB, spoke to the committee on this bill and he stated that he interpreted the purpose of this bill was to provide separately and at greater length the procedure by which a declaratory judgement, construing a statute or regulation governing gaming, can be obtained. He pointed out the existing language at the end of 463.144, which was referred to in the Rosenthal case and the fact that lines 16 and 17, which sets out intent more clearly, tie into AB 355 where the statute has enlarged the declarations of policy and a departure from the ordinary judgement prodeeding, supplemental relief, inasmuch as supplemental relief would not be granted in this type of proceeding. He said the bill goes on to cover full disclosure to the board and the confidentiality of the information and those are the three main points of the bill.

Chairman Barengo asked Mr. Daykin to comment on page 3, section 4. He said this would be taken out in favor of section 1. He stated that the most important difference between the new and the old language is that the new language specifically forbids any supplemental relief. This would provide judicial review rather than prospective relief in the declaratory judgement. He stated that this is a departure from traditional law and from what has been normally associated with the declaratory judgement.

Chairman Barengo asked Mr. Daykin to comment on page 1, line 20. He said he felt this was appropriate here because of the prohibitory language in the bill. And, since they have cut off the right to judicial supplemental relief ~~and to~~ automatically staying the board or commission from filing this action. But, they are reaffirming the right of the board or commission to stay its own actions. He also pointed out that the courts have ruled this constitutional.

Chairman Barengo asked Mr. Daykin to comment on page 2, section 5, subsection 2 which he and Mr. Ross had some reservations on. Mr. Daykin stated that in regard to this matter it must be kept in mind that the board and commission is not dealing with a little old lady selling apples, that this a an extremely hard business and deals with the kind of people who do not ordinarily consort with nice little old ladies. Therefore, in turn their informants must be reassured that they will be protected from exposure.

Mrs. Wagner asked Mr. Daykin to express his opinion on Mr. Dixon's suggestion that the information which goes to the commission to aid their decision, then that information should be made known to the applicant. Mr. Daykin said he felt that the board, at that point, would have to decide whether to bring out information and give it

to the commission and likewise to the applicant, or to keep it within the board, so that it would remain confidential and try to bring out something else that information has lead to but that you can reveal. The board, under Mr. Dixon's plan would have to be very careful in what it passed on to the commission level.

Chairman Barengo pointed out Mr. Hicks' analogy to NRS 174.245 and, after dicussing this briefly, Mr. Daykin stated that the confidential information can be used as leads to develop the admissible information as in criminal law. Chairman Barengo brought out that if there was confidential information gained in three or four reports, and you did not know what was in the first report which might be different than the third report, then you would have no way to impeach the third report without knowing what was in the first report. Mr. Daykin stated that that was very true and he said that he did not see any immediate solution to that problem by changing the language.

Chairman Barengo said that if the bill is left the way it is, those reports would remain confidential and could not be used, if an applicant finds that the board has transmitted to the commission that information, and it was used, then it would be up to the applicant to bring that to court and claim that due process was not followed or apply to the commission for a rehearing because they did not have a chance to rebut that piece of information. Mr. Daykin stated that that was right and that ultimately there would be judicial decisions against the commission and board if they acted improperly. Chairman Barengo then stated that that perhaps would be the best method of keeping things straight and Mr. Daykin agreed as a practical matter.

AB 529: Larry Hicks, Washoe County District Attorney and President of the Nevada State District Attorney's Association, stated that this bill had been sponsored by the state District Attorneys. He said that he believed also by the casino industry and the Resort Owners Association in Southern Nevada. He said that this bill was meant to fill a need relating to cheating in the casinos such as switching cards in a twenty-one game. He stated that the problem with the law as it exists is that you must prove the person who is cheating had made a profit from the cheating. This bill would add the attempt to cheat to the law.

AB 530: Mr. Hicks stated that this bill, too, was supported by the District Attorney's Association and the Resort Owners Association. He said that this bill stems from a decision by the courts that cheating by the breaking of the handle of the slot machines and subsequent manipulation of the slot machine to make a payoff is not covered under the existing statute. He stated that this is usually done with the aid of a "blocker" who shields the person working with the machine from the security people in the casinos. And, he said that this method of cheating is becoming more frequent.

