

MEMORANDUM

To: Peter C. Bernhard, Chairman, Nevada Gaming Commission
Arthur Marshall, Commissioner, Nevada Gaming Commission
Sue Wagner, Commissioner, Nevada Gaming Commission
Radha Chanderraj, Commissioner, Nevada Gaming Commission
John Moran, Jr., Commissioner, Nevada Gaming Commission

From: Marc Warren, Senior Research Specialist
Nevada Gaming Commission

Date: July 22, 2004

Re: *Statutory and regulatory changes to legalize (1) nonrestricted gaming at restricted locations and other nontraditional venues within the State of Nevada via communications technology, other than the Internet (“intrastate remote gaming”), and (2) interstate off-track pari-mutuel horse wagering*

I. INTRODUCTION:

As you know in May and in June, presentations were made and discussions were held with respect to whether or not permitting the use of communications technology, *other than the Internet*, to allow for the expansion of nonrestricted gaming, *including race and sports book wagering*, strictly from within Nevada (“intrastate remote gaming”) would be consistent with the public policy of Nevada concerning gaming as set forth in NRS 463.0129. Among the various locations mentioned for expansion of intrastate remote gaming during the May and June meetings were the hotel rooms, lobbies, poolside, restaurants, etc., situated upon the premises of a nonrestricted licensee, as well as restricted gaming locations and other nontraditional venues away from the premises of nonrestricted licensees.

Although difficult to prepare this memo without inadvertently considering the public policy of Nevada with respect to gaming, it serves to provide an analysis of the statutory and regulatory changes which should be made if the State Gaming Control Board (Board) and Nevada Gaming Commission (Commission) or, for that matter, the Nevada Legislature¹ find that intrastate remote gaming is consistent with Nevada’s public policy concerning gaming. Additionally, since intrastate remote gaming on race and sporting events is legally permissible under Regulation 22, whereas all other types of

¹ The Nevada Legislature may ultimately have to be called upon to amend the public policy concerning gaming prescribed in NRS 463.0129 before intrastate remote gaming is allowed.

nonrestricted intrastate remote gaming currently are not, this memo not only addresses them separately.

II. INTRASTATE REMOTE RACE BOOK AND SPORTS POOL - ACCOUNT WAGERING PER REGULATION 22.140

With this in mind, regarding intrastate remote race book and sports pool wagering, as I indicated during the May meeting, account wagering via the telephone has been a permissible means of facilitating the placement of such wagers from within Nevada since, at least, October 1972, pursuant to Regulation 22. Additionally, with the amendments to Regulation 22 in November 1998, other forms of “communications technology”, *other than the Internet*², were sanctioned for use in facilitating the placement of such wagers. As a result, there are some nonrestricted race and sports book operators that now accept race and sports book account wagers by, not only telephone, but also by closed-loop computer systems³. More importantly, for purposes of this memo, a couple of these licensees would now like to expand race and sports book account wagering to hotel rooms and other nontraditional gaming areas of nonrestricted gaming establishments as well as to restricted gaming locations through the use of kiosks⁴.

² Specifically, Regulation 22.140 permits “books” to accept wagers which are transmitted via “*communications technology*”, *other than the Internet*, which are approved by the Board Chairman from persons who have established wagering accounts, so long as the book demonstrates to the Chairman’s satisfaction that all transmissions of such wagers will originate from within Nevada. Regulation 22.010(5), specifically, defines “communications technology” as “the methods used and the components employed to facilitate the transmission of information including, but not limited to, transmission and reception systems based on wire, cable, radio, microwave, light, optics, or computer data networks. The term does *not* include the internet.”

³ However, before a bet can be executed, the patron must first establish a wagering account and deposit any funds he wishes to bet in the account. Moreover, the patron must carry a beeper-type device that employs a personal identification number, or PIN. I also pointed out during the May meeting that, since a wagering account must first be established, there is compliance with Regulations 6, 6A and 22 because the exchange of funds, i.e., the wager, actually occurs at the book.

⁴ For example, as set forth in a memorandum provided to you dated May 14, 2004, American Wagering, Inc. (AWI) is presently seeking additional administrative approval to expand kiosk wagering. (As you know, AWI has received approval to place and has placed upright and sit-down, self-service kiosks in various books within the State of Nevada. These kiosks allow a person to place a race or sports book wager utilizing cash, vouchers, winning tickets and/or money on deposit in a wagering account established pursuant to Regulation 22.140). Specifically, pursuant to a letter to Chairman Neilander, AWI has requested permission to use *hotel room* and portable/wireless kiosks equipped with a biometric fingerprint reader to enable wagering from hotel rooms and elsewhere *upon the premises* of a nonrestricted licensee. The kiosks would be configured to restrict wagering to those patrons who have opened a front-money wagering account, i.e., no wagers could be placed with cash, vouchers and/or winning tickets.

Additionally, as you know, Virtgame, Inc.’s SBX System has been on *field trial* at various bar/tavern restricted locations. The SBX System also employs a kiosk to facilitate race and sports book wagering. Before a person may place a bet through one of the kiosks, he must first open a front-money wagering account at a participating book and obtain a personal identification number, or PIN, from the book which must be input in order to activate the kiosk and place a wager. If a person would like to review the betting lines of more than one participating books, he must establish a separate wagering account and obtain a separate PIN from each book. Each time an account holder enters a PIN and utilizes a kiosk, a transaction fee (approximately \$1.00) is debited against his wagering account.

