

MINUTES

ASSEMBLY COMMITTEE ON TAXATION
JANUARY 25, 1977
9:30 a.m.

Members Present: Chairman May
Mr. Dreyer
Mr. Harmon
Mr. Horn
Mr. Jacobsen
Mr. Mann
Mr. Murphy

Members Excused: Mr. Schofield (Visit to Prison)
Mr. Craddock

Guests Present: Ed Bowers, Gaming Ind. Assoc.
R. E. Cahill, Nevada Resort Assn.
John R. Crossley, Legislative Counsel Bureau -
Audit
Harlan Elges, Gaming Control Board
John Gianotti, Harrah's
Phil Hannifin, Gaming Control Board
Frank Johnson, Hilton Hotels Corp.
Les Kofoed, Gaming Ind. Assoc.
Russ Nielsen, UPI
Earl T. Oliver, Legislative Counsel Bureau -
Audit
Guy Shipler, KOH - KTVN
John Stratton, Gaming Control Board
Janice Thomas, Gaming Control Board
Charles Zobell, Review-Journal

Chairman May called the meeting to order at 9:35 a.m. Committee members were briefly polled on what their desires were as far as minute-taking was concerned. The committee members present expressed their approval of detailed minutes, which will be the rule as much as is appropriate. Mr. Murphy suggested that toward the end of the session a change be allowed as the number of meetings increase and hearings become longer.

It was agreed upon by all members present that the secretary of the Assembly Committee on Taxation will keep Bill Books and Minute Books of all members. These items will be placed at each Assemblyman's seat prior to each Taxation meeting.

Chairman May reminded members of the committee that they will be marked Present if they arrive at the meetings within ten minutes of the announced time of the meeting. Beyond ten minutes, the member will be marked Absent, and the records will so reflect.

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Chairman May acknowledged the presence of members of the Gaming Control Board. He stated that this agency is the largest revenue collector in the State.

STATEMENT BY MR. PHIL HANNIFIN, GAMING CONTROL BOARD:

Mr. Hannifin began by explaining that the presence of his personal secretary was simply a back-up if one of the recording systems failed.

"This morning with your indulgence, I intend only to talk to you on an informational basis. We have no legislation to recommend to you at this time. There are, however, certain events that have transpired that should be of knowledge to this committee with respect to taxation or gaming fees.

"We have lost in courts a couple of significant cases. One I will relate to you now is entitled Cashman Photo Concessions and Labs, Incorporated, doing business as Cashman Photo Enterprises vs. the Nevada Gaming Commission. That was decided in the Nevada Supreme Court, July 11, 1975. Cashman sought a declaratory judgment declaring that the Casino Entertainment Tax levied by NRS 463.401 did not apply to the photo concessionaires selling their wares in the casino showrooms. The State Supreme Court reversed the District Court and held that the provisions of 463.401 did not apply to the sales of photographs in showrooms. Consequently, Cashman who had contracts with ten licensees located on the Las Vegas Strip received assignments from those licensees and filed with the State for a refund of \$193,784.49 following the Supreme Court's decision. Interest had to be added to that. The Nevada Gaming Commission Department of Administration approved the refund in its principal amount in September. Cashman was thereafter paid.

"A total of \$261,984.41 including Cashman's claims has been refunded to licensees pursuant to the decision of the Supreme Court in the Cashman case since the date of that decision. The Commission has received a total of an additional \$51,246.58 in claims which have not yet been refunded. The outstanding claims will be refunded in whole or part upon verification by our audit division. No other claims are at this time anticipated with respect to that decision.

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"In addition, there is a case entitled Grand Resorts, Incorporated, doing business as MGM Grand vs. the State of Nevada in the Eighth Judicial District. The potential liability in that case is \$233,162.57, plus interest and the costs of the suit. The MGM Grand is seeking a refund of all amounts paid in their Jai Alai Fronton as Casino Entertainment Tax on the grounds that such tax is not applicable to the activity of Jai Alai. The claim refund covers all amounts paid as Casino Entertainment Tax on admission fees, food sales, and beverage sales within the confines of the Fronton. This case was settled. The advice of our legal counsel was that in the face of the Cashman case, we had no chance of winning in court. The settlement was for \$112,721.58. There was \$12,159.28 in interest - a total refund to MGM of \$124,880.86.

