DIVISION OF GAMING ENFORCEMENT,
Petitioner

v.

BOARDWALK REGENCY CORPORATION,
Respondent.

Initial Decision: June 8, 1982
Remand Order: August 2, 1982
Initial Decision: October 21, 1982
Final Agency Decision: January 4, 1983
Approved for Publication by the Casino Control Commission:
July 8, 1988

SYNOPSIS

The Division of Gaming Enforcement filed a complaint with the
Casino Control Commission against respondent alleging numerous
violations of the Casino Control Act. The matter was transmitted to
the Office of Administrative Law for a hearing.

The complaint involved respondent’s actions during one weekend
when respondent attempted to accommodate a “high roller” who, during
the course of the weekend, lost $1.2 million playing roulette
and blackjack. Respondent’s alleged violations included the following:
(1) allowing the gambler to walk through and place bets from the pit;
(2) failing to cooperate with Commission inspectors attempting to
monitor the gambler’s actions; (3) failing to call “no more bets”; (4)
permitting a pit boss to act as curator of the shoe in a game of
baccarat; (5) failure of the pit boss to wear his casino key employee
license credential; (6) removing counter checks from the cage and
taking them to the patron’s hotel room in order to settle the gambling
debts; (7) accepting as payment three personal checks, one of which
was undated and two of which were postdated, and (8) improperly
processing the patron’s checks.

The administrative law judge concluded that several violations had
occurred and assessed penalties of $137,500 against respondent. Other
violations alleged in the complaint were dismissed. Exceptions to this
initial decision were filed, resulting in an Order of Remand by the
Casino Control Commission. In the order, the Commission rejected
some conclusions of law made by the administrative law judge and
directed further proceedings based on its findings. The administrative
law judge conducted another hearing and issued a second initial
decision, which assessed an additional $40,000 in fines against the respondent.

Upon review of both initial decisions, the Commission modified the conclusions of the administrative law judge.

Regarding the removal of the counter checks and acceptance of the patron's personal checks, the administrative law judge had determined that three offenses had occurred in regard to the checks: the location of the transaction, acceptance of improperly dated checks and acceptance of checks not made payable to the casino licensee. The Division had argued that nine violations occurred—three for each of the three checks. Respondent contended there was only one violation, namely a $1.2 million consolidation in which non-conforming checks were accepted. The Commission concluded that the Casino Control Act speaks in terms of individual instruments and therefore, three violations occurred because three non-conforming checks were accepted. The Commission affirmed the $35,000 per violation penalty assessed in the initial decision. However, the Commission also determined that the removal of the counter checks constituted separate offenses and assessed a fine of $1,000 per counter check removed, a total of $37,000. In addition, a fine of $1,000 each was assessed for nine violations in connection with processing the checks—failing to initial, date and time stamp each of the three personal checks.

The administrative law judge had dismissed the count involving the pit boss acting as curator of the shoe because, in his opinion, the pit boss was not a "participant" in the game as that term is used in the rules of the game of baccarat, but was merely dealing cards to accommodate a valuable patron. The Commission, however, ruled that a participant is a wagering player and, because the Casino Control Act prohibits casino employees such as pit bosses from wagering, the respondent violated Commission regulations in permitting the employee to serve as curator. However, the danger to casino integrity in this situation was minimal and a letter of reprimand was deemed to be the appropriate regulatory response. Regarding the same pit boss's removal of his employee credentials, the Commission increased the fine assessed by the administrative law judge. The Commission noted it was particularly alarmed that top casino supervisory personnel encouraged this violation. Thus, the Commission increased the $2,000 recommended penalty to $5,000.

The Commission also increased the penalty for failing to call "no more bets." The administrative law judge had concluded that the dealer neglected this requirement because the patron spoke no English
and was the only player. Nonetheless, a violation had occurred and a fine of $500 was recommended. The Commission doubled the penalty because the violation was intentional.

The charge of failure to cooperate with the Commission arose from a series of actions by which employees of the respondent attempted to shield the "high roller" from inspectors and hesitated in complying with a request to monitor the patron by television. These actions were alleged to violate section 80(d) of the Casino Control Act, which requires of licensees a continuing duty to provide assistance and information to the Commission and to cooperate in any inquiry, investigation or hearing. The Commission concluded that section 80(d) should be interpreted in the broadest possible fashion in order to maximize the obligation of licensees to cooperate with the Commission and the Division. The Commission called respondent's attempt to intimidate and interfere with Commission inspectors "deplorable" and bullying tactics motivated by simple greed. The Commission doubled the monetary penalty assessed by the administrative law judge, noting that this was the respondent's first transgression of this type.

In a separate opinion, Commissioner Jacobson said he would have required temporary suspension of respondent's operation certificate and closing of the casino for a specified period of time, in addition to monetary penalties. In his view, the fines imposed on respondent would be regarded as merely a cost of doing business, instead of a deterrent against future violations. The penalty of $257,000—measured against the $1.2 million that was lost by the favored patron—was not sufficient. Respondent had to choose between complying with the law or accommodating a valuable patron. In deciding to accommodate the patron, respondent intentionally defied the authority of the Commission.