From a statutory and regulatory standpoint, there is nothing that would prohibit such expansion of intrastate remote race and sports book account wagering via Regulation 22. *See* Footnote # 2 above. (In fact, when the Nevada Legislature enacted the interactive gaming statutes in 2001⁵, since regulations must be adopted before “interactive gaming” may take place, i.e., “enabling” legislation, it exempted race and sports book account wagering conducted pursuant to Regulation 22 from the definition of “interactive gaming” thus, ensuring that intrastate remote race and sports book account wagering is in no way restricted.)

However, this does not necessarily mean that if the Chairman of the Board were to administratively approve new types of race and sports book communications technology, such as kiosks, etc., pursuant to Regulation 14, that he should not limit the locations where such communications technology may be installed or used for account wagering purposes, in light of the public policy of Nevada concerning gaming and the trend to restrict “convenience”⁶ gaming. As you may recall, during the May meeting, both Chairmen Bernhard and Neilander expressed reservations regarding allowing race and sports book account wagers to be made from hotel rooms of nonrestricted gaming establishments as proposed by Tim Lockinger, CFO of American Wagering, Inc. Additionally, Chairman Neilander indicated that during legislative hearings relative to the gaming salon bill which became law in 2001, the Nevada Legislature made a determination that private gaming salon wagering should not occur in a *hotel room* and, accordingly, the underlying regulation, Regulation 5.200, expressly prohibits the establishment of a gaming salon in “a room available for sleeping or living accommodations”.

With this in mind, it may be prudent for the Board and Commission, should it permit the expansion of intrastate remote race and sports book account wagering pursuant to Regulation 22, to define, by regulation, where and under what circumstances and conditions, if any, such wagering may occur.

III. INTRASTATE REMOTE NONRESTRICTED GAMING (OTHER THAN RACE BOOK AND SPORTS POOL ACCOUNT WAGERING)

A. Introduction:

First and foremost, unless otherwise indicated, the following analysis is strictly limited to *all other types* of nonrestricted gaming other than race and sports book wagering. Accordingly, for purposes of the balance of this memo, unless otherwise indicated, “intrastate remote gaming”, as defined above, *no longer* includes race and sports book account wagering.

⁵ The interactive gaming statutes are codified at NRS 463.550 to 463.790, inclusive.

⁶ As you know, a prime example of the trend to restrict where gaming may be conducted is set forth in Regulation 3.015 which, as of February 2000, limited restricted gaming to bars, convenience stores, grocery stores and drug stores.

As you may recall, Board Member Scherer suggested in May that the Nevada Legislature in adopting the interactive gaming statutes⁷ in 2001 may have already vested the Commission with the authority to adopt regulations that would enable some, if not all, of these proposed intrastate remote gaming concepts to become a reality.

Moreover, Chairman Bernhard also indicated in May that “interactive gaming”, as defined by the Nevada Legislature in 2001 “*doesn’t say Internet gaming. So interactive gaming could easily encompass the intrastate type of gaming that we’re talking about today.*” In fact, Chairman Bernhard, in analyzing the three conditions, which the Commission must find can be complied with before it may adopt regulations pursuant to NRS 463.750⁸ governing the licensing and operation of interactive gaming, concluded that the first two conditions may already be met⁹. Accordingly, assuming, as we have for purposed of this memo, that the third condition or prerequisite finding is met, i.e., that intrastate remote gaming is consistent with the public policy concerning gaming, to echo Chairman Bernhard’s comments, it is imperative that the interactive gaming statutes be analyzed and a determination be made as to whether or not intrastate remote gaming is legally permissible under those statutes¹⁰.

B. Applicability of Interactive Gaming Statutes:

An analysis of the interactive gaming statutes starts with an analysis of the definition of “interactive gaming”. Specifically, “interactive gaming” is defined in subsection 1 of NRS 463.016425 as:

⁷ Again, these statutes are codified at NRS 463.750 to 463.790, inclusive, and are often referred to as “enabling” legislation given that the Commission, pursuant to subsection 1 of NRS 463.750 “may, with the advice and assistance of the Board, adopt regulations governing the licensing and operation of interactive gaming.”

⁸ Specifically, subsection 2 of NRS 463.750 expressly provides that:

“2. The Commission may not adopt regulations governing the licensing and operation of interactive gaming until the Commission first determines that:

- (a) Interactive gaming can be operated in compliance with all applicable laws;
- (b) Interactive gaming systems are secure and reliable, and provide reasonable assurance that players will be of lawful age and communicating only from jurisdictions where it is lawful to make such communications; and
- (c) Such regulations are consistent with the public policy of the State to foster the stability and success of gaming.”

⁹ Specifically, with respect to the first two conditions (as set forth in Footnote #8), Chairman Bernhard noted that “*the compliance with applicable laws section is not – does not have the same ramifications when we’re talking about intrastate as it does when we’re talking about interstate.*” Moreover, he indicated that based upon the presentations and discussions during prior Commission meetings exploring the three conditions that, with respect to the second condition, “*the technology is either there or almost there to provide the protections for security and reliability. It’s there or almost there to provide the age verification and to make sure that the border control provisions can be followed.*”

¹⁰ Specifically, Chairman Bernhard concluded that the focus now is and should be on issues raised pursuant to Nevada’s public policy concerning gaming when he stated that “*we’re really to the issue of policy.*” And in concluding, he stated “[*s*]o that is the framework, and Member Scherer is absolutely correct that as we consider what statutory and regulatory amendments might be required, we have to look at that statute and see if what we’re talking about is already permitted if the Board and the Commission decides that the policy of the State of Nevada is furthered by allowing these types of things.”

