

# DUE DILIGENCE? OR GOTCHA? LICENSE BACKGROUND INVESTIGATIONS

By Norman DesRosiers

Last year I wrote an article commemorating the 25th anniversary of the Indian Gaming Regulatory Act. The theme of the article was “The Evolution of Tribal Gaming Regulation.”

It was pointed out that, shortly after the act was passed, there were suddenly potentially hundreds of new governmental jurisdictions (both tribal and state) that would have various forms of gambling now legalized. The gambling authorized in the act went from bingo and pulltabs up to full-fledged casinos.

Prior to this, for all practical purposes, there were only two jurisdictions with casino games regulatory experience, Nevada and New Jersey. Consequently, there was virtually no pool of experienced regulators to recruit from to meet the needs of all of these new gambling jurisdictions with regulatory personnel. Therefore, states, and in many instances tribes, filled the void of gaming regulators with criminal law enforcement personnel.

There was some understandable logic to this approach. However, the act of pulling police-minded personnel from various law enforcement and criminal investigation agencies, waving a magic wand and declaring that suddenly today you are a gaming regulator did not always have optimum results. Adjusting to this sudden change in roles and responsibilities proved challenging at best, and in many instances there were lasting negative consequences.

It is noteworthy here to remember that many, if not most, of these emerging gambling jurisdictions had laws making gambling illegal prior to the act. Furthermore, the vast majority of the newly appointed regulators had virtually no gaming experience, and the few who did were more along the line of investigating and prosecuting illegal gambling.

In my humble opinion, if gambling is legal in any given jurisdiction, then regulating it is a civil regulatory responsibility. However, perhaps out of fear and inexperience or an abundance of caution, many state policy makers continued to allow these newly delegated regulators full criminal law enforcement authority.

So this now sets the stage for the discussion at hand: What is the proper balance of meaningful due diligence and unreasonable levels of background investigations on gaming license applicants? What is the proper balance in conclusions of genuine risk or unsuitability determinations based on material facts versus looking for reasons to deny based on immaterial technicalities or gut feelings with little or no substantiation?

We certainly understand and support the genuine need to keep criminal and other undesirable elements out of the industry. As a career gaming regulator, I worked hard at doing just that. However, after personally reviewing investigative reports of literally thousands of applicants over the years, one develops a pretty strong sense of what constitutes a material risk and what doesn't.

While an omission or inaccurate response on a background questionnaire could technically be grounds for a license denial, one should reasonably assess whether that omission, if disclosed, would have really changed the course of the background investigation or final conclusion. Generally, it would not have. Another example might be to remember that 20 years ago, in many jurisdictions, a bankruptcy on one's record would have been an automatic disqualifier, especially for a cash-handling employee position. This type of negative information was viewed as a character deficiency, a result of poor fiscal responsibility, lack of fiscal discipline, poor judgment, etc. While in some cases today, these conclusions could still be true, more often than not in many cases, the bankruptcy has been due to circumstances beyond one's control, i.e. catastrophic illness or injury, economic collapse, etc. If everyone with bankruptcy today was deemed unsuitable, we would lose a substantial percentage of our industry workforce.

I would like to suggest that the role of a regulatory background investigator is to verify the truthfulness of information provided on a background questionnaire. Additionally, of course, verify any and all existing records of criminal activity, education, civil financial activity and check with references.

The role of the investigator should not be to take the approach of a criminal investigation: to attempt to establish previously unprosecuted criminal conduct. That should be left to criminal investigators with probable cause, not a civil regulatory license investigator.

I fully understand and appreciate that a gaming license is a privilege and not a right and that the burden is on the applicant to prove suitability. Regulators have been given the authority to make suitability determinations on the very loose standard that an applicant must not have any negative reputation, habits or associations. Applying this broad standard has many inherent dangers, especially if the perceived negative reputation is derived from rumors, media stories on the Internet and in some cases faulty or unsubstantiated police intelligence. I would strongly caution that no regulator should be making suitability conclusions relative to reputation, habits and associations without valid corroborating evidence to substantiate the media allegations or intelligence reports.

Unfortunately, there have been numerous instances where the reputations and livelihoods of applicants have been ruined based on unjust abuses of authority by overzealous police-minded regulators. Admittedly, most of these incidents occurred in the early days of these emerging jurisdictions 10 to 20 years ago. However, some of those applicants who experienced those injustices are still trying to clear their names and reputations to this day.

This article is not intended to broadly disparage regulatory or law enforcement personnel. The vast majority of these personnel have fulfilled their responsibilities in a commendable manner. Gaming regulators can and should be credited with keeping the industry relatively free from crime and corruption scandals over the last two decades.

The intent of this commentary is simply to recognize that gaming regulators have virtually unlimited authority and discretion when making licensing decisions. I would simply hope to remind them to use that authority fairly and judiciously when making decisions that will have long-lasting effects on the lives and businesses of license applicants.

It is truly believed that we have come a long way in the last 20 years in our application of regulatory standards and fairness. Our approach has been enhanced through maturity and experience. A simple understanding of what the proper balance of due diligence and risk assessment is will be most helpful to all of the stakeholders.



### **NORM DESROSIERS**



*Norman DesRosiers is widely recognized as a leading regulator of Native American gaming with more than 20 years experience. A former vice chairman of the National Indian Gaming Commission, DesRosiers also has served on gaming commissions for several tribes. He recently joined the board of directors for Galaxy Gaming. He may be reached at [nhdesrosiers@att.net](mailto:nhdesrosiers@att.net).*

# Compliments like these really make us light up.

Proud to receive the  
2014 Slot Floor Technology Award  
for Customer Bonus System.

*MotorCity*  
CASINO · HOTEL

A MILLION MILES AWAY,  
RIGHT DOWN THE STREET.



MotorCityCasino.com