Robert E. Reilert, Esq., for respondent
Charles A. Matison, Esq., for respondent (Cooper, Perskie, Katzman, April, Niedelman & Wagenheim)
Brian J. Molloy, Esq., for respondent (Wilentz, Goldman & Spitzer)
Howard M. Barman, Deputy Attorney General, and Kevin F. O'Toole, Law Assistant, for petitioner (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)
Alfred J. Bennington, Esq., for Alessandro Fornasiero (Blatt, Mairone and Biel)

LEFELT, ALJ:

The Division of Gaming Enforcement (DGE) seeks civil penalties and other appropriate relief from the Boardwalk Regency Corporation (BRC) because DGE claims that between May 15, 1981 and May 18, 1981 BRC employees, in their attempts to accommodate a high-stakes gambler, violated numerous provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq.

PROCEDURAL HISTORY

BRC holds a New Jersey Casino license and has operated a casino hotel (Caesar's) in Atlantic City since June 1979. BRC's present difficulties began when one Gaetano Caltagirone arrived with his entourage at Caesar's in New Jersey. Mr. Caltagirone was a well-known customer of Caesar's in Nevada where he was authorized to receive 1.5 million dollars in gambling credit. Mr. Caltagirone is a high-roller or high-stakes gambler and by the end of his long weekend (Friday, May 15-Monday, May 18, 1981), he had lost 1.2 million dollars.

The complaint, alleging various BRC violations during Mr. Caltagirone's stay, was filed on June 10, 1981. On July 8, 1981, BRC filed a notice of defense and statement of request for a hearing and on August 14, 1981, the first prehearing conference was held before Donald M. Thomas, Hearing Commissioner. On September 17, 1981, the second prehearing conference was held, also before Commissioner Thomas. On September 21, 1981 the Casino Control Commission transmitted this matter to the Office of Administrative Law and on October 15, 1981 the third prehearing conference was conducted by the undersigned at the Office of Administrative Law in Trenton, New Jersey.

This matter was tried at several locations in Atlantic and Mercer counties. The evidentiary hearing ended on March 17, 1982 and a briefing schedule was established. Upon receipt of reply briefs, I closed the record on April 26, 1982.
THE EVIDENCE
Findings of Uncontested Fact

The evidence presented by the parties included witnesses, depositions, and numerous exhibits. After considering the testimony and exhibits including the depositions, I CONCLUDE that many of the facts are undisputed and I adopt the following recitation as my findings of uncontested believable fact:

Upon Mr. Caltagirone’s arrival on May 15, 1981, he rented a penthouse suite in the hotel and completed the necessary New Jersey forms to obtain credit for 1.5 million dollars. Mr. Caltagirone’s “play,” as the casino personnel describe gambling, included mostly roulette and some baccarat. When “playing” roulette, he wagered between $5,000 and $20,000 on each spin of the roulette wheel.

BRC assigned A. Fornasiero, a pit boss licensed in the games of blackjack and roulette, as Mr. Caltagirone’s interpreter, since Mr. Caltagirone spoke only Italian. Mr. Fornasiero interpreted for Mr. Caltagirone during his entire stay in the Casino.

On May 17, 1981, in order to assist Mr. Caltagirone, Mr. Fornasiero removed his casino employee license at the instruction of the Game’s Manager and performed the function of curator of the baccarat shoe. Mr. Caltagirone was the sole patron at this baccarat table.

Other alleged activities of BRC personnel and Caltagirone involve factual disputes, and therefore will be discussed separately. For present purposes, it is sufficient to state that Mr. Caltagirone proceeded to “play” on credit from May 15 through May 18, 1981 by drawing counter checks or markers to cover his losses, which as previously noted were substantial.

Finally, on May 18, 1981, Mr. Caltagirone called Mr. Fornasiero and indicated that he desired to settle his account in his hotel room. The 1.2 million in counter checks was removed from the cage area (a secured physical structure in the casino) by Larry Woolf, Vice President of the Casino; Charles Horton, Assistant to the Treasurer of the Casino; Bernard Resnick, Assistant Casino Manager and Mr. Fornasiero. The BRC contingent then joined Mr. Caltagirone in his suite. Throughout this period in Mr. Caltagirone’s suite, all statements made to or by Mr. Caltagirone were translated by Mr. Fornasiero.

Mr. Caltagirone presented three checks which he wished to exchange for his counter checks. Check #1 was not dated, check #2 was dated October 10, 1981 and check #3 was dated March 15, 1982. All three of the checks were made payable to Mr. Caltagirone and en-
endorsed by Caltagirone. The Casino personnel indicated to Mr. Caltagirone that they could not, under the law, receive postdated checks and requested that he replace these checks with current ones. There then ensued a vigorous argument during which Mr. Caltagirone refused to pay by any other method. He claimed that he paid his debts in Nevada by postdated checks and could not understand why New Jersey was different from Nevada since both are in the United States. It became obvious to the BRC personnel that there was no way they could be able to convince Mr. Caltagirone, who appeared to be totally irrational, that New Jersey law required their rejecting his consolidation proposal. During this argument, BRC personnel, claimed Caltagirone was “foaming from his mouth” with anger. Mr. Woolf attempted to make some phone calls to various persons who outranked him in the Casino hierarchy. Precisely what occurred next is contested and therefore resolved in a separate section below.

