



REPORT AND RECOMMENDATIONS

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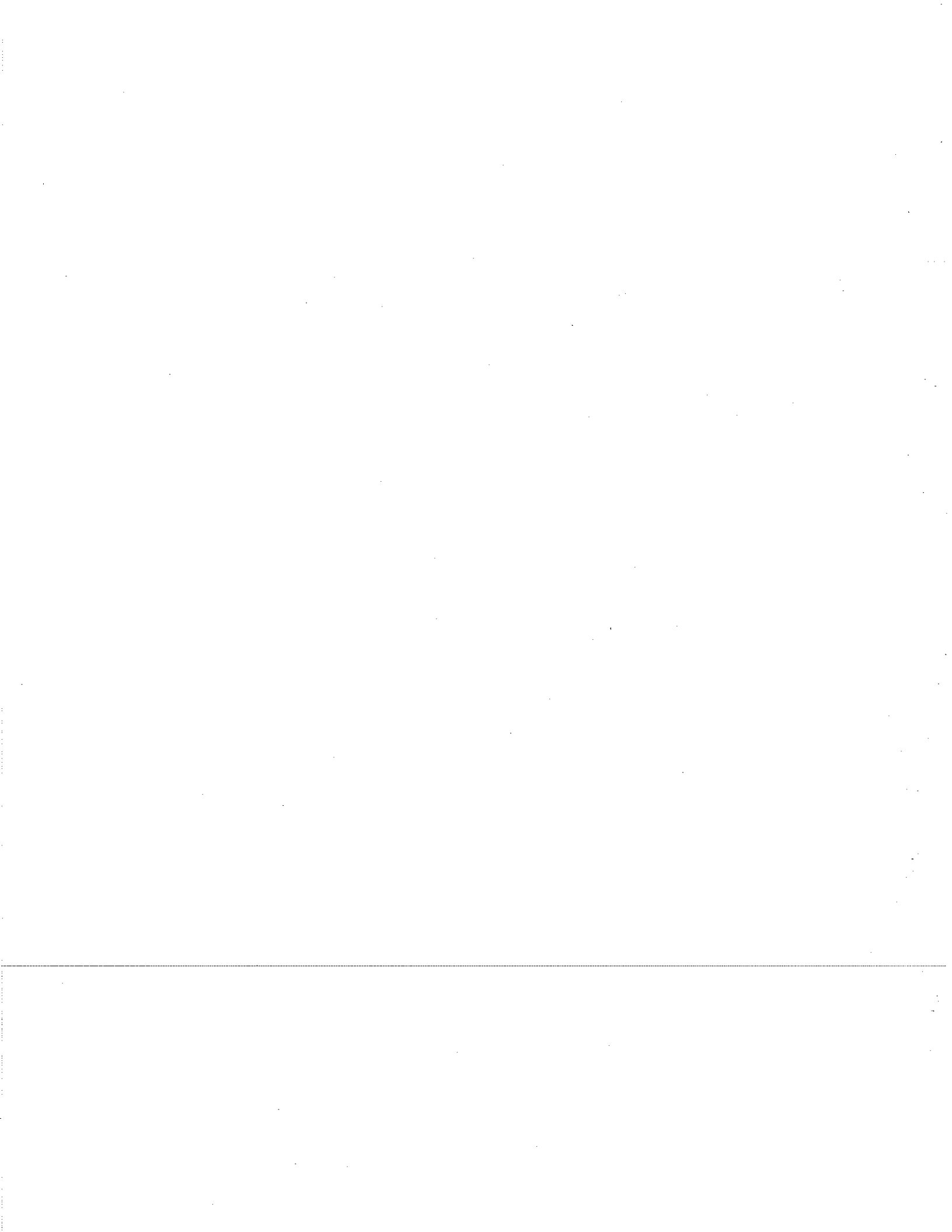
CASINO GAMBLING

by the

COMMISSION OF INVESTIGATION

of the

STATE OF NEW JERSEY





STATE OF NEW JERSEY
STATE COMMISSION OF INVESTIGATION

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TO: The Governor and the Members of the Legislature of the
State of New Jersey

The New Jersey State Commission of Investigation herewith
submits its Report and Recommendations on Casino Gambling as mandated
by Section 10 of P.L. 1968, Chapter 266 (N.J.S.A. 52:9M-10), the
Act creating the Commission.

Respectfully Submitted

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SUMMARY AND RECOMMENDATIONS

Soon after New Jersey's voters on November 2, 1976 approved a referendum proposal authorizing casino gambling in Atlantic City only, the Governor at a press conference urged the State Commission of Investigation (S.C.I.) to undertake a review of the problems and consequences -- including the threat of criminal intrusion -- posed by the advent of this new industry. For the S.C.I., the assignment meant a sudden renewal of a low-key inquiry that had actually begun in 1974 (prior to the defeat that year of a casino gambling referendum proposal) -- then, as now, in cooperation with the Attorney General's Division of Criminal Justice, the State Police and other law enforcement authorities.

The S.C.I.'s casino gambling investigation, while part of a shared venture, nonetheless was conducted distinctly separate from other inquiries in compliance with the Commission's statutory obligation to investigate, report and make recommendations independent of any other related governmental activity or consideration.

Although the magnitude of the task of monitoring casino gambling was anticipated, nevertheless its wide-ranging scope has severely taxed the limited personnel resources of the S.C.I. However, the inquiry -- particularly its law-mandated concentration on organized crime -- has enabled the S.C.I. to develop an extensive intelligence network that will fuel its continuing and expanding casino gambling monitoring program.

The S.C.I.'s recommendations, which follow, are primarily aimed at promoting the integrity of the casino gambling industry. The Commission shares the widely held conviction that the endeavor can be successful only if it gains and retains the public trust. Already the S.C.I.'s explorations in Atlantic City and other jurisdictions have produced some indications that only the most stringent of gambling control laws can thwart the infiltration of casinos and related services and suppliers by organized crime. Because of the potential enticements of casino gaming to criminal elements, the S.C.I. whenever it had a choice between being hard-nosed or easy-going, opted in favor of strictness in drafting its recommendations.

