IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, Plaintiff, v. TINIAN CASINO GAMING CONTROL COMMISSION, DAVID Q. MARATITA, JOHN U. HOFSCHNEIDER, JOSE P. CRUZ, LINO V. LIZAMA, JOSEPH M. MENDIOLA, REYNALDO M. CING, and WILLIAM B. NABORS, Defendants.	CIVIL ACTION NO. 91-690 **DECLARATORY JUDGMENT**

This suit was initiated by the Commonwealth of the Northern Mariana Islands against the defendants for two purposes. First, and foremost, was to obtain from the court a determination that certain provisions of the Tinian Casino Gaming Control Act of 1989 (the Act) and/or certain regulations promulgated thereunder are invalid and unenforceable. Second, if the answer to the first proposition is in the affirmative, to remedy that which has been done - mainly for the accounting and collection of funds spent by the defendants in carrying out the provisions of the Act.

This matter was heard on August 28th and 29th on Tinian and the court now reduces to writing its determination of the issues presented and its reasoning.

FOR PUBLICATION

THE HAND THAT HAS BEEN DEALT: THE CAUSE OF ACTION

The complaint is in the form of a request for declaratory relief and the defendants have responded in that vein. The cause of action appears to be proper. Declaratory relief actions are expressly recognized and authorized. Com.R.Civ.Proc. Rule 57.

Both the plaintiff and defendants are desirous of obtaining a determination of a justiciable controversy. In the traditional sense, a declaratory judgment is sought prior to the time there has been any interference with the rights of the party seeking a declaratory judgment. However, the traditional role of a declaratory relief action has been expanded to encompass those circumstances where such an interference has already occurred but the controversy still exists and a declaratory judgment will resolve the uncertainties and controversies between the parties.1/

It is apparent from the answers and briefs filed by the respective parties that this matter is ripe for declaratory relief treatment. A judicial determination as to the validity/invalidity of the questioned provisions of the Act will terminate the controversy giving rise to this proceeding. Indeed, it is difficult, if not impossible, to discern how the relationships (and controversies) between the plaintiff and

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1/ As seen, infra, some actions by the defendants have already allegedly interfered with the rights of the plaintiff while others are waiting in the wings.

defendants can be resolved without the determinations requested.2/

Declaratory relief is appropriate when the judgment will serve a useful purpose in clarifying and settling the legal relations and issues, and when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceedings. Guerra v. Sutton, 783 F.2d 1371 (9th Cir. 1986).

Rule 57 of the Rules of Civil Procedure provides that a declaratory relief action shall be given priority on the court's calendar. The parties have facilitated this directive by agreeing to the expedited briefing and hearing schedule. The parties do not advance any arguments that there are issues of fact and the court perceives none.

Succinctly put, there exists an actual controversy, the interests of the parties in the subject matter of the controversy are substantial and direct, and the matter is ripe for determination. Though many of the provisions of the Act and regulations have not been implemented, there is no doubt the "ripening seeds of a controversy" have been planted. 22A Am.Jur.2d Declaratory Judgments, § 36.

2/ Perhaps the one reservation to this statement is whether the court is involving itself in a political question. However, as the analysis of the controversy and the relationship between the parties is further explored, it is concluded that any perceived "political question" is not a barrier to granting declaratory relief. See, Powell v. McCormack, 395 U.S. 486, 89A S.Ct. 1944 (1969); Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691 (1962).

INITIATING THE INITIATIVE

In July of 1989, a petition was circulated and presented to the Attorney General. The petition proposed the enactment of an initiative to legalize casino gaming for the Second Senatorial District of Tinian and Aguiguan.

Article IX, Section 1 of the Constitution, in pertinent part, provides:

> "The people may enact laws by initiative.
>
> a) An initiative petition shall contain the full text of the proposed law. . . . If the petition proposes a local law that affects only one senatorial district, the petition shall be signed by at least twenty percent of the persons from the senatorial district who are qualified to vote.
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> b) An initiative petition shall be filed with the attorney general for certification that the requirements of section 1(a) have been met.
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> c) An initiative petition certified by the attorney general shall be submitted to the voters at the next regular general election that is held at least ninety days from the date the petition has been certified.
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> d) . . . An initiative petition that proposes a local law shall become law if approved by two-thirds of the persons from the senatorial district who are qualified to vote. An initiative petition that has been approved by the voters shall take effect thirty days after the date of the election unless the petition provides otherwise."

The initiative process is specifically recognized for the establishment of gambling. Article XXI of the Constitution states:

> Gambling is prohibited in the Northern Mariana Islands except as provided by Commonwealth law or established through initiative in the Commonwealth or in any senatorial district.3/

The initiative, sub judice, was certified by the Attorney General on August 1, 1989. In November of 1989, the matter was approved by the constitutionally required two-thirds vote for the Second Senatorial District. As a result, the Act became effective January 1, 1990.4/

Pursuant to the Act, the Mayor of Tinian appointed members to the Commission who were confirmed by the Tinian Municipal Council.5/ An executive director of the Commission was hired.6/

Thereafter, certain application fees from prospective casino licensees were deposited with the Department of Finance of the Commonwealth Government. On February 1, 1991, the

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3/ This article of the Constitution was a result of the 1985 Constitutional Convention, Amendment No. 42.

4/ The Act is attached to the complaint as Exhibit "A." There is no dispute that this is the official version of the initiative.

5/ Defendants Hofschneider, Cruz, Lizama, Mendiola and Cing are members of the Commission.

6/ Defendant Nabors was the Executive Director but has resigned.

Commonwealth Legislature passed Public Law No. 7-21 which, inter alia, provided that:

> [A]ll funds in the amount of $1,432,000 plus all interest derived therefrom deposited with the Department of Finance by the Municipal Treasurer, Municipal Council, Tinian Casino Gaming Commission, or the Mayor of the Second Senatorial District which were collected through the Tinian Casino Gaming Control Commission pursuant to the Tinian Casino Gaming Control Act of 1989 shall be transferred and deposited forthwith into an account established for this purpose by the Tinian Municipal Treasurer.

The funds were transferred and the Tinian Municipal Treasurer (defendant Maratita) opened an account. On February 6, 1991 the Office of the Attorney General advised Maratita that he could not expend any money from the account until the funds were appropriated pursuant to 1 CMC § 1408.[7/] Maratita, apparently following orders from the Commission, proceeded to ignore the Attorney General's advice and disbursed the funds. Disbursement was pursuant to a budget previously passed by the Tinian Casino Gaming Control Commission

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[7/] 1 CMC § 1408 states:

> All revenues derived from local revenue laws shall be collected pursuant to procedures adopted by the Director of Finance and shall be deposited in the General Fund in a special account for appropriation in local appropriation laws enacted by the legislative delegation from which district the revenues are derived. A decision by the legislature to approve or reject a proposed expenditure preempts a decision on the same expenditure for the same fiscal year by the legislative delegation.

(Commission) and which was approved by the Tinian Municipal Council. See, Tinian Ordinance No. 3-01, Exhibit C attached to the Commission's brief.