He pointed out that lines 5 and six and lines 13 and 14 on page 2 provides that this bill would also cover employees who have

access to the keys and other mechanisms of the slot machines who work with a person from the outside to set up the slot machines for payoffs, is guilty of cheating. This would also apply when an employee of one casino perpetrates this same type of cheating at a neighboring casino.

AB 531: Mr. Hicks stated that this bill was supported by the same people and it is a companion bill to AB 529. He explained that this bill would make conspiring to commit gambling crimes a crime punishable by confinement in the state prison or fine or both. He said they felt this would be necessary because of the sophistication and elaborate plans. He said that this is something that is rehearsed and planned out in great detail and sometimes, through an informant, they find out about these plans and cannot prosecute because the plan has not been carried out. He stated that they need the felony offense to cover that kind of scheme rather than the gross misdemeanor that it would be under current statute. He pointed out that this would also include the preparation to commit the crimes. Discussion regarding the comparative penalties of the conspiracy and/or preparation with those of the completed crimes followed briefly and Mr. Hicks finally reiterated the tremendous amount of scheming and planning involved in crimes of this type compared with other crimes, such as bank robbery.

At 9:00 a.m. Chairman Barengo announced there would be a fifteen minute break before the committee would begin committee action.

SB 79: Frank Daykin, LCB, was here to give background on this bill, which had been heard by the committee on April 1. Chairman Barengo asked him to comment on a letter from Thomas Beatty, Deputy District Attorney, Clark County, regarding this bill (which is attached and marked Exhibit C). Mr. Daykin stated that the point brought out in the letter is valid and that on line 6 of page 1, the language should be "for one year or more" rather than "more than one year". This change would also apply to section 6 line 33.

He stated that by amending in those two corrections, the felony sentencing provisions would be preserved consistently. He further stated that this bill originated out of Washoe County because of thier objection to feeding these people in the county jail when they were really prisoners of the state prison who had committed a minor offense while on probation or parole and it was their feeling that those people should be back in the state prison serving that time.

Mrs. Wagner pointed out that this bill had been discussed prior and she still did not feel this was the answer to the problem which exists. She stated that she agreed with Mr. Ross that a system by which the state would reimburse the counties would be a better plan.

Mr. Ross also stated that the committee acted on a bill during the April 6 meeting which would help to alleviate this problem which is basically one of money.

Mr. Bart Jacka, Las Vegas Metro Police Department was next to speak to the committee requesting that they reconsider AB 467.

AB 467: Mr. Jacka asked that this be reconsidered with a few changes made to it. He stated that this procedure would be strictly discretionary not mandatory. He gave some background information as to why he felt this bill was important to his department. He stated that the financial burden, on the misdemeanor matters, was great. He stated that they felt there should be a change to the bill to extend the time requirement from 5 days to 10 or 15 days. He stated that if the subpena could not be served by mail then there could be personal service. He stated that there has been use of this system in traffic court and also in California and the results have been very favorable.

Mr. Ross moved for reconsideration. Mr. Polish seconded the motion and it carried unanimously. (Mr. Sena and Mr. Price were not present to vote.)

Mr. Ross moved for a Do Pass and Amend to include: 1. That the time period be extended to 10 days, 2. That the mailing be made to include a provision that it could be the signature of the addressee only for receipt, 3. That a certificate of mailing must be filed with the court on the day the mailing is done. Mrs. Hayes seconded the motion and it carried unanimously.

Chairman Barengo reported to the committee on the status of bills which had been sent to the committee this session.

Assemblyman Price gave a brief report to the committee on the sub-committee work on AB 239 stating that the parties interested in this bill had come to agreement and the amendments were read.

AB 239: Mr. Banner moved for a Do Pass as Amended. Mrs. Wagner seconded the motion and it carried unanimously. (Mr. Sena was not present to vote.) It was also pointed out that the section on intent would be left out of the bill and the intent would be read into the record when the bill was presented on the floor of the Assembly. Mr. Price also pointed out that passage of this bill would mean that AB 240 should also receive a do pass from the committee.

AB 30: Mr. Banner moved for a Do Pass as Amended. Mrs. Wagner seconded the motion and it carried unanimously with the same members voting.

