

GAMING LEGALNEWS

LET'S BE BLUNT: RECREATIONAL MARIJUANA WILL BRING NEW REGULATORY CHALLENGES TO GAMING LICENSEES IN NEVADA

by Jennifer Gaynor, Kate Lowenhar-Fisher, Greg Gemignani, and Jeff Silver

As Nevada voters are bombarded with messaging both for and against the legalization of recreational marijuana leading up to the vote on "Question 2" on the November state ballot, Nevada's gaming industry watches with what we imagine must be a mix of interest and trepidation.

On the one hand, there is the promise of increased tourism to Nevada should Question 2, Nevada's recreational marijuana initiative, pass in November. For example, sources (including NSDUH, Marijuana Policy Group, RCG Economics, Travel Nevada, and Las Vegas Convention and Visitors Authority) estimate that "the passage of Question 2 and the responsible implementation of recreational use marijuana" could bring an estimated 6,800,719 potential adult-use Nevada tourists aged 21 and up in 2018.¹

Anything that increases visitor volume is a boost for gaming and hospitality revenues.

On the other hand, if recreational marijuana becomes legal, the state's gaming licensees will also see a related uptick in regulatory scrutiny.

Nevada's gaming regulators, the Nevada Gaming Control Board ("Board") and Nevada Gaming Commission ("Commission"), have already drawn a line in the sand when it comes to Nevada's gaming licensees having any involvement with the medical marijuana business. In a May 2014 Notice to Licensees, Board Member Terry Johnson warned 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 Board solidified its position in its July 2014 hearing with the pronouncement that a person could not be in the gaming business if his or her spouse was in the medical marijuana business. And in August 2015, Board Member Terry Johnson further cautioned that the Board would include in its scrutiny "persons such as landlords too that might be involved in the gaming context and concurrently in the medical marijuana context." ([Click here](#) to read our "Landlords, Beware! Medical Marijuana and Gaming: How Close Is Too Close?" article from November 2015.)

Fast-forward to Fall 2016. More than twenty medical marijuana dispensaries are operational across Nevada, including at least a couple of locations in very close proximity to the Strip. Recreational marijuana is on the ballot for the November election. But marijuana is still an illegal Schedule 1 controlled substance under federal law. And the operation of a gaming facility still requires a privileged state license,



October 17, 2016 • Volume 9, Number 3

GAMING LEGAL NEWS EDITORIAL BOARD

Robert W. Stocker II, Gaming Law

517.487.4715 • rstocker@dickinsonwright.com

Dennis J. Whittlesey, Gaming Law/Indian Law

202.659.6928 • dwhittlesey@dickinsonwright.com

Michael D. Lipton, Q.C., Gaming Law

416.866.2929 • mdliptonqc@dickinsonwright.com

Peter H. Ellsworth, Gaming Law

517.487.4710 • pellsworth@dickinsonwright.com

Kate Lowenhar-Fisher, Gaming Law/Liquor Licensing

702.550.4459 • klowenhar-fisher@dickinsonwright.com

Gregory R. Gemignani, Gaming Law/Intellectual Property

702.550.4468 • ggemignani@dickinsonwright.com

Glenn M. Feldman, Gaming Law/Indian Law

602.285.5038 • gfeldman@dickinsonwright.com

Peter J. Kulick, Gaming Law/Taxation

517.487.4729 • pkulick@dickinsonwright.com

Kevin J. Weber, Gaming Law

416.367.0899 • kweber@dickinsonwright.com

Jeffrey A. Silver, Gaming Law

702.382.4482 • jsilver@dickinsonwright.com

DW COOPERATION AGREEMENT FIRMS

MdME, Macau (www.mdme.com.mo)

Varela & Fonseca Abogados, Peru (www.varelafonseca.com)

Velchev & Co., Bulgaria (www.vlaw.bg)

WH Partners, Malta (www.whpartners.eu)

GAMING WEB SITES OF INTEREST

www.indianz.com

www.gaminglawmasters.com

www.ggbmagazine.com

www.pechanga.net

Disclaimer: Gaming Legal News is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the fields of gaming law and federal Indian law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered in Gaming Legal News.

which is worth far more to Nevada gaming operators than any uptick in tourist revenues from the lure of recreational marijuana.

It seems fairly clear that Nevada's gaming operators will need to steer clear of investment in or ownership of recreational marijuana businesses, as they have with medical marijuana businesses. Similarly, they would be wise to avoid leasing property, especially that within the footprint of their gaming facilities, to anyone in the recreational marijuana business. But with a potential huge expansion in marijuana use in the state, especially among the "green" tourists, gaming operators will want to consider their plans for how to deal with customers who came not just for good gaming, entertainment, food and shopping, but also for the recreational marijuana experience.

Just a few questions to consider: How will this impact the operation of the day clubs and night clubs located on gaming resort premises? What about customers who want to partake of marijuana on the casino floor or in their hotel rooms? What will gaming licensees be expected to provide as far as security and enforcement regarding the possession and/or use of recreational marijuana on their premises? Will they be expected to monitor or deter the delivery of recreational marijuana to customers who are staying at their resorts? What about trade shows or conventions related to medical marijuana on their premises? What kind of due diligence must casinos conduct on their tenants and vendors? How will this affect problem gambling policies and procedures? The list of issues that will need to be addressed by gaming licensees is lengthy.

The State's concerns about recreational marijuana are clear, as evidenced by the gaming regulator's stance on medical marijuana and the public opposition to Question 2 by Nevada's Governor, Brian Sandoval. The big question, therefore, is if Question 2 passes, how can Nevada's casino-resorts reap the benefits of recreational marijuana tourism without running afoul of the gaming regulators? This dilemma will be faced by gaming industry executives who are actively marketing to attract millennials, knowing that this age group will likely become the largest customer for recreational marijuana use.

The answer: Following the gaming regulators' lead is often the most prudent choice. Nevada's gaming regulators do not have any obligation to change their current stance on marijuana involvement by licensees. Therefore, should Question 2 pass in November, gaming licensees would be wise to follow the regulatory process closely and review and revise their policies and contracts in preparation. Our Nevada gaming team is closely tracking developments in this area and can help gaming licensees to navigate through these perilous waters if and when recreational marijuana becomes a reality in Nevada.

¹ See <http://www.theweedblog.com/nevada-is-estimated-to-gain-400-million-in-recreational-marijuana-revenue-from-tourism/>.

Jennifer Gaynor, Kate Lowenhar-Fisher, and Greg Gemignani are Members in Dickinson Wright's Las Vegas office, and Jeff Silver is Of Counsel in the Las Vegas office. Jennifer Gaynor can be reached at 702.550.4462 or jgaynor@dickinsonwright.com. See the masthead for the contact information of the other authors.