The Legal Status of Gaming and Its Impact on Licensing

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The legal status of gaming or gambling is not the same as other businesses. Gaming is said to be a "privileged" business. There is no "right" to conduct a gaming business. Those who conduct most common types of businesses have a "right" to do so. They operate by right, not by privilege. It is a well established principle that "where a business in itself is harmless and legitimate, the power of the state to regulate it is not the equivalent of the power to suppress or destroy. Nondangerous businesses cannot be legislated out of existence."[1] The courts have not found gaming to be such a business.

Just a few months after Nevada's Gaming Control Act was enacted in 1931, the Nevada Supreme Court upheld the right of the City of Las Vegas to deny a gaming license. In so doing, the court said, "Gaming as a calling or business is in the same class as the selling of intoxicating liquors in respect to deleterious tendency. The state may regulate or suppress it without interfering with any of those inherent rights of citizenship which it is the object of government to protect and secure." [2]

The role of the gaming industry in Nevada today is much changed from what it was in 1931. A 1988 study revealed that the "tourist industry" accounted for 45 percent of total earnings in the state, 65 percent of total full time equivalent jobs in the state, and nearly 55 percent of state direct general fund revenues.[3] The dominance of the gaming industry in Nevada and its substantial impact on jobs and tax revenues has not softened the judicial perspective on the status of the gaming industry. The Federal District Court for the District of Nevada as recently as 1988 stated: "Licensed gaming is a privilege conferred by the state and does not carry with it the rights inherent in useful trades and occupations."[4]

Recognition of gambling as a socially acceptable activity has increased as gaming has expanded into jurisdictions outside Nevada and as the industry has moved to market itself as another form of "entertainment." Logic would suggest that gaming has become a "useful trade and occupation," at least in Nevada. The law, however, does not always follow logic. It is highly unlikely that courts will soon decide that gaming has become a "useful trade and occupation," even in Nevada. Centuries of experience with gambling are unlikely to be overcome by a few years, or even decades, of Nevada-type success. The terminology has more to do with the nature of the activity and its role in society than with the economic effects of a well run, well regulated industry that we have today. Courts are not

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likely to decide that economic success and even economic contribution to the state can be translated into a reduction of the state's authority to govern gaming by changing the conduct of gaming from a "privilege" to a "right."

A more expansive explanation of the power to regulate gaming and similarly "disfavored" activities has been offered:

> Where a license or license tax is imposed under the police power as to a means of regulation, it must not be imposed on such terms and conditions as to operate as the virtual prohibition of a useful and legitimate occupation or business, and this rule has been held to apply regardless of whether the license tax is levied under the police or taxing powers. However, . . . with respect to those occupations or forms of business that are not useful, but are inherently harmful and dangerous to society or the public welfare, license requirements and exactions may be so imposed as to discourage and even amount to a prohibition of them.[5]

As the foregoing suggests, gaming is but one of the businesses deemed by law to be "inherently harmful and dangerous to society or the public welfare." In an opinion by that great defender of constitutional rights, Justice Douglas, the United States Supreme Court approved searches of federal liquor license holders as authorized by statute. Justice Douglas wrote: "We deal here with the liquor industry long subject to close supervision and inspection. As respects that industry, and its various branches including retailers, Congress has broad authority to fashion standards of reasonableness for searches and seizures."[6] Two years later, in a case involving a federal firearms license, Justice White spoke for the Court when he wrote: "When a dealer chooses to engage in this pervasively regulated business and to accept a federal license, he does so with the knowledge that his business records, firearms, and ammunition will be subject to effective inspection."[7]

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This special status or, perhaps more accurately, lack of status that privileged businesses occupy with respect to constitutional protections was highlighted by the Supreme Court a few years later in a case resulting from an OSHA warrantless search which the Court held unconstitutional.[8] Noting that the earlier cases cited to support the search involved liquor and firearms, the Court declared: "The element that distinguishes these enterprises from ordinary businesses is a long tradition of close government supervision, of which any person who chooses to enter such a business must already be aware."[9] It is this "long tradition of close government supervision" that will keep the gaming business subject to stringent regulation regardless of how acceptable this business becomes in our society.

