REPORT AND RECOMMENDATIONS

on

CASINO GAMBLING

by the

COMMISSION OF INVESTIGATION

of the

STATE OF NEW JERSEY

STATE OF NEW JERSEY

STATE COMMISSION OF INVESTIGATION

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April, 1977

TO: The Governor and the Members of the Legislature of the State of New Jersey

The New Jersey State Commission of Investigation herewith submits its Report and Recommendations on Casino Gambling as mandated by Section 10 of P.L. 1968, Chapter 266 (N.J.S.A. 52:9M-10), the Act creating the Commission.

Respectfully Submitted

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SUMMARY AND RECOMMENDATIONS

Soon after New Jersey's voters on November 2, 1976 approved a referendum proposal authorizing casino gambling in Atlantic City only, the Governor at a press conference urged the State Commission of Investigation (S.C.I.) to undertake a review of the problems and consequences -- including the threat of criminal intrusion -- posed by the advent of this new industry. For the S.C.I., the assignment meant a sudden renewal of a low-key inquiry that had actually begun in 1974 (prior to the defeat that year of a casino gambling referendum proposal) -- then, as now, in cooperation with the Attorney General's Division of Criminal Justice, the State Police and other law enforcement authorities.

The S.C.I.'s casino gambling investigation, while part of a shared venture, nonetheless was conducted distinctly separate from other inquiries in compliance with the Commission's statutory obligation to investigate, report and make recommendations independent of any other related governmental activity or consideration.

Although the magnitude of the task of monitoring casino gambling was anticipated, nevertheless its wide-ranging scope has severely taxed the limited personnel resources of the S.C.I. However, the inquiry -- particularly its law-mandated concentration on organized crime -- has enabled the S.C.I. to develop an extensive intelligence network that will fuel its continuing and expanding casino gambling monitoring program.

The S.C.I.'s recommendations, which follow, are primarily aimed at promoting the integrity of the casino gambling industry The Commission shares the widely held conviction that the endeavor can be successful only if it gains and retains the public trust. Already the S.C.I.'s explorations in Atlantic City and other jurisdictions have produced some indications that only the most stringent of gambling control laws can thwart the infiltration of casinos and related services and suppliers by organized crime. Because of the potential enticements of casino gaming to criminal elements, the S.C.I. whenever it had a choice between being hard-nosed or easy-going, opted in favor of strictness in drafting its recommendations.

Because of the Commission's emphasis on the danger of criminal penetration of casinos and the need to structure the most honest operation possible, this report eschews some issues which are primarily of an economic nature. Thus, for example, the Commission has avoided specific stipulations on the number of rooms a casino-hotel should be required to have or on casino taxation. Nonetheless, while making no recommendations on certain purely economic problems, this report discusses some of these factors at length because of their importance to Atlantic City, the gaming industry and the taxpayers in general.

The Commission wishes at this point to stress the necessity of properly programming one particularly important economic issue -- the casino gambling proposal's required distribution of casino tax revenues to ease the utility, property tax and rental costs of the elderly and disabled. Unless the industry wishes

to stand accused of being spawned by a hoax, even as it tries to shape a reputable image, this casino referendum "campaign promise" to some one million people must certainly be fairly and adequately implemented.

While there is no reason why casino gambling cannot become an economic and social asset to New Jersey, its residents and its visitors, the nature of the industry, as previously noted, makes it a vulnerable target for criminal intrusion. Because of this vulnerability, the S.C.I. intends to maintain its monitoring of the casino gambling industry as an obligation to the taxpayers of this state under provisions of S.C.I. law requiring that it conduct investigations to assure the faithful and effective enforcement of the laws of the state "with particular reference but not limited to organized crime and racketeering."

Following are the major conclusions and recommendations of the State Commission of Investigation report on casino gambling:

A. REGULATORY AUTHORITY

- A two-tier system, consisting of a decision-making rule-making, hearing body and an investigative and law enforcement body.

- The decision-making body shall comprise of five part-time commissioners, totally independent, appointed by the Governor with Senate confirmation to staggered five-year terms, each commissioner being limited to a single term.

- No more than three of the five commissioners shall belong to any one political party.

- The enforcement body shall be a division within the Department of Law and Public Safety and so structured as to guarantee its independence of operation to the greatest extent possible.

- The enforcement body's obligation to police the casino gambling industry shall not be diluted by the assignment to it of other tasks.

- The enforcement body shall be provided with its own strong, independent audit capability, a function the S.C.I. regards as particularly important.

- To help thwart corruption, stringent restrictions should be imposed on the contact by officials of either regulatory body with private gambling enterprises prior to, during and after their terms or periods of service.

- All regulatory members, officials and employees should be barred from all political activity.

B. LICENSING

- The S.C.I. takes no position on casino hotel room requirements, which it considers to be primarily an economic issue, but recommends that if the Legislature does not enact specific room requirements which would tend to limit the number of casino licenses, some means

of limiting the total number of such licenses should be devised.

- The number of casino licenses any one licensee may participate in shall not be limited but shall be keyed to the number of other casinos in operation.

- A casino licensee shall be required to have complete control of the entire physical premises on which the casino is located.

- A casino license applicant shall at all times bear the burden of proving his qualifications for a license.

- Applicants for a casino license shall waive any liability for required disclosure of all information requested of them during the application process.

- Casino licenses shall be denied to any applicant who fails to prove by clear and convincing evidence his qualifications for such license.

- A casino license shall be denied to any applicant who has been convicted of a specified list of crimes, including any "offense indicating a lack of business integrity or business honesty, without regard to whether such crime is labeled a misdemenaor, felony or disorderly persons offense."

- A casino license shall be denied to any applicant who is or was a member of organized crime or who is or was an associate of organized crime, as specified.

- Certain persons employed by or associated with the casino licensee shall be required to be individually licensed.

- Before an actual casino license is issued, certain associated persons subject to individual licensure shall first have obtained their license.

C. ANCILLARY SERVICES

- Certain specified casino gambling "ancillary services" shall be required to be licensed in order to mitigate a dual risk of intrusion by criminal elements directly into casino operations or indirectly through the hotel or through services related to casinos.

- Licensing shall be required of any providers of raw materials or services to the casino gambling industry, such as gambling equipment manufacturers, casino security services, gambling debt collection agencies, gaming equipment repairs.

- Operators and owners of casino and casino-related companies and manufacturers of gaming equipment must be stringently licensed.

- Licensing shall be required of any casino or hotel service industry such as suppliers of liquor, food and non-alcoholic beverages, security services, garbage haulers, vending machine providers, as well as suppliers of goods sold in such machines, linen suppliers, limousine services, any shopkeeper located

within the hotel complex and any other industry which the regulatory body shall require to be licensed.

- Any supplier of goods or services not mentioned in the above lists but which supplies to the hotel on a continuing basis must register with the regulatory body the terms of the arrangements and the identity of all owners and employees of the supplier.

- Any supplier of a casino-related goods or services on a "one time basis" except manufacturers of gaming equipment, shall not be required to be licensed or to register but must file the terms of its agreement with the regulatory agency.

- All providers of goods and services directly relating to the casino operation, as specified, must be licensed at the time of the opening of the casino. Other providers, as specified, must have applied for licensure at the time of the casino opening but may provide goods or services pending licensure decision.

D. CASINO OPERATIONAL PROCEDURES

- Clear separation of certain casino functions must be mandated by statute.

- Casino accounting and security departments must be required by law to report in writing any circumstances that even "suggest" a violation of internal and security controls by the casino licensee.

- Chips should be purchased only at gaming tables and redeemed only at cashier's cages.

- All slot machines must have counters built-in that record total play and total payout.

- Odds and payout should not be regulated by the State, at least at the outset.

- Casino gambling hours should be limited to 16 hours daily, from noon to 4 a.m. daily, including Saturdays, Sundays and holidays.

E. CASINO CUSTOMER RELATIONS

- Casinos should not be allowed to extend credit

- The Legislature should enact a statute requiring casinos to issue chips to players only upon the presentation by players of cash or its specified equivalent, such as traveler's checks, nationally recognized credit cards or personal checks.

- Tipping of casino personnel shall be absolutely prohibited.

- Liquor may be made available in a casino but not at the gambling tables.

- All persons involved in debt collection activities must be licensed.

- All persons involved in organizing and operating junkets must be licensed.

- Dress codes or regulations should be minimal and required only to have a reasonable relationship to proper health and safety standards.

F. RECORD-KEEPING PRACTICES AND REPORTING PROCEDURES

- From a law enforcement perspective, tight controls on and detailed records of casino revenues and disbursements shall be prescribed whether or not tax considerations require such procedures.

- Each casino licensee must be required to maintain specified and detailed books, records and supporting documents as governed by regulatory rules.

- All bookkeeping and other phases of casino licensee's operation shall be required to be open to immediate inspection without warrant or probable cause.

- Specific procedures for audits of licensee's financial condition by Certified Public Accountants shall be promulgated.

- All licensees must maintain their banking accounts in banks within this state.

- Licensees shall be required to file with the casino gambling enforcement regulatory bodies copies of all reports submitted to other state, local or federal agencies and to certain private entities.

- Annually each licensee shall provide a certified list of all individuals receiving payments of any kind for personal services rendered to the licensee.

- Licensees shall be required to report to the licensing agency whenever any individually licensed person associated with the casino is terminated or otherwise severs his relationship.

- A casino licensee and any corporation holding an interest therein shall cooperate and assist the licensing authority in obtaining information regarding the benefial owners of its stock.

- The casino licensee and all individuals and/or corporations licensed by virtue of their employment or association with a casino licensee shall at all times make available to the licensing authority their corporate and personal financial records.

- All transactions in excess of $2,500 by a casino licensee must be made pursuant to a written contract, to be made available on request to the regulatory authorities.

G. SANCTIONS

- Conflicts provisions imposed upon members and employees of the regulatory authority shall be subject to specific civil and criminal sanctions.

- Even unintentional violations of casino gambling statutes shall be subject to sanctions.

- Specific civil and criminal sanctions shall be provided for the use of unlicensed personnel to collect casino debts.

- A violation by any holder of a substantial interest in a casino shall be punishable in addition as a violation by the casino licensee.

H. LABOR ORGANIZATIONS

- All representatives of all labor organizations must register fully before entering into collective bargaining with casino or hotel employees.

- All labor organizations who seek to receive dues or administer pension funds must qualify according to the "disqualification criteria" for licensure.

- No labor organization or agent shall hold any financial interest in any hotel or casino licensee where it represents employees.

I. MISCELLANEOUS PROVISIONS

- "Moonlighting" by public employees or persons holding public office in casino jobs shall be prohibited.

. Casino licensees, casino-related companies and all corporations or persons individually licensed because of their interest in, employment by or association with a casino shall be limited in the amount of money they may contribute to political parties, candidates or campaign organization.

A. REGULATORY AUTHORITY

INTRODUCTION

The State Commission of Investigation believes that the structure of the regulatory authority created to administer and control casino gambling in Atlantic City is perhaps the most important issue to be considered in enacting casino gambling legislation. No other area of the legislation will have as much direct impact on the actual enforcement of the law or on the public confidence in the integrity of the casino industry as will the provisions establishing the governmental body or bodies to which the administration of the act will be entrusted.

Since weaknesses or omissions in these provisions will not necessarily be overcome, offset or negated by strengths in other areas of the law, the S.C.I. recommends the Legislature promote the following concepts with respect to the regulatory authority it creates:

1. -- Independence of action
2. -- Strength of authority
3. -- Competence and integrity of personnel

The effectiveness of the entire act, the S.C.I. insists, will depend upon the effectiveness of the regulatory authority. For example, strong licensing provisions could be dissipated by a hesitant or subservient regulatory authority. But a strong and independent regulatory authority would rise above weaknesses in licensing provisions by vigorous enforcement of

the provisions available to it while at the same time demanding swift enactment of more adequate statutory tools with which to properly carry out its responsibilities.

Before proceeding to the Commission's specific recommendations on the structure of the regulatory authority, some discussion of the general criteria recommendation for such an authority - independence, strength, and competence and honesty - is appropriate. These terms are general and evoke in different persons different reactions. To properly understand the recommendations, therefore, some understanding of the Commission's view of these concepts is essential.

Independence of Action

The concept of independence for an authority responsible for regulating an industry historically regarded as a target of criminal and political misuse undoubtedly will cause some fear that it will succumb to various abuses of power. However, the Commission clearly is not recommending total independence with unbridled power. Rather, it is recommending operational independence within a system of strong statutory guidelines and subject to external checks and balances. The type of two-tier regulatory authority contemplated by the S.C.I. would have ability to act on its own when necessary for the proper administration of casino gambling in Atlantic City without direction or control by other state agencies or officials.

The statutory provisions proposed by the S.C.I. would

clearly define the public policy under which--and the limits within which--the regulatory authority is free to act. Subject to these bounds, a truly effective regulatory authority must be able to act immediately as the occasion warrants without the need to clear its actions through other agencies or officials. Moreover, it must be able to act free from unwarranted pressures - political pressures, pressures from the industry, pressures from those who want to be a part of the industry. Such pressures would be deflected by the regulatory authority's internal integrity --which, in turn, would depend heavily on external checks and balances that must constantly "encourage" such integrity. This is why the S.C.I. so strongly emphasizes that its call for substantial independence for the regulatory authority be coupled with maintaining of sufficient external checks on its integrity.

Strength of Authority

The S.C.I.'s logical next-step belief that strong powers be given to the regulatory authority may also raise the fear that a strong authority will run roughshod over the industry it polices without regard to the rights and liberties of those under its control. While this is a legitimate concern, and should be kept in mind in drafting the act, the Commmission warns against giving it undue weight.

It is contended that engaging in casino gambling in New Jersey is a privilege, not a right. While this expression has been worn with use, it is a truism that offers proper guidance in drafting regulatory legislation.

Historic limits on the State's power to impose regulatory controls and restrictions should not automatically be extended to dilute its power over casino gambling. The S.C.I. is not advocating dictatorial powers for the regulatory authority, as will be obvious further on in the specific recommendations as to those powers.

But the State Commission of Investigation does urge that we do not allow our usual views of due process, civil liberties, property rights, etc., to cause us to automatically reject certain suggested statutory and regulatory-imposed controls over casino gambling as being not in conformity with the State's control over other endeavors and industries. Instead, the regulatory authority's powers should be approached from the point of view that those applicants desiring to obtain the privilege of engaging in casino gambling do not have the right to expect the same limitations on state powers that are applicable to other regulated industries and occupations.

This approach to the drafting of casino control legislation is particularly important right now, before casino operations begin. As it starts from scratch to authorize and regulate the casino gaming industry, the State should impose all of the controls, limitations and conditions on the practice of casino gambling it deems necessary and appropriate to protect the public interest. It should not hesistate to adopt provisions it believes to be necessary, even though regarded by some as

"unjust" or otherwise not in accordance with pressure group depictions of the due process tradition. To start weak may, as a practical matter, result in a legislative inability later to assert those greater state powers belatedly found to be necessary. Once persons have begun to operate casinos, there will be an inevitable tendency to lose sight of the "privilege" they are enjoying and to talk instead in terms of their "rights".

Compentence and Honesty

Since the third general concept -- a regulatory authority that is both competent and of high integrity -- is the prime goal in creating any agency, the S.C.I. is naturally most concerned with the peculiar problem of achieving that result. While much of the responsibility for accomplishing the goal in the casino gambling field must of necessity fall to those who will actually select the persons to run and staff the regulatory authority, there are ways that the legislative process can at least promote, if not assure, its realization.

Salary levels sufficient to attract and retain qualified persons are necessary. A budget that not only provides for such salary levels, but also provides for a sufficient number of personnel is necessary. Minimum qualifications with respect to educational background and professional experience must be considered. And limitations on the types of private or public activities regulatory authority personnel may engage in prior to, during and after termination of their public

employment are essential, particularly with respect to the integrity of the authority.

RECOMMENDATION:

THAT THE REGULATORY POWER BE DIVIDED BETWEEN TWO BODIES OF AGENCIES, ONE HAVING THE DECISION-MAKING AUTHORITY AND ONE HAVING THE ENFORCEMENT RESPONSIBILITY

The first decision to be made in creating a regulatory authority to govern casino gambling is whether to lodge all the power in one body or to divide it among tow or more bodeis (or agencies). The bills proposed by Senator McGahn and Assemblyman Perskie call for the creation of a single agency. Nevada, on the other hand, employs what has come to be called a two-tier system, under which the decision-making, "rule-making" functions are separated from investigatory and enforcement functions. The S.C.I. recommends the adoption of a two-tier system that incorporates the following breakdown of basic responsibilities.

Decision Making Body

1. holds license application hearings and decides whether to grant or deny same;

2. conducts disciplinary hearings upon complaint from the enforcement body, and imposes sanctions, such as fines, suspensions, or revocations of licenses, when appropriate;

3. promulgates rules and regulations upon its own motion or upon application from the enforcement body or the industry.

Enforcement Body

1. investigates all license applicants;

2. appears before the decision-making body and recommends approval, disapproval or otherwise advises decision-making body with respect to all license applicants;

3. monitors and surveils all casino operations;

4. investigates possible violations of casino gaming laws, regulations or rules;

5. files and prosecutires complaints before decision-making body when violations found;

6. appears before decision-making body to recommend, oppose, or otherwise advise on promulgation of rules and regulations;

7. takes or defends appeals from licensing, disciplinary, and rule-making decisions of decision making body.

The primary reason that prompted the S.C.I.'s recommendation of a State regulatory power divided in this fashion is a basic concept of fair play. Historically, our system of laws has been based upon a separation of the investigatory- prosecutorial function from the adjudicative function. To place the power both to investigate possible violations of the casino gaming laws and the power to impose sanctions for such violations would violate this concept.

Other factors militate against a single body and in favor of a two-tier system. One is the need for proper checks and balances. To be effective, the S.C.I.'s insistence on a strong and independent regulatory authority must apply to both bodies in the two-tier system.

And as also noted, this recommendation is predicated upon the presence of external checks on the regulatory authorties to prevent independence from leading to abuses of power. A two-tier system would itself provide some external checks (though not all, as will be discussed later.) Each body will tend to serve as a check on the other.

The decision-making body will clearly do so, since it will have to review the recommendations of the enforcement body before reaching its own decision on whether to issue or deny a license, whether a violation has occurred and if so, whether and what sanctions to impose, etc.

On the other hand, the enforcement authority will act as a check on the decision-making body by its power to take appeals from decisions of the decision-making authority that it disagrees with, as well as to defend appeals by other parties when it agrees with the decision-making body's finding. Thus if a license is granted to an applicant which the enforcement body believes to be unsuitable, it will have the authority to seek judicial reversal of the decision-making body's action in granting a license.

Closely related to this check and balance on each other is the fact that a two-body system makes corruption of that system harder than where all the power is contained within a single body. To obtain a license through bribery or other improper means will now almost invariably require an approach to both bodies, since "fixing" one may be insufficient to

insure approval of a license.

Another reason to separate the regulatory power into two bodies is to increase the ability of each body to perform more fully its own functions.

If the enforcement body will not have the authority to make the ultimate decisions on licensing or disciplinary matters, then it can assume an adversarial role and to appear before the decision-making body as an advocate.

By the same token, the decision-making body -- freed from investigative and enforcement functions -- can make its decisions on an impartial basis without favoring one side or another.

Closely related to this is the basis upon which those decisions will be made. While the enforcement body would be free to gather all information that may come to its attention with respect to a license applicant or licensee, a license application or disciplinary action would only be decided on matters presented to the decision-making body in open hearing. Quite often in any investigation, and properly so, much information is gathered in a form that cannot be openly presented. It may be from an informant; it may be hearsay; the source may later balk at repeating it. Whatever the reason, such information, while good as a lead, is unusable as direct proof. If a single body system were employed, such information might nevertheless taint the ultimate decision. Furthermore, in a single body system, much of this information might have to be revealed to the public under either the Open Right Meetings Act, N.J.S.

10:4-6 et seq. or the "Right to Know Law", N.J.S. 47:1A-1 et seq.

Here, too, however, the S.C.I.'s position should not be misinterpreted. It is not recommending that only evidence in a form that would be admissible in court should be used by the decision-making body. A further discussion of this point appears later. Rather, the S.C.I. simply recognizes that even under the relaxed rules of admissibility in administrative proceedings, certain materials may not be used as the basis for reaching a decision.

RECOMMENDATION:

> THE DECISION-MAKING BODY SHALL TAKE THE FORM OF A PART-TIME COMMISSION, TOTALLY INDEPENDENT FROM OTHER AGENCIES AND DEPARTMENTS.

By the very nature and limitation of its functions, the decision-making body should as practical matter and as a matter of economy be a part-time commission.

The amount of work to be done by the decision-making body will not justify the total expenditure a full-time agency might necessitate. The decision-making body will not have any day-to-day responsibilities. It will not itself be investigating license applicants or checking for violations of the law. Rather, it will primarily be making rulings based upon adversarial presentations made to it by competing interests.

Moreover, even with respect to its purely adjudicative activities, it does not appear that the decision-making body will be swamped to the point that a full time body is necessary. Unlike

Nevada, where almost anyone who wants a casino license can apply for one, it appears that in New Jersey certain restrictions will substantially reduce the number of potential applicants. Thus, even in the very beginning when license applications first start coming in, it is realistic to assume that they will come in more like a trickle then a flood. Once the initial licensures are completed, the decision-making body's primary responsibility will be to hold disciplinary hearings as needed. Here, too, it is reasonable to assume that if stringent statutory provisions have been adopted and proper licensing investigations conducted, there should not be a larger number of disciplinary cases to handle.

Accordingly, the S.C.I. recommends a part-time decision-making body that would operate independently of other bodies or agencies, and would perform functions much in the manner of a court. It must, therefore, be able to render its decisions free from outside controls or pressures.

RECOMMENDATION:

THAT THE DECISION-MAKING BODY ("COMMISSION") CONSIST OF FIVE COMMISSIONERS.

In light of the fact that most of the decision-making agency's work will be to render adjudications after hearings, it is recommended that an odd number of Commissioners be appointed to avoid tie votes. While any odd number of Commissioners would achieve that result, five (5) are recommended as being the most desirable. Because of the tremendous public and governmental interest in insuring

that fair and unbiased decisions are made with respect to casino licenses, it is the S.C.I.'s opinion that three Commissioners would not provide a sufficient cross-section or sufficient internal checks against improper decisions being reached by the Commission. On the other hand, seven Commissioners (or any higher number) would be too cumbersome.

RECOMMENDATION:

THE COMMISSION SHALL BE APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE.

Because of the critical nature of this decision-making agency with respect to casino gaming and the public's perception of that industry, there should exist some checks on the power to appoint its members. Because the agency would be quasi-judicial and quasi-administrative in nature, it does not appear permissable under Art. 4, Sect. 5, Para. 5 of our State Constitution to empower the Legislature to directly make any such appointments, as it does in the case of the State Commission of Investigation. Therefore, the normal method of gubernatorial appointment with senatorial consent is considered to be the most appropriate.

RECOMMENDATION:

COMMISSIONERS SHALL BE APPOINTED TO FIXED, STAGGERED TERMS OF OFFICE, SUBJECT TO REMOVAL ONLY FOR MISFEASANCE, MALFEASANCE, OR NONFEASANCE IN OFFICE.

