


1986

## GAMING ON THE HIGH SEAS

Robert D. Faiss

Anthony N. Cabot

Follow this and additional works at: [https://digitalcommons.nyls.edu/journal\\_of\\_international\\_and\\_comparative\\_law](https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law)

 Part of the [Entertainment, Arts, and Sports Law Commons](#), [Taxation-Transnational Commons](#), and the [Tax Law Commons](#)

---

### Recommended Citation

Faiss, Robert D. and Cabot, Anthony N. (1986) "GAMING ON THE HIGH SEAS," *NYLS Journal of International and Comparative Law*: Vol. 8 : No. 1 , Article 5.

Available at: [https://digitalcommons.nyls.edu/journal\\_of\\_international\\_and\\_comparative\\_law/vol8/iss1/5](https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law/vol8/iss1/5)

This Article is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Journal of International and Comparative Law by an authorized editor of DigitalCommons@NYLS.

# GAMING ON THE HIGH SEAS

ROBERT D. FAISS\* & ANTHONY N. CABOT\*\*

## 1. INTRODUCTION

The statement that legalized casino gaming is one of the most highly regulated industries in the United States will find little dispute. Both Nevada and New Jersey have developed comprehensive regulatory schemes that principally seek to achieve three goals.<sup>1</sup> The first goal is to ensure that gaming is conducted honestly.<sup>2</sup> The second is to prevent the infiltration of the industry by persons with criminal associations.<sup>3</sup> The third goal is to ensure that the state receives its just

---

\* Robert D. Faiss is a partner in the firm of Lionel Sawyer & Collins of Las Vegas, Nevada. Mr. Faiss formerly served as White House assistant to President Lyndon B. Johnson and Executive Assistant to Nevada Governor Grant Sawyer. Among the positions held by Mr. Faiss are Past Chair, Gaming Law Committee, General Practice Section, American Bar Association; Past President and Trustee of the International Association of Gaming Attorneys; and member of the Executive Committee of the Nevada State Bar Section on Gaming.

\*\* Anthony N. Cabot is a partner in the firm of Lionel Sawyer & Collins of Las Vegas, Nevada. He is a graduate of Cleveland State University (B.A.—*Summa Cum Laude*) and Arizona State University (J.D.—*Cum Laude*).

1. The Nevada Gambling Control Act is codified in Chapters 462-467 of the Nevada Revised Statutes. NEV. REV. STAT. § 41:462 to 467 (1985). Additionally, the Nevada Gaming Commission has promulgated regulations covering twenty-nine general areas of regulatory concern. In New Jersey, the statutes controlling gaming are found in the Casino Control Act, codified at N.J. STAT. ANN. § 5:12 (West Supp. 1986).

2. One of the avowed purposes of the Nevada Gaming Control Act recognizes that "the continued growth and success of the gaming industry is dependent upon public confidence and trust that licensed gaming is conducted honestly and competitively and that the gaming industry is free from criminal and corruptive elements." NEV. REV. STAT. § 463.0129(1)(b) (1985). Likewise, under N.J. STAT. ANN. § 5:12-1(6) (West 1985), it is noted that "an integral and essential element of the regulation and control of such casino facilities by the state rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations."

3. In *Marshall v. Sawyer*, 301 F.2d 639, 648 (9th Cir. 1962) (Pope, J., concurring), it was acknowledged that Nevada "has gone to great lengths to protect its peculiar institution; and in doing so it has been mindful that he who stirs the devil's broth must need use a long spoon. For the whole of the State's system of licensing gambling establishments shows its preoccupation with the fear that the wrong kind of person may get control of these enterprises." These sentiments were also expressed in *Nevada Tax Comm'n. v. Hicks*, 73 Nev. 115, 119, 310 P.2d. 852, 854 (1957), where the Nevada Supreme Court noted, "Nevada gambling, if it is to succeed as a lawful enterprise, must be free from the criminal and corruptive taint acquired by gambling beyond our borders. If this is to be

share of gaming taxes.<sup>4</sup> The achievement of these goals is dependent upon a comprehensive body of law that regulates almost every aspect of gaming. The major areas of regulation include licensing,<sup>5</sup> conduct of games,<sup>6</sup> types of gaming equipment,<sup>7</sup> internal controls and accounting procedures,<sup>8</sup> credit and collection activities,<sup>9</sup> junkets,<sup>10</sup> advertis-

---

accomplished not only must the operation of gambling be carefully controlled, but the character and background of those who would engage in gambling in this state must be carefully scrutinized." These policies are also expressed in the New Jersey Casino Control Act, which states: "Continuity and stability in casino gaming operations cannot be achieved at the risk of permitting persons with unacceptable backgrounds and record of behavior to control casino gaming operations contrary to the vital law enforcement interest of the state." N.J. STAT. ANN. § 5:12-1(b)(15) (West Supp. 1986).

4. Both New Jersey and Nevada impose numerous fees and taxes on the gaming industry. See, e.g., NEV. REV. STAT. § 463.370 (1985) (a monthly fee for state license, based upon gross revenue); NEV. REV. STAT. § 463.373 and § 463.375 (1985) (a quarterly fee for state license for certain restricted and nonrestricted operations); NEV. REV. STAT. § 463.383 (1985) (a quarterly fee for state license based on the number of games operated); NEV. REV. STAT. § 463.385 (1985) (an annual tax on slot machines); and NEV. REV. STAT. § 463.401 (1985) (a casino entertainment tax). See also, e.g., N.J. STAT. ANN. § 5:12-139 (West Supp. 1986) (annual casino license fee); N.J. STAT. ANN. § 5:12-144(a) (West Supp. 1986) (annual tax on gross revenues); and N.J. STAT. ANN. § 5:12-140(a) (West Supp. 1986) (annual license fee on every slot machine).

As these tax and fee measures indicate, the gaming industry plays an important role in the economy of both Nevada and New Jersey. Eighty-four percent of the Nevada's general fund is derived either directly or indirectly from the gaming industry. Paul A. Bible, Nevada Gaming Commission Chairman, Speech to Eighth Annual Gaming Conference and Workshop of Nevada Society of CPAs (May 28, 1986). The Nevada Gaming Control Act recognizes that "the gaming industry is vitally important to the economy of the state and the general welfare of the inhabitants." NEV. REV. STAT. § 463.130(1)(a) (1985). As Justice Pope noted in the *Marshall* case "I take judicial notice that Nevada simply cannot afford to lose its gaming business. . . ." 301 F.2d at 648. See also, e.g., N.J. STAT. ANN. § 5:12-1(b)(4) (West Supp. 1986) (the avowed purposes of allowing gaming in New Jersey is its use as a "unique tool of urban redevelopment for Atlantic City").

5. NEV. REV. STAT. § 463.162 (1985); N.J. STAT. ANN. § 5:12-80 (West Supp. 1986).

6. New Jersey has comprehensive requirements regarding the rules governing the conduct of all casino games. N.J. STAT. ANN. § 5:12-100(e) (West Supp. 1986). These requirements extend to such lengths as to regulate when a player may elect to split a pair in blackjack. N.J. ADMIN. CODE tit. 19, § 47-2.11 (1984). In contrast, Nevada does not dictate the rules of the particular games. Instead, the Nevada Gaming Commission has promulgated general rules for the conduct of games. See Regulations of the Nevada Gaming Commission and State Gaming Control Board (1986) [hereinafter Nev. Gaming Comm'n. Reg.] 5.011 (grounds for disciplinary action), 5.012 (publication of payoffs), 5.013 (gaming by owners, directors, officers, and key employees), 5.025 (operation of keno games), 5.110 (progressive slot machines) and 23.010 -23.090 (card games).

