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Nevada Gaming Licensing

Qualifications, Standards, and Procedures

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The process of acquiring a Nevada gaming license is long and consists of several procedures. Although the process is time-consuming, it is far from Byzantine or obscure; each step, as defined by statute and precedent, flows logically from the one before. This paper provides an overview of licensing process in Nevada, with additional information on the reasoning behind several of the procedures involved.

Nevada Gaming Statutes: Their Evolution and History[1]

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. In 2013, these statutes were again modified to permit the governor compact with other states to permit interstate interactive gaming.

General Gaming Terms

Nevada defines gambling games by characteristics and by specific games. Pursuant to Nevada statutes, a gambling game is "any game played with cards, dice, equipment or any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value, including, without limiting the generality of the foregoing, faro, monte, roulette, keno, bingo, fan-tan, twenty-one, blackjack, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck, Chinese chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panguingui, slot machine, any banking or percentage game or any other game or device approved by the Commission…" NRS 463.0152. While many news stories and blogs have argued that poker is not a gambling game, Nevada statues, and statutes in many other states, classify poker, when played for money, as a gambling game by law.

Qualifications for Licensing

In 1953, the Nevada Legislature established standards for determining whether an applicant was qualified to hold a gaming license. An applicant was unsuitable if he or she was: (a) convicted of a felony, larceny, narcotics violation, or firearm violation within the past five years; (b) under 21 years of age; or (c) an alien. These standards proved unworkable. The standards for criminal activity prevented the gaming authorities from assessing other facts. The prohibition against aliens was, at best, protectionism and possibly unconstitutional. The age restriction did not provide for unusual circumstances.

Today, the modern system for assessing the qualifications of applicants enables gaming regulators to exercise discretion within guidelines established by law, regulation and precedent. While serving

the interest of the state, this system sometimes creates problems for a potential applicant. Because the criteria are not quantified, there is no definite method to assess whether a particular applicant is "licensable." Before filing an application, the potential applicant and his attorney should assess the applicant's character and past before filing for licensure or suitability.

Gaming authorities now follow licensing guidelines in each of several categories. They examine the following:

- character of the individual applicant;
- financing of the proposed operation;
- business competence of the proposed operators;
- suitability of the location;
- ownership of location;
- multiple licensing criteria, if applicable; and
- conduct during the investigative process.

An applicant for a state gaming license has the burden of proving his qualification to receive a license.[2] Accordingly, the applicant must provide evidence to satisfy each of the criteria. This section discusses these criteria.

The Character of the Applicant

In 1973, the Board issued a bulletin listing the criteria under which an applicant might be found unsuitable. Those criteria, still applicable today, are:

- conviction of a felony or misdemeanor involving violence, gambling, or moral turpitude;
- an unexplained pattern of arrests showing a lack of due regard for the law;
- a failure to prove good character, honesty and integrity;
- association or membership in organized crime;
- association with unsuitable persons;
- prior unsuitable operation of a casino;
- conduct constituting a threat to the public health, safety, morals, good order and general welfare of the State of Nevada and the industry; or
- conduct reflecting discredit upon the State of Nevada or the gaming industry.

A regulation adopted in October 1975, now codified in the statute, established additional standards for business competency and source of funds.[3] The applicant must have business competence and experience

for the role or position for which the applicant seeks a license.

The standard for source of funds requires that funding for the entire operation is adequate for the nature of the proposed operation and is obtained from a suitable source.

The applicant must satisfy the Commission that prior associations "do not pose a threat to the public interest of this state or to the effective regulation and control of gaming, or cause or enhance the danger of unsuitable, unfair or illegal practices...."[4] Commission Regulation 3. 090(1)(b) places the burden on the applicant to show his associations "will not result in adverse publicity for the State of Nevada and its gaming industry."

Neither the Gaming Control Act nor the regulations defines "association." One court noted "the word 'associate' is not of uniform meaning but is, rather, vague in its connotation."[5] For example, do incidental contacts with known criminals constitute association? What about involuntary contacts? What if the applicant had no knowledge of the other person's unsuitability? These questions often become problematic issues for an applicant.

The Nevada courts have never directly defined the term "associate" as it applies to unsuitable persons. Other courts, however, have defined associations to constitute more than incidental contacts with unsuitable persons.

While interpreting a regulation prohibiting police officers from "associating" with criminals, one court defined the term to mean more than "incidental contacts" between police officers and known criminals.[6] The issue in another case was whether a parolee violated his parole by "associating" with undesirable persons.[7] In interpreting the term the court defined "association" as more than incidental contacts. The court interpreted "association" as to mean "to join often, in a close relationship as a partner, fellow worker, colleague, friend, companion or ally."

