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Nevada Gaming Statutes: Their Evolution and History¹

Robert D. Faiss and Gregory R. Gemignani

ABSTRACT: Throughout the past eighty years, Nevada gaming has changed considerably. Nevada's gaming laws have both reflected and influenced that change. At every step of the way, regulatory changes paved the way for the growth and evolution of Nevada's gaming industry into one of the world's largest and best regulated.

Keywords: Nevada, gaming, regulation, casino

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In 1931 Governor Fred B. Balzar signed the law legalizing "wide open" gambling in Nevada. Under the 1931 law, a person did not have to obtain a state license to conduct gaming. Instead, the potential casino owner only had to obtain a local license from the county sheriff and, where mandated by local ordinance, from any incorporated city or county. License fees were \$25 per month for each table game and \$10 per month for each

slot machine. The fees were divided between the state (25%), the county (25%), and the city or town (50%). In its original form, the 1931 Act did not regulate gaming. The only qualification for licensing was that an applicant be an American citizen. Eight days after Governor Balzar signed the bill into law, the Legislature rectified the oversight by granting local authorities the power to regulate or prohibit gaming.

Air conditioning and the growing popularity of the automobile in the early 1940s caused an explosive growth of Nevada's gaming industry. The cool casino breezes made the blast-furnace heat of a Southern Nevada summer tolerable. And, the automobile transformed Las Vegas into a weekend playground for gamblers from Southern California. Western Airlines began flights to Las Vegas, providing yet another boost to the state's tourist trade.

In 1945, lawmakers created a state casino license as a method of assessing and collecting a tax on gaming revenues. The initial tax was calculated at 1% of gross casino revenues (i.e., total cash won less cash paid out as losses) exceeding \$3,000. The tax generated about \$100,000, an insignificant amount of the total state budget. The Nevada Tax Commission became the regulatory authority for the gaming industry.

The potentially lucrative industry caught the attention of legitimate developers and less-than-legitimate organized crime figures. While Nevada's fledgling gaming industry began to grow, lawmakers in California were cracking down on the state's illegal casinos. Many California operators moved to Nevada, particularly Reno and Lake Tahoe. With the new crop of gamers came allegations of cheating. Some failed to obtain state licenses. In the fall of 1947, one of the new faces in Nevada, Harry Sherwood, part-owner of the Tahoe Village Casino, was shot and killed in his casino. His partner, Louis Strauss, was arrested, but later cleared of all charges in connection with the shooting.

Although 1945 amendments to state law created the requirement for a state gaming license, the document was merely a vehicle to collect tax revenues and did not bestow on the Tax Commission any regulatory authority. No explicit provisions in state law allowed the Tax Commission to consider the character of an applicant in rendering a decision on the issuance of a gaming license. In June 1947, Nevada Attorney General Alan Bible issued an opinion that led to state involvement in the regulation of casino gaming. In his opinion, Attorney General Bible stated that the

provisions of the law that permitted the Commission to pass regulations necessary to administer the gaming laws permitted the Commission to adopt regulations requiring "inquiry into the antecedents, habits, and character of applicants in order to satisfy the Commission that they will not violate the gambling law ... prohibiting thieving and cheating games" He told the Commission that if it "finds reasonable ground to apprehend that the grant of a license would be against the public interest, you would be within the powers delegated to you to refuse the license."

The Commission exercised its new authority at its January 1948 meeting by denying five license applications. Of course, at the same three-day hearing, it considered and approved about a thousand other applications. The agency was woefully understaffed. It had an inspector and one accountant to collect and enforce the gaming tax.

In 1949, amendments to the Gaming Act allowed the Commission to require the fingerprinting of casino employees. "A great many of the old crossroaders (professional cheaters), who were still alive at that time were wanted by the police in one place or another," a casino operator said. "They did not want their fingerprints taken, so the only thing for them to do was quit their jobs and leave the state."

In 1950, Senator Estes Kefauver of Tennessee, chaired a U.S. Senate Committee, commonly known as the Kefauver Committee, to investigate organized crime's influence in America. Kefauver was an aspiring presidential candidate. The Committee investigation propelled Kefauver into the national spotlight and, as a result, he ran a close second to Adlai Stevenson in selection of the 1956 Democratic presidential nominee and became his running mate.