Because of the Commission's emphasis on the danger of criminal penetration of casinos and the need to structure the most honest operation possible, this report eschews some issues which are primarily of an economic nature. Thus, for example, the Commission has avoided specific stipulations on the number of rooms a casino-hotel should be required to have or on casino taxation. Nonetheless, while making no recommendations on certain purely economic problems, this report discusses some of these factors at length because of their importance to Atlantic City, the gaming industry and the taxpayers in general.

The Commission wishes at this point to stress the necessity of properly programming one particularly important economic issue -- the casino gambling proposal's required distribution of casino tax revenues to ease the utility, property tax and rental costs of the elderly and disabled. Unless the industry wishes

to stand accused of being spawned by a hoax, even as it tries to shape a reputable image, this casino referendum "campaign promise" to some one million people must certainly be fairly and adequately implemented.

While there is no reason why casino gambling cannot become an economic and social asset to New Jersey, its residents and its visitors, the nature of the industry, as previously noted, makes it a vulnerable target for criminal intrusion. Because of this vulnerability, the S.C.I. intends to maintain its monitoring of the casino gambling industry as an obligation to the taxpayers of this state under provisions of S.C.I. law requiring that it conduct investigations to assure the faithful and effective enforcement of the laws of the state "with particular reference but not limited to organized crime and racketeering."

Following are the major conclusions and recommendations of the State Commission of Investigation report on casino gambling:

A. REGULATORY AUTHORITY

- . A two-tier system, consisting of a decision-making rule-making, hearing body and an investigative and law enforcement body.

- . The decision-making body shall comprise of five part-time commissioners, totally independent, appointed by the Governor with Senate confirmation to staggered five-year terms, each commissioner being limited to a single term.

- . No more than three of the five commissioners shall belong to any one political party.
- . The enforcement body shall be a division within the Department of Law and Public Safety and so structured as to guarantee its independence of operation to the greatest extent possible.
- . The enforcement body's obligation to police the casino gambling industry shall not be diluted by the assignment to it of other tasks.
- . The enforcement body shall be provided with its own strong, independent audit capability, a function the S.C.I. regards as particularly important.
- . To help thwart corruption, stringent restrictions should be imposed on the contact by officials of either regulatory body with private gambling enterprises prior to, during and after their terms or periods of service.
- . All regulatory members, officials and employees should be barred from all political activity.

B. LICENSING

- . The S.C.I. takes no position on casino hotel room requirements, which it considers to be primarily an economic issue, but recommends that if the Legislature does not enact specific room requirements which would tend to limit the number of casino licenses, some means

of limiting the total number of such licenses should be devised.

- . The number of casino licenses any one licensee may participate in shall not be limited but shall be keyed to the number of other casinos in operation.
- . A casino licensee shall be required to have complete control of the entire physical premises on which the casino is located.
- . A casino license applicant shall at all times bear the burden of proving his qualifications for a license.
- . Applicants for a casino license shall waive any liability for required disclosure of all information requested of them during the application process.
- . Casino licenses shall be denied to any applicant who fails to prove by clear and convincing evidence his qualifications for such license.
- . A casino license shall be denied to any applicant who has been convicted of a specified list of crimes, including any "offense indicating a lack of business integrity or business honesty, without regard to whether such crime is labeled a misdemeanor, felony or disorderly persons offense."
- . A casino license shall be denied to any applicant who is or was a member of organized crime or who is or was an associate of organized crime, as specified.

- . Certain persons employed by or associated with the casino licensee shall be required to be individually licensed.
- . Before an actual casino license is issued, certain associated persons subject to individual licensure shall first have obtained their license.

C. ANCILLARY SERVICES

- . Certain specified casino gambling "ancillary services" shall be required to be licensed in order to mitigate a dual risk of intrusion by criminal elements directly into casino operations or indirectly through the hotel or through services related to casinos.
- . Licensing shall be required of any providers of raw materials or services to the casino gambling industry, such as gambling equipment manufacturers, casino security services, gambling debt collection agencies, gaming equipment repairs.
- . Operators and owners of casino and casino-related companies and manufacturers of gaming equipment must be stringently licensed.
- . Licensing shall be required of any casino or hotel service industry such as suppliers of liquor, food and non-alcoholic beverages, security services, garbage haulers, vending machine providers, as well as suppliers of goods sold in such machines, linen suppliers, limousine services, any shopkeeper located

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within the hotel complex and any other industry which the regulatory body shall require to be licensed.

- . Any supplier of goods or services not mentioned in the above lists but which supplies to the hotel on a continuing basis must register with the regulatory body the terms of the arrangements and the identity of all owners and employees of the supplier.
- . Any supplier of a casino-related goods or services on a "one time basis" except manufacturers of gaming equipment, shall not be required to be licensed or to register but must file the terms of its agreement with the regulatory agency.
- . All providers of goods and services directly relating to the casino operation, as specified, must be licensed at the time of the opening of the casino. Other providers, as specified, must have applied for licensure at the time of the casino opening but may provide goods or services pending licensure decision.

D. CASINO OPERATIONAL PROCEDURES

- . Clear separation of certain casino functions must be mandated by statute.
- . Casino accounting and security departments must be required by law to report in writing any circumstances that even "suggest" a violation of internal and security controls by the casino licensee.

- . Chips should be purchased only at gaming tables and redeemed only at cashier's cages.
- . All slot machines must have counters built-in that record total play and total payout.
- . Odds and payout should not be regulated by the State, at least at the outset.
- . Casino gambling hours should be limited to 16 hours daily, from noon to 4 a.m. daily, including Saturdays, Sundays and holidays.

E. CASINO CUSTOMER RELATIONS

- . Casinos should not be allowed to extend credit
- . The Legislature should enact a statute requiring casinos to issue chips to players only upon the presentation by players of cash or its specified equivalent, such as traveler's checks, nationally recognized credit cards or personal checks.
- . Tipping of casino personnel shall be absolutely prohibited.
- . Liquor may be made available in a casino but not at the gambling tables.
- . All persons involved in debt collection activities must be licensed.
- . All persons involved in organizing and operating junkets must be licensed.