In the spring of 1991, additional license application fees came into the possession of the Commission which established a supplemental budget for the expenditure of this money. The Tinian Municipal Council approved the budget by Ordinance No. 3-02. These funds have been (or will be) disbursed through Maratita.

In May, June, and July of 1991, the Commission published in the Commonwealth Register proposed rules regarding the criteria to be used in awarding casino licenses, the manner of holding hearings before the Commission, and matters governing casino applications as well as fees. Though published, these proposed regulations are still pending and not yet in force.

In a rather exhaustive and extensive review of the Act, the plaintiff argues that many provisions of the Act and the regulations promulgated by the Commission are invalid. Of monetary interest, it is asserted the expenditure of funds by the Municipal Treasurer was illegal and, therefore, the defendants must pay back the funds improperly disbursed.

At the heart of the resolution of this dispute is the status and relationship of the provisions of the Initiative vis-a-vis several provisions of the laws of the Commonwealth.

Put in simplistic terms, it is the position of the

plaintiff the Initiative cannot and does not supersede the Constitution and statutes of the Commonwealth. The defendants argue that if there is a conflict between the laws of the Commonwealth and the Initiative, the latter prevails.

THE RULES OF THE GAME: THE INITIATIVE PROCESS

Article IX of the Constitution establishes a self executing initiative process. It does not require further legislation by the legislature before an election for the initiative can be held. Article IX adequately sets forth the procedure and requirements for the initiative. Basically, it grants a constitutional power to voters to enact laws independent of the legislature.

It is observed that the initiative power in Article IX is restricted to the enactment of laws and the initiative process is not available for amending the Constitution unless Article XVIII, Section 4 of the Constitution is implemented. There is no pretense (or argument) that the Act is a constitutional amendment. Consequently, it must be conceded that should any portion of the Act conflict with the Constitution, the latter prevails.[8/]

Provisions for initiatives are liberally construed to effectuate, and not to hamper, the exercise of the voters

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8/ As the court perceives the defendants' argument, they do not assert the Initiative prevails over express Constitutional provisions but only laws enacted by the Commonwealth Legislature.

the rights granted thereby. Birkenfeld v. Berkeley, 550 P.2d 1001 (Cal. 1976); McFadden v. Jordan, 196 P.2d 787 (Cal. 1948), cert. den. Allen v. McFadden, 336 U.S. 918, 69 S.Ct. 640.

The above basic principles do not appear to be the main bone of contention by the parties. Where the plaintiff and defendants part company is the classification of the Act. The plaintiff equates the Act with a local law and it is stated that a general state (read Commonwealth) law takes precedent over a local law adopted by the initiative process. Citing, inter alia, King City Water District #54 v. King City Boundary Review Board, 554 P.2d 1060 (Wash. 1976).

This proposition is not contested by the defendants. However, the classification of the Act as a local law is.

The briefs of the parties have alluded to the somewhat unique nature of the relationship of the Commonwealth Government and the municipalities of Rota, Tinian and Saipan. Although reference to cases from the United States are helpful in understanding the hierarchy of statutes or ordinances as between a state, county and municipality, in the final analysis, the determination as to whether The Tinian Casino Gaming Control Act of 1989 is a local law and therefore subservient to Commonwealth-wide law, must be made by considering the Constitution of the Commonwealth.

At first blush, the Act appears to be a "local law" since its implementation is to apply only to the Second Senatorial District - Tinian and Aguiguan.

Article VI, Section 8, establishes the chartered municipalities of local government on Rota and Tinian and Aguiguan.

Article II, Section 6, provides:

> Laws that relate exclusively to local matters within one senatorial district may be enacted by the legislature or by the affirmative vote of a majority of the members representing that district. The legislature shall define the local matters that may be the subject of laws enacted by the members from the respective senatorial districts, laws enacted through initiative by the voters of a senatorial district under article IX, section 1, regulations promulgated by a mayor under article VI, section 3(e), or local ordinances adopted by agencies of local government established under article VI, section 6(b).

1 CMC § 1402(a) defines "Local Bill" as a bill that, if enacted, becomes a law pertaining exclusively to matters within one senatorial district.

Subdivision (8) of § 1402(a) includes as a Local Bill: "Gambling prohibition and regulation, so long as such regulations are in addition to Commonwealth regulations."

1 CMC § 1403 prescribes the method and procedure for the introduction of a "Local Bill."

Because of the definition of a "Local Bill" (by enactment) and because a "Local Bill" is to be introduced and passed only by the legislative delegation of the respective senatorial district, it is clear 1 CMC §§ 1401-1406 do not include an act formulated and approved by the initiative process. Although Article II, Section 6 of the Constitution

gave the authority to the legislature to define the subject matter of local laws which are enacted by the initiative process, it clearly did not do so. Thus, 1 CMC §§ 1401-1406 is of no assistance in resolving this matter.

As the court views this matter, the combination of Article IX, Section 1 and Article XXI is dispositive. Given the fact that a liberal construction is to be afforded the initiative process, Article XXI gives the voters of a senatorial district the specific authorization to use the initiative process of Article IX to establish gambling. Thus the imprimatur of constitutional authority is the source of the Act and does not implicate the "Local Law" provision of Article II, Section 6. Since the Constitution provides the mechanism for the Act and is independent of the local law provisions of the Constitution and the Code, the initiative process and the law promulgated by that process is not subordinate to the general law of the Commonwealth. See Pipoly v. Benson, 125 P.2d 482, 484 (Cal, 1942) (where subject of local law or regulation concerns "municipal affairs," such law or regulation is superior to conflicting state statute).

As noted by the defendants, the Constitutional Convention history of Article XXI (Constitutional Amendment No. 42) supports this conclusion.9/ Not only does the history

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9/ Committee Recommendation No. 42, as clarified by Delegate Villagomez: "No. 3, this amendment permits each of the three senatorial districts to enact for their own district to permit any kind of gambling that they see fit for their particular district."

of Constitutional Amendment No. 42 lead to the conclusion that the gambling initiative process was elevated to a higher classification, but the very nature of the difficult process (a two-third vote) satisfactorily rebuts the argument that the Act rises to no more than the level of a local law.10/

It is, therefore, concluded that if there is a conflict between a provision of the Act and a statute in the Commonwealth Code, the former is not necessarily invalid. The court does not accept the "all or nothing" approach taken by the plaintiff or the Commission for reasons which will now be explained.

The plaintiff has set forth a rather compelling argument as to the consequences if any senatorial district can enact laws by the initiative process which may supersede Commonwealth-wide laws. The potential for the breakdown of the Commonwealth to a great degree into separate and independent political entities is not a fanciful argument. As seen, infra, the Act infringes upon many areas of the Commonwealth Government which previously were thought to be immune from any encroachment by any one senatorial district. There are safeguards however - the Constitution and the limitation of the exercise of power of any senatorial district by judicial

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10/ As mentioned before, a local law is introduced and passed pursuant to 1 CMC § 1403. The introduction process, the time involved and vote required are much less arduous than the initiative process.

determinations of whether the power intended to be exercised is within the reasonable and proper parameters of the initiative process enacted by the voters.11/

In order to appropriately address the concerns raised by the Commonwealth and to accommodate the decision of the voters of the second senatorial district as exemplified by the Initiative process, a four factor test will be utilized:

1. There is a presumption that the provisions of the Initiative are valid. This presumption is derived from Articles IX and XXI of the Constitution.

