

Library

MEMBERS PRESENT: Chairman Stewart
Vice Chairman Sader
Mr. Thompson
Miss Foley
Mr. Beyer
Mr. Price
Mr. Chaney
Mr. Malone
Mrs. Cafferata
Mrs. Ham
Mr. Banner

MEMBERS ABSENT: None

GUESTS PRESENT: Colleen Dolan, UNR Intern
Shelly Chase, UNR Intern
Bob Evans, UNR Intern
Ken Creighton, LCB

Chairman Stewart called the committee to order at 8:05 a.m. and proceeded with a sub-committee report on AB 52.

AB 52: Provides punishment for participation in a criminal syndicate.

Chairman Stewart stated that his sub-committee was not prepared at this time to recommend an appropriate amendment to AB 52. He indicated they had met with the Attorney General's Office, who through working with the police agencies had substantial amendments submitted. The amendments mainly conform this bill to some of the provisions contained in the Senate Bill on pyramid schemes. Mr. Stewart stated that the sub-committee had reviewed those proposed amendments and had changes to be incorporated. It was his feeling that they would be ready the week of March 30.

AB 133: Provides civil penalty for pyramid promotional schemes and endless chains.

Mr. Thompson stated that his sub-committee had met to discuss this bill and had contacted the bill drafter with questions about the involvement of churches and non-profit organizations in endless chains. It was his personal opinion that the \$2,500 fine for this crime is a little stiff. He reminded the committee that the law currently makes an endless chain illegal, and that the only new language is the assessment of the \$2,500 penalty for each violation. It was his understanding that the intent of the bill was to fine those who start the pyramid schemes.

Mr. Malone pointed out that it was the bill drafter's opinion that this bill goes to those chains with monetary gain. Mr. Thompson pointed out that one of the questions was how the bill affects campaign chain letters, but did not feel that the bill was intended to address that particular activity. He repeated his feeling that a \$2,500 fine to an individual unwittingly involved was excessive.

Miss Foley asked if the AG in Las Vegas had been successful in prosecuting the people involved in the pyramid scheme down there. No one was certain what the outcome of that situation had been.

Mr. Chaney pointed out that while the intent of the bill is towards those who promote pyramid schemes, it still does not eliminate those unknowingly involved. He agreed that \$2,500 was too stiff a fine against those small people. It was his feeling that the bill should be amended so that it obviously does not address innocent persons. Mr. Stewart pointed out that the judge should have discretion to discern which individuals were innocently involved.

Mr. Beyer read the language of the bill and asked if an individual receiving and sending on a letter is promoting the scheme. It was the understanding of the several of the committee members that the language did encompass that individual. Mr. Sader questioned whether it would or not and felt that "participating" would be the active term.

Miss Foley referred to the minutes of February 25 where Jim Barnes stated that the penalty could be assessed against the individual who passes the letter on as well as the individual who institutes the action.

Mrs. Cafferata moved INDEFINITELY POSTPONE AB 133, seconded by Mr. Chaney, and carried by a majority vote, with Mr. Price, Mr. Sader and Chairman Stewart voting nay.

AB 157: Requires report of abuse and neglect of older person and provides penalty therefor.

Mr. Sader stated he and Miss Foley were not yet in a position to make any recommendations on this bill due to problems with possible amendments. He indicated that through talking with the people in the Welfare Division, there has been a change of position on the part of the agencies which are going to have to service this bill. They are not certain they can handle it in Aging Services at all and with the staff previously indicated. Mr. Sader commented that the amendments proposed by those people would remove the investigative function entirely and simply

be a reporting function. He felt that Steve Coulter would support that since the only alternative is to send the bill to Ways and Means. Mr. Sader requested the committee's indulgence on waiting for those amendments.

To Mrs. Cafferata's question, Mr. Sader indicated that the original concept of the bill was to the reporting aspect and that the investigation end had been added later after soliciting the feelings of the Welfare people.

Miss Foley commented that she was upset with Mr. Roanhaus since his original testimony indicated he would have 2 ombudsmen and only need 1 additional person to handle the responsibility of investigating elderly abuse complaints, and at this time he has changed his testimony to reflect that they cannot do that unless they have a much larger staff.

Mr. Sader added that the Welfare people want to be able to document the reports of elderly abuse, and those which constitute criminal conduct will be reported to the local agency which will be in charge of prosecuting. Under their recommended amendment there will be no investigation by them, but there will be a reporting procedure which does not currently exist in the law.

Chairman Stewart asked for the sub-committee report on AB 234.

AB 234: Provides alternative to grand jury proceedings.

Mrs. Cafferata indicated she had received the American Bar Association recommendations on grand juries and wanted to discuss the committee's feelings before having amendments drafted. She stated they had discussed mandating that grand juries be impaneled every two years in all the counties, making some adjustment to the number of people if the county were under 15,000. The ABA also recommended using electronic devices, allowing the lawyer to be present to advise the witness, rights of immunity, no unreasonable delays and confidentiality of witnesses. She added that there were about 23 recommendations and of those she had chosen the ones which she felt protected the individual's rights.

Miss Foley wanted to know how far this committee wants to go in giving the DA more investigatory powers. She stated she was originally against the bill but, through checking around, it appeared to be pretty fair legislation. She felt that in considering the alternatives, the committee should be careful and decide what the total picture would be.

Chairman Stewart stated he would hesitate to review entirely the grand jury system. He suggested just reviewing this bill as an alternative and making a recommendation on whether or not to pass it.

Miss Foley read the language at page 2, line 45, and asked if the individual's attorney does not have the right or opportunity to cross examine, can they use any of the information received in any judicial proceeding. Mr. Stewart indicated that the testimony taken during a grand jury proceeding can be used and is usually used for impeachment purposes where a witness has changed his story. He felt the use would be for very limited purposes. Mr. Sader pointed out for the committee that there are constitutional guidelines which might bar that evidence from being used at a later proceeding. He added that in a criminal proceeding, the file of the district attorney is not open to the opposing side and the evidence is not necessarily discoverable unless the district attorney wants to make it so. Chairman Stewart pointed out that most district attorneys do open their files and at least the police report is always, in his experience, given out.

Miss Foley stated she would like to check with some of the district attorneys and JPs in the smaller counties to get their opinions and feelings about the bill. She indicated she would also check with those in Clark County.

Chairman Stewart felt that this bill was an alternative to the bill previously killed to give the administrative subpoena to the attorney general. He pointed out that in this situation a magistrate who has control of the subpoena. He added that in white collar crimes, business crimes, it is very difficult to get to those areas unless you can get the records and is not the same as a robbery or burglary. He felt this bill has more safeguards than the administrative subpoena.

AB 266: Broadens provisions for modification of periodic payments of alimony.

Chairman Stewart reminded the committee that when there is an agreement between the parties to a divorce involving the payment of alimony, this bill would allow, in all circumstances, that agreement to be modified in the future.

Mrs. Cafferata moved INDEFINITELY POSTPONE AB 266, seconded by Miss Foley, and carried unanimously by the committee.

AB 328: Requires justice of peace to be resident of appropriate township and in certain townships, to be attorney.

Mr. Sader moved INDEFINITELY POSTPONE AB 328, seconded by Mr. Thompson, and carried by majority vote, with Mr. Banner, Miss Foley and Mr. Stewart voting nay.

AJR 24: Proposes to amend Nevada Constitution to allow raffles for charity.

Mr. Price indicated that his intern had prepared a report on lotteries for the committee. Chairman Stewart brought it to the attention of the committee that the gaming bills scheduled to be heard jointly with the Senate Judiciary Committee contained two measures which deal with lotteries.

Shelly Chase, Mr. Price's intern, read the report she had prepared with reference to AJR 24 and SJR 23, EXHIBIT A and EXHIBIT B.

Chairman Stewart stated that there would be further hearings on AJR 24 on April 6.

Mr. Sader asked for committee introduction of BDR 40-803, BDR 16-802 and BDR 14-804, and stated they deal with accessories, authorizing the use of telephonic search warrants and the changes in the 458 program, which deals with referral of habitual alcoholics or drug abusers into programs. He explained that telephonic search warrants would enable officers to call the judge for a search warrant and be recorded, requiring the testimony under oath during a trial that the voice was recognized.

Mr. Malone moved for committee introduction of BDR 40-803, BDR 16-802 and BDR 14-804, seconded by Mrs. Ham, and carried unanimously by the committee.

Mr. Sader then asked for a motion by the committee to draft four additional bills, one involving accomplices' testimony, granting the state an appeal for a pretrial order suppressing evidence, specifying that the crime of robbery does not require proof of an intent to permanently deprive, and use of immunity. He explained that the bill dealing with use of immunity removes the immunity of family members who harbor criminal members of their family so that the district attorney can prosecute them.

Mr. Malone moved that the bills be drafted, seconded by Mr. Sader and carried unanimously by the committee.