7. N.J. STAT. ANN. § 5:12-100 (West Supp. 1986); NEV. REV. STAT. 463.305 (1985).

8. N.J. STAT. ANN. § 5:12-99 (West Supp. 1986); Nev. Gaming Comm'n. Reg. 6.050.

9. N.J. STAT. ANN. § 5:12-101(b) (West Supp. 1985); NEV. REV. STAT. § 403.367-.368 (1985). See generally Faiss & Cabot, *On S.B. 335, One Year Later, GAMING BUS. MAG.*, Sept. 1984, at 80; Cabot & Faiss, *Nevada's Gaming Credit Law-It's Working but Some Repairs May Be Necessary*, INTER ALIA: JOURNAL OF THE STATE BAR OF NEVADA, May-June (1984) at F1. 25.

10. N.J. STAT. ANN. § 5:12-100 (West Supp. 1986), Nev. Gaming Comm'n. Reg. 463.305 (1985).

ing<sup>11</sup> and employees.<sup>12</sup> These types of regulatory controls are not unique to the United States. Gaming controls similar in some respects to those found in Nevada and New Jersey can be found in most countries which allow casino gaming.<sup>13</sup>

In stark contrast, the gaming industry on the high seas is generally not operated under direct government control.<sup>14</sup> There are no regulations controlling these floating casinos and any person can operate the casino regardless of suitability. More importantly, the casino owner is not required to implement internal controls and pays no gaming taxes. Thus, a player has no governmental assurance that the games are conducted honestly.

Despite the general absence of governmental controls, most cruise lines claim their casinos are operated honestly with restricted betting limits.<sup>15</sup> The cruise ship lines assert that the casino is a small part of the leisure package offered on a cruise.<sup>16</sup> Consistent with this philosophy, cruise lines have an individual company policy addressing areas such as internal controls, hiring practices, and conduct of the game.<sup>17</sup> Additionally, the game rules are adjusted and implemented to account for the location of the ship on a moving body of water.<sup>18</sup>

The concept of a floating gaming establishment is not unique to the cruise ship industry. American history shows a rich tradition of gaming aboard ships. The riverboats of the nineteenth century were infamous as havens for the American gambler. In 1840, there were approximately 2,000 gamblers plying their trade on the Mississippi River between Louisville and New Orleans.<sup>19</sup> The riverboat gambler was de-

---

11. N.J. ADMIN. CODE tit. 19, § 51(1983), Nev. Gaming Comm'n. Reg. 5.011(4).

12. N.J. STAT. ANN. § 5:12-90 (West Supp. 1986); NEV. REV. STAT. § 463.335 (1985).

13. See generally Kelly, *British Gaming Act of 1968*, 8 N.Y.L. SCH. J. INT'L & COMP. L. 33 (1986); McMillan & Eadington, *The Evolution of Gambling Laws in Australia*, 8 N.Y.L. SCH. J. INT'L & COMP. L. 167 (1986).

14. See *infra* notes 73-85 and accompanying text.

15. *The Third Jurisdiction, GWB's Guide to Shipboard Gaming*, 6 GAMING AND WAGERING BUS., Dec. 1985, at 32-33 [hereinafter *Shipboard Gaming*].

16. *Id.* at 33.

17. *Id.* at 32-33.

18. *Id.* These unique rules may include the use of different size dice tables and fewer betting options. *Id.*

19. U.S. DEPT OF COMMERCE, COMMISSION ON THE REVIEW OF THE NATIONAL POLICY TOWARD GAMBLING, GAMBLING IN PERSPECTIVE: A REVIEW OF THE WRITTEN HISTORY OF GAMBLING AND AN ASSESSMENT OF ITS EFFECT ON MODERN AMERICAN SOCIETY, (App. I) 23 (1976) [hereinafter *GAMBLING IN PERSPECTIVE*]. Unlike cruise ships, the riverboats operated within the jurisdiction of the United States.

scribed as "perhaps the grandest and most picturesque dresser of his day. . . ." <sup>20</sup>

The early gamblers on the steamboats were generally honest and relied upon superior skills to earn their livings.<sup>21</sup> By the 1850's, however, the lure of easy money resulted in the prevalence of the "sharpie," or dishonest gambler. One historian noted that if an honest gambler did exist, he was suspected of being a crook.<sup>22</sup>

River gambling was curtailed during the Civil War as the Mississippi became the battlefield for Union and Confederate gunboats and, therefore, the navigation of passenger steamboats virtually ceased.<sup>23</sup> After the war, attempts were made to revitalize the gaming trade on the steamboats.<sup>24</sup> Changing economic conditions and attitudes toward the gamblers, however, spelled doom to the industry. The plantation owners who were the favorite mark of the sharpies disappeared, fewer ships were plying their trade on the river, and states on both sides of the river began passing laws calculated to suppress gaming.<sup>25</sup> By 1870, river gambling was rare and most of the old-time riverboat gamblers left for the city or the western frontier.<sup>26</sup> Other forms of gambling in the South were also severely curtailed after the Civil War. By World War I they were driven underground.<sup>27</sup>

In contrast to the riverboat, voyages on the first cruise ships were conspicuous for the absence of gambling. Perhaps the first documented cruise was chronicled by Mark Twain in a book written in 1868 concerning the 1867 pleasure excursion of the *Quaker City* to Europe, the Holy Land and Egypt.<sup>28</sup> In his characteristic wit, Twain wrote:

The pilgrims played dominoes when too much Josephus or Robinson's Holy Land Researches, or book writing, made recreation necessary—for dominoes is about as mild and sinless a game as any in the world perhaps, excepting always the ineffably insipid diversion they call playing at croquet, which is a

---

20. H. ASBURY, *SUCKER'S PROGRESS: AN INFORMAL HISTORY OF GAMBLING IN AMERICA FROM THE COLONIES TO CANFIELD*, 233 (1938).

21. H. CHAFETZ, *PLAY THE DEVIL: A HISTORY OF GAMBLING IN THE UNITED STATES FROM 1942 to 1955*, 75 (1960).

22. *Id.*

23. ASBURY, *supra*, note 20, at 73.

24. *Id.* at 75-76.

25. *Id.*

26. *Id.*

27. *GAMBLING IN PERSPECTIVE, supra* note 19, at 31-37.

28. D. MCKEITHAN, *INTRODUCTION TO TRAVELING WITH THE INNOCENTS ABROAD, MARK TWAIN'S ORIGINAL REPORTS FROM EUROPE AND THE HOLY LAND* vii (1958).

game where you don't pocket any balls and don't carom on anything of any consequence, and when you are done nobody has to pay, and there are no cigars or drinks to saw off, and, consequently, there isn't any satisfaction whatever about it—they played dominoes till they were rested, and then they backguarded each other privately till prayer time.<sup>29</sup>

Today, casino gaming on cruise ships is in its infancy. A recent survey of seventy-one cruise ships reveals that less than half of the cruise lines offer any form of onboard gaming.<sup>30</sup> These floating casinos are small in comparison to the casinos of Nevada and New Jersey.

The average cruise ship has sixty-six slot machines and some also have a limited number of table games.<sup>31</sup> Conversely, the average major resort on the Las Vegas "strip" has over one thousand slot machines.<sup>32</sup> All the cruise ships combined have approximately five thousand slot machines in addition to table games.<sup>33</sup> In contrast, there are over a million slot machines in operation in Nevada alone.<sup>34</sup>

This article discusses the legal aspects of this emerging industry, including the limited direct jurisdiction of existing gaming regulators.

---

29. *Id.* at 314-15.

30. *Shipboard Gaming*, *supra* note 15, at 32.