2. If any provision of the Initiative conflicts with the United States or Commonwealth Constitutions, it must fall. The gaming initiative process cannot be used to circumvent or supersede constitutional provisions.

In analyzing this second factor, the court adopts the following language of the California Supreme Court in its decision in Amador Valley Joint Union High School Dist. v. State Bd. of Equalization, 583 P.2d 1281 (Cal. 1978). In Amador Valley, the court stated:

11/ It is clear that gambling is a unique subject matter for implementation by the initiative process. Thus, though the plaintiff's fears of "anarchy" are not to be taken lightly, the prospect of other initiatives which would rise to the level of the Tinian Casino Gaming Control Act of 1989 are doubtful because of the existence of Article XXI.

> We stress initially the limited nature of our inquiry. We do not consider or weigh the economic or social wisdom or general propriety of the initiative. Rather, our sole function is to evaluate [the initiative] legally in light of established constitutional standards.

Id. at 1283.

The court does not attempt to envision every possible scenario under which the contested provisions may be declared unconstitutional. If a particular provision is capable of constitutional construction and application, the court will neither alter the provision nor will it declare that portion of the initiative or regulation unconstitutional. This court will not substitute its own opinion for the wisdom of a later court that is confronted with a question concerning the constitutionality of a certain provision as it applies to a particular set of facts and circumstances. The court will, however, point out what it perceives to be the only constitutional construction of certain provisions. If a provision is incapable of construction in a constitutional manner, it will be stricken. See County of Nevada v. MacMillen, 522 P.2d 1345 (Cal. 1974).

3. Any provision of the initiative must be reasonably related to the establishment of gaming in the senatorial district. Since the authority for the

initiative is to establish gaming in a certain senatorial district, the scope of the initiative is necessarily restricted to that purpose.

4. Any provision of the initiative which attempts to require use of, or to utilize, or to prohibit the use of branches or agencies of the Commonwealth Government will be scrutinized and rejected if the result is to effect the normal and necessary operations of the Commonwealth Government. The proverbial tail cannot wag the larger dog.

This four factor test will necessarily require a definitive review of each of the provisions for which the plaintiff seeks declaratory relief. It is to that task which the court now turns.

THE MONEY IN THE POT - WHO WINS IT?

The payment by potential casino operators for applications for licenses resulted in $1,432,000 being deposited with the Department of Finance. By virtue of Public Law 7-21, these funds were transferred out of the Department of Finance to the Tinian Municipal Treasurer. Thus, 1 CMC § 1408 which requires appropriation in local appropriation laws enacted by the Tinian legislative delegation is not applicable. Public Law 7-21 recognized (and therefore indirectly implemented) several provisions of the Act.

Section 50 of the Act provides that license fees and gambling revenue taxes generated by the casino shall be

appropriated by the Tinian Municipal Council to be expended by the Mayor of Tinian.

On February 1, 1991 Emergency Regulations were adopted and signed by the Mayor of Tinian and the Governor. These regulations established the Office of the Tinian Municipal Treasurer so that that official could collect monies generated under the Tinian Casino Gaming Control Act. The authority cited for the issuance of the regulations was 1 CMC § 5106(e) and Part VI, Section 50(4) of the Act.

Public Law 7-21, therefore, completed the mechanism for the disposition of the funds held by the Department of Finance to the Tinian Municipal Treasurer, which office was recognized and empowered to disburse funds upon appropriation by the Municipal Council.

It is the plaintiff's position that the Municipal Council has no power to appropriate funds and that Section 50 of the Act conflicts with 1 CMC § 1408. Therefore, any disbursement of funds is illegal and the defendants must repay all disbursed funds.

It has already been determined that the initiative is not affected by statutes of the Commonwealth so long as the questioned provisions in the initiative meet the other requirements of the four factor test.

It appears basic that to "establish gaming" the second senatorial district, through an appropriate process, must be able to collect, control and disburse funds which are part and

parcel of the gaming industry. If the license fees and revenues are controlled by other agencies, the entire operation could be stymied.

The initiative establishes a means for the collection, deposit, appropriation and disbursement of funds which are an integral part of the gaming industry.

The means used do not conflict with any provisions of the Constitution. In fact, they comport with Article VI.

Article VI, Sections 6 and 7 of the Constitution not only establish the Tinian Municipal Council but they also grant extensive powers to the Council including the formulation and reprogramming of the Tinian annual budget. Significantly, Section 7 subparagraph 5 provides that the Council may be given additional powers and duties as provided by law. The Act grants those additional appropriation powers over the funds generated from the establishment of gaming as provided for in Article XXI.

The court concedes there is some tension created with the constitutional obligation of the Department of Finance as set forth in Article X, Section 8. However to give full meaning and effect to Articles VI and XXI, the revenues produced from the establishment of gaming in the second senatorial district are necessarily local revenues. Article VI, Section 8(a) provides that "(l)ocal taxes paid to the chartered municipal governments of Rota and Tinian may be expended by those governments of Rota and Tinian and may be

expended by those governments for local public purposes on the respective islands."

With this array of constitutional authority, it is determined that the revenues collected from gaming activities pursuant to the Act are available for appropriation by the Tinian Municipal Council for local public purposes subject to the above exceptions. The provisions of 1 CMC §§ 1401, et seq., do not preempt the provisions of Part VI, Section 50.

Thus, it is determined that the classification of gaming revenue as funds which are subject to the budgetary and appropriation process as delineated in the Constitution and the initiative is proper and the expenditure of the funds is not subject to the controls the plaintiff states it has. Accordingly, the request that the defendants repay or refund the monies already spent is denied as it is determined there was no impediment to the disbursements.

THE OTHER CHALLENGES - LEMONS OR PLUMS

Attached to plaintiff's brief is Exhibit A which lists a salmagundi of provisions of the Act which it claims are void. These will be taken in order, applying the four factor test developed above.

1. **Part II, Section 5.**

This section provides the Mayor will appoint the Commission members with the advice and consent of the Tinian Municipal Council. The Mayor is authorized to remove Commission members. The defendants assert the Commission is an "autonomous

local government entity." This is not borne out by the provisions of Part II, Section 5. It is determined that by virtue of the initiative, the Commission is part of the municipal government within the second senatorial district.

2. **Part II, Section 5(7).**

This section sets salary levels of Commission members which exceed 1 CMC §§ 8247 and 8248 and are, therefore, in conflict with those statutes. Although one may question the need to compensate Commission members in the amounts stated ($75,000 per annum), it is not for the court to question the wiseness of such a determination. The salary level was stated in the initiative and the voters of Tinian approved it and must have known that the net revenues produced by gambling fees and taxes would be reduced accordingly. The Commission is established by initiative and the members are unique in their duties and responsibilities as well as the restrictions placed upon them. To attempt to place the members in the standard government employee mold is neither feasible nor proper. It is also noted that the salaries are set, not at the whim of the members, but must be approved by the Tinian Municipal Council who, in turn, are responsible to the voters.