Mrs. Cafferata asked what the status is of AB 187. The secretary's notes indicated it was waiting for Mr. Rusk to get his witnesses together.

Since there was no further business, the meeting was adjourned at 9:00 a.m.

Respectfully submitted,


Jor Jan M. Martin
Committee Stenographer

(Committee Minutes)

* AB 404
** AB 403
+ AB 405

883

**61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION**

DATE: March 26, 1981
 SUBJECT: AB 133: Provides civil penalty for pyramid
 propotional schemes and endless chains.

MOTION:
 DO PASS _____ AMEND _____ INDEFINITELY POSTPONE XX
 RECONSIDER _____
 MOVED BY: Cafferata SECONDED BY: Chaney

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____
 AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

VOTE:	MOTION		AMEND		AMEND	
	<u>YES</u>	<u>NO</u>	<u>YES</u>	<u>NO</u>	<u>YES</u>	<u>NO</u>
Thompson	<u>XX</u>	—	—	—	—	—
Foley	<u>XX</u>	—	—	—	—	—
Beyer	<u>XX</u>	—	—	—	—	—
Price	—	<u>XX</u>	—	—	—	—
Sader	—	<u>XX</u>	—	—	—	—
Stewart	—	<u>XX</u>	—	—	—	—
Chaney	<u>XX</u>	—	—	—	—	—
Malone	<u>XX</u>	—	—	—	—	—
Cafferata	<u>XX</u>	—	—	—	—	—
Ham	<u>XX</u>	—	—	—	—	—
Banner	<u>XX</u>	—	—	—	—	—
TALLY:	<u>8</u>	<u>3</u>	—	—	—	—

ORIGINAL MOTION: Passed _____ Defeated _____ Withdrawn _____
 AMENDED & PASSED _____ AMENDED & DEFEATED _____
 AMENDED & PASSED _____ AMENDED & DEFEATED _____
INDEFINITELY POSTPONED XXX

ATTACHED TO MINUTES OF March 26, 1981

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: March 26, 1981

SUBJECT: AB 266: Broadens provisions for modification
of periodic payments of alimony.

MOTION:

DO PASS _____ AMEND _____ INDEFINITELY POSTPONE XX
RECONSIDER _____

MOVED BY: Cafferata SECONDED BY: Foley

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

VOTE:	MOTION		AMEND		AMEND	
	YES	NO	YES	NO	YES	NO
Thompson	<u>XX</u>	---	---	---	---	---
Foley	<u>XX</u>	---	---	---	---	---
Beyer	<u>XX</u>	---	---	---	---	---
Price	<u>XX</u>	---	---	---	---	---
Sader	<u>XX</u>	---	---	---	---	---
Stewart	<u>XX</u>	---	---	---	---	---
Chaney	<u>XX</u>	---	---	---	---	---
Malone	<u>XX</u>	---	---	---	---	---
Cafferata	<u>XX</u>	---	---	---	---	---
Ham	<u>XX</u>	---	---	---	---	---
Banner	<u>XX</u>	---	---	---	---	---
TALLY:	<u>11</u>	---	---	---	---	---

ORIGINAL MOTION: Passed _____ Defeated _____ Withdrawn _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

AMENDED & PASSED _____ AMENDED & DEFEATED _____

INDEFINITELY POSTPONED XXX

ATTACHED TO MINUTES OF March 26, 1981

61st NEVADA LEGISLATURE
ASSEMBLY JUDICIARY COMMITTEE
LEGISLATION ACTION

DATE: March 26, 1981

SUBJECT: AB 328: Requires justice of peace to be resident of appropriate township and in certain townships, to be attorney.

MOTION:

DO PASS _____ AMEND _____ INDEFINITELY POSTPONE XX
 RECONSIDER _____

MOVED BY: Sader SECONDED BY: Thompson

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

AMENDMENT:

MOVED BY: _____ SECONDED BY: _____

VOTE:	MOTION		AMEND		AMEND	
	YES	NO	YES	NO	YES	NO
Thompson	<u>XX</u>	_____	_____	_____	_____	_____
Foley	_____	<u>XX</u>	_____	_____	_____	_____
Beyer	<u>XX</u>	_____	_____	_____	_____	_____
Price	<u>XX</u>	_____	_____	_____	_____	_____
Sader	<u>XX</u>	_____	_____	_____	_____	_____
Stewart	_____	<u>XX</u>	_____	_____	_____	_____
Chaney	<u>XX</u>	_____	_____	_____	_____	_____
Malone	<u>XX</u>	_____	_____	_____	_____	_____
Cafferata	<u>XX</u>	_____	_____	_____	_____	_____
Ham	<u>XX</u>	_____	_____	_____	_____	_____
Banner	_____	<u>XX</u>	_____	_____	_____	_____
TALLY:	<u>8</u>	<u>3</u>	_____	_____	_____	_____

ORIGINAL MOTION: Passed _____ Defeated _____ Withdrawn _____
 AMENDED & PASSED _____ AMENDED & DEFEATED _____
 AMENDED & PASSED _____ AMENDED & DEFEATED _____
 INDEFINITELY POSTPONED XXX _____

ATTACHED TO MINUTES OF March 26, 1981

LOTTERIES

History in Nevada

There seems to be no clear-cut reason for the Constitutional prohibition of lotteries in the state of Nevada. Research into the state's history may provide the only clues. In examining the debates on the Nevada Constitution one cannot find any discussion whatsoever about the provision prohibiting lotteries. The measure was introduced and passed. The reason for this easy passage may be attributed to the territorial history. The Territorial Legislature of 1861 prohibited gambling of all kinds. The violation was a felony - 2yrs in prison, and/or a \$5,000 fine. In 1864 the first session of the State Legislature again prohibited gambling, but reduced the crime from a felony to a misdemeanor; the penalty was \$100 to \$500 or 1 to 6 months in jail. Lotteries would be naturally named as a form of gambling. In 1869 gaming was first legalized, but disallowed any persons under 17 from taking part in the activity. It could be possible that the section on lotteries was merely overlooked.

In 1909 Nevada again prohibited all gaming, naming the crime a felony, punishable by 1 to 5 yrs. in prison. This law even prohibited possession of cards by any person. In 1915 the law was revised, allowing poker, five hundred, solo and whist within gaming establishments and allowed para mutual betting on horse races. Finally in 1931, all gaming was restored to Nevada. The question of lotteries was never brought up, so the constitutional provision remained.

Recent History

Nevada has tried to remove this prohibition more than once, but the measures have always been defeated. Apparently, opposition comes from gaming establishments. In the 1960's when Nevada tried to institute lotteries, fear was expressed by state gaming authorities that the federal government would soon again be involved in state matters. They felt that Washington already took too keen an interest in Nevada and didn't want to invite any more interference. (Please note Las Vegas Sun Editorial, May 11, 1976.) Exhibit #1

The federal interference would have come from a federal statute instituted in 1890, which prohibited the interstate mailing of lotter tickets. New Hampshire, the first state to reinstate the idea of state run lotteries, came under attack from the Attorney General in 1974. He stated that unless legislation were soon enacted by Congress, the Justice Department would have to proceed against New Hampshire, and other states which had now become involved in the state lotter business; thirteen in all. The proceedings involved a civil remedy for a method of permanently

enjoining a "pattern of racketeering" involving violations of certain criminal statutes. On the last day of the 93rd Congress, legislation was passed permitting the transportation, mailing and broadcasting of advertising, information, and materials concerning a lottery conducted by a State on an intrastate bases. It also exempts equipment and tickets used within a State in a State-conducted lottery from the ban on the interstate transportation of wagering paraphernalia. Therefore, much of the trouble with federal intervention has been eliminated with the passage of this bill. (Please see attached news articles for examples of problems in the states.) ^{Ex} All revenues derived from state-run lotteries are tax exempt. (Section 4402 (3)(B) of the Tax Code) The provision states that these lotteries are exempt if "the ultimate winners are determined by the results of a horse race." All state lotteries are organized along these guidelines.

In 1977 two Assembly Joint Resolutions again tried to remove the prohibition against lotteries. (Please see attached minutes.) ^{Ex #5} Although one proposal had the sole intention of helping senior citizens and charitable or religious organizations (A.J.R. 33), there was definite opposition from gaming interests. Mr. Les Kofoed, Director of the Gaming Industry of Northern Nevada, and Mr. Cahill of the Nevada Resort Association testified against both bills, because they felt this lottery would give gaming more competition. Both bills were killed in Commerce Committee.

States Allowing Lotteries

Twenty-one states allow raffles within their boundaries, thirteen of these states conduct state-run lotteries for the purpose of raising revenue.

I checked on five states that allow lotteries for charitable institutions, but, may or may not be involved in the running of lotteries, themselves. These states were Oregon, Wyoming, New Mexico, Nebraska and Vermont. (Please see attached statutes) ^{Ex #4} Vermont has a Lottery Commission overseeing the running of lotteries. The Commission will license agents, set the price of lottery tickets, determine the manner of payment of prizes, etc. The commission is appointed by the Governor and consists of five members.