The United States Supreme Court has more recently directly addressed the scope of gaming regulation.[10] In deciding that the Puerto Rico Legislature could restrict advertising by casinos in Puerto Rico, Justice Rehnquist distinguished some

cases cited by the appellant casino, stating that, in the cases cited, "the underlying conduct that was the subject of the advertising restrictions was constitutionally protected and could not have been prohibited by the State." He then wrote, "Here, on the other hand, the Puerto Rico Legislature surely could have prohibited casino gambling by the residents of Puerto Rico altogether. In our view, the greater power to completely ban casino gambling necessarily includes the lesser power to ban advertising of casino gambling . . . ."[11] It is significant that the regulatory action involved a First Amendment right. The Supreme Court has historically accorded First Amendment rights a special status and greater protection than other constitutional rights.

Prohibition of gaming or some types of gaming activities in the United States has often been made part of a state's constitution so that legislatures could not authorize gaming, or at least some forms of gaming , without first obtaining the consent of the electorate. States with some constitutional restrictions on gaming include: Arkansas, Florida, Nevada, Missouri, New Jersey, New York, California, and South Dakota. These restrictions, for the most part, resulted from strong anti-gambling reform movements in the 1800s primarily directed at lotteries.[12]

States thus have very broad authority to regulate gaming. To exercise the full extent of this power, however, the legislature must exercise it through broad grants of power to regulatory authorities.

The Licensing Process

Regulatory control of gaming rests on three legs. The first, and many would argue the most important, is the licensing process. The second leg is the law and regulations that govern gaming operations. One of the most important aspects of this leg are "internal controls" on the handling and recording of cash and other assets. The third leg is the enforcement of the regulations, including the auditing and review of internal controls.

All three legs are important, but the licensing process, if it is working properly, helps ensure the success of the remaining two legs by screening out the highest risks for potential regulatory violations. In addition, it enables regulators to bar entry to the industry of persons whose reputation would cause a lack of public confidence in the regulatory process and in the honesty of the gaming industry. One could argue that if the regulatory process were adequate, the state could grant every applicant a license and then discipline the licensee or revoke the license if the licensee violated any law or regulation. No regulatory system could guarantee such success, especially in a constitutional democracy. We pride ourselves on the constitutional protection given individual rights to protect them from governmental interference. In our society, it is unlikely that the public would have any confidence in the integrity of gaming if unsavory persons were routinely receiving gaming licenses.

Courts have allowed regulatory bodies great leeway in determining who should be licensed. That is, if the state legislature has granted gaming regulators broad powers to deny licenses, the courts generally uphold the exercise of that power.

Statutory Authority

Nevada has given its gaming regulators broad powers to deny licenses. The public policy of the state concerning gaming is found and declared to be that the gaming industry is important to the general welfare of the state, that its continued growth and success is dependent upon public confidence that it is conducted honestly, and that it must be free of criminal and corruptive elements. Further, no applicant has a right to a license, any license issued is a revocable privilege, and the holder acquires no vested rights.[13]

An applicant for a gaming license in Nevada has the burden of proving his qualification for a license. The State does not have to prove the applicant is unsuitable.[14] Nevada statutes prohibit granting a gaming license unless the Nevada Gaming Commission "is satisfied that the applicant is: (a) A person of good character, honesty and integrity; (b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest . . . ."[15] Finally, the Commission is empowered to deny an application "for any cause deemed reasonable by the commission."[16] New Jersey has similarly broad powers and requires an applicant to establish suitability by "clear and convincing evidence."[17]

Judicial Interpretation

In 1977, the Nevada Supreme Court issued what has become a landmark decision in gaming regulation, *State v. Rosenthal.*[18] The court's opinion is a concise exposition of the powers that may be exercised in the regulation of gaming, particularly concerning the licensing process. The court held that the Gaming Control Act did not provide for judicial review of the denial of a gaming license, that the Act contained adequate standards for Commission action, and that the licensing hearing and procedures provided sufficient due process, or at least all of the process due an applicant for a gaming license. Underlying each of these holdings was the court's conclusion that the Gaming Control Act did not create any property interest in an application for a gaming license. Persons without a property interest or fundamental right at stake have little for the court to protect.