This section is reasonably related to the establishment of gaming and complies with or does not run afoul of the other factors to be considered. The assertion by the plaintiff that the section is in violation of Article X, § 7 of the Constitution does not have merit. That provision relates

to annual appropriations and expenditures of the Commonwealth legislature and does not pertain here. Also, the claim that employment contracts of the Commission must be pre-approved by the Attorney General's Office or that statutory salary caps are applicable must fall. Part II, Section 5(7) is valid.

3. Part II, Section 5(8).

This section sets forth the duties and powers of the Commission. The plaintiff complains specifically about subparagraphs (b), (c) and (e) which, it asserts, permit the establishment of penalties and fines by the Commission. A reading of (b) and (c) does not result in the conclusion reached by the plaintiff.

Only (e) gives cause for concern but the Commission agrees the reach of the power to impose penalties is civil rather than criminal. The Commission also does not contest the fact that penalties can only be levied against licensees who are within the administrative regulatory power of the Commission. The Commission has no authority to formulate and enforce any criminal penalties. CNMI Constitution, Article III, Section 11.

The Commission does have the power and duty to restrict or rescind licenses which it grants. If the "penalty" referred to is in this vein, it appears a proper exercise of its powers. If a monetary fine is assessed, it must directly relate to the establishment and administration of gaming. With the above clarification, the section is valid.

4. Part II, Section 5(12).

The plaintiff states this section allows the Commission to grant testimonial immunity -- it does, but only with the approval of the Attorney General. See 6 CMC § 6502. The court determines that in its functions the Commission may very well need immunized testimony. There is a practical problem however. If the Attorney General gives his approval, the enforcement of the Commission's order to answer or to produce evidence with immunity is questionable. If the witness refuses to answer, the Commission has no contempt powers.

Accordingly, it is determined that subparagraph (12) is valid except that if the person refuses to comply with the Commission's order, the matter is beyond the power and control of the Commission. The proper course will be for the Commission to refer the matter to the Attorney General for proceedings pursuant to Title 6 of the Code. The latter enjoys discretion in this regard and the fourth prong of the test is not violated.

5. Part II, Section 5(15).

This section provides that appointed employees of the Commission are exempt from the Commonwealth Civil Service System. This is not in conflict with Article XX of the Constitution as that article allows exemption "as provided by law." The terms of the initiative provide that exemption. The section is valid.

6. Part II, Section 5(16)(c) and (d).

The plaintiff asserts that these provisions conflict with the Administrative Procedure Act (APA), 1 CMC §§ 9101, et

seq. This is of no import. The Commission may adopt its own procedures so long as the due process requirements of the Constitution are satisfied.

7. **Part II, Section 5(17)(g).**

According to this subparagraph, the Commonwealth Government shall make available to the Commission all information "as may be necessary to the effective administration of this act." This provision is invalid to the extent it requires the Government to turn over to the Commission information which is not accessible to the general public. For example, 4 CMC § 1701(d) requires the Division of Revenue and Taxation to keep tax returns and tax information confidential and 6 CMC § 5325 requires confidentiality on information of child abuse. Article I, Section 10 provides the constitutional right of privacy except upon a showing of compelling interest. The Act shows no compelling interest. Further, the Constitutional framework and procedure for the enactment and implementation of the gambling initiative in a senatorial district is to establish gambling. To broaden the scope to require the Commonwealth Government to accede to the demands of one senatorial district is beyond the provision of the initiative process. This provision is invalid.12/

12/ The information requested pertains to licenses. Should this be important in the eyes of the Commmission, there is an obvious way to gain the information - by consent of the proposed licensee in his/her application or as a condition of issuing a license. See, e.g., Trubow, Privacy Law and Practice, ¶ 13.12 at 13-90 (Vol. 2, 1988) (taxpayer may designate person or other entity to receive his or her tax information directly from the Internal Revenue Service).

8. Part II, Section 5(18).

This provision provides the Commission may refuse to reveal certain matters in court or administrative matters. Excluded are proceedings "brought by the Municipality." This provision runs afoul of Article IV of the Constitution which vests such matters with the Judicial Branch. This provision is invalid.

9. Part II, Section 11.

Sub-paragraph 1 of Section 11 states that arrangements may be made between the Commission and the Commonwealth Director of Public Safety with rights to various matters of police assistance. Sub-paragraph 2 states the Director of Public Safety shall ensure that effect is given to such arrangements. Thus, if the Director refuses to comply with subparagraph 1, which he has a right to do as it is discretionary, then subparagraph 2 does not come into play. If the Director exercises his jurisdiction to make the arrangements for police assistance as listed, then implementation as called for in subparagraph 2 is merely ministerial. Even if this semantic dichotomy did not render Section 11 virtually meaningless, this, once again, is expanding the scope of the power of the voters of Tinian beyond permissible limits. Thus, should there be any question, Section 11 is determined to be invalid if it is attempted to be used to require the Director of Public Safety to do any acts other than those which he is constitutionally and statutorily obligated to perform.

10. Part II, Section 14(2).

Section 14 establishes a Division of Enforcement which operates under the Commission. Subparagraph (2) provides the Division of Enforcement shall have such law enforcement powers as may be delegated to it by the Attorney General. This is not mandatory and is discretionary with the Attorney General. Should the Attorney General find he has no authority or, if he does, he declines to delegate enforcement powers, that ends the matter. Simply put, this provision does not mandate the Attorney General to grant enforcement powers. If it did, it would be invalid.

11. Part II, Section 14(3).

As stated by the plaintiff, this provision grants broad and unrestricted powers of search and seizure without a warrant to the Division of Enforcement. Article I, Section 3 of the Constitution preserves the right of the people to be secure in their persons and property against unreasonable searches and seizures. The defendants have forcefully (and correctly) argued the Commission and its employees are part of the government. Therefore, any exercise of the rights assertedly accorded the employees of the Division of Enforcement by Section 14(3) are acts of the government.

It is agreed that to establish gaming, the Commission must have the power to regulate and police the gaming activities within permissible limits. Many of the problems raised by this provision can be averted by requiring a

licensee/casino operator to consent to unannounced or announced inspections and examinations. See, In Re Martin, 447 A.2d 1290 (N.J. 1982) (upholding validity of notice on application which informed employee that certain unwarranted searches would be conducted on casino premises). It is assumed this will be a standard condition for the granting of a license. This consent would include those inspections set forth in subparagraphs (a), (b), (c), (d), (e) and (f) so long as the premises are gaming facilities and the equipment related to the casino operation. If so, the prickly problem of an unreasonable search and seizure is eliminated. In brief, it is clear this section cannot be used as authority to search patrons and their personal effects. It can only be implemented against persons licensed by the Act.

12. Part II, Section 14(5).

This provision purports to grant to the Commission and all its personnel "the powers of a peace officer of the Commonwealth." The term "peace officer" is not defined and it is not discerned what, if any, authority the person would have.13/ Assuming this means "police officer," any authority accorded the personnel of the Commission must be subject to the approval of the Director of Public Safety.