This concept of "association" is consistent with the Commission's treatment of the issue in recent licensing hearings. The Commission has consistently distinguished between "associations" and "acquaintances." Only volitional relationships predicated upon a united purpose or concerted action subject the applicant to increased scrutiny.

The New Jersey Supreme Court has similarly held that unknowing associations are not a permissible basis for a finding of unsuitability.[8] The court stated that after an applicant is aware of the unsuitability of an association, the failure to dissociate is a knowing association.

In the New Jersey case, the state's Casino Control Commission

found that the founder of a casino company was unsuitable. Among the reasons was a recurring and enduring relationship with an individual who allegedly had ties to organized crime.

The applicant sought judicial review. In upholding the agency decision, the court noted that it is "not critical of a proposition denouncing guilt adjudication predicated solely on unknowing or otherwise innocent association and is sensitive to the difficulties defending against such a premise."

The concept of unsuitable "associations," while difficult to define, is essential to the maintenance of the integrity of the regulatory system. In that respect, the applicant must be willing and able to defend every association he has had over his lifetime. While he will not have to defend acquaintances, his defense of the relationship must focus upon the following factors:

- the nature and intensity of the relationship considering factors like:
    - o type of relationship, i.e., business or friendship;
    - o knowledge of the second person's unsuitability;
    - o whether the relationship was voluntary; and
    - o frequency or involvement of the relationship;
- the applicant's attitude and actions after becoming aware of the concern by gaming authorities with the relationship;
- the influence or control over the applicant by the other persons; and
- the nature of the concern about other persons and how that concern poses a threat to the public interest.

Past Criminal Activities

No definitive tests are available to determine whether a person with a history or criminal activities can receive a gaming license.

As stated previously, the Commission examines other factors in addition to past criminal activities. As such, convicted criminals have received gaming licenses. Likewise, gaming authorities have denied licenses to persons never convicted of a crime but who failed to show that they have not been involved in criminal activities.

Decisions show that the gaming authorities consider several facts in assessing whether to deny an application based on prior criminal activities. These include:

- the nature of the crime (criminal activities involving gaming crimes or moral turpitude, such as thievery or embezzlement, are very significant);

- mitigating or extenuating circumstances;
- proximity in time of the criminal activity;
- age at time of the criminal activity;
- a pattern or high frequency of criminal activity; and
- honesty and forthrightness of the applicant in disclosing the past criminal activity to gaming investigators.

Financing

The Board scrutinizes the financing for any purchase or construction of a Nevada casino. The Board and Commission assure that the source of funds is suitable and that the proposed financial arrangements are adequate for the proposed operations.

The applicant must show there is adequate financing available to pay all current obligations and that working capital is adequate to finance the opening.[9] In many instances, the criteria for determining whether the financing is adequate are subjective. The decision depends on several factors, including the size of the casino; the nature of past operations; the condition of the facilities; and the amount of debt service.

Conduct During the Investigation

Applicants must make full and true disclosure of all information requested by the Board during the investigation.[10]

The applicant's conduct during the investigation may easily become an area of concern to the Board for a variety of reasons. If the applicant attempts to hide or mischaracterize a past transgression, the Board may question the applicant's current credibility. Making an untrue statement of a material fact in any application or statement to the Board is alone grounds for denial.[11] If the applicant is not cooperative, the Board may question whether such an attitude is indicative of the applicant's attitude toward the laws and regulations. If the applicant keeps disorganized and incomplete financial and personal records, the Board may question the applicant's ability to account properly for taxes.

For these reasons, the applicant increases the probability of obtaining a license by preparing in advance for the investigation and cooperating fully with the agents. The applicant should organize in advance all records routinely reviewed by the Board's agents.[12] The applicant should implement a system to expedite the production of documents requested by the agents. The applicant should be available on short notice to

answer questions. Failure to supply information requested within five days after receipt of the request is grounds for delaying consideration of the application.[13] Most importantly, the applicant should be candid and complete in answering agents' questions.

Business Competency of Applicant

Business competency of an applicant is a varying concept that depends on the type of application, nature of the applicant's involvement in operations, type of operation and organization structure. Ed Olsen, a former chairman of the Board, developed a method for assessing business competency, which is useful today.

"You had to take into consideration what type of an investment or enterprise the guy was going into," Olsen said. "If he was going into a little club, then you took a look at his technical experience and knowledge. On the other hand, if you were going into an investment in a corporation or big business, such as running a hotel, then his particular knowledge of gambling is immaterial. But for the little guy that's going to open a table in Reno, he's going to be hit by some of the most enterprising and brilliant cheaters in the world ... So you had to take into consideration his ability to protect himself as well as protect the state."

The Licensing Process

Completing and filing an application is the first step toward obtaining a Nevada gaming license.[14] Applications must be made on forms approved by the Board. These forms elicit basic information about the applicant's antecedents, habits, character, criminal record, business activities, financial affairs and business associates for the years preceding the date of filing of the application.