In keeping with the general recommendation that the decision-making body be given the maximum possible independence, it is felt that fixed terms of office will further such independence. Fixed terms should serve to insulate a Commissioner from outside influences and pressures once he has been appointed to office.

To have him serve at the pleasure of some other govermental official or body would tend to make a Commissioner more dependent upon the appointing authority. The same is true with respect to removal procedures. Obvisouly, there must be some method by which Commissioners who act improperly may be removed from office. However, the grounds for removal must be carefully drawn and should relate directly to the proper performance of a Commissioner's functions.

Staggering of the terms of office will also enhance the basic independence and impartiality of the Commission. Except for the original appointments which will all be made within a short space of time, subsequent appointments under a staggered system would be made on a continuing basis by different Governors with the advice and consent of Senates all subject to changing political loyalties.

RECOMMENDATION:

A COMMISSIONER SHALL BE LIMITED TO ONE FIVE-YEAR TERM OF OFFICE.

A five-year term of office is suggested since it logically fits into a staggered system of appointments where there are five Commissioners. With five-year terms, one seat on the Commission will turn over each year. Yet even with this constant turnover, the remaining Commission members will continually provide a level of experience and a degree of expertise in the area of casino gambling. Shorter terms or a non-staggered system of appointments

would tend to lessen the continuity and experience of the Commission.

On the other hand, fixed terms and a significant amount of independence can lead to arrogance and insensitivity toward the needs of the State, the public or the industry itself. Moreover, if only certain Commissioners hold over for additional terms, while others regularly depart as their term expires, the holderovers, by sheer weight of their years of service, may tend to assume a disproportionate role in the decision-making of the agency. Therefore, the S.C.I. recommends a one-term limit for all Commissioners.

RECOMMENDATION:

THE COMMISSION SHALL BE CHAIRED BY THE COMMISSIONER SENIOR IN TIME ON THE COMMISSION, WHO SHALL NEVERTHELESS BE PART-TIME

There have been suggestions that the Chairmanship be a fulltime position. The S.C.I. opposes this and recommends instead that the Chairmanship be a part-time position the same as all other Commissioners. The S.C.I. believes that a fulltime Chairman would soon come to dominate the rest of the Commission, if for no other reason than by virtue of the fact that the other Commissioners, being part-time, would begin to rely on the Chairman and his closer, fulltime contact with the industry. Additionally, there does not appear to exist a need for a fulltime Chairman. Unlike the enforcement body which will have daily investigative and monitoring responsibilities, the Commission is not seen as having a real day-to-day responsibility. Outside

of conducting license, disciplinary and rule-making hearings, there is little else that the Commission will be called upon to do. Thus, in between such hearings, there is no real need for a fulltime Chairman.

To further insure that the Chairman does not assume disproportionate powers within the Commission, it is recommended that the chairmanship of the Commission pass automatically to the Commissioner senior in service on the Commission. This would mean that annually, a different Commissioner would become chairman as the preceding chairman finished his five-year term of office and left the Commission. Thus, each Commissioner would hold the chairmanship for one year - his final year (unless of course a Commissioner leaves prior to the expiration of his five years and thereby alters the normal seniority patterns).

To initiate this system, it is recommended that with respect to the first appointments to the Commission, the chairmanship go to the Commissioner appointed for a one-year term. It would then bypass the Commissioner appointed for two-year term, etc., until it reached the Commissioner originally appointed to a full five-year term.

RECOMMENDATION:

NO MORE THAN THREE COMMISSIONERS SHALL BELONG TO ANY ONE POLITICAL PARTY.

This restriction, typical for many state bodies, is intended to remove partisan polities from the agency's activities to the greatest extent possible.

RECOMMENDATION:

THE ENFORCEMENT BODY SHALL BE AN INDEPENDENT, STATUTORILY CREATED DIVISION WITHIN THE DEPARTMENT OF LAW AND PUBLIC SAFETY.

The structure and nature of the body charged with the day-to-day enforcement of casino gambling was one of the most difficult issues considered by the State Commission of Investigation during its review of casino gambling. That review revealed two distinct approaches to this issue, each of which generated considerable support.

One view was that a totally separate and independent agency should be created to enforce casino gaming within the State. The other approach was to place the enforcement activities within a division created for that purpose in the Department of Law and Public Safety, where it would be under the direction and control of the Attorney General and staffed by Deputy Attorney Generals and State Police personnel.

There is much appeal to the idea of a totally independent enforcement agency, separated from any other governmental agency. Such a concept is entirely consistent with the State Commission of Investigation's general position that casino gambling regulatory authorities be given as much independence as possible within a system of external checks and balances. Certainly, an independent enforcement body would increase the available checks and balances. Not only would the decision-making body act as a check on the enforcement agency, but so would the Attorney General's Office and the State Police if the enforcement body were not located

within the Department of Law and Public Safety. As a division within that department, the enforcement arm would have a less independent status.

A second argument in favor of a separate enforcement body is that it would have no other responsibilities except enforcement of casino gambling statutes. It would not, therefore, be diverted from those problems to other areas of law enforcement concern as might occur -- unless specifically barred -- if it were located within Law and Public Safety or any other department.

However, several possibly overriding considerations favor placing the enforcement function within the Department of Law and Public Safety. The one factor most frequently cited is the need for an established intelligence capacity. Since a primary function of the enforcement body will be to conduct investigations of license applicants, it will require the establishment and maintenance of an effective intelligence gathering operation. Those who favor placing the enforcement functions in Law and Public Safety point out that the State Police already have this capability, whereas an entirely new agency would need time and funds to develop its own.

Secondly, there would not be a split between civil and criminal enforcement powers with respect to casino gambling. This argument proceeds from the view even if a separate enforcement agency was created, it would be limited to civil jurisdiction, while it also could be given criminal jurisdiction, the S.C.I. does feel that criminal jurisdiction of this State should not be further fragmented, but

should be limited to the Attorney General and the 21 county prosecutors. Therefore, there is validity to an argument that placing the enforcement arm within the Department of Law and Public Safety would avoid a separation of authority between civil and criminal aspects of casino gaming law enforcement. It is further true that such a split has the potential for duplication of effort, since many activities that would give rise to civil sanctions would also be grounds from criminal prosecutions. Moreover, one agency can more effectively apply both those powers. It will be able to determine, based on the individual circumstances of a particular case, whether civil sanctions, criminal prosecutions, or both, are the most appropriate and effective means of taking corrective action.

The third argument for placing the enforcement functions within the Department of Law and Public Safety is that it will be difficult if not impossible, to obtain quickly the number of qualified people needed to staff a new agency. It is estimated that to properly police casino gambling, the enforcement arm alone will need approximately a half dozen attorneys, ten to twenty accountants,and forty to sixty agents and investigators - for a total of between 60-100 staff personnel. This is a large number of experienced people to obtain in a short time. However, it is conceded that placing the function in Law and Public Safety would also need many new people - new Deputy Attorneys General, new State Police personnel and new accountants and other staff members.

The issue is a close one. The State Commission of Investigation feels strongly about the need for a governmental agency with the authority and capability to independently monitor the performance of the enforcement arm. It further believes that the Attorney General's Office is the only agency presently capable of providing such a review on the on-going, continuous basis that will be needed. Yet there is a serious problem of diminishing that capability by placing the enforcement arm under the Attorney General in addition to the Division of Criminal Justice. Without intending any derogation whatsoever, it is simply a fact of life that governmental agencies are less hesitant and more aggressive at policing one another than they are at exposing their own weaknesses and failures.

Nevertheless, the S.C.I. does feel that additional layers of governmental bureaucracy should not be created unless absolutely needed and that law enforcement powers of this State should not be further fragmented. The S.C.I. also agrees that an entirely new enforcement body may materially delay the implementation of casino gambling without any significant corresponding gain from such a delay. Unlike the decision-making "commission," whose activities at the outset may be minimal while it awaits the results of license application investigations, the enforcement arm will be called upon to immediately conduct the extensive background checks necessary before casino licenses can be approved and issued. If a new agency is at the same time trying to pull its own staff together, these license investigations may be delayed considerably or handled poorly.

It is for the above reasons that the State Commission of Investigation is persuaded to opt in favor of placing the

enforcement responsibilities within the Department of Law and Public Safety. To minimize the potential problems expressed earlier with respect to that arrangement, the State Commission of Investigation further recommends that the Legislature consider statutory provisions that would:

1. Create a separate division, similar to the Division of Criminal Justice.

2. Create an operating head of that division whose sole superior is the Attorney General.

3. Limit the functions of the division to the enforcement of casino gambling.

4. Prohibit the use of the Deputy Attorney Generals and State Police personnel assigned to that division for other duties or collateral responsibilities.

5. Give the head of that division direct control over the State Police personnel assigned to the division.

6. Empower the division to hire other personnel, particularly accounting and other specialized individuals.

RECOMMENDATION:

THE ENFORCEMENT BODY SHALL BE LIMITED IN ITS RESPONSIBILITIES TO THE ENFORCEMENT OF CASINO GAMBLING - RELATED STATUTES AND REGULATIONS

Whether or not the enforcement arm is assigned to the Department of Law and Public Safety, it should be responsible only for casino gambling enforcement activities. It should not be encumbered with other tasks that will make it difficult to perform any of its specific duties properly.

The State Commission of Investigation notes that under the original bill proposed, for example, the regulatory authority apparently would have some responsibility to enforce, administer

or review Equal Employment Opportunity compliance by licensees. While it may be desirable to include Equal Employment Opportunity requirements in any casino gambling law, the S.C.I. strongly recommends against placing responsibility for their administration with the enforcement arm. Equal Employment Opportunity provisions have nothing to do with casino operations per se; they are requirements that apply to all employers in general. They have a very real potential for tying up the enforcement body's manpower in civil litigation, thus diverting it from its primary function. These Equal Employment Opportunity duties are properly assignable to the Division of Civil Rights, which has the experience and obligation to enforce such provisions. Moreover, the Division of Civil Rights need not interfere with the enforcement body's jurisdiction over casino gambling since investigations aimed at discriminatory hiring practices would not normally involve actual casino operations but would be limited to a review of the licensee's employment policies.

However, casino gambling legislation should contain a provision specifically prohibiting the Division of Civil Rights from ordering a licensee to hire a person or otherwise granting relief to anyone who is required to have a license and has not obtained same from the licensing authority. In such cases, the licensing authority's determination should be final unless there is demonstrated improper bias on the licensing authority's part.

RECOMMENDATION:

THE ENFORCEMENT BODY SHALL BE SPECIFICALLY PROVIDED WITH ITS OWN AUDIT CAPABILITY AND AUDIT FUNCTION.

Based upon its own experience, the State Commission of Investigation believes that in order to effectively monitor the possible infiltration of organized crime into casinos and casino-related activities, the casino law enforcement arm must be able to trace the sources of money being used by licensees and others who operate ancillary services. Organized crime figures are simply not going to appear "on the record" as visible members of any corporation that is doing business as or with a casino. The S.C.I. has been able in several investigations to uncover possible organized crime infiltration of otherwise legitimate enterprises through the ability of its own agents/ accountants to audit the books, records and bank account of the enterprises in question. In fact, even prior to the casino gambling referendum of 1974, the use of such audit techniques led to the discovery that money for a certain hotel in Atlantic City came from organized crime figures through "fronts".

Nevada specifically recognizes this concern. Its Gaming Board is comprised of three members, one of whom must be a certified public accountant. See Nevada Statute 463.030(5). He heads the fiscal division of the board, which is responsible for the board's audit activities See Nevada Statute 463.070(3).

In testimony before the Commission on the Review of the National Policy Toward Gambling, Mr. Peter Echeverria, as Chairman of the Nevada Gaming Commission, emphasized the importance of the audit function. Asked what the principal violations were that the Nevada Gaming Commission was most concerned with, Mr. Echeverria testified:

"They vary and they are seasonal. Our principal concern always is source of funds. I think if I were to select one item, which I think is something we watch on a constant basis, is where is the money coming from that supports the casinos and gets them started in business.

Consequently, each month our Commission recieves from the audit staff and after a screening from the Gaming Control Board, our Commission receives a list of loans to licensees, Regulation 8.130. They are confidential, they are privileged communications. They are not publicized.

We have an opportunity to examine every source of every dollar going into every licensed establishment, what the source of the funds come from, where they come from, what they are going to be used for. We have an opportunity to examine that list. If any member of the Commission, one member of the Commission questions any item on the loans to licensees, we give that licensee a period of thirty to ninety days to return the money and get his money somewhere else.

RECOMMENDATION:

RESTRICTIONS SHALL BE IMPOSED ON THE CONTACT ANY MEMBER OF EITHER REGULATORY BODY MAY HAVE WITH PRIVATE GAMBLING ENTERPRISES PRIOR TO, DURING, AND AFTER HIS TERMINATION IN OFFICE.

One of the major concerns that the State Commission of Investigation has with the control of the casino gaming industry is its potential for corruption of those who regulate and monitor its activities -- not only actual corruption - bribes, extortion, etc. - but the subtle corruptive influencing that can occur through close connections with an industry. Not only would past, present or future ties to the gaming industry give the appearance of impropriety on the part of any member of the regulatory authority, but such ties would in some cases either consciously or subconsciously

affect the manner in which an individual performs his official functions.

Obviously, no one should be permitted to serve on either body while he presently has ties to the industry. However, such a restriction alone is insufficient. Additional restrictions on prior and future relationships with the industry are equally important. In particular, the public must have confidence that the individuals chosen to administer casino gambling on behalf of the State are free of personal pressures that would hinder their impartial execution of the law.

Accordingly, the State Commission of Investigation recommends enactment of statutory provisions along the following lines:

1. No person shall be eligible to serve as a member or employee of either regulatory body (hereinafter "authority") who within the three years prior to such employment or appointment:

   a. held any interest directly or indirectly, in, or

   b. was in any capacity employed by or associated with, or

   c. received any monies or other thing of value from:

   any private gambling enterprise wheresoever situate, or any company or corporation having a parent or subsidiary relationship to such gambling enterprise.

2. No member or employee of the authority shall engage in any of the activities set forth in paragraph 1 during his term of office or employment.

3. No member or employee of the authority shall, during the three years immediately subsequent to his termination of service or employment with the authority, engage in any of the activities set forth in paragraph 1 with respect to any licensee of this authority. The prohibitions of this section shall apply to all activities of a licensee whether within or without this State.

4. Prior to entering office in or employment with the authority, all members and employees shall enter into a covenant whereby they agree to abide by the post-employment restrictions contained in paragraph 3 in return for their appointment to or employment by the authority.

5. Any licensee of this authority who causes, permits, or otherwise is a party to any violation of paragraphs 2 or 3 of this section, shall have its license suspended for a period of not less than and shall be subject to a fine of not more than $100,000.

As can be seen, pre-employment restrictions extend to association with any private gambling operations, whether or not that operation had any connection with New Jersey. Post-employment restrictions apply only to associations with licensees of this State. The reasons for this difference are several. One, a wider post-employment restriction may be unenforceable unless a present licensee is involved. It may also be unnecessary since it is less likely that an employee would have been affected in the performance of his duties by the prospects of future employment with a casino operation in Nevada, for example, that had no connection with New Jersey, then he would if the possibility of future employment involved a licensee, whether or not in a casino-related capacity and even if the position was not located in New Jersey. Greater pre-employment restrictions are also recommended because it may be difficult in many situations to determine whether private gambling operations in other jurisdictions

have an impact, directly or indirectly, on conditions in New Jersey. In those instances, a person's past association with any private gambling operation, whether licensed in this State or not, may make it difficult to perform his duties properly.

It should be noted that any form of association with an enterprise having an interest in the industry would be prohibited during the periods of the restrictions. Thus, a former authority employee would not only be restricted from working directly in a casino, but also from working for the licensee in any other area of the licensee's business, whether it had to do with casino gambling or not, and whether it was an activity conducted within New Jersey or outside the State. With today's large, diversified corporations, a prohibition limited in its scope to the licensee's casino acitivities would have little value in alleviating the problem sought to be controlled. A well-paying position in some other phase of the licensee's business would have the same potential to influence an official's conduct as would a job in the casino itself.

Paragraph 1 (c) is an attempt to avoid the problems raised in State v. Savoie, 67 N.J. 439 (1975). In that case, our Supreme Court interpreted N.J.S.A. 2A:105-1 (extortion by a public official) to require proof that the money or other thing of value taken by a public official was taken for the performence of his duties. Under the Court's interpretation of the statute, a gift given as a friendly gesture would not violate the statute. The State Commission of Investigation believes that in the area of casino gambling, there should not be any room for "gifts",

innocent or otherwise. Savoie was simply a case of construing the language of N.J.S.A. 2A:105-1 and finding that it did not evidence an intention to prohibit a public official from accepting all monies, whether intended to influence his official duties or not. It does not stand for the proposition that a flat prohibition on accepting money or other things of value would be unenforceable. To the contrary, if the wording of a statutory provision clearly indicated such an intention, and adequately placed public officials on notice of same, any receipt of monies would be a violation. The State Commission of Investigation recommends such a provision with respect to casino gambling to remove even the slightest temptations to those who will enforce casino gambling laws.

Paragraph 4 serves two purposes. First, it will clearly place all members and employees on notice as to these restrictions and will document that notice. More importantly, it should afford the State with standing to enforce these restrictions in other jurisdictions. Reasonable restrictive covenants, freely entered into and bearing a relationship to the prior employment activities, are generally enforceable. Such a covenant may be of value in another state where the provisions of our gambling statutes by themselves would not otherwise be given extraterritorial effect.

Finally, the provision considered to be the most effective in deterring the violations of these restrictions is subparagraph 5. In order for a violation of the post-employment restrictions to occur, there must be some involvement on the part of a New Jersey licensee. Even with respect to pre-employment and current employment restrictions, a licensee of this State could conceivably be involved.

The threat of sanctions against that licensee, as well as against the offending employee or former employee, is believed to the best means of preventing such conduct from occurring.

RECOMMENDATION:

PRIOR TO EMPLOYMENT, ALL MEMBERS SHALL BE REQUIRED TO EXECUTE AN AFFIDAVIT OF NON-INTEREST IN ANY LICENSEE.

Consideration had been given to a recommendation that the members of both regulatory bodies be required to make personal financial disclosures. Such disclosures would be for the purpose of determining whether a member had a direct or indirect interest in any private gambling enterprise. However, financial disclosure requirements do involve substantial intrusions into personal privacy. The threat of such disclosures may deter even the most honest of persons from accepting positions with the licensing authority. To many, the potential public revelation of their personal finances, even if everything is in order, is simply not worth whatever prestige or monetary reward would be involved in accepting the position.

The S.C.I. believes that a suitable alternative exists. Prior to commencing employment with the authority, each member should be required to execute an affidavit attesting to his non-interest in any business or activity connected with a private gambling enterprise during the prior three years. Failure to file the required affidavit would prevent appointment to or employment by the regulatory authority. Should a false affidavit be filed, then in addition to removal proceedings because the

affiant was statutorily ineligible to take office in the first place, the person making same would be subject to criminal prosecution for false swearing. Acquiring an interest subsequent to appointment would, of course, be a violation of the statute in itself and would be punishable as such.

RECOMMENDATION:

ALL POLITICAL ACTIVITY BY ANY MEMBER OR EMPLOYEE OF THE REGULATORY AUTHORITY SHALL BE PROHIBITED, INCLUDING THE MAKING OF POLITICAL CONTRIBUTIONS.

Gambling is an issue with much emotional appeal. It is also an issue involving high stakes. Its impact on the normal electoral process can be seen by the large sums of money spent to secure passage of the referendum. The State Commission of Investigation believes that all those who will both administer and enforce the gaming laws should be totally removed from participation in the political process. They should not be permitted to hold an office in a political party; to campaign for candidates or public issues; to attend party conventions or caucuses; to endorse candidates or issues. Nor should they be permitted to make political contributions. Neither their performance in their official position, nor their continued retention of that position should have the appearance of being politically motivated. Since casino gambling is likely to remain a highly visible topic in the foreseeable future, attracting much consideration by governmental officials, both state and local, it would be impossible to make a campaign contribution to anyone seeking public office with any reasonable assurance that the person will not sooner or later speak out on the issue of casino gambling. Certainly, it

would at least give the appearances of impropriety for such a candidate to have received money from a public employee with the casino gambling regulatory authority.

B. LICENSING PROVISIONS

INTRODUCTION

The S.C.I. is of the opinion that licensing provisions are also among the most critical provisions of casino gaming legislation. If gaming is to be operated by individuals and/or corporations of the highest caliber, the most restrictive legislative framework will probably fail in its intended task if its licensing requirements are weak. On the other hand, the licensing only of applicants who are able to meet the most stringent of provisions will attract operators to the industry who will hopefully function under the spirit of the regulations, on the same course as the regulatory authority and in the interests of the state as a whole.

The State Commission of Investigation has done extensive research of licensing criteria in other jurisdictions, including Nevada, Puerto Rico and the Bahamas. While many of those standards are considered extremely salutary and will be suggested by the S.C.I., it also must be remembered that the state character of New Jersey is different in many important respects from the aforesaid jurisdictions. The S.C.I. will therefore also make certain recommendations which are based upon the particular purpose of gaming in this State and other indigenous conditions.

RECOMMENDATION:

SOME MEANS OF LIMITING THE TOTAL NUMBER OF CASINO LICENSES SHALL BE PROPOSED BY THE LEGISLATURE

While the State Commission of Investigation takes no position on the issue of casino hotel room requirements, considering it to be primarily of economic concern, the S.C.I. does concede that imposing specific hotel room requirements would act to limit the total number of casinos that might be operating in Atlantic City at any one time. The S.C.I. does believe that the Legislature should consider imposing some limitation on the total number of casino licenses in the event that it eschew the issue of specifying minimum casino hotel room requirements for qualifying for licenses.

What follows is a general pro-and-con discussion of casino hotel room requirements. While this discussion has a more economic than law enforcement flavor, it may be helpful in advancing legislative resolutions in the area.

The arguments in favor of casino hotel room requirements stem from the referendum itself. Proponents of hotel room requirements argue that one of the primary purposes of the referendum was to revitalize Atlantic City. They further argue that to accomplish such revitalization on anything approaching a permanent basis will necessitate more than cosmetic touches to existing structures. They say that substantial levels of new capital expenditures are needed to achieve significant results within Atlantic City. Yet it is feared that if such capital

expenditures are not forced and channeled into other areas besides the construction of the casinos themselves, the other amenities necessary to a viable resort-oriented economy may not receive the financial shot-in-the arm they need. It is particularly feared that Atlantic City will find itself without adequate first class sleeping accommodations to attract and house tourists in sufficient numbers to maintain the area's economy once the initial surge of visitors drawn by the newness of casino gambling begins to slacken. At that point, they argue, Atlantic City must be prepared to lure new and repeat business through a combination of casino gambling and other attractive facilities catering to a wide range of conventioneers, vacationers and one-day visitors.

For these reasons, it is claimed that limiting the issuance of casino licenses to hotels having a specified number of rooms will force potential operators to make the capital improvements believed to be essential to the overall success of Atlantic City's rebirth.

As part of this line of reasoning, it is further stated that room requirements must be set at a high level, with 500 rooms as the number most often advanced. It is explained that if the number is lower, too many existing hotels will qualify immediately. This, proponents see as an undesirable result for several reasons. New investors and new money are thought to be hesitant to come to Atlantic City if they are aware that existing hotels can open up a number of casinos in a short period of time. Even if new construction is attracted, it may not involve significant levels

of expenditures. High room requirements, however, are viewed as compelling present hotel owners to expand their facilities, thus causing further capital improvement, to comply with whatever requirement is set above existing levels.

