

Executive Summary: A Survey of Laws and Regulations In Tribal and Industry Gaming

Dr. Amy Bunger Pool, Department of Justice, Law and Society, The American University

The American University, on behalf of the Advisory Commission on Intergovernmental Relations, conducted a phone survey of gaming outlets and their regulators, be they local, state, federal or tribal governments. The primary focus of the several hundred-interview survey was casino-style gaming, with modest representation of other types of gaming outlets.

Gaming outlets were questioned about their establishment and the types of games offered, the requirements with which they must comply in the course of their business, and the actual daily regulatory or monitoring practices in which establishments engage. Regulators answered questions about not just what was required of outlets, but how, and to what extent, they enforced the laws and regulations under which outlets must operate.

What is clear is that the gaming industry itself is in a state of flux. There is significant growth both in the number of outlets, but also in the number and type of games any one outlet can offer. As more gaming enterprises open, establishments are competing for customers. This competition is manifested in the increase in surrounding attractions and facilities, such as shopping outlets, golf courses and RV parks, as well as internal issues. Casinos themselves are beginning to change the types of games which they offer, primarily a shift from tables to slots, with the simultaneous explosion of video gaming. Gaming entrepreneurs are paying close attention to their client base, shifting to a more “customer service” oriented model, complete with day care options, but which is also focused on what types of games are in place for which types of customers, based on demographic data.

The regulation of gaming is also changing. As is common in the history of law, as great a volume of business in any one industry develops, law grows concurrently. What this study empirically demonstrates is that regulations have grown, but not significantly, since gaming began. This is not meant to suggest that the initial regulation of the gaming industry was not significant. That question lies outside the scope of this study and can only be answered with a comparison of gaming regulation to other business enterprises. What this work does demonstrate is that the regulation of this industry is being modified at a fairly rapid pace for law. Evidence of this occurs in the development of new standards, such as Minimum Internal Control Standards (MICS), Title 31, and Prop 5. There has clearly been a “learning curve” in the regulation and monitoring of gaming, which for many states, is really still in historical infancy. As the outlets and the regulators gain in expertise, it is clear that a professionalization of standards and procedures is evolving. Evidence for this appears in the degree to which a solid majority of both tribal and industry outlets well exceed the regulatory standards by which they are asked to abide, not necessarily because law compels them to do so, but simply because the market demands that they do.

There clearly remain areas of significant controversy about the regulation of this industry. The data suggest, first and foremost, that many of the laws and regulations governing this industry, are mired in ambiguity. Outlets want a higher level of specificity and regulators clearly have latitude in the degree of enforcement that they follow. The most commonly mentioned

areas of disagreement or concern were vendor licensing, MICS and the degree to which some areas of regulation were repetitive, which was a cost for both outlets, but also expressed as an issue of taxpayers dollars. Both outlets and regulators expressed concern about curtailing underage gaming and about the establishment of a public perception of integrity.

The data also make clear that state and tribal governments engage in divergent regulatory practices. These findings echo what will be referred to as the Belletier Report¹, which is to say that it is not apparent from the survey data that state-based variations in the oversight of this industry are problematic. The actual range of those practices varies probably more in the precise law than it does in the daily practice and monitoring inside the casinos themselves, where a high degree of commonality exists. It is possible that it is not with the existing law or regulatory schemata, but with the actual enforcement thereof, that attention should be turned. In essence, the scope, intensity and vigilance of the enforcement is more important than what is “on the books” because the range of practices inside the industry, and amongst regulators is not terribly large.

On the surface, and in the popular media, while both perspectives, the regulator and the “regulatee”, seem politically charged and engaged in rhetorical battles when viewing each perspective in the aggregate, the actual operators of casinos and the regulators with whom they work, when engaging in one-on-one conversations, are surprisingly balanced in their perspectives on the degree to which they are regulated, or the degree to which outlets comply with what is asked of them.

It is important to remember that this is a study based on interviews with regulators and their respective gaming outlets. The veracity of the information is dependent, therefore, on the knowledge of the respondents, not a factual demonstration or a legal judgment about what a law requires. Thus it is reflective of respondent’s *understanding* of the state of the law, or regulatory schemata.

¹Michael A. Belletier, “Legislating and Regulating Casino Gaming: A View from State Regulators”, which was developed in coordination with the Regulation, Enforcement and Internet Subcommittee of the National Gambling Impact Study Commission (NGISC). It is a conglomeration of views of executive level gaming regulatory officials in the nine states that have almost all of the non-tribal casino outlets. These states (and their regulators) include: Nevada (Steve DuCharme and Dennis Nylander of the Nevada Gaming Control Board); New Jersey (Frank Catania, former Director of the New Jersey Division of Gaming Enforcement) Mississippi (Chuck Patton, Executive Director of the Mississippi Gaming Commission); Colorado (George Turner, Director of the Colorado Division of Gaming); Missouri (Mel Fisher, Executive Director for the Missouri Gaming Commission); Indiana (Jack Thar, Executive Director of the Indiana Gaming Commission); Iowa (Jack Ketterer, Administrator of the Iowa Racing and Gaming Commission; Louisiana (Honorable Hillary Crain, Chairman of the Louisiana Gaming Control Board) and Illinois (Associate Chief Counsel, Illinois Gaming Board).

ITEMS FOR FUTURE EXPLORATION

The data suggest a high level of consensus as to where the problem areas in the regulation and/or enforcement of gaming are:

(1) **Ambiguity in Law and Regulation.** The Belletier Report discusses this in terms of “legislative clarity of purpose”. The consensus of executive level regulators was that statements of purpose or legislative intent need to be incorporated into statute, such that there is a clear statement of the purpose and intent of a public policy. As one smaller casino outlet regulator articulated, “I spend as much time trying to make sure I have correctly and precisely interpreted the regulations and laws by which I must abide, and figuring out how I adapt them to casino gaming, as I do actually adhering to the directed requirements.”

An example of the importance of focusing on intent is exemplified by changes in Nevada law whereby achieving the intent of the legislation is now viewed as more important than the precise letter of the law.

(2) **Better Coordination of Laws with the Same Function.** There are instances where federal and state governments, in addition to tribal governments, are completing the same tasks. This can be the case with fingerprinting and background checks, record keeping and financial reporting.

(3) **Examine Vendor Licensing.** Respondents argue that practices in vendor licensing are unequitable. Current rules allow for vendors to do business with a number of tribes and remain unlicensed as long as they do less than \$10,000 worth of business at any one establishment. Thus, there are many vendors who will do \$9,900 worth of business and avoid licensing, while some vendors deal exclusively with one outlet, and make just over the \$10,000 mark.

(4) **Examine the Public Policy Purpose.** Consistent with a recommendation in the Belletier Report, it is prudent for localities to understand what the “purpose” of gambling in their area is. There are a myriad of fees, licenses and taxes, which can be labeled as different things in different states, that are clearly intended to increase the public coffers. Generally, states do not consider these licenses or fees to be compulsory legal requirements or regulations.

(5) **Compare Casino and Gaming Regulation to Other Business Industries** The amount of regulation in this industry cannot be fairly assessed without understanding it relative to regulations imposed on other businesses in the private sector. There are common restaurant, safety, EEO types of regulations and requirements which all businesses face. These were excluded from this study, which assessed only gaming regulations, but are there similar types of regulations seen in gaming regulation, that appear in other businesses? Only then can regulation be thoroughly assessed.