The required forms for a gaming license can be obtained from any office of the Board or the Board website. The packet consists of the forms listed below.

The Application Form asks for the identity of the applicant and the type of license or approval sought. If the applicant is a corporation or partnership, it must file a Form 2. An application for registration by a holding or intermediary company is made on Form 3.

The Personal History Record elicits basic information about the personal history of the applicant. On that form, the applicant is required to disclose his personal, familial, educational, marital, civil litigation, criminal and residential information. This form also requires

employment history, licensing background and character references.

A Release of All Claims form holds the State of Nevada and its gaming regulators free from all lawsuits and other claims arising out of the application or the investigation process.

Finally, the applicant is asked to sign an Applicant's Request to Release Information form. Any person to whom this form is given is requested to provide gaming authorities with information, regardless of privilege.

The Personal Financial Questionnaire, asks for financial information about the applicant. This information covers the amount and source of investment in the gaming establishment, tax information, bankruptcy disclosures, salary information and a statement of assets and liabilities.

The applicant also is required to provide an Affidavit of Full Disclosure. In the affidavit, the applicant attests to be the sole owner of the interest for which he is seeking a license. The applicant also attests that no undisclosed party has any interest in any respect, including through such circumstances as anticipated future transfers, finder's fees, commissions or undisclosed financing.

Fingerprint Cards are necessary to verify the applicant's identity and investigate any criminal background.

Limited partnerships also must submit a "gaming purpose" statement, proposed as an amendment to the Articles of Incorporation or Certificate of Limited Partnership, to take effect after licensing.[15]

To avoid any confusion or misunderstanding, the applicant should give particular attention to completing the Personal History Record and Personal Financial Questionnaire.[16] The Board and Commission are generally very unforgiving and suspicious of applicants who make significant errors in their initial applications. Guy T. Hillyer, a former member of the Board, pointed out to attorneys the importance of precision and thoroughness in preparation of the application. "Assist your client in the preparation of the application so as to completely disclose all relevant facts as much as humanly possible. Do not allow your client to play cat-and-mouse with the investigative agents."

Nonrestricted Applications

Besides the application forms, an applicant for a non-restricted license must prepare and submit the following additional documentation and information:

- proposed Internal Control System;
- First-Year Cash Flow Projections;

- Statement of Pre-Opening Cash;
- Pro-forma Balance Sheet;
- proposed Surveillance System;
- Minimum Bankroll; and
- if the applicant seeks to acquire an existing casino, a contract provision "satisfactory to the Commission" providing for full payment of fees and taxes that the present casino operator may owe.[17]

An application is not "complete" until the applicant submits substantially all required information. The Board will not assign an "incomplete" application for investigation, nor will it consider it in the queue for aging purposes.[18]

Initial Documents

The investigation of an applicant usually begins with the request for basic financial documents. A well-advised applicant will have these documents compiled at the time of filing the application. When the investigation begins, there will not be any delay while the applicant scrambles to retrieve documents and, where necessary, order duplicates from banks and other places.

The Investigation

Those who have never been the target of a government investigation—and even those who have—are often surprised at the scope and depth of a Nevada gaming license investigation. As a former White House presidential assistant, the author can attest that the Nevada gaming license investigation is far more extensive and intrusive than the highest U.S. security clearance investigation.

Applicants are asked to explain and sometimes justify personal behavior and business transactions dating back several years. Some refer to the investigation as the most trying experience of their lives. When they file an initial application, they have only one assurance: if they have any transgressions in their pasts, Nevada's gaming agents will most likely dig them up.

Investigative Team

The head of the Investigations Division of the Board is the Chief of Investigations. The Chief has the responsibility for assigning, overseeing

and coordinating the various investigative teams. Assisting the chief are two deputy chiefs, one each located in Las Vegas and Carson City.

An investigative team can consist of as few as one agent or as many as a dozen. The size of the team depends on the complexity of the investigation, time requirements and other considerations. On major investigations, the team consists of a senior agent, one or more financial agents and one or more background agents.

The highest-ranking member of the team usually is an experienced agent whom the Board has promoted from the ranks. This person has direct responsibility for the daily activities of the agents involved in the investigation. The ranking member provides guidance to the agents in his charge and formulates the investigative strategy.

Financial agents, who usually hold degrees in accounting, are responsible for investigating the applicant's current financial status, past financial activities, general business probity and the financial status of the proposed gaming operation.

Background agents typically consist of retired or former law enforcement agents. They are responsible for investigating the applicant's background, general reputation and personal and business associates.

