

LEGISLATING AND REGULATING CASINO GAMING: A VIEW FROM STATE REGULATORS *

Introduction

The authority to regulate legalized gambling activity has, throughout our nation's history, been vested in the states of the union. With only limited exceptions, the U.S. Congress has accepted this constitutionally supported federalism. Importantly, the Congress has attempted to foster a public policy climate in which each state sets an independent framework for the form or extent of gambling it may elect to authorize, and for the scope and intensity of the regulation of legalized gambling. The special case of tribal gaming, of course, requires federal policy.

There is no basis to conclude that this 200-year-old framework for state-based oversight of gambling warrants fundamental adjustment. That said, where legalized by a state, casino-style gambling demands strong legislative and regulatory oversight and vigilance. The failure for any state to maintain rigorous regulation serves to undermine national public confidence not only in the gaming industry, but also in the ability of our political leadership to maintain the public trust.

As reflected elsewhere in this report, the rise in the legalization of gaming in various forms has, in the main, been accepted by the American people. Counterbalancing this acceptance is a caution against any relaxation of the national conscience as regards how and in what ways gambling is encouraged, scrutinized or controlled.

The sections of this paper provide a cross-state analysis of the content and key topics addressed in existing casino enabling legislation and in the rules and procedures adopted by gaming regulatory agencies.* Discussion is provided as to the commonalties and differences in regulatory structures and practices.

This paper does not endorse or encourage the adoption by any state of policies and legislation intended to expand legalized gambling. Instead this report was developed as a guide to states that may consider casino gaming legislation.

* *Editorial Note: This paper was developed at the request of the Regulation, Enforcement and Internet Subcommittee of the National Gambling Impact Study Commission. The paper is the product of the collaborative efforts and contributions of individuals that serve as regulatory officials in the nine states that account for nearly all of the non-tribal casino gaming operations in the United States. The observations made and the opinions expressed in this paper are not the views or official policy statements of any state gaming authority. Rather, the views herein are a summary of the insights and observations of individuals experienced in gaming enforcement and regulation.*

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Legislative Clarity of Purpose

Legislatures and courts in some states do not favor the incorporation in statute of statements of purpose or legislative intent. In the case of gambling, however, a clear articulation of public purpose is useful, if not essential.

Consideration of casino-style gaming legislation is certain to involve a measure of controversy and opposition. A statement of public policy and intent, while not quelling controversy, serves to clarify the standards by which the long-term acceptability of authorizing casino gaming activity may be measured. A statement of purpose may also be useful in reconciling the adoption of statutory provisions that face potential constitutional challenge.

Perhaps more importantly, clarity of purpose provides the grounding against which to test regulatory and administrative decisions at the time of initial decision making as well as upon review or appeal. Clearly stated purposes supporting regulated, legalized casino gambling provide the underlying reasons for such “big picture” decisions as who is licensed and where licenses are located, as well as for policy decisions such as what games are allowed to be played or, what investments and community service contributions may be required or expected of a licensed operator. The ability of staff, boards and commissions, and the courts to articulate their reasoning and relate that reasoning to the statutory policy and purpose, helps to assure consistency and avoid arbitrariness in the regulatory process.

Several states have supported their decision to authorize casino gambling as a means of enhancing economic development. Nevada’s statute, for example, declares as public purpose that, “the gaming industry is vitally important to the economy of the state and the general welfare of the inhabitants.” Other states cite a more targeted economic purpose. New Jersey statutes endorse the promotion of the “tourism, resort and convention industry” as the basis for supporting casinos in Atlantic City. Illinois cites a purpose of tourism and economic development and expressly limits casino gambling to river towns, giving preference in licensure to “economically depressed areas of the state.”

By reference or inference, several states have adopted casino gaming legislation to generate new revenues. Many states earmark these revenues for specific purposes -- typically education, social services or local government assistance.

The casino industry, collectively, promulgates its product as affording the opportunity for recreational entertainment. Incorporating the concept of affording entertainment opportunity as a part of the purpose of authorizing casino gaming would therefore seem warranted.

Integral with a statement of public purpose should be an explicitly stated commitment to the overarching principle of integrity. This principle is intertwined not only with the conduct of gambling, but with the regulatory and decision making processes, tax collection and any other aspect of casino oversight that, perceived in a negative light, raises questions about the industry or its presence in the state.