For purposes of continuing the uncontested recitation, I find that Mr. Caltagirone ripped the counter checks and BRC personnel took the three personal checks from the hotel room to the Casino cage. Mr. Woolf signed a receipt for the checks and removed them briefly from the cage for a discussion as to what BRC ought to do next. When the cage personnel received the three checks, they failed to date, time stamp and initial them and did not endorse the checks payable to BRC's bank. In addition, Mr. Caltagirone’s patron credit reference card was simply marked with “CONSOL 1.2 million dollars 5/18/81.” On May 19, 1981 the undated check was dated by BRC’s Director of Cage Operations, Mr. Ebert, and given to Mr. Fornasiero who was bonded and flown by airplane to Monte Carlo, France, where he personally deposited this check in Mr. Caltagirone’s bank and returned with the cash to BRC. On May 19, 1981, the cage personnel noted on Mr. Caltagirone’s patron credit reference card that a check in the amount of $400,000 had left the cage. At about the same time the undated check was leaving the cage with Mr. Fornasiero, Messrs. Woolf and Cade, BRC’s Senior Vice President, were explaining their dilemma to then Commission Chairman Lordi and thereafter to Guy Michaels then Assistant Director of DGE.

After a newspaper article concerning Mr. Caltagirone and these occurrences appeared in the Atlantic City Press, an individual claiming to be Mrs. Caltagirone redeemed the postdated checks with a shopping bag, containing $800,000 in cash.
Findings of Contested Fact

Whether the personal checks were accepted by BRC

The evidence is clear that Mr. Caltagirone's 1.2 million in counter checks was removed from BRC's cage and brought to Mr. Caltagirone's hotel room in order to accommodate a good customer who wished to settle his account. The evidence is conflicting, however, as to whether the three personal checks supplied by Mr. Caltagirone to consolidate his 1.2 million dollar losses were voluntarily accepted by BRC.

BRC contends that the checks were received to memorialize the underlying debt after Mr. Caltagirone ripped the counter checks. BRC maintains that the evidence justifies a conclusion that BRC involuntarily received the checks. BRC's contention is largely based upon Mr. Woolf's testimony and deposition. Mr. Woolf claims that Mr. Caltagirone tore the counter checks during their vigorous argument and before BRC accepted the personal checks. Mr. Woolf, the highest BRC corporate official in the hotel room, and Mr. Horton in their depositions testified that when Mr. Caltagirone ripped the counter checks, Mr. Woolf said "well I guess that makes the decision for us." It is interesting to note, however, that Mr. Woolf at the evidentiary hearing claimed that either Mr. Horton or Mr. Resnick made this statement. In his deposition, Mr. Woolf acknowledged that while in the hotel room he was in charge. At the evidentiary hearing, however, Woolf maintained that on reflection he was not the ranking official. Woolf explained that BRC operations are separated between casino and financial matters and since he represented only casino matters, Mr. Horton, as the Financial Vice-President's representative, was technically Mr. Woolf's equal, representing BRC's financial interests.

Nevertheless, Mr. Fornasiero's deposition indicated that Mr. Woolf accepted the checks. Mr. Fornasiero stated in his deposition that they all agreed to cash the checks and give Mr. Caltagirone the counter checks. Mr. Resnick said in his deposition that after a consensus was reached, Mr. Caltagirone handed his personal checks to Mr. Horton and Mr. Horton handed Mr. Caltagirone the markers and then Mr. Caltagirone ripped them up. BRC seeks to mitigate the depositions by arguing that when BRC employees spoke of acceptance they meant receipt and that Caltagirone must have been given the markers to count, before agreeing to the exchange. I do not believe that the evidence supports this position.

I believe that BRC accepted the undated and postdated checks not
as a coerced only alternative, but as its best bet to get paid. In short, the BRC representatives weighed the various alternatives and a business decision was made. I find support for this conclusion not only in the depositions already mentioned, but in the realization that it would have been extremely foolish for BRC to relinquish control over the counter checks until BRC agreed to accept the personal checks in consolidation of the counter checks. I reject BRC’s contention that it gave Mr. Caltagirone 1.2 million dollars in negotiable counter checks to count, when he was foaming from his mouth in anger. I also cannot believe that if BRC was coerced into the decision by Caltagirone’s tearing the markers, that fact would not have been mentioned to Chairman Lordi at the meeting where Messrs. Woolf and Cade reported this incident. Mr. Woolf can only assume that such a statement was made; he cannot remember. However, Mr. Fee, the Casino Control Commission’s Director of Division of Financial Evaluation Control, was present during this meeting. He recalls Messrs. Woolf and Cade stating only that they had no other alternative and that there ought to be an amendment to the Casino Control Act to accommodate high-stakes gamblers.

I, therefore, find as fact that BRC voluntarily agreed to accept the three checks before Mr. Caltagirone tore the counter checks.

_Whether BRC employees told a Casino Control Inspector to leave the table where Caltagirone was gambling and to observe from inside the pit rather than behind Caltagirone_

Casino Control Inspector Scimines testified that on May 17, 1981 the area at Caltagirone’s table “was not crowded,” but Senior Inspector Ford described the area as “very crowded” and Bernard Resnick, Assistant Casino Manager, in his deposition indicated that crowd control was impossible because of the interest generated by the large sums Mr. Caltagirone was betting. The dealer, Cheryl Hood, described the scene as very chaotic, like a circus. BRC at the request of Mr. Caltagirone placed two security guards at either end of the private table provided for Mr. Caltagirone’s benefit.