The Initial Interview

The investigation begins with an initial interview of the applicant by the agents. This is the first opportunity for the applicant to meet with the agents who will be handling the investigation. It gives the agents an opportunity to explain procedures and demystify the process. The agents review the initial application forms line by line with the applicant to assure there are no unintentional omissions, mistakes or typographical errors. The agents also will make their initial request for documentation.

The Investigation

Background investigators have very broad powers. They can inspect premises. They also can demand access to records for the purpose of inspection, audit, examination and photocopying.[19] They may review civil lawsuits and criminal charges. No set rules exist about how far back in the applicant's past the investigators may search. Although the focus may be on the last 10 years, if pertinent, they may review a transgression that occurred 20 years ago.

The two primary purposes of fieldwork are to verify the information

provided by the applicant and to uncover information that the applicant may not have revealed. Because of the nature of fieldwork, an applicant may not have much contact with the background investigators. They are often working with other law enforcement agencies, and conducting extensive interviews to learn the character of the applicant.

Their investigation goes beyond a mere check of the applicant's police record. The agents investigate the applicant's business and personal associates and methods of doing business. The agents review civil court records to determine the types and nature of all civil litigation involving the applicant and to ensure that the applicant has fully disclosed the litigation.

All investigations involve standard checks of court and agency files. Schools and universities are contacted to verify education. Military information is verified with the respective branch with attention on any disciplinary or other derogatory information. Marital information is reviewed with attention to divorces. This is important because divorces often are acrimonious and the files contain allegations of wrongdoing. Moreover, former spouses and court documents often are sources of information relevant to the investigation. For example, pleadings in a custody case may attack the competency of the applicant based on illegal activities, such as drug use. In a divorce, the pleadings may allege hidden assets, sources of income, or other information inconsistent with the application or the applicant's tax return, or which are related to illegal activities

Background investigators also verify criminal information on the applicant. Most important are the circumstances of all arrests or detentions and whether the applicant revealed all of them. Many law enforcement agencies keep extensive records. Investigators may discover that the applicant failed to reveal a criminal record by checking court records. The major sources, however, are police records and law enforcement information systems. These include local sheriffs, local police, the Federal Bureau of Investigation, the Drug Enforcement Administration, customs and immigration, organized crime task forces, other gaming regulatory agencies, and liquor and other privileged license agencies. Other sources of law enforcement information are computer data bases maintained by different law enforcement agencies.

Among the types of law enforcement information available are arrest reports, incident reports, field interrogation reports, and intelligence reports. Police records often have information that was not presented to the court because the witness could not be found or the police failed to

follow constitutional guidelines in obtaining it. Unlike criminal actions, license applications are not burdened by the same rules about what can be considered. For example, the court cannot consider a detailed sworn statement by a witness who is now unavailable to testify. A regulatory agency may use such information when considering an applicant's request for a privileged gaming license.

Whether the prosecutor dropped the charges against the applicant, or even if the applicant was acquitted, is not conclusive in a licensing investigation. Standards for granting gaming licenses and standards for proving criminal guilt are different. The same incident reviewed in the same light may be insufficient to justify a criminal conviction, but may be sufficient to deny a gaming license. Criminal background checks do not end with the applicant, but may extend to the applicant's family, friends, business partners and associates.

Records of civil court proceedings often provide information that proves relevant to a background or financial investigation. These lawsuits may contain allegations of unscrupulous business practices and the identity of persons who have had unsatisfactory business experiences with the applicant. Evidence of disposition of the civil cases is also important. Cases end for many reasons. Sometimes the person seeking relief abandons the case. He may realize that he will lose, or that the other person does not have the money to pay even if he wins. The case also may become too expensive or time consuming. Other cases may settle. Terms of the settlement may suggest the validity of the allegations. For example, if the person sued pays a substantial portion of the amount requested, it may show that the allegations have some merit.

Beyond the nature or omission of civil lawsuits, a review of litigation may reveal that an applicant abuses the civil court system to gain economic advantages. The existence of many lawsuits may show a pattern of using the judicial system to avoid or compromise legitimate debts.

Besides criminal and civil court records, governments keep information on people, much of which may be relevant to the person's suitability as a gaming licensee. For example, the consumer affairs division of a state government may have complaints filed by customers of the applicant's business that contain allegations of fraud, or deceptive trade practices. Similarly, the equal opportunity employment offices may have complaints alleging sexual or racial discrimination in the workplace.

Governments usually have a considerable amount of public

information on corporations and partnerships. Individual applicants for casino licenses often have extensive business backgrounds. These may involve prior and contemporaneous businesses. Reviewing corporate information from these businesses may reveal the applicant's associations. Often whether a person acted as an incorporator, director, or officer is public information that can be found through government offices, such as a corporate register or secretary of state. These searches may reveal corporations not listed on an application.