Typical of the public policy statements on integrity is the Colorado statute that asserts:

Public confidence and trust can be maintained only by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments and the manufacture or distribution of gaming devices and equipment. (Colorado Limited Gaming Act, 12-47.1-102).

The Colorado gaming statute and the statutes of several other states also cite licensure in gaming as a “revocable privilege,” underscoring the intended legislative purpose of preventing or rooting out corrupt or corrupting practices and relationships. In furtherance of this point, most jurisdictions place the burden of proof for any approval of licensure upon the licensure applicant.

Constitutional Considerations

Many state constitutions contain language intended to prohibit state authorization of legalized gambling, in general or in specific forms. In the second half of the 19th Century scandals involving the operation of lotteries resulted in constitutional bans on the conduct of lotteries. Other constitutions provide for a prohibition of a broader nature, such as a ban on “games of chance.”

States initiating casino gaming have addressed these constitutional limits in varying ways. In New Jersey, Colorado and Missouri, state constitutions were amended. In each of these states voter-approved constitutional amendments authorized a limited form of casino gambling, while maintaining broader prohibition language. New Jersey’s amendment restricts casino gambling to Atlantic City, while Colorado specifies that casino gambling may be conducted in three named towns. Missouri, in two separate amendments, authorized riverboat gaming on or adjacent to the Mississippi and Missouri Rivers.

The legislatures in some jurisdictions have by-passed constitutional prohibitions with statutory language or initiatives endorsed by the electorate. In Mississippi, for example, by statutory declaration, “gambling” was defined as the conduct of a “lottery” and the conduct of casino games was excluded from the definition of “gambling.”

Each state’s elected officials must, of course, carefully weigh constitutional history and language and contemporary public sentiment before enacting gambling legislation. That said, the spate of legalization of gaming that occurred in the 1990’s has helped give rise to organized national interests opposed to gambling legalization. As a result, states weighing constitutional barriers should anticipate strident calls for voter-based authorization and, especially where the voters don’t have a say, constitutional challenges. Depending upon the specific language of a state’s constitution the most expeditious path to authorizing casino gaming may prove to be carefully constructed constitutional change.

Organization of Regulation

The principle of integrity demands that administrative decision making be in the hands of an appointed independent body, rather than a single individual subject to political influence, actual or reasonably inferred. The decision making body itself exercises operating and administrative authority and, must be further subject to appeal or oversight of its decisions.

In some jurisdictions, a gaming board or commission exercises final administrative authority subject to review by the state judiciary. Other jurisdictions, most notably Nevada, have adopted a two-tiered system in which one (appointed) body (i.e., the Nevada Gaming Control Board) exercises administrative authority, subject to a separate (appointed) entity (i.e., the Nevada Gaming Commission) that serves as the due process oversight body.

Existing state gaming statutes, as state preference dictates, specify the qualifications for appointees to gaming authorities. Statutory consideration for the qualifications of appointees to boards and commissions often include: length of terms; geographic representation; (balanced) political affiliation; professional qualifications; and, most importantly, economic and personal independence from the entities and persons subject to regulation. In most gaming jurisdictions, appointments are made by the Governor and are subject to Senate confirmation.

Compensation of appointed board or commission members is often also a statutory feature. The salary or compensation practice differs across existing jurisdictions, varying with administrative structure and scope of duties. The states of Illinois, Missouri, Indiana, Iowa and Colorado each compensate part-time board or commission members on a per diem basis, with a stipend ranging from \$50 to \$300 dollars per meeting. In these jurisdictions the staff director of the board or commission is typically compensated as a cabinet level official. New Jersey's Casino Control Commission members are full-time officials and, by statute, are compensated with an annual salary of \$90,000.

Extent of Gaming Authorized

Perhaps the single most significant factor in shaping the dynamics of the regulatory process is the scope of legislatively authorized casino gaming. With the exception of Nevada, every state that has authorized casino gambling has placed limitations on the number or the location of casino licenses, or both. Several states, for example, limit the location of casinos by requiring that operations be on or adjacent to bodies of water.

Casino gaming in Nevada most closely approximates the free market, or open competition, model of economic activity. Individual enterprises enter or leave the market based upon competitive opportunity or competitive success. In other jurisdictions it has been typical for legislation to eschew the free market model, generally as an overt decision to "limit the proliferation" of casino gambling. As with many forms of economic activity, it can be suggested that the more that artificial (i.e., non-market) limitations are placed upon the availability of casino gambling, the more challenging licensure and regulation become.