A number of arguments also have been made against hotel room requirements. One is that they serve no valid law enforcement function. The ability of state and local authorities to enforce the casino gambling laws in particular and other laws in general in Atlantic City after the introduction of casinos is not seen as being enhanced in any manner by a requirement that the casino licensee also operate a hotel with a certain number of rooms, or for that matter, that the casino be located within a hotel complex in the first place. Free-standing casinos do not appear to be any harder to police; in fact, they may be easier than casinos located within a hotel, considering the variety of other activities that take place within a hotel complex.

Another argument against such requirements is that they do not have any discernable relationship to the betterment of casino operations themselves. That is, from a "consumer affairs" standpoint, the people attracted to Atlantic City by casino gambling have a right to expect that they will find a high degree of honesty, fairness, and security when they participate in gambling games. With respect to these factors in casino operations, hotel room requirements have little or no value in terms of insuring that the licensee will conduct his games

in a manner acceptable to the State. Nor do they add to the State's ability to monitor a licensee's performance in these player-protection areas.

However, adoption of specific hotel room restrictions will tend to limit the number of potential applicants for a casino license. At 500 rooms only two existing hotels have even a chance of qualifying at this point; at 400 rooms, the number of potential licensees increases to ten or twelve. It must be pointed out that the overall effect of high room requirements actually is to "freeze out" all but a few persons and corporations.

Unlike most areas of casino gambling legislation, hotel room requirements do not particularly protect the public from any harms associated with the industry. If the State legislates in this area, it will do so solely in an effort to effect certain economic considerations. This is entirely different from provisions that impinge upon private supply and demand factors to protect the public from identifiable dangers. How does the State reach its decision to set limitations at 1000 rooms? 500 rooms? 400 rooms? The goals sought are worthwhile ones. But what studies, what data suggests the chances of success or failure should the State seek to control these investment decisions rather than leave them to private businessmen?

In Nevada, where there are no such requirements, magnificant 1000-room hotel/casino complexes have sprung up in addition to much smaller facilities. Dozens of casinos offering a wide range

of sleeping accomodations and other amenities operate profitably. Yet this growth has been stimulated by the natural law of supply and demand, rather that by the artificial law of state-imposed minimum-facility requirements. Who is to say that more hotels and additional rooms are the answer to Atlantic City's problems?

Consideration should be given to a recommendation that the total number of casino licenses authorized be limited by statute. The most important reason advanced for limiting the number of casinos was that this would reduce law enforcement problems. Clearly, it would be easier and less costly in terms of manpower and money to monitor and police six casinos than it would twelve, ten casinos as opposed to twenty, etc. Moreover, if there is no upper limit on the number of casino licenses that can be issued, licensing acitivities of the regulatory authority might be an on-going process, requiring continual allocations of investigators and expenditures to review license applications. With a limit, there would come a time when the licensing authority could turn from reviewing applications to concentrating on monitoring actual casino practices.

Related to the last consideration is the fact that a license limitation could help reduce litigation over the issuance of licenses. With an upper limitation on the total licenses it may issue, the licensing authority would be in a position to be more critical in applying the licensing standards. Once enough applicants were found who clearly met the various license

requirements, it would not have to issue licenses to other applicants where doubts or unresolved issues remained. On the other hand, without such limitations, the licensing authority would have to continue to review all applicants received and, when rejecting any, would have to give reasons therefore. Any time an application was rejected, there would exist the possibility of litigation over the reasons for rejection.

The third consideration for limiting the total casinos permitted was to prevent a possible over-expansion of the industry which might lead to self-destruction. Additionally, unlimited casino development might turn Atlantic City into a garish strip of casinos with a wide-open gambling atmosphere that might repel many tourists.

One final note: If it is decided to limit the number of casino licenses, the State Commission of Investigation recommends that the limitation be imposed directly and "up front" rather than through the operation of other licensing criteria such as hotel room requirements. Direct limitations only affect the total number of licenses available; they do not affect who is eligible to apply for a license. Indirect criteria limit both the total licenses and the individuals and corporations who may apply in the first place. The latter situation is far more restrictive on normal private business considerations, since it forces the applicant into certain patterns - such as 500-room hotels. It also is more susceptible to charges of favoritism because it does limit who even has a chance to be licensed.

RECOMMENDATION:

THE NUMBER OF CASINO LICENSES ANY INDIVIDUAL, PARTNERSHIP OR CORPORATION MAY PARTICIPATE IN, DIRECTLY OR INDIRECTLY, SHOULD NOT BE LIMITED, BUT SHOULD BE KEYED TO THE NUMBER OF OTHER CASINOS IN OPERATION.

Some consideration was given to recommending a limitation on the number of licenses any one interest might hold or share in. The S.C.I. felt that in Atlantic City's relatively limited geographis area, the potential for monopolization of the industry would be far greater than if casino gaming were to be permitted state-wide. Without limitations on the licenses one party might hold, all the casinos might end up being controlled by one, two or three entities. This would place tremendous economic power in the hands of a few, both in terms of revenues realized and in terms of the number of jobs and level of wages available to the local work force. Moreover, if there is a concentration of ownership or control, there will be less competition for the tourist dollar between casinos. This may lead to a reduction in the number and variety of other facilities offered by the licensee as attractions to visitors, since such additional inducements are not as necessary when you enjoy a "lock" on the action.

On the other hand, a limitation on the number of licenses any one party can participate in might have an adverse impact on the total investment that will be made in Atlantic City. If an individual or corporation has the finances necessary to construct and operate more than one facility, should he be automatically barred from doing so (assuming, of course, that as to each and

every license he qualified on all criteria)? Does an absolute prohibition go beyond the legitimate need to foster at least a certain level of competition within the industry?

The State Commission of Investigation concludes that a flat prohibition goes too far and is therefore undesirable. However, in recognition of the need to preserve competition and thereby encourage a wide range of investors to invest in the industry and in Atlantic City in general, the S.C.I. does recommend that some limitation be imposed on subsequent licenses beyond the first casino license.

It suggests that the holding of additional licenses be keyed to the existence of other non-related casino operations. For example, no person or corporation would be entitled to participate in the operation of a second casino until at least two other non-related casinos were operating; a third license would require the existence of four non-related casinos, and so forth. Once again, the limits on the normal patterns of expansion that might otherwise prevail are not totally restrictive, but go only so far as appears reasonably necessary to protect legitimate State interests.

RECOMMENDATION:

A CASINO LICENSEE WHOULD BE REQUIRED TO HAVE COMPLETE CONTROL OVER THE ENTIRE PHYSICAL PREMISES IN WHICH A CASINO WILL BE LOCATED.

This recommendation is made regardless of whether the issuance of a casino license is tied in any manner to the othership of a hotel. However, the reasons behind such recommendation are

best illustrated by a discussion of a casino hotel operation. Besides the casino, a typical hotel complex would include various other activities - lodging, bar, restaurants, shops, health facilities, beauty parlors, and other services. Many of these operations normally might be franchised out in one manner or another by the owner of the premises. Some of them are particularly susceptible to organized crime infiltration; others have potential for other law enforcement problems such as traffic in drugs and prostitution.

The State Commission of Investigation recommends, as one step to insure regulatory control over all activities in and around a casino, that the casino license be required at all times to have a more dominate interest in the entire physical premises than that of anyone else operating on or in any portion of the premises. That is, the licensee would either have to own outright the entire premises, or would have to have a master lease covering it. In either event, anyone occupying any portion of the premises as a shop, bar, restaurant, etc., would have to sub-lease or otherwise deal with the licensee. Coupled with other provisions empowering the licensing authority to approve or reject any contracts or business associations entered into by a licensee, this provision would extend the authority's control to all activities in or about the premises in which a casino was located.

Without such a provision, it might be possible for a casino licensee to lease and occupy only a portion of a much larger

complex. The owner of the entire complex would be in a position to utilize the remainder of his premises in any manner he saw fit. The licensing authority's control and leverage over the licensee would be of no value in those circumstances, since the licensee would not be a party to the transaction.

RECOMMENDATION:

A LICENSE APPLICANT MUST AT ALL TIMES BEAR THE BURDEN OF PROVING HIS QUALIFICATIONS FOR A LICENSE.

Placing the burden of proof upon the applicant is consistent with, and essential to, the maintenance of the distinction that a casino license is a privilege and not a right. Nevada imposes such a burden. Nevada Statute 463.170. The importance of this provision cannot be minimized. As can be seen from the licensing criteria discussed in another section of this report, those criteria will necessarily be somewhat broader in order to cope with a wide range of circumstances and eventualities. Therefore, in any instances it will be equally hard to prove or disprove an applicant's compliance with a given criteria. This may be particularly true in connection with financial information concerning a corporation.

In all instances where proofs are unclear on a given issue, the burden of proof will be extremely important both as to the licensing authority's original determination and to any appeal from it. Initial licensure is one of the most critical steps towards the integrity of the entire casino gambling system. The S.C.I. believes, of course, that no applicant should receive a

license if there is any question as to his fitness to hold it. Accordingly, the applicant must have the burden of proving his qualifications, rather than the licensing authority in disproving them.

The following language is suggested as one approach to this issue:

> In administering and construing the terms of this Act, any person or entity applying for any license or permit under this Act shall at all times bear the burden of proving his qualifications therefore by clear and convincing evidence with respects to each and every criteria established for the license or permit sought. In any dispute between an applicant and the Commission, all doubts and inferences shall be resolved in favor of the Commission against the applicant.

RECOMMENDATION:

> APPLICANTS SHALL PROVIDE ANY AND ALL INFORMATION REQUESTED DURING THE ENTIRE APPLICATION PROCEDURE AND SHOULD WAIVE LIABILITY FOR THE DISCLOSURE THEREOF.

These dual provisions will save regulatory agency manpower and resources and will further allow appropriate aggressiveness.

RECOMMENDATION:

> ALL APPLICANTS SHALL CONSENT TO SEARCHES AND SEIZURES, PHOTOGRAPHING, FINGERPRINTING, HANDWRITING EXEMPLARS, VOICE RECORDINGS AND POLYGRAPHS WHEN DEEMED ADVISABLE BY THE REGULATORY COMMISSION AND PURSUANT TO GUIDELINES ESTABLISHED BY THE REGULATORY COMMISSION.

The S.C.I. deems it advisable to grant to the regulatory body the power to seek further information where appropriate in the above described manners without the necessity of judicial intervention. Since the license is to be regarded as a privilege, the State Commission of Investigation is of the opinion that the applicant's cooperation should be complete in this area

to the inclusion of a waiver of certain privileges and immunities.

RECOMMENDATION:

EACH APPLICANT SHALL BE REQUIRED TO PROVIDE SPECIFIC DOCUMENTATION AND INFORMATION, IN ADDITION TO ANY OTHER INFORMATION REQUIRED BY THE REGULATORY COMMISSION AS FOLLOWS: ANY AND ALL INFORMATION RELATING TO THE FINANCIAL RESOURCES FOR THE PROJECT; ANY AND ALL INFORMATION CONCERNING THE INTEGRITY OF ALL FINANCIAL BACKERS, INVESTORS, STOCKHOLDERS, LIEN HOLDER, INDENTURE OR DEBENTURE HOLDERS, AND MORTGAGES WHERE THE OBLIGATION IN ANY WAY RELATES TO THE PROJECT;EVIDENCE OF GOOD CHARACTER OF THE APPLICANT INCLUDING LETTERS OF RECOMMENDATION FOR LAW ENFORCEMENT OFFICIALS IN HIS COMMUNITY, ARREST RECORDS, LETTERS OF RECOMMENDATION FROM OTHER GAMING AUTHORITIES, INFORMATION CONCERNING FAMILY AND CHARACTER, AND DETAILS OF ALL CIVIL JUDGEMENTS; INFORMATION CONCERNING THE LIKELIHOOD OF SUCCESS OF THE OPERATION WITH A COMPLETE DESCRIPTION OF OPERATIONS AND KEY EMPLOYEES; INFORMATION REGARDING THE IMPACT ON THE COMPETITIVE MARKET (GAMING) AND THE ENVIRONMENT OF ATLANTIC CITY.

The above requirements will again reduce the resources which the regulatory agency will be required to allocate to the investigation of applicants by placing the affirmative duty upon those applicants to provide detailed information for evaluation.

RECOMMENDATION:

1. THE COMMISSION SHALL DENY A CASINO LICENSE TO ANY APPLICANT WHO IS DISQUALIFIED ON THE BASIS OF ANY ONE OF THE FOLLOWING CRITERIA:

   (a) FAILURE OF THE APPLICANT TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE APPLICANT IS QUALIFIED IN ACCORDANCE WITH THE PROVISIONS OF THIS ACT.

   (b) THE FAILURE OF THE APPLICANT TO PROVIDE INFORMATION, DOCUMENTATION AND ASSURANCES REQUIRED BY THE ACT, OR REQUESTED BY THE REGULATORY COMMISSION; THE SUBMISSION OF INFORMATION BY THE

APPLICANT WHICH IS UNTRUE OR MISLEADING AS TO A MATERIAL FACT; OR THE FAILURE OF THE APPLICANT TO REVEAL ANY FACT MATERIAL TO QUALIFICATION.

(c) THE CONVICTION OF ANY PERSON REQUIRED TO BE QUALIFIED UNDER THIS ACT OF ANY OFFENSE IN ANY JURISDICTION WHICH INVOLVED VIOLENCE, ANY CRIME WHICH INVOLVED FRAUD OR DECEIPT,ANY CRIME INVOLVING THIEVERY, ANY CRIME INVOLVING BRIBERY OR EXTORTION, ANY CRIME INVOLVING MORAL TURPITUDE OR ANY OTHER OFFENSE INDICATING A LACK OF BUSINESS INTEGRITY OR BUSINESS HONESTY, WITHOUT REGARD TO WHETHER SUCH CRIME IS LABELED A MISDEMEANOR, FELONY OR DISORDERLY PERSONS OFFENSE.

(d) CURRENT PROSECUTION OR PENDING CHARGES IN ANY JURISDICTION FOR ANY OF THE OFFENSES ENUMERATED IN SECTION C.

(e) THE APPLICANT IS OR WAS A MEMBER OF ORGANIZED CRIME OR AN ASSOCIATE OF ORGANIZED CRIME. WITH RESPECTS TO ASSOCIATES OF ORGANIZED CRIME, THE APPLICATION WILL BE DENIED WHERE IT IS ILLUSTRATED THAT THE ASSOCIATION CREATES A REASONABLE BELIEF THAT THE ASSOCIATION WILL BE INIMICAL TO THE PUBLIC POLICY OF THE STATE, THIS ACT OR THE GAMING INDUSTRY AS A WHOLE.

(f) THE APPLICANT HAS CONTUMACIOUSLY DEFIED LEGISLATIVE INVESTIGATING COMMITTEES OR OTHER OFFICIALLY CONSTITUTED BODIES ACTING ON BEHALF OF THE UNITED STATES OR ANY STATE OR COUNTY ENGAGED IN THE INVESTIGATION OF CRIMES, OFFICIAL CORRUPTION OR ORGANIZED CRIME.

(g) THAT THE APPLICANT HAS FAILED TO ESTABLISH THAT HE IS OF SUFFICIENTLY FIT CHARACTER TO POSSESS A CASINO LICENSE.

The above criteria are important in a number of respects. The initial paragraph requires denial of the applicant for any of the reasons listed. Paragraph (a) establishes that the burden of proof is always upon the applicant and paragraph (b) defines other duties of the applicant, failure to perform which must also result in denial.

Provision (c) is general in its terms because of the vagaries of definition of varying offenses from state to state. The State Commission of Investigation is of the opinion that a general description of the crimes which militate against the granting of a license is a much more efficient provision than an attempted statutory reference to each offense.

The exclusion of members of organized crime (provision (e)) is considered by the State Commission of Investigation to be an obvious yet essential provision. The reason for the requirement of a detrimental result to the state flowing from an association with organized crime is to protect applicants from a possible unknowing or otherwise innocent association. The reason for exclusion of associates (provision (e)) is to protect the industry from infiltration by strawmen for organized crime.

The intent of provision (f) is to exclude parties who have, beyond their guaranteed civil rights, acted in a manner to defy lawful authority whether or not a crime was committed thereby.

Notwithstanding the fact that the provisions supplied in provision (g) are intended to be sufficiently inclusive so as to exclude undesirable applicants, the S.C.I.'s experience with other jurisdictions is that situations arise in the application process where licenses should, in the public interest, be denied for reasons other than the very specific ones provided heeretofore.

RECOMMENDATION:

A PROVISION SHOULD BE ENACTED PROHIBITING ANYONE FROM EXERCISING ANY VOICE, CONTROL OR AUTHORITY

IN OR OVER A CASINO'S OPERATIONS UNLESS INDIVIDUALLY LICENSED BY THE CASINO.

Subsequent sections will discuss the issue of individually licensing persons associated in various capacities with a casino licensee. A consideration of this issie, however raises certain other questions. Firstly, it is difficult to draft statutory or regulatory language that will cover all the capacities in which a person might be employed by or associated with a casino licensee. Secondly it may not be necessary that all persons in any given category automatically be required to undergo licensure.

For example, Nevada by statute provides a fairly detailed list of these categories of persons who may be required by the Nevada licensing authority to be licensed, but places discretion in that authority on an individual basis whether or not to require licensure. It is entirely possible that the Nevada Commission, either because it misconceived the extent of an individual's authority with respect to a casino licensee, or was misinformed as to same, would not require a given individual to be licensed even though that person exercised significant control over a casino's operations.

This provision is intended to prevent or minimize either of these possibilities in New Jersey. If such a prohibition is bolstered by criminal penalties and license sanctions, then both the individual or corporation who would exercise authority over the casino licensee and the casino licensee who would permit such authority to be exercised would face the consequences of a non-licensed person participating in the operation of a casino. It is reasonable to believe that the threat of stiff sanctions

would encourage both the individual and the casino licensee to err on the side of discretion and seek licensure of the individual whenever there was any doubt as to whether or not he was exercising control or authority over casino operations. In this manner, some of the onus for reaching such a conclusion would be shifted from the licensing authority to the casino licensee, who is in a better position in the first instance to be aware of the activities of the various persons and corporations connected with the casino. To further "encourage" the casino licensee to report all persons to the licensing authority who have any control or authority over the casino's operations, the civil sanctions of the provision should apply to the casino licensee regardless of whether the unlicensed person's exercise of control was intentional or unintentional with respect to the casino licensee's knowledge of it or participation in it. The State has a right to expect that a casino licensee will at all times maintain full control over his operations. If through the neglect or inadvertance of the licensee a non-licensed person participates in the operation, then there has been a failure on the part of the licensee to exercise the control expected of him.

RECOMMENDATION:

CERTAIN PERSONS EMPLOYED BY OR ASSOCIATED WITH THE CASINO LICENSEE SHALL BE REQUIRED TO BE INDIVIDUALLY LICENSED.

Whether the actual casino license is issued to an individual, a partnership or a corporation, that licensing

process alone is an insufficient safeguard of the public interest in the honesty and integrity of the industry. Equally important factors are the persons who will be associated with the casino operations in one capacity or another. This includes not only the employees that will staff the casino but also those in mangerial capacities and even to "behind the scenes" people who supply the finances and other services to get the operation off the ground. It is not enough to license only those individuals dealing directly with the public - such as croupiers, cashiers, pit bosses, etc. Those who have the authority to affect a casino's operations in any way must also be subject to the scrutiny of a licensing process. As was explained in the preceding, it is difficult to list all the persons who should, by virtue of their connection with a casino, be individually licensed. Any such list runs the risk of leaving someone out who also should be licensed, simply because words and titles cannot define every possible situation or association. Nevertheless, a suggested list would include the following:

1. Anyone holding a stated equity interest in the licensee (or holding a stated amount of any class of its stock if the licensee is a corporation) - Note: The Commission understands that the Attorney General's proposal establishes a 2 percent figure. Such a figure is appropriate and is recommended for consideration;

2. Lenders of 2 percent or greater of the capital financing of the licensee, or 2 percent or greater of any evidence of such indebtedness whether acquired directly or as an assignee;

3. All directors of the licensee;

4. All officers of the licensee;

5. All employees of the licensee who have any duties with respect to casino gambling or the area in which casino gambling will take place;

6. All persons engaged in debt collection or behalf of the casino licensee;

7. All persons approving or otherwise coordinating so-called complimentaries, including junkets, on behalf of the licensee;

8. All security personnel retained by the licensee;

9. Any other person whose association with the casino requires licensure in the public interest according to the judgment of the licensing authority.

Categories 1 and 2 deal with those persons having a financial interest in the corporation in one manner or another. Whether it is an equity or a debtor-creditor interest, such interest can and often is used to exert control and influence over an enterprise's operations. Persons in categories 3 and 4 obviously have the capacity to exercise authority within a casino licensee. Category 5 was drawn to separate non-casino employees from persons actually working within the casino, in the event a casino licensee operates more than just a casino. In the latter event, there would not be a need to automatically require all other employees, such as bell hops, maids, cooks, etc., of the licensee to be licensed. Their licensure, if at all, would fall under number 9. For example, it may be as important to the State's control over a casino licensee to require the manager of its hotel operations to be licensed as it is to have a shift boss or other casino-related supervisors licenses.

Categories 6 and 7 deal with two areas of casino-related activities that have been proven in the past to be sources of abuse. While apparently not as prevalent as in the past, examples of improper methods of collecting gambling debts still surface from time to time. Their decline is due in part, no doubt, to the increased attention focused upon such practices and not necessarily to the "good-heartedness" of the debt collectors. Similarly, incidents where players traveling on junkets have been ripped off by the junket operator, or where the casino itself was the victim, continue to occur. Category 8 covers any security personnel employed directly by the licensee, regardless of whether his duties involved the casino itself or other parts of the licensee's operations. Anyone occupying any security post for the licensee is in a position to aid in the circumvention of the licensee's overall security system. Finally, number 9 is a catch-all enabling the licensing authority on a case by case basis to require the licensure of anyone not covered by the other categories but nevertheless exercising sufficient impact on the licensee's operation to warrant licensure. As indicated above, this might be a hotel manager, an entertainment director, a maitre'd or anyone else who occupies a sensitive position within the licensee's operations.

Some related issues must be noted in connection with the licensure of individuals. Both the legislation proposed in New Jersey and, to a lesser extent, the Nevada statutes employ a concept of "qualified" or "suitable" for licensure in place

of actual licensure of certain individuals. If such a requirement means that the individual must meet all the licensing criteria but is not actually licensed, the end result may be the same. Of course, if that is the case, then why not issue a license if the same investigation is conducted and the same standards applied as with actual licensure? On the other hand, "qualified" may mean that while the individual is expected to meet the license standards, he is not required to formally submit an application or undergo actual investigation.

The State Commission of Investigation believes that it is particularly important to place the requirements of supplying background information and proving one's qualification for a license on each individual. No procedure should be adopted that would allow only the casino licensee to prove the qualifications of its individual officers, agents and employees. Any such procedure would remove the personal accountability of the individual for the completeness and veracity of all information supplied to the licensing authority. One of the best ways to insure that the licensing authority receives full and complete disclosure by all persons associated with the casino gambling is to place an each person the responsibility for providing such information in verified form, so sanctions, both civil and criminal, can be imposed against the individual for false, misleading or incomplete information.

