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MAY 2, 1977

[Critique by the State Commission of Investigation supplementary to its primary Casino Gambling reports.]

TO the Members of the Senate:

The attached critique by the State Commission of Investigation is supplementary to its primary Casino Gambling Report. It is being distributed to individual members of the Senate to help you in your consideration of the Assembly-passed legislation on Casino Gambling Control.

The S.C.I. hopes this interim assessment -- as well, of course, as our full report on the subject -- will spur the enactment of the strongest possible casino control law.

As you will note, the S.C.I. remains convinced that its original recommendations are essential for structuring such a strong law if your objective is to enact a statute that will provide the best public protection against the criminal and corruptive influences the casino industry admittedly attracts.

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INTRODUCTION

Previously, the State Commission of Investigation had submitted to the Assembly its comments on the draft bill on casino gambling as it had emerged from the Assembly State Government Committee. Subsequently, the Assembly considered and passed a casino gambling bill. In the course of its consideration, the Assembly considered numerous amendments thereto, and adopted many of the amendments proposed on the floor. Accordingly, some of the S.C.I.'s original comments must be restated in light of the amendments made.

One of the primary comments made by the S.C.I. to the Assembly was with respect to the open availability to the public of certain of the casino operator's financial records. This dealt with § 74 (b), (d), and (e). The Assembly did amend §74 by adding a new subparagraph h. This Commission whole-heartedly concurs in this amendment as a very positive step in protecting the public's interest in casino gambling and enhancing its confidence that its public officials have properly protected their interest.

The S.C.I. strongly urges the Senate to maintain this amendment. It also suggests that two additions to §74 (h) would strengthen that section even further. Those additions are discussed at comment #22 of our overall comments set forth infra.

Because the Commission views the need for open public inspection so strongly, it has attached to the end of this report its earlier analysis of this issue which was submitted to the Assembly. This was done to set forth the underlying concepts that motivated the S.C.I. to take this position.

Next, the Commission notes that during the Assembly's consideration of this bill it did adopt changes designed to reflect the goal of licensing ancillary services as well as the casinos themselves, as had been advocated by the S.C.I. Again, the amendment (which added language to §12) is endorsed by this Commission. However, the Commission feels constrained to urge additional language amendments that would clearly spell out the manner and extent to which these casino service industries are to be regulated. These additions are found at comments #3 & #35. The S.C.I. believes that they accurately reflect the original intent of the Assembly Committee when it first adopted these service industry amendments.

The S.C.I. notes that the provisions dealing with testimonial immunity, see §67, were strengthened by an amendment proposed during floor debate. As noted in its comments, infra at #18, the S.C.I. believes this amendment to be a good step in increasing the power of the Casino Control Commission to insure compliance with this Act. The S.C.I. does feel, however, that the amendment may not provide sufficient options to the C.C.C. It therefore suggests that license revocation should apply to the initial refusal to give testimony or provide evidence. After any such initial refusal, the C.C.C. should have the additional option of deciding whether to grant immunity to the witness and compel testimony to aid whatever investigation is being conducted, or to proceed to prosecute the witness on criminal charges on the basis of independent evidence that may be available.

In this manner, the initial refusal to answer itself has consequences -- loss of license -- without any regard to immunity from criminal prosecution. If the witness decided he did not want to

criminally incriminate himself, he could still refuse to answer. It would then be up to the C.C.C. and the Enforcement Division to decide whether the loss of license was sufficient, or whether further action was necessary.

The S.C.I. does not believe that any licensee who refuses to answer a question pertaining to casino gambling should be allowed to retain his license. A statement by a licensee that he may incriminate himself demonstrates by itself his unfitness to hold a license. The issue of immunity is a separate question that should be resolved by the Casino Control Commission separately.

Finally, some comment on §63(g) is in order. This provision would allow the C.C.C. to review investigative procedures of the Enforcement Division, and at least inferentially to enter orders limiting or otherwise controlling the Division's powers in those areas. The S.C.I. strongly urges that guidelines for such review be set forth in the statute, to prevent the C.C.C. from unnecessarily disrupting the Division's investigative activities. The Commission notes that great pains were taken to establish guidelines for the imposition of sanctions by the C.C.C. on licensees. See §130. These guidelines clearly favor the licensee and reduce the C.C.C.'s power to impose sanctions.