Senior Inspector Ford testified that Mr. Leone, a BRC Games Manager, approached her and told her to back Inspector Scimines off the table. Leone, according to Ford, claimed that Inspector Scimines had laughed and disturbed Caltagirone. Leone said: “I want you to back her off that table.” Ford was upset and concerned that a member of her shift might be accused of wrongdoing and therefore she asked Leone whether Inspector Scimines had done anything
wrong. Leone said, "no," but claimed that Caltagirone was temperament and that Scimines was making him nervous. Ms. Ford believed that Leone's manner was abrupt and "not nicely done." According to Ford's report of this incident, she then explained to Leone that she would respect his wishes and not have Inspector Scimines stand directly over the table, but that Scimines must perform her duties. After this conversation, Leone returned to the pit and Senior Inspector Ford called Inspector Scimines to the Commission booth to determine whether she had done something wrong.

Senior Inspector Ford explained that Scimines stated that a BRC security officer asked her to leave the area of the table—"to move on." Inspector Scimines explained to the Senior Inspector that she was being blocked by a BRC security guard from viewing the table. Scimines testified that the security guard was standing in front of her, keeping her from seeing Caltagirone. Scimines laughed when the security officer precluded her observations. When Senior Inspector Ford asked Inspector Scimines why she laughed, Ford testified that Inspector Scimines explained that it was an immediate nervous response to what had occurred. At the evidentiary hearing, Senior Inspector Ford further testified that she instructed Scimines to return to the table and continue her observations. "We would do our job," said Senior Inspector Ford.

Shortly after Scimines returned to the table area, Mr. Resnick and Mr. Leone came to the Commission booth. According to Resnick's deposition, Inspector Scimines had been standing very close to Caltagirone and talking to one of the security guards. Caltagirone said, "I don't want her standing there." Resnick claims that he asked Inspector Ford whether it would be possible to have Scimines stand inside the pit, especially since she could probably see the game better from the inside anyway. Senior Inspector Ford explained that they were just doing their job. Resnick, according to his deposition, said that "We respect your job. If you feel there is a violation, by all means write it up and we will answer it later." Resnick further explained to Ford that with the kind of money Caltagirone was betting, if Caltagirone wanted to burn the Casino down, he would give him a match.

Ford's testimony at trial closely followed Resnick's account of this conversation contained in his deposition. Senior Inspector Ford added that Resnick was very definite in his manner and that she told Resnick and Leone that, until she spoke to her Supervisor, she would have Inspector Scimines observe from the pit.
Before being called by Senior Inspector Ford, Scimines had observed Caltagirone from approximately 2:15 p.m. until 2:40 p.m. After her conference with Ford, Inspector Scimines returned to the table at approximately 2:45 p.m. Inspector Scimines testified that the security officer was again blocking her view. According to Scimines he moved in front whenever she tried to observe Caltagirone—the security officers appeared not to want anybody in front of them. Inspector Scimines observed from the outside of the table, approximately 12 feet from the table, until approximately 3:00 p.m. when Inspector Scimines reported to Ford at the Commission booth that she had observed the dealer failing to call "no more bets." (See the findings relating to this charge below.)

BRC asserts that the purpose of its contacting Senior Inspector Ford was to request that she "exercise her discretion to decide where to place her inspectors." The overwhelming weight of the evidence, however, does not support this assertion. After considering all of the evidence on this point and the witnesses' demeanor, I find the following facts:

1. The area around Caltagirone's table was at times very crowded on May 17, 1981 when he was playing roulette. The security guards were placed at both ends of the table to keep the crowds from Caltagirone.

2. Caltagirone became disturbed by Inspector Scimines, when Scimines talked to the security guard and laughed in disbelief as the security guard first told her to move on and then attempted to block her view of the table.

3. BRC employees wanted Senior Inspector Ford to move Inspector Scimines farther away from the table. Mr. Resnick suggested that Scimines could observe the game from the pit. Their manner and statements were chosen to accomplish their goal—rid Caltagirone of an annoyance.

4. Inspector Scimines was called to the Commission booth by Senior Inspector Ford and after a brief discussion, Ford told Scimines to continue observing Caltagirone. DGE contends that "BRC's action caused Scimines to be called to the booth, thereby causing the table game, for a time, to be left unobserved by Commission personnel." This is accurate; however, at most, the table was unobserved for approximately five minutes and there is nothing in the evidence to indicate that it is unusual for table games to be unobserved by Commission personnel for brief periods. In fact, Inspector Scimines testified
that she returned to the Commission booth to report the “no more bets” incident, presumably leaving the table unobserved for a brief period.

5. On this record, I cannot determine whether Scimines’ second observation point was either farther from her initial observation post or inferior in some other way from her prior post. While Inspector Scimines testified that a BRC security guard was blocking her view, she explained that she could see Caltagirone making his wagers and she obviously saw and heard well enough to report a violation of the Casino Control Commission Regulations. (See “no more bets”.) Consequently, I cannot conclude that her observation was in fact made less effective at the second vantage point. Both of Scimines’ observations were probably made from 7 to 12 feet, since Senior Inspector Ford, when she made her observation of the table to verify the “no more bets” incident, testified to walking around the table by the security guards approximately 7 feet from the table. Scimines testified to making her ”second observation” at 12 feet.

6. Finally, it is clear on this record that the observations of Caltagirone were continued largely because of Senior Inspector Ford’s courage and devotion to her duty. She did not succumb to either Messrs. Leone or Resnick’s pressure and had instructed Scimines to return to the table and continue her observations. Ford did not instruct Inspector Scimines to view Caltagirone from the pit as she mistakenly indicated in her deposition. I reach this conclusion by relying on Ford’s demeanor and her live testimony, her reports made prior to the deposition and the other related evidence. While Ford did indicate to Leone and Resnick sometime between 2:45 and 3:00 p.m. that she would have Inspector Scimines observe from the pit, this order was neither communicated to Scimines nor implemented, presumably because Inspector Scimines shortly thereafter (at about 3:00 p.m.) reported the dealer’s failure to call “no more bets.”