31. *Id.*

32. There are six locations on the strip with gaming revenues over 60 million dollars each year. These six locations have 6,322 slot machines which account for 36.5% of their average total gaming revenue. STATE GAMING CONTROL BOARD, SUPPLEMENT TO NEVADA GAMING ABSTRACT 1-21 (1984) [hereinafter GAMING ABSTRACT]. This report, published by the State Gaming Control Board ("Board"), includes the "mix" of games and devices, the gaming revenue produced by these games and devices, and "average-win-per-unit" (AWPU) for the year ended June 30, 1984. In prior years this information was included in the Board's annual Nevada Gaming Abstract, however, with the goal of providing the gaming industry and other interested users with more current data, these statistics are now included in the September, December, March and June monthly report of the Board.

Since "mix" and "AWPU" were not added to the monthly report until September 1984, and also are not included in the 1984 ABSTRACT, this one-time-only report is to be used as a supplement to the 1984 ABSTRACT.

33. *Id.*

34. STATE GAMING CONTROL BOARD, QUARTERLY REPORT (Dec. 31, 1985). The number of slot machines in Nevada can be attributed to the legal operation of slot machines in non-casino locations. Under Nevada law, a non-casino wishing to operate less than 16 slot machines may apply for a "restricted" gaming license, if certain criteria are met. See NEV. REV. STAT. § 463.161 (1985). There are over 1,300 "restricted" locations in Nevada. Of these, 30 percent are located in taverns, 15 percent in convenience stores, 12 percent in restaurants and 10 percent in supermarkets. These restricted locations account for over 8,000 machines. Hyte, *Gaming Devices in Non-Casino Locations*, SIXTH ANNUAL GAMING CONFERENCE 1984 33-34 (compilation delivered at the Sixth Annual Laventhol and Horwath Gaming Industry Conference of 1984 in Las Vegas, Nevada).

## 2. FEDERAL CONTROL OVER GAMBLING ON THE HIGH SEAS

### a. *History of Federal Legislation*

Prior to 1948, the Federal government had almost no involvement in the regulation of gaming.<sup>35</sup> In 1948, Congress passed broad prohibitions against the operation of gambling ships which were either in territorial waters, owned by American citizens or residents of American registry, or otherwise within the jurisdiction of the United States.<sup>36</sup> These prohibitions were not aimed toward the operation of cruise ships, but rather the operation of stationary barges located off both the eastern and western seaboard. The advent of these floating casinos was in 1926 when the barges appeared and were anchored off the coast near San Francisco for the ostensible purposes of fishing, recreation and pleasure.<sup>37</sup> Passengers were carried to and from these ships in small speed boats.<sup>38</sup> Shortly after these ships appeared in Northern California, other ships appeared off the coasts of Florida and Los Angeles.<sup>39</sup>

These ships were anchored approximately three miles off shore and were brilliantly lit, thus clearly visible to those on shore.<sup>40</sup> The ships provided gaming accommodations for approximately 500-600 persons. Moreover, the ship owners advertised extensively and provided free food and entertainment on board.<sup>41</sup>

The operation of these ships, however, was a continuing problem for law enforcement officials. The Los Angeles County District Attorney attempted to prosecute the ship owners on numerous occasions.<sup>42</sup> With one exception, these prosecutions proved unsuccessful because the ships were located outside the criminal jurisdiction of the State of California.<sup>43</sup> The county was successful, however, in prosecuting the operators of water "taxis" servicing the *Johanna Smith*, a ship

35. Blakey & Kurland, *The Development of the Federal Law of Gambling*, 63 CORNELL L. REV. 923, 958 (1978); see also W. O'Donnell, *A Chief Executive's Views On The Necessity For Comprehensive State Control and Regulation In The United States Gaming Industry*, 12 CONN. L. REV. 727, 744 n.33 and accompanying text (1980).

36. Blakey & Kurland, *supra* note 35, at 958.

37. H.R. REP. No. 1058, 72d Cong., 1st Sess. 3 (1932) (letter from Arthur J. Tyler, Commissioner of Navigation) [hereinafter *1932 Hearings*].

38. *Id.*

39. *Id.* at 9. The ships anchored off the coast of Florida had a short history. Those ships faced substantial competition from the elaborate casinos in Cuba and were forced out of business. Later, ships appeared off the coast of New Jersey. *Id.* at 3.

40. *Id.* at 16.

41. *Id.* at 13-15.

42. *Id.* at 21.

43. *Id.* at 5.

anchored off the coast of the city of Long Beach.<sup>44</sup> The operators were convicted of violating a state statute prohibiting the "prevailing" upon any person to visit a place kept for gaming or prostitution.<sup>45</sup> The court reasoned that although gaming may not be a crime on the high seas, the gist of the crime was the "prevailing" upon persons within the state.<sup>46</sup> In this case, the gist of the crime consisted of advertising and providing free water taxi service to the gambling ship.<sup>47</sup>

To evade further prosecution under the law, many water taxi operators began making stops at places other than the anchored ships and would have a passenger request a stop at the gaming ship.<sup>48</sup>

At the time, these gaming ships were also being condemned by the politicians of California. Congressman Joe Crail called them "breeding places of vice; it is the place where [criminals] can go out and consult and prepare and plan crimes without interference from any lawful authority whatsoever."<sup>49</sup> Congressman Arthur Free claimed, "[p]eople go to these ships to gamble, lose their money, come in and knock over some guy in a filling station, or rob a store; their money is taken away from them out there and they come back broke and commit suicide."<sup>50</sup>

To deal with this perceived evil, a bill was proposed in Congress which would have prevented the water "taxis" from proceeding from coast to shore without a permit issued by the Department of Commerce.<sup>51</sup> The Secretary of Commerce would have the authority to refuse permits if he was of the opinion that the shuttle was being operated for the purpose of transporting passengers to or from a stationary vessel conducting any business prohibited by the law of the state where these vessels land.<sup>52</sup> Nonetheless, because of protests from private pleasure boat and yacht owners who felt that there was already too much federal regulation of boats,<sup>53</sup> the bill was never passed by Congress.<sup>54</sup>

In the first half of the nineteenth century, there was little effort to prohibit the operation of the gaming ships.<sup>55</sup> In 1939, there were still

---

44. *People v. Chase*, 117 Cal. App. 775, 1 P.2d 60 (1931).

45. *Id.* at 61.

46. *Id.* at 62.

47. *Id.* at 63.

48. *1932 Hearings*, *supra* note 37, at 2.

49. *Id.* at 29.

50. *Id.* at 12.

51. *Id.* at 1.

52. *Id.* at 2.

53. *Id.* at 6.

54. See H.R. 408, 72nd Cong., 2nd Sess. (1932) and S. 2883, 72nd Cong., 2nd Sess. (1932) (the bill died in Committee).

55. *Blakey & Kurland*, *supra* note 35, at 958 n.138.



four ships anchored off the coast of Los Angeles.<sup>56</sup> These ships, however, became the target of California Attorney General Earl Warren after his election in 1938.<sup>57</sup>

Warren's first move against the ships was to issue a notice of abatement to the owners of the *Rex*, a British-built square rigger.<sup>58</sup> The *Rex* was equipped with a 400-foot salon on her main deck containing roulette wheels, craps tables and other gambling games.<sup>59</sup> Below deck were elegant dining rooms and rows of slot machines.<sup>60</sup> The estimated net profit on the *Rex* was \$300,000 per month.<sup>61</sup>

Anthony Cornero (a.k.a. Tony Stralla), the ship's owner, ignored the notice, and on August 1, 1939, a raid was unsuccessful because the *Rex* kept the raiding party at bay with fire hoses.<sup>62</sup> Cornero "held out" on his ship but surrendered on August 10. The next day the Superior Court issued an injunction closing the casino.<sup>63</sup> Eventually, the case reached the California Supreme Court, which ruled that the *Rex* was within the jurisdiction of California.<sup>64</sup>

In 1964, Cornero made another effort at operating a floating casino when he converted a World War II mine layer and anchored it five miles off the coast of Long Beach.<sup>65</sup> The Federal government raided the vessel and successfully libeled it for violating its coastwide license.<sup>66</sup>

The end of California coast gambling ships occurred in 1948,<sup>67</sup> after gambling ship legislation introduced by California Senator William Knowland passed Congress.<sup>68</sup> This legislation was codified at 18 U.S.C. § 1082, and while accomplishing its purpose of banishing stationary gaming ships, its enactment has greater implications.