- . Dress codes or regulations should be minimal and required only to have a reasonable relationship to proper health and safety standards.

F. RECORD-KEEPING PRACTICES AND REPORTING PROCEDURES

- . From a law enforcement perspective, tight controls on and detailed records of casino revenues and disbursements shall be prescribed whether or not tax considerations require such procedures.
- . Each casino licensee must be required to maintain specified and detailed books, records and supporting documents as governed by regulatory rules.
- . All bookkeeping and other phases of casino licensee's operation shall be required to be open to immediate inspection without warrant or probable cause.
- . Specific procedures for audits of licensee's financial condition by Certified Public Accountants shall be promulgated.
- . All licensees must maintain their banking accounts in banks within this state.
- . Licensees shall be required to file with the casino gambling enforcement regulatory bodies copies of all reports submitted to other state, local or federal agencies and to certain private entities.

- . Annually each licensee shall provide a certified list of all individuals receiving payments of any kind for personal services rendered to the licensee.
- . Licensees shall be required to report to the licensing agency whenever any individually licensed person associated with the casino is terminated or otherwise severs his relationship.
- . A casino licensee and any corporation holding an interest therein shall cooperate and assist the licensing authority in obtaining information regarding the beneficial owners of its stock.
- . The casino licensee and all individuals and/or corporations licensed by virtue of their employment or association with a casino licensee shall at all times make available to the licensing authority their corporate and personal financial records.
- . All transactions in excess of \$2,500 by a casino licensee must be made pursuant to a written contract, to be made available on request to the regulatory authorities.

G. SANCTIONS

- . Conflicts provisions imposed upon members and employees of the regulatory authority shall be subject to specific civil and criminal sanctions.

- . Even unintentional violations of casino gambling statutes shall be subject to sanctions.
- . Specific civil and criminal sanctions shall be provided for the use of unlicensed personnel to collect casino debts.
- . A violation by any holder of a substantial interest in a casino shall be punishable in addition as a violation by the casino licensee.

H. LABOR ORGANIZATIONS

- . All representatives of all labor organizations must register fully before entering into collective bargaining with casino or hotel employees.
- . All labor organizations who seek to receive dues or administer pension funds must qualify according to the "disqualification criteria" for licensure.
- . No labor organization or agent shall hold any financial interest in any hotel or casino licensee where it represents employees.

I. MISCELLANEOUS PROVISIONS

- . "Moonlighting" by public employees or persons holding public office in casino jobs shall be prohibited.

- . Casino licensees, casino-related companies and all corporations or persons individually licensed because of their interest in, employment by or association with a casino shall be limited in the amount of money they may contribute to political parties, candidates or campaign organization.

A. REGULATORY AUTHORITYINTRODUCTION

The State Commission of Investigation believes that the structure of the regulatory authority created to administer and control casino gambling in Atlantic City is perhaps the most important issue to be considered in enacting casino gambling legislation. No other area of the legislation will have as much direct impact on the actual enforcement of the law or on the public confidence in the integrity of the casino industry as will the provisions establishing the governmental body or bodies to which the administration of the act will be entrusted.

Since weaknesses or omissions in these provisions will not necessarily be overcome, offset or negated by strengths in other areas of the law, the S.C.I. recommends the Legislature promote the following concepts with respect to the regulatory authority it creates:

1. -- Independence of action
2. -- Strength of authority
3. -- Competence and integrity of personnel

The effectiveness of the entire act, the S.C.I. insists, will depend upon the effectiveness of the regulatory authority. For example, strong licensing provisions could be dissipated by a hesitant or subservient regulatory authority. But a strong and independent regulatory authority would rise above weaknesses in licensing provisions by vigorous enforcement of

the provisions available to it while at the same time demanding swift enactment of more adequate statutory tools with which to properly carry out its responsibilities.

Before proceeding to the Commission's specific recommendations on the structure of the regulatory authority, some discussion of the general criteria recommendation for such an authority - independence, strength, and competence and honesty - is appropriate. These terms are general and evoke in different persons different reactions. To properly understand the recommendations, therefore, some understanding of the Commission's view of these concepts is essential.

Independence of Action

The concept of independence for an authority responsible for regulating an industry historically regarded as a target of criminal and political misuse undoubtedly will cause some fear that it will succumb to various abuses of power. However, the Commission clearly is not recommending total independence with unbridled power. Rather, it is recommending operational independence within a system of strong statutory guidelines and subject to external checks and balances. The type of two-tier regulatory authority contemplated by the S.C.I. would have ability to act on its own when necessary for the proper administration of casino gambling in Atlantic City without direction or control by other state agencies or officials.

The statutory provisions proposed by the S.C.I. would

clearly define the public policy under which--and the limits within which--the regulatory authority is free to act. Subject to these bounds, a truly effective regulatory authority must be able to act immediately as the occasion warrants without the need to clear its actions through other agencies or officials. Moreover, it must be able to act free from unwarranted pressures - political pressures, pressures from the industry, pressures from those who want to be a part of the industry. Such pressures would be deflected by the regulatory authority's internal integrity --which, in turn, would depend heavily on external checks and balances that must constantly "encourage" such integrity. This is why the S.C.I. so strongly emphasizes that its call for substantial independence for the regulatory authority be coupled with maintaining of sufficient external checks on its integrity.

Strength of Authority

The S.C.I.'s logical next-step belief that strong powers be given to the regulatory authority may also raise the fear that a strong authority will run roughshod over the industry it polices without regard to the rights and liberties of those under its control. While this is a legitimate concern, and should be kept in mind in drafting the act, the Commission warns against giving it undue weight.

It is contended that engaging in casino gambling in New Jersey is a privilege, not a right. While this expression has been worn with use, it is a truism that offers proper guidance in drafting regulatory legislation.

Historic limits on the State's power to impose regulatory controls and restrictions should not automatically be extended to dilute its power over casino gambling. The S.C.I. is not advocating dictatorial powers for the regulatory authority, as will be obvious further on in the specific recommendations as to those powers.

