

The Investigations Division of the State Gaming Control Board: An Introduction to the Investigative Process

Randall E. Sayre

*Chief of the Investigations Division
Nevada State Gaming Control Board*

Introduction

The Investigations Division (Division) of the Gaming Control Board (Board) is responsible for conducting pre- and post-licensing investigations of applications filed pursuant to chapters 463 through 466 of the Nevada Revised Statutes (NRS). These investigations include gathering information with respect to an applicant's antecedents, habits, character, criminal record, business activities, and personal and business financial affairs and associates. The Division also analyzes and projects financial viability, as well as economic impact.

The processing of applications is accomplished with a staff of fifty-two agents and thirteen clerical support staff. Offices are located in Carson City and Las Vegas, and are split equally in staffing levels. The Chief of Investigations and support staff, as well as Applicant Services, function primarily from the Carson City office; Applicant Services also maintains a fully functional office and staff in Las Vegas to assist in processing applications.

The state suffered considerable budget constraints beginning in fiscal year 1991. As a result, the Division experienced a staff loss of approximately 26 percent through attrition and the elimination of positions. This has caused the Division to combine functions and streamline in order to meet the needs of the industry. Unfortunately, this has resulted in a steady increase in application processing time.

The Application

The Board has developed application packages which, when completed properly, provide the necessary information for expeditious processing by Board staff. Available instruction sheets identify all required supplemental documents for each type of application. The applications and instruction forms are available from Applicant Services in Las Vegas and Carson City.

It is important for the application and supplemental forms to be completed in full. Historically, the personal history record and the personal financial questionnaire are the forms most often not given appropriate attention by the applicant. Both forms, while lengthy, detailed, and invasive, require completeness and accuracy for an expeditious investigation and accelerated licensing process.

An application that advances beyond a sole proprietorship triggers additional information needs and regulatory requirements. The needs will increase with the complexity of the business entity — with the greatest burden placed on publicly traded corporations affiliated with a Nevada licensee.

Frequently overlooked by the corporate applicant is the requirement that to be eligible to receive a gaming license, the corporation's articles of incorporation must contain specific language relating to the conduct of gaming in the state of Nevada. The language is standard and is addressed in Nevada Gaming Commission Regulation 15.500.1. The language can also be obtained from the office of Applicant Services. (This requirement does not apply to parent, intermediary, and holding companies.) The Secretary of State will not accept articles of incorporation containing gaming language without Nevada Gaming Commission

(Commission) approval. This approval process is accomplished internally by Board staff and subjects the applicant to no additional burden. After approval, staff forwards the articles of incorporation to the Secretary of State for filing and so advises the applicant. It is the applicant's burden to ensure that filing fees are paid to the Secretary of State following notification of language approval.

An additional area frequently overlooked by applicants and licensees is required language within trusts containing gaming assets. Standard language has been approved by the Attorney General's office and is also available through the office of Applicant Services; deviations from this language will not be accepted. The transfer of gaming assets to a trust requires Board and Commission approval, and will subject the licensee to disciplinary action if the assets are transferred prior to obtaining these approvals. Under certain circumstances (*see* NRS 463.172), the transfer of assets to a trust can be administratively approved by the Board Chairman. Trust language is approved internally by staff prior to the transfer being acted upon by the Board and the Commission.

The Coordinator of Applicant Services forwards the completed application package to the Chief of Investigations or the Chief of Corporate Securities as appropriate. After review of the application by the Chief, agents are assigned for investigative field work and report preparation for Board and Commission consideration.

The types of applications that are required to be filed with the Board are numerous. The Coordinator of Applicant Services and the Division Chiefs are an excellent source for assistance in determining if a proposed activity or transaction is going to require Board and Commission action.

During fiscal year 1993, 2,813 applications were filed for Board and Commission action, with 2,664 being processed to the Commission. The discrepancy between applications filed and processed is a result of: applications filed in one fiscal year and completed in another; discretionary filings not processed immediately; and, applications disposed of at Board level and therefore not receiving Commission action (*i.e.*, withdrawals).