Geographic limitations on licensure take on several forms in the various states. In New Jersey, casinos are limited to a single location -- Atlantic City. In Colorado, casinos are limited to three small (former mining) towns. Mississippi, Louisiana, Iowa, Illinois, Indiana and Missouri each limit casinos to locations along waterways.

Among the “riverboat” states, Mississippi most closely approximates the “open competition” economic model. Casinos are required to locate along the Mississippi River or the Gulf Coast, but the casinos themselves are not limited in number, nor are casinos required to be operational vessels.

Louisiana, Indiana and Illinois require operational riverboats, and limit the number of licenses available. Though Iowa and Missouri have no statutory limits on the number of licenses, the respective regulatory boards in these states have been legislatively empowered to consider limitations on the number of licenses they make available.

Limitations on the number or location of casino licenses create the potential for monopoly-like conditions. This potential for exclusivity of operation places a premium on the awarding of a license. The consequences of exclusivity in licensure can be significant from a regulatory perspective. Companies vying for licensure seek out political alliances designed to retard competition or influence those with the power to decide on licensure. “Local” investors who obtain a share of a project without assuming a capital risk are one manifestation of this behavior. In limited licensure environments, local public officials court or are courted by prospective operators. “Bidding Wars” emerge among competitors for a coveted location or a monopoly franchise. Other potentially problematic issues such as the role of campaign contributions, the hiring of “local experts” as project consultants or questionable property acquisition arrangements, can also emerge.

Jurisdictions authorizing casino gaming should, therefore, be aware that a statute intended to “limit the spread” of casino gaming conversely increases the potential for inappropriate influence in the awarding of licenses. In this regard, statutory safeguards should include consideration of:

- Independence in licensure decision-making (see above, Organization of Regulation).
- Placing the burden to prove suitability for licensure upon the applicant.
- An explicit requirement for competitive proposals for limited availability licenses.
- Carefully articulated policy standards for deciding among competing applications.
- Comprehensive disclosure of financial and political relationships.
- Explicit powers to review, investigate and approve contractual relationships entered into by applicants and licensed operators.
- Requirements that assure confidentiality in the treatment of sensitive personal and financial information balanced by appropriate public meeting requirements.
- In depth and independent investigatory practices and investigatory personnel.

Suitability and Investigations

A foundation of contemporary casino gaming regulation is the presumption that those involved in the ownership or control of casino operations must be deemed “suitable” for licensure or involvement in gaming. Virtually every casino gaming state has given broad powers to appointed boards or commissions to assess, on a judgmental basis, the background and integrity of owners and others deemed “Key Persons” of a gaming company. A Key Person may be an individual or an entity that, by position, office, ownership or relationship can exercise control or significant influence over, the broad policies, management or operations of a licensed entity.

Most jurisdictions statutorily prohibit persons with a criminal felony conviction from serving as a Key Person. In general, however, state legislatures have not attempted to exhaustively itemize discrete qualifying or disqualifying factors for suitability, but rely instead upon broad statements that empower regulators to assess, judgmentally, the “character, background, personal and financial integrity, associations and business probity” of each individual Key Person. The authority to establish which individuals or entities are deemed Key Persons is likewise typically delegated by statute to the chief regulatory body.

In order to be effective in assessing the background of Key Persons, regulators must be authorized to conduct in-depth and, by most any standard, remarkably intrusive background investigations. Legislation, as well as the rules of the regulatory body, typically mandate “full cooperation” from applicants and persons subject to regulation. In fact, a key tenet of the suitability determination process is that a Key Person’s failure to provide information or a lack of veracity in the information provided is grounds for adjudging unsuitability.

Individuals may be found lacking in capacity or suitability for involvement in a gaming venture. As a result, it is advisable for gaming statutes to explicitly authorize the gaming regulatory authority to compel the “disassociation” of persons found “unsuitable” for involvement, in addition to the authority to deny licensure to an entity.

The personnel assigned to conduct investigations into the background of Key Persons are typically (and advisably should be) law enforcement officers of the state -- whether state police personnel, revenue agents or the direct agents of the licensure board or commission. Law enforcement personnel and law enforcement agencies have wide-ranging access to criminal and background information that is essential in the regulatory process.

