

MARIJUANA VS. GAMING: A COMPARISON OF LICENSE APPLICATION PROCESSES



By Dennis Gutwald

A key component of regulation in any industry is the process that determines who gets to participate in that industry. Just as Nevada's nonrestricted gaming licensing application process ("Gaming Process") has evolved over decades to what it is today, Nevada's marijuana license application process ("Marijuana Process") is also evolving. The history of Nevada's gaming regulation would be expected to guide the development of its marijuana license application process; however, as a gaming lawyer who has prepared several marijuana license applications, the current differences between the two application processes are surprising. A comparison of the Marijuana Process with the Gaming Process is the subject of this article and illustrates the disparity between the two and perhaps provides some insight regarding areas where the two processes could become more similar in the future.

Individual Background Investigations

Background investigations on individuals are only a very small part of the Marijuana Process, but they are a major component of the Gaming Process. For the Marijuana Process, principals of applicant entities are required to provide resumes, social security numbers, dates of birth, and fingerprint cards that are run through state and federal criminal record databases. They are also required to provide a financial statement or two to evidence they have the money that they represent to invest in the marijuana business. Applicants do not have to provide their litigation history, five years of financial documents, or details of arrests, regulatory violations, or criminal convictions. They are only required to sign an affidavit saying they have not been convicted of a felony crime of violence or pertaining to a controlled substance. The affidavit only requires the listing of felony convictions for which incarceration, probation, or supervised release was not completed, within the last ten years.

Because of the Nevada Department of Taxation's ("NDT") constraints on time, trained personnel, and money available to conduct investigations, and the high number of applications that must be processed simultaneously, background investigations have been rudimentary in nature. On the other hand, Gaming Process background investigations could be the subject of an entirely separate, lengthy article. The following provides a brief and incomplete summary of information and documents applicants must provide to the Nevada Gaming Control Board ("GCB") for a thorough review by its agents:

- Details of all arrests (for felonies or misdemeanors) and regulatory violations, ever, regardless of outcome;
- Extensive residence and employment histories;
- Detailed litigation histories with supporting documents for the applicants and the companies with which they have been materially involved;
- Five years of financial records and schedules that detail all the applicants' financial assets and liabilities, including copies of all of the applicants' bank statements, deposits information, checks information, brokerage statements, and tax returns with supporting documentation;
- Information regarding children, spouses, brothers, sisters, parents, and parents-in-law; and
- Extensive information regarding the applicants' business holdings.

And much more is required.

Operation Investigations

Both the Marijuana Process and Gaming Process require in-depth review of business operation plans, financial plans, financial statements, pro forma statements, marketing plans, surveillance and security plans, business location leases or purchase documents, and business organization documents for all companies in the ownership structure. In addition, marijuana applicants must provide educational plans for their staff, a plan to



minimize the environmental impact of their operations, and permission from the relevant locality where the marijuana business will be located. Because gaming businesses handle so much cash, applicants are required to have extensive internal control procedures. Marijuana applicants must provide extensive policies and procedures for maintaining the care, quality and safekeeping of marijuana but they are not required to submit extensive internal controls procedures related to cash management.

For both types of investigations, hundreds and sometimes thousands of pages of documents must be provided to the regulators. However, the amount of time an applicant has to prepare, assemble, and submit the required documents, and the amount of time regulators have to review them, is considerably shorter for the Marijuana Process.

Time to Submit Applications and Time to Process Them

When the NDT is ready to issue more marijuana business licenses, it makes an announcement that applications will be accepted within a certain time window, usually lasting about fourteen days. Deadlines to submit applications are usually less than a couple of months from the time of the announcement. The NDT is not particularly secretive about upcoming announcements, so those who have good communication channels with the NDT usually are not surprised when the announcements are made. But because of the very short timeframe between when the NDT begins accepting applications and the submission deadline, Marijuana Process applicants must have most of the application and investigation requirements completed (usually with a considerable investment of time, effort, and money) before the NDT begins accepting applications.

Typically, NDT employees have been given hard deadlines, usually just a few months, to accept applications, process them and issue licenses. Because all the applications are received around the same time, the agents have a voluminous amount to process within a very short time period.

In contrast, Gaming Process applicants often have many months to assemble the information they need for their applications and investigations. And while there may be deal-specific deadlines, generally, the GCB takes at least six months and usually longer to process such applications.

Money For Processing Applications

The initial Marijuana Process fee is \$5,000 for each license application, with a second fee which can be up to \$30,000 and is due when and if the license is issued (most marijuana businesses apply for multiple license types). While the NDT can charge for its "actual" costs, it does not charge large, upfront investigative fees like the GCB.

Less money for investigations leads to much less investigation. Money is not available for NDT agents responsible for investigating applicants to travel to places outside of Nevada where applicants have lived and worked. Money is also not available for the agents to devote a lot of time to individual applicants that may warrant a much more in-depth investigation.

While the initial GCB application fees are low (\$500 per person and entity), additional GCB investigation fees are always charged and collected before an investigation begins and can easily amount to \$50,000 for each person investigated. There usually is a significant investigation fee for investigating the transaction and business entities involved as well. Application investigation fees can run well over \$100,000 and investigations costing over \$1,000,000 are not that unusual.

GCB agents conduct very thorough investigations, because applicants provide the money necessary to do so. It is routine for GCB agents to travel outside of Nevada to where applicants have lived and worked since the money to do so is available. GCB agents can devote substantial time and effort in the investigation of individual applicants because, again, the funds are available to do so.



Trained Personnel

As noted above, the Marijuana Process has applications being accepted and processed for only a few months in any given year. Consequently, NDT does not have a team of dedicated investigators, but rather has several individuals who have many other duties in addition to conducting applicant investigations. The GCB, on the other hand, has numerous individuals dedicated to the role of investigations. The individuals serving as investigators are specifically chosen because of their background in financial analysis and/or criminal investigations and many have decades of investigative experience both in and out of the GCB.

Standards for Approval

The following are some of the criteria the NDT must use in determining who is issued a license:

- The total financial resources of an applicant;
- The experience of the applicant's principals at operating other businesses or nonprofit organizations;
- The educational achievements of the applicant's principals;
- Demonstrated knowledge or expertise on the part of the applicant's principals regarding the compassionate use of marijuana to treat medical conditions;
- The amount of taxes paid to, or other beneficial financial contributions made to, the State of Nevada and/or its political subdivisions by the applicant or its principals; and
- Diversity based on race, ethnicity or gender of the applicant or its principals.

Gaming applicants are subject to less specific standards that essentially amount to a determination of the applicant's general character, reputation, integrity, and ability to participate or engage in or to be associated with gaming.

The Future

Nevada's extensive gaming license application process was not created overnight. It evolved over decades as the industry grew and become more complex. Nevada has done an outstanding job (one that deserves and gets national attention) of establishing the regulations and a regulatory infrastructure to successfully introduce the marijuana industry to Nevada, ensuring product safety for consumers and quick tax revenues. But over time, the Marijuana Process will also evolve as new regulatory needs are identified, with the two processes perhaps becoming more similar to one another over time.



Dennis Gutwald is an attorney in the Gaming & Administrative Law Practice Group of McDonald Carano, with more than 20 years of experience counseling premier gaming companies, banks, investment companies, and high-profile individuals on all aspects of gaming law in Nevada and nationally. He regularly handles gaming, liquor, marijuana, and other special licensing matters. Mr. Gutwald is a former Senior Agent in the Investigations Division of the Nevada Gaming Control Board, which regulates the State of Nevada's multi-billion-dollar gaming industry.