“[T]he conduct of gambling games through the use of *communications technology* that allows a person, utilizing money, checks, electronic checks, electronic transfers of money, credit cards, debit cards or any other instrumentality, to transmit to a *computer* information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes or other similar information. *The term does not include the operation of a race book or sports pool that uses communications technology approved by the Board pursuant to regulations adopted by the Commission to accept wagers originating within this state for races or sporting events.*

Additionally, subsection 2 of that very same statute defines “communications technology” for purposes of “interactive gaming” to include:

“[A]ny method used and the components employed by an establishment to facilitate the transmission of information, including, without limitation, transmission and reception *by systems based on wire, cable, radio, microwave, light, optics or computer data networks, including, without limitation, the Internet and intranets.*

Hence, it is reasonable to conclude that any computer system which, through its components (e.g., hardware, software, communications technology, other associated equipment, etc.), allows a patron to wager from a remote location, including from *within* Nevada, would constitute an “interactive gaming system”¹¹ and, thus, NRS 463.750 et. al. provide the Commission with the statutory authority to adopt regulations governing the licensing and operation *computer-based* intrastate remote gaming systems, again, so long as, at a minimum, from a public policy perspective, such gaming is permissible¹².

C. Implementation of Mandatory Regulations per Subsection 3 of NRS 463.750:

With respect to adoption of the mandatory interactive gaming regulations prescribed in subsection 3 of NRS 463.750, which, in turn, would allow for intrastate remote gaming, the following statutory and regulatory changes would *need* to be made in order to implement those provisions:

- 1) ***Establishment of the investigative fees for a license to operate interactive gaming, manufacture interactive gaming systems, and manufacture equipment associated with interactive gaming systems (See NRS 463.750(3)(a)):***

¹¹ The term “interactive gaming system” has not been defined but is required to be defined if interactive gaming regulations are adopted. (See subsection (3)(f) of NRS 463.750.)

¹² Since the remote gaming would strictly occur on an *intrastate* basis, the first condition set forth in subsection 2(a) of NRS 463.750 (see Footnote # 8 above) is not an issue since federal laws, primarily, the Wire Act would *not* apply. Moreover, as Chairman Bernhard indicated in May, the second condition prescribed in subsection 2(b) of NRS 463.750 probably can be complied with (see Footnote #s 8 & 9).

No statutory or regulatory changes are necessary, since subsection 5 of Regulation 4.070¹³ contain the requisite language.

- 2) ***Provide that a person must hold a license as a manufacturer of interactive gaming systems to provide or supply such systems (See NRS 463.750(3)(b)(1)):***

No statutory or regulatory changes are necessary, since “manufacturer”, as defined in NRS 463.0172, includes a person who “[m]anufactures, assembles, programs or makes modifications to a gaming device, cashless wagering system or ***interactive gaming system***”, and NRS 463.650¹⁴, specifically, requires a manufacturer of interactive gaming systems to procure all necessary *state* and local licenses.

- 3) ***Provide that a person may be required to hold a license as a manufacturer of equipment associated with interactive gaming (See NRS 463.750(3)(b)(2)):***

NRS 463.665¹⁵ must be amended to incorporate “manufacturer of equipment associated with interactive gaming” therein. Additionally, the Commission must either amend Regulation 14.020¹⁶ or adopt a new section in Regulation 14 that contains the discretionary licensing language.

NOTE: With respect to the ***mandatory*** licensing of a “manufacturer of interactive gaming systems” and the ***discretionary*** licensing of a “manufacturer of equipment associated with interactive gaming”, the distinction reflects the different historical

¹³ Subsection 5 of Regulation 4.070 states:

“5. In addition to any nonrefundable application fees paid, the board may require an applicant to pay such supplementary ***investigative fees*** and costs as may be determined by the board. The board may estimate the supplementary investigative fees and costs and require a deposit to be paid by the applicant in advance as a condition precedent to beginning or continuing an investigation.”

¹⁴ Subsection 1 of NRS 463.650 provides:

“1. Except as otherwise provided in subsections 2 to 5, inclusive, it is unlawful for any person, either as owner, lessee or employee, whether for hire or not, to operate, carry on, conduct or maintain any form of manufacture, selling or distribution of any gaming device, cashless wagering system or ***interactive gaming system*** for use or play in Nevada or for distribution outside of Nevada without first procuring and maintaining all required federal, state, county and municipal licenses.”

¹⁵ NRS 463.665 reads as follows:

“1. A manufacturer or distributor of associated equipment who sells, transfers or offers the associated equipment for use or play in Nevada ***may be required*** by the Commission, upon recommendation of the Board, to file an application for a finding of suitability to be a manufacturer or distributor of associated equipment.

2. Any person who directly or indirectly involves himself in the sale, transfer or offering for use or play in Nevada of such associated equipment who is not otherwise required to be licensed as a manufacturer or distributor ***may be required*** by the Commission, upon recommendation of the Board, to file an application for a finding of suitability to be a manufacturer or distributor of associated equipment.

3. If an application for a finding of suitability is not submitted to the Board within 30 days after demand by the Commission, it may pursue any remedy or combination of remedies provided in this chapter.”