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The Nevada Gaming Commission, in 1976, denied Frank Rosenthal a gaming license as a key employee of a company holding a gaming license. Rosenthal filed a petition in district court for judicial review of the Commission's decision. The district court held that Rosenthal's constitutional rights to procedural due process had been violated, declared the licensing provision of the Gaming Control Act unconstitutional for want of standards, and nullified the decision of the Commission. The Commission appealed to the Nevada Supreme Court.[19]

The Nevada Supreme Court, its unanimous opinion authored by Justice Thompson, probably the most respected legal scholar on the court, reversed the district court and reinstated the decision of the Commission. Justice Thompson noted that the legislature had declared a gaming license to be a privilege and not a right, required board and commission members to have special qualifications suited to the important duties they perform, granted comprehensive powers to the regulators, and limited court intrusion into the regulatory process. After reviewing the statute providing for judicial review, the court held that it applied only to disciplinary actions against licensees and thus there was no statutory provision for judicial review of the denial of a gaming license.[20] Justice Thompson went on to quote from an early licensing case, adding that it was still the law on this point: "It is not the province of the courts to decide what shall constitute suitability to engage in gambling in this state."[21] Referring to the statutory framework for gaming regulation, Justice Thompson wrote that the legislature "carefully" distinguished between persons with licenses and those without, and said: "This is a reasonable distinction since licensees possess *property interests* which those who have never been licensed do not have."[22]

By holding that there is no judicial review of gaming license denials, the Nevada Supreme Court could have avoided the other issues raised by the court below. Nonetheless, it proceeded to "decide" each of the other two issues upon which the district court had ruled against the Commission. Apparently the Court decided this was a rare opportunity to review the statutory framework for licensing with an applicant whose background sharply highlights the concerns that produced such broad regulatory powers. The Commission in denying Rosenthal a license found him to be

> a person whose licensing by the State would reflect or tend to reflect discredit upon the State of Nevada by reason of: A) A North Carolina court finding of guilt for conspiracy to bribe an amateur athlete; B) Testimony of Mickey Bruce in Senate subcommittee hearings that applicant attempted to bribe him to throw outcome of 1960 Oregon-Michigan football game; C) Statements by police officers Dardis and Clode to Senate subcommittee and to Florida Racing Commission that applicant admitted he was corrupting public officials in return for protection; D) The applicant's being barred from race tracks and pari-mutuel operations in the State of Florida.[23]

The court held that the Gaming Control Act provided constitutionally adequate standards of licensing, and, even if it did not, by taking the regulations together with the statute there were more than sufficient standards to guide the Commission's decision making process. The statutes in question provided that gaming licenses should be administered "for the protection of the public and in the public interest in accordance with the policy of this state," and the Commission has authority to deny a license "for any cause deemed reasonable."[24] Justice Thompson explained that the statutory provisions were adequate because "reasonable" action is required of the Commission. With respect to the broad grant of authority given the Commission to deny a license "for any cause deemed reasonable," the

opinion concludes that "it is entirely appropriate to lodge such wide discretion in the controlling administrative agency when a privileged enterprise is the subject of the legislative scheme."[25]

With respect to the issue of procedural due process, the court disposed of the lower court's decision and Rosenthal's contention that his procedural due process rights had been violated by saying that the Commission's procedures provided due process. Rosenthal and his two attorneys were present for the public hearings. The applicant testified and was given an opportunity to explain the allegations of criminal activity in his past and to argue his position. Witnesses testified on his behalf and letters attesting to his good character and reputation were read into the record. In other words, it was not the due process that Rosenthal wanted, but it was all that was due him as an applicant for a gaming license.