But the State Commission of Investigation does urge that we do not allow our usual views of due process, civil liberties, property rights, etc., to cause us to automatically reject certain suggested statutory and regulatory-imposed controls over casino gambling as being not in conformity with the State's control over other endeavors and industries. Instead, the regulatory authority's powers should be approached from the point of view that those applicants desiring to obtain the privilege of engaging in casino gambling do not have the right to expect the same limitations on state powers that are applicable to other regulated industries and occupations.

This approach to the drafting of casino control legislation is particularly important right now, before casino operations begin. As it starts from scratch to authorize and regulate the casino gaming industry, the State should impose all of the controls, limitations and conditions on the practice of casino gambling it deems necessary and appropriate to protect the public interest. It should not hesitate to adopt provisions it believes to be necessary, even though regarded by some as

"unjust" or otherwise not in accordance with pressure group depictions of the due process tradition. To start weak may, as a practical matter, result in a legislative inability later to assert those greater state powers belatedly found to be necessary. Once persons have begun to operate casinos, there will be an inevitable tendency to lose sight of the "privilege" they are enjoying and to talk instead in terms of their "rights".

Competence and Honesty

Since the third general concept -- a regulatory authority that is both competent and of high integrity -- is the prime goal in creating any agency, the S.C.I. is naturally most concerned with the peculiar problem of achieving that result. While much of the responsibility for accomplishing the goal in the casino gambling field must of necessity fall to those who will actually select the persons to run and staff the regulatory authority, there are ways that the legislative process can at least promote, if not assure, its realization.

Salary levels sufficient to attract and retain qualified persons are necessary. A budget that not only provides for such salary levels, but also provides for a sufficient number of personnel is necessary. Minimum qualifications with respect to educational background and professional experience must be considered. And limitations on the types of private or public activities regulatory authority personnel may engage in prior to, during and after termination of their public

employment are essential, particularly with respect to the integrity of the authority.

RECOMMENDATION:

THAT THE REGULATORY POWER BE DIVIDED BETWEEN TWO BODIES OF AGENCIES, ONE HAVING THE DECISION-MAKING AUTHORITY AND ONE HAVING THE ENFORCEMENT RESPONSIBILITY

The first decision to be made in creating a regulatory authority to govern casino gambling is whether to lodge all the power in one body or to divide it among two or more bodies (or agencies). The bills proposed by Senator McGahn and Assemblyman Perskie call for the creation of a single agency. Nevada, on the other hand, employs what has come to be called a two-tier system, under which the decision-making, "rule-making" functions are separated from investigatory and enforcement functions. The S.C.I. recommends the adoption of a two-tier system that incorporates the following breakdown of basic responsibilities.

Decision Making Body

1. holds license application hearings and decides whether to grant or deny same;
2. conducts disciplinary hearings upon complaint from the enforcement body, and imposes sanctions, such as fines, suspensions, or revocations of licenses, when appropriate;
3. promulgates rules and regulations upon its own motion or upon application from the enforcement body or the industry.

Enforcement Body

1. investigates all license applicants;
2. appears before the decision-making body and recommends approval, disapproval or otherwise advises decision-making body with respect to all license applicants;
3. monitors and surveils all casino operations;
4. investigates possible violations of casino gaming laws, regulations or rules;
5. files and prosecutires complaints before decision-making body when violations found;
6. appears before decision-making body to recommend, oppose, or otherwise advise on promulgation of rules and regulations;
7. takes or defends appeals from licensing, disciplinary, and rule-making decisions of decision making body.

The primary reason that prompted the S.C.I.'s recommendation of a State regulatory power divided in this fashion is a basic concept of fair play. Historically, our system of laws has been based upon a separation of the investigatory- prosecutorial function from the adjudicative function. To place the power both to investigate possible violations of the casino gaming laws and the power to impose sanctions for such violations would violate this concept.

Other factors militate against a single body and in favor of a two-tier system. One is the need for proper checks and balances. To be effective, the S.C.I.'s insistence on a strong and independent regulatory authority must apply to both bodies in the two-tier system.

And as also noted, this recommendation is predicated upon the presence of external checks on the regulatory authorities to prevent independence from leading to abuses of power. A two-tier system would itself provide some external checks (though not all, as will be discussed later.) Each body will tend to serve as a check on the other.

The decision-making body will clearly do so, since it will have to review the recommendations of the enforcement body before reaching its own decision on whether to issue or deny a license, whether a violation has occurred and if so, whether and what sanctions to impose, etc.

On the other hand, the enforcement authority will act as a check on the decision-making body by its power to take appeals from decisions of the decision-making authority that it disagrees with, as well as to defend appeals by other parties when it agrees with the decision-making body's finding. Thus if a license is granted to an applicant which the enforcement body believes to be unsuitable, it will have the authority to seek judicial reversal of the decision-making body's action in granting a license.

Closely related to this check and balance on each other is the fact that a two-body system makes corruption of that system harder than where all the power is contained within a single body. To obtain a license through bribery or other improper means will now almost invariably require an approach to both bodies, since "fixing" one may be insufficient to

insure approval of a license.

Another reason to separate the regulatory power into two bodies is to increase the ability of each body to perform more fully its own functions.

If the enforcement body will not have the authority to make the ultimate decisions on licensing or disciplinary matters, then it can assume an adversarial role and to appear before the decision-making body as an advocate.

By the same token, the decision-making body -- freed from investigative and enforcement functions -- can make its decisions on an impartial basis without favoring one side or another.

Closely related to this is the basis upon which those decisions will be made. While the enforcement body would be free to gather all information that may come to its attention with respect to a license applicant or licensee, a license application or disciplinary action would only be decided on matters presented to the decision-making body in open hearing. Quite often in any investigation, and properly so, much information is gathered in a form that cannot be openly presented. It may be from an informant; it may be hearsay; the source may later balk at repeating it. Whatever the reason, such information, while good as a lead, is unusable as direct proof. If a single body system were employed, such information might nevertheless taint the ultimate decision. Furthermore, in a single body system, much of this information might have to be revealed to the public under either the Open Right Meetings Act, N.J.S.