The Kefauver Committee report was critical of the Nevada regulatory apparatus. "The licensing system which is in effect in the state has not resulted in excluding the undesirables from the state," the Committee wrote, "but has merely served to give their activities a

seeming cloak of respectability.” The Committee concluded that many casino owners were members of organized crime or “had histories of close associations with underworld characters who operate those syndicates.”

Regardless of how Nevadans felt about Kefauver, the state’s regulatory system needed improvement. Testifying before the Committee, both Nevada’s Lieutenant Governor and its Tax Commissioner admitted that the state made little or no effort before 1949 to screen gaming license applicants. “The State of Nevada should have a more comprehensive control of gaming,” conceded Governor Charles Russell.

Nevada’s gaming industry was threatened. The message was to clean up the industry, or the federal government would close it down. But, the state had a powerful champion in U.S. Senator Pat McCarran of Nevada. McCarran was Chairman of the Senate Judiciary Committee and a senior member of the Appropriations Committee. The Washington Post noted in July 1952, “It sums up the character of this Congress to state an unquestionable fact: that its most important member is Patrick A. McCarran.”

In 1951, McCarran led the fight against a proposed federal law to assess a 10% tax on the gross receipts of all gaming transactions. The tax would have forced the closure of virtually every Nevada casino and sports book. Nevada’s economy would have been devastated. “If ... the proposed tax is intended to suppress all gaming, whether legal or illegal, throughout the United States, it goes far beyond the recommendations of the Kefauver Committee,” McCarran said.

McCarran convinced Congress to pass a modified bill that exempted card games, roulette, slot machines, and dice. It would be a bureaucratic nightmare for the federal government to attempt to regulate the games for tax purposes, he said. The compromise bill included racebooks, but exempted pari-mutuel wagering.

The modified tax crippled the state’s 25 racebooks. Twenty-one of them went out of business, claiming the tax prevented them

from making a profit. The Reno Evening Gazette, a longtime opponent of legal gaming, said closure of the racebooks cost Nevada \$200,000 in tax revenues. The paper claimed the loss “fulfills the warning made years ago that the state government was following a poor and risky policy, and tying its welfare too close to the gambling industry.”

While McCarran staved off federal efforts to legislate gaming out of existence, the state took on the task of ridding the industry of its undesirables. In 1955, the Gaming Control Board was created as a full-time administrative agency. The Board would serve as the investigative and enforcement arm of the Tax Commission.

“The purpose of this (two-tiered) system was that this Board would delve into all applications, would report them to the Nevada State Tax Commission, which would then have a final approval,” Governor Charles Russell said.

While the Gaming Control Act of 1949 gave the Tax Commission authority to consider the suitability of applicants for gaming licenses, little was done. Before 1955, the Commission adopted just five pages of regulations. The system enacted in 1955 was much more comprehensive. It gave the Commission and the newly created Gaming Control Board authority to investigate applicants’ business probity, and their ability to finance projects and generate working capital. Despite the added powers of the Tax Commission, gaming continued to experience problems and there were multiple casino failures in 1956 and 1957.

The gaming industry remained in dire need of restructuring in 1958 when Grant Sawyer, a young, progressive Democrat from Elko County, began his candidacy for Governor. Few gave Sawyer a chance. He was regarded as an unknown from a cow town. Undaunted, Sawyer ran a tireless campaign. He adopted the slogan: “Nevada is not for sale.” His shocking victory was proof that the people of Nevada were ready for change.

One of Sawyer’s first acts as Governor was to win legislative support of a bill taking control of gaming from the Tax Commission

and giving it to a new, independent agency, the Nevada Gaming Commission (the "Commission"). The Commission was composed of five members. The Governor appointed the members, but did not serve on the Commission. Sawyer's first appointments included two FBI agents and a former U.S. Attorney.

Sawyer had a strong mandate for the new Commission. "Exhaustive investigations (must) be made as to present licensees in order to be as certain as humanly possible that criminal elements, mobs, or syndicates have neither interests nor control of existing businesses," he said.

While the Gaming Control Board continued to conduct investigations and administer gaming regulations, it had more autonomy than it had under the Tax Commission. Previously, the Board Chairman served as Secretary to the Commission. Under Sawyer's Bill, the Commission and Board were independent agencies. Sawyer appointed a former assistant to FBI Director J. Edgar Hoover as the new Board Chairman, and doubled the agency's budget. His revisions launched the modern era of gaming control in Nevada.