It is typical in casino gaming jurisdictions to provide for both the licensed entity, and the Key Persons associated with that entity, to be the subject of investigation and approval by the chief regulatory body. Investigations of the licensed entity typically focus on the financial and managerial capacity of the business entity, as well as gaming experience, the site and the proposed casino physical plant. In several jurisdictions, proposed “economic impact” or proposed community amenities are also evaluated. Licensure reviews also examine the organizational structure, surveillance plans and other related aspects of a proposed operation.

Scope of Licensure-Individuals

In addition to oversight of licensed operators and Key Persons, each state authorizing casino gaming requires some form of approval or licensure of casino employees and entities supplying gaming equipment. There is a considerable variability across the states as to the scope of the individuals and entities subject to licensure. This section discusses the licensure of casino workers.

In most jurisdictions all licensure related authority is vested in the casino regulatory entity. The main exception is Nevada, where county government is responsible for the issuance of work permits for rank and file casino personnel. The Nevada Gaming Control Board retains the authority to object to the granting of a work permit for various “good cause” reasons.

Most jurisdictions have express statutory provisions specifying disqualifying criteria for persons seeking to work in casinos. Typically, any felony conviction disqualifies an individual for licensure. Some jurisdictions preclude licensure for individuals with misdemeanor convictions for crimes of dishonesty. Denial or revocation of licensure in another gaming jurisdiction is also often cited as a disqualifying factor.

The scope of employee licensure varies across jurisdictions. Some jurisdictions only license persons engaged in gaming related duties. In other states, all employees, regardless of work duties or work location (e.g., hotel workers) are subject to licensing. In most jurisdictions licensure for rank and file gaming personnel entails a standardized criminal background check. Upper management casino personnel and other Key Persons of a licensed operation are subjected to more extensive background examinations.

Most states have elected to limit the number of employee licensure applications they must consider. This has been accomplished by requiring license applicants to have an employment commitment or to be employees of a casino prior to being granted a permanent state license. Requiring casino employment prior to licensure significantly reduces the number of persons seeking licensure, avoids creating an impression that an individual is “qualified” for a specific casino position, and limits the on-going volume of record keeping work associated with maintaining licenses on a current basis.

Scope of Licensure - Suppliers

The licensure of suppliers to the gaming industry is primarily concentrated on business entities that provide gaming devices and equipment (e.g., “slot” and video poker machines, cards, dice, tokens, chips, table layouts and roulette wheels). Most regulatory bodies are also granted the statutory authority to license entities that provide non-gaming-related goods or services to casinos. Such authority is not routinely utilized. Only the State of New Jersey currently requires licensure of certain non-gaming casino contractors.

The depth of regulatory investigations and oversight of suppliers varies across the states. Typically, prospective suppliers are subjected to investigations (of both the applicant firm and its

principal officials) similar in nature to those conducted on prospective casino operators. Many states also require periodic reporting on sales activity and financial status. Some states also require periodic renewal of a supplier's license.

In the oversight of suppliers of electronic gaming devices, particular attention is paid to the regulation of the computer chips that govern the outcomes (i.e., "payouts") of such devices. Manufacturing quality assurance is reviewed by regulators. Additionally, master computer chips are subjected to testing, either by an independent private sector laboratory or by "in house" specialists employed by the regulatory body.

Enforcement – Internal Controls and Site Monitoring

The most concerted work of state casino regulatory agencies is concentrated in the regulation of the day-to-day operating environment of casinos. In the main, regulators exercise this oversight by requiring each casino to adopt and adhere to a rigorous and comprehensive set of internal procedural operating controls, typically referred to as the "Internal Control System." Various means are utilized by regulators to assure casinos adhere to procedural controls.

Few institutions handle more cash and cash equivalents than do casinos. On a given day in larger casinos, upwards of \$20 million may be wagered. Literally thousands of transactions are undertaken daily that involve the exchange and movement of cash, chips and tokens. Against this volume, only a stringent, well organized and properly executed set of controls can track transactions, assure proper taxation of revenues, prevent theft, loss or embezzlement and provide for public confidence in the integrity of casino operations.

In general, state statutes authorize regulatory boards to oversee and control the conduct of gaming operations through a broad grant of rulemaking authority. Most state regulatory bodies promulgate standardized "Minimum Internal Control System" requirements for casinos to follow. Individual casino control systems are subject to specific approval by the regulatory body. Casino Internal Control Systems focus, in detail, on procedures related to the full range of gaming-related activity, including but not limited to the conduct of games, the movement and handling of cash and cash equivalents and the accounting and record trail of all transactions.

