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Gaming; Authority of Attorney General to Prosecute Gaming Offenses

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timony given.²⁸

28. Compare N.R.S. §465.050 with STATUTES OF NEVADA 1979, c. 534, §9, at 1020.

Gaming; authority of attorney general to prosecute gaming offenses

N.R.S. §463. — (new); §§228.120, 463.141 (amended).
SB 33 (Committee on Judiciary); STATS 1981, Ch 292

Prior to the enactment of Chapter 292, the Nevada Gaming Commission (hereinafter referred to as the Commission) had the power to initiate and direct proceedings, actions, or prosecutions instituted to enforce state gaming, licensing, and control provisions.¹ Prior law expressly permitted the Commission to request a district attorney or, if the district attorney refused, the attorney general, to institute and conduct enforcement proceedings.² Chapter 292 authorizes both the Commission and the State Gaming Control Board (hereinafter referred to as the Board) to initiate proceedings to enforce these provisions.³ Either body may request that a district attorney, or recommend that the attorney general, prosecute any public offense committed in violation of provisions governing the licensing and control of gaming,⁴ the supervision of specified gaming establishments,⁵ or pari-mutuel betting.⁶ The Board, however, is required to notify the Commission if it initiates any proceeding or requests the prosecution of any offense.⁷

In addition, Chapter 292 specifies that when a district attorney for the county where a specified violation⁸ occurs receives a written request to file a complaint or information or to present the matter to a grand jury, but fails to do so within fifteen days, the Commission or Board may recommend that the attorney general prosecute the case.⁹ Upon

1. STATUTES OF NEVADA 1967, c. 376, §35, at 1040 (enacting N.R.S. §463.141 1). See also Nevada Tax Comm'n v. Mackie, 75 Nev. 6, 9-12, 333 P.2d 985, 986-988 (action to revoke gaming license is an administrative decision to be made by Nevada Tax Commission), Nevada Tax Comm'n v. Hicks, 73 Nev. 115, 310 P.2d 852 (suitability to engage in gambling is an administrative decision to be made by Nevada Tax Commission).

2. Compare N.R.S. §463.141 with STATUTES OF NEVADA 1967, c. 376, §35, at 1040.

3. See N.R.S. §463.141.

4. See *id.* §§463.010-463.720.

5. See *id.* §§463B.010-463B.280.

6. See *id.* §§463.141, 464.010-464.100.

7. *Id.* §463.141.

8. See *id.* §§463.010-463.720 (Licensing and Control of Gaming), 463B.010-463B.280 (Supervision of Certain Gaming Establishments), 464.010-464.100 (Pari-Mutuel Betting), 465.030-465.101 (Crimes and Liabilities Concerning Gaming).

9. *Id.* §463.— 1.

written recommendation from the Commission or Board to prosecute, the attorney general may file without leave of court¹⁰ and proceed with *exclusive* charge of the prosecution.¹¹ If a district attorney declines to prosecute a gaming offense after receiving a proper request from the Commission or Board, the district attorney may respond within fifteen days with a written statement of reasons for the refusal.¹²

Chapter 292 appears to leave open the question of whether the Commission or Board must first request a district attorney to prosecute a gaming offense before recommending that the attorney general prosecute as expressly required under prior law.¹³ New Nevada Revised Statutes Section 463.141 is not specific in ordering the initial request to a district attorney and seems to indicate that the Commission or Board may go to *either* the district attorney or attorney general for criminal prosecution of gaming offenses.¹⁴ New Nevada Revised Statutes Section 463.—, however, provides specific procedures in the event of district attorney inaction.¹⁵ A strong argument seems to favor the specific language of requesting the district attorney to prosecute first over the general language of proceeding directly with either the district attorney or the attorney general.¹⁶

10. *Id.* Compare *id.* §228.120 5 with STATUTES OF NEVADA 1979, c. 547, §3, at 1094 (prior law required the attorney general to obtain leave of the court that had proper jurisdiction to try the matter before instituting criminal proceedings; current law allows proceedings as a matter of course when provided by specific statute).

11. N.R.S. §463.— 1.

12. *Id.* §463.— 2.

13. Compare *id.* §463.— 1, 2 with *id.* §463.141.

14. See *id.* §463.141.

15. See *id.* §463.— 1, 2.

16. Phone conversation with Patty Becker, Deputy Attorney General, Nevada Gaming Control Board, Carson City, Nev., on June 23, 1981 (during conversation Patty Becker explained that the specific language of the "added" section on N.R.S. 463.— qualified the general language of the new N.R.S. §463.141) (notes on file at *Pacific Law Journal*).