

BANKRUPTCY, DEBT & GAMING LAW SYMPOSIUM

Robert D. Faiss*

INTRODUCTION

Of all the opportunities offered in the field of gaming law, one of the most compelling is the opportunity to be first. This issue of the *UNLV Gaming Law Journal* is an example. You are now reading the first issue exploring the relationship between gaming and bankruptcy laws in the first law school journal dedicated solely to gaming law and scholarship. This reflects both the importance and youth of gaming law.

Barely thirty-five years ago, there was no recognition of gaming law as a distinct area of private practice. Furthermore, there was no person characterized as a “gaming attorney.” Today, there are hundreds of distinguished legal practitioners around the world who proudly merit that designation; and, in addition, there are gaming attorney bar sections, practice groups, and professional associations. Over the past ten years, the William S. Boyd School of Law at the University of Nevada, Las Vegas—thanks in major part to the vision of the founding dean, Richard Morgan, and the dedication of the current dean, John Valery White—has become the first law school to develop a full-scale Gaming Law Studies Program that is providing students with hands-on experience, especially in the often-neglected subject of legislative advocacy.

Nevada, because it was the first-and for a long time the only casino jurisdiction in the United States—it was home to a number of innovations related to the evolution of gaming law. Both government and private attorneys contributed to that record. Although Nevada legalized gaming in 1931, the shaping of its gaming control program did not begin until the enactment of the Nevada Gaming Control Act in 1959, at the request of Governor Grant Sawyer. That event, coupled with Governor Sawyer’s courageous and forceful leadership, began the process that noted historian Michael Green has described as moving gaming “from being a pariah to a respected industry.”

The 1959 Act created the Nevada Gaming Commission as the final authority on gaming policy, regulations, licensing, taxation and discipline, and joined it with the Nevada State Gaming Control Board. Then, as now, the Board is the authority for: day-to-day oversight of the gaming industry, determining and collecting gaming taxes, investigating and recommending Gaming Commission action on applications for licensing and approval of new games and gaming devices, and for initiating creation and amendment of gaming regulations.

* Chair, Gaming and Regulatory Law Department, Lionel Sawyer & Collins, and Adjunct Professor, Gaming Law, William S. Boyd School of Law, UNLV.

Nevada, in 1959, was under assault by the federal government and generally condemned by all the other states for hosting an industry allegedly controlled or infiltrated by the underworld. In his first message to the first appointed members of the Nevada Gaming Commission, Governor Sawyer charged them to “hang tough” in cleansing the gaming industry of any presence of underworld figures and in keeping out such persons who might attempt to enter the industry.¹

Early in the Sawyer administration, the gaming control agencies demonstrated that mob figures would not be tolerated in Nevada gaming by creating the “List of Excluded Persons.” Those on the list were barred from even entering casino premises. Legal challenges to the creation of the list were defeated. Through their combined efforts, state, local and federal officials eventually won their fight against undesirables. Today, there can be no credible suggestion that Nevada gaming is tainted by a mob presence or influence.

However, obstacles to successful and orderly growth and operation of Nevada gaming regulation and casino operations have continued. Where once the dominant concern in Nevada gaming regulation was the threat of underworld involvement, that concern has dissipated and been replaced by challenges that have recently arisen. These new challenges are presented by: the licensing and regulating of domestic and foreign public companies; the sophisticated financing models in the acquisition or creation of gaming companies; the accelerated change in gaming technology; the barriers to suitability investigations in some foreign jurisdictions; the review of gaming operations by Nevada licensees outside of the state to ensure compliance with Nevada standards and protection of Nevada’s reputation as a leader in gaming control standards and regulation; the creation of mobile gaming; and finally, the standards for, and regulation of, gambling on the Internet.

In meeting those challenges, government and private gaming attorneys seldom had a checklist to follow. Because gaming is so different from other industries, customary legal approaches often were not readily adaptable. For this reason, those attorneys have continuously been challenged with resolving unique legal questions of first impression. This demand for legal innovation has certainly been true in the intersection of gaming law and bankruptcy law over the years.

When a licensed gaming entity files for protection under the Bankruptcy Code, it places management under the supervision of the bankruptcy court. However, the automatic stay does not apply to the exercise of the state’s regulatory powers. A bankruptcy judge cannot halt gaming control investigations or compel the operation of a gaming business without a licensed operator. Gaming agencies must approve a change of control of the licensed entity. Pursuant to Nevada Gaming Commission Regulation 9.030, a bankruptcy trustee must file for gaming control approval to exercise his duties.

Bankruptcy courts and gaming control agencies generally overcome all obstacles by the force of their authority. However, each has had to adjust to the other when gaming is concerned and—at least to my knowledge—that has been accomplished in splendid fashion. Probably the best historian for how

¹ UNIV. OF NEV. ORAL HIST. PROGRAM, HANG TOUGH! 85-86 (1993).

gaming law problems in bankruptcy have been overcome is Michael Wilson, Chief Deputy Attorney General of the Gaming Division of the Nevada Attorney General's Office. He has been the architect of a number of firsts in gaming law, including notable successes in federal bankruptcy court.

New problems and opportunities for gaming attorneys to be the first to resolve them are going to grow with the diversification of the gaming industry, both the products they offer and the manner in which they operate. This is a good time to be a gaming attorney. The excellent articles in this issue will help make that time better for those of us who practice in the field of bankruptcy law.