The extent to which regulators maintain a physical presence on casino property varies from state to state. State statutes generally authorize absolute access to all areas of casinos and regulatory authority over casino operating conditions and circumstances. Some state statutes require an agent of the gaming authority to be present whenever gambling is conducted. In practice, the Midwestern "riverboat" gambling states typically maintain an on site presence in casinos at all times.

On site agents may enhance the ability of a regulatory body to identify operating irregularities. As a practical matter, state regulatory bodies also rely upon the casinos to maintain logs that document irregularities and to "self-report" casino violations to gaming agents. Most jurisdictions enforce this self-reporting principle by the imposition of rules and regulations

requiring the reporting of violations and the reporting of changes in personnel, events or information to the regulatory agency.

One of the most powerful tools in overseeing the conduct of gambling operations is the video camera surveillance system. Typically, surveillance requirements are imposed by rules and regulations rather than by statute. State requirements cover a range of topics, including the number, capacity, quality and location of cameras, as well as, the procedures for camera coverage and policies regarding the retention of activity recorded on videotape. In each jurisdiction surveillance is the responsibility of the casino and its employees. Most jurisdictions require the supervision of the surveillance function to operate (structurally) independent of gaming operations personnel and management.

Enforcement - Audit Oversight

In addition to Internal Control System and surveillance requirements, casino regulatory agencies direct and review audits of casino operations. In some states, private sector audit firms are engaged by the regulatory body (typically at the expense of the casino) to conduct compliance audits. The audits measure operator conformance to Internal Control System requirements. Audit protocols are prescribed by the state regulatory agency. Many states require compliance audits to be conducted on a quarterly basis. Most state regulatory bodies also conduct compliance audits and special or focused audits with state agency audit personnel.

All jurisdictions require casinos to retain an internal audit staff that also conduct regular, on-going compliance audits and reviews. These audits are in addition to required annual financial audits conducted by CPA firms that are typically selected by casino operators, subject to regulatory authorization.

Complaint Actions

A critical aspect of each state's compliance and enforcement activity is statutorily authorized complaint powers. It is typical for complaint authority to include the imposition of fines as well as the authority to impose suspensions (on individuals or operations) and less severe sanctions, including reprimands. Each state jurisdiction has also been granted the authority to revoke licenses -- an infrequently used but essential power.

The financial aspects of regulatory fines are typically significant. In Illinois, for example, fines on casino operators can total up to a day's total receipts for a casino applied to each discrete violation. The Missouri statute provides for fines of up to three times a day's receipts. Fines are typically applied to specific "internal control violations" and statutory or rule violations.

Conformance with Anti-Gambling Statutes

Every state has statutory provisions that criminalize various forms of gambling activity. In enacting legislation authorizing casino gaming, proper attention should be paid to crafting appropriate exemptions to existing gambling prohibitions. Additionally, new criminal provisions

may need to be enacted in order to categorize offenses that constitute illegal activity (e.g., cheating at a game) in the environment of legalized casino gambling.

In general, states that have legalized casino gambling have amended existing anti-gambling criminal statutes to carve out a broad exemption for the conduct of legal gambling as authorized under a newly crafted casino gambling Act. Many states already have exemptions of this type for purposes of authorizing a state operated lottery system.

Other areas requiring close attention are the statutory treatment of gambling losses and gambling indebtedness related to legal (casino) gambling activity. Several states have statutory provisions that render gambling debts unenforceable. If a state intends to allow casinos to grant credit to patrons, a provision that allows for the enforceability of collection may be necessary. On a related note, some jurisdictions have provisions that allow gamblers, or others, to recover “gambling losses” from a party that accepts (illegal) wagers. Such civil action laws are designed to discourage illegal wagering. Where such statutes exist, care should be taken to statutorily prevent application to legalized casino wagering.

Enforcing the honesty and integrity of legalized casino gambling games requires an ability to prosecute those that engage in cheating at otherwise legal games. Cheating can involve the patrons of a casino as well as individuals involved in operating (e.g., dealing) a game. Due to the fact that many forms of gambling are illegal in most states, (irrespective of whether it involves cheating), attention must be paid to assuring that appropriate and clearly enforceable criminal statutes exist to prosecute casino gambling cheaters.

Generally, existing statutes would allow for prosecution of a cheating crime as a form of “theft by deception.” There can be difficulties in proving the amount of theft involved in a casino cheating scam and, in many instances, only a misdemeanor offense can be successfully prosecuted. For this reason, an Act authorizing casino gambling should consider explicit statutory provisions (both misdemeanor and felony) for criminal charges against persons involved in cheating at casino games.