Corporate books contain a wealth of information. Incorporation papers show the date of incorporation, and number of authorized shares. Subsequent filings usually show the list of initial officers and directors and any changes to them, along with dates of each change. The corporate minutes contain information on significant events, such as major acquisitions or loans, and the hiring or firing of key personnel.

Verification of employment history also is done for many reasons. It establishes the person's experience in a particular area. Verification also is a vehicle to explore the applicant's honesty. Here the investigators often go beyond the stated reasons for changing employment and decide if other reasons exist. On paper, the stated reason may be a reduction or change in staffing, when the employer fired the person because of suspected theft. Employers who have reason to suspect that an employee is stealing may not use that reason to fire the employee because they fear that they may get sued for doing so. If another legitimate reason is available to fire the person, they may seize the opportunity to use that excuse. An investigator may take advantage of the applicant's release of all liability to convince the employer to detail the facts leading to the applicant's firing or resignation.

The applicant is likely to have more frequent contact with the financial agents than with the background agents, as the production of financial documentation plays a major part in the investigation.

The financial agents use these documents for a variety of reasons. If the applicant provides part or all of the financing for the gaming establishment, these records determine the adequacy of the applicant's resources and the suitability of his sources. The records are beneficial to the agents since financial records often reveal the identities of the applicant's associates and his financial arrangements with those persons. The agents also scrutinize sources of income and records of payments through these documents.

The applicant must often identify the source of bank deposits or the nature of payments reflected on cancelled checks. Some of the other

tasks regularly performed by financial agents during their investigation include:

- tracing primary holdings to their original sources;
- verifying personal income information to confirm that current holdings are consistent with income disclosed to the tax authorities;
- preparing a cash flow analysis; and
- verifying the applicant's net worth.

Similar to criminal and civil background, financial agents initially review 5 to 10 years of financial records. Although, the agents usually focus on the last 10 years, an applicant has no assurances that the agents will not review a transgression that occurred 20 years ago.

A source of funds analysis traces where the applicant receives income and the source of funds from which assets are purchased. The regulatory goal is to assure that the applicant is not a front for unsuitable individuals who are financing the acquisition of a casino. It also provides insight into the applicant's business and associations.

Bank records are the most common vehicles for establishing source of funds, provided all accounts are revealed. Bank statements are the beginning points because they contain both deposits and withdrawals. Deposits often reveal sources of income. All deposits are reviewed to learn if they are ordinary, such as biweekly salary deposits, or extraordinary, such as the one-time sale of an automobile. Large extraordinary deposits should be verified by reviewing source documents. Particular attention should be made to large cash deposits. While good reasons may exist for an applicant to deposit cash into an account, it is also the easiest method by which criminal activity may be hidden because it has no trail. Whether an applicant made an extraordinary deposit in cash can be determined by reviewing a teller's cash sheets.

Standard bank records that investigators may review include (1) signature cards showing who is authorized to use the bank account, (2) monthly statements showing all activity on the account, including deposits, withdrawals, and checks paid, (3) canceled checks, and (4) deposit tickets showing a breakdown of checks, cash deposited, and identification of the checks. The applicant may have other documentation that will greatly help in the investigation, such as check registers, copies of all checks deposited, and the canceled checks.

Many persons also use check record programs on their home computers, such as Quicken, which can generate several reports. Computer programs also may generate net worth reports that investigators may use to compare with the application. A better source,

however, is a review of a bank's loan files. Most loans require the applicant to make some level of disclosure of assets to qualify for the loan.

Bank accounts are the usual, but not exclusive, place into which funds can be deposited. Other possible depositories include brokerage accounts and savings and loans associations. An investigator should review all accounts before conducting a cash-flow analysis or reconciling income to expenses.

A principal concern of many regulators is the protection of state tax revenues. Applicants who intentionally fail to pay other taxes, such as federal income tax, may be unqualified to hold a gaming license. A primary method of investigating whether a person fully pays federal income tax is to compare cash flow with reported income. This requires the investigator to identify all bank and other accounts that the applicant has used for personal transactions during the relevant period. They can derive this information from the application, tracing the flow of funds, credit checks, review of correspondence, bank checks, and other methods. Once they identify all accounts, the investigator will then total all deposits, and deduct transactions that do not involve taxable income (e.g., sale of a car for less than the purchase price, transfers between accounts, the principal amount on repayment of loans, etc.). If a substantial difference remains, the investigator may confront the applicant for explanation of the difference. Beyond this, tax returns provide information on sources of income, verify businesses, and provide information on associations.

The agents have many ways of detecting a potential problem. Once any inkling exists, the applicant must expect the problem to be a major focus of the investigation. Licensed persons applying in a new capacity are usually "updated" by an investigation that concentrates on the time period since they were last licensed or found suitable.