If such thought can be given to the power to sanction licensees, similar guidelines can be drafted to cover review of the Division's investigative procedures. Set forth herein is suggested redraft of §63(g):

Addition to §63 (g)

In reaching a determination under this subsection, the Commission must be guided by the following:

1. The primary concern of this statute, and therefore of the Commission, is and must be the vigorous and effective enforcement of this Act.

2. The need to inspect and investigate is presumed at all times. The disruption of a licensee's operations is never presumed and must be proved by clear and convincing evidence.

3. The need to inspect and investigate the following phases of casino operations is so integral to the overall enforcement of this Act that "unncesssarily disruptive" shall mean in these instances: (a) that the procedures had no valid law enforcement purposes, and (b) that the procedures were so totally disruptive as to prevent the casino licensee from continuing any operations at all:

   i) inspect and audit of books and records

   ii) count room activities

   iii) cashier's cage

   iv) internal controls and security procedures.

4. In all other circumstances, unnecessarily disruptive shall mean: (a) the disruption was great in relationship to the legitimate investigative needs of the State, and (b) reasonable alternatives of investigation were then available.

The following pages contain the State Commission of Investigation's comments on the bill as passed by the Assembly. These comments are listed in the order of the sections as they appear in the bill, and not in their order of importance. Therefore, the number at the left-hand margin is merely a numerical sequence of the comments. Immediately to the right of that number is the section of the bill to which the comment applies, and the page in the printed bill where that section can be found.

In various of the comments, cross-reference is made to the State Commission of Investigation's bound report, "Report and Recommendations on Casino Gambling" which Report was previously submitted to the Governor and the Legislature. Cross-reference is made so that a fuller explanation of various areas of concern is available. All cross-references are indicated by a parenthesis and contain the numerical and letter page number of the Report at which the further discussion can be found. For example, at (12-D) a discussion of hours of operation can be found.

Art. 1:

1. §3- p.9 — The S.C.I. continues to urge that no one be permitted to apply for a license on behalf of another person; that individual accountability is the best protection against false or incomplete information. (21-B)

   This is not to say that the casino licensee should not also bear responsibility for the qualifications of its key employees. It should, and the S.C.I. would endorse any such responsibility in addition to the individual's personal responsibility. (29-B)

2. §6- p.9 — If after the words "in which" the following were substituted, "authorized gambling games are to be conducted in and restricted to ", it would be clear that no gaming may take place outside of the single authorized casino room.

3. §12- p.10 (see amendments p. 1) — This section was amended by the Assembly. However, it is still recommended that after the words "which provides" it should read "casino hotels", to make clear that it is referring to suppliers of the entire hotel/casino complex, not just the casino.

4. §19- p. 11 — In keeping with comment Number 2, this would be better worded if after "premises wherein" the following was substituted "a casino is located."

5. §24- p. 11 — After "actually uncollected" the words "after reasonable efforts to collect same" should be added to make clear that effort must be made to collect bounced checks before they can be written off.

6. §35- p. 12 — After the words "commission which" the following should be substituted - "permits a casino licensee to commence gaming activities." The State should never "certify" that any casino is "efficient and prepared to entertain the public." §96 clearly sets forth what an operation certificate does mean.

7. §36- p. 13 — After "commission", should be inserted "the division", to give recognition that the Division will be a party to various proceedings.

Art. 2:

8. §52- p.15

1. The S.C.I. continues to recommend that no Commissioner serve more than one full term. This is particularly true of the Chairman (13-A and 14-A).

2. The S.C.I. continues to recommend against a full time Chairman. See discussion on pg.(14-A). He should be chosen by seniority rather than by the Governor.

9. §53- p.16

Again, the S.C.I. recommends against a Chairman who will dominate the rest of the Commission (14-A).

10. §54- p.16

The S.C.I. cautions against an executive secretary who it appears will be second in power only to the Chairman, and will therefore be more powerful than the other four Commissioners. This position has all the appearances of a potential patronage position, especially if there is a powerful Chairman.

Art. 3:

11. §58(d)- p.18

The S.C.I. has strong reservations about the financial disclosure statements that must be filed with the Attorney General. This Commission might endorse such provisions if the key members of all casino licensees and ancillary services were likewise required to provide such information.

12. §61- p.20

The S.C.I. is concerned that there are insufficient sanctions against a licensee who permits a violation of the conflicts of interest provisions to occur. A review of Art. 9 (specifically §129) suggests that the only penalty for a licensee is a fine - see §129(5). This is totally inadequate in light of the seriousness of "conflicts violations. See our report at pg.(25-A). ¶5 on that page should read "one month" after "less than".