The meeting was adjourned at 10:55 a.m. by Chairman Barengo. Also entered into the record are Exhibits D & E which are attached regarding AB 491.

Respectfully submitted,

Linda Chandler

Linda Chandler, Secretary

Del Webb Corp. EXHIBIT T

Testimony of Bob Faiss
Hearing on A.B. 491
Assembly Judiciary Committee
April 7, 1977

I am Bob Faiss, a member of the firm of Lionel Sawyer & Collins, attorneys for the Del E. Webb Corporation.

I recommend two amendments to A.B. 491, which were developed at a meeting of legal counsel for a majority of the major gaming licensees in Southern Nevada.

The first amendment is to add on page 1 at line 10 after "in the district court of the district in which the plaintiff resides" these words: "or the licensed gaming establishment with which the plaintiff is affiliated is located."

I am advised the state gaming authorities concur in this amendment.

The reason is that publicly traded corporations do not legally "reside" in Nevada. Under the present language of A.B. 491, all would have to bring actions for declaratory judgment in Carson City. This would work an unnecessary hardship on those corporations whose activities in connection with a subsidiary licensee are located in Southern Nevada. Usually, necessary witnesses and records would be located in Southern Nevada also.

The present language of A.B. 491 would burden those publicly traded corporations without any offsetting benefit to the state.

The second proposed amendment is to have page 2, line 4 read as follows:

"(a) Any applicant for a license, registration or finding of suitability."

This language would deny the courts the power to issue restraining orders or injunctions against the gaming authorities in declaratory judgment actions by those who have not yet been licensed, registered or found suitable. This prohibition is consistent with the philosophy of this committee that an applicant for initial licensing does not have the right of judicial review of a license denial, which was expressed by your refusal of A.B. 398.

Proponents of the present language of A.B. 491 would extend that prohibition to those who already have been licensed, registered or found suitable by making it apply to anyone who applies to the gaming commission to do anything. And, it well could be that the definition of applicant could be stretched to include anyone whom the commission feels should have applied for permission to do something before he did it.

Giving the bill this broad sweep would be both unnecessary and unwise.

It has been suggested that without the present language of A.B. 491, a publicly traded corporation could enjoin the Board and Commission from enforcing an objection to a stock offering or a licensee could enjoin the gaming

agencies from preventing him from engaging in foreign gaming. Neither is a realistic threat. No publicly traded corporation is going to attempt to sell stock, and probably could not, with an outstanding objection by the State of Nevada. No licensee with any sense, under the protection of a temporary order, would acquire a foreign gaming interest which he would have to shed, under distress conditions, if he should lose the case. I do not believe the gaming agencies seriously believe such situations are serious possibilities.

For all, or nearly all, of the gaming legislation proposed to you this session, there has been some demonstrated need, usually because of administrative difficulties encountered by the gaming authorities or a court decision which has shown the need for remedial action.

No need has been shown for denying the possibility of preliminary injunctive relief to licensees.

The present provision allowing declaratory judgment actions, NRS 463.145(4), does not prohibit preliminary injunctions. It has been in effect for 18 years and I am unaware of any cases commenced under that statute where a preliminary injunction has been issued against the gaming commission or board.

In fact, in my opinion, it would be a rare situation where the gaming authorities would even be faced with the possibility of a injunction being issued against

them in a declaratory judgment action.

In the first place, actions for a declaratory judgment in gaming are not common. Our firm has been involved in a number of lawsuits with the gaming authorities over the past four years. Only two of them sought a declaratory judgment and neither of those sought injunctions.

In the second place, courts are extremely reluctant to preliminarily enjoin an administrative agency from performance of its duties. This would especially be true with the gaming agencies, because of their sensitive responsibilities.

In the third place, a preliminary injunction of any kind is not granted unless there is a clear showing of probable success by the plaintiff and of possible irreparable injury to the plaintiff.

Therefore, the only realistic threat of a preliminary injunction against the gaming agencies is in a case, which is not an original application and not a disciplinary action, where the agencies clearly are acting contrary to law or acting pursuant to an invalid statute or regulation. In such a case, I submit, the legislature would not want to erect a shield against court protection for a licensee.