10:4-6 et seq. or the "Right to Know Law", N.J.S. 47:1A-1 et seq.

Here, too, however, the S.C.I.'s position should not be misinterpreted. It is not recommending that only evidence in a form that would be admissible in court should be used by the decision-making body. A further discussion of this point appears later. Rather, the S.C.I. simply recognizes that even under the relaxed rules of admissibility in administrative proceedings, certain materials may not be used as the basis for reaching a decision.

RECOMMENDATION:

THE DECISION-MAKING BODY SHALL TAKE THE FORM
OF A PART-TIME COMMISSION, TOTALLY INDEPENDENT
FROM OTHER AGENCIES AND DEPARTMENTS.

By the very nature and limitation of its functions, the decision-making body should as practical matter and as a matter of economy be a part-time commission.

The amount of work to be done by the decision-making body will not justify the total expenditure a full-time agency might necessitate. The decision-making body will not have any day-to-day responsibilities. It will not itself be investigating license applicants or checking for violations of the law. Rather, it will primarily be making rulings based upon adversarial presentations made to it by competing interests.

Moreover, even with respect to its purely adjudicative activities, it does not appear that the decision-making body will be swamped to the point that a full time body is necessary. Unlike

Nevada, where almost anyone who wants a casino license can apply for one, it appears that in New Jersey certain restrictions will substantially reduce the number of potential applicants. Thus, even in the very beginning when license applications first start coming in, it is realistic to assume that they will come in more like a trickle than a flood. Once the initial licensures are completed, the decision-making body's primary responsibility will be to hold disciplinary hearings as needed. Here, too, it is reasonable to assume that if stringent statutory provisions have been adopted and proper licensing investigations conducted, there should not be a larger number of disciplinary cases to handle.

Accordingly, the S.C.I. recommends a part-time decision-making body that would operate independently of other bodies or agencies, and would perform functions much in the manner of a court. It must, therefore, be able to render its decisions free from outside controls or pressures.

RECOMMENDATION:

THAT THE DECISION-MAKING BODY ("COMMISSION")
CONSIST OF FIVE COMMISSIONERS.

In light of the fact that most of the decision-making agency's work will be to render adjudications after hearings, it is recommended that an odd number of Commissioners be appointed to avoid tie votes. While any odd number of Commissioners would achieve that result, five (5) are recommended as being the most desirable. Because of the tremendous public and governmental interest in insuring

that fair and unbiased decisions are made with respect to casino licenses, it is the S.C.I.'s opinion that three Commissioners would not provide a sufficient cross-section or sufficient internal checks against improper decisions being reached by the Commission. On the other hand, seven Commissioners (or any higher number) would be too cumbersome.

RECOMMENDATION:

THE COMMISSION SHALL BE APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE.

Because of the critical nature of this decision-making agency with respect to casino gaming and the public's perception of that industry, there should exist some checks on the power to appoint its members. Because the agency would be quasi-judicial and quasi-administrative in nature, it does not appear permissible under Art. 4, Sect. 5, Para. 5 of our State Constitution to empower the Legislature to directly make any such appointments, as it does in the case of the State Commission of Investigation. Therefore, the normal method of gubernatorial appointment with senatorial consent is considered to be the most appropriate.

RECOMMENDATION:

COMMISSIONERS SHALL BE APPOINTED TO FIXED, STAGGERED TERMS OF OFFICE, SUBJECT TO REMOVAL ONLY FOR MISFEASANCE, MALFEASANCE, OR NONFEASANCE IN OFFICE.

In keeping with the general recommendation that the decision-making body be given the maximum possible independence, it is felt that fixed terms of office will further such independence. Fixed terms should serve to insulate a Commissioner from outside influences and pressures once he has been appointed to office.

To have him serve at the pleasure of some other governmental official or body would tend to make a Commissioner more dependent upon the appointing authority. The same is true with respect to removal procedures. Obviously, there must be some method by which Commissioners who act improperly may be removed from office. However, the grounds for removal must be carefully drawn and should relate directly to the proper performance of a Commissioner's functions.

Staggering of the terms of office will also enhance the basic independence and impartiality of the Commission. Except for the original appointments which will all be made within a short space of time, subsequent appointments under a staggered system would be made on a continuing basis by different Governors with the advice and consent of Senates all subject to changing political loyalties.

RECOMMENDATION:

A COMMISSIONER SHALL BE LIMITED TO ONE FIVE-YEAR TERM OF OFFICE.

A five-year term of office is suggested since it logically fits into a staggered system of appointments where there are five Commissioners. With five-year terms, one seat on the Commission will turn over each year. Yet even with this constant turnover, the remaining Commission members will continually provide a level of experience and a degree of expertise in the area of casino gambling. Shorter terms or a non-staggered system of appointments

would tend to lessen the continuity and experience of the Commission.

On the other hand, fixed terms and a significant amount of independence can lead to arrogance and insensitivity toward the needs of the State, the public or the industry itself. Moreover, if only certain Commissioners hold over for additional terms, while others regularly depart as their term expires, the holderovers, by sheer weight of their years of service, may tend to assume a disproportionate role in the decision-making of the agency. Therefore, the S.C.I. recommends a one-term limit for all Commissioners.

RECOMMENDATION:

THE COMMISSION SHALL BE CHAIRED BY THE COMMISSIONER SENIOR IN TIME ON THE COMMISSION, WHO SHALL NEVERTHELESS BE PART-TIME

There have been suggestions that the Chairmanship be a fulltime position. The S.C.I. opposes this and recommends instead that the Chairmanship be a part-time position the same as all other Commissioners. The S.C.I. believes that a fulltime Chairman would soon come to dominate the rest of the Commission, if for no other reason than by virtue of the fact that the other Commissioners, being part-time, would begin to rely on the Chairman and his closer, fulltime contact with the industry. Additionally, there does not appear to exist a need for a fulltime Chairman. Unlike the enforcement body which will have daily investigative and monitoring responsibilities, the Commission is not seen as having a real day-to-day responsibility. Outside

of conducting license, disciplinary and rule-making hearings, there is little else that the Commission will be called upon to do. Thus, in between such hearings, there is no real need for a fulltime Chairman.