---

56. TIME MAGAZINE, Aug. 14, 1939, at 14.

57. Cray, *High Rollers on the High Seas*, CAL. LAWYER, Dec. 1982, at 49.

58. *Id.* at 50.

59. TIME MAGAZINE, *supra* note 56, at 14.

60. *Id.*

61. *Id.*

62. Cray *supra* note 57, at 51.

63. *Id.*

64. *People v. Stralla*, 14 Cal. 2d 617, 96 P.2d 941 (1939).

65. LIFE MAGAZINE, Aug. 19, 1946, at 34. Cornero subsequently moved his operations to Nevada and was responsible for the construction of the Stardust Hotel and Casino, the last and largest of the alleged "underworld built" resorts. R. KING, GAMBLING AND ORGANIZED CRIME 122 (1969).

66. H.R. REP. No. 1700, 80th Cong., 2d Sess. 2 (1948).

67. See GAMBLING IN PERSPECTIVE, *supra* note 19.

68. Cray, *supra* note 57, at 51. See H.R. REP. No. 1700, 80th Cong., 2d Sess. at 2 (1948).

b. *Breadth of Federal Legislation*

The interpretation of Section 1082 could have significant impact on the future development of the cruise ship industry. Currently, the amount of casino gaming on cruises is a relatively small part of the cruise package. Given the growth of gaming worldwide, it is conceivable that gaming may assume a greater importance even to the extent that publicly traded gaming companies may consider entry into the market with floating luxury casino ships. Whether American companies or individuals can invest in such ventures may be limited by Section 1082.

The law applies to three groups of persons: American citizens, American residents and persons who are either on an American vessel, or otherwise subject to the jurisdiction of the United States.<sup>69</sup> The statute makes it unlawful to establish, operate or own an interest in a gambling vessel, that is, a vessel used principally for the operation of a casino.<sup>70</sup> A court has inferred that a "vessel" is every kind of water or air craft capable of transportation or of floating in the water.<sup>71</sup>

The first issue, therefore, arises in the application of Section 1082 to American citizens or residents for violations which occur on the high seas. The United States has the authority to prescribe the conduct of its citizens beyond the territorial boundaries of the United States.<sup>72</sup> This authority extends to regulating the conduct of American citizens on the high seas.<sup>73</sup> This issue was settled in the only reported case involving a prosecution for operation of a gaming ship on the high seas. In *United States v. Black*,<sup>74</sup> the defendants, American citizens, operated a non-American vessel on a cruise from New York harbor into international waters and back to New York. Once in international waters, a group known as "The Sons of Italy" conducted gaming activities in an area set aside by the ship's master.<sup>75</sup> The District Court for the Southern District of New York held that the indictment was sufficient on the settled principle that citizenship alone is sufficient to confer jurisdiction upon the United States over extra-territorial acts.<sup>76</sup>

A second jurisdictional issue is the ability of the United States to assert jurisdiction over a ship with an American registry. The law also dictates that the flag state has the right to assert jurisdiction upon the

---

69. *United States v. Black*, 291 F.Supp. 262, 265 (S.D.N.Y. 1968).

70. 18 U.S.C. § 1082(a)(1) (1982).

71. *United States v. Black*, 291 F. Supp. 262, 265 (1968).

72. *Steele v. Bulova Watch Co.*, 344 U.S. 280 (1952).

73. *See, e.g., Blackmer v. United States*, 284 U.S. 421 (1932).

74. 291 F. Supp. 262 (S.D.N.Y. 1968).

75. *Id.* at 264.

76. *Id.* at 266.

fiction that a ship on the high seas is assimilated into the territory of the state of the flag which it flies.<sup>77</sup> A survey of cruise ships offering casino gaming, however, reveals that there are no ships that have American registry.<sup>78</sup> Thus, this jurisdictional argument is not applicable.

A third jurisdictional issue relates to the United States' right to assert jurisdiction over ships of foreign registry and ownership. As early as 1887, the Supreme Court recognized the right of a country to exercise jurisdiction over a foreign vessel when entering an American port.<sup>79</sup> United States territorial jurisdiction includes "a marginal belt of the sea extending from the coast line outward a marine league, or three geographic miles."<sup>80</sup> The question whether territorial jurisdiction extends beyond three miles is unsettled. The area between three and twelve miles is considered the contiguous zone. International law recognizes a twelve-mile limit for revenue, customs, sanitation, immigration and fishing rights.<sup>81</sup>

Beyond the three or twelve-mile territorial limits, the United States jurisdiction is limited to instances where the act is intended to produce detrimental effects within the United States.<sup>82</sup> For example, the Supreme Court upheld the convictions of defendants who operated a British rum vessel twenty-five miles off the coast of California. The Court's rationale for upholding the convictions was based on the defendants' involvement in a continuous conspiracy operating contemporaneously within and without the United States.<sup>83</sup> This rationale could

---

77. See, e.g., *United States v. Flores*, 289 U.S. 137 (1933); *United States v. Riker*, 670 F.2d 987 (11th Cir. 1982); *United States v. One (1) 43 Foot Sailing Vessel "Winds Will"*, 538 F.2d 694 (5th Cir. 1976).

78. Rachel Leiby, a paralegal for the law firm of Lionel Sawyer & Collins, Las Vegas, Nevada, conducted a survey of 44 ships having casinos or other forms of gambling. Of these ships, 12 were registered in Panama, 4 in the Bahamas, 7 in Great Britain, 8 in Greece, 3 in Liberia, 4 in Italy, 2 in the Netherlands, Antilles, and 4 in Norway.

79. *Mali v. Keeper of the Common Jail of Hudson County*, 120 U.S. 1, (1887).

80. *Cunard SS. Co. v. Mellon*, 262 U.S. 100, 122 (1923). The three nautical mile rule resulted from an executive order issued by President Washington to members of the executive branch. 1 MOORE, DIGEST OF INTERNATIONAL LAW 702 (1906). See, e.g., Heinzen, *The Three Mile Limit: Preserving the Freedom of the Seas*, 11 STAN. L. REV. 597 (1959). One land mile equals .87 nautical miles. Thus, the three nautical mile limit is approximately 3.45 miles. *United States v. State of California*, 381 U.S. 139 (1965).

81. Cf. *Convention on the Territorial Sea and Contiguous Zone, opened for signature April 29, 1948*, 15 U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205, art. 24 (establishes a twelve mile limit for contiguous zone and recognizes the competence of coastal States to "exercise the control necessary to . . . [p]revent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea.").

82. See, e.g., *United States v. Cadena*, 585 F.2d 1252 (5th Cir. 1978).

83. *Ford v. United States*, 273 U.S. 593 (1927).

support the assertion of jurisdiction over a stationary gambling ship lying outside United States territorial jurisdiction regardless of its operators citizenship or the state of its registry.