Oregon simply allows charitable organizations to conduct lotteries, raffles, or other similar games to benefit the organization for educational, charitable, humane, patriotic, etc. reasons. Although not stated in the statutes, upon questioning persons at the Legislative Council in Oregon that the District Attorney of each county would be the person to whom lottery requests were directed. New Mexico has similar provisions, calling on the heads of the municipalities or on the County Commissioners for permission to hold lotteries.

Exhibit #1

Las Vegas Sun
5-11-764/12/75
Kittling

Justice Department officials charge the New Hampshire state lottery commission has been operating "through a pattern of racketeering" in violating federal law by mailing tickets and renewal applications across state lines.

In the middle 1960s, when an effort was made to remove the constitutional prohibition of lotteries in Nevada, fear was expressed by state gaming control authorities that— should the movement be successful— it wouldn't be long before Nevada was in hot water with the feds for the same reason New Hampshire recently was censured.

Serious

had the repeal effort been successful, the

consequences probably would have been far more serious for Nevada than for the rock-ribbed New England state.

The Justice Department has asked the U.S. District Court to issue an order forbidding the state from continued violation of federal anti-lottery laws. New Hampshire officials would be required to make quarterly compliance reports to the U.S. attorney for the next five years.

Even though the Nevada repealer was pushed by a private outfit that wanted to operate a lottery with only a portion of the proceeds going to the state, Nevada's legal gaming industry undoubtedly would have paid some dire penalties had similar violations be detected in any local operation.

Haven

Any infractions surely would have been viewed as reinforcement of the belief held by some Washington officials that our state is a haven for the unsavory and that all who live here are actual or potential lawbreakers.

It's almost certain that had a Nevada lottery even been accused of federal violations, dozens of investigators, Justice Department sleuths of various talents and lawyers would have descended upon the state in great force.

Come to think of it, that's what's happened anyway, so it's a good thing further bait wasn't thrown out to lure anymore "crimebusters" to our peaceful state.

Problems with Federal Antigambling Statute.

Justice Aide Clears Lottery in New York Of Violating a Law

NYT 9-17-74

Special to The New York Times

WASHINGTON, Sept. 16—

The Justice Department today gave the New York State Lottery a clean bill of health, and exempted the lottery from a planned Federal crackdown.

"They do not appear to have violated any Federal criminal statutes," said Marvin R. Loewy, deputy chief of the Organized Crime and Racketeering Section. "They appear not to include any use of U.S. mails or any use of interstate facilities."

Mr. Loewy said that no such determination had been made in the cases of New Jersey, Connecticut or any of the 13 other states that conduct lotteries.

He was interviewed after a 60-minute meeting with Ronald Maiorana, New York State's director of the lottery and off-track betting.

"I am most pleased with the recognition" by the Attorney General's office of the propriety of New York's lottery," Mr. Maiorana said. "The meeting

today was an important step in restoring public confidence and dispelling any inadvertent inference that the New York lottery was in danger of being shut down by the Federal Government because of illegal practices."

Mr. Maiorana noted that his office had been besieged with telephone calls from bettors who sought to get back the \$3 they had bet on the million-dollar lottery that will be held Sept. 30.

"I want to assure all patrons of the New York lottery that the current million-dollar lottery and the regular 50-cent weekly lottery will continue as planned," he said.

The New York lottery brings about \$100-million a year, he said.

"Most Reputable"

Mr. Maiorana noted that "we don't transport lottery tickets in interstate commerce, we don't use the mails, we don't broadcast lottery information, we don't make illegal use of the banks—either national or state-chartered."

"In short," he said, "the New York lottery is the nation's most reputable and respected lottery."

Last month, Attorney General William B. Saxbe threatened to seek a court order shutting down state lotteries in New York, New Jersey, Connecticut and 10 other states. Mr. Saxbe said the lotteries might have violated Federal antigambling laws.

On Sept. 7, Mr. Saxbe said he would seek injunctions in 90 days unless Congress moved to exempt the state lotteries from antigambling laws.

Saxbe Gets Views

Mr. Saxbe met with Governors and lottery officials of the 13 states, who argued that Federal antigambling laws did not apply to the states, because state lotteries were not specifically mentioned in the laws. In fact, the law predated the state lotteries.

There appeared little likelihood that Congress would act within 90 days to exempt the state lotteries from Federal antigambling statutes. Congress plans to adjourn Oct. 18.

Senator John L. McClellan, Arkansas Democrat who is chairman of the Criminal Laws Subcommittee of the Judiciary Committee, said today that he would like to defer hearings on such legislation until next year.

The House Judiciary Committee is preparing to conduct hearings on the confirmation of Nelson A. Rockefeller as Vice President. It is therefore considered unlikely that the committee will conduct hearings on lottery legislation.

State-run lotteries under probe

REG 8-28-74
WASHINGTON (AP) — The Justice Department is examining whether 13 state lotteries violate federal criminal laws.

Until completion of the study within a few weeks, the department will take no action against any of the lottery operations, says deputy assistant attorney general Thomas Hayes.

"Until that review is complete, any action has been deferred," he said.

The department's ultimate decision would affect lotteries now operating in Maine, New Hampshire, Connecticut, Rhode Island, Massachusetts, New York, New Jersey, Maryland, Delaware, Pennsylvania and Michigan, and those being started in Illinois and Ohio.

CONTROVERSY IN MAINE

The study was promoted by a controversy over the legality of the Maine state lottery. Peter Mills, the U.S. attorney for Maine, said he considered the lottery illegal and threatened court action to shut it down.

After Mills' comments last June, Maine's congressional delegation sought the Justice Department's views on whether the lottery violates federal law, Hayes said. The question was turned over to the criminal division and William Lynch, head of the department's Organized Crime section which prosecutes gambling violations.

Hayes said the criminal division recommendation will be submitted to Atty. Gen. William B. Saxbe for a decision.

In Maine, Hayes said, a key question is whether the lottery violates a federal law governing when banks operate as escrow agents. The Maine system calls on banks to distribute lottery tickets to retainers and collect receipts on behalf of the state.

But Hayes said Tuesday, "The more significant question is interstate mailing of lottery tickets and interstate solicitation."

Assembly Commerce Committee Minutes
February 28, 1977

Claim files are different than an agent's records, and claim files are retained permanently on tape. In answer to Mr. Weise's question concerning the \$5,000 bond, Mr. Garrod thought this was a good faith bond but it was the prerogative of the legislature to determine the amount of this bond.

Assembly Joint Resolution 24

Assemblyman Lloyd Mann said that he received this idea for a state lottery to support senior citizens' tax relief from a newspaper article that described such an operation in the east. Mr. Mann explained how he thought such a lottery could be operated. He does not feel that it would take away any money from the gaming industry, but if the gaming people think it would be detrimental to the state he would back off from his support of the bill because he wouldn't want to do anything to destroy the major industry of the state.

Mr. Les Kofoed, Director of the Gaming Industry of Northern Nevada, stated that he was also representing the Nevada Resort Association in this matter since Mr. Cahill had been injured. Mr. Kofoed stated it was hard to oppose a bill with such a noble purpose, but they do not like this approach to relief for senior citizens. They do not think a state lottery would be successful; they don't think it would attract any new business; they do not agree that it would not create competition for the gaming industry and they are faced with increasing competition now.

Mr. Kofoed reminded the committee that Mr. Mann had stated that if the gaming industry is opposed to it, he would withdraw the resolution. Since the gaming industry does oppose the bill, the committee should entertain a motion to indefinitely postpone this measure.

COMMITTEE ACTION

Assembly Joint Resolution 24: Mr. Weise moved Indefinitely Postpone. Seconded by Mr. Mello and unanimously carried.

Assembly Bill 130

Assemblyman Lloyd Mann said he introduced this bill by request and would have Mr. Charles W. Ivy who requested it address the committee.

Mr. Ivy stated the purpose of this bill was to keep Nevada tax dollars within the state in creating a preference in buying

MINUTES

ASSEMBLY COMMERCE COMMITTEE

March 16, 1977

Members Present:

- Chairman Harmon
- Vice Chairman Mello
- Mr. Barego
- Mr. Demers
- Mrs. Hayes
- Mr. Moody
- Mr. Price
- Mr. Sena
- Mr. Weise

Guests Present:

- Assemblyman Brookman
- R. E. Cahill, Nevada Resort Assn.
- Orvis Reil

Chairman Harmon called the meeting to order at 3:15 p.m.

Assembly Joint Resolution 33

Mrs. Brookman told the committee this resolution was to help senior citizens and charitable or religious organizations. It is against the law to sell raffle tickets in Nevada and certain national organizations will not allow their local chapters to sell these tickets until it is lawful.