"In these two cases, the State made refunds because the Casino Entertainment Taxes had been applied against items later determined not subject to the tax. The Casino Entertainment Tax, when it was originally enacted, included some items in the original Federal Cabaret Tax which were not carried over in the State legislation. It seemed to imply that those items would be covered. The decision of the court indicates that they were not covered. Some of those things which are services inside showrooms, for example, the photo sales or cigarette sales; admission charges, for example, those which pertain to Jai Alai. There was a previous case which has ended up in moot status with Circus Circus. Those of you from Las Vegas may recall that at one point every person entering the Circus Circus was required to pay an admission fee. We filed the same kind of audit exception against Circus Circus. That went to court, but it was never decided. Cashman was decided in front of it and the MGM case, so now the Circus Circus case is moot, and we have lost that one as well.

"The only thing I would bring to your attention again in the informational area is that we have lost a considerable amount of money by reason of those decisions, which we refunded. And, of course, prospectively, we lose a considerable amount of money to the future."

Mr. Hannifin briefly covered the information which is shown on the attached page entitled, "Casino Entertainment Tax Collections." (Exhibit A)

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"There is another very broad area apart from the Entertainment Tax. There was a case decided, and it is entitled Gemini, Inc. doing business as the Lady Luck Casino and Saloon vs. the State of Nevada and Nevada Gaming Commission. It was decided May 30, 1975. The Lady Luck sued the State for a refund of gaming taxes paid under protest during 1973. On May 30, 1975, the District Court granted judgment in the plaintiff's favor on both causes of action. The sum of \$7,196 plus interest at 7% was refunded to the Lady Luck because the court believed that the licensee was entitled to deduct all fills for a slot machine which the Board had previously believed was a promotional device. In its second cause of action, the licensee was refunded \$1,736 plus interest. The amount represented the refund of taxes previously paid under protest when the State Gaming Control Board disallowed a deduction from gross gaming revenue for the cost of silver dollars paid out of certain slot machines. The Board believed that the licensee could only deduct from gross revenue the face value of any coin paid out rather than the actual cost of that coin. The court disagreed and consequently awarded judgment to the plaintiff. There is no additional liability to the State as a result of this court's decision on the first cause of action relating to a machine believed to be promotional in nature. However, the cause of action relating to refund of quarterly taxes paid without adjustment for the cost versus face value of silver dollars may pose additional liability for the State in the future. Although the liability is not believed to be substantial, it is a possibility that other licensees may seek such refunds. To date no other licensee has made such a claim, and it is not possible to estimate how much money, if any, other licensees may be entitled to as refunds as a result of this decision.

"Now let me go into that just a bit so that perhaps I can give you a flavor of what transpired. In this location, the owner established one slot machine. Upon presentation of a coupon which was widely distributed to the general public to a person in the casino cage, the slot machine in question could be activated electrically by a switch in the cage. That activation allowed the customer to play one 25¢ slot machine ten times for one quarter. Now the problem with this is that the Board felt that this was a promotional effort on the part of the operator to draw customers in. Under the definition of gross gaming revenue, it is clearly stated that promotional efforts should not be allowed as a deduction against the gross revenue. We took the position that by allowing ten plays on a quarter machine for only one

quarter, and then deducting from that win all of the paid-outs, the casino shorted the State. We got one quarter in return, but ran the risk ten times of play. That same kind of principle will hold true in other cases that I may talk about and other situations ongoing in the State.

"There is another area in this promotional business that should be related. We currently have a case filed by Harrah's Club in Reno for a refund of taxes which were paid under protest. It is now believed that we may be able to settle this case with Harrah's out of court, and we are seeking such a settlement because again we do not believe we are on firm legal ground. Our potential liability to Harrah's is \$678,461.69. The nature of this case is as follows: Harrah's filed two claims covering the period of 1969 through the present for refunds of the quarterly percentage fees allegedly overpaid. The Control Board has disallowed the deductions from gross gaming revenue for money and merchandise paid to Harrah's customers upon redemption of premium points. The Board has in the past maintained a position that such expenditures are promotional in nature and hence not properly deducted from gross gaming revenue for purposes of determining quarterly percentage fees. By these claims, Harrah's seeks to adjust the quarterly percentage fees it paid to allow for such deductions thereby resulting in a refund.

"What happens is that a customer playing a slot machine upon hitting a jackpot receives not only the jackpot in cash, but certain coupons. An accumulation of those coupons subsequently allows the customer to present the coupon to a special booth for redemption in either cash or in terms of merchandise. We have taken the position with regard specifically to the merchandise that that is promotional and is not allowed under the terms of the language of the statute as we understand it. Again because of the preceding Gemini, Inc., case we feel we are on very weak ground."

Mr. Hannifin spoke concerning the difficulty of assessing the value of merchandise; hence, the reason for disallowance of merchandise items as deductions from gross gaming revenues.

