GAMBLING AND THE LAW®:
Is This Rule Really Necessary?

When hotel-casinos first opened in Atlantic City, operators found themselves wrapped up in red tape.

Every time they filed a petition with the New Jersey Casino Control Commission, they had to deliver 17 separate copies. This was before email, so some poor secretaries had to physically photocopy, collate and staple 17 separate packets, plus a few more for the companies' executives and lawyers.

And hotel-casinos had to file lots of petitions. Everything was regulated. Restaurants had to get permission from the NJCCC if they wanted to move kitchen equipment. Casinos all had to use the same color felt on their gaming tables. Advertisements had to be pre-approved, and could not mention certain information, like the payout odds on slot machines.

Somebody finally asked the regulators what they did with those 17 separate copies. The NJCCC looked into it, and admitted that they did not know where they all went. So the 17 copies rule was dropped.

The problems created by over-regulation can be a lot worse than tons of wasted paper and unnecessary photocopying costs. The pre-censorship of casino advertising infringed on important first amendment rights for both the operators and patrons. Players, for example, might have found it useful to know which casinos offered the best odds.

The NJCCC was not anti-gambling, except to the extent they thought they were supposed to be. New Jersey was only the second state in the U.S. to legalize casinos. Legislators had visited Nevada and made it clear that they did not like what they saw.

The rule against advertising game odds was in response to billboards in Las Vegas shouting "Loosest slots!", which the New Jerseyans found distasteful. Kitchens had to be measured because the casino enabling statute had requirements on the square footage for

gaming and non-gaming areas. Table felts were all the same color, as were gaming chips, so that regulators would have no trouble reviewing eye-in-the-sky security videotapes.

Social scientists have discovered what can be considered universal truths about regulatory agencies. Regulators tend to start out overly-strict, although they eventually become overly-friendly with the industries they control. Government bureaucracies continue to grow, even when the businesses they are regulating are shrinking. And a rule, once put down on paper, lasts until ... well, forever.

Probably the most important, and overlooked, characteristic of all regulatory agencies is that they gain lives of their own, sometimes completely separated from the real world. Rules are applied simply because they have always been applied. Businesses continued to be restricted not only when those restrictions are no longer needed, but even when the regulations directly hurt the very people they are supposed to protect.

One of the first things that gets lost is the reason behind the rules.

When casinos were first legalized in New Jersey, for example, there was a great fear that all that new money would create conflicts of interest for elected and appointed officials. Casinos were brought in to revitalize Atlantic City. A Casino Reinvestment Development Authority was created in 1984 to make sure the money went into projects like housing. Strict rules were put in place to ensure casinos would not influence where the money was spent.

This led in 1986 to the Chairman of the CRDA having to resign, because his adult daughter, a casino cashier, moved back into his house.

It's easy, in this case, to see that a government agency was not going to direct hundreds of millions of dollars into, say, building a parking structure for a casino, simply because the Chairman's daughter worked in that casino. But how would you write a rule that allows a young daughter who is a casino cashier to live in his home, but not an older son who is a casino president? Unless you are willing to spend enormous amounts of time and money holding hearings on each individual case, the rules have to be written in black and white, with bright red lines telling people what they can and cannot do.

We could also say, "That's so 1980s." But listen to this complaint from Steve Wynn, while he was being vetted by the Massachusetts regulators:

An investigator who gets paid by the hour and can decide how many hours

> he should charge, called up one of my outside directors, the chairman of Occidental Petroleum, and insisted that he supply him immediately with proof of his ownership of his car. Please. What was he looking for, the Mafia?

Wynn, is, of course, right. These are billion-dollar companies, and a car is not going to determine suitability. But refusal to comply with even an unreasonable demand can lead to a casino license being denied.

The problem here seems to be that disconnect between the reason for the rule and the rule itself. Yes, the best way to regulate any legal gambling operation is to investigate the background of everyone involved in management or ownership, and to track every dollar in and out of the business. But why are we regulating? Why aren't there the same types of government oversight on used car dealers or street vendors?

There really was Mafia infiltration of casinos during the 1940s and '50s. The business is still, primarily, conducted with untraceable cash and gaming chips, with few paper records. There is not only the potential for skimming, but also for cheating.

But is there the same need today to re-investigate publicly-traded corporations that have been licensed in a dozen jurisdictions as there was when the insiders had names like Bugsy and his girlfriend, the Flamingo?

The industry trade group, the American Gaming Association, has been trying for years to get regulators to curb their enthusiasm. The first head of the AGA was Frank Fahrenkopf, Jr., former chairman of the Republican National Committee. So it knew that it could not just come right out and say, "That's a stupid rule." Instead, it commissioned leading gaming attorney, David O. Stewart, to write a number of white papers, with titles like "Improving Gaming Regulation: 10 Recommendations for Streamlining Processes While Maintaining Integrity."

The A.G.A. and other professional groups, such as the International Association of Gaming Regulators and the International Association of Gaming Advisors, have succeeded in streamlining regulation. They have been able to get many jurisdictions to adopt a "Multi-jurisdictional Personal History Disclosure Form." If the point is to ensure that casinos are owned and run by people who are honest and competent, the questions should be the same, regardless of which state is issuing the license.

The A.G.A.'s recommendations seem small, but they could have a big impact.

Wynn would never have had reason to complain, if outside directors were only registered, not licensed. Companies would save millions of dollars if they did not have to file reports, sometimes every three months, containing information that is easily available to regulators from other sources. And, is there any reason why waiters and waitresses have to undergo background checks?

Perhaps we never will, or even should, reach a point where running a casino is like running any other business. But every government regulation should start with the question, "Is this rule really necessary?"

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 Prof. Rose is recognized as one of the world's leading experts on gambling law, and is a consultant and expert witness for governments, industry and players. His latest books, INTERNET GAMING LAW (1st and 2nd editions), BLACKJACK AND THE LAW, GAMING LAW: CASES AND MATERIALS and GAMING LAW IN A NUTSHELL are available through his website, www.GAMBLINGANDTHELAW.com.