In adopting A.B. 355, this committee will give the gaming commission the authority to seek injunctions against licensees and others who are violating the law. It would not be fitting if, in a companion measure, you take

away the licensee's present right to seek an injunction against the gaming agencies from improperly enforcing the law against him.

EXHIBIT D

RENO OFFICE
GEORGE L. VARGAS
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LOUIS MEAD DIXON
ROBERT W. MARSHALL
JAMES P. LOGAN
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EDWARD H. TRICKER
CHRIS A. BEECROFT, JR.
DEAN P. VERNON

March 29, 1977

The Honorable Melvin D. Close, Jr.
Nevada State Legislature
Legislative Building
Carson City, Nevada 89701

Re: A. B. 491

Dear Senator Close:

A. B. 491 purports to "extend" the application of the Uniform Declaratory Judgments Act to the determination of controversies under the Gaming Act, but with a limitation on the power of the court to grant "supplemental relief."

Apparently, the limitation prohibits not only interlocutory or pendente lite relief but also "supplemental relief" as contemplated in N.R.S. 30.100, i.e., relief after judgment.

Additionally, A. B. 491 would limit the inherent power of the court to grant such supplementary relief in connection with judicial review pursuant to N.R.S. 463.315. Such review is limited to disciplinary proceedings only, not license applications.

While I have great respect for the Commission and its decisions, I am not persuaded that it is infallible.

I am hesitant to silently acquiesce in the enactment of legislation that would limit the inherent power of courts - even our Supreme Court - to extend equitable relief where appropriate.

If there is concern that some district judge might act irresponsibly pending review, a charge that perhaps should not be made, wouldn't it be preferable to provide for immediate appellate review of the protective order, thereby preventing an abuse of discretion by the lower court?

Additionally, I am concerned with the proposed amendment to N.R.S. 463.144 on page 2 of A. B. 491. I have no question with the principle of confidentiality and no hesitancy in fully protecting confidential material. My only concern is that the amendment would permit the Board to send confidential material to the Commission where it could be used to persuade or prejudice the Commission in a decision-making process, either an application or a disciplinary hearing. It seems to me that in such circumstances, the Commission should not be given access to confidential material, but should be limited only to material which could be made of record. Otherwise, the applicant or respondent will be denied inherent fairness.

I am writing these comments because I will be out of state for a week and may not be present at the hearing. I hope they will be received in the constructive sense in which they are intended.

Very truly yours,

Louis Mead Dixon

LMD/c
cc: Mr. Philip P. Hannifin
Mr. A. J. Hicks
bc: Mr. Charles G. Munson
3/31: Mr. Lloyd T. Dyer

EXHIBIT C (w/attachment)

Office of the District Attorney

CLARK COUNTY COURTHOUSE
LAS VEGAS, NEVADA 89101
(702) 386-4011

GEORGE HOLT
DISTRICT ATTORNEY

THOMAS D. BEATTY
ASSISTANT DISTRICT ATTORNEY

JAMES BARTLEY
COUNTY COUNSEL

CHIEF DEPUTIES
DONALD K. WADSWORTH
RAYMOND D. JEFFERS
MELVYN T. HARMON
DAN M. SEATON
LAWRENCE R. LEAVITT
H. LEON SIMON
JOEL M. COOPER

JOE PARKER
CHIEF INVESTIGATOR

KELLY W. ISOM
ADMINISTRATIVE OFFICER

February 11, 1977

Senator Mel Close, Chairman
Senate Judiciary Committee
Nevada Legislature
Carson City, Nevada 89710

RE: SENATE BILL 79

Dear Mel:

This seven page bill apparently tries to say: "Where a person who is already serving a sentence in the state prison is sentenced to imprisonment for a misdemeanor or gross misdemeanor, such latter term of imprisonment shall also be served in the state prison."

Such a rule makes sense.

The bill does not: indeed it wreaks havoc as presently written.

A close reading of Section 6 will illustrate the confusion and complexity produced. Presently a person convicted of involuntary manslaughter may be (1) sentenced to state prison for not less than one nor more than six years; or (2) sentenced to the county jail for not more than one year; and/or (3) fined.