What amount of discretion that should be given to the licensing authority to decide what persons should be licensed?

Nevada gives considerable discretion, requiring by statue only that officers and directors must be licensed. See Nevada Stature 463,530. All others are either licensed at the discretion of the gaming commission or must hold work permits, the latter applying to actual casino employees and involving considerably less review before issuance. There is much to be said for leaving a certain amount of discretion in this area to the licensing authority. This is particularly true as to stockholders, where in many instances, holdings of 10 percent or higher may carry with them little or no power with respect to actual operations of a corporate entity.

On the other hand, discretion can be an excuse for inaction or avoidance of responsibility. Because the licensing procedure is the primary point at which the State can weed out undesirable casino licensees and undesirable individuals, the State Commission of Incestigation believes that little discretion should be given to the licensing authority in this area. It is well recognized that it is harder to revoke a license once issued than to deny its issuance in the first place. Whether properly or otherwise, what starts out as a privilege has a way of becoming a right, once granted. Thus it is imperative that the licensing authority be required to thoroughly review those persons who occupy positions or relationships with the casino licensee believed to have the potential to affect the quality or integrity of the casino's operations before casino licenses are issued.

Closely related to the issue of discretion is the question of exemptions from licensure requirements. Exemptions may be provided because a casino licensee is a "publicly-traded" corporation; because the holder of an equity interest in the licensee is a so-called "holding or intermediary company"; or because it is a banking institution that holds the mortgage of a licensee. The exemption may be automatic or discretionary; if discretionary it may be subject to revocation. The exemption may also be tied to alternative requirements to be imposed in place of the normal licensing requirements.

These issues arise in part because the casino licensee may itself be a corporation, and in part because the relationships set forth in categories 1 and 2 may involve corporate holders of equity or creditor interests in the licensee rather than invididual holders of those interests. Thus, A.T. & T. might own 25 percent of the stock of a corporate casino licensee; Chase Manhattan Bank might be the licensee's primary lender. Are they nevertheless required to undergo the same form of licensure as would be required of an individual or a closely-held corporation in the same situation? Do you automatically exempt them from the licensing provisions without any investigation at all? Should they undergo a different, more limited examination?

While not in complete agreement with Nevada's resolution of these issues, the State Commission of Investigation finds that state's statutory licensing scheme does offer worthwhile guidance. Banking institutions are not automatically exempted from complying with licensing requirements when they hold obligations of a casino licensee, but may be either selectively or by general regulation exempted by the Nevada Gaming Commission. Nevada Statute 463.175. Exemptions may be revoked or may have limits and conditions placed on them. Similarly, publicly-traded corporations, whether as an actual casino licensee or as a holder of an interest in a casino licensee, are not automatically exempted by statute. Rather, the gaming commission may exempt a publicly-traded corporation from certain, but not all, normal license requirements. Nevada Statute 463.625. Even the, the publicly-traded corporation must comply with alternative statutory licensing provisions. These alternative provisions are similar to the normal corporate licensing provisions, but are less inclusive. The same applies to holding or intermediary companies of the licensee. (These are business entities that exercise some degree of power over the license through its holding of all or any part of the licensee's voting stock, Nevada Statute 463.485 and 463.486). As to the holding company, specific licensing requirements apply. Nevada Statute 463.575 et seq. These provisions focus particular attention on the corporate officials of the holding company who the gaming commission determines is or will be engaged in the gaming activities of the actual licensee. Thus,

fewer persons within the holding company are required to undergo scrutiny then would be the case as to an actual casino licensee.

The preceding discussion focuses attention on the two competing values that must satisfactorily be resolved by any licensing system: (1) the licensing process must enable the State to weed out not only unqualified or undesirable casino licensees; it must also insure that unqualified or undesirable individuals do not exercise any control of influence, directly or indirectly, over an otherwise qualified casino licensee, and (2) that the licensing authority must not be swamped with mandatory licensing provisions that will only impair its ability to enforce the licensing requirements in proper cases.

On the one hand, if the licensing authority has no discretion but must conduct a formal, full scale investigation of any bank holding a casino licensee's mortgage, regardless of whether the bank is Chase Manhattan or a local bank thought to deal in mob money, one of two things will most likely occur - either the entire licensing process will become hopelessly bogged down or the licensing authority will begin to simply ignore or short-cut the license provisions. Neither situation is desirable or acceptable. On the other hand, the fact that a corporation is publicly-traded does not, by itself, provide assurances that its operations are run properly or that it is free from "hidden interests" simply because its stock can be purchased on the open market. There are corporations traded on both major exchanges that are nevertheless closely held and controlled by a small

number of people, thus negating any thought that the corporations activities are carefully scrutinized by a board of directors elected by a wide range of shareholders.

The State Commission of Investigation makes the following recommendations with respect to the resolution of the competing values found in the issue of exemptions:

--Firstly, that there be no exemptions from or relaxations of licensing criteria with regard to any application for the actual casino license. Whether the applicant is an individual or a publicly-traded corporation, the same scrutiny should be given prior to the issuance of a license to operate a casino.

--Secondly, in those categories where an individual license is required by virtue of a person's relationship to a casino licensee, these same licensing procedures should apply unless it is a corporation or a licensed banking institution that has entered into the defined relationship with the casino licensee. Thus, an individual, partnership, or other unincorporated business organization holding an interest in the licensee should be required to be licensed, with all the attendant licensing procedures.

However, when a corporation or a licensed banking institution is the holder of an interest in a licensee, then the licensing authority should have some discretion whether to require actual licensure or not. It is with respect to such entities that mandatory licensing begins to have the serious negative consequences previously discussed which offset much of the positive aspects

of licensure investigation and review. But the discretion should not be unchecked, and should exist within a statutory framework that provides reasonable controls so that discretion is not abused.

Accordingly, the State Commission of Investigation recommends that exemptions only be granted on a casey-by-case basis. Moreover, the corporation or bank that would otherwise be required to be licensed must apply for such exemption, to set the following procedures in motion: The request for an exemption must specify the particular bank or corporation seeking same and the specific relationship to or transaction with a casino licensee or applicant for which the exemption is sought. The enforcement arm must review the particular relationship and recommend to the licensing authority whether to grant the exemption or not. In forming its recommendation, the enforcement arm would be required to consider certain guidelines set forth by the legislature to control the granting of exemptions. These statutory guidelines, while general in nature, should attempt to assess the degree of control or influence exercised or capable of being exercised over a casino licensee by the corporation seeking exemption. Such criteria should avoid the use of such labels, as "publicly-traded" or "holding company" and should go instead to more precise indications of control. Some suggested criteria are:

1. The percentage holding of the licensee's equity stock or capital debt.

2. Whether the corporation or bank holding the interest is the true holder thereof or a nominee.

3. The physical proximity of office facilities between the licensee and the corporation or bank.

4. The presence of any interlocking officers or directors.

5. The terms of agreement between the licensee and the corporation or bank.

6. Whether the interest was obtained publicly or through private negotiations.

7. The size and diversity of the corporation or bank's other interests.

8. Whether the licensee was formed by the corporation or bank, or was independently formed.

9. Any other factors that come to the attention of the enforcement arm which bear on the question of control of influence.

The licensing authority would then be required to review the enforcement body's recommendations and to make specific findings with respect to the various criteria, to support its conclusion to grant or not grant an exemption. In this manner, the exercise of discretion is subject to public scrutiny and both the enforcement body and the licensing authority are forced to evaluate the appropriateness of granting an exemption.

Even if an exemption is not granted, normal licensing procedures should not automatically apply. Rather, the licensing authority should be empowered to further decide whether the reasons for denying an exemption suggest the need for the full scale investigation and extensive individual licensing of corporate personnel such as is applied to an actual casino licensee, or whether an alternative, less inclusive procedure is sufficient under the circumstances. With respect to the formulation of

alternative procedures, the S.C.I. recommends consideration of Nevada Statute §§463.585 to 463.615, but ignoring its reference to the terms holding or intermediary company, and eliminating the exemption provided by Nevada Statute 463.625 for publicly traded corporations. These provisions offer alternative licensing procedures that might be imposed on any corporation or bank having an interest in a casino licensee but failing to qualify for a complete exemption. They are not as extensive as normal licensing procedures, but instead focus more directly on the personnel within the corporation or bank that may become involved in any way with the casino's operations.

RECOMMENDATION:

> BEFORE THE ACTUAL CASINO LICENSE MAY BE ISSUED, CERTAIN OF THE PERSONS SUBJECT TO INDIVIDUAL LICENSURE BY VIRTUE OF THE NATURE OF THEIR ASSOCIATION WITH THE CASINO LICENSEE SHALL FIRST HAVE OBTAINED THEIR INDIVIDUAL LICENSE.

The State Commission of Investigation fears that casino licenses may be issued prior to any investigation or even identification of the individuals who will hold key positions within the casino licensee's organization. For example, a corporation may be formed expressly to apply for a casino license. It may consist of no more than the usual four or five incorporators, each holding a nominal amount of stock. The officers and directors of the corporation may also come from the same group of persons. Assume that this corporate applicant for a casino license can satisfactorily explain where and how it will finance the casino it hopes to operate. Does a background investigation of these

shareholders and officer/directors provide sufficient scrutiny of this applicant's fitness for a casino license? Is enough known about such a corporation? Or shouldn't the licensing authority have some idea of the operational structure that will be created to run the casino and of the individuals who will fill the key positions in that structure? And shouldn't this be known to the licensing authority before the casino is licensed?

Again there are competing considerations. The license applicant may argue that he cannot hire anyone for these positions until he knows he has a license. It can also be argued that the statute will in any event require the licensure of these persons before they can engage in any casino activities, so there is no reason to make their licensure a pre-condition to the issuance of the casino license itself.

On the other hand, of what value is it to the State to investigate a corporation applicant that is in reality only a shell? Middle-level management has almost as much effect on a corporation's activities as does the senior management. Thus, who the shift boss is may be as important in assessing an applicant's qualifications for a casino license as who the president or chairman of the board is.

What the State Commission of Investigation fears in this respect is two-fold:

Firstly, it may well be that once a licensee has the casino license, he will begin to submit people for individual licensure who are entirely unsatisfactory. While they would still be subject

to rejection, their connection to the casino licensee if known prior to his licensing, might have been sufficient grounds to reject the original application. After all, the type of persons associated with the casino licensee is one of the primary indications of the licensee's general character and reputation in the first place.

Secondly, once an applicant has a casino license, he may begin to complain about the licensing authority's interference with his "rights" if the authority's rejection of various individual employees prevents the casino operator from taking advantage of his license and beginning operations.

A balance must be struck somewhere. It would be impracticable, if not impossible, to make the issuance of a casino license contingent upon the prior licensing of <u>all</u> persons who would be associated with the casino. Not all positions have the same potential impact on the casino's overall operations. What is important is that those persons who will have significant decision-making or managerial responsibility be identified and investigated prior to the casino's license being issued. While croupiers, dealers, stickmen, even pit bosses, do have a direct impact on a casino's operations, those positions do not have the same potential for the improper exercise of control over casino activities and casino revenues as do shift bosses, credit managers, junket coordinators and other management-level employees.

It is important to note at this point that most casino gambling legislation includes a requirement, either statutory

or by regulation, that the casino operator adopt a satisfactory system of internal control procedures designed to safeguard its assets. Included within such a requirement -- indeed an essential part of it -- is the formulation of a plan of organization which adequately segregates various functional responsibilities so that there are internal checks and balances. A plan of organization obviously entails the drafting and allocation of job functions to different positions within the operational structure of the casino. Thus, in all events, the casino licensee will at some point be required to submit to the licensing authority a table of organization for its review and approval. That being the case, the S.C.I. believes that no hardship to the applicant is created, and substantial benefits to the State are realized, by requiring that not only must an applicant detail his operational structure prior to the issuance of a casino license, but that he must identify the individuals who will occupy key positions within that structure so that their qualifications and background may be investigated.

It is recommended that the persons filling positions in the following areas within a casino operation be required to have been processed for licensure before the actual casino license may be granted. Officers; directors; casino shift managers and anyone senior in authority to the shirt manager; pit bosses; credit managers; complimentary services managers; cage or cashier managers; and accounting department managers.

Individuals in these positions exercise substantial direct

control over the handling and safeguarding of a casino's interest. The type of persons occupying these key positions is as much, if not more so, an indication of the character of a casino as are the members of senior corporate management. If mob infiltration or other outside influences over casino activities is to take place, past experience indicates that such control will more likely be exerted through the take-over of middle-level management positions than it will be through the means of top level management. The Meyer Lansky's of this world seek to protect their "investments" and "interest" by placing their people in those positions where the action is - on the gambling floor; in the cage; in the court room; granting credit, etc. Thus, the Lansky lieutenant is more likely to be shift or pit boss than president of vice president of the casino.

It is possible that mere figureheads would be nominated for these key positions prior to the issuance of a casino license, with a rapid substitution of other persons in their place once the casino license had issued. But this does not appear to be a realistic probability. First of all, in light of the consideration prompting such a requirement in the first place - to identify for the licensing authority the key individuals within the casino - it is believed that a significant turnover of these key persons shortly after licensure would be grounds for disciplinary action against the casino licensee. Such a turnover would suggest a fraud on the licensing authority, much like the sudden transfer of title from husband to wife is a fraud on the husband's creditors.

Also the new individuals hired for those positions would still have to be licensed. However, at this point the casino license would be unable to cry "wolf" if the licensing authority rejected many of the new applicants. The authority would not be interfering with the licensee's casino operations; to the contrary. The authority would have issued a license based upon its approval of the individuals originally submitted by the casino licensee for key positions. If for some reason many of those individuals suddenly leave, it would be at least in part the licensee's responsibility; in no event would the licensing authority be responsible for any delays in the casino's operations.

C. ANCILLARY SERVICES

INTRODUCTION

Although the State Commission of Investigation and segments of law enforcement have been highly successful in removing many identified members of organized crime from New Jersey society, there remains a well-organized highly functional organized crime network in this state. Additionally, it is important to note that the appearance of organized crime is presently changing. As traditional sources of illegal funds become more limited and more easily detected and prosecuted, elements of organized crime have become significantly more interested in investing funds in legitimate enterprises.

The infiltration of legitimate business by organized crime is a situation which society should be aggressive to prevent. In addition to providing a ready source of funds to capitalize illegal ventures, a convenient cash flow to disguise illegal profits, and an ostensibly legitimate occupation for organized crime members and associates, an incursion into legitimate enterprise is often accompanied by extortion, loansharking, commercial bribery, tax violations and anti-trust law infringements.

Thus, it is the position of the S.C.I. that any casino gambling legislation should not only preserve and protect the integrity of the operation of casinos in Atlantic City, but should also foreclose the possibility of opening up new and fertile areas of legitimate business enterprise to elements of

organized crime.

The S.C.I.'s continuing organized crime program discloses that there are several identifiable legitimate entreprises which have long been a target of infiltration by organied crime. Further, the S.C.I.'s monitoring of the workings of organized crime in Atlantic City discloses substantial movement by organized crime in contemplation of a casino operation and the potential which it represents. The general approach which the S.C.I. deems advisable is the exposure to stringent licensing scrutiny by the gambling regulatory body of all industries of concern and particularly more of an ancillary nature.

The most efficacious legislative scheme must strike the proper balance between the magnitude of the State's interest in licensing certain service industries and the required administrative resources which will be necessitated. It would be overly burdensome to require licensure for all parties entering into a contractual relationship with the licensed hotel yet, as has been stated, it would be against the interests of the state not to require licensure most other cases. The required scrutiny of the proposed provider should be directly proportional to the risk to the gaming industry and society as a whole. The risk is twofold: (a) that undesirable elements infiltrate the gaming industry through <u>direct involvement with the casino operation</u>, and (b) that undesirable elements either <u>indirectly effect the gaming industry through involvement with the hotel or are financially benefitted through profits recouped from endeavors relating to casino gaming</u>. From this standpoint, the following three

levels of ancillary services are discussed.

RECOMMENDATION:

ANCILLARY SERVICES PROVIDING ANY DIRECT SERVICE TO THE CASINO OPERATION AND CERTAIN IDENTIFIED ANCILLARY SERVICES PROVIDING TO THE HOTEL SHALL BE LICENSED.

The first portion of this recommendation deals with any provider of any of the raw materials or services of the gaming industry itself. Included in this category would be such providers as manufacturers and suppliers of gaming equipment, casino security services, agencies used to collect gaming debts, schools teaching gaming playing or dealing techniques, and companies which service or repair gaming equipment.

The second portion of the recommendation addresses itself to industries which have proven to be in the "high risk" category with respect to organized crime infiltration and which present the potential for indirectly effecting the gaming industry through directly effecting the hotel operation. Based upon general experience and specific knowledge gained from its present inquiry, the Commission recommends the inclusion of the following industries in this category: suppliers of liquor, food and non-alcoholic beverages, garbage haulers, vending machine suppliers, suppliers of goods sold in vending machines (where different), linen suppliers, limousine services, any shopkeeper whose premises are located within the hotel complex, and any other industry which the gaming commission wishes to add by regulation.

RECOMMENDATION:

ANY SUPPLIER OF A GOOD OR SERVICE NOT MENTIONED IN THE FIRST CATEGORY HEREIN WHICH SUPPLIES ON A

CONTINUING BASIS TO THE HOTEL, SHALL FILE THE TERMS OF THE ARRANGEMENT AND THE NAMES OF ALL OWNERS AND EMPLOYEES WITH THE REGULATORY BODY, SAID ARRANGEMENT SHALL BE REVOCABLE AFTER APPROPRIATE INVESTIGATION AND HEARING.

The recommendation refers to suppliers of services which are not connected directly with the casino and have not been traditional targets for infiltration by organized crime. While recognizing that neither of the significant risks described in the first category are present and regard to the second category, however the second category allows the regulatory agency the discretion to revoke the arrangement based either upon information supplied to the agency or upon the results of its own investigation.

RECOMMENDATION:

ANY SUPPLIER OF A CASINO-RELATED GOOD OR SERVICE ON A ONE TIME BASIS SHALL NOT BE REQUIRED TO BE LICENSED OR TO REGISTER, BUT SHALL FILE THE TERMS OF HIS AGREEMENT WITH THE REGULATORY AGENCY, SAID ARRANGEMENT WILL BE REVOCABLE BY THE AGENCY.

One-time jobbers or contractors who provide or deliver a service to the hotel operation are excepted from this category based on the hardship which might be created for hotel management and the administrative surplusage which might be created within the regulatory authoity. On the other hand, one-time jobbers or contractors who perform a function for or supply a service to the casino operation are considered to be working in a highly sensitive area and are of a much more limited number. Thus, the regulatory authority, in the view of the S.C.I. should have the discretionary power to vaoid such arrangements.

RECOMMENDATION:

ALL CATEGORY 1 LICENSES FOR PROVIDERS OF GOODS AND SERVICES DIRECTLY RELATING TO THE CASINO OPERATION

MUST BE LICENSED AT THE TIME OF THE OPENING OF THE CASINO; ALL OTHER CATEGORY 1 PROVIDERS OF GOODS AND SERVICES MUST HAVE APPLIED FOR A LICENSE AT THE TIME OF THE OPENING OF THE CASINO BUT MAY PROVIDE UNTIL THE DECISION ON LICENSURE IS RENDERED; ALL AGREEMENTS FOR THE PROVIDING OF GOODS OR SERVICES SHALL CONTAIN PROVISIONS REFLECTING THE PROVISIONS HEREIN.

This recommendation addresses the very real problem of the number of licenses which will be necessitated before a casino-hotel operation may open. In addition to the operator's license, the previously discussed provisions would add a requirement for investigation and licensure of an additional ten to fifteen entities. Requiring all necessary licenses to be issued before the opening of the casino would present the potential of an administrative logjam. On the other hand, allowing the licensed casino premises to open with gaming equipment supplied by a provider who eventually is rejected for licensure by the regulatory agency might present an almost irreversible condition to the state. Thus, the S.C.I. recommends the middle ground of requiring all <u>casino</u> related licenses to be issued at the opening thereof and all <u>hotel</u> related licenses to be in at least the application stage.

D. CASINO OPERATIONAL PROCEDURES

INTRODUCTION

No matter how much the State monitors the activities of a casino, at least some degree of reliance will have to be placed upon the licensee's records in determining the amount of revenues taken in during gambling operations. The accuracy and reliability of these records, in turn, is initially a function of the systems of internal controls maintained by each licensee. Effective internal controls require both a system of controlled access to revenues and a separation of duties with respect to the receipt and subsequent handling of those revenues. Controlled access are those procedures designed to require written verification of an individual's access to those revenues at any stage in their processing from receipt to eventual deposit or other disbursement. Custody of the revenues, whether merely temporary or more permanent, must be had through written authority to assume same, so that there is generated the documented evidence, commonly referred to as the "paper trail", by which the revenues may later be traced and accounted for.

These "paper trails" procedures can be defeated or circumvented by the failure to adequately separate the functions and accountability of those who will handle revenues at one point or another. Each individual's responsibility for temporary custody of revenues must be such that his interest in properly accounting for that custody is different than that of the person to whom custody is relinquished.

Thus, not only must each individual in the "chain of custody" be required to obtain documentary evidence of his transfer of custody, but lines of responsibility at various points must not lead directly back to the same immediate superior. Rather, each section of the casino's operations must function separately from the other in terms of responsibility and accountability so that the records of one function act as a check on the accuracy of the records of other functions:

RECOMMENDATION:

A CLEAR SEPARATION OF CERTAIN CASINO FUNCTIONS IS NECESSARY AND SHALL BE MANDATED BY STATUTE OR REGULATION

The State Commission of Investigation recommends that casino licensees be required to adopt plans of operation that require distinct separation of functions. It further suggests that each of the following functions found in a typical casino be required to be headed by a management level supervisor who is responsible directly to the casino manager and who operates his particular activity independent of any control from the other casino activities:

1. table games
2. slot machines
3. cashier's cage and vault
4. credit department
5. complimentary services department
6. maintenance department (of casino equipment and facilities)

Each of these is a fairly defined area of operation within a casino. While the operational head of each of these departments

may have assistants between him and the employees who actually perform the various duties of that section, the department head should have no one between him and the casino manager in terms of his authority and responsibility for the proper functioning of that section. For example, the floor boss should not be in a position to exercise any authority with respect to the operations of the cashier's cage, and should not be able to relax, alter or otherwise interfere with the procedures adopted by that section to control its functioning. Thus, if the proper procedure at the cage is to issue chips to a table only after a manual count thereof is taken and a proper fill slip executed, a pit boss or other table games supervisor could not bypass such controlled access procedures by saying "we need them in a hurry for a high roller; I'll sign for them later."

It is further recommended that two other functional areas usually found in a casino operation be headed by management level supervisors, but that because of the nature of their functions, they should report to a senior officer of the licensee who is superior in authority to the casino manager. These sections are:

1. accounting department
2. security department

Each of these two departments has a responsibility to monitor and review the performance of the other casino functions set forth above. They act as an internal check of the compliance with proper procedures by the various other operating departments within the casino. In effect, then, they are monitoring to a degree the per-

formance of the casino manager, since he is the overall supervisor of these subordinate departments. Accordingly, it would be undesirable from the standpoint of proper separation of internal controls, to have him exercise any direct control or authority over the operations of the accounting or security functions. They should, instead, take their authority from and be responsible to a corporate officer senior to the casino manager. This is not to suggest that every time the security department finds what it believes to be an improper procedure, that it "run" to senior management without informing the casino manager of the situation. Certainly they should also call his attention to it (unless, of course, he is considered to be directly involved). The concern is not in reporting suspicions to the casino manager; it is in his having any control over the follow-up investigation that may be conducted by the accounting or security department.