Non-Gaming Business Relationships

A casino, like any large business, engages in a diverse set of outside business relationships in order to conduct operations. Many of these relationships are unrelated to the conduct of gambling. Included are the procurement of food and beverages, legal and consulting assistance, the retention of construction firms, uniform and laundry services, marketing and advertising services and the procurement of a wide range of everyday supplies, from office goods to dishware and linens.

Viewed in one light obtaining needed goods and services is standard business activity and would not seem to rise to a level of regulatory concern. Looked at from a historical and political perspective, however, in the casino environment each major procurement decision can carry with it the potential for an outside vendor to exert undue influence or control over a casino operation.

For this reason, most casino jurisdictions by statute, by rule, or both exert a measure of oversight over all procurement decisions made by operators. This oversight might entail licensure of (non-gaming) provider entities or other regulatory measures. Virtually all casino regulatory bodies, for example, periodically initiate special investigations into casino vendor relationships.

Casino gaming states generally police procurement decisions on an exceptions basis and require full disclosure or regulator access to all contractual relationships entered into by a casino licensee. Most jurisdictions require the gaming company's internal controls to specify procurement standards and procedures. Adherence to these standards and procedures may be subject to compliance auditing and complaint action.

Some state gaming authorities require major expenditure decisions to be subject to "prior approval" by the regulatory body. One feature of the regulatory structure in some jurisdictions is an explicit requirement that a casino licensee be prohibited from entering a contract for "consideration in excess of fair market value." On an exceptions basis, the licensed entity may be required to demonstrate to regulators how a procurement contract conforms to this requirement.

In addition to the procurement of goods and services, most contemporary casino projects entail large-scale investments, often requiring significant levels of borrowed or invested funds. It is typical for casino gaming enabling legislation to expressly require that financing for casino operations be approved by the regulatory authority as being "appropriate and from a suitable source." Though the contemporary experience of casino gaming states suggests that virtually all of the funding for casino operations is being raised from traditional, appropriate and well-established financial markets, the failure to conduct an investigation and ask where the money comes from may, in itself, serve to encourage a change in practice.

Problem Gambling

The rise in acceptance of well-regulated, state-authorized casino gaming has not been without controversy or consequence. Of all of the criticisms of gambling, the one receiving the most public attention has been the topic of "problem gambling."

Problem gambling is a term without precise definition that embraces the fact that some, albeit an arguably small proportion, of those who gamble do so irresponsibly and to personal financial or social detriment. The term problem gambling can apply to individuals with a diagnosable medical condition or disorder of dependency, compulsion and irrationality in conduct. The term can also apply to a hard to break habit, bordering on a compulsion, that prevents or inhibits restraint in gambling.

Though problem gambling is not restricted to gambling behavior linked to authorized casinos, as a practical matter, legalization of casinos forms an identifiable focus for the existence of problem gambling. For this reason, states acting to authorize legalized casinos should consider statutory and regulatory policies that acknowledge problem gambling and seek to offset its impact.

Statutes in some states require that information be provided to persons engaging in casino gaming (and other forms of legalized gambling) advising as to how to obtain help if a patron feels gambling has become a problem. At least three states have legislated problem gambling telephone “helplines” to be maintained. Other states have initiated such toll free services through regulatory agency mandates.

In 1998, the states of Illinois, Missouri and Nevada adopted regulatory requirements for casino licensees related to problem gambling issues. Licensees are required to post and distribute information on the availability of help for gambling problems and to promulgate training and procedures for employees related to the awareness of problem gambling. These requirements include provisions for patrons to “self-ban” and to be removed from casino mailing lists and credit access.

Three states have provided explicit statutory language that sets aside financial support for combating problem gambling. In Iowa, a small percentage of gross gaming receipts are earmarked for assisting in problem gambling efforts. In New Jersey fines levied against licensed entities are earmarked for that state’s private sector service organizations that assist the problem gambler. In Indiana, ten cents of each admission fee collected by the state is transferred to the state mental health agency. This agency has used these funds to conduct studies on problem gambling and to finance the operation of an 800-number helpline service.