Mr. Cahill of the Nevada Resort Association opposed the resolution for the same reasons that they opposed A.J.R. 24 and A.B. 148 and there was no need for repeating these reasons to the committee. One additional reason is the fear of crossing state lines and bringing the Federal Government into the picture. This bill is much broader since it includes charitable and religious organizations.

Mrs. Brookman said the definition of raffle in Nevada is lottery, and she feels the definition should be changed. It would have to be a constitutional change.

Assembly Conference Committee Minutes
March 16, 1977

COMMITTEE ACTION

Assembly Joint Resolution 33: Mr. Mello moved to Indefinitely Postpone, seconded by Mr. Sena. Unanimously carried.

Chairman Harmon said the next bill to be discussed would be A.B. 435.

Mr. Demers said the purpose of this bill was to slow down the consumption of water and also it was an energy saving measure. This would be only for state buildings and installation is simple and inexpensive.

COMMITTEE ACTION

Assembly Bill 435: Mr. Mello moved Do Pass, seconded by Mr. Weise and unanimously carried.

The next bill before the committee was A.B. 436. Chairman Harmon said he introduced this bill because of the shortage of natural gas and other shortages that will occur. This should be a good energy saving measure.

Mr. Demers said he would like to suggest that an amendment be considered which would include a provision that swimming pools used for therapeutic purposes would be exempted.

Mr. Price brought up the question of suppliers who have a large stock of pool heaters and this legislation would give them only 7 months to dispose of this stock.

Chairman Harmon stated that he and Mr. Demers would try to amend A.B. 436 in accordance with various suggestions.

Assembly Bill 378

Mr. Demers stated that the bill was requested by Southern Nevada Air Conditioning and Sheet Metal Contractors Association and they did not have a representative present to explain their problems.

Mr. Reil was concerned about how such legislation would affect an individual who was not a contractor but who was constructing his own or a friend's house.

Mr. Demers requested that the hearing on A.B. 378 be rescheduled in order that the proponents might have a chance to appear. Chairman Harmon said this would be done.

The meeting was adjourned at 3:40 p.m.

Jane Dunne
Assembly Attache

*Nebraska
Revised Statutes
1981*

28-1109. Proof of possession of gambling device; prima facie evidence. Proof of possession of any gambling device shall be prima facie evidence of possession thereof with knowledge of its contents and character.

Source: Laws 1977, LB 38, § 225; Laws 1979, LB 152, § 9.

28-1110. Lottery; prosecution; not in violation of jurisdiction where conducted; no defense. It shall be no defense to a prosecution under any provision of this article relating to a lottery that the lottery itself is drawn or conducted outside this state and is not in violation of the laws of the jurisdiction in which it is drawn or conducted.

Source: Laws 1977, LB 38, § 226.

28-1111. Gambling device or record; money used as a bet or stake; forfeited to state. Any gambling device or gambling record possessed in violation of any provision of this article, or any money used as a bet or stake in gambling activity in violation of any provision of this article, shall be forfeited to the state.

Source: Laws 1977, LB 38, § 227.

28-1112. Defendant, status as a player; affirmative defense, when. In any prosecution for an offense defined in this article, when the defendant's status as a player constitutes an excusing condition, the fact that the defendant was a player shall constitute an affirmative defense.

Source: Laws 1977, LB 38, § 228.

28-1113. Article, how construed. Nothing in this article shall be construed to:

- (1) Apply to or prohibit wagering on the results of horse races by the pari-mutuel or certificate method when conducted by licensees within the race track enclosure at licensed horse race meetings; or
- (2) Prohibit or punish the playing of bingo when conducted by any licensee operating pursuant to Chapter 9, article 1.

Source: Laws 1977, LB 38, § 229; Laws 1979, LB 164, § 19.

28-1114. Gift enterprise; established business; conditions. Any person engaged in a bona fide business, with an established place of business in this state or, in the case of a foreign corporation, with an established place of business in another state may, solely for the purpose of business promotion and not for profit to such person, conduct contests and lotteries in which prizes are offered and awarded to participants in such contests and lotteries when no fee is required for

participation therein. Such contests and lotteries may require, as a condition of participation, evidence of purchase of a product or other property, but the price charged for such product or other property shall be no greater than it would be if no contest were involved.

Source: Laws 1977, LB 38, § 230.

28-1115. Gift enterprise; nonprofit organization; conditions. Any nonprofit organization holding a certificate of exemption under the Internal Revenue Code, section 501, or whose major activities, exclusive of conducting lotteries, raffles, or gift enterprises, are conducted for charitable and community betterment purposes, may conduct lotteries, raffles, and gift enterprises. The gross proceeds of such activities may be used solely for charitable or community betterment purposes, awarding of prizes to participants, and operating such lottery, raffle, or gift enterprise. Not less than sixty-five per cent of the gross proceeds shall be used for the awarding of prizes and not more than twenty-five per cent of that amount remaining after the awarding of prizes shall be used to pay the expenses of operating such scheme. For the purpose of this section, the expenses of operating a lottery shall include (1) all costs associated with printing or manufacturing any items to be used or distributed to participants such as tickets or other paraphernalia, (2) all office expenses, (3) all promotional expenses, (4) all salaries of persons employed to operate the scheme, (5) any rental or lease expense, and (6) any fee paid to any person associated with the operation of a lottery, raffle, or gift enterprise, except that prizes awarded to participants shall not be included within the twenty-five per cent limitation contained in this section. Each nonprofit organization conducting a lottery shall have its name clearly printed on each lottery ticket used in such lottery. No such ticket shall be sold unless such name is so printed thereon. Each nonprofit organization conducting a lottery shall keep a record of all locations where its lottery tickets are sold. All tickets must bear a number, which numbers must be in sequence.

Source: Laws 1977, LB 38, § 231; Laws 1978, LB 351, § 51; Laws 1979, LB 152, § 10.

28-1116. Gift enterprise; political subdivision; approval by electors. Any county, city, or village may establish and conduct lotteries when the proceeds of such lotteries are used for community betterment purposes and the awarding of prizes to participants. No county, city, or village shall establish and conduct such a lottery until such course of action has been approved by a majority of the registered voters of such county, city, or village casting ballots on the issue at a regular

lar gallery or exhibition, and visible in a non-display setting. (1971 c.743 §262)

167.100 Application of ORS 167.060 to 167.100. ORS 167.060 to 167.100 shall be applicable and uniform throughout the state and all political subdivisions and municipalities therein, and no local authority shall enact any ordinances, rules or regulations in conflict with the provisions thereof. (1971 c.743 §262a)

167.105 [Repealed by 1971 c.743 §432]

167.110 [Repealed by 1971 c.743 §432]

167.115 [Repealed by 1971 c.743 §432]

GAMBLING OFFENSES

167.117 Definitions for ORS 167.117 to 167.132. As used in ORS 167.117 to 167.162, unless the context requires otherwise:

(1) "Bingo or lotto" means a game, played with cards bearing lines of numbers, in which a player covers or uncovers a number selected from a container, and which is won by a player who is present during the game and who first covers or uncovers the selected numbers in a designated combination, sequence or pattern.

(2) "Bookmaking" means promoting gambling by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.

(3) "Contest of chance" means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.

(4) "Gambling" means that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome. "Gambling" does not include:

(a) Bona fide business transactions valid under the law of contracts for the purchase or sale at a future date of securities or commodities, and agreements to compensate for loss caused by the happening of chance, including but not limited to contracts of indemnity or warranty and life, health or accident insurance.

(b) Engaging in contests of chance under

the following conditions:

(A) The contest is played for some token other than money;

(B) An individual contestant may not purchase more than \$10 worth of tokens for use in the contest during any 24-hour period;

(C) The tokens may be exchanged only for property other than money;

(D) Except when the tokens are exchanged for a beverage or merchandise to be consumed on the premises, the tokens are not redeemable on the premises where the contest is conducted or within 50 miles thereof; and

(E) Except for charitable, fraternal or religious organizations, no person who conducts the contest as owner, agent or employee profits in any manner from operation of the contest.

(c) Social games.

(d) Bingo or lotto operated by a charitable, fraternal or religious organization when no person other than the organization or a player profits in any manner from the operation of the lottery and when the organization has complied with the provisions of subsection (2) of ORS 465.100.

As used in this section, "charitable, fraternal or religious organization" means any person organized and existing for charitable, benevolent, eleemosynary, humane, patriotic, religious, philanthropic, recreational, social, educational, civic, fraternal or other nonprofit purposes, and who is also exempt from payment of federal income taxes because of its charitable, fraternal or religious purposes. The fact that contributions to an organization profiting from the contest do not qualify for charitable deduction for tax purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the Internal Revenue Code of 1954, as amended, constitutes prima facie evidence that the organization is not a bona fide charitable, fraternal or religious organization.

(5) "Gambling device" means any device, machine, paraphernalia or equipment that is used or usable in the playing phases of unlawful gambling, whether it consists of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices within this definition. Amusement devices which do not return to the operator or player thereof any-

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thing but free additional games or plays shall not be considered to be gambling devices.

