MINUTES OF HEARING - GAMING BILLS BEFORE COMMITTEE ON COMMERCE - 55TH NEVADA ASSEMBLY SESSION - FEBRUARY 15, 1969

Present: Wood, Mello, Torvinen, Espinoza, Hafen, Bowler and Capurro.

Absent: None

Also Present: Professor Richard M. Buxbaum, Professor of Law, School of Law, University of California at Berkley;
Mr. Charles Munson, Director Gaming Industry Assoc.;
Mr. Ed Bowers, Executive Secretary of Gaming Comm.;
Mr. Frank Johnson, Chairman, Gaming Control Board;
Mr. John W. Diehl, Chairman of Gaming Commission;
Mr. Frank Brown, Gaming Commissioner;
Mr. Les Kofoed, Harolds Club;
Mr. Jerry Higgins, Sparks Nugget;
Mr. Gionotti, Harrahs Club;
Mr. Ashelman, Attorney at Law;
Mr. Howard F. McKissick, Speaker of the Assembly;
Assemblymen Swackhamer, Dini and Bryan;
Representatives of the Press Rooia, Ryan and Saltzman.

Chairman Wood convened the hearing at 11:00 a.m. and discussion proceeded with A.B. 254, making certain technical changes regarding gaming licensing and control. Chairman Wood announced that this bill was introduced by the committee and referred back to commerce.

Diehl: The sole purpose of this bill is to clear up technical language and take care of problems encountered in the past. The bill is for explanation purposes only.

Johnson: The first change is on page 1 beginning on line 9. This amendment was aimed at church organizations and others who hold bingo games. The various charitable or educational organizations who have bingo as fund raising enterprises would go into the hole if they were required to obtain licenses.

The next change on line 20 "an action may be brought even though the person owing the amount is not a gaming licensee under the provisions of this chapter". This has been added in an effort to collect fees from those who have given up or lost their license; Those who still collect money on which taxes are owed to the State.

Diehl: The Commission has no difficulty collecting fees and taxes on active licensees because they are subject to license revocation but after the license has been given up or terminated, our cont[illegible] ceases. This just gives us the right to collect on it later.

Johnson: Page 2, line 26 gives the Board the right to set investigator costs of applicant coming in. This spells out our right to do so.

Page 3, line 7 states as follows: "The Commission may grant a license to a foreign corporation if all security holders of the corporation are licensed pursuant to this chapter." This addition permits smaller companies with fewer people to come under this act. Other changes on this page simply adds the Board's jurisdiction to investigate violations in chapter 465 in addition to other chapters. Chapter 465 is entitled "Gambling crimes and penalties".

Page 4 we have taken out the word "dealer" and inserted "gaming employee". We ran into this problem in several of the actions taken regarding cheating. We could go against the dealer involved, but not the pit boss, or other employees who may have had knowledge of the cheating. We feel the word "gaming employee" allows us to get to everyone involved in the offense and not just the dealer.

Other changes on pages 4,5,6 and 7 are simply amendments to the gaming act following existing law.

Wood: Can we go back to page 4, Section 7 and get some further clarification?

McKissick: At this point we enter into the field of corporate licensing. I sent the batch of gaming bills to Mr. Buxbaum together with A.B. 148 and S.B. 89 on corporate licensing and A.B. 101 on multiple gaming licenses. This is where they intertwine. Mr. Buxbaum has looked at this and if you have no objections, we might ask if he has any questions on these.

Wood: We have no objections to inter-relating these subject matters.

Buxbaum: Is this particular section contingent upon the passage of A.B. 148 or S.B. 89?

Johnson: No, it applies to existing law.

Buxbaum: It wasn't quite clear to me after reading Section 7 whether there was any intertwining of the bills. Otherwise, I noted that the last sentence is an advance on the present statute.

Wood: Any comments?

Munson: The gaming Industry Association has no objection to the proposals on 254. We feel it is proper and desirable legislation. With the possible reservation that sections on the corporate licensing law need to be in the changes to existing law in the event no other corporate licensing law were to be enacted to bring it into agreement with present law.