RECOMMENDATION:

MEMBERS OF THE ACCOUNTING AND SECURITY DEPARTMENTS SHALL BE REQUIRED TO MAKE WRITTEN REPORTS OF ANY CIRCUMSTANCES THAT SUGGEST THAT THE LICENSEE'S INTERNAL CONTROLS AND SECURITY PRECAUTIONS ARE NOT BEING FULLY ADHERED TO.

Each casino licensee must be required to formulate and implement internal control procedures and security precautions before a casino license will be issued. These procedures must be reviewed and approved by the licensing authority. The State will place a great deal of importance and reliance on these "self-policing" measures as one means to insure that the licensee properly accounts for and safeguards the casino's assets.

The primary function of the employees in both the licensee's internal accounting department and in his security section will be to monitor compliance with these internal control procedures. Their daily activities will be directed at uncovering indications of non-compliance with or circumvention of such procedures. The State Commission of Investigation therefore recommends that they be required by statute or regulation to report in writing to their department head, any indication, no matter how slight and whether confirmed or not, that there has been a deviation from the prescribed procedures. Such reports should specifically set forth the circumstances giving rise to such suspicions, all persons potentially involved, the particular procedures and/or books and records that may not be in order, and the time, date and method of discovery of the possible deviation from proper procedures.

The head of the accounting or security department, as the case might be, should in turn be required to forward a copy of the report along with his own comments of recommendations thereon, to the senior management officer to whom the department head is responsible. Copies of all such reports should be required to be maintained by each department for inspection by either the casino's independent CPA or by the licensing authority.

RECOMMENDATION:

CHIPS SHALL ONLY BE PURCHASED AT THE GAMING TABLES AND REDEEMED AT THE CASHIER'S CAGE.

These restrictions are designed to limit and clearly define the handling of cash within the casino. No money should be issued to the gaming tables. They should only receive their opening

"float" of chips each day. Players should be able to obtain chips only at the tables. The cashier's cage, on the other hand, should begin with a predetermined bankroll plus additional chips for issuance to the tables. The cashier's cage would be the only place where chips can be redeemed by players.

In this manner, the handling of money is carefully segregated. Incoming cash - the money tendered by the players - enters only at the tables. From there, it goes into the drop box and then to the count room. Only after it has thus been accounted for, can it be transferred to the cage cashier for current use or to the vault for temporary storage. It will not, therefore, become part of the operating cash drawer being used by the cashier to redeem chips from players, until it has been recorded.

By the same token, the tables will play no part in redeeming chips. The dealers will have no money at the table to pay players off. Players must turn in their chips to the cage for payment. Thus, the cage only has a disbursing function, while the tables only have a receiving function.

RECOMMENDATION

ALL SLOT MACHINES SHALL BE RESTRICTED TO THE CASINO AREA ONLY AND MUST HAVE COUNTERS BUILT IN THAT RECORD SEPARATELY THE TOTAL PLAY AND THE TOTAL PAYOUT ON DIFFERENT INDEXES.

Because of the nature of the slot machine's operation, it is possible to obtain an accurate record of the total amount of money bet and the total amount paid out. The difference is the actual casino "win" or "loss", not a statistical win or loss as in the

case of table games. This is so because it is possible to record each pull of the handle, which is a distinct bet, and each payout, which of course is a win to the player and a loss to the casino. This is not possible on table games, since each game involves on each roll of the dice (spin of the wheel, or deal of the cards) varying bets by many players.

Since it is possible to obtain accurate information on the casino's "handle" and win or loss by placing counters in the slot machine, they should be mandated. Such counters would enable either the licensing authority or the casino's independent CPA to conduct surprise, spot audits. Actually operating the machine and determining whether the counters have properly recorded the transactions will serve to best verify that the counters are in fact accurately recording the slot machine's win (or loss). The access to these counters should be sealed, so that they cannot be tampered with and they would only be serviced upon notification to an agent of the licensing authority that work was to be done on the counter portion of the machine.

RECOMMENDATION:

COUNTER MECHANISMS SHOULD BE REQUIRED AT EACH GAMING TABLE

As was indicated above, it is not possible, as a practicable matter, to record each bet and each win or loss on each and every turn of the roulette wheel, roll of the dice, or turn of the card. It could be done if the game was slowed down and a bookkeeper assigned to each table. Without that, however, neither the total

handle nor the actual table win or loss can be determined. All that can be determined is the table's "drop", the amount of cash, fill slips, and credit slips deposited into the table's drop box during the course of play.

Accounting for these monies and slips is the first step in recording the casino's revenues. Interviews with several CPA firms familiar with casino audits indicate that until the drop boxes are counted in the count room, casino revenues are virtually unauditable. Prior to that point, there is no way of verifying or testing the money taken in by the casino. Money can be diverted by dealers before deposited into the drop box. Money can be removed from the box during transit from the table to the count room, without any trace. And, of course, during the count procedure itself, money can be diverted by various means - from simple palming to false counts where the money is later "adjusted" to the lower count. The reason is that there are no "sales receipts" evidencing each transaction at the gaming table as there are in stores, banks, or other businesses. According, elaborate procedures for transferring the drop boxes from table to count room, and for counting them once in the room, have been designed to insure maximum accuracy of the initial determination of the casino's revenues.

Placing a counter at each table game is urged. This will serve to make the dealer act as a check on the count room. Since he will have to record on the counter all deposits into the drop

box accurately, or face disciplinary procedures, the count on the counter will be an accurate check on the count actually taken in the count room. Moreover, the fact that there will be an independent count in the count room to judge his count by, causes the dealer to properly enter each drop box deposit into the counter. Thus, they each act as a check on each other. As such, they also act as a check on the handling of the drop box between the time it leaves the table and the time it enters the count room.

In this manner, the revenues are subject to some accountability right at the tables themselves. The only way the table counter will be inaccurate is for the dealer to physically divert the money before it goes into the drop box. Such physical diversion will be open to possible discovery by any number of people, from the pit boss, to security personnel, to customers.

The dealer cannot enter a false, lower amount on the counter than is actually placed in the drop box, and then have a confederate remove the difference and "make the count right" because a spot audit of the drop box before it leaves the table would reveal the discrepancy. While a $20 discrepancy might be chalked off to an honest error by the dealer in recording the amount deposited in the drop box, a large difference such as $250, $500, or more would raise some serious problems. Without a counter at the table, spot audits of the drop boxes are meaningless - what do you compare the actual count of the drop boxe's contents to?

It is further recommended that the counter be required to have a tape so that each individual transaction can be seen, whether it is a cash deposit, credit slip, or fill slip. Only three or four different separate letter symbols preceding the monetary amounts would be needed to distinguish the different types of deposits into the drop box. It is further recommended that this tape be kept within the sealed housing containing the counter, and opened only to an agent of the licensing authority. The total on the counter at any time should not be able to be read out by the casino personnel. In that way, possible collusion between table personnel and count room personnel is further reduced, because the table personnel will not be able to tell the count room what the count should be. Therefore, the count room must make an accurate count or risk being caught by the tape record. Accordingly, each time the drop box is removed from the table, the dealer must be required to operate the "total" key so that a record of each drop box's total is made, and a new count begins with the next drop box.

The argument will be made that dealers are not clerks in a store; that they will be too busy to record the various "drops" into a recorder because the "action" will be too hot and heavy. The State Commission of Investigation does not believe this to be true for the following reasons. Players are not constantly buying chips as they bet. Rather, a player purchases an amount of chips and sits down and begins betting. When six

or eight persons have sat down and obtained their chips, a table is full and only betting is taking place. If after a time the player needs more chips because he is losing, he buys more. The point is, issuing chips, while a continuous process over the course of an evening, is not a constant process. Furthermore, the dealer or croupier is required in any event to count the money before deposited, or to count the chips received from the cage before signing a fill slip. He pauses in the gambling activities for these procedures anyhow. To simply punch in on a key-board type recording device would not add any significant delay to the gambling. To insure this, a requirement could be set that all purchases of chips must be in specified even dollar amounts depending on the denomination of the chip - for example, in multiples of $20 for dollar chips; $100 for five dollar chips, etc. This would mean that the dealer would not have to perform any startling mental gymnastics to run the number up on the counter. It would also keep players from buying chips in dribs and drabs.

RECOMMENDATION:

ODDS AND PAYOUTS SHOULD NOT BE REGULATED BY THE STATE, AT LEAST NOT AT THE OUTSET.

The odds associated with various forms of bets in each game, and the payouts that will result (since payouts are not based on true odds but involve a built-in house percentage) are, of course, important to the player. They determine the chance he takes at a table, or at a slot machine. The question is whether

the State should regulate these odds and payouts, as opposed to merely requiring the casino operator to clearly post both the odds and the pay-outs of various bets, so that the bettor is warned of his chances.

The State Commission of Investigation believes that the odds and payouts should not, at least initially until experience suggests otherwise, be regulated by the State. Regulating the odds does more than protect a player - posting them would do that. Regulating the odds begins to favor the player at the expense of the casino operator. How is the State to determine what is a fair and proper "house percentage" on various bets. A slight percentage change one way or the other might mean severe consequences to the casino's profitability without protecting the player in return. As long as the player is informed of the odds and so long as the house cannot alter those odds or payouts without first advising the licensing authority and notifying the public, this area should be left to the casino operator's discretion. The State can only lose by getting involved. If the odds are not considered fair by players, they will blame the State. On the other hand, if they are too low, casino operators will be quick to accuse the State of being the reason for their non-profitability.

RECOMMENDATION:

HOURS OF CASINO OPERATION SHOULD BE LIMITED TO 16 HOURS DAILY, INCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS, AND FROM NOON TO 4 A.M. DAILY. NO 24 HOUR ROUND-THE-CLOCK OPERATION SHALL BE ALLOWED.

Here again is an issue that generates considerable controversy. Casino backers argue that unless gambling is permitted round-the-clock, casinos will fail in Atlantic City. They say that not only does 24 hour a day gambling increase their revenues, but it also means more jobs for Atlantic City workers. It is also argued that Atlantic City will be more of an attraction to visitors, and hence will attract more tourists, if there is something to do at all hours of the day. Finally, it is said that if the casinos close down at all, even if only from 4 a.m. to 8 a.m., this will cause illegal games to spring up to fill the void.

On the other side of the issue are more persuasive arguments. The cost to police casino gambling and Atlantic City itself will be increased. Clearly, for every hour a casino is open, the enforcement arm will have to have at least some agents on duty actively monitoring casino operations. And with the round-the-clock movement of players from one casino to another, the cost to police the streets of Atlantic City will increase.

Another argument against 24-hour-a-day gambling is that it is socially undesirable to allow a pattern to develop whereby day becomes night, night becomes day and there is no break, no pause in an environment's activities. It is said that there is a value both to the resident population and to the visitors who will be lodged in the midst of the gambling areas of the city, to have at least some dead time during the day when the commotion, noise and general street activity dies down.

The State Commission of Investigation disagrees completely with those who contend that 24-hour-a-day gambling is a must, either to make the casinos themselves profitable or to supply new jobs to Atlantic City residents. Casinos in Puerto Rico and England do not operate round the clock and yet are profitable. Moreover, even the advocates of 24 hour gambling admit that during the wee morning hours after 4 a.m. and before 8 or 9 a.m., there is not the level of gambling found during midnight to 4 a.m. or earlier in the evening. Accordingly, few people are employed during the early morning hours, as tables are shut down.

The Commission believes that there comes a time when enough is enough. The State should not risk a radical wrenching of normal social patterns just to feed the casino operator more and more profits. Casinos were advocated in the first place as an attraction for tourists, not as the be-all end-all of Atlantic City. As long as the casinos are open for a sufficient period each day they will be just that - an attraction to tourists. Round the clock gambling will not increase the attraction, but it may certainly increase the social disruption caused by the introduction of casinos into Atlantic City.

The State Commission of Investigation, therefore, recommends a limitation on casino gambling to the hours between noon and 4 a.m. That is 16 hours a day, plenty of time for the tourist to visit the attraction. It is even enough late night hours for the high roller to do his thing. Yet it also provides a breather during each day, when people and gambling tables must

separate, so that both bodies and spirit can be refreshed and renewed.

Furthermore, the S.C.I. recommends against allowing the casino operators to swap hours in one day for hours in another day. Instead, the Legislature should specifically prescribe what hours during the week casinos may be open and thus schedule of hours must be uniform throughout the industry, allowing both the casino regulatory authorities and local law enforcement authorities to develop duty schedules and monitoring procedures that follow an established routine. If casinos, at the option of each individual casino were allowed to close 4 hours more on Tuesday in order to gain 4 more hours on Saturday, etc., the ability of the authroities to effectively organize and deploy their agents would be substantially impaired. Extra officers would be needed and overtime costs would rise in an attempt to cope with the varying schedules of half a dozen or more casinos.

E. CASINO CUSTOMER RELATIONS

INTRODUCTION

This is a most sensitive area from the standpoint of both the State's interest -- in the general public welfare as well as in the revenues to be derived -- and the interest of the casino operators -- in the stability, integrity and success of their state-regulated private enterprise. It is an area that involves, among the more crucial problems, such questions as whether or not to permit "credit" or "tipping", and it even overlaps into some casino operational functions such as hours of play and the gambling odds.

The State Commission of Investigation in the following discussions and recommendations emphasizes what it regards as the most critical of these casino customer relationships as well as those that should be defined if only as part of the overall effort to assure the propriety and integrity of the industry in its daily dealings with its patrons.

RECOMMENDATION:

> CASINOS SHALL NOT BE ALLOWED TO EXTEND CREDIT. THE LEGISLATURE SHOULD ENACT A STATUTORY PROVISION REQUIRING CASINOS TO ISSUE CHIPS TO PLAYERS ONLY UPON THE PRESENTATION BY THEM OF CASH OR ITS EQUIVALENT SUCH AS TRAVELER'S CHECKS, NATIONALLY RECOGNIZED CREDIT CARDS OR PERSONAL CHECKS

This is an area that stirs considerable controversy. It is one of the significant issues that the Legislature will have to come to grips with.

Proponents of allowing casinos to issue credit to players advance several arguments in support of their position. Foremost seems to be the following: High rollers -- big, steady bettors -- will only go where they can get credit; high rollers are essential to maximize casino profitability; if credit is not permitted, the casino's attractiveness as a potential investment diminishes and investors will shy away from Atlantic City. Also, if the casinos cannot extend credit, players will look elsewhere for credit and may wind up with the loansharks. Finally, proponents argue that a prohibition on credit will cause visitors to carry more cash on their persons, thus increasing street crime.

Casino credit is opposed, on the other hand, because it offers a hard-to-police method for illicit diversion of revenues - "skimming" as it is popularly called. Credit debts may be collected at a later date and never entered on the casino's books. The money collected is then available for diversion to criminal or other outside elements, while also escaping taxation since it has not been included in the casino revenue calculations. In fact, the debt, even though collected, may be "written off" against legitimate income as an uncollected "bad" debt.

Directly related to the problem of unrecorded collection of these credit debts is the manner in which they may be collected. While the "pay-up or I'll break your leg" loanshark school of debt collection may not have started with casino gambling, it certainly is no stranger to the industry. The use of physical

intimidation is not the only problem. The overdue debt may be used as a means of gaining entrance to, and eventual control of, other businesses.

Finally, there is the question of player protection. If a player must either put up cash or write out a check, he is less likely to exceed his own personal financial limitations than if he can readily obtain easy credit. Casino credit is particularly attractive, because it normally bears little or no interest and has a seemingly liberal repayment period. Its attractiveness has a significant potential, therefore, to cause a bettor to lose more than he can afford to.

One problem with this issue is the lack of statistical information upon which to reach a reasoned conclusion. Interviews with casino officials in Nevada, Puerto Rico, the Bahamas and England have produced conflicting opinions on the necessity of credit to a successful gambling operation. Gambling in England is conducted much more as a social diversion than as a big business. Therefore, it may not provide an accurate barometer of the need or lack of need for casino credit. Nevertheless, the fact does remain that casinos in England cannot grant credit per se and yet they operate at a profit.

On the other hand, casino operators in Nevada, the Bahamas and Puerto Rico, where credit is permitted either in unlimited amounts or with some restrictions, cannot provide statistics that

show the relationship between credit gambling and profitability. Moreover, operators interviewed admitted that prohibitions on credit gambling would not turn their operations from profits to losses, but only would reduce the level of profitability. How great a reduction can only be estimated. Nevertheless, it does seem clear that there is some relationship between the extension of credit and the level of casino profitability.

The State Commission of Investigation is not convinced, at least at this point, that without the right to grant credit in unlimited amounts, that casinos will fail in Atlantic City, or that investors will see casinos as an undesirable investment. On the other hand, the S.C.I. is convinced that casino credit does bring with it substantial social and law enforcement problems. Skimming by the unrecorded collection of credit debts will occur and improper debt collection practices will be a serious problem.

Moreover, this agency is certain that casino credit will promote loansharking. A typical loanshark transaction involving gambling (as opposed to usurious loans to businessmen for business purposes) normally occurs after a gambling debt has accrued and is not itself the original cause of the gambler's indebtedness. That is, a gambler ordinarily does not go to a loanshark at a time when he is then free of debt and ask the "shark" for money with which to bet. Rather, the gambler turns to the loanshark when gambling debts have caught up with him and his back is to the wall.

Skimming through debt collection will be hard to prevent no matter what restrictions are placed upon credit debt collections on behalf of the casino. Even non-threatening collections can go unrecorded. In fact, they may have a greater potential in that respect. The collector may agree with the gambler to take 75 cents on the dollar in return for the gambler's agreement not to reveal that the debt has been paid off. Both sides gain and each is happy. Neither side has any incentive to reveal this transaction.

Accordingly, the State Commission of Investigation recommends that the Legislature enact a statutory provision requiring casinos to issue chips to a player only upon the presentation by him of cash or its equivalent such as traveler's checks, a nationally recognized credit card, or a personal check. The reasons for this recommendation are as follows:

First, all three modes of payment inherently tend to place limitations on the amount the player may risk and lose. These limitations are directly related to his own personal financial situation - the amount of cash he has with him; his available credit with American Express, BankAmericard, etc., or the amount of liquid assets he can transfer to his checking account to make good the check he has drawn.

Secondly, all three of these forms of buying chips must find their way onto the casino's books. Cash is cash and after deposited in the drop box at the table, will be counted and recorded then and there as part of the casino's revenues.

Credit card slips are revenue to the casino. They do not evidence a debt relationship between the casino and the cardholder. The debt relationship is between the player and BankAmericard, etc. The casino will get paid by the credit card compnay regardless of what the player does about paying his bills.

Only with the personal check is there a possible problem. Until it is deposited and actually honored for payment, it really is little more than an I.O.U. For that reason, the State Commission of Investigation recommends the following additional restrictions on the acceptance of personal checks:

1. Adequate identification information must be obtained from the player and recorded by the casino at the time the check was accepted.

2. Cash shall not be given for the check - the player will only be given a credit slip which can be presented to the dealer for chips.

3. No post dated check may be accepted.

4. All checks accepted must be deposited by the casino into its regular bank account for collection within two working days of receipt by the casino.

5. Any check returned to the casino by its bank as uncollected must be reported immeidately to the licensing authority.

6. No player will be permitted to present any further checks to any casino or to endorse or otherwise act as a guarantor for any other player's personal check until the licensing authority has been notified in writing by either the player or the casino that the dishonored check has been paid in full.

The State Commission of Investigation believes these provisions will make the use of personal checks less vulnerable to the same abuses that can occur with casino markers or I.O.U.s One of the purposes of permitting checks while prohibiting pure I.O.U. credit situations is to allow the player to travel without carrying large amounts of cash while at the same time impressing upon him that the presentation of a personal check indicates an intention on his part to make good that check upon its presentment for collection. Thus, the check cannot be post dated, which would negate such intention. Nor can the check be held by the casino to give the gambler "time" to get some money together to cover the check. In writing the check, the player will have to be aware of his other personal assets so that he does not write a check for more than he can quickly cover.

Casinos should not be permitted to "cash"a personal check, but should be authorized only to issue chips for the full amount of the check accepted. This should help insure that the transaction is legitimate rather than a means of the player defrauding the casino, or the casino conspiring with the player to skim money.

The most important requirement is that the return of an uncollected check must be reported immediately by the casino to the licensing authority. This gives the authority notice of a potential bad debt situation that might warrant careful scrutiny. More importantly, the State Commission of Investigation recommends that the licensing authority have the power to daily transmit a list to each casino of all persons who have failed to honor their

checks. This would go to all casinos, not just the casino where the check had been accepted. Any person on such a list could not thereafter be permitted to present personal checks to any casino until removed from that list. Removal would occur only when either the player or the casino notified the licensing authority in writing that the check had been paid in full.

Some additional recommendations with respect to casino credit are in order. First, the authority to approve the acceptance of personal checks or credit cards should be limited to the credit manager's department. This department would, as indicated earlier, operate independent of control from other phases of the casino operation. By limiting the authority to approve these transactions, responsibility for same is clearly fixed. The potential for collusion between the approver of the transaction and the player is reduced, since only a few people have that power, and none of them actually issue chips or oversee the play of the games. Instead, if after obtaining sufficient identification information the credit manager determines to approve the transaction, a three part credit slip would be executed by him. This slip would be serially numbered and the serial number should be recorded on the corresponding identification information record which the credit office must prepare and maintain in all cases. Thus, the credit slip itself need not contain the player's name. Part one would be given to the player who would present same to the table for issuance of chips. At the table, it would be deposited into the drop box, eventually making its way through

the count room to the accounting department. The second part would stay in the credit department with the other records. The third part would remain intact in the machine for use by the licensing authority. The actual personal check or credit card slip would be kept by the credit department and properly processed for collection.

RECOMMENDATION:

THAT ALL PERSONS INVOLVED IN DEBT COLLECTION ACTIVITIES MUST BE LICENSED

Regardless of whether casinos are limited to check-cashing or are permitted to extend credit based upon markers or I.O.U.'s, the collection of these debts must be strictly limited to the personnel within the credit manager's department. All personnel within the department must be indivually licensed. The State has a particular interest in insuring that proper debt collection practices are employed. Moreover, if the normal collection processes fail and a bounced check or unpaid I.O.U. must be turned over to another agency for collection, that agency and all its personnel must be licensed. This applies to collection agencies whether inside this state or in other jurisdiction. The statute must clearly require the casino to use only licensed persons and agencies in the collection of gambling debts.

RECOMMENDATION:

TIPPING OF CASINO PERSONNEL SHOULD BE ABSOLUTELY PROHIBITED

The State Commission of Investigation wants to go clearly on record as being absolutely opposed to the tipping of casino employees and in favor of a statutory prohibition to that effect

with both license and criminal sanctions.

Tipping of casino employees is rife with the possiblity of collusion between the dealer and a player. Why do we tip in general? Tips are given in recognition for good service to the customer. The waiter is tipped because he was pleasant, efficient and brought the diner a good meal. The barber is tipped for taking care to cut the patron's hair. But what "good service" can a player expect from the dealer. Does he help the player out? Is the edge of the next card to be dealt "bubbled" ever slightly so that the player can see it? Does the dealer say "do you want a hit?" in tones that suggest to the player whether or not a hit would be advisable. Would a dealer pass more chips to the player than he won or than he paid for when he asked for chips?