(6) "Lottery" or "policy" means an unlawful gambling scheme in which:

(a) The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones; and

(b) The winning chances are to be determined by a drawing or by some other method; and

(c) The holders of the winning chances are to receive something of value.

(7) "Numbers scheme or enterprise" means a form of lottery in which the winning chances or plays are not determined upon the basis of a drawing or other act on the part of persons conducting or connected with the scheme, but upon the basis of the outcome of a future contingent event otherwise unrelated to the particular scheme.

(8) "Player" means a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein is a person who does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein. A person who engages in bookmaking is not a player.

(9) "Profits from gambling" means that a person, other than as a player, accepts or receives money or other property pursuant to an agreement or understanding with another person whereby he participates or is to participate in the proceeds of gambling.

(10) "Promotes gambling" means that a person, acting other than as a player, engages in conduct that materially aids any form of gambling. Conduct of this nature includes, but is not limited to, conduct directed toward the creation or establishment of the particular

game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases or toward any other phase of its operation. A person promotes gambling if, having control or right of control over premises being used with his knowledge for purposes of gambling, he permits the gambling to occur or continue or makes no effort to prevent its occurrence or continuation.

(11) "Slot machine" means a gambling device that as a result of the insertion of a coin or other object operates, either completely automatically, or with the aid of some physical act by the player, in such a manner that, depending upon elements of chance, it may eject something of value or otherwise entitle the player to something of value. A device so constructed or readily adaptable or convertible to such use is no less a slot machine because it is not in working order or because some mechanical act of manipulation or repair is required to accomplish its adaptation, conversion or workability. Nor is it any less a slot machine because apart from its use or adaptability as such it may also sell or deliver something of value on the basis other than chance.

(12) "Social game" means:

(a) A game, other than a lottery, between players in a private home where no house player, house bank or house odds exist and there is no house income from the operation of the social game; and

(b) If authorized pursuant to ORS 167.121, a game, other than a lottery, between players in a private business, private club or place of public accommodation where no house player, house bank or house odds exist and there is no house income from the operation of the social game.

(13) "Something of value" means any money or property, any token, object or article exchangeable for money or property, or any form of credit or promise directly or indirectly contemplating transfer of money or property or of any interest therein.

(14) "Unlawful" means not specifically authorized by law. [1971 c.659 §3a; 1971 c.743 §253; 1973 c.755 §1; 1974 s.s. c.7 §1; 1975 c.421 §1; 1977 c.550 §1]

gambling device which caused the charge to be brought was manufactured prior to 1941 and was not operated for purposes of unlawful gambling. [1971 c.743 §269; 1977 c.264 §1]

167.150 [Repealed by 1961 c.579 §2]

167.151 [1961 c.579 §1; 1963 c.480 §1; repealed by 1971 c.743 §432]

167.152 [1955 c.494 §1; repealed by 1971 c.743 §432]

167.153 Proving occurrence of sporting event in prosecutions of gambling offenses. In any prosecution under ORS 167.117 and 167.122 to 167.147 in which it is necessary to prove the occurrence of a sporting event, the following shall be admissible in evidence and shall be prima facie evidence of the occurrence of the event:

(1) A published report of its occurrence in a daily newspaper, magazine or other periodically printed publication of general circulation; or

(2) Evidence that a description of some aspect of the event was written, printed or otherwise noted at the place in which a violation of ORS 167.117 and 167.122 to 167.147 is alleged to have been committed. [1971 c.743 §270]

167.155 [Repealed by 1961 c.503 §3]

167.157 [1969 c.169 §1; repealed by 1971 c.743 §432]

167.158 Lottery prizes forfeited to county; exception; action by county to recover. (1) Except for bingo or lotto operated by a charitable, fraternal or religious organization, all sums of money and every other valuable thing drawn as a prize in any lottery or pretended lottery, by any person within this state, are forfeited to the use of the county in which it is found, and may be sued for and recovered by a civil action.

(2) Nothing contained in ORS 465.010 to 465.070 shall interfere with the duty of officers to take possession of property as provided by subsection (1) of this section. [1971 c.743 §271; 1977 c.650 §3]

167.160 [Repealed by 1961 c.503 §3]

167.162 Gambling device as public nuisance; defense; seizure and destruction. (1) A gambling device is a public nuisance. Any peace officer shall summarily seize any such device that he finds and deliver it to the custody of the sheriff, who shall hold it

subject to the order of the court having jurisdiction.

(2) Whenever it appears to the court that the gambling device has been possessed in violation of ORS 167.147, the court shall adjudge forfeiture thereof and shall order the sheriff to destroy the device and to deliver any coins taken therefrom to the county treasurer, who shall deposit them to the general fund of the county. However, when the defense provided by subsection (3) of ORS 167.147 is raised by the defendant, the gambling device or slot machine shall not be forfeited or destroyed until after a final judicial determination that the defense is not applicable. If the defense is applicable, the gambling device or slot machine shall be returned to its owner.

(3) The seizure of the gambling device or operating part thereof constitutes sufficient notice to the owner or person in possession thereof. The sheriff shall make return to the court showing that he has complied with the order.

(4) Whenever, in any proceeding in court for the forfeiture of any gambling device except a slot machine seized for a violation of ORS 167.147, and such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.

(5) In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (a) that he has an interest in such gambling device, as owner or otherwise, which he acquired in good faith, (b) that he had at no time any knowledge or reason to believe that it was being or would be used in violation of law relating to gambling.

(6) In any proceeding in court for the forfeiture of any gambling device except a slot machine seized for a violation of law relating to gambling, the court may in its discretion order delivery thereof to any claimant who shall establish his right to the immediate possession thereof, and shall execute, with one or more sureties, or by a surety company, approved by the court, and deliver to the court, a bond in such sum as the court shall determine, running to the State of Oregon, and conditioned to return such gambling device at the time of trial, and conditioned further that, if the gambling device be not returned at the time of trial, the bond may in the discretion of the court stand in lieu of and be forfeited in the same manner as such gambling device. [1971 c.743 §272; 1977 c.264 §2]

History: 1953 Comp., § 40A-19-5, enacted by Laws 1963, ch. 303, § 19-5; 1965, ch. 230, § 1.

Cross-reference. — For evidentiary rule regarding use of presumptions in criminal cases, see Rule 303, N.M.R. Evid.

Specific intent required. — The narrow definitions of gambling device and dealing in gambling devices in the New Mexico law require a specific intent to use or transfer for use with a gambling purpose, and use for entertainment alone would not subject the parties to prosecution under the gambling statutes. 1969 Op. Att'y Gen. No. 69-54.

Transporting devices to Indian country. — Under this section and 30-19-10 NMSA 1978 the state could seize gambling devices being transported across lands under state jurisdiction to Indian country. 1965-66 Op. Att'y Gen. No. 65-221.

Importation for entertainment. — Gambling

devices may be imported into the state and held for the purposes of providing entertainment for patrons of a nightclub which plans to use the devices with stage money and without any consideration or prize involved in the entertainment. 1969 Op. Att'y Gen. No. 69-54.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 36 Am. Jur. 2d Gambling §§ 82 to 106.

Paraphernalia or appliances used for recording gambling transactions or receiving or furnishing gambling information as gaming "devices" within criminal statute or ordinance, 1 A.L.R.3d 726.

Possession: validity of criminal legislation making possession of gambling or lottery devices or paraphernalia presumptive or prima facie evidence of other incriminating facts, 17 A.L.R.3d 491.

38 C.J.S. Gaming §§ 97 to 104.

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30-19-6. Permissive lottery.

Nothing in this article [30-19-1 to 30-19-14 NMSA 1978] shall be construed to apply to any sale or drawing of any prize at any fair held in this state for the benefit of any church, public library or religious society situate or being in this state, or for charitable purposes when all the proceeds of such fair shall be expended in this state for the benefit of such church, public library, religious society or charitable purposes.

A lottery shall be operated for the benefit of the organization or charitable purpose only when the entire proceeds of the lottery go to the organization or charitable purpose and no part of such proceeds go [goes] to any individual member or employee thereof.

Nothing in this article shall be held to prohibit any bona fide motion picture theater from offering prizes of cash or merchandise for advertising purposes, in connection with such business, or for the purpose of stimulating business, whether or not any consideration other than a monetary consideration in excess of the regular price of admission is exacted for participation in drawings for prizes.

Nothing in this article shall be held to apply to any bona fide county fair, including fairs for more than one county, which shall have been held annually at the same location for at least two years and which shall offer prizes of livestock or poultry in connection with such fair when the proceeds of such drawings shall be used for the benefit of said fair.

History: 1953 Comp., § 40A-19-6, enacted by Laws 1963, ch. 303, § 19-6.