United States regulation of gaming on foreign-owned and registered cruise ships within its territorial waters has limited significance. The practical result is that cruise ship operators, to comply with territorial law, must wait until the ship is safely beyond territorial waters before opening the casino.<sup>84</sup>

Most important to potential American investors is the apparent ability of the United States to assert jurisdiction over American citizens or residents having ownership in a gambling ship. This ability may prohibit American investment in luxury ships which are centered around a casino. A gambling vessel is defined as a vessel capable of floating which is "used principally for the operation of one or more gambling establishments".<sup>85</sup> Certainly, the legislation was intended for large-scale commercial gambling. Unfortunately, the term "principally" is a vague term.<sup>86</sup> At best, it is synonymous with "mainly" or "chiefly".<sup>87</sup> If "principally" can be described in economic terms as representing at least fifty percent of revenues, most cruise ships, even if they cater to a gaming clientele, probably would not be considered "principally" gaming ships. Even the magnificent resorts along the Las Vegas Strip would barely qualify as being used "principally" as gaming establishments, since these resorts with gaming revenues of at least a million dollars generated only 57.9 percent of their revenues from gaming.<sup>88</sup> Remaining revenues were generated from rooms, food, beverage and other activities.<sup>89</sup>

Federal jurisdiction over criminal activity may also indirectly affect the conduct of gaming on cruise ships. In *Paine v. United States*,<sup>90</sup> a defendant was convicted of larceny after cheating a passenger in a game of cards on board a ship sailing from San Diego to Seattle. While the court did not disclose the federal statute under which the defendant was convicted, general statutes existed regarding criminal activity

---

84. *Shipboard Gaming*, *supra* note 15, at 32. There may, however, be an exception for ships engaging in gaming activities beyond the three to twelve mile territorial limits for the primary purpose of evading the laws of the United States. *Cf.* *United States v. Brennan*, 394 F.2d 151 (2d Cir. 1968).

85. 18 U.S.C. § 1081 (1961). *See also*, *supra* notes 69-71 and accompanying text.

86. *Sutton v. Hawkeye Casualty Co.*, 138 F.2d 781, 785 (6th Cir. 1943).

87. *Hartford Accident & Indemnity Co. v. Casualty Underwriters*, 130 F. Supp. 56, 58 (D. Mass. 1955).

88. GAMING ABSTRACT, *supra* note 32, at 1-2.

89. *Id.* Other "activities" include entertainment, golf, tennis, pool concessions, special events, health spas and shopping concessions.

90. 7 F.2d 263 (9th Cir. 1925).

within the special maritime and territorial jurisdiction of the United States.<sup>91</sup> Such statutes may provide a method of indirectly policing the honesty of gaming activities on board cruise ships while they are within United States territory or jurisdiction.<sup>92</sup>

The American approach to regulation of gaming on the high seas is substantially different from those of other countries. Most countries do not attempt to govern the conduct of gaming on ships or vessels outside of their territorial limits.<sup>93</sup> Under British law, the government

---

91. See, e.g., 18 U.S.C. § 661 (1982).

92. While it is beyond the scope of this article, an additional issue that arises is the ability of an American passenger to recover money lost while gambling, either upon allegations of cheating or otherwise. In *Richter v. Empire Trust Co.*, 10 F. Supp. 289 (S.D.N.Y. 1937), the plaintiff sought recovery in a civil suit for a sum of money paid to a defendant in satisfaction of a gaming debt. The plaintiff lost the money while engaged in a card game conducted on a steam ship travelling from New York to San Francisco. At the conclusion of the trip, the plaintiff tendered a check for the losing wagers. The defendant presented the check for payment but the funds were being held by a trust company. Both the plaintiff and defendant claimed the funds. A conflict of laws issue arose in an action seeking the return of monies lost on gaming. The court inferred that the law governing the transaction would be the place of registry and if an American vessel, the state of the port of registry.

Some states of the United States are taking different approaches to the enforceability of gaming debts. This is evident by a comparison of the laws of New York and California. In *Lane & Pyron, Inc. v. Gibbs*, 266 Cal. App. 2d 61, 71 Cal. Rptr. 817 (1968), an assignee of two Nevada gaming establishments sought to recover checks cashed in their casinos. Refusing to uphold the enforceability of the checks, the court recognized that both the courts of Nevada and California refused to aid in the collection of gambling losses. The court held that California's rejection of such claims applies not only to Nevada law but also domestic public policy. The court noted, however, that there was a measure of logic to the arguments that public policy in the State of California was no longer hostile to gaming activities because California now sanctions *pari-mutuel* wagering and draw poker. Nevertheless, the court stated that public policy doctrines emanating from higher tribunals could not be ignored.

In *Intercontinental Hotels Corp. v. Golden*, 15 N.Y.2d 9, 254 N.Y.S.2d 527 (1964), the owner of a Puerto Rican casino sought to recover upon a check given in payment of a valid gaming debt in Puerto Rico. In upholding the casino's right to maintain the action, the court rejected contentions that suits on gaming debts legally contracted elsewhere are contrary to the public policy of the State of New York. The court observed that New York public policy does not consider authorized gaming violative of some prevalent conception of morality or deep rooted tradition. The court stated that the public sentiment in New York is only against unlicensed gambling, which is unsupervised and unregulated by law, and affords no protection or assurances of fairness or honesty to consumers.

93. See, e.g., Lotteries and Gaming Act, 1969, § 21, (Bahamas); The Gaming Act, 1968, ch. 65, § 5 (Great Britain). In Norway, casino gambling and related activities are illegal and subject to criminal penalties both within Norway and in Norwegian territorial waters. The prohibition also extends to ships of Norwegian registry navigating on the high seas. See (Norwegian Penal Law) art. 298; art. 299. See also art. 383 (gambling in public places or the housing of such activities are punishable acts and criminal sanctions extend to gamblers).

does not even appear to take a great interest in gaming conducted on ships within its territorial waters.<sup>94</sup> Under the British Gaming Act of 1968, gaming in public places is unlawful. According to leading commentators, however, passengers and the ship's company are an identifiable group separate from the public.<sup>95</sup> They conclude that gaming can lawfully take place at sea because the ship is not a public place since the public cannot board it once at sea.<sup>96</sup>

### 3. DIRECT STATE CONTROL OVER GAMBLING

The extent of direct state control over gaming was explained in the California case of *People v. Stralla*.<sup>97</sup> In that case, the defendant was convicted of maintaining a gambling ship in violation of California laws.<sup>98</sup> The defendants appealed their conviction on the grounds that the gambling ship was four miles from shore, thus outside the traditional three-mile limit.<sup>99</sup> The state argued the ship was within its jurisdiction as it was anchored within the headlands of the Santa Monica Bay.<sup>100</sup> After the convictions were reversed by the appeals court, the California Supreme Court affirmed the convictions.<sup>101</sup>

Under traditional international law, if the headlands of a bay are six miles apart or less, a line between their headlands replaces the coast line for territorial purposes.<sup>102</sup> The Santa Monica Bay, however, has headlands that are approximately twenty-nine miles apart.<sup>103</sup> Nevertheless, the California Supreme Court justified its assertion of jurisdiction upon the principle that bays with greater headlands can be territorial waters if, like Santa Monica, they are historic bays.<sup>104</sup>

94. 171 Butterworths Ann. Leg. Serv. Statute Supplement, The Gaming Act, (1968). Moreover, the commentary suggests that if an identifiable group of persons hire a boat, they can lawfully conduct gaming thereon if it is occupied solely by that group.

95. *Id.* at 23.

96. *Id.* at 25.

97. 14 Cal.2d 617, 96 P.2d 941 (1939).

98. *Id.* at 617.

99. *Id.*

100. *Id.*

101. *People v. Stralla*, 96 Cal. App. 846, 88 P.2d 736, *rev'd*, 14 Cal. 2d 617, 96 P.2d 941 (1939).

