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Gambling and the Law®: In Defense of Lobbyists

“Astroturfing,” that is, creating phony grass roots movements, has recently given lobbyists an especially bad name.

Political operatives who falsely claim that health reform means “Death Panels” deserve to be condemned. But most lobbyists, and their clients, the dreaded “special interests,” often get a bum rap.

Activists do not spend most of their time giving bundles of cash to corrupt politicians. Their main goal is to persuade legislators and regulators on behalf of their clients. They do this by providing information that no one else can.

For example, lobbyists for tribes with casinos have done a good job of educating members of Congress on the meaning of sovereignty.

It is literally impossible for any member of any state legislature, let alone Congress, to read every bill that he or she has to vote on. In fact, even with the largest staff, it is almost impossible to just keep track of all the bills that are introduced.

It is the lobbyists’ job to do just that, for the subject that is of interest to their clients. The lobbyists then gather and present information to lawmakers, especially those who are on committees that will have hearings on the bills.

Yes, a lobbyist is an advocate. But those who are dumb enough to lie or give false information to a legislator, lose credibility, and influence, with the entire legislature.

The roles of lawyers, consultants, experts and lobbyists sometimes overlap.

One way they all aid their clients is to analyze proposals before they become laws. The State Legislature of New Mexico once asked me to testify on the legal impact of an initiative that had just been approved by the voters. They were quite surprised when I told them that they had just accidentally given a state constitutional right to everyone in the state to operate slot machines.

Fortunately, the initiative had so many other defects that it was later declared invalid by the State Supreme Court.

When the Hawaii State Legislature was considering legalizing a casino on the Big Island, I testified as an expert witness before the House of Representative’s Finance

Committee. The issue was whether native Hawaiians were Indians under the Indian Gaming Regulatory Act. The company that paid for my trip was working to get casinos, and was stymied because the State Attorney General had said that if the bill passed, there would be Indian casinos all over the state. I testified that, no, Native Hawaiians are not Indians under IGRA, for both historical and legal reasons.

I don't consider myself a lobbyist. My testimony would have been exactly the same, regardless of who paid my expenses. But the group advocating a private casino for Hawaii would not have arranged for me to testify if my position had been the opposite.

For the casino industry, the most important lobbying group by far is the American Gaming Association ("AGA"). It was created to counter a specific proposal based on ignorance about the industry.

In 1993, the Mashantucket Pequots agreed to give Connecticut a minimum of \$100 million a year for the right to have slots in their Foxwoods Casino. Time and Newsweek put this "new" Las Vegas on their covers.

Naturally, this got the attention of the federal government, particularly the Clinton Administration, which needed money to revise the welfare system. So it proposed a 4% tax on all gambling operations' gross receipts.

Now, anyone in the business would have told them 4% off the top would put a lot of casinos out of business. But who would tell them?

The second smartest thing the casino industry ever did politically was create the AGA. The first smartest was hiring Frank J. Fahrenkopf, Jr., to head it.

Besides being an exceptionally bright gaming lawyer from Nevada, Fahrenkopf had been Chairman of the Republican Party from 1983 to 1989.

He and the AGA put together a coalition of dozens of industry groups that would be hurt if casinos folded, including airlines and hotels. They got members of Congress involved. Questions started being asked, such as, "Is it even legal for the federal government to tax an Indian casino?"

The Clinton 4% tax idea died.

But the casino industry was hit almost immediately with a new problem. The "anti's" proposed a National Gambling Impact Study, to be done by a Commission. A political ploy, the Commission was going to be given subpoena power and just enough money to drag casino executives in front of T.V. cameras.

Fahrenkopf and the AGA were able to put some reasonable limits on the subpoena power and require the Commission to look for positive as well as negative affects of legal

gaming. Most importantly, the AGA got some pro-gaming people onto the Commission.

Trent Lott (R.Miss.), then-Majority Leader of the Senate, and Newt Gingrich, then-House Speaker, were appointing religious conservatives, including Dr. James Dobson, president of Focus on the Family, and the spectacularly incompetent Kay Coles James, dean of Pat Robertson's School of Government at Regent University, as the Commission's chair.

In one of the most impressive pieces of lobbying I have ever seen, Fahrenkopf helped get the following four appointed to the nine-member Commission: J. Terrence Lanni, C.E.O. of MGM Grand, Inc., then the largest hotel-casino in Las Vegas; Bill Bible, former Chairman of the Nevada Gaming Control Board; John Wilhelm, President of the union representing 40,000 workers in Las Vegas hotel-casinos; and Robert Loescher, a member of the Tlingit tribe, which wanted to open a casino in Alaska.

The AGA only represents casinos. Apparently, the other forms of gambling did not have lobbyists. So, missing from the Commission were any representatives of state lotteries or Internet gambling.

Guess what forms of gambling the Commission ended up condemning.

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