Swackhamer: On Page 3, line 7 which states: "The commission may grant a license to a foreign corporation if all security holders of the corporation are licensed pursuant to this chapter."

I suppose that makes reference to the material on page 6 starting on line 6 "Maintain an office on the licensed premises in Nevada" etc. Is that correct?

Diehl: I suspect that they do tie in.

Swackhamer: On page 6, line 15 beginning "Refrain fromany public offering of any of its securities unless such public offering has been reported in advance to the commission." How far in advance must this be reported?

Diehl: There is no specific time requirement; at the present time at least. There are large hotel chains trying to get into Nevada now and they could if we gave them the means to do so.

Swackhamer: I think the concern of us all is to make sure that promoters are not able to use a corporate license as a vehicle to build up a casino.

Diehl: This is covered in the regulations.

Swackhamer: But if it were not their intention to make a public offering the language that you are not taking out on page 2 (c), "requiring fingerprinting of an applicant or licensee or employee of a license or other method of identification" Don't you think that will become a little unwieldy?

Diehl: It could very much so. Perhaps this is set up to take care of the companies dealing with 10 or 14 people. With more people it could become very burdensome.

Torvinen: I have looked in the statutes hopefully to find a definition of a foreign corporation relating to the gaming industry.

Diehl: There is none. The definition in Regulation 15 is stated as follows: (Mr. Diehl read definition) We have adopted this by regulation only but there is no definition in the statutes.

Wood: Do you feel the definition is lacking and needs to be determined?

Diehl: Not at this time. It would be taken care of in any corporate licensing act that might come up.

Buxbaum: In Section 9, it appears to have its own definition of a foreign corporation which does not seem to agree with the definition you have given. It is written into the bill so I assume it is referring to out of state or parent corporations. On page 6, line 16, "Refrain from any public offering of any of its securities unless such public offering has been reported in advance to the commission." rather than "approved by the commission". Why was this amendment proposed?

Diehl: I don't know why counsel has suggested that change but I do feel "approved by" should remain in the act. Our counsel is in Las Vegas so I'm unable to make the reason known right now. We could

have a problem if the act leaves something to be desired. We hoped this would be cleared up by the corporate licensing act this session. The subject regarding foreign corporations - in Section 9, it refers to them, but it does not give a direct definition.

McKissick: Unless we get corporate licensing act, we had better be sure this is in good shape. There is a problem in Section 9. You have taken out on page 5 "have the conduct of gaming among the purposes stated in its articles of incorporation". I can see possible prolems arise. Also the change in Section 8 on page 6 "avoid" changed to "refrain"; this had better be right in case the corporate licensing act does not go through.

Swackhamer: On the bottom of Page 5, "Execute an agreement with the commission". In your opinion, Mr. Buxbaum, would such a provision be defensible in Court?

Buxbaum: I am not quite sure to whom the agreement goes. Does it go to a foreign parent or a Nevada corporation? It does not come into affect until the subsidiary asks for licensing. I don't know the regime that well. Is this required each year or is it a first year request only? If it were a re-application, it could be asking a lot.

Diehl: This is just a first year request.

Buxbaum: In any case, no monetary interest can be taken away since no license has been issued at that point.

A.B. 253

Wood; This bill clarifies prohibition of cheating devices in gaming. This was introduced and referred to the Commerce Committee.

Johnson: Line 13 of the bill, "might make the game more likely to win or lose" We feel this does nothing at all. We intended to alter the wording. Each time you deal a hand you are more likely to win or lose.

Capurro: Do you mean the language is ambiguous?

Johnson: It just doesn't mean anything. Attorneys have convinced me of this. Any time you have any action at all the game is more likely to win or lose. The definition of the other sub-sections would handle the problem.

Capurro: Then we will need an amendment on this.

Munson: Our Association has no objections to this.

A.B. 102:

McKissick: I introduced this bill at the request of a group of CPA's handling accounts for gaming clients, in particular Chanslor Barbieri & DeWhitt. It arose because of the requirement for the gaming client to put up cash deposits. They felt they should be allowed to put up something such as a time certificate earning maybe 5% interest rather than cash. Is there a problem for the commission in this respect?