¹⁶ Subsection 1 of Regulation 14.020, which does not address associated equipment, provides:

“1. A person may act as a manufacturer or distributor, or as an operator, only if that person holds a license specifically permitting the person to act as a manufacturer or distributor, or as an operator except as provided for in NRS 463.160(2).”

licensing treatment of manufacturers of associated equipment versus manufacturers of gaming devices as currently set forth in NRS 463.665 and NRS 463.650, respectively. (See Footnotes # 14 and 15)¹⁷. Additionally, for purposes of this memo, as set forth below, the distinction would have to be incorporated into Regulation 14 relative to the approval of “interactive gaming systems” and “equipment associated with interactive gaming”, i.e., interactive gaming systems should be subject to Commission approval, whereas equipment associated with interactive gaming should only require approval by the Chairman of the Board.

- 4) ***Set forth standards for the suitability of a person to be licensed as a manufacturer of interactive gaming systems or manufacturer of equipment associated with interactive gaming that are as stringent as the standards for a nonrestricted license(See NRS 463.750(3)(c)):***

Since no regulation exists setting forth such standards, the Commission must adopt a new regulation that set forth the standards for suitability and should consider amending NRS 463.170, if it deems it necessary to subject “manufacturers of interactive gaming systems” and/or “manufacturers of equipment associated with interactive gaming”, to:

- (a) ***Additional*** standards, other than those set forth in subsection 2 of NRS 463.170¹⁸, that are specific to manufacturers of interactive gaming systems and equipment associated with interactive gaming¹⁹; or

¹⁷ This distinction was clearly understood by the Nevada Legislature when enacting the interactive gaming statutes as not only reflected in the foregoing mandatory regulatory provisions but, also, as expressed by Chairman Neilander during the enactment process. Specifically, the legislative history summarizing Chairman Neilander’s testimony before the Senate Committee on Judiciary relative to a proposed amendment to the definition of “interactive gaming” and “communications technology” provides:

“Additionally, he said the amendment clarifies there is a ‘manufacturer’ of a system and anyone else who has anything to do with the system is a ‘manufacturer of associated equipment.’ ***That puts it more in line with how we treat gaming devices today,’ he said”***

In appearing before the same committee at a later date, the legislative history again summarizes Chairman Neilander’s testimony as follows:

“He said two categories will remain: the ‘manufacturer,’ a specifically defined category; or, for anything else associated with it, the ‘associated equipment’ category. Mr. Neilander explained associated equipment concerns would be primarily accounting-type software designed to keep track of credits and other things not associated with the actual functioning of the game itself.”

¹⁸ Subsection 2 of NRS 463.170 provides in full:

“2. An application to receive a ***license*** or be found suitable ***must not be granted unless the Commission is satisfied that the applicant is:***

- (a) A person of good character, honesty and integrity;
- (b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming or charitable lotteries, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or charitable lotteries or in the carrying on of the business and financial arrangements incidental thereto; and
- (c) In all other respects qualified to be licensed or found suitable consistently with the declared policy of the State.”

(b) The licensing standards set forth in subsection 3 of that statute²⁰.

- 5) ***Provide that gross revenue received by an establishment from the operation of interactive gaming is subject to the same license fee provisions of NRS 463.370 as the games and gaming devices of the establishment (See NRS 463.750(3)(d)):***

Although the applicability of NRS 463.370 to gross revenues received “from the operation of interactive gaming” is inferred per subsection 1 of NRS 463.770²¹, a new regulation, which sets forth the necessary language, must be adopted by the Commission.

- 6) ***Set forth standards for the location and security of the computer system and for approval of hardware and software used in connection with interactive gaming (See NRS 463.750(3)(e)):***

To effectuate such standards, the Commission must:

- Amend Regulation 14.050²² to incorporate the term “interactive gaming systems” and, thereafter, the Board, pursuant to this amendment, must adopt and publish technical standards for interactive gaming systems that, among other things, set forth the standards pertaining to such things as the location and security of the computer system, control program requirements, etc.;

- Adopt and/or amend various sections of Regulation 14 that address the evaluation, field testing/trial, final approval, summary suspension of approvals, and maintenance of new and modified interactive gaming systems and equipment associated with interactive gaming by the Board which reflect, among other things, the historical distinction between Commission approval of new games and gaming devices and administrative approval of associated equipment, i.e., interactive gaming systems should be subject to Commission

¹⁹ Moreover, subsection 2 of NRS 463.170 certainly would capture “manufacturers of interactive gaming systems” and “manufacturers of equipment associated with interactive gaming”, since the term “license” as defined in NRS 463.0165 includes a “gaming license” which, pursuant to NRS 463.0159 means “any licensee issued . . . pursuant to this chapter”

²⁰ Subsection 3 of NRS 463.170 only applies to applicants for licenses to operate gaming establishments or inter-casino linked systems, not to manufacturers of any kind. Specifically, it reads as follows:

“3. A license to ***operate a gaming establishment or an inter-casino linked system*** must not be granted unless the applicant has satisfied the Commission that:

(a) The applicant has adequate business probity, competence and experience, in gaming or generally; and

(b) The proposed financing of the entire operation is:

(1) Adequate for the nature of the proposed operation; and

(2) From a suitable source.

↳ Any lender or other source of money or credit which the Commission finds does not meet the standards set forth in subsection 2 may be deemed unsuitable.

²¹ Subsection 1 of NRS 463.770 expressly states:

“1. All ***gross revenue*** from ***operating interactive gaming*** received by an establishment licensed to operate interactive gaming, regardless of whether any portion of the revenue is shared with another person, must be attributed to the licensee and counted as part of the gross revenue of the licensee for the purpose of computing ***the license fee*** required by ***NRS 463.370***.”