13/ It is noted that Part II, Section 14(6) also uses the term "peace officer." The only place the court has found the term "peace officer" used in the code is in 6 CMC § 2208 which is the Weapons Control Act.

13. Part III, Section 16(3)(d).

An agreement to provide the grant of a casino license would include the requirement that certain business establishments located on the casino premises be reserved for residents of the Commonwealth. This provision violates Article I, Section 6, the equal protection clause. It is also not rationally related to the establishment of gaming on Tinian. The provision is invalid.

14. Part III, Sections 24, 25, and 26.

The broad intent of the initiative is to vest administrative powers in the Commission. These sections provide for the consideration, determination, approval and amendment of a casino license. The plaintiff asserts the provisions of the Administrative Procedure Act should be implemented.

This is a matter reasonably related to the establishment of gaming on Tinian and is within the parameters of the initiative process. The provisions are valid.

The court does take special note, however, of Section 25(3) which purports to foreclose any judicial review of the determination of the Commission to grant or refuse an application. This matter is addressed, infra, in the discussion relating to Part III, Sections 28(3), (5), (8), (12), (18)(a), (22) and (23).

15. Part III, Sections 28(3), (5), (8), (12), (18)(a), (22) and (23).

Section 28 provides for the grounds and procedures for

the cancellation of a casino license. The plaintiff's attack on subparagraphs (3), (5), (8) and (12) is that they do not comport with the Administrative Procedure Act. For the reasons stated above, this challenge is rejected.

Subsection (18)(a) provides that if a casino licensee also holds a license in Nevada and/or New Jersey and the latter license is suspended or cancelled, the Tinian license will be automatically suspended or cancelled without a hearing or notice and that if the Tinian licensee is penalized in Nevada and/or New Jersey, the same penalty is automatically assessed.

This section is a violation of the due process provision contained in Article I, Section 5 of the Constitution. Therefore, it is invalid. Reciprocal discipline can only be imposed after the licensee has had notice and a hearing to show cause why reciprocal discipline should not be imposed.

Subsection 22 states: "No liability for breach of the lease or agreement attaches to any party thereto by reason only of its termination by force of this Act."

Pursuant to the discussion at argument on this matter, this subsection is limited to those leases or agreements which are subject to approval and supervision of the Commission. So long as the parties consent to an absolution of liability and/or there is no violation of the impairment of the obligation of contracts, Article I, Section 1, Constitution, then the section is valid.

Subsection 23 states that a Commission's decision to

cancel, suspend, or terminate a casino license, lease or management agreement is final and there is no judicial review of its decision.

Gaming is a privilege granted by the Act. State v. Rosenthal, 559 P.2d 830 (Nev. 1977). It is not a matter of right. Id. Therefore, statutory standards for the issuance of gaming licenses need only be constitutional and reasonable. Id. Until an applicant successfully obtains a license, he or she has no property interest. See Kansas Racing Mgmt. v. Kansas Racing Commission, 770 P.2d 423 (Kan. 1989). The expectation of obtaining a license is insufficient to constitute a property interest. Id. Since denial of an application does not infringe upon a property right, due process is not affected. Id. It is, therefore, determined that judicial review of the Commission's decisions with respect to applicants is not necessarily required.

Once one acquires a license, he or she has attained a valuable property right. Therefore, the licensee must be afforded due process before this right can be revoked. State Gaming Control Board v. Breen, 661 P.2d 1309 (Nev. 1983). To the extent that subsection 23 seeks to foreclose judicial review of a termination of a property right vested in a licensee, it is invalid. Eliminating judicial review is not reasonably related to the establishment of gaming and infringes upon the authority of the judicial branch of the Commonwealth as set forth in Article IV.

16. Part III, Section 29(7).

Should a casino licensee desire to mortgage the license or the casino, the approval of the Commission must first be obtained. If the approved mortgagee wishes to enforce the security interest, the secured property can be assigned only to a person approved by the Commission. Subparagraph (7) provides that the decision of the Commission to approve or to disapprove such a person is final and conclusive and is not subject to judicial review. The court finds this provision valid because it is necessary for the control of the establishment of gaming and any prospective mortgagee (as well as the licensee) would be put on notice of the stringent conditions imposed on mortgaging a casino license or hotel. The plaintiff's claims that the section violates Article I, Section 5 and Article IV, Section 1 of the Constitution are misplaced.

17. Part IV, Sections 33(3) and (5).[14/]

In operating a casino, the licensee must hire employees. Part IV, Sections 31 and 32 prescribe the screening and licensing of employees before they can be employed in the casino. Section 33 addresses those instances where a person is deemed by the Executive Director to have "significant influence" over an employee or a licensee. If such a finding

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14/ The plaintiff refers to Part IV, Sections 26(3) and (5). This must be in error and what was intended was Sections 33(3) and (5).

is made, the person has seven days to apply for a license as a casino employee. The subparagraph the plaintiff asserts is invalid, (3), states the Executive Director shall cause the casino operator to terminate "the association or employment of that person." It is the plaintiff's position this violates the impairment of contracts provision of Article I, Section 1. This assertion is without merit except for those circumstances where the casino operator can show that the person has an employment contract and the person's contractual rights have no bearing on the operation of the casino. This would appear to be a matter for dispute resolution at that time. "That intricate legal riddles spark judicial interest is not enough to justify a court of volunteering solutions." Morales v. Ramirez, 906 F.2d. 784 (1st Cir. 1990).

Subparagraph (5) of Section 33 eliminates any liability of the casino operator with respect to the employees covered by Section 33. With this limitation, the section is valid. The Act cannot effect the rights of the parties not licensed or duty bound to obey the dictates of the Commission.

18. Part IV, Sections 35(1) and (2).

These provisions, which give absolute discretion to the Commission to grant or refuse an application for casino employees, do not comport with the Administrative Procedure Act. As noted above, this is not a claim with merit. The section is valid.

19. Part IV, Sections 41(1)(e); 42(2); and 41(4).

The Commission has the power to cancel or suspend the license which enables a casino employee to work in the casino.

Section 41(1)(e) provides that if "the Commission forms the opinion that the licensee (employee) is not a fit and proper person" the person's permit to work will be cancelled. The plaintiff raises due process concerns which are valid. Without adequate due process procedures, the provision is invalid.

Section 41(2) attempts to absolve the Commission and its employees of liability if the work permit of a casino employee is suspended. This section will be effective only if there is no finding of a violation of the employee's constitutional rights. The Commission must have sufficient control of casinos and this includes the employees. There may be a fine line between that control and the recognition and enforcement of employees constitutional rights. The proof in the pudding will be for future courts to see how this section is implemented and applied.

Consistent with the prior ruling of the court, judicial review will be accorded the employees whose permit to work is terminated.

20. Part IV, Sections 44(2) and (3).

These provisions harken back to previous sections which allow/require the Commission or casino operator to terminate any casino employee who, in the opinion of the Commission, is not a fit and proper person to hold a work

permit (license). The sections are valid subject to the caveats previously expressed. The court refrains from repastinating ground already well ploughed.