13. §62- p.20

Again, the S.C.I. cannot stress enough the insufficiency of sanctions for conflicts of interest, at least with respect to this particular industry which is highly susceptible to governmental corruption. See an extended discussion of this at pg.(3-G)of our report.

Art. 4:

14. §63- p.20

Under the concept of the two-tier system advocated by the S.C.I., the Division and not the Commission, would have general responsibility for the emplementation of this act. The Commission would have specific, limited authority of a quasi-judicial nature. See discussion at(6-A). Accordingly, the provision of §63 must be reconsidered, particularly §63(f), which should be deleted.

15. §63(g)- p. 21

Unless some standards are set to guide the gaming commission so that it does not unduly interfere with the legitimate activities of the Division, this provision is objectionable and highly dangerous to proper enforcement of the law. The S.C.I. notes that great care was taken to spell out standards for the imposition of sanctions against a licensee - see §130 (more on same later). If §63(g) is to be enacted at all, there must be guidelines limiting the Commission's intrusion into the Division's independence of action.

16. §64- p. 21

The power to impose sanctions mentioned in this section seems to be substantially reduced by §129. At the very least, these two provisions are unclear as to their interaction. The Commission should have the power to impose fines, license limitations, and/or license suspensions and revocations for any violation of this Act by the licensee. This power should not be confused, as it is be §64 and §129, as well as §130 (1-G).

17. §66- p. 22

The Commission should be limited to fact finding hearings to review the state of the industry. All investigatory activity should remain with the Division. See discussion starting at pg.(7-A).

18. §67- p. 22

(also see amendments p. 1)

This witness immunity provision was amended by the Assembly. The S.C.I. believes the amendment was a step in the right direction, but that it could be improved upon. License revocation should not be dependent upon the granting of immunity. That is, it should occur upon the failure to testify, whether or not immunity has been conferred. Once a failure to testify has occurred, the Commission should have the further option to decide whether to grant immunity and force testimony, or to seek to prosecute the witness himself on criminal charges based upon other independent evidence.

As the new language now reads, revocation only occurs if the license holder fails to testify after immunity. Therefore, if he does testify after immunity, it can well be argued that he now has both criminal immunity and keeps his license. This should not be. The license should be forfeited once a refusal to testify occurs, without any regard to whether immunity has been conferred.

19. §70(1)&(m)-The S.C.I. continues to recommend that any annual audit by an independent CPA not be left to the discretion of the CPA. These two provisions do go in that direction. However, the statute should make it clear that a standard audit report is not sufficient and that CPAs must make their work papers available to the Commission and the Division. See extended discussion of this problem starting at(12-F).
p. 25

20. §70(o)- The S.C.I. recommends that no statute ever enacted by a Legislature of this State contain language that suggests that gaming is "an activity for adults conducted in an atmosphere of social graciousness."
p. 25

21. §70(p)- The goals of this provision may be well-intended; however, it may be unconstitutional for the commission to define community standards. It may be constitutional for the commission to determine community standards after a fact-finding hearing.
p. 26

22. §74- The S.C.I. strongly endorses the changes made in this section by the addition of paragraph h. The Commission would only add that in subsection h(4) the payees on any improvement expenditures should also be identified, and that in h(5) the real property investments for which in lieu of taxes were recaptured should be identified.
p. 28-29

(see amendments p. 2)

Art. 5:

23. §76(b)(1)-The following language should be added to the end - "appear before the Commission at license hearings to oppose, recommend or otherwise advise the Commission on the granting of a license, and shall have the authority to take or defend appeals from all licensing decisions of the Commission, as the Division may deem appropriate."
p. 30

§76(b)(4)-Should read instead "Initiate and prosecute disciplinary proceedings before the Commission, and to take or defend such appeals therefrom as the Division may deem appropriate."
p. 30

24. §76(b)(6)-See comment No. 15. The reference to §63(g) is particularly inappropriate unless 63(g) is substantially modified or deleted.
p. 30

25. §79(a)(4)-After "inspect", the following words should be substituted "examine, and audit all books, records, and documents pertaining to a licensee's operations under the provisions of this Act."
p. 30

This is to make clear the power of the enforcement division to do more than just examine the books - it can and should conduct unannounced spot audits of same. This provision would then be similar to Nevada's 463.140(3)(d). See particularly pg. (21-A).