According to Regulation 4.030(1)(a) - (b), a restricted gaming license permits the operation of fifteen or fewer slot machines in an establishment wherein the operation of slot machines is incidental to the business. A nonrestricted license is any license other than a restricted license. Applications are categorized by the Division as either restricted or nonrestricted.

At present, the average time from filing to Commission action on a restricted application is 4.6 months. A nonrestricted application takes an average of 8.1 months. The cost of the investigation is borne by the applicant and varies significantly. Filing fees for a nonrestricted application are \$500 per entity/individual involved, with an average investigative cost per entity of \$7,500. It is not unusual for an investigation that is international in scope to approach \$300,000, with some examples exceeding \$1,000,000. Filing fees for a restricted application are \$150 per person, with an assessment of \$200 for initial investigative fees. An additional \$50 per entity/individual is assessed for restricted applications which include multiple entities. Generally, no additional investigative fees are required for restricted applications; however, the Board retains the option of increasing the depth of review as necessary.

The Investigation

As previously noted, the time to complete an investigation, as well as cost, will depend on the complexity of the application, individuals, or entities involved, and the level of cooperation by the applicant and/or their professional representatives.

Applications which have been completed properly and require little or no investigative travel can be completed in a relatively short period. For example, the transfer of interest between two licensed individuals may require only one or two months prior to Board and Commission action. Conversely, an application requiring extensive travel, in-depth analysis, multi-layered corporate review, and numerous individuals, may approach a full year to complete.

The most common situations which cause delays in the processing of an application are:

1. Investigative fees not received timely after being requested. An investigation will not commence until fees are received.
2. Not providing full and accurate disclosure on application forms, the Personal Financial Questionnaire, and the Personal History Record. This forces an agent to "ferret

out" the information rather than simply verify it, and reveals a motive issue on the part of the applicant.

3. Document and information requests are not responded to in a timely manner.
4. Changing the application after the investigation is substantially complete. Applicants not having a clear plan or understanding of what they want requires additional staff time.
5. Issues developed during the course of an investigation which could result in a denial of the application or substantial conditioning of the license.

Immediately upon receipt of an assignment, the agent conducts a review of the complete package. The agent then requests investigative fees, financial records to support information presented in the application package, a minimum of five years of banking history, income tax returns for seven years, and other miscellaneous documents. Both restricted and nonrestricted applicants seeking licensing for their second location (or more) will be required to address the criteria for multiple licensing established in Regulation 3.070. Additionally, an initial interview will be scheduled. No further work will be performed until the requested investigative fees have been received.

Occasionally, on a priority assignment, investigative fees are submitted at the time of application submission. This allows Division staff to proceed with minimal delays. Submission of investigative fees with an application should be coordinated with either the Chief of Investigations or the Chief of Corporate Securities.

The field investigation commences after the initial interview of the applicant. It will vary from local travel to exhaustive international travel. Due to the cost, travel outside

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of Nevada is approved at Division Chief level, with international travel requiring justification and approval from the Board Chairman.

Applicants can expect that at minimum, all information submitted with the application package will be verified. Court records, both civil and criminal, as well as from bankruptcy courts, along with public records from multiple sources, licensing entities, professional organizations, and credit reporting institutions, will all be requested and examined. The financial investigation will include a comprehensive review of the applicant's supporting documents, and will result in the establishment of net worth, as well as a cash flow analysis.

Restricted licensees with two locations can expect an increased level of investigative scrutiny when acquiring their third location. At minimum, this will require the applicant to submit a personal financial questionnaire, bank confirmation forms, check registers, and income tax information.

At the conclusion of the investigation, a closing conference is scheduled with the applicant and any professional representatives that have assisted the applicant through the process. This conference is conducted as a courtesy to the applicant in order to make the applicant aware of, and prepared for, any areas of interest or concern that may be of issue at the Board or Commission level.

Occasionally, a closing conference will reveal additional information that assists in explaining information developed through the investigative process. Consequently, the investigative report is not finalized until the conference has been accomplished. Scheduling conferences throughout the course of the investigative process keeps the applicant informed of the progress of the application, and focused on those issues needing immediate attention and response.

