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DICKINSON WRIGHT'S

GAMING LEGALNEWS

MEDICAL MARIJUANA AND GAMING: TO DIVEST OR NOT TO DIVEST?

by Kate Lowenhar-Fisher, Jennifer Gaynor and Greg Gemignani

Even as more and more states pass laws permitting sales and use of medical and recreational marijuana, marijuana remains an illegal Schedule I drug under the federal Controlled Substances Act.

On May 6, 2014, Nevada State Gaming Control Board Member Terry Johnson issued a Notice to Licensees stating that "... the Board does not believe investment or any other involvement in a medical marijuana facility or establishment by a person who has received a gaming approval or has applied for a gaming approval is consistent with the effective regulation of gaming." The Notice went on to illuminate the Board's view that "any such investment or involvement by gaming licensees or applicants would tend to reflect discredit upon gaming in the State of Nevada."

In its July 2014 hearing, the Board went further and made it clear that a person could not be in the gaming business if his spouse was in the medical marijuana business. In the Board's view, there must be strict separation between the gaming and medical marijuana businesses.

Furthermore, in light of the civil forfeiture actions undertaken by United States Attorneys in various states around the country, the Board is seriously considering whether there are issues related to medical marijuana licensees lending money or leasing property to gaming licensees.

As a result of the Board's position, gaming licensees and gaming license applicants who have been awarded (or are pursuing) medical marijuana licenses must consider whether and how to divest from the gaming business.

NEVADA SET TO REGULATE NIGHTCLUBS IN GAMING ESTABLISHMENTS

by Kate Lowenhar-Fisher, Jennifer Gaynor and Greg Gemignani

In the current legislative session in Nevada, a bill sponsored by the Nevada State Gaming Control Board has been amended to promote the regulation of nightclubs and nightclub employees that operate on a gaming premises. In Nevada, a gaming premises is deemed to be anything on the parcel with a gaming establishment, or as former Gaming Control Board Member Randy Sayre once said "generally, anything inside the borders of the adjacent streets, not just the gaming floor."

Currently, the Gaming Control Board in Nevada has the power to call anyone associated with or operating within a gaming premises forward for licensing. For example, the Gaming Control Board could call forward a dress shop owner that is a tenant of a casino property. However, in such an instance, the Gaming Control Board would have to incur the investigative costs for such discretionary licensing activity. Because of this, when the Gaming Control Board has concerns regarding the conduct of a nightclub operator, the Board generally investigates the casino licensee and brings disciplinary action (which may include substantial fines) against the casino licensee for not adequately policing its nightclub tenants.

The provisions of SB38 change the basis for such licensing by requiring nightclubs on a gaming premises and their employees to register as gaming entities and employees. Because the nightclubs will be subject to Nevada's gaming statutes, the Gaming Control Board will have the power to compel licensing while shifting the cost of investigations to the nightclub operators and employees.

As news stories and official notices to the industry have highlighted, there have been a number of issues regarding activities in nightclubs that are tenants of casino operators. Such previously publicized activities include, but are not limited to, refusals to let gaming agents and law enforcement on the premises to investigate allegations of law violations, drug dealing, prostitution and patron dumping (removing overly intoxicated patrons from an establishment and simply "dumping" them, by leaving them on their own outside).

The expansion of the gaming regulatory regime in Nevada to include nightclubs is an effort to curb such illicit activity occurring at clubs on a gaming premises and to ensure that bad actors that are terminated at one club or a gaming premises do not show up at a competing club or gaming premises.

The current bill has the support of major club operators, including Hakkasan, major casino operators, including Wynn Resorts, and the Nevada State Gaming Control Board. It passed the Nevada Senate unanimously, and its first hearing in the Assembly occurred without any opposition to the bill. As many gaming practitioners know, other jurisdictions often look to Nevada for legal developments in gaming because Nevada was the pioneer in regulating gaming activities and involvement in the gaming industry. Therefore, if this change to regulate nightclubs through the state's gaming regulatory body is successful, other jurisdictions may follow.

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