_Whether a dealer, Ms. Cheryl Hood, called “no more bets” during the roulette “play” of Mr. Caltagirone on May 17, 1981_

Both Inspectors Ford and Scimines testified that they observed the dealer, Cheryl Hood, failing to call “no more bets,” which delineates that time when all wagering must stop. Inspector Ford testified that
Inspector Scimines said that the dealer was told by her employer not to call "no more bets." On the other hand, Ms. Hood denies the allegation, claims to have called "no more bets," and asserts that BRC supervisory persons did not give her any special dealing instructions. Mr. Fornasiero in his deposition claimed that to the best of his knowledge the dealer called "no more bets." Mr. Resnick in his deposition also stated that "no more bets" was definitely said.

BRC seeks to make much of various alleged inconsistencies and improbabilities in Inspector Scimines' testimony. BRC contends that it is inconceivable that Inspector Scimines did not tell Senior Inspector Ford about the dealer failing to call "no more bets" when Ford spoke to Scimines about Mr. Leone's complaint. Scimines testified that she was not sure whether the dealer failed to call "no more bets" during her initial observation, but later she testified that the dealer had failed to call "no more bets" during this period. Furthermore, BRC urged that it is unbelievable that Scimines did not record this alleged violation in her notebook until 3 p.m., at the end of the second observation. BRC implies that Scimines is fabricating this incident to mitigate the charges concerning her observation techniques. (Apparently, before the Caltagirone incidents there had been another complaint about Inspector Scimines.)

However, on cross-examination, Ms. Hood admitted that while she usually calls "no more bets," she had no specific recollection of calling "no more bets" on that day. Furthermore, Senior Inspector Ford also testified before me and stated uncategorically that the dealer was not calling "no more bets." Senior Inspector Ford may not have mentioned this observation in her deposition, notebook or daily narrative, but I observed Senior Inspector Ford and I find her testimony highly credible, especially when I consider Mr. Lenz's response to the original violation report. Mr. Lenz is BRC's Casino Manager tasked with responding to violation reports prepared by the Casino Control Commission. Lenz wrote that "management felt it was unrealistic in this situation (to call "no more bets") if there was only one player and he did not understand one word of English." Mr. Lenz in his deposition claimed that his usual practice upon receipt of a violation report was to check and verify the violation with the Casino personnel involved, but he claimed not to have followed that procedure here. I find that assertion incredible. I also believe that for the dealer to call "no more bets" and have Mr. Fornasiero repetitively interpret that statement, each time it was made, must have seemed cumbersome. Therefore, based upon my assessment of all of the witnesses' credi-
bility and the probabilities of what actually occurred, I FIND that "no more bets" was not called by BRC's dealer on May 17, 1981.

*Whether BRC denied or delayed a Casino Control Commission request to place Caltagirone's gambling activities on the Commission closed circuit video monitors*

This dispute centers on whether BRC acted in an expeditious and reasonable manner, neither delaying nor denying the request. After considering the evidence and the credibility of the witnesses testifying on this matter, I find the following facts:

DGE staffs a surveillance room at BRC with the TV capabilities of monitoring and taping the activity at any gaming table. BRC also maintains a surveillance room containing several TV monitors connected to numerous cameras throughout the Casino. The Commission has TV monitors in its booth, but is dependent upon BRC surveillance personnel to connect those monitors with the BRC surveillance cameras.

On May 18, 1981 Senior Inspector Ford requested BRC to place Mr. Caltagirone's "play" on the Commission television sets so Mr. Caltagirone's activities could be monitored. BRC's practice required such a request to be forwarded to Mr. Mancari, BRC's Director of Surveillance, if he were present. In accordance with this practice, Ms. Jenkins, a BRC surveillance employee, referred Ford's request to Mr. Mancari. Mr. Mancari did not know that Ms. Ford was a Senior Inspector. Mancari telephoned Ford and told her that he could not put this activity on the screen unless she had a reason, since BRC had a policy not to put high-roller activity on the Commission screen because it was visible to the public. Ford said she had a reason, but Mancari told Ford to have her Supervisor call him. BRC contends that Senior Inspector Ford's reason was recreational to dispel boredom. This contention is based on testimony in the record that from time to time, Commission personnel have made such requests of BRC surveillance officials.

I CONCLUDE that Senior Inspector Ford's request was not made for recreational purposes. On Saturday, May 16, 1981, Mr. Resnick called Principal Inspector Plumb, Ms. Ford's Supervisor, at his home to complain that the Casino Control Commission was upsetting Caltagirone. On May 17, 1981, the Commission discovered that Mr. Fornasiero had removed his license badge as a direct result of observing the baccarat game on its TV monitors. Furthermore, on May 17, 1981, Ms. Ford and Ms. Scimines both observed Caltagirone's roule-
te dealer fail to call “no more bets” and BRC personnel made clear to Ms. Ford that they were concerned that the close Commission monitoring was disturbing Caltagirone. It is inconceivable to me that under these circumstances Ms. Ford would wish to observe Caltagirone solely for “recreational purposes.” It is understandable why Senior Inspector Ford maintained only in conclusionary terms that she “had a reason.” By this time, the Commission and BRC were in fact adversaries.