21. Part IV, Section 45(5).

Provisional casino employee licenses are provided for under this section. Subparagraph (5) allows for the Commission to cancel these types of licenses at any time for any reason. Since the provisional license is only a temporary one and is issued under specific conditions, there is no property interest attained by the recipient which rises to the level of one to be accorded constitutional guarantees of due process. The section is valid.

22. Part V, Sections 47 and 47(3).

In an apparent attempt to closely scrutinize the gaming industry, this section requires casino service industries which offer goods and services and are directly related to casino or gaming activity to be licensed and registered. In short, no person or firm will be able to supply goods or services to casino operators unless first approved by the Commission. The purpose is to monitor the casino industry to assure "undesirable" elements are not able to infiltrate the system. The provision is within the proper scope of establishing gaming and there are no Constitutional prohibitions discerned. The exemptions allowed for goods and services which are already regulated by a public agency and/or which are insubstantial or de minimus eliminate any problems

the court can foresee. The plaintiff claims that the Alcohol Beverage Control Act, 4 CMC § 5511, preempts the control of the sale of alcohol to a casino. However, for the reasons already stated, this section is valid.

At argument, it was indicated that Commission regulations would have to be promulgated to better address the control of casino service industries. One method would be to require control only of those businesses which do a "substantial" or "significant" amount of business with a casino. The standard would be expressed in a minimum amount of dollars in a certain time period. Until there is full implementation of this section, the court cannot determine there is anything invalid with the section.

23. Part V. Sections 48(1) and (3).

The plaintiff complains that these provisions do not meet the requirements of the Administrative Procedure Act. They need not do so. The provisions are valid.

24. Part VI, Section 50(1).

Section 50 declares that the license fees and gambling revenue taxes shall be local revenues and will be available for appropriation by the Tinian Municipal Council. Thereafter, the "public purposes" for which the money will be spent are listed.

The matter of license fees and revenues have already been resolved (see pages 14, et seq).

Article X, Section 1 of the Constitution provides:

> A tax may not be levied and an

> appropriation of public money may not be made, directly or indirectly, except for a public purpose. The legislature shall provide the definition of public purpose.

Section 8 of the same article provides:

> The Department of Finance or its successor department shall control and regulate the expenditure of public funds. The department shall promulgate regulations including accounting procedures that require public officials to provide full and reasonable documentation that public funds are expended for public purposes.

With these constitutional directives in mind, it is clear that unless the legislature declares the expenditures described in Sections 50(1)(b)(1) and (2) to be for "public purposes", the $100 per month payment to each resident of Tinian for utilities and the monthly cash royalty per household are invalid. As to the other proposed expenditures listed in Section 50(1)(a), these appear to have been directly or indirectly defined as public purposes as the legislature has routinely appropriated money for these types of expenditures. The one exception appears to be "medical and dental insurance assistance." If this is construed to mean the payment of individual insurance premiums, the expenditure would be invalid. If this is limited to government contributions for government employee insurance plans, the expenditure is valid.

25. Part VI, Section 50(2).

The plaintiff asserts that the fees collected for applying for a license and the annual license fee are not local

revenue and must be remitted to the Commonwealth Treasury pursuant to 1 CMC § 1407. For the reasons stated above, this argument lacks merit. It is proper for the fees to be paid to the Tinian Municipal Treasurer.

26. Part VI, Section 50(4).

This section creates the office of the Tinian Municipal Treasurer within the Office of the Mayor of Tinian. Plaintiff asserts this section violates Article VI, Section 8(b) of the Constitution which provides that no additional agency of local government may be established unless certain requirements are met. Creating the Office of Treasurer within the Mayor's Office does not implicate Section 8(b). The treasurer is not an agency but an official under the supervision and control of the Mayor. The creation of the Office of Treasurer for performing ministerial tasks is well within the parameters of Article VI, Section 3(b) which grants the responsibility to the Mayor to administer programs, public services and appropriations for Tinian.

Any perceived conflicts the plaintiff points out with this section and 1 CMC §§ 1407, 1408 and 1409(a)(17) is of no moment.[15/] The provision is valid.

15/ As noted in the discussion on pages 14 et seq., these statutory provisions do not preempt the provisions of the Act. Also, if there was any question about the propriety of the establishment of the Office of the Tinian Treasurer, the February 1, 1991, Regulations signed by the Governor eliminate any doubt.

27. Part VI, Section 52.

Pursuant to this section, the Tinian Municipal Treasurer is to receive all casino license fees, taxes and the like. For the reasons stated above, the provision is valid.

28. Part VI, Section 53(3).

Section 53 establishes penalties for the late payment of gaming fees and taxes. Subparagraph (3) provides that if the fees/taxes are not paid within 90 days of the due date, the casino license will be automatically revoked. This does not comport with 1 CMC § 9111 but is within the scope and power of the initiative. The provision is valid.

29. Part VI, Section 53(4).

Monetary penalties assessed are deemed to be a casino tax and therefore lumped in with the other revenues. This is proper. The section is valid.

30. Part VI, Section 56(1).

This section purports to set forth the time limits by which a civil action may be brought for delinquent fees, taxes, etc. The court agrees with the assessment of the plaintiff. This is not reasonably related to the establishment of gaming. The statute of limitations for various actions are adequately (and properly) set forth in 7 CMC §§ 2501 - 2514. The Commission may sue to collect revenue due but the time limitations set forth in the section are supplanted by the code provisions. The section is invalid.

31. Part VI, Sections 56(2)(a) and (b).

The procedures for a pre-judgment attachment and the presumption of validity of any tax assessment are invalid. Pre-judgment attachments involve due process rights and must be addressed by a court at the time the application for the writ is made. The prima facie evidence rule in (b) is invalid because rules of evidence are established by the court pursuant to Article IV, Section 8. Also this provision, as well as the attempt to have the records of the Commission attain a presumptive status, is not reasonably related to the establishment of gaming. Regular court procedures for collection of money due will apply and Sections 52(2)(a) and (b) are invalid.

32. Part VII, Section 62.

The plaintiff once again argues the notification by the Commission to change the rules of certain games do not comport with the Administrative Procedure Act. Since that Act is preempted, the section is valid.

33. Part VII, Section 74(3).

Casino operators are to go through the Executive Director of the Commission for the submission of various internal gaming procedures. There is no impediment to this section. It is reasonably related to the establishment of gaming. It is valid.

34. Part VII, Section 76.

This section requires the casino operator to keep certain bank accounts for all gaming activities. The grant of a license "shall be deemed to be an unconditional and irrevocable grant of authority from the licensee" to allow the Commmission to inspect the licensee's records wherever located. The plaintiff states this violates Article I, Section 10 of the Constitution and also possibly "The Right to Financial Privacy Act" (RFPA), 12 U.S.C. §§ 3401 et seq. The Commonwealth has adopted the RFPA at 4 CMC § 6454.