102. In *United States v. Carrillo*, 13 F. Supp. 121, 122 (S.D. Cal. 1935), defendants challenged an indictment for piracy based upon robbing one of the gambling ships located off the shore of California in the Bay of San Pedro. The district court held that the indictment was sufficient because the bay was within the United States jurisdiction. The three-mile territorial limit is from the line joining the headlands of the bay.

103. Note, *International Law: Jurisdiction of the State of California Over Gambling Ships in Marginal Waters*, 28 CALIF. L. REV. 521 (1940).

104. *Id.* at 523.

State and Federal jurisdiction within the three-mile territorial waters is often concurrent.<sup>105</sup> The Federal government, however, has relinquished any concurrent jurisdiction with the states for control of gaming and gambling ships in territorial waters.<sup>106</sup> Thus, states can allow cruise ships to conduct gaming activities within their territorial water. For example, Louisiana provides an exception to its general prohibition against gaming for commercial cruise ships.<sup>107</sup> Conversely, California has provisions for the control of gambling ships, that is, any vessel kept or maintained for the purpose of gambling within or without the jurisdiction of the state.<sup>108</sup> Moreover, California has extended its authority to control gambling ships outside of its jurisdiction by prohibiting activities within the state which assists in the solicitation or transportation of persons to the gambling ship.<sup>109</sup>

The federal government's deference to the states in determining gaming laws within the three-mile territorial waters does not completely divest the federal government of police powers if the state decides to make gaming unlawful. This is illustrated in *United States v. Brennan*<sup>110</sup> where the defendants were convicted of sponsoring a floating craps game on board a ship carrying passengers from New Jersey to New York. The United States Court of Appeals for the Second Circuit found that the defendants violated federal law<sup>111</sup> by traveling in interstate or foreign commerce with the intent to carry on an unlawful activity.<sup>112</sup> In characterizing the craps game as an unlawful activity, the court relied upon a New York prohibition against gambling,<sup>113</sup> and upheld the conviction on the basis that gaming in New York territorial waters after the vessel had crossed state lines was sufficient to support a conviction under federal law.<sup>114</sup>

---

105. *Hoppengartner v. United States*, 270 F.2d 465, 470 (6th Cir. 1959).

106. 18 U.S.C. § 1082 (a) (1984).

107. LA. REV. STAT. ANN. § 14:90 (B) (West 1982) provides an exception to the general prohibition against gaming in public (under LA. REV. STAT. ANN. § 14:90.2 (West 1982), for gaming on board commercial cruise ships).

108. See *supra* notes 98-105 and accompanying text.

109. See, e.g., CAL. PENAL CODE § 11300-11304 (Deering 1985). See also, *People v. Chase*, 117 Cal. App. at 775, 1 P.2d at 60, where the ability of the state to regulate the solicitation and transportation of persons to a location outside of United States jurisdiction where gaming is not unlawful was upheld.

110. 394 F.2d 151 (2d Cir. 1968).

111. *Id.* at 153.

112. 18 U.S.C. § 1952 (1982).

113. N.Y. PENAL LAW § 971 (4). (See Practice Commentary, N.Y. PENAL LAW § 225 (McKinney 1980), explaining differences between former penal law (as cited in *Brennan*) and current revised statute).

114. *Brennan*, 394 F.2d at 153.

#### 4. INDIRECT STATE CONTROL OVER GAMBLING ON THE HIGH SEAS

For persons having an affiliation with the gaming industry in Nevada, the decision to seek an interest in gaming operations aboard cruise ships requires more than consideration of the applicability of federal law and the financial impact. Wherever the cruise ships travel, a Nevada gaming licensee cannot associate with a casino, except as a customer, without prior approval of the Nevada gaming authorities.

Nevada Revised Statute 463.690 prohibits any gaming licensee from involvement in gaming operations outside the state (designated as "foreign gaming") without the prior approval of the Nevada Gaming Commission, acting on a recommendation of the Nevada Gaming Control Board. "Licensee" includes both persons actually approved for participation in Nevada gaming and anyone who, directly or through an intermediary, controls that person.<sup>115</sup>

Since approval for involvement in foreign gaming has been difficult to obtain, participation in cruise ship gaming by Nevada licensees is problematical. An example of the difficulty faced by an applicant under Nevada's foreign gaming statutes is provided by the experience of Hilton Hotels Corporation ("Hilton").<sup>116</sup> On August 23, 1983, Hilton applied to inaugurate gaming in Queensland, Australia at the Conrad International Hotel and Jupiters Casino.<sup>117</sup> More than two years later, on October 24, 1985, the Nevada Gaming Commission formally authorized Hilton to become the first Nevada licensee to introduce gaming to a jurisdiction in a foreign country.

The Hilton experience indicates the difficulty ahead for any prospective cruise ship casino operator from the ranks of Nevada licensees. Hilton's application was made possible when Queensland's parliament, after extensively studying other countries gaming regulations, adopted the Casino Control Act in 1982.<sup>118</sup> Hilton's subsidiary, Conrad International Investment Corporation, was designated as a member of the funding consortium of companies approved to apply for the sole casino license to be issued in the southern region of Queensland. Another subsidiary, Conrad International Hotels Corporation, received the contract to manage the casino along with the entire resort

---

115. NEV. REV. STAT. § 463.680 (1985).

116. Hilton Hotels Corporation is a publicly traded corporation that owns and operates three Nevada gaming properties: The Las Vegas Hilton, the Flamingo Hilton and the Reno Hilton. Nevada State Gaming Control Board, Nevada Gaming Commission Order (Dec. 23, 1981) (Amendment No. 2 to Order of Registration).

117. Nevada State Gaming Control Board, Nevada Gaming Commission Order (Aug. 23, 1983) (In the matter of Hilton Hotels Corporation—Amendment No. 3 to Order of Registration) [hereinafter Commission Order, 1983].

118. Casino Control Act, 1982, Queensl. Stat. No. 78 (assented to Dec. 16, 1982).



complex.<sup>119</sup>

The criteria for an applicant for Nevada foreign gaming approval, which are specified in Nevada Revised Statute Section 463.710, in 1983 included:

- (a) The existence of a comprehensive, effective government regulatory system in the foreign jurisdiction;
- (b) Means, including agreements with foreign jurisdictions, for the [Nevada Gaming Commission] and the [Nevada State Gaming Control Board] to obtain adequate access to information pertaining to the gaming operations in which the licensee seeks to be involved and pertaining to any associate of the licensee in the foreign gaming operations;
- (c) Assurance that the licensee and his associates in the foreign gaming operations will recognize and abide by the conditions and restrictions imposed upon approval of participation;
- (d) Assurance that the right of Nevada to collect license fees will be adequately protected through an effective accounting system designed to prevent the undetected employment of techniques to avoid payment;
- (e) Assurance that the relationship of the licensee with any associate will pose no unreasonable threat to the interest of the State of Nevada in regulating the gaming industry within the state;
- (f) Other factors which are found to be relevant to the adequate protection of state-regulated gaming in Nevada.

For Hilton, the first test to be satisfied under this statute was whether the Queensland regulatory system was "comprehensive" and "effective." In September 1983, Hilton asked the Nevada gaming authorities for permission to initiate involvement in Queensland, making this determination necessary.

A report by the Gaming Division of the Nevada Attorney General's Office, released at the Nevada hearings on Hilton's application, compared the Nevada and Queensland gaming systems.<sup>120</sup> The Nevada

---

119. Hilton Hotels Corporation, application (records available in the offices of Assistant Counsel, Hilton Hotels Corporation, Las Vegas, Nevada). The resort is located on Broadbeach Island, three kilometers south of Surfer's Paradise on the Gold Coast Highway in Queensland.