Certainly, any one of these things might result from collussion between a dealer and player without tipping, But tipping obviously would encourage these practices. More importantly and more insidiously, the tip itself may provide the vehicle for the pay-off to the dealer who is working with the player. Instead of having to meet somewhere else later and divvy up the player's "winnings" where they might get caught, the player can pay the dealer through periodic tips. Not only does it lead to possible collusion, tipping also gives the appearance of such collussion. As is often the case, appearances are just as important as actual reality. The other players at a table should not feel that they are at a disadvantage because one player is tipping. The public should feel that

each person at a table has an equal chance at winning and that the dealer is not paying more attention to one player than to others because of tips.

Tipping would be undesirable for these reasons alone. But there are at least two more reasons that argue strongly against tipping. The first is the converse of one argument in favor of tipping. If it is prohibited, the casinos will undoubtedly have to pay their employees higher wages. These wages, in turn, will be reported in full for purposes of state income taxes. The same cannot be said for tips. The State thus stands to gain directly from the legitimate collection of taxes from casino employees.

Lastly, tipping tends to remove money from the game itself. If the player wins $100 and gives the dealer a $10 tip, the amount of money he may subsequently bet has been reduced by 10 percent. As the casino operators will tell you, it is the total handle that matters to them. The casino operator's main goal is to maximize his handle -- the amount that is bet. Tipping reduces this handle by removing money from the game. The casino loses, and so does the State, since its tax revenues depend on the casino's revenues.

RECOMMENDATION:

LIQUOR SHOULD BE AVAILABLE IN THE CASINO - BUT NOT AT THE PLAYING TABLES

This is another highly charged issue. Proponents argue that liquor should be available to the player right at the table as a social amenity. Inherent in this, at

least from the operator's point of view, is that by keeping the bettor at the table, he keeps him betting and increases the total handle.

The chief argument against alcohol at the tables is player-protection. Freely available liquor at the tables over the course of an evening, can impair whatever reasoning ability the player may be applying to the game. It may impair not only his individual bets but his overall perspective of his financial situation.

While on the subject, this agency believes that the position taken by the Attorney General's Office is reasonable -- that is, liquor would be available in the casino area itself but not at the tables.

RECOMMENDATION:

DRESS CODES SHOULD BE MINIMAL AND REQUIRED ONLY TO HAVE A REASONABLE RELATIONSHIP TO PROPER HEALTH AND SAFETY STANDARDS

This is a subject that the State can regulate only with great difficulty. For one thing, there is the initial problem of determining what a reasonable dress code would be. Even if any consensus was reached, the next problem would be to draft provisions that adequately define the attire that could or could not be worn. Finally, there is the very real question of the power of the State to impose regulations in this area.Any state regulation would have to be based primarily,

if not entirely, on a legitimate state interest in protecting against identifiable social harms. In this regard, the only potential harm to the public are the health or safety hazards associated with certain modes of dress. Thus, a prohibition against bare feet in the casino would undoubtedly be valid. Similarly, a ban on bathing suits would probably be a reasonable exercise of the State's police power.

Beyond those, it is difficult to formulate state-imposed prohibitions that would pass constitutional muster. This is not to say that casino operators should not be permitted to adopt dress codes on an individual basis for their particular establishments. Moreover, the operators would be able to vary their individual establishment's dress requirements for different periods of the day, should they so choose.

Accordingly, the State Commission of Investigation recommends that the Legislature, or the licensing authority, only adopt provisions with respect to mode of dress in the casino that have a reasonable relationship to the maintenance of proper health and safety standards leaving the casino operator free to adopt stricter codes if he so desired.

RECOMMENDATION:

ALL PERSONS INVOLVED IN ORGANIZING AND OPERATING JUNKETS MUST BE LICENSED

While the term "junket" is generally understood, the S.C.I. recommends that for purposes of enforcement of casino gambling, that a specific definition of what constitutes a

junket should be provided. Such definition should contain language to the effect that a junker is:

> Any group of two or more persons organized specifically to travel to Atlantic City, some or all members of which will receive from one or more casino licensees any or all of the following free or at substantially reduced rates: transportation; lodging; meals; other complimentary services.

Along with debt-collection practices, junkets are an area where experiences in Nevada and other jurisdictions have indicated that abuses are likely to occur unless there is strict regulation. Players joining a junket may lose their deposits to unscrupulous junket promoters. The casino itself may be defrauded by the promoter and/or the junketeers themselves. Accordingly, a recommendation similar to the one made with respect to debt-collections is made here.

First, each casino must be required to designate the person or persons who will coordinate junket activities on behalf of the casino. Only these persons will be authorized to approve the granting of complimentaries to patrons of the casino.Complimentaries typically include free transportation, room and meals, The junket or complimentary services manager should also be responsible for a recommendation as to the credit to be issued to the junketeer if credit is permitted, contrary to the S.C.I.'s strong opposition to credit.

Secondly, the casino's junket manager should be required to deal only with junket representatives or promoters who obtained a license from the regulatory authority. In most instances, casinos themselves do not organize the junket. Rather, independent promoters arrange junkets and submit a list of proposed players to the casino for approval. It is important, therefore, that these agents or promoters who have initial contact with the players be licensed.

F. RECORD-KEEPING PRACTICES AND REPORTING PROCEDURES FOR CASINO OPERATORS

INTRODUCTION

The recommendations in this section deal with the record-keeping practices and reporting procedures to be required of casino licensees. Before discussing particular recommendations, a general review of the need for such requirements is necessary. At least two distinct functions are served by provisions regulating a licensee's record-keeping practices and procedures:

1. They assure that revenues are properly accounted for, for taxation purposes.

2. They facilitate monitoring of the possible infiltration of organized crime and/or other undesirable elements into casinos and related activities.

The State Commission of Investigation believes that it is important to be aware of each of these functions when drafting casino gambling legislation. It should not be assumed that provisions which accomplish one function will automatically accomplish the other.

From the viewpoint of monitoring possible criminal infiltration of the casino detailed records and sufficient controls to assure the accuracy of such records are absolutely necessary since uncovering organized crime infiltration is largely a function of being able to trace monies into and out of an operation. Effective tracing in turn requires the ability to determine the total monies available to the operation. If the money being diverted to organized crime as its "piece of the action" was not

accounted for in the first place, it would be almost impossible to trace since there are no starting points. The "skim" so often mentioned in connection with casinos is not simply a tax-avoidance device but also a means by which money can be funneled out of a corporation to hidden interests with little or no traceability. The whole point of the skim is to divert money before it goes on the books. Once revenues are properly accounted for and recorded, it becomes much harder to divert corporate funds for illegal payments to outsiders of "silent partners". Therefore, from a law enforcement perspective, tight controls on and detailed records of revenues and disbursements are necessary whether or not taxation considerations necessitate such procedures.

The need to be able to trace money into and out of a casino is particularly acute where publicly-traded corporations may be involved, either directly as the casino licensee, or indirectly as a holder of an interest in a casino licensee such as a "parent" corporation. Tracing the ownership and, more importantly, the control of a publicly-traded corporation will be difficult. Numerous factors contribute to this problem. The stock ownership of a publicly-traded corporation is constantly changing, some times more rapidly than at other times. For example, just prior to the referendum, tens of thousands of shares of Resorts International Class A and Class B stock were traded over the American Stock Exchange in a period of days. The true ownership of the stock is not readily apparent. Simply obtaining up to date records from the stock transfer agent is not enough, since they only

indicate in whose name a stock certificate has been issued. The stock may have been purchased in a nominee's name; it may have been issued in the "street name" of a brokerage firm, or as is becoming more and more common, large blocks of stock may appear in the name of what is in effect a secondary transfer agent. In all of these cases, the stock transfer agent's records do not show true ownership of the stock. They simply show, as the name implies, record ownership.

As an illustration of the potential size of the gap between true and record ownership of a corporation's stock, the shareholder records of Resorts International, Inc. offer a good example. The S.C.I. had the opportunity to examine a print-out of the stock transfer agent's records for the shareholders of Resorts' stock as of August 12, 1976. (These records were freely made available to the Commission by the corporation). As of that date, Cede & Co., of Box 20, Bowling Green Station, New York, appeared as the shareholder of record for 910,310 shares of A stock and 30,579 shares of B stock. That is approximately 21% and 9% of those two classes of stock, respectively. Yet Cede is not the beneficial owner of that stock. It is simply the nominee of the Depository Trust Company (D.T.C.). This Company was created jointly by large financial institutions and the stock exchanges to reduce the physical transfer of stock certificates and to safeguard the holding of certificates (and other financial instruments). D.T.C. in effect acts as a secondary transfer agent for the institutions it services, by

accomplishing book transfers of stock rather than the normal physical transfer through a corporation's transfer agent. The point is Cede & Co. is in many instances twice removed from the true owner, since the institutions it is a nominee for are themselves nominees.

Add to these factors the problems caused by the fact that brokerage houses, investment clubs, and the other corporate holders of large blocks of stock may be scattered throughout the country and even overseas.

These problems illustrate the need for statutory provisions that will enable the State to obtain this ownership information. It also highlights the need for provisions that require the licensee to keep complete and detailed reocrds of all its financial activities. The purpose is to identify and evaluate the individuals and corporations who, through their holdings, may exercise some control over the licensee. Criminal elements would be interested in the stock of a casino corporation primarily as a means of gaining some measure of control over the casino. To those elements, control of a business is only as valuable as the opportunity to divert the business funds. It is the control over who is hired in key positions; control over the salaries to be paid; the bonuses to be awarded, the other fringe benefits, that count. Control is the ability to let contracts to "friendly" parties, to pay consulting fees, to purchase goods and services from "connected" firms. In all these ways, and more, control allows those who exercise it to use seemingly legitimate corporate

expenditures to channel monies out of the business and into improper hands.

Thus, identifying how and to whom a casino disburses its revenues is as essential to piecing together a true picture of where the real control of that casino lies, as is the tracing of stock ownership. In many instances it will be a fare more revealing indication of who is calling the shots, so to speak, to learn that the XYZ Meat Purveyors Corp. received a $50,000 supply contract from the casino than it would to learn that John Smith owned 15,000 non-controlling share of the corporation's stock. Who is getting the lucrative contracts and the high paying jobs in a casino offers a good indication of whether legitimate or illegitimate interests are really in control. Thus, in addition to acting as a means to prevent outright skims, the State must require a casino licensee to keep extensive and detailed financial recores in order to offset the problems it faces of identifying control of the casino where publicly held corporations are involved.

A third consideration for requiring record-keeping and reporting procedures is to make available as much information as is possible to the enforcement body. Monitoring casino activities will be as much an information-gathering process as it will be a physical surveillance activity. The recommended provisions are intended to ensure not only that the enforcement body receives the maximum amount of information but also that such information is readily and immediately obtainable. Moreover, to the extent

possible, it is intended that much of the information be required to be regularly and directly filed with the enforcement body. In this manner, the enforcement body need not make a specific request to a particular licensee for the information. Such individual requests could tip off that an investigation is being conducted to the advantage of the investigated. If, on the other hand, materials must be routinely filed by all licensees, a licensee would be less aware that his activities were being reviewed.

* * * * * *

RECOMMENDATION:

THAT EACH CASINO LICENSEE BE REQUIRED TO MAINTAIN DETAILED BOOKS, RECORDS, AND SUPPORTING DOCUMENTS, IN ACCORDANCE WITH RULES AND REGULATIONS WHICH MUST BE PROMULGATED BY THE DECISION-MAKING COMMISSION

Most corporations maintain books, records, and other evidence of their activities. However, in order that disciplinary sanctions may be applied by the regulatory authorities for the failure to do so, there must be imposed upon the casino licensee a requirement to keep such records. Moreover, for such a requirement to be of any value, it must establish the minimum acceptable level of record-keeping that will constitute compliance. This is not to say that a specific bookkeeping system should be straight-jacketed onto the licensees. But the legitimate need of the licensing and enforcement arms to have available adequate records of casino licensees' financial practices dictates that this area not be left to the discretion of the licensee. Rather,

licensees must be required to maintain sufficiently detailed, organized and documented records that are available at all times for inspection by the State.

Imposition of these requirements should be accomplished by a combination of statutory provisions and rules. Certain of the requirements will be of particular importance and will, by their nature, be less subject to change. These should be imposed by the Legislature to ensure that they are implemented and to underscore their importance. Other provisions, particularly those dealing with the types of records and amounts of detail required, will be subject to change as actual experience dictates. They are more properly left to the decision-making or licensing Commission for promulgation by rules. The State Commission of Investigation recommends the following provisions be considered as minimum requirements to be imposed by statute:

1. That all licensees shall maintain a system of books, records, and supporting documents detailing its financial activities.

2. That a casino licensee's casino activities shall be recorded in a separate set of books from the rest of its activities.

3. That the required records shall be kept in a designated office or offices within New Jersey and shall be maintained for a period of 10 years.

4. That the Commission must promulgate rules setting forth specific requirements as to the type of records to be kept, the amount of detail, the supporting documents required, and the general manner in which books and records shall be kept.

The basic requirement that records be maintained should be imposed by statute to give weight to its importance and to make

clear the Commission's authority to promulgate rules in that area. Similarly, a statutory requirement that separate books and records be kept relating strictly to casino activities is preferable to an agency rule. The State Commission of Investigation considers separate records of casino revenues and disbursements to be of significant value in monitoring a licensee's operations from both a taxation and a law enforcement standpoint. Such a requirement will prevent casino activities from being lumped together with receipts and disbursements for restaurants, bars, lodging, entertainment and other activities conducted by the licensee on other parts of the casino complex. Expenses that are common to both the licensee's casino and non-casino activities, such as real estate taxes, maintenance, mortgage payments, will have to be properly apportioned on the separate books. Instances where the casino picks up the tab for other expenses, such as lodging, shows, etc. will have to be reflected as disbursements on the casino books and receipts on the non-casino books. With such separate records, the regulatory agency will have available to its documentation pro or con on some of the areas of casino operation frequently subject to considerable debate - credit gambling; the setting of odds and payouts; the hours of operation; etc. Moreover, comparisons between various casino operations will be more meaningful. That is, if the results reported by one casino depart significantly from those reported by all casinos in general, than it <u>may</u> be an indication that a closer look should be made of that casino's operations.

The S.C.I. advocates that the licensee's books and records be required to be maintained in New Jersey at a location (or more than one location if the regulatory body is satisfied that a good reason exists for splitting up the books) designated by the licensee in writing. This recommendation is based upon past S.C.I. experiences in attempting to obtain corporate books and records during investigations. Agents of the State Commission of Investigation have at various times been forced to track books from one office to another to obtain access to all the necessary documents; have been required to make a second trip back because the requested materials were "in storage" and not readily available; and they have encountered many instances where a corporation doing substantial business in New Jersey has maintained its books and records in other jurisdictions. All of these problems tend to defeat the immediate access to books and records that all authorities agree is necessary to conduct unannounced, spot audits of casino and casino related activities. While it is not specifically set forth here, this recommendation is based upon the further assumption that other provisions dealing with the general inspection powers of the enforcement body will mandate that all phases of a licensee's operations be open to immediate inspection without a warrant or probable cause. If such a general inspection provision is not enacted, then a specific provision with respect to the licensee's books and records should be enacted.

Maintenance of books and records intact for a period of

ten years is recommended because one of the significant responsibilities to be faced by the enforcement and licensing agencies will be the prevention and detection of civil and criminal violations at high levels of casino management. Such violations are usually accompanied by collusion between various parties and by organized efforts at concealing misdeeds that often come to light only well after the fact.

The Legislature also should enact a provision that requires the regulatory agency to implement the general statutory guidelines by promulgating specific regulations with respect to licensees' financial practices. The statutory provisions should direct that the agency's regulations must at a minimum insure that: (1) detailed records are kept, (2) adequate supporting documentation is provided by licensees, (3) each licensee keeps its books and records in a manner that facilitates reasonable comparisons between the various licensees, and (4) acceptable internal control procedures are adopted and implemented by each licensee to ensure the basic accuracy of its books and records.

General areas for implementation by regulations include the categories into which revenues and disbursements must be broken down; the amount of detail with which the books and records must be kept; the type and form of documentation that must be maintained to support the books and records, and the methods of treating and recording specific transactions.

As stated earlier, it is desirable and necessary that the regulatory agency have available to it financial information

from licensees organized in such a manner as to permit analysis of individual areas of casino operations. Only in this way, can it adequately inform the Legislature of the effectiveness of casino legislation or the need for change. Thus, while for other corporate purposes (such as S.E.C. filings) it may be perfectly proper to lump credit gambling debts together with other uncollected assets under a general heading of "receivables", a separate recording of those credit gambling debts would be necessary for the regulatory agency's functions. Similarly, a general ledger entry "XYZ Corporation - $11,500 on account" may be sufficient for normal purposes. For law enforcement purposes, further detail indicating the specific purpose of the payment and identifying more particularly the payee (such as by including the payee's address) would aid in spot-audits of the licensee's books.

The State Commission of Investigation recommends that the regulatory body establish the minimal levels of supporting documentation that licensees must keep as evidence of their various transactions. Once again, it there are no requirements as to supporting documents, such as bills, invoices, contracts, etc., it will be difficult if not impossible to impose sanctions for failure to provide such documentation. More importantly, certain transactions are of such importance that the form of documentation should be specified, covering check-cashing, junketeering, the purchase and destruction of casino ships and other areas where it is essential that specific controls be imposed and specific

information recorded.

Finally, both from a taxation standpoint and from a view towards gathering information with which to make recommendations to the Legislature, the licensing body should consider regulating the manner in which certain transactions are accounted for. While the Federal Government may permit alternative ways of treating various items for tax purposes, the use of such alternative accounting techniques makes it harder to compare financial records of different corporations. For example, unless regulated, some casinos may choose to record credit gambling debts on a cash basis, while others may prefer to do so on an accrual basis. These alternative choices affect not only how and when taxes will be paid, but also the basic comparability of the operating results for the various casinos.

RECOMMENDATION:

SPECIFIC PROCEDURES FOR AUDITS OF A LICENSEE'S FINANCIAL CONDITION BY CPA'S SHOULD BE PROMULGATED.

Frequently, companies within a regulated industry are required to file annually (or at other designated times) audited financial reports with the regulatory body. This is true, for example, of interstate carriers with respect to the I.C.C., insurance companies with state regulatory departments, etc. It is also true of casinos in Nevada. Pursuant to Nev. Stat. 463.157 et seq., non-restricted licensees grossing $1,000,000 or more must at least once a year, and whenever there is a change of ownership, submit a financial statement to the Nevada Gaming

Commission. Prior to submission, such financial statement must be audited by an independent Certified Public Accountant (CPA) who must render an opinion based upon the results of the audit. The legislation proposed for New Jersey contain similar provisions.

The Nevada and proposed New Jersey provisions, however, place very little specific requirement on how these audits are to be performed. In fact, except for a requirement that the auditor disclose whether the licensee has maintained his accounts, records and control procedures in accordance with the regulations established by the licensing authority, no other specific substantive tests or reporting requirements are imposed upon the auditor. Instead, the audit is to be conducted in accordance with the "generally accepted auditing standards" (hereinafter GAAS). These are standards adopted by the profession itself to control the CPA in the performance of his functions. They are codified in a Statement on Auditing Standards (SAS) issued in 1973 by the American Institute of Certified Public Accountants (AICAP). That Nevada's statutory provision does not go beyond these industry-imposed standards can be seen from Reg. 6.040.3 which details the examination to be made by the independent auditor. The language of that paragraph clearly tracks the standard short-form report recommended by the AICPA in S.A.S. §511.04.

Several things of note should be considered in deciding whether it is sufficient for the purposes of administering the casino gambling laws to rely on the standard audit report or whether specific proceudres and reporting requirements related to

this industry should be adopted. Initially, it is clear that the CPA does not perform per se a verification function. That is, the auditor does not hold himself out as certifying or otherwise confirming the existence or non-existence of factual conditions S.A.S. §600.06. Rather, the auditor is reviewing a financial statement prepared by management. The purpose of his review, under the G.A.A.S., is to formulate an opinion on his part as to whether or not management's presentation fairly represents the overall financial position of the company. See S.A.S. §500 et seq. The audit standards themselves make it clear that the basic responsibility for the fairness of these financial statements rests with management, not the auditor. S.A.S. §110.02.

Obviously, concepts of "fairly" and "overall" are highly subjective, and leave room for a certain amount of discretion in the auditor to determine whether in his opinion management has presented a fair (not an accurate) picture of its financial position. The Institute's codification implicitly recognizes this discretion when it introduces the concepts of "materiality" and "relative risk" to the consideration of the G.A.A.S. See S.A.S. §150. While the AICPA discusses these concepts in terms of how an auditor reaches his determination of how much or how little test procedures and evidentiary support is sufficient with respect to different items within a financial report, S.A.S. 105.03-05, inherent in such a discussion is the possibility that those terms, like the auditors' subjective discretion in general,

can be used later as a shield to justify the auditor's performance when subsequent events make clear that the financial reports were false or inaccurate in significant respects. Famous cases, such as National Student Marketing, Equity Funding and others, where corporations that had been annually filing audited financial statements suddenly wnet bankrupt or otherwise plunged from glowing financial health to extreme straits merely serve to highlight some of the problems of independent audits to be considered here. More typical, however, are recent revelations that a substantial number of American corporations have been making sizeable payments to foreign governments, government officials and to private businessmen, payments that can variously be described as payoffs, bribes, kickbacks, or "political contributions". The S.E.C. filed an extensive report on "Questionalbe and Illegal Corporate Payments and Practices". In that report, the S.E.C. noted that managements of a wide number of corporations had been able to divert sizeable sums of corporate money to illegal or questionable payments without being detected. Often, management had actively participated in the falsification of corporate books and supporting documents to cover-up these diversions. The point is not so much the morality or legality of these practices; rather, it is that most, if not all of these occurrences, went undetected or unreported by the independent CPAs who audited these firms.

These stock fraud and slush fund incidents illustrate what is a growing concern with the reliability of independent audits

by CPAs. When these events occur, they usually raise questions as to where were the auditors? Can continued reliance be placed on standards promulgated by theprofession itself, or are additional procedures necessary? These questions arise for a combination of reasons. One, the profession tends to downplay, if not outright disclaim, any responsibility for the detection of fraud in a corporation's financial activities. S.A.S. §110.05. Rather, it reiterates its function as one of forming an opinion on the whole as to the fairness of a financial statement. Thus, it is clear from an examination of the Institute's statements, that it is possible for an auditor to discover instances of errors, misrepresentations, and even fraud, and yet still issue an opinion that "the presentation conforms with generally accepted accounting principles." S.A.S. §110.05 specifically states that "fraud, if sufficiently material, may affect his examination." (emphasis added). Clearly, then, fraud may not, in some cases, affect the auditor's overall opinion depending on whether the auditor believes it to be sufficiently material in his judgment. Illustrative of this is an excerpt from a recent article in the January 1977 Journal of Accountancy, "Illegal Payments: Where the Auditor Stands":*

> On the other hand, certain acts by a client, while they are questionable and may be illegal, nevertheless may not impair the auditor's

*The authors of the article were Kenneth I. Solomon and Hyman Muller. Mr. Solomon is the partner in charge of the Chicago office of Laventhol and Horwath. Mr. Muller is the manager of AICPA's auditing standards division.

