

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MAY 7, 1977

The meeting was called to order at 9:10 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
 Senator Bryan
 Senator Ashworth
 Senator Dodge
 Senator Foote
 Senator Gojack
 Senator Sheerin

ABSENT: None

Senator Close asked Bud Hicks if he had anything from the decision that Judge Goldman made as to the constitutionality of some of the gaming statutes.

Mr. Hicks stated his understanding was that there was no written decision that it was just an oral decision by the Judge. It was on a writ of habeas corpus. The defendant had been charged with slot cheating and had been bound over for the preliminary hearing and than the writ of habeas corpus filed and the judge signed the order granting the writ. The Clark County District Attorney's office was handling it, so we are getting it all second hand.

AB 491 Changes procedures for judicial determination of validity or construction of gaming statutes and regulations for obtaining documents from regulatory authorities.

Bud Hicks stated this had been reviewed by the Committee before, and Phil Hannifin calls it the lawyers gaming bill. It pertains to declaratory relief actions. Section 2 of 491 replaces the current statutes, which we are seeking to delete from the Statues in section 6. This would be just for gaming provisions. We saw a problem in the Rosenthal case where they tried to argue that their action was really an action for declaratory relief and that under chapeter 31 it was therefore proper for the district court to enjoin the gaming commission in that licensing matter. So if the gaming commission turned down a license of Rosenthal or any one else, then under their theory was they could get injunctive relief against the commission. The court tossed that out. Section 2 provides that any applicant, licensee, person found suitable, holding company, intermediary company may take any provision of the act or the regulations into district court for declaratory review. It is the same as other declaratory review except in the filing of a complaint for judicial determination does not stay enforcement of the commission or board action, the board or commission may grant a stay upon appropriate terms. And then in paragraph 5 of

section 2, in any proceeding brought under this action, the district court shall not grant any injunctive relief or relief based on any extraordinary common law writ to any applicant for licensing, finding or suitability, or registration or any person seeking judicial review of an action of the commission which is subject to the provisions of NRS 463.315. This is not an extension of the law but merely a restatement of it. So this would place in statute what is currently case law in this state. Where our problem has arisen is at the district level where someone can go out and get a single judge to sign an ex-parte order against the gaming commission without notice to us, stopping the whole process. Section 3 is the full disclosure statute, it merely puts into statute form that which has been required by the board and commission, but we felt we needed an expressed statutory expression requiring an applicant to make full and true disclosure. Many times we have had to deny a license or revoke a work permit because there has not been true and full disclosure by the person involved. Section 4 would require any person who is seeking to obtain confidential information, that is information defined as confidential under the act. Currently the law provides that they have to go to district court and get an order. Our problem has been we have had attorneys going into district court, getting ex-parte court orders and coming to the commission and giving us as much as an hours notice to present an entire file to the district court, sometimes the problem really comes about when we have civil litigation out somewhere in Nevada, neither of whom are in the state and neither of them are the licensee or the person who they are seeking information on. They don't have to give notice to the person involved. It is confidential under statute so the board and commission have to go in there and take their best shot at defending it, secondly the person involved doesn't get a chance to say, hey wait a minute you don't have access to my financial statements, income tax returns, and such. So we feel this is an important section and important to the industry too. Section 5 would provide that reports and memoranda prepared by board agents for internal use only within the board and commission are confidential and the board or commission may refuse to produce those documents in any administrative or court proceeding. The purpose of this is that the agents compile numerous extensive reports based on intelligence information, based upon information gathered from confidential informants which is protected by statute now. It covers the gambit from top level intelligence reports shared with federal agencies to on the street encounters with questionable informants. Some of these reports are very extensive, they are very sensitive, we have had attempts to obtain these reports. The question that arose in the Assembly Judiciary was those kinds of reports which we call our investigative summary, was well if the board and commission consider these reports in making a decision to deny a license, shouldn't the person have access to them. We have a very difficult problem be-

because the board and commission do two functions. They are both charged under the statute to investigate and they both have quasi-judicial duties to pass upon licensing. The current practice today is, when they get these investigative summaries and the exhibits attached, and if any of this is used for a grounds for denial, the applicant will be provided with a copy of that particular exhibit or will be given the information pertaining to that particular portion of the investigation. They do not give the entire investigative summary out to license applicants for several reasons. One is that it may contain information from confidential informants, which includes from Federal Strike Forces, IRS, Securities and Exchange Commission. The only way they will give us information in these sensitive cases is if they know that information will be kept confidential. Now that information is not the grounds for denial, it may be the starting point for the agent to go out and conduct his investigation and try to gather the evidence for grounds for denial. In the three years I have been with them I have never seen them do a secret denial based on secret reports. They go out and develop their own information, and if they can't then they don't use it. Sometimes our information is not credible so we always develop our own.

Senator Bryan stated he had some real problems with section 5, he realizes that the information is and should be confidential in some policy justifications, but to provide no regulation setting forth what the applicants rights are with respect to that data or the basis upon which it can be made. Or have no statutory guidelines, it seems to me at the present time to leave it to the grace of the commission.

Senator Close asked for a differentiation between internal and external.

Mr. Hicks stated that an internal report would be say the commission gets a report from the audit division that the Excaliber Hotel is undergoing severe financial difficulties and then they may get a series of reports monitoring the bankroll and the credit policy, so we know if those people are headed into bankruptcy. That is a purely internal use it is not used for a basis for a complaint, it is not used even though Excaliber Hotel may be bringing in new credit managers or something. A non-internal use, or at least my interpretation would be a report that is used as evidence in an application hearing. Admittedly it is a very very thin line to draw, again going back to having an administrative body which mixes two powers, that is investigative and quasi-judicial.

Senator Bryan stated that in his own mind, that information is seen by the board and as conscientious as the board is in my judgment, when it comes to making a decision on external data, once you have seen it how do you ever erase that from your own mind.

Mr. Hicks stated that we are going to have that problem until we have an independent hearing examiner who conducts the licensing hearings and makes the decision. As long as the state makes an administrative body whose duty it is to investigate, to monitor and thereafter to license and to discipline you are going to have that problem. The only problem I can suggest at this late date, because of the difficulty with a severe problem with this section 5 paragraph 2, I would ask that this bill come out with this section just struck out of the bill. We do have other statutory sections that provide that certain information is confidential.

After further discussion by the Committee it was felt that section 5 should be deleted.

Senator Bryan moved amend and do pass.
Seconded by Senator Foote.
Vote was as follows:

AYE:	Senator Close	NOT VOTING:	Senator Ashworth
	Senator Bryan		
	Senator Dodge		
	Senator Foote		
	Senator Gojack		
	Senator Sheerin		

SR 19 Memorializes trustees of Max C. Fleischmann Foundation of Nevada to distribute foundation's assets to similar charitable trusts.

Senator Bryan brought up the fact that this should be a Senate Concurrent Resolution rather than just a Senate Resolution. The Committee concurred.

Senator Foote moved amend and do pass.
Seconded by Senator Sheerin.
Motion was carried unanimously.

At this time the Committee approved the minutes from April 28 thru May 3, the remainder to be sent to the Committee members for their approval and for Senator Closes signature.

The meeting was adjourned at 10:00 a.m.

Respectfully submitted,


Virginia C. Letts, Secretary

MINUTES OF MEETING
MAY 7, 1977
PAGE FIVE

APPROVED:

SENATOR MELVIN D. CLOSE, JR., CHAIRMAN