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MARIJUANA AND THE GAMING INDUSTRY IN NEVADA: JUST SAY NO

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On August 24, 2017, the Nevada Gaming Commission ("Commission") engaged in a "Policy Discussion" regarding "Marijuana and the Gaming Industry." Spurred by what has become a flood of questions from gaming licensees regarding their responsibilities in the recreational marijuana era in Nevada, the Commission hoped to provide some clarity and guidance for gaming licensees regarding the issues of third-party events and business associations.

Commission Chairman Alamo made clear at the outset that this was not a forum in which the Commission would be rule-making, but that it would just be a discussion of current law, as it applies to certain issues that have been raised by licensees.

Before delving into specific issues, however, Chairman Alamo also made a general statement about his view as to what the Commission's policy regarding marijuana should be, which is that: "On one hand you have the gaming industry and on the other hand you have the marijuana industry and the two shall not meet" because marijuana is still a Schedule 1 drug under federal law and licensees must comply with federal laws. He pointed to Nevada Gaming Commission Regulation 5.011 – which provides grounds for disciplinary action for licensees, including the broad category of actions that "would reflect or tend to reflect discredit upon the State of Nevada or the gaming industry."

A survey by Chairman Alamo of his fellow Commissioners' opinions on that statement elicited a general consensus from the Commission that involvement with marijuana was an unsuitable method of operation for Nevada gaming licensees. Along with fears of discrediting Nevada's gaming industry, the Commissioners voiced concern that the federal government may take a stronger interest in Nevada's gaming industry if the state appears unconcerned about marijuana use or promotion on gaming properties.

How this sentiment by the Commission will be put into effect in the form of disciplinary actions brought by Nevada's gaming regulators is yet to be seen. However, the discussion that followed provides some hints.

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The discussion focused on three issues:

1. Events on the premises of a licensed gaming establishment that cater to or promote the use, sale, cultivation or distribution of marijuana.
2. Contracting with or maintaining a business relationship with an individual or entity engaged in the sale, cultivation or distribution of marijuana, including vendors and landlord/tenant relationships.



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3. Licensees receiving financing from or providing financing to an individual, entity or establishment that sells, cultivates or distributes marijuana.

These three issues are but the tip of the iceberg, and Chairman Alamo recognized that with the statement that there will be future questions the Commission will look at that will require more nuance, and that these three issues seemed to present a good starting point for the discussion.

On the first issue – whether gaming licensees can allow on their premises events or conferences that promote the resale, cultivation or use of marijuana – a few points were made clear. One was that the Commission wants to have a “level playing field” for all licensees, and to not penalize those licensees who err on the side of caution in not allowing such events and lose out on revenue to another licensee down the road who books the marijuana conference. The Commission members, again, made it clear they were not setting policy and did not say that licensees could not host a marijuana-related conference or event. However, it was made clear that to do so would put a licensee at risk of disciplinary action. This risk was made clearer by the sentiment expressed by Chairman Alamo, who stated that the only way to get parity and stability between a licensee that abides by the law and the one down the street that doesn't do so is to “file a complaint” so that the gaming regulators can act upon it.

Nevada Gaming Control Board (“Board”) Chairman Burnett, seeking to put a finer point on the question, asked the Commission if having a marijuana convention would be seen as an embarrassment for Nevada's gaming industry. Commission Member Fuetsch responded that she believed that having a marijuana convention would “be the wrong thing to do and have an impact on the gaming industry if it's held at a casino.” Commission Member Townsend responded: “No, no and no ... There is no upside to a handful of dollars over a weekend than there is to the downside of the damage it can do to the integrity of the industry and the State.”

Chairman Alamo condensed the discussion of the second and third questions, which are a licensee contracting with or engaging in business with someone in the marijuana business, including in the landlord/tenant context, and a licensee providing funding for or receiving financing from a marijuana industry company. Both Chairman Alamo and Commission

Member Pro were, as Chairman Alamo said, “crystal clear” on the final two issues – saying “no” to both of them and suggesting that licensees should “follow the money” and should not “go there in any way, shape or form.”

It remains less than crystal clear, however, what exactly this all means for licensees in practice. Commission Member Moran, for example, raised questions that cannot be easily answered, including if hotel rooms in casino resorts are private or public, whether children of gaming licensees may be allowed to be in the state-legal marijuana business and if a licensee comes into possession of money they learn came from marijuana business proceeds, should they not accept it?

Board Member Johnson said it best when he made the statement “that marijuana use violates federal law is not the end of the story” and expressed that Nevada's gaming regulators must balance that concern with the will of the people in Nevada and our state's legislature in voting for medical and recreational marijuana to be authorized in Nevada. But this, alas, will not be an easy path for Nevada's gaming regulators to walk. There are many gray areas and countervailing rights and laws (reasonable expectation of privacy for guests in hotel rooms or the freedom of speech when it comes to events on gaming premises, for example) that must be considered. And, of course, there are issues of practicality – such as how much can you expect each gaming licensee to know about every customer and business partner and how far should licensees be expected to go to police marijuana use on their premises – that also must play into the creation of any good policy. For now, however, gaming licensees at least have more information than they did before regarding how Nevada's gaming regulators may approach these policy issues going forward. If in doubt, “just say no.”

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