Bowers: We appreciate the concept in the matter. It is usually a sizeable amount of deposit required. To give some explanation of the problems involved, I will start with S.B. 79 which was submitted to the Finance Committee in 1967. and eventually passed. The deposits in a fiscal year totalled $737,000 and in 1968-69, an additional $379,000 was deposited. In the last 1 and 1/2 years, the total of $1,316,000 was on deposit. There was no provision for the establishment of a trust to hold the funds until the casino ceases operation. This was discussed with the authorities and it was decided to deposit these funds into the General Fund of the State giving the administration the use of them. This is a delicate situation. Prior to 1967, it was not handled this way. S.B. 79 proposed to amend NRS 463.370, Section 3. This provided that the licensee is required to pay fees on his financial status at the start of business and to make deposit accordingly. Thereafter the licensee remained in an advanced pay status. Thereafter it was learned that the State was losing money because when they went into business, the initial phase found them in a better position financially then when ceasing their operation. Even though the seller will present to the buyer an increase in the operation, we know through experience that this is not so. Upon termination the Board Audit Staff was required to conduct an audit to find out if there was a deficiency or overpayment requiring the state to make a refund. Generally since that time of July 1, 1967, the Advance Deposit Law showed 15 licensees have terminated business under this law. One major casino had $83,000 in combined deposits. After the audit which showed $58,000 in liabilities, the state was required to make a refund of $25,000. When you consider the cost of audit: 612 hours approximately at $5.25 per hour - $3200, and the overhead of 40%, it amounts to $4500 for both administration and audit expenses. This in addition to the $25,000 refund brought the total loss to the State to $29,500. The real problem arises when a business ceases and the records are not always available for audit.

There are 1,000 licenses in the State, 840 of which are restricted, meaning they operate 15 or less gaming devices. They are on a flat fee basis, not percentage. Of the 160 which operate 16 or more gaming devices, 100 are small operations with limited gaming devices. That leaves 60 major casinos comprising 95% of the State's revenue. These are the ones the state looks to. Not many have changed hands in the past until just recently. It is doubtful that there will be a large turnover in the industry in the future, but if there were, the state could be obligated to affect more refunds than can be recovered.

Johnson: A proposed measure by Senator Dodge has indicated that these advance fees would be based on the next succeeding quarter, the pre-1967 law. I can understand the concept in letting the licensee benefit, but as long as these funds are being put into the general fund, the State would lose a lot of money to change it.

Wood: If this were to become part of the gaming act as proposed, what about the concept that it be an investment to the firm putting up the securities. In case of default, it would become automatically payable to the State.

Johnson: At the time the licensee begins operation, he is allowed to put up bond until the first fourth quarter of operation. This can be for a maximum of 29 days. This can be put in the form of cash, or negotiable securities or bonds. Often they are time certificates.

Capurro: There is no provision for what a negotiable security is. Would any of them be acceptable to the Commission?

Johnson: No, it would have to be approved by the commission before being accepted.

A.B. 101:

McKissick: The basic theory of this bill is that if we cannot enact legislation for the control by the gaming commission on multiple and corporate licensing, I would just as soon kill them all and leave it the way it is. However, we have been under this act since 1959 without any great amendments. I have opposed corporate licensing until 1967 when the Las Vegas area developed monopolistic tendencies in the gaming industry; Hughes acquiring so many casinos. I did not feel this was doing any great harm. Any risk is far out-weighed by the benefits. There are others; Del Webb, Harrah, etc. The problem came up in the 67-68 session when Del Webb had to take back the Thunderbird and pay the creditors. Some legislators in Clark County felt if these large entities continued, they would gain monopolies, they became alarmed and they requested legislation. Any regulations enacted this year could be changed next year. We have been fortunate in the past to have competent men on the Board of Commissioners, but this could change in the future. We thought rather than putting a large anti-monopoly act into effect which would give all details such as amount of tax to be paid, number of employees, etc. the guide lines would not give us enough leeway to put it into the written law. The powers to regulate are given in the 1959 act wherein it says "including but not limited to the following:..." Several categories follow. Mr. Dickerson had some thoughts on the multiple licensing and I was eventually referred to Professor Buxbaum by Mr. Newman. He is an authority on Anti-Trust legislation. Too, we wanted to attempt through our own legislation to tell the Federal Government to stay out of our affairs until the control board had the opportunity and the commission also of looking into these matters.