26. §79(c)-thru (f) These sections provide for an administrative inspection warrant. THEY SHOULD BE DELETED IN THEIR ENTIRETY.

pp. 31-32 On the surface, these provisions seem to be an alternative to the open, warrantless inspections provided for in §79(a). However, a closer examination of §79(e) and (f) shows that those two sections substantially reduce the availability of the warrantless procedures set forth in §79(a).

One of the keys to successful control of casino gambling will be immediate and full access to the premises and to all books and records. Nevada has such a provision. Nev. Stat. 463.140(3). Our own A.B.C. has such power with respect to the holders of liquor licenses. See N.J.S. 33:1-35. This statute has been upheld by our courts. State v. Zurawski, 89 N.J. Super 488 (1965), aff'd. 47 N.J. 160.

This is a regulated industry of extreme concern to the State, possibly even more so than the liquor industry. The S.C.I. believes that the State should exert its full powers from the outset to conduct inspections and audits without any warrants. This power should not be diluted by the State in its own legislation. If the courts attempt to cut back these powers, they should be fought for until there is a clear determination one way or the other as to the State's authority in this area with respect to casino gaming. Only if a clear determination against such powers is rendered, should we seek administrative warrants. And at that point, there will be clear case law pointing to the need for such warrants. The S.C.I. believes that vigorous assertion of the State's authority to proceed without warrants will cause that determination never to be reached, and will lead to the upholding of §79(a) as constitutional for this industry. (9-F)

27. Art. 5- pp. 29-32 While on the powers of the Division, the S.C.I. wishes to make additional provisions that should be adopted:

1. The Division should have access to the State Grand Jury, or preferably, be empowered to empanel its own State Grand Jury. Under the present Criminal Justice Act, the new enforcement division may not be entitled to access to a State Grand Jury. Specific provisions should be adopted to this effect.

2. The Division should be specifically designated as the body to prosecute criminal violations of this Act, and to handle all appeals from same. It will have the inherent expertise and interest to promptly and vigorously present and prosecute such cases.

These provisions will enable the Division to coordinate civil and criminal investigations without undue duplication or overlapping of jurisdictions. (17-A).

Art. 6:

28. §82(d)(7)(8)- pp. 34-35 Much concern has been expressed about the power of a publicly-traded corporation to force a stockholder to sell his stock to the corporation or otherwise dispose of it. The S.C.I. shares this concern, but feels that such "buy-out" provisions should be tested before abandoned. The original draft of these provisions seemed appropriate. The new draft as to publicly-traded corporations is of less value - when must the stockholder dispose of the stock? What if he doesn't - can the licensee be held accountable by the Commission? See Comment 44.

29. §82(e)- (see amendments p. 2) This new section added by the Assembly limits ownership of casinos to a total of three (3). That is a flat limitation. The S.C.I. continues to recommend a staggered system of multiple ownership. See our report at(8-B).

The same comment applies to managing casinos for other parties. See §104(a). In fact, the S.C.I. believes these two concepts - ownership and management - should be joined together for purposes of limiting the total one party may be involved in. And this total should be staggered depending upon other independent casinos. As it stands now, one interest could own 3 casinos and could manage 3 others right from the start.

30. §83- p. 35 — The S.C.I. continues to have reservations about the use of hotel/room requirements as a criteria for licensure, especially if investment credits are adopted. Such credits could also be structured so as to force existing premises to be refurbished in return for the credits. This would do away with or reduce the need for hotel/room requirements, which do have the potential for "freezing out" many groups and individuals. (2-B).

31. §85(c)- p. 39 — As the S.C.I. understands this provision, where the casino license is held by a corporation, the listed persons associated with the corporation need only be "qualified" - not actually licensed. The Commission disagrees and strongly urges individual licensure. See extended discussion of this point starting at(17-B). This is especially true since the provisions of §85(c) carry over to holding companies, see §85(d).

32. §85(e)- p. 40 — The discussion in point No. 34 applies equally to non-corporate casino licensees - the individuals holding any interest must be licensed.

33. §86(f)- p. 42 — The S.C.I. urges that "career" offender and "career offender cartel" be dropped and "has engaged in organized criminal activity or associated with persons who engage in organized criminal activities" be used instead. This is a readily-identifiable term, even if its use is no longer in vogue.

34. §88(a)- p. 43 — A renewal period of one year should be clearly stated.