If a person is sentenced to a term of one year in the state prison, it is clearly a felony.

Under this bill a defendant sentenced to one year is apparently convicted of a gross misdemeanor - not a felony - ever. Now, apparently, the minimum sentence to state prison must be one year and one day. Why? Why alter the entire present classification scheme? Indeed, why the last five pages of the bill at all? No attempt has been made to eliminate the words "county jail" from every one of the 1,600 present sentencing statutes on the books, so why only eliminate it from a few?

Note, also, that under this bill if the defendant is fined for involuntary manslaughter he shall be imprisoned in the state prison. Does this make sense?

Regards,

Thomas D. Beatty
Assistant District Attorney

MELVIN D. CLOSE, JR.
SENATOR
PRESIDENT PRO TEMPORE
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COMMITTEES
CHAIRMAN
JUDICIARY
SPECIAL COMMITTEE ON GAMING
MEMBER
COMMERCE
LEGISLATIVE FUNCTIONS

Nevada Legislature

FIFTY-NINTH SESSION

March 1, 1977

Thomas D. Beatty
Assistant District Attorney
Clark County Courthouse
Las Vegas, NV 89101

Dear Tom:

I received your letter relative to Senate Bill 79, which was written on February 11, 1977. Unfortunately on January 28th we passed this bill to the Assembly.

I have provided Robert Barengo, Chiarman of Assembly Judiciary Committee, a copy of your letter.

I appreciate your writing to me.

Sincerely,

MELVIN D. CLOSE, JR.
STATE SENATOR

MDC:vcl

Plan of Bill SB79

EXHIBIT D

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
GAMING DIVISION

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March 30, 1977

Hon. Robert R. Barengo
Nevada State Assembly
Legislative Building
Carson City, NV 89710

Re: A.B. 491

Dear Bob:

I have recently received a copy of a letter dated March 25, 1977, to you from Mr. Robert Faiss regarding A.B. 491. Mr. Faiss indicates that we have agreed upon a change in the language in paragraph 5(a) of A.B. 491, line 4 of page 2.

There apparently has been a misunderstanding between myself and Mr. Faiss regarding this particular change. The State Gaming Control Board and Nevada Gaming Commission do not believe that the change suggested by Mr. Faiss would be in the State's best interest. Consequently, it is suggested that paragraph 5 be left as it is in the Sec. 2 of the current draft of A.B. 491. That section should provide as follows:

> "5. Supplemental relief otherwise available pursuant to NRS 30.100, including the use of any extraordinary common law writs or other equitable proceedings should not be granted by the district courts or the supreme court to:
> "(a) Any applicant; or
> "(b) Any person seeking judicial review of an action of the Commission which is subject to the provisions of NRS 463.315."

The Board and Commission feel that there should be no qualification upon the term "applicant". "Applicant" is currently defined in NRS 463.0102. A change to the paragraph 5(a) of Sec. 2 as requested by Mr. Faiss would limit the applicability of that section only to applicants for licensing or findings of suitability. Such a change would exclude persons seeking any other affirmative approval from the

Commission, including the initial registration of a publicly traded company with the Commission. This is a very important factor in the Gaming Control Act and, as you will note from an examination of NRS 463.220, is similar to licensing with respect to the requirement required to override a Board recommendation of denial. Just as an applicant for a license should not be able to hinder or otherwise delay the licensing process before the Nevada Gaming Commission by obtaining some extraordinary relief, neither should, for example, a publicly traded company seeking a registration from the Commission be able to forestall unfavorable action.

Similarly, a registered publicly traded corporation is currently required to have two approvals from the Commission before making a public offering of its stock or other equity securities. Under the draft as submitted by Mr. Faiss, public companies could enjoin the Board and Commission from enforcing any objection they might have to a stock offering. This could totally frustrate the efforts of the state regulatory agencies in contravention to the policies expressed by the current and past Legislatures. Additionally, the proposed amendment would affect all other persons seeking affirmative approvals from the Commission. This would certainly apply in the cases of licensees seeking approval to be involved in foreign gaming subsequent to initial licensing, findings of suitability, or registration with the Commission. Certainly, it would frustrate the intention of the Legislature if a company seeking approval to become involved in foreign gaming could enjoin the Board and Commission from enforcing the State's statutes and regulations relating to foreign involvement while acquiring property rights in other jurisdictions relating to gaming interests.