²² Subsection 1 of Regulation 14.050 provides:

“1. The chairman shall publish technical standards for approval of new gaming devices, on-line slot metering systems, and cashless wagering systems.”

approval, whereas equipment associated with interactive gaming should only require approval by the Chairman of the Board; and

- ***Either:*** (1) Amend Regulation 14.040 -- “Minimum standards for gaming devices” – to incorporate the term “interactive gaming systems” and include additional minimum standards specific to interactive gaming systems, including, but not limited to, ***requiring such systems must be limited for play strictly to persons within Nevada*** and requiring the “communications technology” used by a patron displays the rules of play and payoff schedule for every game, unless otherwise provided to the patron, ***and/or,*** (2) by separate regulation, establish “minimum standards for interactive gaming systems”.

7) ***Define “equipment associated with interactive gaming,” “interactive gaming system,” “manufacturer of equipment associated with interactive gaming,” “manufacturer of interactive gaming systems,” “operate interactive gaming” and “proprietary hardware and software” (See NRS 463.750(3)(f)):***

The Commission must amend Regulation 14.010 to include these definitions and, where appropriate, such definitions should provide that ***interactive gaming is strictly limited for play by persons within Nevada***²³.

D. Additional Statutory Changes:

Additionally, in order to rectify any inconsistencies in existing laws and regulations and to further ensure that intrastate remote gaming is subject to the same regulatory oversight as the gaming operations conducted at nonrestricted gaming establishments, including, but not limited to, Regulation 6 and 6A, the following ***statutory*** amendments ***should*** and, arguably, need be made:

1) ***NRS 465.094***²⁴ – With respect to the statutes that make it a crime to accept (NRS 465.092) or place (NRS 465.093) wagers from ***within*** this state through “mediums of communications”, an exception for intrastate remote gaming wagers made via interactive gaming systems needs to be included in NRS 465.094.

²³ Additionally, the terms that need to be defined should, except for “manufacturer of interactive gaming system” probably be included among the definitions set forth in NRS Chapter 463 under the “General Provisions” heading. “Manufacturer of interactive gaming system” has already been incorporated into the definition of “manufacturer” set forth in NRS 463.0172.

²⁴ NRS 465.094 reads as follows:

“The provisions of NRS 465.092 and 465.093 do not apply to a wager placed by a person for his own benefit or, without compensation, for the benefit of another that is accepted or received by, placed with, or sent, transmitted or relayed to:

1. A race book or sports pool that is licensed pursuant to chapter 463 of NRS, if the wager is accepted or received within this state and otherwise complies with all other applicable laws and regulations concerning wagering;

2. A person who is licensed to engage in off-track pari-mutuel wagering pursuant to chapter 464 of NRS, if the wager is accepted or received within this state and otherwise complies with subsection 3 of NRS 464.020 and all other applicable laws and regulations concerning wagering; or

3. Any other person or establishment that is licensed to engage in wagering pursuant to title 41 of NRS, if the wager is accepted or received within this state and otherwise complies with all other applicable laws and regulations concerning wagering.”

- 2) **NRS 463.160²⁵** - Subsections 1(a) and 3 should be amended to include “interactive gaming system” in order to clarify, among other things, that it is unlawful to operate such a system without first procuring the necessary local and state licenses.
- 3) **NRS 463.305²⁶** – Subsection 1 should be amended to include the term “interactive gaming system” in order to subject a licensee to disciplinary action if a system has not been approved for testing or operation. Additionally, subsection 2 should be amended to require the Board to maintain a list of approved interactive gaming systems.
- 4) **NRS 463.651 to 463.653, inclusive** – These statutes should be amended to, among other things: (i) require persons who apply for the issuance or renewal of a license as a “manufacturer of interactive gaming systems” to submit a child support statement (NRS 463.651(1) and (2)), and (ii) prohibit issuance or renewal of such a license (NRS 463.651(3)) as well as suspension thereof (NRS 463.652(1)) if such statement is not filed or the person is subject to a court order for child support.

E. Additional Regulatory Changes:

In addition to the aforementioned statutory changes, the Commission should consider adopting new regulations or amending existing regulations that:

²⁵ NRS 463.160 provides in pertinent part:

“1. Except as otherwise provided in subsection 4 and NRS 463.172, it is unlawful for any person, either as owner, lessee or employee, whether for hire or not, either solely or in conjunction with others:

(a) To deal, operate, carry on, conduct, maintain or expose for play in the State of Nevada any gambling game, gaming device, inter-casino linked system, slot machine, race book or sports pool;

(b) To provide or maintain any information service;

(c) To operate a gaming salon; or

(d) To receive, directly or indirectly, any compensation or reward or any percentage or share of the money or property played, for keeping, running or carrying on any gambling game, slot machine, gaming device, race book or sports pool,

without having first procured, and thereafter maintaining in effect, all federal, state, county and municipal gaming licenses as required by statute, regulation or ordinance or by the governing board of any unincorporated town.

3. Except as otherwise provided in subsection 4, it is unlawful for any person knowingly to permit any gambling game, slot machine, gaming device, inter-casino linked system, race book or sports pool to be conducted, operated, dealt or carried on in any house or building or other premises owned by him, in whole or in part, by a person who is not licensed pursuant to this chapter, or his employee.”

²⁶ NRS 463.305 reads as follows:

“1. Any person who operates or maintains in this state any gaming device of a specific model, any gaming device which includes a significant modification, or any inter-casino linked system which the Board or Commission has not approved for testing or for operation is subject to disciplinary action by the Board or Commission.

2. The Board shall maintain a list of approved gaming devices and inter-casino linked systems.

3. If the Board suspends or revokes approval of a gaming device pursuant to the regulations adopted pursuant to subsection 4, the Board may order the removal of the gaming device from an establishment.