35. §92(a)- p. 46 — While the definition of casino service industry has been amended, see discussion at item No. 3, this operational section needs some further language. Language should be inserted that makes clear the following:

1. that no exemptions may be granted to service industries directly related to casino operations (as opposed to hotel-oriented services);

2. with respect to the hotel-oriented services, they may only be exempted on an individual basis after a specific finding by the Commission that the particular exemption is appropriate.

36. §94(b)- p. 48 — The chairman's power should be limited to a temporary license, limited in time to two weeks or until the next regular Commission meeting.

Art. 7:

37. §97- p. 49 — The S.C.I. continues to advocate hours of operation limited to Noon to 4:00 a.m., 7 days a week (12-D).

38. §99(a)(4)- p. 51 — The S.C.I. continues to urge that the approval of check cashing be removed from the cashier's cage and given to a separate and distinct department within the casino's operation (8-E).

39. §100(c)- p. 52 — The S.C.I. repeats its very strong objection to any provision giving State employees control over any key to the drop boxes. This can only serve to cast suspicion on the enforcement agency whenever any irregularities occur with respect to drop boxes. Sufficient independent controls over drop box procedures have been provided for. This provision is totally unwarranted and should be deleted.

Similarly, the S.C.I. objects to language in §63(f) to the effect that the Commission will "certify" the daily count. This has the effect of putting the State's stamp of approval on each operator's activities. It is far better to allow the State to conduct unannounced, spot checks of the count to insure that they are being conducted properly. If casino employees are aware that such counts could come at any time, they must make all their counts accurately or face possible exposure by an unannounced count.

40. §100- pp. 52-55 — The S.C.I. again urges adoption of requirements that all slot machines and table games must have mechanical counters upon which the handle (and for slot machines, the payout) will be recorded. Such counters would be invaluable for spot audits (6 and 7-D).

41. §101(b)- p. 55 — The words after "player" should be deleted up through "check", leaving "unless" in. See §101(b)(3).

42. §101(c)- pp. 55-56 The S.C.I. stands by its original recommendation (and that of the Attorney General's Office) that checks be required to be deposited within two banking days, unless the additional proposals it put forth with respect to check cashing are adopted. These two proposals were:

1. that all "bounced" checks be immediately reported to the Commission,

2. that after a person "bounces" a check, he be placed on a list which prohibits him from further check cashing, or endorsing or guaranteeing the checks of other persons until the Commission receives written notification from either the player or the casino involved that the previous check has been made good.

The S.C.I. cannot stress enough that its main concern with credit is the unreported collection of gambling debts. This is what is ripe for the "skim". The initial return of a bounced check does not prove anything, and is not part of any "paper trail" or recording of the debt. The bounced check could still be collected through collusion between the casino and the player, and not be reported as having been collected. It is for this reason that the two additional provisions set forth above are necessary. They will force reporting of all subsequent payments of bounced checks, since it is in the player's interest now to remove his name from the prohibited list.

The S.C.I. cannot understand why the Assembly Committee did not adopt these provisions when they were presented to the Committee during the discussion of credit gambling. The S.C.I. also cannot understand the Attorney General's reluctance to endorse such provisions. Its comment that such provisions will cause "too much paperwork" simply does not hold water. If too many checks are bounced, there exists a problem that the casino commission should be aware of and on top of. If only a few are bounced, there is no large amount of paperwork. Furthermore, a dollar limitation could be used, to eliminate small checks. That is, these provisions could be limited to checks over $500 or some other figure that would cut out the small $50-$100 checks that are not as ripe for skimming in the first place.

Finally, there must be a specific statutory requirement that each casino obtain and maintain adequate identification records concerning all persons cashing checks. The exact nature of these records can be left to the rule-making power of the Commission.

43. §101(d)- p. 56 — Specific stiff license sanctions and criminal penalties should be provided for a violation of this section (7-G).

44. §105(d)- pp. 63-64 — This ties in with the discussion at item 28. It is this section that determines what happens if an unqualified stockholder is not removed by the casino licensee. Subsection (3) of §105(d) is the most critical. It should read at the beginning "such disqualified holder does not have the ability to exercise any control over the affairs of the casino licensee and does not receive any monies from the licensee..." This is a better test of the stockholder's influence within the licensee.

Additionally, the 5 percent figure should be changed to 2 percent to be consistent with §85(c).

Art. 8:

45. §107(d)- pp. 65-66 — This section originally contained language at line 22 also waiving the licensee's right to judicial review if he fails to file a defense. The S.C.I. recommends re-insertion of that language, indicating that at least as to the merits, the licensee will not be entitled to review on procedural issues. Otherwise, licensees may by-pass Commission hearings and seek review even on the merits.