To further insure that the Chairman does not assume disproportionate powers within the Commission, it is recommended that the chairmanship of the Commission pass automatically to the Commissioner senior in service on the Commission. This would mean that annually, a different Commissioner would become chairman as the preceding chairman finished his five-year term of office and left the Commission. Thus, each Commissioner would hold the chairmanship for one year - his final year (unless of course a Commissioner leaves prior to the expiration of his five years and thereby alters the normal seniority patterns).

To initiate this system, it is recommended that with respect to the first appointments to the Commission, the chairmanship go to the Commissioner appointed for a one-year term. It would then bypass the Commissioner appointed for two-year term, etc., until it reached the Commissioner originally appointed to a full five-year term.

RECOMMENDATION:

NO MORE THAN THREE COMMISSIONERS SHALL BELONG TO
ANY ONE POLITICAL PARTY.

This restriction, typical for many state bodies, is intended to remove partisan politics from the agency's activities to the greatest extent possible.

RECOMMENDATION:

THE ENFORCEMENT BODY SHALL BE AN INDEPENDENT, STATUTORILY CREATED DIVISION WITHIN THE DEPARTMENT OF LAW AND PUBLIC SAFETY.

The structure and nature of the body charged with the day-to-day enforcement of casino gambling was one of the most difficult issues considered by the State Commission of Investigation during its review of casino gambling. That review revealed two distinct approaches to this issue, each of which generated considerable support.

One view was that a totally separate and independent agency should be created to enforce casino gaming within the State. The other approach was to place the enforcement activities within a division created for that purpose in the Department of Law and Public Safety, where it would be under the direction and control of the Attorney General and staffed by Deputy Attorney Generals and State Police personnel.

There is much appeal to the idea of a totally independent enforcement agency, separated from any other governmental agency. Such a concept is entirely consistent with the State Commission of Investigation's general position that casino gambling regulatory authorities be given as much independence as possible within a system of external checks and balances. Certainly, an independent enforcement body would increase the available checks and balances. Not only would the decision-making body act as a check on the enforcement agency, but so would the Attorney General's Office and the State Police if the enforcement body were not located

within the Department of Law and Public Safety. As a division within that department, the enforcement arm would have a less independent status.

A second argument in favor of a separate enforcement body is that it would have no other responsibilities except enforcement of casino gambling statutes. It would not, therefore, be diverted from those problems to other areas of law enforcement concern as might occur -- unless specifically barred -- if it were located within Law and Public Safety or any other department.

However, several possibly overriding considerations favor placing the enforcement function within the Department of Law and Public Safety. The one factor most frequently cited is the need for an established intelligence capacity. Since a primary function of the enforcement body will be to conduct investigations of license applicants, it will require the establishment and maintenance of an effective intelligence gathering operation. Those who favor placing the enforcement functions in Law and Public Safety point out that the State Police already have this capability, whereas an entirely new agency would need time and funds to develop its own.

Secondly, there would not be a split between civil and criminal enforcement powers with respect to casino gambling. This argument proceeds from the view even if a separate enforcement agency was created, it would be limited to civil jurisdiction, while it also could be given criminal jurisdiction, the S.C.I. does feel that criminal jurisdiction of this State should not be further fragmented, but

should be limited to the Attorney General and the 21 county prosecutors. Therefore, there is validity to an argument that placing the enforcement arm within the Department of Law and Public Safety would avoid a separation of authority between civil and criminal aspects of casino gaming law enforcement. It is further true that such a split has the potential for duplication of effort, since many activities that would give rise to civil sanctions would also be grounds from criminal prosecutions. Moreover, one agency can more effectively apply both those powers. It will be able to determine, based on the individual circumstances of a particular case, whether civil sanctions, criminal prosecutions, or both, are the most appropriate and effective means of taking corrective action.

The third argument for placing the enforcement functions within the Department of Law and Public Safety is that it will be difficult if not impossible, to obtain quickly the number of qualified people needed to staff a new agency. It is estimated that to properly police casino gambling, the enforcement arm alone will need approximately a half dozen attorneys, ten to twenty accountants, and forty to sixty agents and investigators - for a total of between 60-100 staff personnel. This is a large number of experienced people to obtain in a short time. However, it is conceded that placing the function in Law and Public Safety would also need many new people - new Deputy Attorneys General, new State Police personnel and new accountants and other staff members.

The issue is a close one. The State Commission of Investigation feels strongly about the need for a governmental agency with the authority and capability to independently monitor the performance of the enforcement arm. It further believes that the Attorney General's Office is the only agency presently capable of providing such a review on the on-going, continuous basis that will be needed. Yet there is a serious problem of diminishing that capability by placing the enforcement arm under the Attorney General in addition to the Division of Criminal Justice. Without intending any derogation whatsoever, it is simply a fact of life that governmental agencies are less hesitant and more aggressive at policing one another than they are at exposing their own weaknesses and failures.

Nevertheless, the S.C.I. does feel that additional layers of governmental bureaucracy should not be created unless absolutely needed and that law enforcement powers of this State should not be further fragmented. The S.C.I. also agrees that an entirely new enforcement body may materially delay the implementation of casino gambling without any significant corresponding gain from such a delay. Unlike the decision-making "commission," whose activities at the outset may be minimal while it awaits the results of license application investigations, the enforcement arm will be called upon to immediately conduct the extensive background checks necessary before casino licenses can be approved and issued. If a new agency is at the same time trying to pull its own staff together, these license investigations may be delayed considerably or handled poorly.

It is for the above reasons that the State Commission of Investigation is persuaded to opt in favor of placing the

enforcement responsibilities within the Department of Law and Public Safety. To minimize the potential problems expressed earlier with respect to that arrangement, the State Commission of Investigation further recommends that the Legislature consider statutory provisions that would:

1. Create a separate division, similar to the Division of Criminal Justice.
2. Create an operating head of that division whose sole superior is the Attorney General.
3. Limit the functions of the division to the enforcement of casino gambling.
4. Prohibit the use of the Deputy Attorney Generals and State Police personnel assigned to that division for other duties or collateral responsibilities.
5. Give the head of that division direct control over the State Police personnel assigned to the division.
6. Empower the division to hire other personnel, particularly accounting and other specialized individuals.