Mr. Mancari testified that after speaking to Senior Inspector Ford, he called Principal Inspector Plumb and BRC contends that this call “to obtain the required authorization.” Principal Inspector Plumb, however, testified that after receiving a call from Senior Inspector Ford complaining about Mancari’s refusal, Plumb went to the DGE’s office, where DGE Detective Hull called Mr. Mancari. Hull and Plumb then requested that Mancari tape Caltagirone’s roulette game. After these requests, Mancari, approximately 13 minutes after the initial Ford request, prepared a videotape of the game.

Senior Inspector Ford was confused about Mr. Mancari’s position, since she knew of no such BRC policy. In fact, on May 7, 1981, Ms. Ford was informally told by a BRC surveillance person that anytime Ford wanted anything on the screen, the BRC employee would “be happy to do so.” In addition, a number of Ms. Ford’s prior requests for TV monitoring had been granted by the BRC surveillance personnel.

There were no written BRC procedures for handling monitoring requests in May 1981 and none were implemented until June 19, 1981, well after this incident.

I believe that Mr. Mancari considered Inspector Ford’s request and since he did not know her and did not know that she was a Senior Inspector, he believed that protecting Mr. Caltagirone outweighed this particular request. When Ford said she had a reason, Mancari wanted confirmation from a superior. I believe that Mr. Mancari did not tape the game until after he was called and requested to tape the game by DGE and a Commission representative. I CONCLUDE that Mr. Mancari’s action, especially when considered within the context of BRC’s concerns, was intended to and did in fact delay Senior Inspector Ford’s request to monitor the game.

**LEGAL ANALYSIS AND CONCLUSIONS OF LAW**

This civil penalty disciplinary proceeding has been brought by DGE
against BRC exclusively; neither agents nor employees of the corporation were charged. The Casino Control Act does not specifically make the corporate casino licensee liable for violations committed by its employees.

Since the act is penal in nature and is to be strictly construed, State v. Perlman, 169 N.J. Super. 190, 196 (Law Div. 1979), a preliminary question is whether the casino may be responsible for all violations even if committed by relatively low-level employees such as dealers and cage employees.

The ability of the Legislature to subject a corporation to criminal liability for the acts of its agents or employees has become well established since the decision in New York Central R.R. v. United States, 212 U.S. 481 (1909). In State v. Western Union Telegraph Co., 13 N.J. Super. 172, 221 (Cty. Ct. 1951), aff'd, 12 N.J. 468, app. dis. 346 U.S. 869 (1953), the defendant was held liable for the conduct of a local manager of one of its branch offices who allowed bookmaking to take place on the premises. If corporate criminal liability is possible for misconduct by agents and employees a fortiori, civil penalties are appropriate.

To further the public confidence in the integrity of casino operations, the regulatory provisions of the act were designed to extend "strict State regulations to all persons, locations, practices and associations related to the operation of licensed casino enterprises...." N.J.S.A. 5:12-1(6) (emp. added). "The statutory and administrative controls over casino operations established by the [Casino Control] act are extraordinarily pervasive and intensive." Knight v. Margate, 86 N.J. 374, 380-381 (1981). Unlike the regulation of veterinarians, see, In re Kerlin, 151 N.J. Super. 179 (App. Div. 1977), casinos have assumed their place with other heavily regulated New Jersey industries, such as liquor and racing. In re Application of Boardwalk Regency Corp., 180 N.J. Super. 324, 341 (App. Div. 1981). Gaming was illegal before the Casino Control Act and therefore the industry operates on a revocable privilege. N.J.S.A. 5:12-1(8).

N.J.S.A. 5:12-129(5) states that the Commission may "assess such civil penalties as may be necessary to punish misconduct and to deter further violations" and specifically mentions individual licensees and casino licensees. Thus, civil penalty actions were contemplated against both individuals and corporations. The casino licensee corporation may act only through its agents and employees. If a distinction were made among categories of employees to isolate the casino from the acts of "lower-level" employees, a dilution of the regulatory effect
would result. The casino would have less reason to monitor carefully all of its employees' activities. It is no defense to a discipline action that the licensee inadvertently, unintentionally, or unknowingly violated a provision of this act. N.J.S.A. 5:12-130(g). Other jurisdictions have had little difficulty in holding a corporation liable for its employee's acts in discipline proceedings. See, e.g., Northeast Dodge Co. v. Commonwealth, 54 Pa. Commw. Ct. 182, 185, 420 A.2d at 771, 773 (1980) (car dealership license suspended for transgression of salesmen).

To insure faithful compliance and strict regulation, I, therefore, CONCLUDE that the Legislature intended in N.J.S.A. 5:12-129(5) that casino licensees shall be responsible for all misconduct occurring on the licensed premises. If any casino employee violates a regulation or statute, the casino licensee shall be responsible whether it had knowledge or not. N.J.S.A. 5:12-130(g).