The government may require that an applicant for licensure waive his/her constitutional right to privacy. Whalen v. Roe, 429 U.S. 589, 593-94, 97 S.Ct. 869, 873 (1977). However, in order for any release authorization to withstand constitutional attack, the government must create adequate safeguards to protect the information from dissemination. Id. Therefore, it is determined that the Commission must develop regulations to ensure that the private information derived from an applicant via waiver is secured against improper dissemination by either the Commission or its employees. In Re Martin, supra at 1303-05. The Commission is instructed to include in these regulations a provision requiring notification of the applicant should any of his/her personal information be disclosed either purposely or inadvertently. Id. at 1305.

Furthermore, although the Commonwealth has adopted the RFPA as embodied in 12 U.S.C. §§ 3401, et seq., section 3404 of

that Act allows a bank customer to consent to the disclosure of his/her bank records.

The provision is also reasonably related to the establishment of gaming and is a vital part of the monitoring process necessary in the gambling industry. With the consent provisions imbedded in Section 76, it is valid.16/

35. Part IX, Section 84(5).

This is another administrative hearing procedural matter regarding certain agreements and other documents in connection with a casino operation. Subparagraph (5) as well as the following subparagraphs provide due process. The fact these procedures are not the same as the Administrative Procedure Act is of no moment. The provision is valid.

36. Part X, Section 85.

This section purports to give unbridled power to the Commission to direct casino operators in the management, supervision, or control of any aspect of the operation of the casino. While this may douse the enthusiasm of prospective applicants to operate under such conditions and while this does not comply with the Administrative Procedure Act, it is within

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16/ It would appear to the court that any licensee should separately acknowledge this provision and expressly consent to waive his/her rights of privacy.

the parameters of establishing gaming. So long as due process violations do not occur, the section is valid.[17]

37. Part X, Sections 87(1)(a)(ii); (1)(c) and (2) and (3) and (4).

In order to monitor casino activities, Section 86 provides for inspectors who are employed by the Commission to enter casinos and observe the operations. Section 87 grants broad powers to inspectors.

Subparagraph (1)(a)(ii) allows the inspector to require any person to answer any question about gaming equipment, chips, or documents which are in his/her possession and which is related to the casino activities. Insofar as this would involve an employee of a casino or an operator, there appears to be no problem. But what causes concern is a patron who has some chips in his pocket. On the one hand the inspector wants to find out if counterfeit chips are being used. On the other hand, a patron is entitled to his/her constitutional right of privacy and right to be free from unreasonable searches and seizures. Additionally, if the inspector is deemed to be an arm of the government, the patron has the right to refuse to answer questions on Fifth Amendment grounds.

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[17] The court notes in Section 85(3) it is stated that if a casino operator is directed to do something and he or she is "convicted of an offense for failure to comply" then there are certain consequences. Exactly what is meant by this subparagraph is not discerned but it certainly cannot stand as a criminal offense.

Consequently, subparagraph (l)(a)(ii) is valid only insofar as to those who have consented to respond to the inspector's questions. Any patron has a right not to answer.

Section 87(l)(c) appears to allow a search and seizure of any person by the inspector. This provision is invalid to the extent it includes non-consenting persons. In other words, it is a violation of Article I, Section 3 of the Constitution to search a patron or anyone who has not consented to this provision. The same analysis applies to Sections 87(l)(e) and (2).

Sections 87(3) and (4) are invalid. An inspector is not a police officer. The issuance of warrants and the exercise of same implicates Article I, Sections 3, 5, and 10 of the Constitution. Sections 87(3) and (4) are not reasonably related to the establishment of gaming. It goes beyond the proper scope and encroaches upon law enforcement activities.

38. Part X, Section 89.

This section provides that an inspector can demand a bank officer to turn over to the inspector bank records of a casino operator.

As long as the casino operator has authorized his/her financial institution to disclose the bank records to the Commission pursuant to § 3404 of the RFPA, the section is valid. This authorization must be in the form of a signed and dated written statement in order to comply with § 3404.

39. Part X, Section 90(2).

Plaintiff claims this section is in conflict with the Administrative Procedure Act. It probably does but the section is valid.

40. Part XI, Section 92.

Section 91 provides that a casino operator or his employes may exclude a person from the casino. Seceion 92 prescribes a method for the person to appeal his exclusion to the Commission. The appeal procedures do not follow the Administrative Procedure Act but the section is valid. See Spilotro v. State Gaming Commission, 661 P.2d 467 (Nev. 1983) (gaming statute provision excluding certain persons from entering gaming establishments is valid regulatory measure designed to ensure the public trust in the gaming industry).

41. Part XI, Section 93.

The Director of Public Safety may also direct the casino operator to exclude certain persons from entering a casino. If so, the casino operator shall comply. The section is valid as a proper way to monitor gaming activities.

42. Part XI, Sections 104 and 105.

Sections 102 and 103 address the potential problems of what probably is a continuing concern of casino operators cheating at gambling and using counterfeit chips or marked cards and the like.

Section 104 allows the casino operator, his/her employees, or an inspector to detain a suspected cheater until

the arrival of the police. The plaintiff claims this is in violation of 7 CMC §§ 6102 and 6103 as well as Article I, Section 3 (search and seizure). The claims fail. The provisions are necessary for the control of gambling and the temporary detention is proper. See Jacobson v. State, 510 P.2d 856 (Nev. 1973) (temporary statutory detention of suspected cheater is proper, but section must be strictly limited to detaining cheaters unless common law right to detain individual accused of stealing, property is involved). The sections are valid.

43. Part XI, Section 112.

This section purports to allow the police to enter the public areas of a casino. They already have that right. The section does not implicate any constitutional prohibitions. The plaintiff's reading that it allows a warrantless search is unfounded. The section stands.

44. Part XI, Section 113.

Under this section, the police are authorized to stop and question any person and ask certain questions as to name, address and date of birth. In addition, if satisfactory proof of the date is not produced, the person is "in violation of the Act." Subparagraph (4) permits an arrest without a warrant for any person who fails to comply with the section.

The section is invalid. The Constitution, Article 1, Sections 3 and 10 requires reasonable cause to stop a person. See Terry v. Ohio, 389 U.S. 351, 88 S.Ct. 507 (1968). Arresting

a person without a warrant for simply refusing to give his date of birth when there is no standard for the initial stop is clearly a violation of the person's constitutional rights. Furthermore, this is not reasonably related to the establishment of gaming. In addition, the Act's attempt to direct or control the police in their duties impermissibly encroaches upon their duties and responsibilities which are guided by constitutional restraints. The section is invalid.

45. Part XI, Section 114.

Once again, this section purports to regulate or control the activities of the police. If the police have probable cause to arrest a person in a constitutional manner, they also have the right to obtain fingerprints, etc. The section is not reasonably related to the establishment of gaming and is invalid,

46. Part XI, Section 116.

This section purports to absolve the Commonwealth, the Commission, the Department of Public Safety and any employees of the Commission for "anything done for the purposes of this Act or done in good faith and purporting to be for the purposes of this Act."

Such a broad and unrestricted attempt at shielding the named officials and entities fails. The section is valid to the extent it pertains only to the Commission and its employees and the court declines to determine the scope of immunity because this will be decided on a case by case basis.

47, Part XI, Section 117.