RECOMMENDATION:

THE ENFORCEMENT BODY SHALL BE LIMITED IN ITS
RESPONSIBILITIES TO THE ENFORCEMENT OF CASINO
GAMBLING - RELATED STATUTES AND REGULATIONS

Whether or not the enforcement arm is assigned to the Department of Law and Public Safety, it should be responsible only for casino gambling enforcement activities. It should not be encumbered with other tasks that will make it difficult to perform any of its specific duties properly.

The State Commission of Investigation notes that under the original bill proposed, for example, the regulatory authority apparently would have some responsibility to enforce, administer

or review Equal Employment Opportunity compliance by licensees. While it may be desirable to include Equal Employment Opportunity requirements in any casino gambling law, the S.C.I. strongly recommends against placing responsibility for their administration with the enforcement arm. Equal Employment Opportunity provisions have nothing to do with casino operations per se; they are requirements that apply to all employers in general. They have a very real potential for tying up the enforcement body's manpower in civil litigation, thus diverting it from its primary function. These Equal Employment Opportunity duties are properly assignable to the Division of Civil Rights, which has the experience and obligation to enforce such provisions. Moreover, the Division of Civil Rights need not interfere with the enforcement body's jurisdiction over casino gambling since investigations aimed at discriminatory hiring practices would not normally involve actual casino operations but would be limited to a review of the licensee's employment policies.

However, casino gambling legislation should contain a provision specifically prohibiting the Division of Civil Rights from ordering a licensee to hire a person or otherwise granting relief to anyone who is required to have a license and has not obtained same from the licensing authority. In such cases, the licensing authority's determination should be final unless there is demonstrated improper bias on the licensing authority's part.

RECOMMENDATION:

THE ENFORCEMENT BODY SHALL BE SPECIFICALLY PROVIDED WITH ITS OWN AUDIT CAPABILITY AND AUDIT FUNCTION.

Based upon its own experience, the State Commission of Investigation believes that in order to effectively monitor the possible infiltration of organized crime into casinos and casino-related activities, the casino law enforcement arm must be able to trace the sources of money being used by licensees and others who operate ancillary services. Organized crime figures are simply not going to appear "on the record" as visible members of any corporation that is doing business as or with a casino. The S.C.I. has been able in several investigations to uncover possible organized crime infiltration of otherwise legitimate enterprises through the ability of its own agents/accountants to audit the books, records and bank account of the enterprises in question. In fact, even prior to the casino gambling referendum of 1974, the use of such audit techniques led to the discovery that money for a certain hotel in Atlantic City came from organized crime figures through "fronts".

Nevada specifically recognizes this concern. Its Gaming Board is comprised of three members, one of whom must be a certified public accountant. See Nevada Statute 463.030(5). He heads the fiscal division of the board, which is responsible for the board's audit activities See Nevada Statute 463.070(3).

In testimony before the Commission on the Review of the National Policy Toward Gambling, Mr. Peter Echeverria, as Chairman of the Nevada Gaming Commission, emphasized the importance of the audit function. Asked what the principal violations were that the Nevada Gaming Commission was most concerned with, Mr. Echeverria testified:

"They vary and they are seasonal. Our principal concern always is source of funds. I think if I were to select one item, which I think is something we watch on a constant basis, is where is the money coming from that supports the casinos and gets them started in business.

Consequently, each month our Commission receives from the audit staff and after a screening from the Gaming Control Board, our Commission receives a list of loans to licensees, Regulation 8.130. They are confidential, they are privileged communications. They are not publicized.

We have an opportunity to examine every source of every dollar going into every licensed establishment, what the source of the funds come from, where they come from, what they are going to be used for. We have an opportunity to examine that list. If any member of the Commission, one member of the Commission questions any item on the loans to licensees, we give that licensee a period of thirty to ninety days to return the money and get his money somewhere else.

RECOMMENDATION:

RESTRICTIONS SHALL BE IMPOSED ON THE CONTACT ANY MEMBER OF EITHER REGULATORY BODY MAY HAVE WITH PRIVATE GAMBLING ENTERPRISES PRIOR TO, DURING, AND AFTER HIS TERMINATION IN OFFICE.

One of the major concerns that the State Commission of Investigation has with the control of the casino gaming industry is its potential for corruption of those who regulate and monitor its activities -- not only actual corruption - bribes, extortion, etc. - but the subtle corruptive influencing that can occur through close connections with an industry. Not only would past, present or future ties to the gaming industry give the appearance of impropriety on the part of any member of the regulatory authority, but such ties would in some cases either consciously or subconsciously

affect the manner in which an individual performs his official functions.

Obviously, no one should be permitted to serve on either body while he presently has ties to the industry. However, such a restriction alone is insufficient. Additional restrictions on prior and future relationships with the industry are equally important. In particular, the public must have confidence that the individuals chosen to administer casino gambling on behalf of the State are free of personal pressures that would hinder their impartial execution of the law.

Accordingly, the State Commission of Investigation recommends enactment of statutory provisions along the following lines:

1. No person shall be eligible to serve as a member or employee of either regulatory body (hereinafter "authority") who within the three years prior to such employment or appointment:
 - a. held any interest directly or indirectly, in, or
 - b. was in any capacity employed by or associated with, or
 - c. received any monies or other thing of value from:

any private gambling enterprise wheresoever situate, or any company or corporation having a parent or subsidiary relationship to such gambling enterprise.
2. No member or employee of the authority shall engage in any of the activities set forth in paragraph 1 during his term of office or employment.

3. No member or employee of the authority shall, during the three years immediately subsequent to his termination of service or employment with the authority, engage in any of the activities set forth in paragraph 1 with respect to any licensee of this authority. The prohibitions of this section shall apply to all activities of a licensee whether within or without this State.
4. Prior to entering office in or employment with the authority, all members and employees shall enter into a covenant whereby they agree to abide by the post-employment restrictions contained in paragraph 3 in return for their appointment to or employment by the authority.
5. Any licensee of this authority who causes, permits, or otherwise is a party to any violation of paragraphs 2 or 3 of this section, shall have its license suspended for a period of not less than and shall be subject to a fine of not more than \$100,000.