Art. 9:

46. §117(b)- p. 72 — In light of the importance in deterring the employment of any persons not licensed by the Commission, the penalties of this section should be at least the same as all the cheating violations. Moreover, there should be specific mention made that any individual within a corporate licensee who permits such violation is also subject to these criminal sanctions.

47. §122- p. 74 — Under this section, unauthorized debt collections or junket activities would be disorderly persons. This should be changed to at least misdemeanors.

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48. §128- pp. 78-80 The provisions of this section should apply only to non-licensees. The enforcement division should not need to go through these procedures to get information from a licensee. The Division certainly should not have to tell a licensee what conduct is under investigation. See §128(b)(1). In fact, even non-licensees should not be told this information. Simply identifying the general nature of the investigation should be enough.

49. §129- p. 80 As stated earlier in item No. 16, this provision seems somewhat contradictory to the general power of the Commission to impose fines, suspend or revoke licenses. To the extent, that the provisions of §129 limit the situations in which a license may be suspended or revoked, they should be amended. For example, it does not appear that filing false application information would be a ground for suspension or revocation. It may well be under §64, but this is unclear because the relationship between §64 and §129 is unclear.

50. §130- pp. 80-81 This Commission recommended that all violations by a licensee be subject to civil sanctions regardless of whether they were intentional or unintentional. See pg.(6-G). Accordingly, the provisions of §130 should only apply to the level of sanctions to be imposed, and not to the determination of whether sanctions should in fact be imposed.

51. The Commission's suggestion at pg.(8-G) that violations by an individual or corporation having a substantial connection to the actual casino licensee should be considered a violation by that casino licensee are appropriate for consideration at this point in the bill.

Art. 10:

52. §135- pp. 82-83 The S.C.I. continues to warn against placing E.E.O. enforcement responsibilities within the Commission. Such responsibilities will bog the Commission down in paperwork unrelated to the enforcement of casino gaming per se.

The S.C.I. does not object to establishing E.E.O. standards in the casino gaming industry. But those standards should be enforced by the Division on Civil Rights, which is geared to handle such activities (20-A).

The S.C.I. also wishes to point out the following legislative recommendations that the Legislature should reconsider:

53. - No consideration has been given to the S.C.I.'s "moonlighting" provisions. These provisions are discussed at(1-I)of the Commission's report. The Senate Committee is respectfully urged to consider such a provision, as the S.C.I. believes it will serve to materially enhance the public's perception of casino gambling enforcement and administration.

54. - The S.C.I. continues to strongly oppose the tipping of casino dealers, croupiers, etc. See our discussion at(9-E). The Commission notes that the deletion of tipping prohibitions came as a result of a procedural question. That is, language concerning tipping was in the original bill. Instead of a motion to delete such language, which would have failed because of the tie vote, a motion was made to adopt. It, of course, failed because of the same tie vote. This may have occurred because of the lateness of the hour when everyone was tired.

55. - Finally, the S.C.I. understands that there is some sentiment that the Governor should have a veto power over the Commission's minutes and also the power to appoint the director of the division of gaming enforcement. The S.C.I. opposes both provisions. It is inappropriate to give any Governor veto power over the operations of a quasi-judicial body, as the Casino Commission will be. Such a body is expected to render fair and impartial findings and decisions after adversarial proceedings. To impose an executive branch veto over such decisions is to substantially reduce the independent judgment of these commissioners.

Likewise, the power to appoint the head of the enforcement division should lie in the Attorney General, not the Governor. The Attorney General now appoints the director of the division of criminal justice. There is no good reason to depart from this course of conduct. The Attorney General himself and the 21 county Prosecutors are appointed for terms of office to remove them from pressures that might otherwise be exerted by the appointing authority. This is because law enforcement activities must not be subject to political pressures.

ANALYSIS OF OPEN PUBLIC INSPECTION PROVISIONS PREVIOUSLY SUBMITTED TO THE ASSEMBLY

AN ANALYSIS BY THE S.C.I. OF ISSUES RAISED BY PROPOSED ART.11

Originally the State Commission of Investigation had indicated that it would not make recommendations on purely economic issues, including taxation. However, an examination of Art. 11 of the proposed casino gambling bill on revised tax provisions, presently before the Assembly State Government Committee, has raised a number of serious questions that the S.C.I. feels should be brought to the attention of the Committee.