120. Report on the Queensland, Australia Gaming Regulatory System by Nevada Attorney General's Office delivered at Nevada State Gaming Control Board hearing (Aug. 24, 1983) (available in the office of Nevada State Gaming Control Board, Carson City, Nevada).

report compared administrative structures, licensing procedures and qualifications, enforcement mechanisms, accounting controls, taxation, potential for criminal activity in the context of gaming operations and exclusion of unsuitable persons from gaming operations.

The Nevada report also developed five criteria as the standard by which to measure the Queensland system, stating, "[i]n our view, a system without these elements could not be comprehensive or effective even if implementation were of the highest quality. Whereas, a system which meets these criteria automatically meets certain regulatory standards . . . ."<sup>121</sup> Those criteria are:

1. Whether the system provides a workable method to screen undesirable elements from the gaming enterprise and ensure the continued integrity of the operation;
2. Whether the system provides a method to ensure that gaming operations are honest and reputable;
3. Whether the system is enforceable;
4. Whether the system can be administered effectively;
5. Whether the system recognizes gaming-related crimes.<sup>122</sup>

The Nevada report determined that the Queensland system met those criteria and could be expected to be effective. Therefore, the Nevada Gaming Commission permitted Hilton to "commence all appropriate action necessary to engage in gaming activities in Queensland, Australia."<sup>123</sup> This approval, however, was only temporary. The Commission cautioned that the approval "does not authorize or constitute Commission approval to participate in gaming in Queensland, Australia, and the Commission specifically reserves its determination as to such final approval."<sup>124</sup> The Commission stressed that final approval would not be granted unless both Hilton and Queensland complied "with all criteria specified in Nevada Revised Statute Section 463.710 . . . ."<sup>125</sup>

Not until two years later were the Nevada authorities prepared to consider final approval for both Queensland and Hilton. On October 24, 1985, the Nevada State Gaming Control Board recommended approval and the Nevada Gaming Commission assembled to consider the matter.

The Commission's initial inquiry was to determine if final ap-

---

121. *Id.* at 104.

122. *Id.* at 104-106.

123. Commission Order, 1983 *supra* note 117.

124. *Id.*

125. *Id.*

proval of Queensland as a gaming jurisdiction should be withheld based on any information made available since preliminary approval was issued two years earlier. Dennis Amerine, Chief of the Audit Division of the Nevada State Gaming Control Board and head of the state's investigative missions to Australia, presented a comprehensive report that found "the regulatory plan established by the Queensland Casino Control Act meets the fundamental criteria for the establishment of a comprehensive government regulatory system."<sup>126</sup>

The Nevada Gaming Commission accepted the report and granted approval for Queensland.<sup>127</sup> Before granting approval, however, Commission Chairman Paul Bible provided some insight about an unwritten factor that Nevada would consider before permitting a Nevada licensee to locate gaming operations anywhere outside the state. Chairman Bible stated: "[W]hen the legislature initially considered the Foreign Gaming Statute, one of the legislative concerns was that they were afraid of Nevada money being siphoned out of this state and going into another jurisdiction and causing Nevada operations not to be as healthy as they would be otherwise because money that is necessary to refurbish and keep . . . operations competitive would not stay in the State of Nevada."<sup>128</sup> Chairman Bible concluded: "I don't want Nevada operations to be dragged into a bankruptcy because of a licensee's activities somewhere else."<sup>129</sup>

The first witness supporting Hilton's application was the company's president and chief executive officer, Barron Hilton. He attempted to ease any concern about the Queensland venture and any resulting financial exposure for Nevada, saying: "I want you to know the total investment of Hilton Hotels Corporation [in Queensland] is approximately eight million American dollars. That compares with some \$550 million that we have invested in Nevada."<sup>130</sup>

After an extensive hearing, the Nevada Gaming Commission approved Hilton's Queensland involvement, but not without imposing stringent conditions designed to protect Nevada gaming.<sup>131</sup>

The first condition was creation of a "Compliance Committee" which was charged with establishing an internal reporting system that would "monitor activities of [Hilton] and its affiliates to identify and

---

126. *Hearing on Gaming Control in Queensland, Australia, Before the Nevada Gaming Commission* (Oct. 24, 1985) [hereinafter *1985 Hearing*].

127. *Id.* at 25.

128. *Id.* at 22.

129. *Id.* at 23.

130. *Id.* at 29.

131. Commission Order, 1983 *supra* note 117.

thus avoid objectionable associations."<sup>132</sup> The Compliance Committee is required to meet quarterly to review all Hilton activities and to transmit to the gaming authorities a certified report that includes:

A statement of any business association with any person found to be unsuitable; a statement regarding all material civil litigation instituted against [Hilton] or its affiliates; a statement of any formal criminal charges which have been filed against any director, officer or key employee of [Hilton], or its affiliates or the companies themselves; a statement regarding any formal allegations or charges by an officer or any government that Hilton Hotels Corporation, an affiliate or any director, officer or key employee has been or is in violation of any law; [and] a statement regarding any significant changes in the combined financial position of Hilton Hotels Corporation and its affiliates . . . .<sup>133</sup>

The Compliance Committee included top corporate officials and a Nevadan who had experience in the requirements of Nevada gaming control.<sup>134</sup> Hilton was also required to maintain a \$10,000 investigative fund for the discretionary use of the gaming authorities in monitoring Hilton's gaming activities in Queensland.<sup>135</sup>

Hilton's experience demonstrates that the heart of foreign gaming approval is "the existence of a comprehensive, effective government regulatory system in the foreign jurisdiction."<sup>136</sup> This is the one element that appears to be absent from cruise ship gaming. Prior to 1985, this lack of governmental enforcement barred any Nevada licensee from involvement in cruise ship gaming.

In 1985, in response to an announced interest in cruise ship gaming by various Nevada licensees, the Chairman of the Nevada Gaming Commission, Paul Bible, attempted to make cruise ship gaming approval procedurally possible. He requested that the Nevada State Legislature adopt a bill that granted gaming authorities discretion to waive the strict requirements of the foreign gaming statutes.<sup>137</sup> Spokesmen

---

132. 1985 Hearing, *supra* note 126, at 31.

133. *Id.*

134. *Id.* at 31, 32. The Nevadan, Raymond C. Avansino, Jr., of Reno, is a former member of the Nevada Gambling Commission. Mr. Avansino's work on the Compliance Committee led to his election to the Hilton Board of Directors, the first Nevadan to be so recognized. Hilton Hotels Corp., News Release 2 (May 8, 1986).

135. See 1985 Hearing, *supra* note 126, at 6.

136. NEV. REV. STAT. § 463.710 (1) (a) (1985).

137. See generally *Hearings On Senate Bill 231 Before the Nevada Senate Judiciary Committee*, (Apr. 2, 1985); *Hearings on Senate Bill 23 Before the Nevada Assembly Judiciary Committee* (May 15, 1985).

for the gaming industry gave strong backing to Chairman Bible's proposal.<sup>138</sup>

Respecting the request, the state legislature passed a bill that authorized the Nevada Gaming Commission to waive any requirement of the foreign gaming statutes, "if it makes a written finding that the waiver is consistent with the public policy of this state concerning gaming."<sup>139</sup> Although the waiver authority became law on July 1, 1985, licensees hesitated to apply for cruise ship gaming authority. In the two years after the legislative waiver authority was granted, no applications for cruise ship gaming had been processed by the Nevada gaming authorities.<sup>140</sup> Moreover, the Nevada gaming authorities did not place priority on processing cruise ship gaming applications. On May 30, 1985, a representative of the Nevada gaming authorities reviewed pending gaming regulation changes, many of them linked to 1985 legislative amendments. A regulation providing criteria for cruise ship gaming approval was not among those listed for state implementation.<sup>141</sup> As of July 1, 1987, the state still had not adopted regulations to deal with cruise ships gaming.