Some feared Sawyer's crackdown came too late to save the industry. Magazine and newspaper articles claimed mobsters were entrenched in Nevada casinos. Life Magazine in 1960 reported that the mob was planning to get out of the narcotics business and muscle in on Nevada gaming operations.

At the same time, Nevada's casinos became increasingly important to its economy. The gaming industry in 1959 generated 21.9% of the state's taxes. It directly employed thousands of Nevadans. Potential moves by the federal government against the gaming industry posed a serious threat to Nevada's future.

U.S. Attorney General Robert Kennedy was aware that millions of dollars were lent to Nevada casinos by the Teamsters Pension Fund, headed by his longtime nemesis, union boss Jimmy Hoffa. In May 1961, Kennedy asked the Nevada Attorney General to deputize 50 federal agents, and raid a number

of casinos. Sawyer believed the raids would generate immense negative publicity that would be devastating to the state's economy. He flew to Washington, D.C, where he met with both Robert Kennedy and his brother, President John F. Kennedy.

The raids never took place. Instead, a cooperative agreement was worked out to allow federal agents to work with the Gaming Control Board to conduct investigations of Nevada casinos. The FBI staff in Las Vegas was tripled. The U.S. Internal Revenue Service was staffed with 40 experts to investigate alleged skimming operations.

By the late 1960s, gaming taxes were the major source of funding the state budget. Still, concern about the state's dependence on the casinos and its ability to regulate the gaming industry persisted. Most Nevada lawmakers were confident they could do the job.

So, too, were members of the Commission on the Review of the National Policy Toward Gambling. "Serious questions arise as to whether a state that relies so heavily on a single industry for its revenue needs is truly capable of regulating that industry properly," the Commission concluded. "The Nevada control structures have stood the tests of time and, often, bitter experience"

The gaming industry's crucial role in Nevada's economy presented a dilemma for the state's gaming regulators. No longer could the Gaming Control Board and Commission decide licensing and disciplinary matters in a vacuum. They had to strike a balance of regulatory and economic concerns in weighing the consequences of their rulings.

Adoption of the Corporate Gaming Act grew out of this need to control and regulate the industry, yet allow it to flourish. Public companies have a greater access to sources of capital needed to expand existing casino properties and build new ones. Making it easier for public companies to participate in the gaming industry greatly accelerates growth.

State legislators wrestled with the possibility of licensing corporations from 1963 to 1967 without changing the law. Nevada's Gaming Policy Committee launched

a study of the issue in 1967. A chief regulatory concern was whether the entry of public companies would result in unbridled stock speculation in gaming properties. There also was a fear that failure of speculative stock offerings in gaming ventures would lead to federal intervention.

The state adopted a law allowing publicly-traded corporations to own casinos without requiring their thousands of shareholders to undergo costly and time-consuming licensing investigations. Passage of the Corporate Gaming Act of 1967 and a controversial 1969 Bill eventually prompted several large and respected companies to begin buying and building hotel-casinos. Hilton, MGM, Holiday Inns, Ramada, Hyatt, Del Webb, and others suddenly got into the gaming business. Ownership of the casino resorts by Hughes and these other well-known companies legitimized the industry.

Investments in casino properties soared after passage of the 1969 law. Nevada quickly rose to prominence as a premier international gaming destination and taxes related to gaming and tourism accounted for a substantial portion of the State's revenue. Through 1977, Nevada was the only jurisdiction in the U.S. with licensed casino gaming. Nevada worked to protect its position as the only legal casino jurisdiction in this country by refusing to allow any of its gaming licensees to be involved in gaming elsewhere. This blanket prohibition was changed in 1977 because it was incompatible with the United States Constitution.

In 1977, passage of the foreign gaming statutes permitted Nevada licensees to participate in gaming elsewhere, but only if the Commission found a comprehensive, effective government regulatory system in the foreign jurisdiction. This required a Gaming Control Board investigation and a formal judgment by the Commission that those governments could be trusted to effectively control gaming. Commission Chairman Paul Bible explained a major reason for the foreign gaming statutes saying:

When the Legislature initially considered the foreign gaming statute, one of the

legislative concerns was that they were afraid of Nevada money being siphoned out of this state and going into another jurisdiction and causing Nevada operations not to be as healthy as they would be otherwise because money that is necessary to refurbish and keep operations competitive would not stay in the State of Nevada

In 1985, the Legislature relaxed the rigid control of the foreign gaming statutes by authorizing the Commission in Senate Bill 231 to waive any provision of those statutes.