Though state authorized casino gaming may precipitate attention to problem gambling in selected states, the issues of problem gambling are present in all states. Most states, for example, are actually in the business of promoting gambling through a state lottery. More than half the states allow racing-related wagering. Several states that do not directly authorize casinos house Native American casinos within their borders. And, all states to one degree or another, recognize that illegal gambling -- from sports wagering to “for amusement only” devices in a corner bar -- exists and affects the populous of a state.

In short, problem gambling is an issue across the nation, whether or not states authorize and regulate casinos. As a result, it would be prudent for all states to undertake public policy measures designed to detect the extent of problem gambling, educate the public as to its dangers and undertake efforts to assure that resources are available to assist those affected by problem gambling. Several states have initiated research studies designed to help measure the incidence of problem gambling. States should also consider assessing the extent to which clinicians are able to recognize and are properly trained to treat compulsive gamblers.

There is a growing consensus among casino regulators, that measures to draw awareness to problem gambling should be initiated by the regulatory agency. There is also a general consensus among the regulators that the regulatory bodies themselves are not the proper entity for overseeing direct services or assistance to individuals with gambling problems. Regulatory agencies are ill-equipped to guide or supervise treatment and social service programs. Additionally, the scope of authority of casino regulators is narrow. As noted, problem gambling

is not restricted to the casino environment, but affects persons engaging in a wide range of gambling, legal and illegal. For these reasons, states should consider assigning the treatment or intervention aspects of problem gambling assistance to social service or medical service agencies.

Underage Gambling

Every state restricts legalized gambling (casino and otherwise) to persons of a “legal age.” Though in some jurisdictions persons as young as age 17 may engage in some forms of legalized gambling, the current practice is for casino gambling to be legal for adults aged 21 and older.

Recent literature and research on problem gambling has underscored the fact that young people seem particularly vulnerable to the allure and potential compulsions of gambling. Though this may, in part, be a function of a “forbidden fruit” allure, it seems, none-the-less, prudent public policy to restrict the availability of legal gambling options to persons aged 21 and over.

Statutes dealing with the age for legalized casino gaming should take a two-pronged direction. First, those licensed to operate casinos should be subject to strict regulatory oversight and held accountable for failing to consistently and diligently deter and detect attempts by underage persons to enter casinos or engage in gambling. Secondly, statutes should place responsibility, as well, upon young persons (or their adult accomplices) seeking to intentionally frustrate the law by gaining access to casino gambling. Specifically, states should consider promulgating petty or misdemeanor offenses provisions that can be applied to persons gaining or facilitating entry by intent or deception.

Code of Conduct and Ethical Issues

Wisely, states enacting casino gaming statutes have invested heavily in the concept of wide-ranging and independent regulatory authority in the bodies charged with the licensure and oversight responsibilities. That said, there are few developments that can undermine public confidence in the conduct of gambling more than situations in which the regulators abandon the principle of public good for real or perceived personal advantage. For this reason, state statutes should balance broad regulatory authority and independence with conduct and ethical obligations placed upon the regulators.

The most obvious prohibition should be a preclusion of those with regulatory authority from benefiting, directly or indirectly, from the decisions of office. This most often takes the form of prohibiting regulators from any form of financial relationship, including relationships struck through family members or (outside) business ties, with regulated entities. Most states also prohibit, in addition to general public employee gift-taking prohibitions, the acceptance of any gratuity or courtesy of anything of more than incidental value from a regulated individual or entity.

Most states, by statute or regulation, prohibit gambling (in the state) by regulators, and many jurisdictions provide for a one or two year “cooling off period” that prevents a former regulator

from moving to the ranks of the “regulated.” Among the most extensive statutory ethical requirements are those imposed in New Jersey.

Jurisdictional Authority

An important, though sometimes overlooked, aspect of a casino gaming regulatory framework is the balancing of state regulatory authority with the existing framework of state and local law. A strongly worded, integrity-oriented state regulatory framework can be frustrated by the failure to grant to the state regulatory entity the powers and duties that supercede existing, and potentially conflictual, local jurisdiction. This can range from the practical concerns, such as responsibly limiting local government taxing powers over a casino, to more problematic issues, such as allowing local governments to screen and “select” the potential operators of a casino.

There is a need for balance in pre-empting the decisions of local government. States, for example, should consider requiring a local government, through the electorate or through the governing body, to approve the presence of casinos (or conversely, prohibit their presence) in that municipality or county.

Care should be taken, also, in articulating the role that local zoning, governmental permit and liquor decisions have in relationship to the operation of a casino. Pre-emptive local authority in such matters may serve as a basis for undue local influence that compromises intended state jurisdiction and oversight.