Nevada policy on cruise ship gaming approval will be forged in the course of the first application for such approval. From the state's viewpoint, there is a sound economic reason for this type of policy formulation. If the state institutes in the absence of an applicant, the taxpayer must bear the cost; if the policy is implemented in processing an application, the applicant bears the full expense.<sup>142</sup> It is assumed that the industry interest that prompted Chairman Bible to request legislative waiver authority in 1985 has not disappeared and that the inactivity in this area will not continue.

Despite the lack of a state policy on cruise ship gaming approval, however, Hilton's experience compared with Queensland's reveals the burden a cruise ship applicant may be required to carry before the Nevada gaming authorities.

The following characteristics may be reasonably anticipated with the first application by a Nevada licensee for cruise ship gaming approval:

---

138. See *supra* note 137 (remarks of David Russell and Robert D. Faiss before Senate Judiciary Committee).

139. 1985 NEV. STAT. ch. 562 § 2.

140. Interview with Michael Sargent, Director of Applicant Services, Nevada State Gaming Control Board (Aug. 25, 1987).

141. David Johnson, Chief Deputy Attorney General of the Gaming Division of the State of Nevada, Remarks at Eighth Annual Gaming Conference of the Nevada CPA Foundation for Education and Research in Las Vegas (May 30, 1986).

142. Nev. Gaming Comm'n. Reg. 4.070(1).

1. Approval, if it should be forthcoming, will take at least a year from application. Since precedent is established, Nevada will be extremely careful because it is apprehensive about the effectiveness of gaming control beyond its borders. As stated by the Nevada Supreme Court in *Nevada Tax Comm'n. v. Hicks*,<sup>143</sup> "Nevada gambling, if it is to succeed as a lawful enterprise, must be free from the criminal and corruptive taint acquired by gambling beyond our borders."<sup>144</sup>
2. The new waiver authority will be utilized only if some provision of the foreign gaming statute is incapable of performance and the waiver is consistent with state gaming policy goals.
3. If a foreign government has jurisdiction over the gaming operation, there must be an agreement between that government and the Nevada gaming authorities allowing Nevada to obtain necessary information.
4. Approval may be limited such as for the number of voyages or the period of time, allowing Nevada to determine the need for revisions. During this test period, the licensee may be required to have a Nevada enforcement agent present from time to time.
5. Activities of the licensee will be intensely scrutinized. Approval will be granted only if it is clear that the licensee is trustworthy and competent and that the new operation will not substantially dilute the financial or management resources of the Nevada operation.
6. The owner of the cruise ship and its non-gaming management will be subjected to some level of investigative review.
7. Unless casino personnel are subject to licensing by the foreign jurisdiction, they will be subjected to some level of investigative review.
8. The casino's internal accounting, administrative and management controls must be adequate to prevent any reasonable possibility of misconduct.
9. Casino audits will be required at the licensee's expense. These audits will provide information for the Nevada regulators and will be conducted by independent certified public accountants or acceptable foreign equivalent.

---

143. 73 Nev. 115, 310 P.2d 852 (1957).

144. 73 Nev. at 117, 310 P.2d. at 854.

10. If the licensee does not already have a Compliance Committee and an internal reporting system similar to those created by Hilton during the Queensland undertaking, he will be required to follow the Hilton example. This will probably include membership of a Nevadan on the Compliance Committee who is knowledgeable about Nevada gaming law.
11. If a test period is invoked, restrictions on betting limits may be imposed.
12. Use of slot machines and gaming devices may be restricted to those manufactured by companies licensed by Nevada.
13. The licensee must create and maintain an investigation fund for the discretionary use of the Nevada gaming authorities.
14. A comprehensive comparison of the proposed cruise ship gaming operation with existing operations on other ships may be required. If safeguards are present in the other operations, the applicant may be required to justify the absence of those safeguards.

It may seem that Nevada's efforts to control gaming beyond its territorial borders is overreaching. Indeed, the foreign gaming statutes have not been immune to criticism. One commentator has questioned whether those statutes could withstand constitutional scrutiny.<sup>145</sup> The thrust of the question is whether the Nevada statutes unduly burden interstate commerce or conflicts with the United States Constitution's Supremacy Clause.<sup>146</sup>

If the foreign gaming statutes suffer some constitutional infirmity, it is doubtful that any Nevada licensee will wish to challenge them. Judgment by the Nevada Supreme Court could take two years and a decision favorable to the state would place the licensee back to the starting point to deal with regulators who have little reason to favor him.

Considering the effect of Nevada's foreign gaming statutes on the potential growth of cruise ship gaming is significant because many of

---

145. Anthony N. Cabot, *Constitutional Considerations in Gaming Law*, Remarks at Annual Conference of the National Association of Gaming Attorneys, Nassau, Bahamas (March 9, 1984).

146. U.S. CONST. art. I, § 8, cl. 1. The discussion of this issue is beyond the scope of this article. Cases which may have an impact on this issue include *Ammex Warehouse Company of San Ysidro, Inc. v. Dept. of Alcoholic Beverage Control For the State of California*, 224 F. Supp. 546 (S.D.N.Y.), *aff'd*, 378 U.S. 124 (1963), *Hostetter v. Idlewild Bon Voyage Liquor Corp.*, 377 U.S. 324 (1963), *aff'g* 212 F. Supp. 376 (S.D.N.Y. 1962).

the major companies in the gaming industry are subject to those statutes.<sup>147</sup> Although approval for cruise ship gaming can be expected to be difficult to obtain, the innovative spirit of Nevada's gaming authorities in Hilton's Queensland approval promises no necessary administrative delays or obstacles.

A legislative action in 1987 further assured that a proper application by a Nevada licensee to become involved in cruise ship gaming would not be unnecessarily hindered. On April 14, 1987, Nevada Revised Statute Section 463.710 was amended to remove "[t]he existence of a comprehensive, effective government regulatory system in the foreign jurisdiction" as a specified factor to be considered by the Nevada gaming authorities in considering a foreign gaming application.<sup>148</sup>

Cruise ship gaming was not the objective of the amendment. Rather, the objective was to better enable Nevada licensees to become involved in gaming in less-developed jurisdictions. As explained by William C. Lebo, Jr., Senior Vice President and General Counsel of Hilton Hotels Corporation: "The specification of this factor has been considered a requirement that the foreign regulatory system must be comparable to Nevada's. As the industry seeks to move into less-developed countries, it will be difficult—if not impossible—to satisfy this factor."<sup>149</sup> However, any application for cruise ship gaming will be a beneficiary of this amendment, as it lessens the focus on a government regulatory system as a licensing factor.

#### CONCLUSION

Gaming on the high seas has had a long and colorful history. Its future, however, may be more colorful and more extensive. The gaming industry's search for new jurisdictions should result in continuing expansion of gaming on cruise ships in the future.

Laws of the United States and its individual states, particularly those of Nevada, will influence how Americans become involved in any cruise ship gaming operation. Moreover, they will influence how one gets involved in gaming aboard a United States flag carrier. The uniqueness of gaming aboard ocean vessels can be expected to cause novel laws and policies, although core requirements will continue to be an honest and fair operation for the bettor and profit for the operator.

---

147. U.S. CONST. art. 6, cl. 2. The Bretton Woods Agreement of 1945, 60 Stat. 1401 (1945), 22 U.S.C. § 286 *et seq.*, commits the United States to elimination of restrictions on international trade.

148. 1987 NEV. STAT. ch. 78.

149. Testimony before the Nevada State Senate and Assembly Committees on Judiciary on A.B. 178, Carson City, Nevada, March 11, 1987.