The first and most important issue the S.C.I. raises is not a taxation question per se, but involves a reconsideration of §74 (d) and (e) of the proposed bill. These provisions provide for the confidentiality of certain financial and other information filed with or gathered by the new gambling commission.

The S.C.I. is aware that the Committee has already given consideration to these provisions and in fact that it gave additional review of these sections at the request of the N.J. Press Association. However, at the time of the Committee's earlier review, the S.C.I. had not received nor reviewed the draft provisions of Art. 11. The recommendations to be suggested herein are prompted by a review of that Article, and had not, therefore, been formulated on the earlier occasions.

Because the S.C.I. considers this situation to be of extreme importance to the overall public confidence in the adminiatration of casino gambling, it respectfully suggests that the Committee reconsider §74(d) and (e) based on the following comments:

Several aspects of Art. 11 raise a concern with respect to the confidentiality provisions cited above. Particularly, the provision calling for investment credits

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or in the alternative, the "in lieu of property tax" relief, have generated this concern. As the S.C.I. understands these proposals, their intent is to encourage casino operators to invest and reinvest in Atlantic City by offering tax relief in return for these investments. The Commission further understands from the explanations given of these provisions when they were first released, that the tax relief given to the casino operator may involve upwards of several million dollars per casino, depending of course on each operator's level of investment and the profitability of his operations.

These tax proposals serve to underscore one of the constant themes, indeed the dominant theme, that has been heard since the referendum. That is, that casino operators need liberal operating provisions because they are being "forced" to make substantial investments in Atlantic City. Thus, they have lobbied long and hard for credit gambling, wide-open hours, and tipping, among other provisions. Now they seek tax relief, which in total dollar amounts may be the single biggest break they will get. This is in sharp contrast to the oft-repeated pre-referendum statements that casinos could and would operate under the strictest controls in the world.

The potential magnitude of these concessions to the casino industry raised a fundamental issue that transcends whether the S.C.I. thinks that the resolution of any given issue was right or wrong; whether the Attorney General's Office takes a different view; or whether the Committee thought either or both agencies were off the mark.

Simply put is the question: Should the people of this State have the right to monitor the results of these concessions and to form their own independent, informed judgment as to the original need and the continuin need as time goes on for any or all of these concessions granted to the casino operators.

Experiences here and in Nevada suggest that governmental review alone will not be enough. Despite statements to the contrary by its public officials, Nevada is so heavily dependent upon the gambling industry that there is a real concern about the ability of that State to tighten up its controls in the face of industry resistance or its willingness to admit any lack of control. Here in New Jersey the same problem may well occur. Anyone who has watched the industry manuever as this proposed legislation began to be assembled, and then watched its intense, continuous and unrelenting lobbying for provisions favorable to its own interests, can have little doubt that once operations get rolling, these same industry pressures will continue to be brought to bear on the agencies charged with enforcing casino gambling.

The public's best protection in this regard is its right to know. It must have the facts with which to judge how this matter of far-reaching importance has been handled The citizens of this state are entitled to judge more than just the performance of the various casino operators; they have an equal, if not greater, interest in judging the performances of its public officials in enacting and administering this new legislation.

Therefore, the S.C.I. asks why the people of this State should not have access to the pertinent -- we emphasize "pertinent" -- information concerning the casino operator's revenues, the taxes he pays on those revenues, and the investment credits received by him as a result of this legislation. Do not the citizens of this State have a right to know who is benefitting and to what extent from this legislation as it will be enacted by the Legislature?

To the extent that §74(d) denies access to that information to individual citizens and the public at large, the S.C.I. urges the Assembly committee give serious consideration to amending that provision. While there is no question free access to information often leads to abuses, the larger values sought to be protected here must allow for what occasional abuses may occur.

The S.C.I. does not suggest that all financial information pertaining to a casino licensee's operations be made public. It recognizes that this is an area where there is a legitimate need for some amount of confidentiality. Clearly, for example, the operator's internal controls must be kept secret, and the provision to that effect is well taken. Similarly, the S.C.I.'s suggestions for requiring "bounced" checks to be reported to the gaming commission (see Commission Report, pg. 6-E) and for increased audit report requirements (see page 25-F) are adopted, there would be legitimate reasons to grant confidentiality to such reports. And there may well be other areas where confidentiality is appropriate.

However, certain basic information regarding the casino licensee's operations should be readily available to the public so that it can judge the effect of this legislation on the industry and on this State. This information could include the following:

1. The licensee's operating figures broken down into the following categories:

   (a) lodging revenues and expenses;

   (b) other non-gaming revenues and expenses;

   (c) table games revenues and expenses;

   (d) slot machines revenues and expenses.