Interim Interviews

The agents may request to interview the applicant during the investigation for a variety of reasons. Most often, agents ask the applicant to explain or clarify a business transaction. However, the agents may use the interim interview to confront the applicant with information that the agents deem to be damaging or incriminating. For this reason, the applicant should always prepare for an interim interview and should be represented by counsel.

In special cases, the Board may conduct investigative hearings

during the course of an investigation.[20] At these hearings, the applicant may present evidence relevant to an issue that arose during the course of the investigation.

Role Of Counsel During The Investigation

At the very least, the necessity of counsel is critical during the licensing process. Legal counsel plays three important roles during the investigation. First, counsel serves as the "point man" for coordinating the agents' requests for documents or information. Requests are usually made by letter to the applicant with copies to his counsel, or by telephone call to counsel. The speed and accuracy of the assembly and transmission of requested information has a direct impact upon the length and cost of the investigation. By coordinating the production of documents and information, counsel can review the materials for responsiveness, clarity, accuracy and completeness. The applicant's level of preparation and cooperation largely determines the length of the investigation.

Counsel's second role is that of an "observer." If requests are made without notice to the applicant's counsel, the applicant should inform counsel of the request. By analyzing the nature of the information requested and observing the direction of the investigation, counsel can make educated guesses about the agents' concerns or areas of interest. With this knowledge, the applicant has the ability to dispel any misconceptions and to prepare ahead of time any necessary rebuttal for the Board and Commission hearings.

Counsel's third role is that of a "presenter." An applicant's counsel, being familiar with the Board and Commission hearings, will be presenting and introducing the applicant in front of the Board and Commission. A detailed summary of the hearing procedures is discussed later in the chapter.

The Closing Conference

Near the end of the investigation, the applicant is given a final interview or closing conference. At this interview, the agents question the applicant about any unresolved or unclear areas encountered during their investigation. By this time, however, questions are usually minimal. Of greater importance to the applicant, the closing conference is an opportunity for the agents to advise the applicant of their "areas of

concern." These are areas that the agents will identify as relevant to the applicant's suitability in their summary to the Board.

The time period between the closing conference and the Board hearing is usually the most hectic. After evaluating the areas of concern raised during the closing conference, the applicant and his counsel must investigate and address each area of concern. This process may include interviewing and preparing witnesses and gathering documentation for introduction as exhibits. Also, the applicant and his counsel should also anticipate any other issues that may be raised during the Board hearing. Finally, the strategy for the Board hearing is developed and coordinated with any other applicants and their witnesses.

The Summary

At the end of their investigation, the agents prepare a confidential written investigative summary report for the Board. The summary is not available to the applicant. It contains the results of the investigation and sets forth areas of concern. The summary contains a synopsis of interviews, summaries of court and police records and financial analyses. In longer and more involved investigations, a summary can be 200 pages or more.

Rump Session

After the preparation of the summary report but before the Board hearing, Board members will meet with the agents in a closed meeting to discuss the application. This meeting, called a "rump" session, allows Board members to question the agents on the contents of the summary. This session helps the Board focus on and define the legitimate areas of concern. It also assures that the agents conducted an adequate investigation. The Board also formulates questions to ask the applicant and masters the information on the applicant and the application.

The Hearings And Decision

The Board will not act upon an application unless the Board Chairman determines that the act or involvement sought by the applicant will occur within six months after the Commission hearing on the application.[21] For example, the Board will not hear an application to open a casino until at earliest six months before the opening date.

There are three exceptions to these time classifications. First, applications for public offering or private placements of securities are exempted. Second, the Commission can waive the time restrictions by a vote made after application to and recommendation from the Board. Third, the time classification does not apply to a preliminary determination of a location's suitability for the conduct of gaming.

Due to the nature of the application process, applicants often face a decision as to whether to invest substantial funds in a casino project before licensing. While the Commission will not predetermine an applicant's suitability, it will, in extraordinary circumstances, make preliminary determinations of a location's suitability.[22] This is done by applying on forms designated by the Board after obtaining the written consent of the owner of the location. To obtain a predetermination, the application must:

- describe in detail the existing or proposed gaming operation;
- explain the circumstances justifying preliminary determination;
- contain a certificate that the applicant notified the local city or county that it is seeking an application for preliminary suitability; and
- include a filing fee of $500. The Board may require additional fees.[23]

The Commission, upon the recommendation of the Board, makes a preliminary determination of the suitability of the location. The decision is based only on facts disclosed at the time and may be limited or conditioned. The approval expires after 12 months unless a complete application for licensing is submitted within that time period. A preliminary determination cannot be sold or assigned.[24]

The Board Hearing

The Board licensing hearing is on the Board's monthly meeting agenda. The agenda is divided into sections based upon the types of items. For example, hearings on applications for restricted licenses start at a certain time, usually 9:00 a.m. Individual agenda items are not heard at set times; rather the items are taken in order according to item number. Although applicants are given a time to be present for their hearing, they should be prepared to wait, sometimes for several hours, for their hearing.