Size of permissive lotteries of necessity limited. — Although the provision of Laws 1949, ch. 133, § 1 (former 40-22-16, 1953 Comp.) lifting the ban against lotteries conducted at fairs where entire proceeds were expended in the state for benefit of public libraries, churches or religious societies did not place a limitation on the size of such lotteries, the condition imposed confined them to petty lotteries since removal of profit from a lottery would greatly curtail the

size. State v. Jones, 44 N.M. 623, 107 P.2d 324 (1940).

Donation of gross proceeds necessary. — Under Laws 1949, ch. 133, § 1 (former 40-22-16, 1953 Comp.) a lottery scheme which appropriated only net proceeds to a charitable organization was illegal. "All the proceeds" meant "gross proceeds." Harriman Inst. of Social Research, Inc. v. Carrie Tingley Crippled Children's Hosp., 43 N.M. 1, 64 P.2d 1095 (1935).

Am. Jur. 2d and C.J.S. references. — 33 Am. Jur. 2d Gambling § 60.

54 C.J.S. Lotteries § 14.

30-19-7. Fraudulently operating a lottery.

Fraudulently operating a lottery consists of operating or managing any lottery which does not provide a fair and equal chance to all participants, or which lottery is conducted in a manner tending to defraud or mislead the public.

Whoever commits fraudulently operating a lottery is guilty of a misdemeanor.

History: 1953 Comp., § 40A-19-7, enacted by Laws 1963, ch. 303, § 19-7.

A.L.R. reference. — Recovery of money or property

lost through cheating or fraud in forbidden gambling or game. 29 A.L.R.2d 1213.

Chapter 14. State Lottery

SECTION

- 651. State lottery commission.
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§ 651. State lottery commission

(a) There is created a lottery commission which shall be responsible for the establishment and management of a state lottery.

(b) The commission shall consist of five members who shall be appointed by the governor, with the advice and consent of the senate. A member may be removed by the governor. A member appointed by the governor when the general assembly is not in session shall be subject to approval by the senate at its next regular, special or adjourned session. Members shall be appointed for three year terms. Any vacancy shall be filled by appointment for the unexpired term. The members shall serve until their successors are appointed and qualified. No member of the commission shall have any pecuniary interest in any licensee, licensed under the provisions of this chapter to conduct a lottery, nor shall any member of the commission have a pecuniary interest in any contract awarded pursuant to this chapter. No more than three members of the commission may be members of the same political party.—Added 1977, No. 82, § 2, eff. date, see note set out below.

Effective date; termination of chapter. 1977, No. 82, § 6, eff. April 27, 1977, provided: "This act [chapter] shall take effect from passage [April 27, 1977]. However, this act [chapter] shall terminate as of June 30, 1980 unless the 1979 general assembly, prior to that date, authorizes, by act, the continuation of a state lottery."

—Continuation of lottery. 1979, No. 54, § 1, provided: "Pursuant to Section of No. 82 of the Acts of 1977 [set out above], the general assembly authorizes the continuation of the state lottery under the terms, conditions, and provisions of No. 82 of the Acts of 1977 [this chapter]."

—Termination. 1979, No. 54, § 2, provided: "This authorization shall terminate on June 30, 1980 unless the general assembly, prior to that date, authorizes, by act, the continuation of a state lottery."

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of June 30, 1933 unless the general assembly prior to that date authorized by act, further continuation of the state lottery."
appointments. 1977, No. 82, § 3, provided: "In making initial appointments to the board created in section 1 of this act [this section] the governor shall appoint two members for a term of one year, two members for a term of two years and one member for a term of three years."
funding. 1977, No. 82, § 4, provided: "The state treasurer is authorized to advance a sum not to exceed \$250,000.00 upon warrants authorized by the commission and drawn by the commissioner of finance for the purpose of funding the initial expenses of the state lottery. All initial expenses shall be fully accounted for by the commission and repaid out of the state's share of first year lottery receipts."
legislative intent. 1977, No. 82, § 1, provided: "It is the intent of the general assembly to establish a state lottery. It is also the intent of the general assembly that such lottery be initiated at the earliest practicable date in order that it produce the maximum amount of net revenue consonant with the dignity of the state and the general welfare of the people."

2. Organization

The governor shall select one member of the commission to be its chairman.

The commission shall, biennially, subject to the approval of the governor, appoint a director.

The governor shall annually submit a budget to the general assembly.—Added 1977, No. 82, § 2, eff. date, see note set out under § 651 of this title; amended 1979, No. 59, § 19, eff. July 1, 1979.

1979 amendment. Subsection (b): Deleted the words "and shall fix his compensation".

For effective date; termination of chapter. For effective date and termination of chapter, see note set out under § 651 of this title.

3. Compensation

Each member of the commission shall receive \$30.00 a day and necessary expenses for time actually spent in the performance of the duties of his office. In no event shall the total of the per diems payable to any member of the commission exceed \$3,000.00 in any calendar year.—Added 1977, No. 82, § 2, eff. date, see note set out under § 651 of this title.

For effective date; termination of chapter. For effective date and termination of chapter, see note set out under § 651 of this title.

4. Powers and duties

The commission shall promulgate rules pursuant to chapter 25 of title 3, governing the establishment and operation of the state lottery. The rules may include, but shall not be limited to, the following:

1) Types of lotteries to be conducted, provided that no lottery

shall be conducted which depends upon the outcome of an athletic contest except that the lottery may be affiliated with a sporting event, or sweepstakes, where the outcome is determined solely by lot or random drawing and not by choice of the lottery participant;

- (2) Price of lottery tickets;
- (3) Number and size of prizes;
- (4) Manner of payment of prizes;
- (5) Manner and frequency of drawings;
- (6) The licensing of agents, provided that:

(A) no person who has not attained the age of majority shall be licensed as an agent; and

(B) no agent shall be in the business of solely selling lottery tickets;

(7) Ticket sales locations, which may include state liquor stores and liquor agencies; private business establishments; fraternal, religious, and volunteer organizations; town clerks' offices; and state fairs, race tracks and other sporting arenas;

(8) Method for sale of tickets provided that they may be sold only for cash;

(9) Manner of compensation of sales agents, claims agents and financial institutions involved in the operation of the lottery;

(10) Manner of selecting winning tickets;

(11) Apportionment of total revenues, within limits hereinafter specified, accruing to the state lottery fund among:

(A) the payment of prizes to winning ticket holders;

(B) the payment of all costs incurred in the creation, operation, and administration of the lottery, including but not limited to compensation of the commission, director, employees, consultants, contractors and other necessary expenses;

(C) the repayment of monies advanced to the state lottery fund for initial funding of the lottery;

(D) the transfer of monies to the general fund, to be used solely for capital expenditures or debt service.—Added 1977, No. 82, § 2, eff. date, see note set out below.

Effective date; termination of chapter. For effective date and termination of chapter, see note set out under § 651 of this title.

§ 655. License fees

A license fee shall be charged for each sales license granted to a person for the purpose of selling lottery tickets. The fee shall be fixed by the commission, but no license fee in excess of \$15.00

year may be charged.—Added 1977, No. 82, § 2, eff. date, see note set out below.

Effective date; termination of chapter. For effective date and termination chapter, see note set out under § 651 of this title.

56. Interstate lottery; consultant; management

a) The commission may develop and operate a lottery or the state may enter into a contractual agreement with another state or states to provide for the operation of the lottery. Approval of a joint fiscal committee and the governor shall be required for all contractual agreements with other states.

b) If no interstate contract is entered into, the commission shall obtain the service of an experienced lottery design and implementation consultant. The fee for the consultant may be fixed or based upon a percentage of gross receipts realized from the lottery.

c) The commission may enter into a facilities management type agreement for operation of the lottery by a third party.—Added 1977, No. 82, § 2, eff. date, see note set out below.

Effective date; termination of chapter. For effective date and termination chapter, see note set out under § 651 of this title.

57. Director and duties

a) The state lottery shall be under the immediate supervision and direction of a lottery director. The director shall devote his full time and attention to the duties of his office and shall not be engaged in any other profession or occupation.

b) The director shall:

(1) Supervise and administer the operation of the lottery within the rules adopted by the commission;

(2) Subject to the approval of the commission, enter into such contracts as may be required for the proper creation, administration, operation, modification and promotion of the lottery or any part thereof. These contracts shall not be assignable;

(3) License sales agents and suspend or revoke any license in accordance with the provisions of this chapter and the rules of the commission;

(4) Act as secretary to the commission, but as a non-voting member of the commission;

(5) Employ such professional and secretarial staff as may be required to carry out the functions of the commission. Chapter 3 of Title 3 shall not apply to employees of the commission; and

(6) Annually prepare a budget and submit it to the commission.—Added 1977, No. 82, § 2, eff. date, see note set out below.

Effective date; termination of chapter. For effective date and termination of chapter, see note set out under § 651 of this title.

§ 658. State lottery fund

(a) There is hereby created in the state treasury a separate fund to be known as the state lottery fund. This fund shall consist of all revenues received from the treasurer for initial funding, from sale of lottery tickets, from license fees, and from all other money credited or transferred from any other fund or source pursuant to law. The monies in the state lottery fund shall be disbursed pursuant to section 654(11) of this chapter, and shall be disbursed by the treasurer on warrants issued by the commissioner of finance, when authorized by the lottery director and approved by the commissioner.