> opinion of management's ability or desire to prepare reliable financial statements. For example, let's assume a client is forced to bribe government officials in a country where bribery is a customary but "illegal" practice. The bribe enables the client to continue daily operations without bureaucratic interruption. The auditor may find out about it when the payments are documented in the accounting records. However, the auditor may properly decide not to withdraw from the engagement since the client did not conceal the illegal act from him and is preparing reliable financial statements.
> Id. at page 55.

This leads into the second problem - that despite all assertions to the contrary, independent auditors may not be all that independent in their audits. After all, the CPA is not hired by the S.E.C., the I.C.C. or the Nevada Gaming Commission. He is hired by the corporation who's books and records he is to examine during the audit. The CPA is paid, and paid handsomely in many cases, by the corporation for his services. The S.A.S. codification of G.A.A.S. is replete with references to the auditor's "client" - and reference is not being made to the investing public of to any regulatory agency. Unfortunately, the concept of a client presents a problem. No one expects a lawyer to do any more than present his client's position as an advocate. Accordingly, the public, in general, places only as much credence in an attorney's expression of his client's views as they would place in the client's direct assertion of his position. The CPA, on the other hand, is thought to provide an independent review of the financial position of a corporation; not as espousal of what a client would like that position to appear as.

Because he serves a client, the auditor will in many instances go to the corporate management when he comes across a problem in his audit. A discussion with management may help solve the problem and permit the auditor to render an unqualified opinion (an unqualified opinion is the only one of four opinions that does not raise a red flag as to the possible existence of problems with a financial statement; the other three-qualified, adverse and disclaimer of opinion - all raise immediate questions). In fact, the auditor is expected to go to management even when it is fraud that has caused his concern:

> When an independent auditor's examination leading to an opinion on financial statements discloses specific circumstances that make him suspect that fraud may exist, he should decide whether the fraud, if in fact it should exist, might be of such magnitude as to affect his opinion on the financial statements. If the independent auditor believes that fraud so material as to affect his opinion may have occurred, he should reach an understanding with the proper representatives of the client as to whether the auditor or the client, subject to the auditor's review, is to make the investigation necessary to determine whether fraud has in fact occurred, and, if so, the amount thereof. If, on the other hand, the independent auditor concludes that any such fraud could not be so material as to affect his opinion, he should refer the matter to the proper representatives of the client with the recommendation that it be pursued to a conclusion.
> §110.07

That section does not, itself, discuss the larger question of whether the CPA should report his suspicions of fraud to outside authorities. In the wake of recent revelations, particularly those involving the existence of corporate slush funds and payoffs, the AICPA has drafted recommendations to cover the area of illegal

acts. Its draft proposal, "Illegal Acts by Clients" states at §21:

> Deciding whether there is a need to notify outside parties of an illegal act is the responsibility of management. In the ordinary case, the auditor is under no legal obligation to notify outside parties. However, if the auditor considers the illegal act to be sufficiently serious to warrant withdrawings from the engagement, he should consult his legal counsel as to what other action, if any, he should take.

From the context of that paragraph, the suggestion that the auditor consult with his legal counsel is obviously for the auditor's protection and not the public's. Referring again to the same article in the Journal of Accountancy, the auditor's view of his responsibility in this area is set forth as follows:

> Notifying other parties [besides corporate management] such as regulatory authorities or law enforcement officials, is the responsibility of management.
>
> Although many would like to see auditors pursue a more aggressive "whistle-blowing" role, the obligation to the public relates to the responsibility he assumes when he expresses an opinion on financial statements, and not to whether he should pass judgment on the moral rectitude of his client. His role with respect to informing on his client appears to be similar to that of any other private citizen.
> Jan. 1977 Journal of Accountancy, pg. 56.

With all due respect to the AICPA and the accounting profession in general, the S.C.I. does not believe that an auditor's responsibilities are no more than that of a private citizen, at least with respect to audits that are undertaken with the express knowledge that the resulting financial statement will be filed with a governmental regulatory agency.

The S.C.I. believes that the Legislature, and more particularly the licensing authority through its rule-making powers, should take advantage of its opportunity to "start from scratch" in New Jersey, and should detail from the outset particular audit procedures and reports that it deems necessary to the proper monitoring of casino gambling. This is not to say that the independent CPAs should be viewed as agents of the State. The enforcement arm will have its own audit capability. However, this "in-house" capability cannot be counted on to provide the same level of performance as the private CPAs will be able to furnish. For one, the State will never in terms of manpower and expertise, be able to compete with the big accounting firms when it comes to auditing a large corporate casino licensee. Moreover, the private CPA's familiarity with his client's activities is a plus, so long as the familiarity produces information rather than compromises. What State auditors will be in a position to do is to conduct stop surprise audits and to follow-up on information supplied to them by the CPAs. Accordingly, the CPAs should be required to furnish as much usuable information to the regulatory authority as is possible.

There is precedent for imposing additional or different requirements on an auditor. Federal agencies frequently do so as their needs dictate. The AICPA itself recognizes the existence of occasions when the auditor will be required to perform his audit in accordance with specifically prescribed procedures. These are generally referred to by the Institute as "special reports". S.A.S. §620 et seq. One of the specific reasons for

a special report is to comply with the requirements of a regulatory agency. S.A.S. §620.01(c)(ii). In New Jersey, for example, the Division of Local Government Services prescribes the procedures to be followed in conducting audits of county and municipal bodies. Its "Requirements of Audit Including Sample Report of Audit and Audit Program for Registered Municipal Accountants of New Jersey" sets forth in detail both substantive audit procedures to be followed and the standardized reporting forms to be used to report the financial condition of the local body in question.

While its audit program obviously applies to an audit of a municipal body rather than a private corporation, some of the Division's requirements indicate what has been said here - that the audit report is as much for the benefit of the regulatory agency it is to be filed with as it is for the client's benefit; perhpas more so. For example, the Division requires that the requirements of its sample report must be adhered to as a minimum for every audit. The sequence of exhibits attached to the sample report must be followed. All reports must include adequate cross referencing. The Division insists on personal responsibility - "The accountant signing the audit must have direct knowledge of the work performed. It is never proper for a registered accountant to sign an audit as a matter of routine." A certified copy of the report must be sent to the division with an actual, rather than facsimile, signature on the certification. Specific areas that must be reviewed and tested are set forth. For

example, the accountant must make test verifications with respect to delinquent taxes so that the number of items in that category verified must be not less than 10% of the dollar volume and 10% of the number of delinquencies unless otherwise authorized by the Division. This certainly does not leave it to the accountant's discretion as to how much verification is sufficient.

Two other requirements set forth by the Division of Local Government Services highlight its concern that it receive as much information from these audits as possible. First, the auditor must make recommendations as to the need for any corrections or other action:

> Recommendations must be specific, must be grouped in one section of the report under the heading "Recommendations", must cover any and all matters calling for correction or other action deemed advisable and must be based on definite conditions. They must not be buried among the general comments. Failure to make proper and appropriate recommendations is sufficient cause for revocation or suspension of license. [of the registered municipal accountant].

Secondly, the Division places particular importance in the area of shortages in the accounts of municipal officers collecting fees and other monies. "The Division of Local Government has a primary concern with all shortages. Every accountant is on notice that the limiting of shortages is one of the most vital phases of municipal accounting and auditing." Not only must actual shortages be reported, but any unusual conditions or suspicious circumstances must also be reported to the Division.

The S.C.I. believes that the casino gambling regulatory

authority would be wise to follow the example of the Division of Local Government Services and promulgate specific guidelines for the auditing of casino licensees. Such guidelines need not ignore nor totally override or discard the profession's generally accepted standards. Rather, wherever and whenever the regulatory authority believes specific procedures are necessary to enable it to better monitor casino gambling, those procedures should be required instead of leaving the type or amount of testing to be performed in a particular area of an audit to the auditor's judgment and discretion.

With respect to substantive audit procedures, several areas of possible concern come to mind immediately. The licensing authority might consider requiring a specified number of credit debts or unpaid checks to be test verified. Similarly, specific tests of junket costs and other complimentary write-offs by the licensee might be required of the CPA. Slot machines traditionally account for a large percentage of the casino's total revenues. Therefore, CPAs might be required to perform a minimum number of separate surprise audits on a given number of machines, to determine whether the mechanical counters accurately record the amount of handle and payout, and thus the hold, of the machine. Additional test procedures directed at other parts of the casino's operation may be required, such as surprise chip inventories, tests of cage operations, etc. Particular attention might be focused on disbursements where the potential for payoffs through phony invoices, shell corporations, etc. is high.

Specific substantive audit procedures serve two purposes. First, they insure that particular areas of concern to the regulatory authority are subject to adequate scrutiny by the auditor. Secondly, they serve to provide some uniformity throughout the industry, at least with respect to the testing of the specific areas of concern. Otherwise, each casino may undergo more or less testing in certain areas, depending on the judgment of the particular CPA firm (and the individual auditor) conducting the audit.

In addition to substantive audit procedures, specific reporting requirements should be considered. Unlike test procedures, which may add to the cost of an audit, reporting procedures should not materially affect either the amount of work done by the auditor or the cost thereof. These requirements would be aimed simply at causing the auditor to report more information to the regulatory authority. They would require the auditor to expand in greater detail on the information gathered on uncovered by him during his audit. This, in turn, might call certain circumstances or situations to the attention of the regulatory agency that would otherwise be of no significance to the auditor himself. Questionable transactions that are not, in the auditor's sound judgment, sufficiently material to his opinion, might tip the enforcement body off to improper infiltration of the casino. The auditor will in many instances be unaware of the broder significance of some of the information he comes across. Because his is primarily a financial review, the auditor generally does

not have the background or familiarity with which to recognize the possible existence of criminal elements. Thus, he may not be alert to the possibility that a questionable transaction involving the ABC Hauling Co. is of considerable importance even though from an audit standpoint, the transaction may be immaterial to the overall picture. Yet, if he considers it immaterial, he is unlikely to report on it at all. No one is suggesting an auditor should tackle ABC Hauling himself; all that is sought is that he provide as much information as is possible to the regulatory authority, so that it can follow up on those areas that have law enforcement or other significance to the State.

The S.C.I. suggests that the CPA be required to furnish the following information in a report to the regulatory agency, in addition to the normal opinion letter:

1. Any circumstances which in any way tended to limit or affect the scope of the auditor's exam, regardless of whether the auditor considers the limitations or circumstances to have been material or non-material and regardless of whether or not he would normally qualify his opinion because of such circumstances.

2. Any exceptions, unusual matters, or questions coming to his attention, and how they were resolved or why they were left unresolved, regardless of whether they were considered material and regardless of whether they would normally be disclosed or require qualification of the auditor's opinion.

3. Any instances or procedures coming to the auditor's attention which suggest that the licensee's accounts, records or internal control procedures are not in conformity with those prescribed by the Commission, regardless of the degree or materiality of the deviation from the prescribed standards.

4. Any suggestions for improvement in any procedures that the auditor may have.

5. Any comments or other items the auditor feels should be called to the Commission's attention.

6. A list of all personnel within the CPA firm who worked on the audit and a designation of those members approving the report for filing with the Commission.

7. A certification by the auditor in charge of the audit that he has reviewed the report and items 1-6 are complete and accurate to the best of his knowledge.

Such additional reporting requirements will make available to the regulatory authority considerably more information than the typical audited financial statement now presents. It also tends to pin down for the record what was or was not uncovered during the audit, so that if any problems later develop, there is less dispute as to what was or was not known during an audit. Finally, by having the regulatory authority impose these additional requirements on the CPA, it removes some of the stigma for reporting such information from the auditor. He can now tell his client that he must make certain conditions or findings known to the agency; he has no discretion or judgment to do otherwise. Thus, he is not betraying his client, but complying with the law.

Undoubtedly, it may be argued that these requirements may impair the CPA's ability to obtain full disclosure from his client because of the possible public disclosure thereof. Auditors may further argue that one of the reasons they do not report the immaterial errors, discrepancies, and other conditions they come across is because of the fact that public disclosure might have

a far greater impact than the actual conditions warrant. That is, that the investing public may give greater weight to the particular condition because an auditor disclosed it, than it is entitled to. Both these fears (managements' reluctance to cooperate and the public's unnecessary panic) are legitimate concerns. They should be protected to the extent possible by making the auditor's report to the regulatory authority confidential. Section N.J.S. 47:1A-2 of the New Jersey "Right to Know Law" expressly makes provision for providing confidentiality to such financial reports. It is recommended that the Legislature in the casino gambling legislation provide for the confidentiality of these reports rather than leave it to the rule-making power of the regulatory agency. While the latter course is also permissible under N.J.S. 47:1A-2, a legislative provision would be far more authoritative, particularly since the right to know law is a legislative creation.

Finally, provisions should be enacted requiring the CPA performing the audit to maintain their permanent account file and working papers in an office in New Jersey, which office has been specifically designated to the regulatory authority. These documents and files should be available to the licensing authority during normal business hours without a subpoena and with authorization from or notice to the casino licensee. The working papers for each audit should be maintained for at least five years. These materials contain, of should contain, significant information as to the specific audit activities performed by the CPA. In

particular, the working papers document the work done during an audit. According to S.A.S. §338.05 the work papers normally would show the following, among other things:

1. Data sufficient to demonstrate that the financial statements or other information upon which the auditor is reporting were in agreement with (or reconciled with) the client's records.

2. That the engagement had been planned, such as by use of work programs, and that the work of any assistants had been supervised and reviewed, indicating observance of the first standard of field work.

3. The auditing procedures followed and testing performed in obtaining evidential matter, indicating observance of the third standard of field work. The record in these respects may take various forms, including memoranda, check lists, work programs, and schedules, and would generally permit reasonable identification of the work done by the auditor.

These requirements are recommended to make sure the CPA's work papers and permanent files are available to the regulatory authority. They will provide documentary support for the audited report required to be filed with the authority. The S.C.I. believes that without such statutory requirements, the authority may encounter problems in obtaining these back-up materials. For one thing, they may be kept by the accounting firm in an office outside of New Jersey, despite the fact that most, if not all, major accounting firms have one or more offices in New Jersey. Secondly, the Commission is very much aware that CPA's tend to view these materials as privileged and resist disclosure of them, even where there is no statutory privilege for a client's communications with a CPA. Several states have given privileged

communications status to CPA-client disclosures. Other states have repeatedly resisted attempts to enact such privileges on the grounds that the independent function to be served by the CPA is quite different from that of a lawyer-client, doctor-patient, or prient-penitent. The S.C.I. strongly recommends that no such privilege be created in this State, and that steps are taken to ensure that the casino regulatory authority may examine and review a CPA's work papers without the necessity of obtaining either a warrant or the casino's permission.

RECOMMENDATION:

ALL LICENSEES MUST MAINTAIN THEIR BANKING ACCOUNTS IN BANKS WITHIN THIS STATE.

Banking account records are among the primary means of obtaining information with which to trace the incoming and outgoing flow of revenues. These records provide details such as the timing and sequence of deposits and withdrawals, where the money originated from and who the payee was. Endorsements, assignments over, and ultimate deposits are also obtainable from such records. Yet, many times if the banking institution is located in another jurisdiction outside of New Jersey, a subpoena issued by an agency of this State may not be honored. Hence, the S.C.I. recommends that all casino licensees be required to maintain all their banking accounts within this State. As part of such a provision, it is also recommended that prior to the issuance of a license and, annaully thereafter, the licensee be required to submit a list, in writing, setting forth all accounts it maintains, and specifying them be depository, name of account,

and account number. This list would be required to be certified as complete and accurate by the chief executive officer and the chief financial officer of the licensee.

Additionally, the licensee should also be under a specific obligation to maintain all the actual monthly statements, checks, check stubs, and deposit slips for each account, for the same period of time that all other financial records must be kept. This is to ensure that in one manner or the other, either from the bank or from the licensee, these records will be available. In some instances, the bank may be unable for one reason or another to locate these records. More importantly, in many instances the microfilm on which these records are kept by banks are of poor quality, causing endorsements, deposit stamps, and other information to be illegible. In all cases, the actual check is far more legible than its microfilm counterpart.

RECOMMENDATION:

> EACH LICENSEE SHOULD BE REQUIRED TO DESIGNATE TO THE LICENSING COMMISSION AND THE ENFORCEMENT BODY, THE OFFICER WHO SHALL BE ITS CHIEF FINANCIAL OFFICER, AND WHO AS SUCH SHALL BE RESPONSIBLE WITH THE CHIEF EXECUTIVE OFFICER, FOR PROVIDING FINANCIAL INFORMATION TO THE TWO BODIES.

The State Commission of Investigation believes that provision should be made whereby the enforcement body (and the licensing Commission when relevant to its functions) would be able to obtain verification from the licensee as to specific financial information. Nevada has a provision of this nature. See Nevada Statute 463.140(3)(d). However, no detail is provided as to how such

verification is to be obtained. The S.C.I. recommends that in addition to the normal subpoena power whereby officers of the licensee could be called in and questioned under oath, that the enforcement arm be empowered to require the licensee to provide written verification of financial information on request by that body. This would provide a less-formal, less time-consuming means of obtaining the information in many instances, yet would still subject the answers to the same sanctions as would testimony under oath.

In order for any system of verification to have real value, the licensee must be required to designate an officer of officers who will be responsible for providing the necessary certification. Otherwise, in many instances, all that will be done is for some junior officer to verify the information. The State Commission of Investigation suggests that each licensee be required to designate a chief financial officer who shall be responsible, along with the chief executive officer, for verifying information on behalf of the licensee. That is, both the president and the chief financial officer will have to review and certify information presented to the enforcement body or the Commission. In those cases where a subordinate corporate officer is particularly familiar with the information sought, such as the credit manager, he would provide the primary verification, with the other two officers certifying that they have reviewed same and found it to be correct to the best of their knowledge.

RECOMMENDATION:

LICENSEES BE REQUIRED TO FILE WITH THE ENFORCEMENT BODY COPIES OF ALL REPORTS SUBMITTED TO OTHER STATE, LOCAL OR FEDERAL AGENCIES, AND TO CERTAIN PRIVATE ENTITIES.

Regardless of whether it operates a casino, most corporations are under obligation to file varoius reports with other governmental agencies. Some of these are S.E.C. reports, federal tax returns, stock exchange reports, and E.P.A. reports. They are also required to submit reports to private entities when certain events occur. For example, damage from fire would be reported to the licensee's insurance carrier; employee embezzlements would generate claims to bonding companies; etc. These reports provide a wide range of information regarding the licensee's activities, particularly those that are related to specific acts or occurrences. It is therefore recommended that licensees be required to automatically forward copies of all such reports to the enforcement body. Such reports will call to the enforcement body's attention current activities of the licensee. They will also form the basis for a data bank on each licensee, providing ready access to a host of facts and figures relating to the licensee.

RECOMMENDATION:

ANNUALLY EACH CASINO LICENSEE SHOULD PROVIDE A CERTIFIED LIST OF ALL INDIVIDUALS RECEIVING PAYMENTS OF ANY KIND FOR PERSONAL SERVICES RENDERED TO THE LICENSEE.

As indicated earlier, one of the ways to extract money from a corporation is through payment of one kind or another for

"personal services" - "Bonuses", consulting fees, etc. The S.C.I. recommends that annually, the licensee be required to submit a list certified to be complete and accurate, that sets forth for each individual who receives some or all of the following:

1. All salaries paid
2. All bonuses awarded
3. All consulting fees paid or contracted for
4. Fringe benefits over a certain amount in the following areas:
   - (a) insurance
   - (b) transportation
   - (c) lodging
   - (d) credit card expenditures
   - (e) expense accounts
   - (f) other significant benefits.

RECOMMENDATION:

LICENSEES SHOULD BE REQUIRED TO FILE REPORTS WITH THE LICENSING AUTHORITY WHENEVER AN INDIVIDUALLY LICENSED PERSON ASSOCIATED WITH THE CASINO IS TERMINATED OR OTHERWISE SEVERS HIS RELATIONSHIP WITH THE CASINO.

Termination of key personnel within a casino may be an indication of problems with that individual's performance; it may indicate problems in the casino's management; or it may be an indication that room was being made for another individual to be placed within the casino's operations. In addition to informing the licensing authority of such changes in personnel, these

reports should required the casino licensee to provide some explanation of the circumstances of the individual licensee's severance. What were the reasons therefor? Was the individual to be re-employed elsewhere by the casino licensee, either in a parent or subsidiary corporation?

RECOMMENDATION:

THE CASINO LICENSEE AND ANY CORPORATION HOLDING AN INTEREST THEREIN MUST COOPERATE WITH AND ASSIST THE LICENSING AUTHORITY IN OBTAINING INFORMATION REGARDING THE TRUE BENEFICIAL OWNERS OF ITS STOCK.

As was indicated in the earlier discussion of this issue, ascertaining the true beneficial owners of a licensee's stock may be a difficult task, especially where large, publicly-traded corporations are involved. Because of this, a mandatory requirement that the licensee must provide at licensure (or at any other designated time) a complete list of all true owners of its stock is not considered a wise provision. Rather, some discretion must be given to the licensing authority in this area. In the case of an individual, partnership, or closely-held corporation, such disclosure should be mandatory. The number of persons holding an interest in the licensee in those situations will not be as great and they will not be constantly changing.

Publicly-traded corporations are a different story, as the previous discussion illustrated. There may be literally hundreds, and even a thousand or more, blocks of stock being held in nominee names. The corporation will have to go to each nominee holder and demand a list of the true owners. Even while this

process is underway, thousands of shares may change hands each day over a stock exchange. Is it necessary, let alone fair, to mandate without deviation that they obtain this information? On the other hand, without their help, the licensing authority in many instances will be unable to do so itself, since out-of-state brokerages, banks, and other nominees may refuse to disclose to the authority the true owners.

It is recommended that a realistic solution in the case of publicly-traded corporations, either when they are directly a casino licensee or when they hold an interest in a licensee, would be to require them to obtain the true identity of any or all of their shareholders upon request to do so by the licensing authority. In connection with this, they should have available at all times for inspection by the licensing authority a list of all stockholders <u>of record</u>. Using this list, the authority could request further identification of the true stockholders whenever it deems that information necessary. For instance, the licensing authority might not have any real concern over who were the beneficial owners of 500 shares of stock being held in street name by Merrill Lynch, when those shares had been held by Merrill Lynch for three or four years. On the other hand, a thousand block purchase just prior to or after the referendum might be of interest to the authority.

<u>RECOMMENDATION</u>:

ALL LICENSEES AND ANY HOLDERS OF AN INTEREST THEREIN MUST MAINTAIN ALL PROXY RECORDS, INCLUDING THE ACTUAL RETURNED PROXIES, FOR A PERIOD OF AT LEAST FIVE YEARS.

Proxies are, of course, the means by which most stockholders exercise their voice in a corporation. They are, therefore, one of the ways in which true control of a corporation can be evaluated. This is particularly true if one block of shareholders seeks to wrest control from the officers then in power - the "proxy fight." In the normal situation, once control of a corporation is gained, the officers and directors in power tend to maintain that power through their ability to annually solicit proxies on behalf of their choices for the Board of Directors and for other major corporate decisions required to be submitted to a vote of the stockholders. A review of those proxies would not necessarily be significant, since most shareholders, having little or nothing to choose from, either vote for management or discard the proxy.