Once the agenda item is called, the applicant and legal counsel take their places at the podium. All applicants must attend unless the Board Chairman has waived their appearance. The Executive Secretary of the Board reads the agenda item as to who or what is properly before the

Board for determination.

Where possible, counsel should work with the agents before the submission of the agenda item to assure its accuracy. An error in the agenda item may cause the Board to delay the hearing until the next regularly scheduled meeting to allow for the correction. This delay may be mandated by the Nevada Open Meeting Law,[25] which prohibits the consideration of matters in a public meeting that are not accurately described in the posted agenda.

Once the agenda item is read, counsel and the applicant identify themselves for the record. Each applicant and witness may be then sworn. Ordinarily, the Board allows the applicant to affirmatively prove his suitability. To this end, the applicant's counsel may proceed with an opening statement, call witnesses on behalf of the applicant and submit briefs and exhibits. All briefs and exhibits should be submitted to the Board at least three days before the hearing to give Board members an opportunity to review them.

During the presentation, the applicant may affirmatively address areas of concern raised by the agents. The applicant and his witnesses may also be subject to intense examination by the Board members.

After the applicant presents his case, the Board has the prerogative to question the applicant about any aspect of his personal or business life that impacts on his suitability. Although Board members generally use the investigative summary as a guide for their questioning, they are not constrained to the summary.

The procedure seems strange to a non-gaming attorney. Unlike the typical court case, where the attorney contends with opposing counsel before a neutral judge or jury, counsel in the Board hearing presents his case to the same agency serving as both investigator and decision maker.

Gaming counsel's job is difficult because the applicant cannot examine evidence contained in the written summary prepared by the agents. The applicant is unable to investigate or verify either the source or the accuracy of any information contained in the summary. Moreover, the case presented against the applicant need not conform to any of the traditional rules of evidence. For example, unlike a typical court case, weight can be given to hearsay (statements by persons who do not have personal knowledge of the stated information but who learned of it from another person).

The Nevada Supreme Court in 1988 affirmed that an applicant for a state gaming license in Nevada does not have right of access to the Board's confidential investigative report before the hearing on its application.[26]

Irving "Ash" Resnick was an employee of the Dunes Hotel & Casino in 1984 when the Commission determined he must obtain a license because he exercised significant control over that entity's gaming operations. Before the hearings on his application, Resnick petitioned the Commission for a copy of the Board's investigative report. The Commission issued an order denying the petition.

Resnick sought judicial review. He requested an order reversing the Commission's order and a declaratory judgment construing Nevada law[27] to allow pre-hearing discovery of the Board's investigative materials. The court granted neither request, holding that it lacked jurisdiction to grant such relief.

The court held that Nevada law,[28] which permits the applicant to call, examine and impeach witnesses, introduce exhibits, cross-examine opposing witnesses and offer rebuttal evidence at his hearings, does not permit prehearing discovery of the Board's investigative report. The right to cross-examine witnesses, the court reasoned, does not confer upon the applicant the right to materials that would help him in cross-examination. Furthermore, the legislature has provided sufficient procedural safeguards to protect the applicant's rights and could have provided for prehearing discovery of investigative materials if that was its intention.

By submitting to the Board's procedures and rules, counsel for the applicant faces an enormous task. Counsel must attempt to anticipate all matters that may be contained in the investigative summary. So prepared, counsel must address, rebut, or explain all areas of concern and, finally, meet the burden of proving suitability.

The applicant must be careful to be absolutely truthful in his answers and not shade past events to put them in their most favorable light. This aspect is essential.

"The failure of an applicant to admit a past transgression during the investigation or hearing does two things in my opinion," said former Board Member Gerry Cunningham. "First, it detracts from or even changes the issue from that which is being discussed to, is the applicant a liar? Secondly, it causes a past issue to have contemporary significance and thus lose any salvation or forgiveness that may be inherent or deserving with the passage of time. In my opinion, the creation of the belief, perceived or otherwise, that an applicant is being untruthful is an almost automatic denial."

Once the Board determines that it has sufficient evidence to make a decision, it generally permits the applicant to present any further

evidence and a closing statement either in person or through counsel.

Board members will then discuss in the open meeting the relative merits of the applicant's suitability. Board members are candid regarding their individual thoughts about the applicant, the evidence and the witnesses. Some of their statements often make newspaper headlines.

As noted, all matters discussed during the course of Board hearings are "absolutely privileged" by law and, thus, do not impose liability for defamation or provide other grounds for recovery in a civil action.[29]

After the discussion, one of the Board members makes a motion. The most common motions are to:

- continue the matter;
- refer the matter back to staff;
- recommend denial of the application;
- recommend approval of an unlimited and unconditional license;
- recommend a license limited to a fixed duration, e.g., one year; or
- recommend a license with conditions.