DGE, therefore, could have brought this case against either the individuals involved or the corporation or both. It chose, legitimately, to proceed against only the corporation. In order to avoid corporate responsibility under the legal test that I believe applies, BRC would have had to demonstrate that it did everything possible in its power to prevent a violation. Ishmal v. Div. of A.B.C., 58 N.J. 347, 351-2 (1971). The proofs are to the contrary. In fact, the proofs presented leave little doubt that many BRC management personnel including the Vice-President for Casino Operations, Games Managers, the Casino Manager, Assistant Casino Manager, Shift Managers, and the Director of Surveillance had knowledge of most of what occurred to "convenience" Mr. Caltagirone. I specifically FIND, based on the evidence that for each violation discussed below, occurring either on the casino floor (including BRC's surveillance room) or in Caltagirone's room, a managerial person either participated in the misconduct, or had knowledge of the misconduct. I also FIND that there is no evidence that BRC managers knew that BRC cage personnel failed to date, initial, time stamp, and endorse the three personal checks, and to record properly the 1.2 million dollar consolidation on Caltagirone's credit reference card. I CONCLUDE, however, that managerial persons probably knew and should have known, since the three checks were brought to the cage by Mr. Woolf and Mr. Horton, temporarily removed by Mr. Woolf and returned by Mr. Woolf. In addition, the nature of the cage operations and the uniqueness of this transaction supports this conclusion. In this case, BRC was clearly a willing participant in its efforts to satisfy Mr. Caltagirone and each

I have organized the following legal analysis and conclusions around each paragraph of DGE's complaint against BRC. For each allegation, I determine whether the proofs justify a violation. Appropriate penalties are discussed thereafter in the section entitled Penalty Determination.

*The 1.2 million dollar consolidation (DGE Complaint, Count I, paragraphs 11, 12, 13, 14, 15 and 16)*

The facts I have found indicate that BRC voluntarily accepted three personal checks from Mr. Caltagirone in his hotel room in consolidation of Mr. Caltagirone's 1.2 million dollar debt and that BRC intended to take possession of these three checks as "owner." *Vacuum Ash and Soot Conveyor Company v. Huyler's*, 101 *N.J.L.* 147, 149 (E. & A. 1925.) Each $400,000 check was made payable to Mr. Caltagirone and each check was intended to consolidate numerous counter checks totalling $400,000. In addition, one check was undated and two were postdated. Caltagirone's purpose in offering such checks clearly was to delay their deposit beyond the time periods prescribed in *N.J.S.A.* 5:12-101(c).

For BRC to accept a personal check in exchange for counter checks, the check must be payable to the Casino licensee and currently dated, but not postdated. *N.J.A.C.* 19:45-1.25(c)3 and 4. *See also*, *N.J.S.A.* 5:12-101(b) and (c). BRC accepted the postdated checks and thereby impliedly agreed to delay deposit beyond the permitted time periods, in violation of *N.J.S.A.* 5:12-101(c). Furthermore, the facts and the clear wording of the regulation belie BRC's contention that a valid consolidation may occur either in the general cashier's cage or in the customer's hotel room. Consolidations should occur in the general cashier's cage. *N.J.A.C.* 19:45-1.26(d). Thus, for each $400,000 consolidation, there were three improprieties: dates, payee, and location of transaction.

For purposes of penalty, should BRC's conduct constitute one violation, as BRC argues, or nine or more violations as DGE argues? The test to determine merger is "whether the legislative intent is to punish individual acts separately or to punish only the course of action
which they constitute.” *State v. Wright*, 154 *N.J. Super.* 174, 178 (App. Div. 1977). I believe that the Casino Control Act civil penalty statutory sections (N.J.S.A. 5:12-129(5) and 130) demonstrate an intense concern over the “conduct” of casino licensees. For example, N.J.S.A. 5:12-129(5) empowers the Commission to assess such “civil penalties as may be necessary to punish misconduct and to deter future violations. . . .” Furthermore, N.J.S.A. 5:12-130, which establishes the standards for the imposition of sanctions, discloses additional concern over the “conduct of the licensee.” The first standard of N.J.S.A. 5:12-130(a) requires an assessment of “the risk to the public and to the integrity of gaming operations created by the conduct of the licensee. . . .” (emp. added). The second standard requires an assessment of the “seriousness of the conduct of the licensee. . . .” N.J.S.A. 5:12-130(b) (emp. added). While one could argue that to control conduct effectively, each act should be punished, the Casino Control law does not specifically provide that each violation in a course of conduct must be separately penalized. *State v. Perlman*, 169 *N.J. Super.* 190, 198 (Law Div. 1979).

It seems to me that BRC’s misconduct was accepting a 1.2 million dollar consolidation that was defective in three ways. BRC accepted consolidation checks, which were improperly drawn and dated, in an improper place (the hotel room). The State attempted to prove and did prove that an unlawful 1.2 million dollar consolidation occurred when these checks were exchanged for Caltagirone’s counter checks. To punish BRC for nine or more violations seems unduly harsh, especially since it was Caltagirone who presented the three checks in consolidation. BRC was wrong in accepting any of the checks, but the fact that it accepted all three of them does not magnify its misconduct beyond a 1.2 million dollar consolidation, defective in three ways.