In 1987, the Legislature recognized that Nevada standards cannot be imposed on a foreign government, and as part of Assembly Bill 178 removed from the foreign gaming approval process the necessity of finding a comprehensive, effective regulatory system in the foreign jurisdiction.

Nevada gaming control no longer had legislative authority to pass judgment on how another government regulates its own gaming industry or to impose our gaming control standards on another jurisdiction.

In 1993, there was a monumental shift in the evolution. As a result of the passage of Assembly Bill 470, the prior approval requirement in the foreign gaming statutes was eliminated.

Instead, extensive reporting requirements were imposed, a revolving investigative fund was required to allow the Control Board to monitor a licensee's foreign venue at the licensee's expense, and most importantly, licensees were made subject to disciplinary actions for violations of provisions of Nevada statutes.

By virtue of the 1993 Act, the limit of Commission authority over foreign gaming was to receive reports and to punish violations by disciplinary action, all subject to due process of law.

The 1993 law is the one that establishes the essential responsibilities and standards with respect to foreign gaming. Those have never been changed or enlarged since 1993.

In 1997, in Assembly Bill 294, the foreign gaming statutes were amended into their present form. The essential change was that the gaming control agencies were granted

authority to determine, either on their own initiative or pursuant to a licensee application, if an activity or association in a foreign gaming jurisdiction violated subsection (3) of NRS 463.720.

The authority established by the Legislature in 1993 and unchanged in 1997 encompasses only certain activities or associations that directly have a material impact on Nevada. An association constitute a violation only if it "(a) poses an unreasonable threat to the control of gaming in this state; (b) reflects or tends to reflect discredit or disrepute upon this state or gaming in this state; or (c) is contrary to the public policy of this state concerning gaming, "

The foreign gaming statues provided Nevada with a tool to protect the reputation of the state and its licensees without trying to exercise extraterritorial jurisdiction over gaming activities outside of the state. Gaming continued to flourish nationally and internationally as Nevada based gaming companies often led the way in expanding gaming in other states, countries and on American Indian lands.

In the late 1990s and early 2000s, it became apparent that gaming was poised for growth in a new area, not in any particular geographic location but through communications networks. In 2001, the Nevada legislature had the foresight to recognize that gaming through networks was poised to be a significant force in the gaming industry. Network based gaming was in its infancy and was not just being offered on the internet, but in some counties it was being offered on private cell phone networks, cable television networks, wired telephone networks and wireless networks. In response, the Nevada legislature enacted statutes to permit regulatory authorities to investigate and assess these new forms of wagering. Also, if the activity could be conducted and regulated in a manner consistent with federal and state law, the Commission had the statutory authority to promulgate regulations and issue interactive gaming operator and manufacturer's licenses. In 2011, these statutes were modernized to permit

regulators to license and find others suitable to provide services to interactive licensees.

For more information about the series, visit the website or contact series editor David G. Schwartz.

About the Authors

Robert D. Faiss, attorney at law, is a shareholder with Lionel Sawyer & Collins. Faiss is considered one of the world's foremost authorities on gaming law. Faiss was named as the premier gaming attorney in the United States and one of the 100 Most Influential Lawyers in America by the National Law Journal. He is listed in Best Lawyers in America for Gaming Law and is included in Mountain States Super Lawyers' "The Top 75." In 2008 he was selected by Lawdragon as one of the "500 Leading Lawyers in America." He was named Best Lawyers "2011 Lawyer of the Year" in gaming law in Las Vegas. He also received the Lifetime Achievement Award in gaming law from the Nevada Gaming Attorneys and the UNLV International Gaming Institute.

Gregory R. Gemignani's practice focuses primarily on intellectual property law, gaming law, technology law, internet law, online gaming law, and online promotions law. A shareholder at Lionel Sawyer & Collins, he has represented many clients ranging from the largest casino companies to start-up Internet ventures. Prior to engaging in the practice of law, Greg was a software systems engineer at Electronic Data Systems Corporation.

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