(b) Expenditures for administrative and overhead expenses of the operation of the lottery, except agent and bank commissions, shall be paid from lottery receipts from an appropriation authorized for that purpose. Agency commissions may not exceed 5 percent of gross receipts and bank commissions may not exceed 1 percent of gross receipts.

(c) No less than 50 percent of gross receipts shall be paid out as prizes.—Added 1977, No. 82, § 2, eff. date, see note set out below; amended 1979, No. 54, § 3; 1979, No. 98 (Adj. Sess.), § 1, eff. date, see note set out below.

1979 (Adj. Sess.) amendment. Subsection (b): Provided administrative and overhead expenses of the operation of the lottery shall be paid from an appropriation authorized from lottery receipts except agency commissions may not exceed 5 percent and bank commissions may not exceed 1 percent of gross receipts.

Subsection (c): Increased prize percentage from "45" to "50" percent of gross receipts.

Effective date. 1979, No. 98 (Adj. Sess.), § 2, provided: "This act [which amended subsecs. (b) and (c) of this section] shall take effect from passage [March 26, 1980] except for the change in 31 V.S.A. § 658(c) [subsec. (c) of this section] which shall take effect July 1, 1980."

1979 amendment. Subsection (a): Deleted the words "from interest earnings" in the second sentence.

Effective date; termination of chapter. For effective date and termination of chapter, see note set out under § 651 of this title.

Commissions paid to lottery agents. 1979, No. 205 (Adj. Sess.) § 121, eff. May 9, 1980, provided: "Commissions paid to lottery agents shall not be considered an administrative expense for purposes of fulfilling the requirements of section 658(b) [subsec. (b) of this section] of Title 31."

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Report of the commission

The commission shall make an annual report to the governor at the general assembly on or before the tenth day of January of each year, including therein an account of its actions, receipts and expenditures under the provisions of this chapter, the practical effects of the application thereof, and any recommendation for legislation which the commission deems advisable.—Added 1977, No. 82, § 2, eff. date, see note set out below.

For effective date; termination of chapter. For effective date and termination of chapter, see note set out under § 651 of this title.

Post audits

All lottery accounts and transactions of the lottery commission shall be subject to annual post audits conducted by independent auditors retained by the commission for this purpose, with the approval of the auditor of accounts, as provided in section 163(9) of title 32. The commission may order such other audits as it deems necessary and desirable.—Added 1977, No. 82, § 2, eff. date, see note set out below.

For effective date; termination of chapter. For effective date and termination of chapter, see note set out under § 651 of this title.

51. Sales and purchase of lottery tickets

The following acts relating to the purchase and sale of lottery tickets are prohibited:

- (1) Persons convicted of a felony within five years of the date of making application shall not be licensed to sell lottery tickets;
- (2) No tickets shall be sold at a price higher than the price printed on the lottery tickets;
- (3) No tickets may be sold to individuals who have not attained the age of majority. However, tickets may be given as gifts to minors or any other individuals except as prohibited by this chapter;
- (4) No member of the commission or employee of the commission, or members of their immediate household, may claim or receive prize money hereunder.—Added 1977, No. 82, § 2, eff. date, see note set out below.

Revised note. At the beginning of this section "(a)" was deleted to conform to general V.S.A. style.
For effective date; termination of chapter. For effective date and termination of chapter, see note set out under § 651 of this title.

§ 662. Unclaimed prize money

Lottery prize winners will be allowed one year from their prize eligibility date to claim a prize. All prize money which is unclaimed after one year shall revert to the state lottery fund.—Added 1977, No. 82, § 2, eff. date, see note set out below.

Effective date; termination of chapter. For effective date and termination of chapter, see note set out under § 651 of this title.

§ 663. State gaming laws inapplicable as to lottery

Chapter 51, subchapters 1, 2 and 3 of Title 13 shall not apply to the sale of lottery tickets as provided in this chapter.—Added 1977, No. 82, § 2, eff. date, see note set out below.

Effective date; termination of chapter. For effective date and termination of chapter, see note set out under § 651 of this title.

§ 664. Prizes exempt from state and local taxes

The prizes received pursuant to the provisions of this chapter shall be exempt from all state, county, municipal and local taxes.—Added 1977, No. 82, § 2, eff. date, see note set out below.

Effective date; termination of chapter. For effective date and termination of chapter, see note set out under § 651 of this title.

§ 665. Penalties

Any person who is convicted of violating a provision of this chapter shall be fined not more than \$500.00, or imprisoned for not more than two years, or both.—Added 1977, No. 82, § 2, eff. date, see note set out below.

Effective date; termination of chapter. For effective date and termination of chapter, see note set out under § 651 of this title.

§ 666. Publication of odds

Any promotional advertising shall, to the extent practicable, estimate the general odds of winning.—Added 1977, No. 82, § 2, eff. date, see note set out below.

Effective date; termination of chapter. For effective date and termination of chapter, see note set out under § 651 of this title.

§ 667. Fiscal committee review

(a) Whenever the gross receipts of the state lottery fall below \$150,000.00 during any three month period after the commencement of the first game, the joint fiscal committee shall immediately investigate the condition of the state lottery, and its likelihood for continuing success. If, after investigation, the joint fiscal committee determines that continuation of the lottery is not in the best

ests of the state, it may order the termination of the state
city.

b) This section shall not apply in the event the commission
into a facilities management agreement pursuant to the
visions of section 656(c) of this chapter.—Added 1977, No. 82,
eff. date, see note set out below.

ffective date; termination of chapter. For effective date and termination
chapter, see note set out under § 651 of this title.

Chapter 15. Ski Tramways

SECTION

06a. Emergency orders.

07. Registration and fees

a) A passenger tramway shall not be operated in this state un-
the operator thereof has been registered by the department.
or before the 1st day of November in each year every operator
passenger tramway shall apply to the department on forms
ared by it for registration hereunder. The application shall
ain such information as the department may require and shall
ccompanied by a registration fee as determined by the board,
rding to the formula stated in this section. The department
assess total registration fees in the sum of \$43,000.00
ally, herein called "Fee Due State".

* * *

b) [Repealed.]

c) The board may, after thirty days notice to all registered
ators, for the year beginning November 1, increase or decrease
"Fee Due State" by an amount not to exceed thirty percent of
fee.

* * *

amended 1971, No. 227 (Adj. Sess.), §§ 1-3, eff. April 5, 1972;
No. 254 (Adj. Sess.), § 162(h); 1977, No. 119 (Adj. Sess.),
eff. Feb. 7, 1978.

7 (Adj. Sess.) amendment. Subsection (a): Assessment for "Fee Due
" changed from "\$20,000.00" to "\$43,000.00".

5 (Adj. Sess.) amendment. Subsection (d): Repealed.

1 (Adj. Sess.) amendment. Subsection (a): Increased total fees to be
collected.

Subsection (d): Increased dollar limit.

Subsection (e): Increased percentage figure.

Filed at the request of
Arthur G. Lusher, December 16, 1932
Signed by W. G. Quatman Sec. of A.

Rec'd Jan 25/33

10 days

RECEIVED IN ASSEMBLY

Jan. 18, 1933.

Julian H. ...
and CHIEF CLERK of Assembly

Jan. 18, 1933.

Referred to Comtee. on
Public Works.

George ... report
back from committee on

Public Works

unanimously, with the recommenda-

tion that it do not pass - that it be rejected

Jan 20, 1933 - Motion to reject was
adopted by the following vote
Jan 24, 1933 - 6 ayes & 6 nays

REPORT OF STANDING COMMITTEE

Mr. Speaker

Your Committee on Public Morals
has had Initiative Petition ~~the~~ No. 1 under consideration, and begs leave to
report ~~unfavorably~~ favorably on the same, with the recommendation that *it do not pass - that it*
be rejected.

Thomas M. Carroll

Chairman of Committee.

Nevada State Legislature
 Thirty-sixth Session
 Assembly Chamber,
 Carson City,

February 20th 1933.

Report of Committee on Public Morals on Initiative Petition No. 1. Said petition filed at the request of Arthur F. Lasher December 16th 1932 (signed) W.G. Greathouse, Secretary of State. Received by the Assembly January 18, 1933 (Signed) Julian Thurston, Assistant Chief Clerk. Referred to Committee on Public Morals.