The Logistics

In addition to processing applications and conducting investigations, the Division is responsible for compilation and public notification of the monthly Board meeting agendas. Due to the legal obligations imposed on public agencies by Nevada's Open Meeting Law, a strict review process is followed to ensure that all legal requirements have been met prior to placing an application on an agenda. Within five days of an assignment, a "tentative agenda" date is

set. Tentative agenda dates are derived by applicant need, agent availability, and complexity of the application.

Emphasis must be placed on the "tentativeness" of the initial agenda date. Under NRS 463.1405(1), "[t]he board shall investigate the qualifications of each applicant under this chapter before any license is issued or any registration, finding of suitability or approval of acts or transactions for which Commission approval is required." Therefore, issues that develop as a result of the investigative process can significantly impact the initial agenda date set for a particular application.

Title pages are developed and submitted simultaneously with the tentative agenda submission. With this information, the process of building an agenda for the monthly Board meeting is started.

The final agenda is set by the Board Chairman three weeks prior to the scheduled monthly Board meeting. This three-week window provides staff with the time necessary to number, copy, and distribute material requiring review prior to the scheduled Board meeting. Any changes to the agenda within this three-week period will require amendment of an agenda and re-distribution of material. Three days prior to posting the agenda, a final review involving key staff members and the Attorney General's office is conducted, to ensure the applicants' needs have been addressed and properly identified pursuant to the Open Meeting Law. Follow-up action is taken to re-distribute any modified title pages to ensure reports correspond to the public notice agenda. It is through this review process that the Board and the Commission receive assurance that the items appearing can be legally heard and acted upon. The agenda is posted for public review no later than 9:00 a.m., three working days prior to the scheduled meeting.

The ramifications of changing, adding, or amending an application will vary depending on the stage of the investigation the application is in. Should these changes develop early in the process, they can be easily assimilated into the investigative process. However, once the investigation is substantially complete, the ramifications, while not readily obvious to the applicant, can cause enormous logistical problems for Board staff. All new, changed, or amended applications must be thoroughly investigated by the agent, and the report must be amended, re-copied, and re-distributed. In addition, the notification letters and the agenda must be amended and distributed. Lastly, there must be sufficient public notice of the amended application.

Following the Chairman's determination of a final agenda, notification letters are prepared and distributed to appropriate individuals required to attend the public meeting. These letters are mailed two weeks prior to the scheduled meeting. All notifications contain the date, time, and location the application will be heard by both the Board and the Commission. Certificates of mailing are attested to and attached to all notification letters. Attendance at Board meetings by nonrestricted applicants is required unless an exception is granted by the Chairman. Applicants for a restricted license will receive notification letters advising either: "Should attendance at the Board meeting be required, you will be informed by telephone the day before the meeting"; or, "You should attend both Board and Commission meetings." In the event a slot route operator is the restricted applicant, specific individuals will be identified that are required to attend.

Conclusion

This article represents a basic introduction into the process from application filing to the meetings of the Board and Commission. The intent is to generate an appreciation for the process and heightened awareness of the positive impact when complete, accurate documents are filed and the applicant remains available throughout the investigative process. The Investigations Division and the Corporate Securities Division remain acutely aware of business needs and a fluid market environment and strive to accommodate these needs.

However, it is important to remember that in 1993, this Division alone processed in excess of 2,500 applications for Board and Commission action, ranging from simple modifications of a license condition to major conglomerates with subsidiaries throughout the globe.

Attention to any specific application is a responsibility shared by both the applicant and the state. Cooperation and responsiveness to staff needs remain the key factors in any application advancing through the process with minimal delays. Over the course of the last twenty-four months, average time for investigation completion has continued to climb to its present level — which is in part due to the reduction in staff experienced by the Division. The reduc-

tion in staff has resulted in fewer agents being assigned to an investigation, thereby increasing the length of the investigation. In an effort to check this trend, a continued effort by all parties concerned will be required.