The Due Process Clause of both the Nevada and United States Constitutions refers to the deprivation of "life, liberty or property without due process of law." Justice Thompson, writing for the court, based the *Rosenthal* decision on the Nevada Constitution and asserted that control of gaming is a matter reserved to the states under the Tenth Amendment to the United States Constitution and there are no federally protected constitutional rights related to gaming. The United States Supreme Court declined review of this case. At least one federal judge agrees with Justice Thompson and the Nevada Supreme Court. Judge Roger D. Foley, Senior Judge for the District of Nevada, in a case that dealt not with licensing but with the power of the State to require certain persons to be excluded from casinos, stated: "Licensed gaming is a matter reserved to the states within the meaning of the Tenth Amendment to the United States Constitution."[26] No other cases have been found asserting that legal position. Both state and federal courts, however, have reached similar conclusions with respect to regulatory powers without the Tenth Amendment rationale. It is the lack of a property interest, the lack of a fundamental right at stake, and the historical treatment of gaming as an activity not deserving of the legal protections afforded "useful trades and occupations" that achieves a like result.

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After stating that Rosenthal had received due process, the court noted that "gaming is a privilege conferred by the state and does not carry with it the rights inherent in useful trades and occupations."[27] Referring to the legislature's distinction between those who have licenses and those who do not, Justice Thompson declared: "The license which is declared to be a revocable privilege, may not be revoked without procedural due process first being afforded the licensee."[28] Until the state grants a license there is no property interest, no protectible right that requires due process to be accorded an applicant. Once the Commission grants a license, a property right is created, a protectible interest exists, and a right to procedural due process attaches. Later cases have held that whatever rights or interest a licensee obtains by virtue of receiving the license, it is limited to the terms of the license and vanishes the moment the license expires.

Nate Jacobson, a former licensee, claimed a violation of his due process rights by the Nevada Gaming Commission and the Gaming Control Board.[29] Jacobson was a former licensee who was seeking licensing as a landlord that would give him a continuing interest in the casino operation he had previously been licensed to own and operate. He was found suitable as a landlord but subject to conditions he found burdensome, so he sold and sued. The federal district court held that Jacobson had failed to state a claim for denial of due process. The Ninth Circuit affirmed, holding that Jacobson's status as a former licensee gave him no greater status than any first-time applicant.

The circuit court then turned to the issue of whether Jacobson "had a property interest protected by the due process clause."[30] The specific question, the court said, was whether the Gaming Control Act provides an applicant "an expectation of entitlement to a license sufficient to create a property interest."[31] The answer, according to the opinion, depends "upon the extent to which the statute contains mandatory language that restricts the discretion of the Commission to deny licenses to applicants who claim to meet minimum eligibility requirements."[32] After noting that the Commission has a statutory grant of "full and absolute power and authority to deny any application for any cause deemed reasonable."[33] The circuit court stated, "The only substantive restriction imposed upon the Commission's exercise of authority is the requirement that the basis for its decisions be reasonable. . . . This wide discretion resting with the Gaming Commission negates Jacobson's claim to a protectible property interest created by the State."[34] The Circuit Court concluded that an "interest in a gaming license is not so fundamental as to warrant constitutional protection apart from its status under state law."[35]

The same year *Rosenthal* was decided in Nevada, the First Circuit Court of Appeals, in a New Hampshire case reached similar conclusions.[36] An application for a pari-mutuel license for greyhound racing was denied and the denied applicant sought relief in the federal courts. The court said:

> [A] person's interest in participating in the ownership of a pari-mutuel greyhound racetrack is neither a right recognized under New Hampshire law nor is it a "fundamental" or "natural" right. . . .[O]nce a license, or the equivalent, is granted, a right or status recognized under state law would come into being, and the revocation of the license would require notice and hearing.[37]

A more recent federal case involved holders of a one-year limited license in Nevada who were denied a permanent license at the end of the one-year term.[38] Rejecting the claim that there was a protectible interest as a result of the limited license, the court held that after the expiration date of the license, the now former licensees "stood in the shoes of first time applicants" and "have no constitutional or statutory right to further licensing."[39]