4. The Commission shall adopt regulations relating to gaming devices and their significant modification and inter-casino linked systems.”

- 1) Address the application process, including, such things as the contents of an application for approval of an interactive gaming system, the circumstances in which an application for a preliminary determination that a new interactive gaming system meets the standards required by Regulation 14 shall or may be filed, etc.

- 2) Clarify that establishments eligible for a license to operate an interactive gaming system, i.e., establishments that, at a minimum hold a nonrestricted license to operate games and gaming devices, which applies for such a license are subject to the multiple licensing criteria provisions in Regulation 3.070.

- 3) From an *operations* standpoint, require a nonrestricted gaming establishment licensed to operate interactive gaming to:
 - (a) Provide the board prior to commencing operations of an interactive gaming system with a list of all persons who may access the main computer or data communications components of its system;
 - (b) Establish and maintain with the board a revolving fund, in an amount not to exceed, for example, \$10,000, for the purpose of funding periodic testing and evaluation of the interactive gaming system by the board²⁷;
 - (c) At the request of the chairman, provide and maintain, at its sole expense and at such location as the chairman may designate, a terminal and printer for the purpose of monitoring information regarding the system including, but not limited to, the names of persons accessing the main computer or data communication components of the system and the identification of functions being performed by such person;
 - (d) Retain and provide board agents, upon request, all records pertaining to its interactive gaming system;
 - (e) To comply with the internal control requirements for Group I licensees, even if, by definition, it is a Group II licensee under Regulation 6. Additionally, the Commission may want to adopt a regulation that, as in the case of operators of inter-casino linked systems, requires, among other things, the licensee to also prepare and submit a separate written internal control system which describes the operation of its interactive gaming system and also requires the written system to be amended, at the discretion of the Chairman of the Board, to reflect any other requirements consistent with Regulation 6; and
 - (f) Not accept a wager through its interactive gaming system from patrons who do *not* utilize a credit card to fund their wagers²⁸, until such time as such patrons appear in person and open up a wagering account which would, thus, enable wagers to be captured by Regulation 6A. In addition, the regulation should include provisions similar to what is set forth in Regulation 22.140 with respect to race and sports book account wagering, including, among other things, requiring and verifying identifying information, recording of the approved credit limit or the amount of the initial front money deposit, and various attestation provisions.

²⁷ The statutory authority is set forth in subsection 5 of NRS 463.670.

²⁸ NRS 463.3557 states:

“1. *Except as otherwise provided in subsection 2*, an electronic transfer of money from a financial institution directly to a game or gaming device may not be made with a credit card.

2. *The provisions of subsection 1 do not apply to an interactive gaming system.*”

4) From an intrastate remote gaming *systems* perspective, require the communications technology used by patrons to be programmed to, at the very least, display the toll-free number of the National Council on Problem Gambling or a similar entity approved by the Chairman of the Board²⁹.

F. Other Statutory and Regulatory Changes IF License to Operate Interactive Gaming is a “Nonrestricted License:

The definition of “nonrestricted license”, prescribed in NRS 463.0177, makes no reference to a license for the operation of an interactive gaming system. However, given that “restricted license” is defined in NRS 463.0189 as only a “license for, or an operation consisting of, not more than 15 slot machines and no other games or gaming devices at an establishment in which the operation of slot machines is incidental to the primary business of the establishment” and, also, given the fact that, pursuant to Regulation 4.130(1)(b), a nonrestricted licensee is “[a]ny licensee other than a restricted licensee”, it seems reasonable to conclude that a license to operate interactive gaming constitutes a “nonrestricted license”. Accordingly, to clear up any potential ambiguity, the definition of a “nonrestricted license” in NRS 463.0177 and Regulation 4.030(1)(b) should probably be amended to include separate subsections which confirm that a license to operate interactive gaming is, indeed, a nonrestricted license³⁰.

With this in mind, NRS 463.1605 probably should be amended to provide an exception. As you know, pursuant to NRS 463.1605, the Commission may *not* issue a *nonrestricted license*, other than for the operation of a race or sports book at an establishment which holds a nonrestricted license to operate games and gaming devices, *for an establishment* in a county whose population is 100,000 or more, unless the establishment is a “resort hotel”. Among other things, “resort hotel” is defined in NRS 463.01865 to require “*more than 200 rooms for sleeping accommodations.*” Accordingly, since it has been concluded above that a license to operate interactive gaming is a nonrestricted license, unless NRS 463.1605 is amended, it could potentially serve to prohibit the issuance of such a license to what would otherwise be a qualifying establishment.

Specifically, in a county with a population of *more than 100,000* but not more than 400,000, pursuant to subsection 4 of NRS 463.750³¹, an establishment may qualify

²⁹ Regulation 5.170 requires the toll-free number to be posted in or near gaming and cage areas and cash dispensing machines.

³⁰ If a license to operate interactive gaming does not constitute a “nonrestricted license”, certain statutes and regulations would not apply to such a licensee, such as Regulation 6, unless express provisions were incorporated therein relative to interactive gaming.