"The basic principle in the statute is to not allow the cost of promotional items. As I understand the basic intent, when the gaming fees were introduced, was to take the State's portion right from the top allowing as a deduction only the direct losses from the game and thereafter all expense items were not to be accounted against the State's share. Now there are some other things that are currently being taken against the State's share.

"Another item, for example, is the cost of collection of gaming markers. For example, if people come into Nevada and gamble on credit and leave the State owing certain amounts of money, then return to their home which may be New York or Cleveland, this becomes a cost of business item which has been allowed without statutory authority since the 1950's. It became somewhat more formalized in the 1960's when it was reflected in one of our forms, the form called the MGC 1 which is the basic tax return submitted to the State every quarter. That is a matter allowing for the deduction from gaming revenue of the cost of collection of markers. There is no statutory authority for that. I don't know how it crept in originally, but it's been there traditionally. It's bothersome to me because there is no statutory authority to allow it, although it is being allowed currently, and I would suggest that either we formalize the legislation one way or the other."

Mr. Hannifin stated that the main reasons for bringing these items before this committee are so that legislation can be enacted to make certain laws or statutes more specific and to more closely define what can or cannot be taxed, what can or cannot be deducted, and so on.

"Some other possible issues that you may wish to go over is the clarification of NRS 463.0114 which is the definition of gross revenue. You have talked about that already. In connection with that, the subcommittee can take a long hard look at the definition of gross revenue and perhaps they need to make alterations.

"There is also a need to take a look at the tax refund statutes. Now they are basically 463.142, and there are also some which have an impact on refunds: 463.400 to 463.406. The statute of limitations on collection matters needs clarification, and Assemblyman Jacobsen mentioned that earlier.

"We would recommend that you look for comparative purposes to the Nevada Tax Commission statutes 360.420 and 360.460. In this area, I do feel legislation is without doubt in my mind necessary so that we have some firm guidelines when refunds are in order under what conditions. Deficiency determinations - are we allowed to offset overpayments and underpayments? We have done this, but there is no clear statutory authority to do it. I think there should be because I don't think we should have to come back to the Legislature or to the Board of Examiners to resolve each and every overpayment or underpayment which occurs.

"I would also mention to you that there is brought to our attention by the legislative auditor and perhaps Mr. Elges can speak more definitively to you about this in a moment - a great number of forms and paperwork required of the licensees. We asked Mr. Elges to attempt to reduce that so the burden would be lessened upon the licensee. Mr. Elges after a study of the matter found that he could not administratively reduce that paper load because of the various statutes which apply."

Mr. Hannifin related problems arising with sales to vendors in the Las Vegas area. He felt the vendors should be under some type of audit procedure.

"There are certain fees collected by the county and they relate to gaming. They are collected by the county, and they are remitted then to the Treasurer of the State in the State General Fund. The legislative auditor has suggested that someone should audit the counties. There is not audit currently being conducted at least by the State which is entitled to the revenue. I have to tell you that I resist the Gaming Control Board being placed in a position of auditing the counties of the State. I don't think that's my function, but it is a problem area developed by the legislative audit bureau and perhaps they can speak to you more about that problem.

During Mr. Hannifin's statement, Mr. Mann questioned how the various concessionaires became subject to the Casino Entertainment Tax, such as the photo companies. Mr. Hannifin's answer was, "Entertainment tax is not levied strictly upon entertainment, but upon the goods and services which are provided wherein the entertainment takes place upon the premises of a licensed gaming establishment."

In addition, Chairman May appointed a subcommittee to look into the problems facing the Gaming Control Board through recent court decisions. Mr. Mann will chair this committee; Mr. Horn is the vice chairman. Other members of this committee are Mr. Murphy, Mr. Dreyer, and Mr. Jacobsen.

STATEMENT BY MR. HARLAN ELGES, GAMING CONTROL BOARD:

Mr. Elges stated that there are some 15 tax returns that major casinos must file each year. Mr. Horn asked that a summary of each of these forms be prepared and given to committee members.

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"In 1967, the legislature revised the Gaming Control Act and brought in some of these quarterly reports. As a consequence, it became quite a burden upon the licensees of filing so many returns within the year. We haven't experienced too much difficulty. I would say our delinquency return is about 3% of the total involving gaming licensees throughout the state. In my own mind, I am not so sure that the legislative audit division was really critical of us; however, I do feel that in some cases there is a burden upon some of the licensees in having to file so many returns. I don't have an answer for it. It's working well in my division. The number of delinquency returns is really negligible, and I feel really comfortable with it. However, if there was some area that we could reduce it, I would be willing to take any suggestions or answer any questions."