The first judicial review by a New Jersey court of a denied applicant for a gaming license was *In re Boardwalk Regency Corp.*,[40] The New Jersey Casino Control Commission found the corporation, Boardwalk Regency Corp. (BRC), qualified for a license, but found the Perlman brothers, Clifford and Stuart, unqualified as owners, and therefore conditioned the issuance of the license on the divestiture of the Perlmans' interests in the operation. Clifford was Chairman,

CEO and ten percent shareholder of Caesar's World, Inc., the parent corporation of BRC. Stuart was Vice-Chairman and eight percent shareholder of Caesar's. The Commission held that BRC had failed to establish by "clear and convincing evidence" that the Perlman brothers possessed the "good character, honesty and integrity required by the Casino Control Act to qualify for a license"[41] The issuance of a license to BRC was conditioned upon the Perlmans disposing of any interest they held in any of the Caesar's World companies and being removed from any position as officer, director or employee of Caesar's World, Inc. or any of its subsidiaries.

Some of the facts that troubled the Commission included Clifford Perlman's "repeated and enduring" relationship with Alvin I. Malnik, whom the Commission asserted was "a person of unsuitable character and unsuitable reputation ... [who] associated with persons engaged in organized criminal activities, and [who had] himself participated in transactions that were clearly illegitimate and illegal."[42] Malnik had been identified in the media as a business associate of Meyer Lansky, a reputed organized crime figure. Perlman continued his association with Malnik even after Philip Hannifin, Chairman of the Nevada Gaming Control Board, had expressed his concern about that association and received Perlman's commitment to sever a business relationship with Malnik. The appellate court found that the Commission's findings "were reasonably available on the whole record," and stated it would not disturb those findings. While there was no evidence directly against Stuart Perlman, the Commission and the court found "that the affairs of the brothers are inextricably entwined."[43]

The Perlmans complained that the Commission's findings did not support a bad character conclusion. The appellate court replied:

> The statutory burden to demonstrate affirmatively the qualifying attributes, whatever they might be, has been expressly and clearly placed on the applicant by the Legislature and is subject to the canon of clear and convincing evidence. It is not necessary to disqualification that the applicant or any personnel required to be qualified be of demonstrably bad character. Disqualification is justified by their failure to prove themselves qualified by clear and convincing evidence.[44]

The court pointed out that with respect to gaming matters "to doubt is most certainly to deny."[45]

Responding to the Perlmans' contention that the Commission had taken its action because of "unknowing or otherwise innocent association," the court acknowledged the difficulty of defending such a premise. It then went on to say that the Commission was obviously disturbed by the "apparent insensitivity of the brothers to the potential impact of those associations upon the industry, those who regulate it, those who manage it, those who patronize it and the public in general."[46] The court concluded, "This sensitivity on the part of the Commission respecting the insensitivity on the part of the Perlmans resides safely within the four corners of the statute where strict regulation is expressly mandated."[47]

Such strict regulation, the court said, had been exercised for many years in New Jersey with legislative power "almost without limit" in such industries as liquor and horseracing, and, the court concluded, "We see every reason . . . for legalized casino gaming to take its deserved place among those industries."[48]

The Perlmans contended that the "good character" required by the Casino Control Act was unconstitutionally vague. The court disposed of this issue summarily, stating "the words 'good character' in the context of the Casino Control Act leave to men of common intelligence little doubt about their meaning."[49]

The New Jersey Supreme Court affirmed the superior court's decision expressing approval of the legal analysis, except where it ruled against the Commission on the removal of the Perlmans from all positions in Caesar's World, Inc. and its subsidiaries.[50] The supreme court reinstated the Commission's decision.