In all other aspects, the Board and Commission are in agreement with the industry relating to A.B. 491 and have no objection to the proposed amendment to Sec. 2, paragraph 1, as suggested by Mr. Faiss in his letter of March 25.

Sincerely,

ROBERT LIST
Attorney General

By
A.J. Hicks
Deputy Attorney General
Gaming Division

AJH:lc
cc: Robert Faiss, Esq.
Hon. Mel Close
State Gaming Control Board
Nevada Gaming Commission

Read & Approved
Phil Hannifin

EXHIBIT E (w/attachment)

SAMUEL S. LIONEL
GRANT SAWYER
JON R. COLLINS
ROBERT M. BUCKALEW
STEPHEN L. MORRIS
JEFFREY P. ZUCKER
PAUL R. HEJMANOWSKI
ROBERT D. FAISS

DAVID N. FREDERICK
LENARD E. SCHWARTZER
ANDREW S. BRIGNONE
DENNIS L. KENNEDY
ALBERT G. MARQUIS
JOHN R. LUSK
AUDREY A. DAINES
DAN C. BOWEN
CHARLES H. McCREA, JR.
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LIONEL SAWYER & COLLINS
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AREA CODE 702
TELEPHONE 385-2188

March 29, 1977

The Honorable Robert R. Barengo
Chairman
Assembly Judiciary Committee
Legislative Building
Carson City, Nevada 89710

Dear Mr. Chairman:

This follows my letter of March 25, 1977, regarding two changes to A.B. 491 proposed by representatives of the gaming industry, a copy of which is enclosed.

In the letter, I noted that Dep. Atty. Gen. Bud Hicks had concurred in the recommended changes.

Mr. Hicks today advised me this is in error, and I hasten to correct the misunderstanding. I now understand the gaming authorities do not oppose the change to Section 2(1) of A.B. 491, providing where a suit for declaratory relief may be brought, but do oppose the change to Section 2(5)(a), which would limit "applicant" to that person making an initial application for licensing or suitability. The wording of the latter section is now in dispute between the gaming industry and gaming officials and I assume you will receive full testimony on their respective positions at the hearing on the bill.

Sincerely,

RDF

Robert D. Faiss

RDF:ls
Enc.

cc: Senator Mel Close
Dep. Atty. Gen. A. J. Hicks

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Dear Mr. Chairman:

At meetings in Carson City last week, representatives of the gaming industry were unanimous in recommending the following changes to A.B. 491:

A. Add after "resides" in line 10 of page 1: "or the licensed gaming establishment with which the plaintiff is affiliated is located," making that paragraph read as follows:

Sec. 2. 1. The board or commission or any applicant, licensee, person found suitable, holding company, intermediary company or publicly traded corporation which is registered with the commission may obtain a judicial determination of any question of construction or validity arising under this chapter or any regulation of the commission by bringing an action for a declaratory judgment in the First Judicial District Court of the State of Nevada in and for Carson City, or in the district court of the district in which the plaintiff resides or the licensed gaming establishment with which the plaintiff is affiliated is located, in accordance with the provisions of chapter 30 of NRS.

B. Add after "applicant" in line 4 of page 2: "for a license or finding of suitability,' making that paragraph read as follows:

5. Supplemental relief otherwise available pursuant to NRS 30.110, including the use of any extraordinary common law writs or other equitable proceedings, shall not be granted by the district court or the supreme court to:

(a) Any applicant for a license or finding of suitability; or

(b) Any person seeking judicial review of an action of the commission which is subject to the provisions of NRS 463.315.

The first change is recommended to allow publicly traded corporations, which have no legal residence in Nevada, to bring actions in the county in which their subsidiary licensees are located.

The second is to clarify that the "applicant" to which the paragraph refers is that person making an initial application for licensing or suitability, which was the intent of those who prepared the draft legislation.

Dep. Atty. Gen. Bud Hicks has concurred in the recommended changes.

Various industry representatives may have further comment on A.B. 491, but there was agreement that at least the above changes should be recommended to your committee.

Sincerely,

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