³¹ Subsection 4 of NRS 463.750 provides in full:

“4. Except as otherwise provided in subsection 5, the Commission shall not approve a license *for an establishment* to operate interactive gaming unless:

(a) In a county whose population is 400,000 or more, the establishment is a resort hotel that holds a nonrestricted license to operate games and gaming devices.

for a license to operate interactive gaming even if it does not have more than 200 hotel rooms. Hence, if NRS 463.1605 is not amended to take this into consideration and create an exception, then, technically, pursuant to that statute, the Commission could not consider an application for a nonrestricted license to operate interactive gaming. To rectify this inconsistency, it is, therefore, recommended that subsection 1 of NRS 463.1605 be amended to simply include as part of the introductory exception an additional exception. Specifically, subsection 1 could be amended to read: “*Except as otherwise provided in subsection 3 or in NRS 463.750, the Commission . . .*”

G. Consideration of Other Statutes and Regulations:

In preparing this analysis, it has been difficult to set aside and not consider the concerns expressed by some of the speakers that intrastate remote gaming could possibly lead to the expansion of gaming despite the trend to restrict the locations where gaming may be conducted (*see* Footnote #6) and without prospective licensees having to make the capital contributions that have been required to be made by nonrestricted licensees in counties with populations of 100,000 or more in accordance with the “resort hotel” requirement.

With respect to the concern regarding prospective interactive gaming licensees not having to make the investments that “bricks and mortar” casinos have had to make, so long as intrastate remote gaming is legalized pursuant to the interactive gaming statutes, this concern is somewhat moot.

As set forth in Footnote #31 above, pursuant to NRS 463.750, a license to operate interactive gaming can only be issued to an establishment in a county whose population is 100,000 or more, if the establishment, at a minimum, holds a nonrestricted license for games and gaming devices and meets all of the requirements of a “resort hotel”, save and except, the “more than 200” hotel room requirement which, pursuant to NRS 463.750,

(b) *In a county whose population is more than 40,000 but less than 400,000*, the establishment is a resort hotel that holds a nonrestricted license to operate games and gaming devices or *the establishment*:

- (1) Holds a nonrestricted license for the operation of games and gaming devices;
- (2) *Has more than 120 rooms available for sleeping accommodations* in the same county;
- (3) Has at least one bar with permanent seating capacity for more than 30 patrons that serves alcoholic beverages sold by the drink for consumption on the premises;
- (4) Has at least one restaurant with permanent seating capacity for more than 60 patrons that is open to the public 24 hours each day and 7 days each week; and
- (5) Has a gaming area that is at least 18,000 square feet in area with at least 1,600 slot machines, 40 table games, and a sports book and race pool.

(c) In all other counties, the establishment is a resort hotel that holds a nonrestricted license to operate games and gaming devices or the establishment:

- (1) Has held a nonrestricted license for the operation of games and gaming devices for at least 5 years before the date of its application for a license to operate interactive gaming;
- (2) Meets the definition of group 1 licensee as set forth in the regulations of the Commission on the date of its application for a license to operate interactive gaming; and
- (3) Operates either:
 - (I) More than 50 rooms for sleeping accommodations in connection therewith; or
 - (II) More than 50 gaming devices in connection therewith.”

would be somewhat relaxed, i.e., the establishment would have to have “more than 120 rooms”. Accordingly, in order to be eligible for a license to operate interactive gaming, significant capital investments would still have had to been made or would need to be made by an applicant before its application could be considered by the Board and Commission, irregardless of whether or not the applicant was previously exempt from the “resort hotel” requirement under the grandfather provision.

Additionally, with respect to the concern expressed by several speakers that intrastate remote gaming, if permitted, would appear to be diametrically opposed to the trend to restrict where gaming may be conducted, this concern would also be somewhat alleviated, at least with respect to an establishment in Clark County, since, as concluded above, a license to operate interactive gaming pursuant to NRS 463.750 is a “nonrestricted license”. Accordingly, as prescribed in NRS 463.308, in a county whose population is 400,000 or more, a nonrestricted license, such as a license to operate interactive gaming, can only be issued to an *establishment* that is located in a gaming enterprise district.

However, this fact does not mean that the Board and Commission should not consider adopting a regulation that defines the locations from where patrons may place an intrastate remote gaming wager. In fact, in addition to the statutory and regulatory changes above, it may be prudent for the Board and Commission to give strong consideration to adopting such a regulation in light of amendment to Regulation 3.015 approximately four years ago that limited the locations where *restricted* gaming operations may be conducted (*see* Footnote #6). Moreover, given the gaming enterprise district statute, the Board and Commission may want to limit intrastate remote gaming, other than race and sports book wagering, to locations or areas strictly upon the premises of a nonrestricted gaming establishment.

H. And Finally . . .:

Finally, there are several caveats or, at least, things to keep in mind with respect to this analysis and when any future deliberations are undertaken with respect to intrastate remote gaming.

First of all, although the foregoing statutory and regulatory analysis is comprehensive, it stands to reason that there may be other statutory and/or regulatory provisions that, arguably, should be amended and/or adopted before intrastate remote gaming is legalized per the interactive gaming statutes.

Secondly, with respect to using the interactive gaming statutes to legalize intrastate remote gaming, as mentioned above, the interactive gaming statutes are “enabling” legislation and, thus, before intrastate remote gaming can be legalized, regulations must be adopted in accordance with the foregoing statutory and regulatory analysis. However, as also mentioned above, such regulations may not be adopted unless, among other things, they are consistent with the public policy of Nevada with respect to gaming. Accordingly, although the analysis set forth herein is based upon the

assumption that from a public policy perspective intrastate remote gaming is permissible, it may be most prudent for the Board and Commission to first defer to the Nevada Legislature to assess and decide whether or not intrastate remote gaming is consistent with the current public policy concerning gaming before adopting regulations pursuant to the interactive gaming statutes. As Chairman Neilander expressly stated on the record in May “ . . . we have heard some testimony today that there are certain activities that perhaps don't need statutory amendments in respect of what's happening on a nonrestricted property, on the premises. The notion of going outside the premises, obviously, has huge **policy** implications and reconciliation with existing statutes we have talked about.”