Unlike Nevada, where the Gaming Control Act provides for judicial review of Gaming Commission disciplinary decisions and some other decisions and orders, but not for licensing decisions,[51] the New Jersey Casino Control Act provides for judicial review of all decisions and orders of the Casino Control Commission.[52]

Because of the historic legal status of gaming, however, legislatures do have powers with respect to the gaming business that are unheard of in other business or commercial contexts. If legislatures make their intent clear by the language they employ, our courts will generally uphold this unusual exercise of governmental power.

The appellate division of the superior court took pains to explain the standards it would apply in its review of the Commission's decision. In Nevada, the courts generally defer to the expertise and judgment of the gaming regulators; however, the New Jersey court stated it would not defer to the Commission's expertise because "expertise has not yet developed by experience or special training," alluding to the limited experience of the regulators who had licensed one other casino, Resorts. Nevertheless, the findings of the Commission were upheld by the appellate court in every instance except one and that was reversed by the New Jersey Supreme Court and all provisions of the Commission's Order were reinstated. Today, with the Casino Control Commission having almost twenty years of institutional experience behind it, New Jersey courts would most likely defer to the Commission's expertise.

The Colorado Court of Appeals sustained a denial of a gaming license for an employee of a gaming operation who had a bookmaking conviction in California twenty-three years before applying for the gaming license. Colorado statutes provide that an applicant who has been convicted of a gambling related offense may not be licensed. The court held that the restriction was "reasonably related to the proper goal of assuring both honest gaming and the public perception that such gaming is honest."[53]

Denial of a gaming license by the Illinois Gaming Board has been upheld after the Illinois Appeals Court reviewed the statutory factors required to be considered in making a decision on a license application including the character of the applicant and financial matters relating to the application.[54]

Summary

Whether or not control of gaming is a Tenth Amendment matter as Justice Thompson asserted in *Rosenthal,* there is no federally protected right until there is a property interest. And since the states can abolish gaming, they can also determine the conditions upon which the activity may exist. Therefore, if the gaming legislation is properly drafted, a property interest in a gaming business does not exist until the state confers it. The United States Constitution does not create a property interest in a gaming license. At best, it only protects such property interests after they are created under state law and even then subject to whatever limitations state law imposes on the existence of the property interest.

Not all states have granted their gaming regulators the broad statutory powers that the Nevada and New Jersey legislatures have given their regulators. Where state legislatures have not done so, courts may impose more restrictions on the regulatory process. Courts in those states may find a property interest in applying for a gaming license. If so, federal due process standards may apply in the licensing process. Not every state may want to go as far as Nevada has. Nevada may be the only state that has denied judicial review to denied gaming license applicants.

Many people find it almost unbelievable that gaming regulators have the powers they exercise because it is so contrary to an American's experience in other commercial activities. Because of the historic legal status of gaming, however, legislatures do have powers with respect to the gaming business that are unheard of in other business or commercial contexts. If legislatures make their intent clear by the language they employ, our courts will generally uphold this unusual exercise of governmental power.

Endnotes

[1]16 AM. JUR. 2D. *Constitutional Law* § 432 (1979); *See also* 51 AM. JUR. 2D., *Licenses & Permits*, § 101 (1970).

[2]State *ex rel.* Grimes v. Board of Comm'rs of City of Las Vegas, 1 P.2d 570, 572 (1931).

[3]THE URBAN INSTITUTE, PRICE WATERHOUSE, FINAL REPORT: FISCAL AFFAIRS OF STATE AND LOCAL GOVERNMENTS IN NEVADA (1988).

[4]Thomas v. Bible, 694 F. Supp. 750, 759 (D. Nev. 1988) (citing *Grimes*, note 2 above, and more recent cases).

[5]53 C.J.S. *Licenses* § 21 (1987).

[6]Colonnade Catering Corp. v. United States, 397 U.S. 72, 77 (1970).

[7]United States v. Biswell, 406 U.S. 311, 316 (1972).

[8]Marshall v. Barlow's, Inc., 436 U.S. 307 (1978).

[9]*Id.* at 313.

[10]Posadas de Puerto Rico Assoc. v. Tourism Co., 478 U.S. 328 (1986).

[11]*Id.* at 345-346.