As can be seen, pre-employment restrictions extend to association with any private gambling operations, whether or not that operation had any connection with New Jersey. Post-employment restrictions apply only to associations with licensees of this State. The reasons for this difference are several. One, a wider post-employment restriction may be unenforceable unless a present licensee is involved. It may also be unnecessary since it is less likely that an employee would have been affected in the performance of his duties by the prospects of future employment with a casino operation in Nevada, for example, that had no connection with New Jersey, then he would if the possibility of future employment involved a licensee, whether or not in a casino-related capacity and even if the position was not located in New Jersey. Greater pre-employment restrictions are also recommended because it may be difficult in many situations to determine whether private gambling operations in other jurisdictions

have an impact, directly or indirectly, on conditions in New Jersey. In those instances, a person's past association with any private gambling operation, whether licensed in this State or not, may make it difficult to perform his duties properly.

It should be noted that any form of association with an enterprise having an interest in the industry would be prohibited during the periods of the restrictions. Thus, a former authority employee would not only be restricted from working directly in a casino, but also from working for the licensee in any other area of the licensee's business, whether it had to do with casino gambling or not, and whether it was an activity conducted within New Jersey or outside the State. With today's large, diversified corporations, a prohibition limited in its scope to the licensee's casino activities would have little value in alleviating the problem sought to be controlled. A well-paying position in some other phase of the licensee's business would have the same potential to influence an official's conduct as would a job in the casino itself.

Paragraph 1 (c) is an attempt to avoid the problems raised in State v. Savoie, 67 N.J. 439 (1975). In that case, our Supreme Court interpreted N.J.S.A. 2A:105-1 (extortion by a public official) to require proof that the money or other thing of value taken by a public official was taken for the performance of his duties. ~~Under the Court's interpretation of the statute, a gift given as a friendly gesture would not violate the statute. The~~ State Commission of Investigation believes that in the area of casino gambling, there should not be any room for "gifts",

innocent or otherwise. Savoie was simply a case of construing the language of N.J.S.A. 2A:105-1 and finding that it did not evidence an intention to prohibit a public official from accepting all monies, whether intended to influence his official duties or not. It does not stand for the proposition that a flat prohibition on accepting money or other things of value would be unenforceable. To the contrary, if the wording of a statutory provision clearly indicated such an intention, and adequately placed public officials on notice of same, any receipt of monies would be a violation. The State Commission of Investigation recommends such a provision with respect to casino gambling to remove even the slightest temptations to those who will enforce casino gambling laws.

Paragraph 4 serves two purposes. First, it will clearly place all members and employees on notice as to these restrictions and will document that notice. More importantly, it should afford the State with standing to enforce these restrictions in other jurisdictions. Reasonable restrictive covenants, freely entered into and bearing a relationship to the prior employment activities, are generally enforceable. Such a covenant may be of value in another state where the provisions of our gambling statutes by themselves would not otherwise be given extraterritorial effect.

Finally, the provision considered to be the most effective in deterring the violations of these restrictions is subparagraph 5. In order for a violation of the post-employment restrictions to occur, there must be some involvement on the part of a New Jersey licensee. Even with respect to pre-employment and current employment restrictions, a licensee of this State could conceivably be involved.

The threat of sanctions against that licensee, as well as against the offending employee or former employee, is believed to be the best means of preventing such conduct from occurring.

RECOMMENDATION:

PRIOR TO EMPLOYMENT, ALL MEMBERS SHALL BE REQUIRED TO EXECUTE AN AFFIDAVIT OF NON-INTEREST IN ANY LICENSEE.

Consideration had been given to a recommendation that the members of both regulatory bodies be required to make personal financial disclosures. Such disclosures would be for the purpose of determining whether a member had a direct or indirect interest in any private gambling enterprise. However, financial disclosure requirements do involve substantial intrusions into personal privacy. The threat of such disclosures may deter even the most honest of persons from accepting positions with the licensing authority. To many, the potential public revelation of their personal finances, even if everything is in order, is simply not worth whatever prestige or monetary reward would be involved in accepting the position.

The S.C.I. believes that a suitable alternative exists. Prior to commencing employment with the authority, each member should be required to execute an affidavit attesting to his non-interest in any business or activity connected with a private gambling enterprise during the prior three years. Failure to ~~file the required affidavit would prevent appointment to or~~ employment by the regulatory authority. Should a false affidavit be filed, then in addition to removal proceedings because the

affiant was statutorily ineligible to take office in the first place, the person making same would be subject to criminal prosecution for false swearing. Acquiring an interest subsequent to appointment would, of course, be a violation of the statute in itself and would be punishable as such.

RECOMMENDATION:

ALL POLITICAL ACTIVITY BY ANY MEMBER OR EMPLOYEE OF THE REGULATORY AUTHORITY SHALL BE PROHIBITED, INCLUDING THE MAKING OF POLITICAL CONTRIBUTIONS.

Gambling is an issue with much emotional appeal. It is also an issue involving high stakes. Its impact on the normal electoral process can be seen by the large sums of money spent to secure passage of the referendum. The State Commission of Investigation believes that all those who will both administer and enforce the gaming laws should be totally removed from participation in the political process. They should not be permitted to hold an office in a political party; to campaign for candidates or public issues; to attend party conventions or caucuses; to endorse candidates or issues. Nor should they be permitted to make political contributions. Neither their performance in their official position, nor their continued retention of that position should have the appearance of being politically motivated. Since casino gambling is likely to remain a highly visible topic in the foreseeable future, attracting much consideration by governmental officials, both state and local, it would be impossible to make a campaign contribution to anyone seeking public office with any reasonable assurance that the person will not sooner or later speak out on the issue of casino gambling. Certainly, it

would at least give the appearances of impropriety for such a candidate to have received money from a public employee with the casino gambling regulatory authority.