I was hoping we could cover this by putting a little anti-trust wordage into it. After all, there are no other experts on gaming than ours. When the Justice of the Supreme Court put a stop on the sale of the Stardust, we had nothing on the books to handle it, so no way we could stop the Federal intervention. I wonder why we should be required to put this into our legislation. Michigan has never enacted a law aimed at Henry Ford; I see no reason why we should do so with Hughes, At that time, Laxalt said to go ahead and later he said to hold up on it. Recently, he has said to go to work on it again. I know now, of course, there is no possible way to keep the Federal Government out if they want to come in. Mr. Zimmerman, Anti-Trust, wrote a letter to Laxalt regarding the action U.S. vs. Papst in Las Vegas. This regarded the ownership of motel and hotel rooms and they were fearful that there would be a monopoly by corporations combining. The Justice Department in clarifying the situation, described Las Vegas as a peculiar section of the country. We are not prevented, however, from making laws which would be beneficial to us in intra-state affairs.

This bill is not the way I submitted it to the bill drafter though. It has been watered down, so to speak.

Buxbaum: To comment on this, it is not the same; it has some differences from the one we wrote.

Ashleman: (Mr. Ashleman introduced himself and stated that he had to catch a plane back to Las Vegas but would like to heard regarding this bill. He stated that he had defended many Anti-Trust actions and was now in the process of bringing an action. He stated that this bill would greatly complicate the functions of our courts and attorneys. For instance, in Section 3 "endanger the security of employment of any employee in any gaming establishment operated by such licensee or affiliate.") I wonder if you want to make this amendment. It could have more unfavorable than favorable results. When you get into the employee portion, you are affecting the function of union management problems. There are already causes of action in that area. I wonder if the language is too strong. Perhaps there is other legislation which I have not seen which covers this. Does this section stop a present licensee from gaining a monopoly or only affects a new licensee?

Buxbaum: Do you feel that this act may complicate an attorney's defense? It is my opinion that it would have no affect on the judgements made. I know of no case where the existing laws have prevented the enactment of the Clayton-Sherman Anti-Trust Law. It may make rise for new statutes, maybe following federal precedent. If the legislature feels it is not wanted, it can be excluded. The courts can apply a private remedy.

(Mr. Buxbaum stated that Anti-Trust was his specialty both in the legislative field as well as the academic. He then explained the background for the Anti-Trust Act. He stated there is usually no need for the anti-trust to be established in a state unless the industry involved getts too close to that area. Whether or

not the industry warrants the establishment of an anti-trust department within the state to control must be decided by the state. He noted the Cartwright Act established in California and reiterated that there was no way possible to keep the Federal Government out. The same transactions may be subject to two enforcement agents; the state and the Federal Government. The Government has the right to bring Anti-Trust action if there is a monopolistic practice in the state. The State Anti-Trust statutes tend to be limited in enforcement of local problems. He said the situation in New York regards to Market Industry is similar. Anytime Anti-Trust is involved, you can expect Federal interest in the industry. It is a kind of political balance.)

If the State thinks there is a problem and there is an affect on the gaming industry, and you cannot trust your statutes to handle it, then legislation should be enacted. I can help you with this matter because in drafting the necessary legislation it could be fashioned after the Sherman-Clayton Act including the definitions and powers of control.

Wood: Will you introduce a new bill on this?

McKissick: We will be better able to know what to introduce when this has been discussed. Some words have been left out.

Buxbaum: On Line 14, Subsection 3, it is probably best if you strike the words "of any employee". This was put in to prevent the major casinos from monopolizing the labor field.