[12]*See* GAMBLING IN AMERICA, FINAL REPORT OF THE COMMISSION ON THE REVIEW OF THE NATIONAL POLICY TOWARD GAMBLING 145 (1976).

[13]NEV. REV. STAT. § 463.0129 (1993). New Jersey's Casino Control Act has similar language. N.J. STAT. ANN. § 5:12-1 (West 1988).

[14]NEV. REV. STAT. § 463.170 (1993).
[15]*Id.*
[16]NEV. REV. STAT. § 463.1405 (1993).
[17]N.J. STAT. ANN. §§ 5:12-64, -80 (West 1988).
[18]559 P.2d 830 (1977), *appeal dismissed by* Rosenthal v. Nevada, 434 U.S. 803 (1977).
[19]*Id.*
[20]In 1983, the Nevada Legislature specifically provided that licensing denials would not be subject to judicial review. NEV. REV. STAT. § 463.318 (1993).
[21] Nevada Tax. Comm'n. v. Hicks, 310 P.2d 852, 855 (1957).
[22]State v. Rosenthal, 559 P.2d at 834 (*emphasis added*).
[23]*Id.* at 833.
[24]*Then* NEV. REV. STAT. §§ 463.140 and .220 (1975), *now combined and amended in* NEV. REV. STAT. § 463.1405 (1993).
[25]State v. Rosenthal, 559 P.2d at 835.
[26]Thomas v. Bible, 694 F. Supp. 750, 760 (D. Nev. 1988).
[27]State v. Rosenthal, 559 P.2d at 835.
[28]*Id.* at 836.
[29]Jacobson v. Hannifan, 627 F.2d 177 (9th Cir. 1980).
[30]*Id.* at 179.
[31]*Id.* at 180.
[32]*Id.*
[33]*Id.*
[34]*Id.*
[35]*Id.*
[36]Medina v. Rudman, 545 F.2d 244 (1st Cir. 1977) *cert. denied*, 434 U.S. 891 (1977).
[37]*Id.* at 250.
[38]Kraft v. Jacka, 669 F. Supp. 333 (D. Nev. 1987).
[39]*Id.* at 338.
[40]434 A.2d. 1111 (N.J. Super. Ct. App. Div. 1981), *aff'd as modified* 447 A.2d 1335 (N.J. 1982), *appeal dismissed by* Perlman v. Attorney General of New Jersey 459 U.S. 1081 (1982).
[41]*Id.* at 1116.
[42]*Id.* at 1117.
[43]*Id.*
[44]*Id.* at 1118 (citations omitted). The Commission need not expressly vote to deny a license. The failure to obtain four affirmative votes for a license constitutes a denial of a gaming license application under the New Jersey Casino Control Act. N.J. STAT. ANN. § 5:12-73(d) (West 1988). *In Re* Playboy-Elsinore Associates, No. A-4188-81T1 (N.J. Super. Ct. App. Div. 1983).
[45]434 A.2d at 1119.
[46]*Id.*
[47]*Id.*
[48]*Id.* at 1120.
[49]*Id.* at 1122.
[50]*In Re* Boardwalk Regency Corp., 447 A.2d 1335 (N.J. 1982) *appeal dismissed by* Perlman v. Attorney General of New Jersey, 459 U.S. 1081 (1982).
[51]*See* NEV. REV. STAT. §§ 463.153 (exclusion list), .315-318 (disciplinary actions), .337 (work permits) and .3662 (patron disputes) (1993).
[52]N.J. STAT. ANN § 5:12-110 (West 1988).
[53]DeMarco v. Colorado Limited Gaming Control Comm'n, 855 P.2d 23, 26 (Colo. Ct. App. 1993). The court stated it "assumed" applicants for gaming licenses have sufficient property interest to claim deprivation of due process, but the challenged statute satisfied due process. *Rosenthal* was cited as contrary on this point.
[54]Arch-View Casino Cruises, Inc. v. Illinois Gaming Board, 636 N.E.2d 42 (Ill. App. Ct. 1994).