Lastly, there are no assurances that some or all prospective intrastate remote gaming systems would constitute interactive gaming systems given the fact that the “term “interactive gaming system” has yet to be defined. However, even if the interactive gaming statutes do not, for some reason, provide the statutory authority to allow for intrastate remote gaming, this analysis is still valid.

Specifically, if the interactive gaming statutes do not provide the underlying statutory authority, the same statutory and regulatory changes described above would have to be made, at least substantively, including the statutory amendments that were made when the interactive gaming statutes were adopted. If not, intrastate remote gaming would not be subject to sufficient regulatory oversight and the inconsistencies which would be created with respect to existing laws and regulations as a result of the legalization of such gaming would not be rectified. Accordingly, whether or not NRS 463.150³² provides the Commission with the statutory authority to regulate intrastate remote gaming or it is determined that the Nevada Legislature would have to be called upon to enact enabling legislation, the foregoing analysis still applies, particularly, when considering that, for purposes of the interactive gaming statutes, “communications technology” is defined to include “intranets”. In other words, the statutory amendments and the new regulations and amendments to existing regulations which were described above are appropriate but, instead, would simply reference whatever term or terms are determined to best describe intrastate remote gaming systems (e.g., definition of “intrastate remote gaming”, “manufacturer of intrastate remote gaming systems”, “equipment associated with intrastate remote gaming systems”, etc.)

³² If, for some reason,

NRS 463.150 provides in pertinent part as follows:

“1. The Commission shall, from time to time, adopt, amend or repeal such regulations, consistent with the policy, objects and purposes of this chapter as it may deem necessary or desirable in the public interest in carrying out the policy and provisions of this chapter.

2. These regulations must, without limiting the general powers herein conferred, include the following:

. . . .

(h) Defining and limiting the area, games and devices permitted, **and the method of operation of such games and devices** for the purposes of this chapter.

. . . .

(j) Governing the manufacture, sale and distribution of gambling devices and equipment.

. . . .”

IV. INTERSTATE OFF-TRACK PARI-MUTUEL WAGERING:

Although the May and June meetings were intended to address remote nonrestricted gaming from within Nevada, as you recall, a couple of speakers strongly encouraged the Commission to move forward with adopting regulations in accordance with NRS 464.020 that, once adopted, would permit a person licensed to accept off-track pari-mutuel wagers to accept such wagers from patrons who are in other states and places outside the United States in which this type of wagering is legal³³.

As you know, NRS 464.020 was amended in 2003 in order to be consistent with the federal Interstate HorseRacing Act as amended in December 2000. Basically, the Interstate HorseRacing Act, as amended, sanctioned what was already taking place in various states; that is, *interstate* off-track pari-mutuel wagering. As a result, the Interstate HorseRacing Act and NRS 464.020 now both expressly provide that off-track pari-mutuel wagering on an interstate or, for that matter, an international basis is legal provided that the bettor is situated in a state or jurisdiction in which this type of wagering is legal and the wager is accepted in a state in which such activity is also legal.

However, as mentioned above, under NRS 464.020, this type of wagering may only be conducted pursuant to regulations adopted by the Commission. With respect to such regulations, Chairman Neilander stated on the record in May that Board Member Siller, with the assistance of the Attorney General's Office, has prepared draft regulations which will soon be circulated to the industry and other interested persons for purposes of discussion, most probably, in a workshop environment. As part of this regulation adoption process, Regulation 22.140 will have to be amended as well. Pursuant to subsection 2 of that regulation, a book may only accept wagering communications that originate *within* the State of Nevada. Accordingly, that subsection as well as subsections 1 and 5(d)(3) must be amended to permit wagers on off-track horse races to originate from outside of Nevada. Additionally, the language in subsection 7 of that regulation that prohibits wagers from being accepted from non-Nevada residents after 96-hours after a wagering account has been opened must be amended to provide an exception relative to off-track pari-mutuel wagering.

³³ Subsections 2 and 3 of NRS 464.020 read as follows:

"2. The Nevada Gaming Commission may issue licenses permitting the conduct of the pari-mutuel system of wagering, *including off-track pari-mutuel wagering*, and may adopt, amend and repeal regulations relating to the conduct of such wagering.

3. The wagering must be conducted only by the licensee at the times determined by the Nevada Gaming Commission and only:

(a) Within the enclosure wherein the race or other sporting event which is the subject of the wagering occurs; or

(b) Within a licensed gaming establishment which has been approved to conduct off-track pari-mutuel wagering.

↳ This subsection does not prohibit a person licensed to accept, pursuant to regulations adopted by the Nevada Gaming Commission, off-track pari-mutuel wagers from accepting wagers made by wire communication from patrons within the State of Nevada, from other states in which such wagering is legal or from places outside the United States in which such wagering is legal."

Lastly, NRS 465.095 also must be amended to carve out an exception so that the acceptance and placement of an off-track pari-mutuel wager through “mediums of communications” is not subject to criminal prosecution under NRS 465.092 and 465.093, respectively.

- c: Dennis K. Neilander, Chairman, State Gaming Control Board
- Bobby L. Siller, Member, State Gaming Control Board
- Scott Scherer, Member, State Gaming Control Board
- Marilyn Epling, Executive Secretary, Nevada Gaming Commission and State Gaming Control Board