Where, however, a proxy fight is taking place, important information as to the true control of various blocks of stock may be uncovered. Which stockholders support the "insurgents" may provide some clue as to an identity of interest among seemingly otherwise unrelated stockholders. This is especially true if many of the shareholders voting for the competing slate of directors are new stockholders rather than ones of long standing. Inferentially, then, their shares may have been purchased with the specific purpose of forming a block with which to exercise control within the corporation.

For these reasons, it is recommended that the actual executed proxies be retained by the licensee for a stated period of time, preferably the same period that all its other corporate

records must be maintained. In addition, the list of all proxies sent out should be kept, so that all the shareholders to whom proxies were submitted can be ascertained.

RECOMMENDATION:

THE CASINO LICENSEE, AND ALL INDIVIDUALS AND CORPORATIONS LICENSED BY VIRTUE OF THEIR EMPLOYMENT IN OR ASSOCIATION WITH A CASINO LICENSEE, MUST AT ALL TIMES MAKE AVAILABLE TO THE LICENSING AUTHORITY THEIR CORPORATE AND PERSONAL FINANCIAL RECORDS.

As has been repeatedly stated, one of the primary responsibilities of the licensing authority and the enforcement body will be to trace the flow of money into and out of the casino, to determine if it is being improperly diverted. In order to effectively accomplish this, it will be necessary in many instances to determine where the money goes beyond its original recipient. That is, after John Doe receives an annual bonus of $20,000, where does that money wind up? Or if parent corporation receives a percentage charge from the licensee's operation, what is the ultimate disposition of these monies? These questions require that all licensees, not just the actual casino licensee, be required to make their corporate and personal financial records available to the licensing authority, not only at the time of original application for a license, but thereafter once casino operations being.

RECOMMENDATION:

ALL PURCHASES, RENTALS, OR OTHER ACQUISITION OF GOODS OR SERVICES BY THE CASINO LICENSEE IN EXCESS OF $2,500 SHOULD BE MADE PURSUANT

TO A WRITTEN CONTRACT, WHICH CONTRACT SETS FORTH SPECIFICALLY ALL THE TERMS THEREOF AND OBLIGATES THE SELLER, RENTER, ETC. TO MAKE AVAILABLE ON REQUEST ITS RECORDS TO THE ENFORCEMENT BODY.

Another section of this report discusses the licensing of ancillary services. Those provisions will obviously require a business of individual licensed as an ancillary service, to make available its records to the enforcement body. However, the requirement to obtain licensure as an ancillary service is predicated upon a continuing relationship with the casino licensee or with the industry itself. Clearly, continuing contact with the gambling industry has more potential for harm than does a one-time transaction. However, even one-time transactions may have the potential for improper dealings. The installation of several tennis courts, for example, may involve $50,000 - $100,000; furnishings for hotel rooms can easily run into a couple of hundred dollars per room, which in a large hotel means expenditures of $100,000 or more.

Yet, these transactions might not involve suppliers or businesses licensed as ancillary services. Therefore, the State would not have the leverage of licensure to force production of records and documents, particularly if the supplier is a non-New Jersey corporation. Requiring the casino licensee to enter into written contracts for all significant pruchases or other acquisition of goods and services does two things.

First, by requiring such contracts to contain all the terms of the transaxtion and to particularly specify the items or services

to be provided to the casino licensee, it "locks in" the transaction and prevents the parties, if in fact they are acting in collusion, from later contriving to alter, adjust or otherwise change those terms to cover up such collusion. For this reason, the specifics must be set forth. What make or model of television sets was to be furnished for all the rooms; what amount and grade of material was to be used in the construction of the parking lot? These things have a way of being left ambiguous in a less than arms-length transaxtion, to facilitate the diversion of monies that is being sought to be accomplished by the transaction.

Secondly, be requiring a written contract, the State can require a clause therein that the seller agrees as part of the transaction to make available its financial records to the licensing authority. This would make the State, in effect, a third party beneficiary to the contract and would give it standing to enforce those clauses in another jurisdiction. Having voluntarily entered into a contract containing such a clause, the seller should be bound by its terms. On the other hand, simply enacting a statutory provision requiring sellers to make their records available might not achieve the same result. Courts in other jurisdictions might be less willing to give extra-territorial effect to a New Jersey statutory provision.

G. SANCTIONS

INTRODUCTION

In order for any regulatory system to function properly and effectively, there must be provided sanctions which can be imposed upon those who violate or otherwise fail to comply with the statutory and regulatory requirements enacted by the Legislature and by the regulatory authority. Sanctions may be civil (fines, injunctions, suspensions, contempts, etc.) or they may be criminal (fines, probation, incarceration). To be effective, sanctions must provide warnings to the public in general and to those who will come into contact with the regulated industry in particular, both as to the acts which must not be done and as to the consequences thereof.

Before passing to specific recommendations, the S.C.I. has several generalized observations with respect to the area of sanctions. The Commission believes that in a regulated industry where licenses must be obtained and maintained in order to operate, a system combining civil and criminal sanctions is particularly -ffective. This is so for several reasons. One, the possible loss of a license through the suspension or revocation of same is often more of a deterrent to misconduct than are criminal sanctions. License suspension for even a week in casino gambling can amount to very substantial lost revenues. Secondly, civil sanctions involve a lower standard of proof and generally can be imposed in shorter time than can criminal sanctions. Swiftness of application is one of major

attributes of any successful system of deterrence. On the other hand, certain individuals and certain types of levels of wrong-doing can only be adequately punished by the imposition of criminal sanctions - particulary jail terms. Moreover, in many instances the civil sanctions will not be available beca e the violator was not a license holder. In those instances, only criminal sanctions would have any deterrent effect or any capacity to punish. This is especially important in cases of individuals who committed violations while they held a license but were not discovered until after they had left their job.

In adopting a system of sanctions that employs both civil and criminal sanctions, the Legislature must be careful to define the interplay between the two types of sanctions. Some violations may be of relative insignificance and should only be subject to civil sanctions. The more significant violations should be covered by both civil and criminal penalties, thus allowing the regulatory agency a greater range of sanctions to bring to bear on the violator. Where both civil and criminal sanctions are applicable to a violation, the Legislature should clearly indicate its intention as to whether both sanctions may be applied in a given case, or whether the regulatory authority must make a choice. The S.C.I. believes that in a highly sensitive industry such as casino gambling, there is considerable merit in most instances to applying both license sanctions and criminal penalties to a violator, and would recommend that the Legislature so provide. In any event, this issue should clearly be addressed by the casino gambling legislation.

Finally, the S.C.I. is concerned that sufficient specific violations are set forth, whether they be civil, criminal or both. General "catch-all" provisions making violation of any other provision punishable by one or more sanctions are necessary. To list every possible violation would (1) be enormously long and complicated (2) would run the risk of leaving out a given situation. Thus, "catch-alls" are valuable, particularly with respect to civil sanctions.

However, many acts are undesirable that may not readily fall within the general regulatory scheme. "Catch-alls" only apply to the acts, procedures, and requirements set forth in other parts of the legislation. An act that would do violence to the spirit of the statutory scheme may not be covered by any particular clause. Even if it might arguably be covered, some acts or forms of conduct are of such importance that the question of their coverage or not should not be left to statutory interpretations, but should be spelled out.

RECOMMENDATION:

THE CONFLICTS OF INTEREST RESTRICTIONS IMPOSED UPON MEMBERS AND EMPLOYEES OF THE REGULATORY AUTHORITY SHOULD BE THE SUBJECT OF SPECIFIC CIVIL AND CRIMINAL SANCTIONS.

One of the keys of both the public confidence in casino gambling, and to the State's ability to control that industry effectively, will be the honesty and integrity of those who serve on and for the regulatory bodies. Nothing is more damaging to the public's condifence in any regulatory system than to discover that the regulations have, or appear to have,

an interest in those they regulate.

It is because of this concern for the special problems casino gambling poses with respect to governmental corruption that particular conflict of interest restrictions have been recommended for application to the regulatory bodies of this industry. The provisions recommended are more extensive and considerably stricter than those contained in the generally applicable conflicts of interest provision fround in N.J.S. 52:13D-12 et seq. Stricter provisions are necessary to force greater awareness and concern for the problems caused by even the appearance of corruption.

The same concern that led to the recommendation of specific conflicts of interest provisions also leads the S.C.I. to conclude that enforcement of these provisions should not be treated in the same manner as the normal conflicts law. The Commission believes that N.J.S. 52:13D-12 et seq. does not provide sufficient sanctions to effectively enforce the tougher concept of conflicts of interest sought to be imposed with respect to the casino gambling industry. The primary sanctions of that statute are found in section 21 (i) which provides that anyone violating the conflicts provisions are subject to a fine of from $100 to $500, and a one year suspension from office. If the violation is willful and continuous, the State officer or employee may be barred for a period of up to 5 years from holding and public office or employment. In addition to these sanctions for most violations there are specific sanctions for two particular types of conflicts. One is where a former state officer or employee represents in any capacity in any cause or proceeding any person or party with respect to which

the former employee had been substantially or directly involved with during his public office. N.J.S. 52:13D-17. The other situation where a specific penalty is provided for is with respect to persons who induce or attempt to induce any State officer or employee to violate the statute. N.J.S. 52:13D-26. Both of these particularly defined violations carry maximum penalties of $500 and/or 6 months imprisonment.

For a number of reasons, the S.C.I. believes the penalties provided for in the "New Jersey Conflicts of Interest Law" are inadequate for the casino gambling industry and those State officers and employees who will police it. First of all, there appears to be no applicable sanctions that can be taken against a public employee who had an interest in a regulated industry, which interest was not discovered or disclosed until after he left public office. The general sanctions of 21 (i) seem clearly limited to persons then in public office. Section 17 does apply to State officers and employees after termination, but it requires that the former officer or employee represent a person or party in a cause or proceeding. If there was no representation or appearance subsequent to termination, this section would not apply if the former State officer or employee went to work for a regulated industry but did not represent or negotiate with the regulatory body on behalf of that industry.

Yet, if these provisions don't apply, it is doubtful that there is any sanctions that can be brought to bear on the offending state employee. Of course, bribery and public extortion would apply where the proofs would warrant, but clear conflicts that did not involve any bribes or official extortion would escape

punishment if not detected while the official was in office.

Even if they were detected in time, the sanctions are minimal. Fines of $100-500 are not enough, at least with respect to the casino industry. A casino regulatory officer could have a 20% hidden interest in a casino and be fined a maximum of $500. Of course, the casino itself would face sanctions, but the offending public official should also bear some of the consequences for his actions. It is therefore recommended that the Legislature provide specific civil and criminal sanctions for violations of the conflicts of interest provisions which will apply to the casino regulatory authority. The civil sanctions should have increased fines, with a maximum of at least $2500 or $5,000). Criminal sanctions should also be available for most, if not all, conflicts violations.

RECOMMENDATION:

EVEN UNINTENTIONAL VIOLATIONS OF THE CASINO GAMBLING STATUTES SHOULD BE SUBJECT TO SANCTIONS

Strict adherence to all the statutory and regulatory provisions should be expected and required of all licensees. The Commission believes that one of the best ways to encourage licensees to conform their conduct to proper standards is to punish even unintentional violations, at least with civil sanctions. In some instances, even a strict criminal liability might be appropriate. Such absolute liability should cause licensees to more carefully conduct their affairs. It will also remove the problems of proving intentional or willful conduct in many cases where such a standard might otherwise leave the

regulatory agency powerless to punish a licensee's failute to observe all the statutory requirements.

Intentional and unintentional would go intead only to the sanctions to be applied. That is, if the decision-making body was convinced that the licensee's failure to adhere to the regulatory provisions was unintentional, the level of punishment would be less severe, than would be the case if gross negligence or even willful disregard of the law were shown.

RECOMMENDATION:

SPECIFIC CIVIL AND CRIMINAL SANCTIONS SHOULD BE PROVIDED FOR THE USE OF NON-LICENSED PERSONNEL TO COLLECT CASINO DEBTS.

As was stated in the discussion of credit gambling, the State is concerned about the methods that may be used to collect bounced checks or overdue markers. Provisons requireing that the casino must use only licensed persons or corporations to collect these debts are one step toward controlling the potential problems. However, it should be kept in mind that many visitors to Atlantic City will come from out of state. Obviously, therefore, if they use personal checks or sign markers, subsequent collection may take place outside of this state. As a result, out-of-state collection agencies may become involved. The State can only insure that they apply for license by forcing the casino licensee to use only licensed collection personnel. The casino then would be able to use only those out-of-state agencies that submitted to the jurisidiction of this State by obtaining a license

Because of the seriouness of these debt collection problems

the S.C.I. recommends that the Legislature enact provisions providing for specific civil and criminal sanctions for the use of non-licensed personnel to collect debts. These sanctions would apply to both the casino licensee and to any agency to which it turned over collection duties. Thus, the collection agency would face sanctions if it, in turn, turned over collection of the debt to non-licensed persons.

These sanctions should apply to the corporate licensee (whether it be the casino or the debt collection agency) and to the individual within the casino or collection agency that turned over the check or marker to a non-licensed person or agency. There must be personal responsibility as well as corporate responsibility in so far as the collection process is concerned.

RECOMMENDATION:

THAT A VIOLATION BY ANY HOLDER OF A SUBSTANTIAL INTEREST IN A CASINO SHALL BE PUNISHABLE IN ADDITION AS A VIOLATION BY THE CASINO LICENSEE

It is of course possible for individual stockholders, officers directors and others to violate the regulatory statutes through their own activities and conduct. In many instances, imposing sanctions on the individual alone will be sufficient, both as a punishemnt and as a deterrence to others. However, the S.C.I. also believes that there will be instances where an individual or corporation holds such a significant interest in a casino licensee, that his actions are in effect the actions of the licensee whether or not taken directly in the name of the casino licensee. In these cases it would be appropriate to impose sanctions on both the actual offender and the casino licensee.

The Commission is particularly concerned that a casino licensee does not become insulated from disciplinary proceedings by virtue of its becoming a subsidiary to another corporation. If the so-called parent or holding company exercises sufficient control over the casino licensee then a violation by the parent corporation should also expose the licensee to sanctions. Otherwise, to limit the sanctions to fining or suspending the parent corporation license may be insufficient deterrence to such violations. As indicated earlier, the most effective sanctions will be those that are imposed directly on the casino licensee. That is where the State's authority has its greatest leveage. Suspending the license of an individual or corporate shareholder normally will have far less effect.

INTRODUCTION

The S.C.I.'s experience and collected intelligence regarding organized crime strongly suggests that there are few better vehicles utilized by organized crime to gain a stranglehold on an entire industry than labor racketeering. Organized crime control of certain unions often requires the legitimate businessmen who employ the services of the union members to pay extra homage to the representatives of the underworld. Moreover the ready source of cash which union coffers provide can be employed as financing of all sorts of legitimate or illicit ventures. Because of the gravity of the public interest in this particular area, the Commission is of the view that the representatives of labor organizations involving casino employees should be required to register and subjected to qualification according to the ownership disqualification criteria.

RECOMMENDATION:

> ANY INDIVIDUAL OR REPRESENTATIVE OF ANY LABOR ORGANIZATION OF WHATEVER NATURE SHOULD BE REQUIRED TO REGISTER THE NAME OF HIS ORGANIZATION, AFFILIATED ORGANIZATIONS, THE PENSION AND WELFARE SYSTEMS THEREOF AND ALL OFFICERS, AGENTS AND TRUSTEES OF SUCH ORGANIZATIONS AND SYSTEMS BEFORE ENTERING INTO ANY COLLECTIVE BARGAINING ON BEHALF OF CASINO OR HOTEL EMPLOYEES

The first provision is an informational device to be employed solely by the regulatory Commission.

RECOMMENDATION:

ALL LABOR ORGANIZATIONS, UNIONS OR AFFILIATES WHO SEEK TO RECEIVE DUES OR ADMINISTER PENSION AND WELFARE FUNDS SHOULD BE QUALIFIED TO DO SO PURSUANT TO THE DISQUALIFICATION CRITERIA FOR LICENSURE.

The provision is intended to exclude members of organized crime and other unsavory individuals from effecting the casino industry through labor organizations.

RECOMMENDATION:

NO LABOR ORGANIZATION, UNION OR AFFILIATE NOR ITS OFFICERS OR AGENTS SHOULD BE ALLOWED TO HOLD ANY FINANCIAL INTEREST WHATSOEVER IN ANY CASINO HOTEL OR CASINO LICENSE WHERE THEY REPRESENT THE EMPLOYEES THEREOF.

The provision avoids what is, in the S.C.I.'s viewpoint, a simple conflict of interests.

I. MISCELLANEOUS PROVISIONS

RECOMMENDATION:

PERSONS HOLDING PUBLIC OFFICE OR PUBLIC EMPLOYEES SHALL BE PROHIBITED FROM ALSO HOLDING A CASINO JOB, I.E. "MOONLIGHTING".

Since the operation of casinos in New Jersey will be a matter invested with the public interest, the need to insure that they operate honestly, fairly and without favoritism is manifest. Thus, it is important that the casinos do not act as a corrupting influence on other segments of the State's governmental activities. The State Commission of Investigation, therefore, proposes that any person holding any state, county or local governmental office or public employment be prohibited from obtaining employment with a casino licensee so long as the public office or employment is held.

The need for this provision with respect to certain offices or jobs is obvious. For example, Atlantic City police officers should be barred from working off-duty either directly in a casino or in any business that supplies goods or services to the casinos, such as security firms, private investigative agencies, etc. These officers will have some responsibility as part of their official duties, to enforce the laws of this State with respect to casinos. To have them working off-duty in a casino or casino-related industry would be an inherent conflict.

The same inherent conflict exists with any law enforcement personnel, not just the local police department in Atlantic City. While members of other local, county and state enforcement agencies may have fewer direct responsibilities for the enforcement of laws within the confines of Atlantic City, all nevertheless have a general round-the-clock obligation to be alert to, and to report, violations of the law that they become aware of.

Allowing any active law enforcement personnel to work off-duty in a casino tends to compromise their official responsibilities. This compromise is both real and also a matter of public confidence. Having off-duty law enforecement personnel working for a casino can only tend to reduce the public's confidence in the fair and impartial enforecement of the law in general, and with respect to casinos in particular.

Another example where the need for such a prohibition is fairly apparent would be with respect to the local building inspector. His official responsibilities will bring him in direct contact with the casino licensee. There have been too many documented cases of payoffs, kickbacks, and other improper activities between builders and building inspectors to argue that the potential for corruption of that office does not exist.

Some other examples of obvious inherent conflicts are local municipal councilmen, city and county health and sewerage officials, tax assessors, and fire inspectors. These are listed simply to illustrate the wide range of government office holders and public employees whose official jobs have some connection

with a casino licensee. Prohibitions against off-duty employment by persons in these offices and jobs is in the public interest because of the inherent potential for conflicts of interest.

The State Commission of Investigation has recommended that all state, county, and local public office holders and employees be prohibited from such "moonlighting", regardless of whether their official duties do extend to casino gambling or even to Atlantic City. With the amount of money that is at stake in casino gambling, the industry is ripe for charges of political deals and favoritism. Public confidence in the State's independent, unbiased, and virgorous control over casino gambling will be impaired to some degree by the employment of any public official of employees in casino or casino related activities. Clear evidence of this was given when it was discovered during the campaign to obtain passage of the casino referendum, that numerous people holding public jobs were receiving salaries and/or "street money" to work on behalf of the referendum. Many of these public employees were located in areas far removed from Atlantic City. For example, several instances of public employees in both Camden and Essex Counties receiving monies to campaign for casino gambling were identified. This State Commission of Investigation is not suggesting at this point that these activities were illegal or that campaign services were not performed in return for the monies. What concerns the S.C.I. is the public appearance of such situations. The fact that public officials and employees in Camden or Essex County, for example, have little direct connection to casino gambling in Atlantic City does not lessen the appearance

of possible impropriety, of votes being bought, if you will.

Furthermore, since the industry will be heavily regulated by the State government, persons in political offices and in public employment throughout the state may well have input into and influence over the shape of the legislation governing casino gambling and the subsequent state enforcement thereof.

Extending this prohibition to all public employees and office holders serves two other purposes. First, it will avoid the need to draw fine lines and attempt, on each individual basis, whether a particular office or job has any potential for corruption or taint as a result of the individual holding it also working for a casino. Secondly, a blanket prohinition works no discrimination for or against any public employee. It will apply to all equally.

RECOMMENDATION:

CASINO LICENSEES, CASINO-RELATED COMPANIES, AND ALL CORPORATIONS OR PERSONS INDIVIDUALLY LICENSED BECAUSE OF THEIR INTEREST IN, EMPLOYMENT BY, OR ASSOCIATION WITH A CASINO SHOULD BE LIMITED IN THE AMOUNT OF MONEY THEY MAY CONTRIBUTE TO POLITICAL PARTIES, CANDIDATES, OR CAMPAIGN ORGANIZATIONS.

This issue is closely related to the previously discussed issue of "moonlighting" by elected or appointed public officials and employees in casinos and casino-related businesses -- in part, contributions by casino licensees, both corporate and individual, give the appearance of attempting to "buy" political influence and favoritism and in fact have the very real potential for causing such favoritism to occur. The

referendum on casino gambling itself gave rise also to this very appearance. The campaign committee formed to raise money to back casino gambling received large contrib-tions from hotels and other persons and corporations obviously in a position directly to benefit by passage of this legislation. In at least two instances, these contributions exceeded $50,000; in several others they exceeded $5,000.

This money in turn was distributed in part to the previously mentioned local public officials and employees as salaries and street money for the election campaign. The campaign committee also spent part of its funds to hold receptions at both national presidential nominating conventions. During these receptions, the committee lobbied with political figures, both office holders and non office-holders, on behalf of casino gambling.

The State Commission of Investigation is inclined to recommend, an absolute prohibition against any licensee of the state regulatory authority, whether it be an individual, corporation or so-called "holding company" from making a contribution to any political candidate, party or campaign organization within this State, either directly or indirectly. However, the Commission believes that such an absolute pro-hib-tion may raise serious constitutional questions in light of the recent Supreme Court decision in Buckley v. Valeo, U.S., 96 S. Ct. 612 (1976). In that case, the United States Supreme Court upheld federal statutory limitations on the amounts individuals and corporations could contribute to political candidates. The limitations upheld were $1,000 per individual

candidate and $25,000 in total contributions in any single year.

The Court upheld these contribution limitations as being minimal restrictions on the rights of the contributors to exercise free speech through the vehicle of contributions to candidates they backed. The Supreme Court did not directly discuss absolute bans on contributions, since none had been imposed by the provisions under attack. Implicit in its "reasonable limitation" on free speech ruling, however, is the possibility that flat prohibitions would not be reasonable exercises of Congress' power to attack the evils associated with large political contributions.

Accordingly, the S.C.I. recommends that at the very least, the Legislature should impose strict limitations on the amounts licensees could contribute to political activities. It further suggests that the Legislature closely examine this issue to determine whether flat prohibitions would be permissable. This is particularly true with respect to corporations, since the "free speech" guarantees may not be applicable to donations made by corporations. Indeed the federal statute involved did include an absolute ban on contributions by corporations under certain circumstances. 18 U.S.C.§610. New Jersey has a similar provision with respect to regulated industries. See N.J.S. 19:34-45. Such provisions as to corporate donors may well be constitutional even in light of Buckley.

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