According to this section, civil penalties can be assessed against corporate entities and persons in substantial amounts for the failure to comply "with any provision of this Act...." The section is valid when construed to be limited to licensees under the Act.

48, Part XI, Section 119,

The problem exists as to the prosecution of persons who are accused of cheating or the unlawful use of equipment. This section purports to allow the Attorney General's Office to institute criminal proceedings. Additionally, the Executive Director or any person authorized by him may institute proceedings. The latter provisions are in conflict with Article III, Section 11 which provides the Attorney General is responsible for prosecuting violations of Commonwealth laws.

It is, therefore, determined that this section is valid only to the extent that any criminal prosecution must be initiated by the Attorney General. This is not to say an employee of a casino cannot detain a person for cheating and file a complaint which the Attorney General can use as a basis for instituting criminal charges. See Jacobson v. State, 510 P.2d 856, 861 (Nev. 1973) (where reasonable grounds exist, casino operator may detain anyone suspected of stealing property for a reasonable time to investigate). But the attempt to authorize the Executive Director or his designee to prosecute any crimes is invalid. The section is valid to the

extent it authorizes administrative enforcement against licensees under the Act.

49. Part XI, Section 121.

According to this section, if a corporation "commits an offense against this Act," individual liability is imposed upon "the chairman of directors, managing director, manager or other governing office by whatever name called and each member of the governing body by whatever name called by the bcdy corporate" as well as every person who took part in the management of the business at the time the offense occurred, The person charged can show that he/she had no knowledge of or did not consent to the offense.

With the understanding that this section applies only to licensees under the Act, the section is valid.

50. Part XI, Section 122.

This section prescribes the method of serving notice on a person of a document related to the Act. The standards set forth appear to be reasonable. Only subparagraph (3) cannot withstand scrutiny. It purports to foreclose any opportunity for one to question the service in court. This violates Article VI, Section 8 of the Constitution (which provides the rules of procedure to be formulated by the court) and is not reasonably related to the establishment of gaming.

51. Part XI, Section 123.

This section provides guidelines as to certain evidenciary matters within the confines of the administrative

procedures of the Commmission. Though they may not comport with the Administrative Procedure Act, this is of no moment. The section is valid.

52. Part XI, Section 124.

The Commission is authorized to promulgate various regulations. Such regulations are to be adopted, amended and/or repealed in accordance with the Administrative Procedure Act. Temporary regulations may be adopted in a manner not consistent with the Administrative Procedure Act. Nonetheless, this is not fatal. Since the scope of the regulations appear to be directly related to the establishment of gaming, it is determined the section is valid. At argument, concern was expressed as to subparagraphs (q) and (t). The former relates to the distribution and consumption of alcohol on casino premises. The court finds no impediment to exercising this control because it relates directly to problems such as intoxicated players and the right to deny further alcohol drinks. The minimum building code standards in (t) would only be in addition to commonwealth wide building codes and which would relate to gaming operations.

53. Part XI, Section 125.

In order to put some teeth in the enforcement of the provisions of the Act, this section sets forth certain civil penalties which the Commission may assess for various violations of the Act.

It is determined the assessment of a civil penalty by the Commission is valid if:

1. The hearing provided meets the minimum due process requirements.

2. The subject of the penalty is a corporation or individual within the parameters of the Act. Therefore, any person who is not a licensee or employee who is subject to or required to comply with and obey the Act, cannot be penalized.

3. Any section which has been determined herein to be invalid cannot be used as a basis for a civil penalty.

4. Judicial review is allowed pursuant to 1 CMC § 9112.

With the above constraints, the section is determined to be valid.

THE REGULATIONS

Plaintiff also contends that certain proposed provisions contained in Commission Resolution No. 91-06 violate Commonwealth law.

1. Regulation 2:2.1(c) (1).

This regulation gives the Commission the authority to grant testimonial immunity in any contested case. Plaintiff contends that this conflicts with the CNMI Constitution because the Constitution vests the authority to prosecute violations of the law with the Attorney General.

Part II, Section 5(12) of the initiative allows the Commission to grant testimonial immunity, but only with the approval of the Attorney General. Regulation 2-2.1(c)(1) grants the Commission the power to grant immunity without consulting the Attorney General. The regulation is invalid to the extent that it conflicts with Part II, Section 5(12) of the initiative.

2. Regulation 2:2.1(d)(2).

This regulation provides for the application of special rules of evidence "if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs." The use of special rules of evidence are reasonably related to the establishment of gaming and there is no impediment for the Commission to use these rules for considering applications. If these rules are used to cancel a license, judicial review is accorded and a court will apply normal review standards.

3. Regulations 1-4.2 and 2:3.3.

Regulation 1-4.2 outlines the qualifying criteria and information an applicant or licensee must provide to the Commission under the Act. Regulation 2:3.3 places the burden of proving these qualifications on the applicant or licensee. The plaintiff contends that these regulations violate Commonwealth law to the extent that they place the burden of providing this information on the applicant or the licensee while the Administrative Procedure Act, as codified at 1 CMC § 9109(i), places the burden of proof in a proceeding on the proponent of the order.

These regulations are valid for two reasons. First, § 9109(i) places the burden on the proponent "[e]xcept as otherwise provided by statute." Second, requiring the applicant or licensee to provide information relevant to determining whether they meet the criteria in the regulations is reasonably related to the establishment of gaming in the senatorial district.

4. **Regulation 2:5.1(b).**

This regulation grants the Commission the discretion to decide whether to conduct a hearing on issues involving the adoption, amendment, or repeal of its regulations. Plaintiff argues that this regulation is inconsistent with the Administrative Procedure Act, § 9104(a)(2), which requires mandatory hearings if requested by the legislature or one of its committees. This regulation is valid since it is constitutional and reasonably related to the establishment of gaming on Tinian.

5. Regulation **2:6.1(c).**

This section grants the Commission the discretion to determine whether it will issue a declaratory ruling pursuant to petitions from the public. The Administrative Procedure Act, § 9107, requires rulings in response to public requests. This regulation is valid since it is constitutional and reasonably related to the establishment of gaming on Tinian.

Plaintiff also contends certain proposed provisions contained in Commission Resolution No. 99-08 violate Commonwealth law.

1. Regulation 1-1:2.

This regulation relates to casino service industries, As noted above in the discussion relating to the initiative, further fine tuning will be required including the setting of threshold amounts of business a service industry must supply before becoming subject to licensure. Until this is done, the Commission cannot effectively regulate casino service industries.

2. Regulation 1-2-4.

The plaintiff asserts there is no master plan for Tinian. If not, this is of no moment. The regulation is valid.

3. Regulation 1-3.2.

This regulation also relates to casino service industries. At this point in time, the regulation appears valid. It will not be stricken.

4. Regulations 1-6.1 and 1-6.2.

These regulations place the duty on an applicant to establish his/her qualifications and to disclose information to support the application. As noted, supra, this is reasonably related to the establishment of gaming. The provisions are valid.

Judgment is hereby entered accordingly. No costs are allowed.

Dated at Saipan, MP, this 6TH day of September, 1991.

Robert A. Hefner, Presiding Judge