Mr. Elges further defined the different types of licenses that are given in the gaming division.

Chairman May adjourned the meeting at approximately 10:30 a.m.

Mr. Mann asked the subcommittee members to stay for a few minutes after adjournment. Mr. Horn was asked to take the area of forms. Mr. Murphy was asked to take the area of the independent office. Mr. Mann, Mr. Jacobsen, and Mr. Dreyer will handle the research on the broader area of the court cases that have thrown the things out. All three groups will come back and report to the committee.

Respectfully submitted,



Carl R. Ruthstrom, Jr.
Secretary

ATTACHMENTS: Casino Entertainment Tax Collections
1/24/77 Memo to Phil Hannifin from Harlan Elges

Exhibit A

CASINO ENTERTAINMENT TAX COLLECTIONS
(BY FISCAL YEARS)

	<u>1970/1971</u>	<u>1971/1972</u>	<u>Variance</u>		<u>1972/1973</u>	<u>Variance</u>		<u>1973/1974</u>
			<u>Dollar</u>	<u>Percentage</u>		<u>Dollar</u>	<u>Percentage</u>	
Clark	\$5,160,572	\$5,615,527	\$+454,955	+ 8.8	\$6,364,243	\$+748,716	+13.3	\$7,819,862
Douglas	699,578	898,967	+199,389	+28.5	898,723	- 244		1,069,184
Washoe	<u>535,690</u>	<u>557,976</u>	<u>+ 22,286</u>	<u>+ 4.2</u>	<u>520,058</u>	<u>- 37,918</u>	<u>- 6.8</u>	<u>608,544</u>
STATEWIDE	<u>\$6,506,189</u>	<u>\$7,182,379</u>	<u>\$+676,190</u>	<u>+10.4</u>	<u>\$7,941,687</u>	<u>\$+759,308</u>	<u>+10.6</u>	<u>\$9,672,655</u>

	<u>1974/1975</u>	<u>Variance</u>		<u>1975/1976</u>	<u>Variance</u>	
		<u>Dollar</u>	<u>Percentage</u>		<u>Dollar</u>	<u>Percentage</u>
Clark	\$9,068,419	\$+1,248,556	+16.0	\$9,002,232	\$-66,187	-0.7
Douglas	1,209,295	+ 140,111	+13.1	1,249,188	+39,893	+3.3
Washoe	<u>690,835</u>	<u>+ 82,291</u>	<u>+13.5</u>	<u>754,885</u>	<u>+64,050</u>	<u>+9.3</u>
STATEWIDE	<u>\$11,149,245</u>	<u>\$+1,476,590</u>	<u>+15.3</u>	<u>\$11,212,411</u>	<u>\$+63,166</u>	<u>+0.6</u>

77 Locations currently paying Casino Entertainment Tax.

MEMORANDUM

DATE: January 24, 1977

TO: Phil Hannifin

FROM: Harlan Elges

SUBJECT: Casino Entertainment Tax Losses

The estimated loss of the tax on photographs is \$177,000 per year, statewide.

The estimated loss on admissions from the MGM Fronton is \$108,000 per year. Loss on food and beverage is estimated at \$31,000, for a total loss from the Fronton of \$139,000 per year.

HHE/jkh

GUEST LIST

<u>NAME</u> (Please print)	<u>REPRESENTING</u>	<u>WISH TO SPEAK</u>	
		Yes	No
Bill Manning	Gaming Control Board	X	
Harlan Elgers	"	-	-
Russ Melser	LPI		-
CLANICE THOMAS	QCB		-
John Stratton	GCB		
Bob Smith	Resort Assn		✓
John W. Crowley	LCB - audit		X
Earl D. Oliver	LCB - audit		✓
Charles Zobell	Review - Journal		✓
Guy Shipley	- KOH - KTVN		✓
JOHN G. GIOTTI	Harczak		✓
Ed Brown	Gaming Ind. Assoc.		✓
Frank Johnson	Hotel Corp.		✓
Les Laford	Gaming Ind. Assn.		✓

ASSEMBLY COMMITTEE ON TAXATION
 FIFTY-NINTH SESSION, 1977

MEETING ROLL CALL

MEETING DATE: TUESDAY, JANUARY 25, 1977

	PRESENT	ABSENT	LATE	EXCUSED
Chairman May	✓			
Mr. Schofield		✓	<i>open pull</i>	X
Mr. Craddock		✓		X
Mr. Dreyer	✓			
Mr. Harmon	✓			
Mr. Horn	✓			
Mr. Jacobsen	✓	X		
Mr. Mann	✓			
Mr. Murphy	✓			