The extent to which local government is authorized to, in effect, regulate the “growth” of casinos is intertwined with the scope of gaming that a state authorizes. In states such as Mississippi and Nevada, where casinos are often located in clusters and established around the “competitive” economic model, host communities properly desire to assert controls over the location, size and impact of developments. In situations where the number of licenses are limited, however, too much local discretion may spawn conflicting or inappropriate actions by local officials.

“Black Book” Requirements

The well-documented involvement of organized crime in the history of casino gaming in Nevada helped give rise to a wide range of statutory and regulatory provisions designed to “clean up” the casino industry. The most meaningful of these regulatory provisions -- strong and independent regulation and licensure, suitability determinations, and tight auditing and internal control systems -- have already been discussed. Another often-cited feature of gaming regulation is what has come to be called the “Black Book,” or the “prohibited persons” register.

Most casino gambling states authorize regulatory bodies to prohibit persons with certain criminal histories or “notorious or unsavory reputations” from gambling in a casino. Though well intended, except for efforts to exclude persons that are readily (physically) identifiable, such “exclusions” are difficult to enforce. Legislators and regulators insisting upon such provisions should take care in not exaggerating the impact of this measure.

Gaming Devices in Alternate (Non-Casino) Settings

Several states have authorized casino-style gaming devices (i.e., slot machines and video poker machines) in non-casino environments, ranging from restaurants and bars to convenience stores. Some of these states allow formalized casinos, others do not. The issues of licensure and integrity of operations, discussed throughout this paper, apply equally to the conduct of gaming in these remote or alternate settings. In many ways, the creation of these small but often unlimited (in number) gambling settings increases the potential for integrity problems.

Of the several states that have authorized this smaller scale version of casino-style gambling, the accumulating evidence suggests that centrally monitored and linked machines and tight regulation of suppliers and distributors is the regulatory model which best enhances integrity.

No matter how tight the regulatory system, however, states authorizing these widespread but small scale operations must be braced to deal not only with the potential for unscrupulous operators, but with the often troubling consequence of unsupervised gambling -- most notably underage participation. States should likewise be aware of the growing sentiment among many with an aversion to gambling, or even those of an open mind, that "convenience gambling," as it is often called, on readily accessible video or reel-type devices is the most troubling and "addictive" form of gambling.

Policy makers considering authorization of this type of gambling are advised to consult with public officials in the several western states that have implemented or experimented with this form of gaming activity.

Closing Observations

Since 1990, ten states have joined Nevada and New Jersey in legalizing (non-tribal) casino-style gaming. In the main, the result of this dramatic shift in public policy has been the creation of diverse, and in the judgment of most observers, highly effective state regulatory systems.

Fueled by demanding statutory obligations and an often skeptical public and media, collectively these new jurisdictions states, arguably, have helped to "raise the bar" as regards the integrity of an industry that, in the not-too-distant past, was seen as a source of scandal and crime-related controversy. Though new controversies, such as the complications of problem gambling, have come to the fore, with one exception the states that now regulate casino gaming have demonstrated that organized criminal influence and disreputable practices and figures can be kept out of legalized casino operations.

As with any number of public policy responsibilities, states that have legalized casino-style gaming have done so with differing policy objectives and under diverse regulatory models. Despite these differences in approach, the bedrock commonality among these states has been a vigilant and unyielding oversight that is focused squarely on maintaining integrity.

Some may point to the controversies that have emerged in Louisiana as contradictory to the view that states have successfully met the challenge of regulating the gaming industry. In reality, these controversies serve to underscore the recognition that “integrity” is not a statute or a point in time decision, but an on-going responsibility of individuals assigned to on-going duty. No regulatory system -- whether state or federal -- assures integrity or achieves its purposes simply by statutory construction or lofty pronouncements.

The belief that the gaming industry can be responsibly regulated by state government is not an argument in support of legalization by more states. Whether to expand legalized gambling is a complex political decision to be made by elected officials. The sole contribution to the legalization argument made in this paper is, simply put, “don’t assume casino gaming cannot be properly regulated by a state government.” That said, no state should assume the task of regulation is simply technical or perfunctory. The lack of a legislated commitment to politically independent and rigorous regulation, of itself, should be argument enough to defeat a legalization initiative.

It is the hope of those that have contributed to this document that it provides meaningful and effective guidance and concepts for those presented with the task of formulating a regulatory framework.

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