2. The table games revenues and expenses should further be broken down into the following sub-categories:

   (a) specific time periods of play – such as midnight to 4 A.M.; 10 A.M. to 6 P.M., just as examples.

   (b) the amount of gaming expenses that are complimentary charge-offs.

3. With respect to check-cashing by the licensee:

   (a) the amount of checks actually deposited for collection (rather than redeemed by patron before departing);

   (b) The amount initially "bounced";

   (c) the amount ultimately uncollected.

4. With respect to taxes and credits:

   (a) the amount of gross revenues tax actually paid; and the amount of taxes that would have been paid without any credits;

   (b) the investment credit or "in lieu of" received by the licensee;

   (c) an itemized list of the improvements for which credit is sought, specifying with particularity the nature of the improvement, their individual costs, and the payees thereof.

These items of information will allow the public to assess the benefits flowing to each individual casino operator as a result of his obtaining a license from this State. This information will also offer some idea of the cost to the State to provide these operating incentives. Finally, item 4 is particularly important. The public will be down in Atlantic City if all goes as planned. It will be able to judge for

itself whether the claimed improvements measurably affect the quality and nature of the services offered to them by the licensees. Even more importantly, the public at large should be aware of whom the licensee is hiring or from whom he is purchasing when these improvement expenditures are made. The details of these expenditures will show whether licensees are using related companies to provide improvement goods or services, thus in effect taking money out of one pocket and putting it into another; whether the payee had an integral relationship to the passage of the referendum or of this legislation; whether the value of the goods or services is overstated; whether much of these investment credit expenditures go to firms located out of this State.

Casino operators may well argue that their operating revenues and tax figures should not be made public; that they have a right of privacy. The fact is that they do not have any inherent or absolute right of privacy in this area. Whatever rights of privacy do exist in connection with taxes and financial reports are normally the results of legislative enactments. These enactments attempt to serve a general public policy - that an individual's, or a corporation's, financial affairs are normally no one else's concern. The S.C.I. submits that this general public policy does not and should not apply to the casino gambling industry. The public policy in this instance must be openness, not confidentiality and privacy.

Because of the long tradition of privacy accorded such information, we all hesitate when anyone suggests that financial information, especially tax matters, should be made public. Yet, it is hard to conceive of competing values that would defeat the public policy expressed above. Certainly, the casino licensee has a natural

desire not to have the public or his competitors know how well or how poorly he is doing. He also may feel certain information may be of value to his competitors, though obviously anyone in or familiar with an industry knows pretty much how everyone else in that industry operates in the first place. In fact, because of the lack of any sufficient countervalues and the strong public need to know, the State Commission of Investigation is tempted to recommend that in addition to making available the information outline infra in numbered paragraphs 1 - 4, that each operator's actual state tax return be made public. This is a regulated industry. The operator will be enjoying a special and unique privilege. His return is an accounting not only to the government, but to the public, of how he uses or abuses those privileges. When the Committee considers the rest of the recommendations made herein, it might well examine the possibility of also making the casino licensee's state tax returns public (this is as to the actual operators, and not individually licensed employees).

For essentially the same reasons that have been set forth with respect to financial matters and §74(d), the S.C.I. also recommends a re-examination of 74(e). The licensing process is most critical to the overall success of casino gambling. The public confidence in that process can be increased by full disclosure of the background information required to be supplied by the applicant. No public policy is served by keeping this license application information secret. The applicant will already be under a statutory requirement to supply such information accurately and completely. He risks sanctions and loss of license if he fails to do so; therefore the applicant does not need the encouragement of a confidentiality provision to insure compliance. On the other hand, full disclosure may serve to elicit from the public information regarding an applicant that might not otherwise be available to the gaming commission. Often it is only when one person makes a

statement of fact or circumstances, that another person will realize he has information that disputes or contradicts the veracity of the original statement, and come forward.

On the other hand, information supplied to the enforcement division by the public, the media and other governmental agencies should be kept confidential unless and until it is relevant to actual proceedings before the gaming commission. The investigative process is enhanced through the free flow of information unhampered by fear of disclosure, while at the same time individuals are protected from unwarranted and unfounded smears. This was one of the reasons for the two-tier system – to separate the adjudicatory function from the investigative function, since the one must operate in openness, while the other needs confidentiality to be effective.