The Board then votes on the matter and sends its recommendation to the Commission.

Commission Hearing

Although the Commission has the final authority to deny or approve a license, its hearings are generally shorter in duration than the Board's. Commission members receive a full transcript of the Board's hearings before their meeting. They need only to ask about matters not covered in the agents' summary or in the transcript.

The Commission hearing is similar to the Board hearing. The Chairman conducts the Commission hearing. Items are heard as listed on the Commission's agenda but may be taken out of order at the chairman's discretion.[30] The Executive Secretary reads into the record the title of the matter and the applicant and witnesses are identified and sworn. As with the Board hearing, attendance by the applicant is mandatory at the Commission meeting except those:

- whose appearances the Chairman has waived;
- having restricted applications and having received unanimous Board approval; or
- selling an interest in a licensed gaming establishment to another individual licensed at the same establishment, provided both parties have complied with all conditions recommended by the Board.[31]

The applicant ordinarily is given the opportunity to prove his

suitability. The applicant may call witnesses and present documentary evidence. The Commission will not generally consider documents unless the applicant files the original and eight copies of the document with the Executive Secretary at least eight calendar days before the hearing.[32] The failure to file documents timely may result in the deferral of an application.

The Commission, of course, can ask questions or seek clarification of any point. The Commission Chairman has the authority to rule on all procedural and evidentiary matters that arise either in or between meetings.[33] The Chairman's authority can be temporarily abrogated by a simple majority of the Commission.[34] At least one member of the Board will be present at the hearing to respond to questions from the Commission.

The applicant may make a closing statement at the end of all discussion. Thereafter, the Commission will close the public hearing. Commission members may then discuss, in the open meeting, the merits of the applicant's suitability or possible conditions to the license.

After the discussion, one of the Commission members will make a motion. The most common motions are:

- to continue the matter;
- to refer the matter back to the Board;
- to deny the application;
- to approve the application with or without conditions or for a limited or unlimited duration; or
- a combination of the foregoing. The Commission has the statutory authority to deny an application on any ground it deems reasonable.

The Commission's voting rules are different from those of the Board, where a simple majority determines the action taken. If the Board has given a favorable recommendation on an application or had a tie vote, a simple majority of votes by the Commission will determine the action of the Commission. If the Board has recommended denial of the application, the Commission must have a unanimous vote to approve the application.[35]

The Commission must take action on the application within 120 days after the Board's recommendation.45 If it fails to do so, the application is deemed approved. The Commission routinely requires applicants to waive the 120-day rule if a continuance is necessary.

If it denies an application, the Commission must prepare and file a written decision setting forth the reasons for its action. No written

decision is necessary after approval of an application.

Judicial Review

A denied applicant for a Nevada gaming license has no recourse against the Commission to seek a reversal of the adverse decision. This is contrary to the practice before most administrative bodies where the courts can review a decision to determine whether the agency acted arbitrarily.

Notes

1 This section adapted from *Nevada Gaming Law - 3rd Edition.*

2 NGC Reg. 4.010, NGC Reg. 5.040.

3 NGC Reg. 3.090; Nev. Rev. Stat. § 463.170(3).

4 Nev. Rev. Stat. § 463.170(2)(b).

5 *Weir v. United States* (1937).

6 *Sponick v. City of Detroit Police Dept.* (1973).

7 State v. Morales (1983).

8 *In Re Boardwalk Regency Casino License Application* (1981).

9 NGC Reg. 3.050.

10 Nev. Rev. Stat. § 463.339.

11 NGC Reg. 4.040(2).

12 A list of documents routinely requested is provided later in this paper.

13 NGC Reg. 4.040(1).

14 Nev. Rev. Stat. § 463.200.

15 Nev. Rev. Stat. § 463.566.

16 Form 4 and Form 5.

17 Nev. Rev. Stat. § 463.386.

18 Nev. Rev. Stat. § 463.210(2).

19 Nev. Rev. Stat. § 463.140, 463.1405, and NGC Reg. 4.010 et seq.

20 NGC Reg. 2.060

21 NGC Reg. 4.080.

22 NGC Reg. 4.105.

23 Id.

24 Id.

25 Chapter 241 of Nev. Rev. Stat.

26 *Resnick v. Nevada Gaming Commission* (1988).

27 Nev. Rev. Stat. § 463.313(1)(b).

28 Nev. Rev. Stat. § 463.313.

29 Nev. Rev. Stat. § 463.170(4).

30 NGC Reg. 2.030.

31 NGC Reg. 2.040.

32 NGC Reg. 2.030

33 NGC Reg. 2.020.

34 Id.

35 Nev. Rev. Stat. § 463.220