Said Petition contains ~~words~~ an act prohibiting gambling or the use of any house or building for gambling purposes, prohibiting the possession and providing for the destruction of gambling devices. prescribing penalties for the violation, and providing for the enforcement of said act, and repealing all acts and parts of acts in conflict therewith. The enacting clause of said act reads "The People of the State of Nevada do enact as follows:" Thereafter said act ~~is detailed in 9 sections.~~

The Committee on Public Morals reports unfavorably on said Initiative Petition NO.1 with the recommendation that it do not pass, and that it be rejected instead of ignoring it. This procedure would automatically place said petition before the people of the state to vote upon it at the next general state election. To approve said petition would at once repeal the present state gambling law. This would be unfair to the State, counties and cities as they all receive a large revenue from the present gambling law, and at a time when this revenue is sorely needed. It would also be unfair to gambling establishments, as they have made large investments under the present gambling law, and besides they furnish a large daily pay roll which is a great benefit to every community where it exists. The State Controller's report for the period ending June 30th 1932 shows the State received in gaming licenses \$69,109.77.

In addition the cities and counties throughout the state collect a large revenue for their own use from gaming licenses from the present law. as an illustration, ~~why~~ the revenue from only one city, and one county is herein mentioned, to wit:

For 1931	
Las Vegas City.....	\$13,248.30
General Fund Clark County.....	22,295.88
Collected for the State.....	<u>11,961.02</u>
Total Gambling fees collected in 1931.....	47,505.00

For 1932	
Las Vegas City.....	20,250.00
General Fund Clark County.....	13,865.50
Collected for the State.....	<u>11,429.50</u>
Total Gambling fees collected in 1932.....	45,545.00

In these two years Las Vegas and Clark County collected in gambling licenses ~~of~~ \$93,050.00 of which \$23,390.52 was for the State.

Formerly a very large revenue in the form of graft was paid by gambling establishments for law evasions and special privileges to parties generally known as grafters who made gambling a racketeer industry for illicit personal gains. These same grafters injected their activities into politics to the great demoralization of politics. Some of this grafter element are now credited with urging the repeal of the present ~~law~~ gambling law by the way of advocating the adoption of this initiative petition--which prohibits all forms of gambling except horseracing.

Accordingly we see the advocates of antigambling laws and signers of this petition working in accord with grafters and racketeers who favor the adoption of this petition.

The signers of this petition are honest, sincere and conscientious people who on principle are opposed to any form of gambling except horse racing, and who therefore believe in prohibition, instead of the wiser form of regulation.

Prohibition, as illustrated in the 18th Amendment and in the Volstead Act, never prohibits, and it would work out the same way under gambling prohibition. Prohibition laws of this class, which try to legislate morality into people, are an evil in themselves, and finally always do more harm than good.

Regulation may have its faults, but is always open to amendment. One of its greatest benefits is its freedom from fanaticism and fanatics. Those who believe in regulating licensed gambling are just as honest, as sincere, and as conscientious as those who favor prohibition, and believe that regulation is the better and more practical way for handling a very complex subject for the state and all concerned.

If this petition were enacted by the people, it would cause bootleg gambling to prevail throughout the entire state.

It prohibits even social games in the home, such as bridge, five hundred or whist, when a prize or any representative of value is a feature. In this particular section 6 reads: "This act shall not be construed to prohibit social games when not played, either directly or indirectly, for money, property, checks, credit, or other representative of value." Social games in violation of section 6 would also be in violation of section 3 which prohibits the possession of any cards, tables, or gambling devices of any nature. Social games in the home in violation of section 4 provides for the seizure by search warrant of such cards, tables or gambling devices. In such cases section 5 would make a violation of the act a gross misdemeanor, punishable, upon conviction, by a fine of not less than \$100.00 more than \$1,000.00, or by imprisonment in the county jail not less than sixty days nor more than a year, or by both such fine and imprisonment. Upon a second conviction, then it becomes mandatory on the court to impose the prison sentence, either with or without the fine.

Under sections 3, 4, 5 & 6 social games in the home played for a prize, or other representative of value, or a home game of poker, would subject the players to arrest by any neighbor fanatic ~~whom the prohibitionist~~ upon complaint of any neighbor fanatic who wants to prohibit gambling.

The same sections, 3, 4, 5 & 6 in more detail are also directed against the commercial or professional gamblers. Against this class the history of gambling proves they are going to gamble anyway, and under prohibition gambling laws, they have to lean on somebody, and the result is you find them leaning upon the graffer and the racketeer and corrupted officials. In such case, the graft revenue goes to the graffer, the racketeer and to the corrupt officials, and the state, the cities and the counties lose the legitimate revenue.

Thomas M. Carroll
Chairman Public Morals Committee
B. H. Garner
F. L. Beverly
Joe S. Cooper
Fred W. Black

members.

LEGALIZATION OF GAMBLING

General Atmosphere of the Period

Nevada had experienced in the two years prior to 1931 a tremendous decline in the mining industry. With the drop in silver prices, state government was worried about a loss in revenue. On the other hand, the depression in Nevada did not result in a dire unemployment situation due to the work provided by the construction of the Hoover Dam, a federal highway program, and increased activity at the Naval Ammunition Depot.

Political Atmosphere of the Nevada Legislature, 1931

In 1931, the Assembly was equally divided between Republicans and Democrats. In a surprise move an independent assemblyman threw his support to the Republicans, thus enabling them to organize the Assembly. Republicans easily won control of the senate, capturing 13 out of 17 seats. A Republican Assemblyman Tobin from Humboldt sponsored AB 98 to legalize gambling, although the newspapers reported that the bill had previously been in the pockets of several Democrats. Democrat leadership was purportedly worried about the image of the party and discouraged sponsorship. (Reno Evening Gazette, Feb. 13, 1931, p. 2)

In any event, when the votes were counted in the Assembly, 13 out of 17 Republicans supported the measure, with 3 Republicans approving and 1 abstaining. Ten out of 18 Democrats in the Assembly favored the bill. The one independent assemblyman also voted for the bill. On the senate side, 11 out of 13 Republicans favored legalizing gambling, with one Republican "no" vote and one abstention. Of the four Democratic Senators, two voted for the bill and two against.

In summary, Republicans were strongly in support of AB 98 and Democrats were fairly evenly divided on the question.

Following is the vote tally on the 1931 bill to legalize gambling in Nevada:

Assembly Vote on AB 98:

24 Ayes, 11 Nays

Ayes--Alward (D-Clark), Bellinger (D-Elko), Black (R-Washoe),
Bradshaw (D-Lyon), Branson (R-White Pine), Bugbee (D-Lyon),
Carpenter (I-Perishing), Dalzell (R-Nye), Dixon (D-Lincoln),
Dunseath (D-Washoe), Falls (R-Washoe), Finney (R-Clark),
Fitzgerald (D-Nye), Frolich (R-Washoe), Georgetta (R-White
Pine), Hamlin (R-Mineral), McQuillan (R-Nye), Moorman
(D-White Pine), Pearce (R-Elko), Sadler (D-Eureka), Spradling
(R-Ormsby), Tobin (R-Humboldt), Walts (R-Washoe), and
Wheeler (D-White Pine).

Nays--Cobb (variously listed as I and D, voting D-Storey),
Fussman (R-Douglas), Kenny (D-Churchill), Kieppe (R-Washoe),
McAuliffe (D-Esmeralda), Malone (D-Washoe), Matthews
(D-Elko), Mulcahy (D-Washoe), Noble (D-Churchill), Riddell
(D-Elko), and Small (R-Washoe).

Senate Vote

13 Ayes, 3 Nays

Ayes--Burt (R-Lincoln), Bush (R-Humboldt), Cole (R-Nye), Dressier
(R-Douglas), Fairchild (R-Elko), Friedhoff (D-Lyon),
Getchell (R-Lander), Handley (R-Eureka), Heidtman (R-
Washoe), Henderson (R-Clark), Miller (R-Mineral), Molini
(D-Esmeralda), and Proctor (R-White Pine).

Nays--Coryell (R-Storey), Dolf (D-Churchill), and Winters (D-Ormsby).

2. Creation of additional sources of revenue and stimulation of the tourist industry.

On the whole this aspect of the legalized gambling issue was played down, especially in the northern newspapers of the state. Yet, it is significant to note that most of the disagreements within the legislature itself revolved around which level of government would get what share of the gambling revenue pot. County interests and city interests wrestled over which entity deserved the greatest percentage of revenue from gambling licenses.

According to the Las Vegas Review, the measure to legalize gambling was billed as a device to attract millions of dollars to the state. (Las Vegas Review, March 21, 1931, p. 8) Speculation that the bill had been promoted to increase Nevada's attraction to tourists cannot be entirely dismissed, since it had barely passed when construction of casinos began in Reno, Las Vegas, Elko and Winnemucca.

3. General liberality of the 1931 legislature.

The 1931 legislature was described by the Las Vegas Review as being composed of cowpunchers, miners, ranchers and divorce lawyers. The atmosphere created by these legislators was certainly not one of pious conservatism. The same legislature which legalized gambling also gave the state a six-weeks divorce law and refused to sponsor a state prohibition bill. The Las Vegas Review claims that during the 1931 session of the legislature not one bill was introduced to restrict personal liberties. (Las Vegas Review, March 20, 1931, p. 1)