Mr. Buxbaum was asked if it was necessary in Lines 3, 4 and 5 to clarify the prevention of issuance of a license to an existing licensee.

Buxbaum: There has to be a correct way you can revoke an existing license or you are getting too close to a monopoly. It was not the intention at the time of drafting of the bill to prevent additional licenses from being granted to existing licensees. I don't know whether you plan to call in existing licensees for review under the Anti-Trust regulations. I don't understand the system here.

The other thing is that in sub-section 2, I wonder if the words should not be added "is not to be issued as follows:" It was intended to have an extension rather than a narrowing affect.The way it is presently phrased, it is narrowed down rather than being a separate point. I think a modification is in order on this.

Those are the major points. If there is any interest on the part of the committee, I have the language necessary for sub-section 2.

McKissick: That was the way it was given to the bill drafter and it came back differently. The question now, is if the gaming commission made the correction, there must have been a reason for it. Evidently, the committee and the commission have not worked with the bill drafter on this. Or else, the bill drafter was instructed. I would suggest that perhaps Mr. Buxbaum be asked to take A.B. 101 and line for line go over it with the committee to have it changed.

If this bill were to be adopted as is, it would have a strong impact on the industry.

Munson: If agreeable, we would like to have our attorneys examine it before we make any verbal remarks on the bill.

Wood: If the committee can receive the recommended changes we can proceed with the amendments. I think it should be lined into the present bill.

Capurro: If Mr. Buxbaum does not mind, what are the changes to be made. It would be good to go over them while he is here to discuss them.

Buxbaum: I would leave sub-section 1 as it is. On Sub-section 2, my idea is as follows: (Mr. Buxbaum then cited the recommended change and the amendment is attached hereto) I believe this wording will go better with what the courts have been using in this regard.

Wood: How would this proposed amendment affect a firm considered to be doing business inter-state in nature and yet through local operations permitting a gaming license.

Buxbaum: I would expect this to operate on such a company. Any nationwide company such as a hotel chain. For instance, if a supplier has pressure brought on him to furnish his goods or services to a Las Vegas operator at a, say 40%, discount, because such operator does business in other states. This could be in violation if it can be shown to be detrimental to the competition.

Diehl: If you find these practices being engaged in you have the right to enforce fair practice through licensing power. There is a precedent here which allows the state courts to have such a regulatory statute. It exposes the company performing the violation and regulates this type of practice. I can see various problems arising by giving the competitors cause of action because of the Anti-Trust act. This is a personal opinion but I don't feel this is what we are after. There are already too many problems from actions being brought against competitors. As I understand it, you feel the reason for this statute is because we may have a change in the board or the commission which may not benefit the regulations as they are. I think we might be getting too detailed. We need a legislative explanation that this is what we want to control. Then we should concern ourselves with a very simple statute which I think could be brought about. without extended causes of action for a competitor. (Mr. Diehl then presented his suggested language) I don't feel we are interested in a little Anti-Trust act as such. We have already done this by legislation. The commission and the board can be given the authority to prevent any problems in this area.

Johnson: The diminishing of the competition will not be for the good of the state.

Capurro: Have you used this type of legislation before?

Diehl: Every license application is considered by the board and commission in light of all criteria available and all existing laws and statutes.

(When asked if they could do the same thing with their regulations as could be done with A.B.101 as it is proposed, Mr. Diehl asked if it was the intention to take the regulation of the law out of the control of the board.)

Buxbaum: I don't believe the law would give competitors more cause of action. It is just a regulatory measure into the criteria for issuing multiple licenses.

Hafen: I wonder whether this would be considered vertical integration. For instance should an operator decide to provide his own supplies rather than buying from other suppliers, what is the affect on this. Is this an area where you would come into it?

Johnson: That is not covered by this particular regulation. There is no doubt in my mind that there are areas in the statutes which need to be strengthened in order to solve these problems after they arise.

Buxbaum: The bill would cover this. Subsection 1 would allow the agency to handle any problems arising in this category.

(Mr. Buxbaum then proceeded to quote the reasons why the commission has the implied right of action. "No person shall..." and stated that the proposed amendments would be submitted to the committee for their consideration.)

Munson: I feel we may be falling into superfluous legislation. The total volume of business which is included in the criteria to prevent unsuitable methods of operation, in our judgment it would give the commission the right to move into any area they feel constitutes their approach. We feel while monopoly is a peril, the regulations of the commission are adequate. If there is a question about the power of the commission to make and enforce such regulations, maybe the legislature might use a directive to the commission on this.

Wood: I have found where a state agency has extensive powers and has been charged with the administration of its own regulations as approved by the agencies that the affect is much better than in those areas and agencies where we have compounded the situation by compilation of laws which have not been in the best interests of the industry.

Kofoed: If the purpose of this legislation is to protect us from certain people on the commission, it certainly has nothing to do with that. Regardless of who is serving, whether it is enacted or not, the commission still has to decide whether there is a monopoly.

Capurro: I wonder if this law could be used to help in a problem, say to allow the commission to investigate a matter rather than the Federal Government.

Munson: Naturally we would prefer to deal in matters like this with authority on the local level. However, the Government can still step in and we have considered that if the commission is granted these rights, it could provide ample protection without Federal intervention when such a problem should arise.

McKissick: If the industry is opposed to A.B. 101, maybe we should just leave everything the way it is. It was proposed to assist in giving ratification to the guide lines on the monopolistic problems. Is it wise for the legislature to get involved in this area of monopolies and practices, or just leave it.

Buxbaum: I don't know. The answer would be incomplete right now. With regard to the multiple license criteria, the way this act is set up, it is compatible with 463.150.

Diehl: I don't object to this type of legislation, but I feel it could be done with a small type of legislation. I highly endorse some type of an act that would specifically give us such power to enforce such legislation, but I feel we do have the powers at the present time. It is included under our general powers. I want to get it across that we are not opposing this. We would appreciate some form of clarification. It would be much easier to enforce. Maybe a statement of policy or something.

McKissick: Is that regulation covered by the present statutes?

Buxbaum: If we try to utilize the existing language to guide in the event of court action, perhaps by inserting "no license should be issued unless the commission upon a hearing shall find that the following are so:...." That would be a suggestion.

Diehl: We would want some type of direction on this.

Wood: Will you include with the other proposed amendments, a proposal for the additional language?

Buxbaum: Yes.

Wood: In giving thought to this type of legislation, I ask that you do so with the thought in mind that we have professed to the Federal Government on more than one occasion that if they would leave us alone we will take care of our own problems in the State of Nevada. If we confuse the issue by placing proliferous legislation we would be asking for continued intervention. When these proposed amendments have been presented to the committee, we will give notice at the time of hearing for the benefit of those interested in this matter. We had hoped to discuss some of the aspects of 148 today.

Buxbaum: My comment on the checking of the suitability of owners of holding, parent or grandparent corporations of Nevada gaming corporations is how it may be reflected in the proposed bill. Distinction between these parent corporations which are small private companies.

(Mr. Buxbaum then presented his views on A.B. 148 regarding the parent or grandparent corporations of the Nevada corporations.)

There is a check on these, but it is a limited check. If the idea is that the public companies are adequately controlled by the S.E.C.; I would disagree that the nature of the S.E.C. subdivision involved has the right to make that type of a determination. It is not so much the person as it is those items such as the issuance of stock, the person's right to ask for shareholders meeting, etc. The S.E.C. controls are financial, not in the suitability of the man as this bill has.

McKissick: Should it rest to the discretion of the gaming commission in this field? Say the same type of discretion given to the private companies?

Diehl: Regulation 15 does give us the right of examination this is under general powers. I would suggest that A.B. 148 and S.B. 89 together with Regulation 15 be studied at the same time.

Wood: Would it be possible for you to provide the committee with the regulations since we have no way to obtaining them?

Diehl: I will make copies of the regulations available to you for consideration by the committee.

Mr. Wood adjourned the meeting at 2:00 p.m.