After resolving the factual dispute over BRC’s acceptance of the 1.2 million dollar consolidation (DGE Complaint, Count I, paragraph 15), I was better able to consider the related paragraphs in proper perspective. Consequently, I must modify my March 15, 1982 Substantive Order, Appendix B, by indicating that this Initial Decision controls and any conclusions to the contrary in my March 15 Order dealing with DGE Complaint, Count I, paragraphs 11-16 should be disregarded. The BRC misconduct encompassed by the charges in paragraphs 11-16 amounts to three punishable violations.
Dating, Initialling, Time Stamping and Endorsing the Checks
(DGE Complaint, Count I, paragraphs 17 and 18)

There is no factual dispute that BRC cage personnel failed to date, initial, time stamp and restrictively endorse the three Caltagirone checks as required by N.J.A.C. 19:45-1.25(d)1i, ii, iii. The cage personnel could not accept any check without dating, initialling, time stamping and restrictively endorsing it, yet each of Caltagirone’s checks was so received. Thus, my Substantive Order of March 15, 1982 concluded that this conduct constituted three violations of N.J.S.A. 5:12-101(b)4.

Depositng the Undated Check in the Casino’s Bank Account
(DGE Complaint, Count I, paragraph 19)

For the reasons explained orally on March 11 and 12, 1982, I dismissed this charge. I will not repeat my reasons herein except to say that BRC had carried this check to Caltagirone’s personal bank, thereby in my opinion, cashing it in the most expeditious manner possible. Furthermore, there is some question whether N.J.A.C. 19:45-1.28(b), which technically required this check to be deposited in BRC’s bank, is authorized by N.J.S.A. 5:12-101(d)(2), which permits the presentation of this check to any “bank for collection or payment . . .” An administrative agency may not use regulations to cover conduct not contemplated by statute. Hotel Suburban Sys. v. Holderman, 42 N.J. Super. 84, 90-91 (App. Div. 1956); and Terry v. Harris, 175 N.J. Super. 482, 496 (Law Div. 1980).

Completing the Patron Credit Reference Card (DGE Complaint, Count I, paragraphs 20 and 21)

Caltagirone’s credit reference card contained the following notation: “CONSOL 1.2 million dollars 5/18/81.” The 1.2 million dollar consolidation, however, was accomplished by three $400,000 checks. Thus, I concluded on March 15, 1982 by Substantive Order that this notation constituted one violation of N.J.A.C. 19:45-1.27(d)10, which required the recording of the date and amount of each check (paragraph 20).

It was undisputed that Caltagirone’s credit reference card noted that a $400,000 check left the cage on May 19, 1981 when the undated check was hand delivered to Caltagirone’s bank. Thus, DGE did not object to BRC’s motion to dismiss paragraph 21 of the complaint and on March 15, 1982 by Substantive Order, I dismissed this alleged violation of N.J.A.C. 19:45-1.27(d)13 (paragraph 21).
Traversing the Pit (DGE Complaint, Count II, paragraph 3)

DGE alleged that Caltagirone traversed the pit area by playing from a position adjacent to the dealer. DGE contended that this conduct violated N.J.S.A. 5:12-96(b) and BRC's Certificate of Operation, condition paragraph 29. For the reasons expressed orally on March 11-12, 1982, I granted respondent's motion to dismiss this count at the conclusion of DGE's case.

Neither regulation nor statute could be found making this conduct illegal and subject to civil penalty. Undoubtedly, good practice would require barring patrons from the pit area, but based on the absence of any regulatory or statutory provision, I could not conclude that failure to do so was intended to be a violation.

DGE further claimed that a breach of the Certificate of Operation merits a discipline charge. The statute and regulations, however, indicate that the Certificate of Operation is a license to operate. Neither statute nor regulation provides that breaches of the Certificate are to be sanctioned by civil penalty. N.J.S.A. 5:12-35 provides that the Operation Certificate issued by the Commission certifies that the operation of the casino conforms to the act's requirements and that the casino personnel and procedures are efficient and prepared to entertain the public. The Operation Certificate states the understanding of the Commission with respect to the caliber of the licensee's activities as of a certain date and provides the necessary approval to commence operation. N.J.S.A. 5:12-129(4) permits the Commission to suspend the Operation Certificate of any casino for violations of any provision of the act or regulations. It does not provide that a sanctionable violation occurs when the provisions of the Certificate are disobeyed. The Commission's remedies for violations of a Certificate must be through renewal under N.J.S.A. 5:12-88.

Should the Commission reject my analysis, conclude that a violation is proper, and reverse my dismissal of paragraph 3 of Count II in DGE's Complaint, a remand will be necessary to provide BRC with an opportunity to present its defense of this allegation. Whatever result the Commission reaches, I suggest that it consider adopting a regulation precluding patrons from traversing the pit. I further suggest that the Commission determine whether it wishes to subject casinos to discipline for breaches of their Certificates of Operation and, if so, suggest that the Commission prepare an appropriate rule.
Calling "no more bets." (DGE Complaint, Count II, paragraph 5)


Pit Boss Performing Curator of Shoe Function (DGE Complaint, Count II, paragraph 7)

DGE claimed a violation when Mr. Fornasiero, a licensed pit boss, performed the function of curator of the shoe at baccarat. For the reasons expressed orally on March 11-12, 1982, I granted respondent's motion to dismiss on this count at the conclusion of DGE's case. I found neither regulation nor statute precluding this conduct and suggest here also that the Casino Control Commission consider adopting an appropriate rule, if it intends to preclude such conduct. Should the Casino Control Commission disagree with this ruling, a remand will be necessary to provide BRC with an opportunity to present evidence in defense of this charge.

Wearing the Licensee Badge (DGE Complaint, Count II, paragraph 9)

DGE claimed that a violation occurred when Mr. Fornasiero removed his casino key employee license badge to perform the function of curator of the shoe. N.J.A.C. 19:41-1.3(d) requires licensees to wear their licenses in a conspicuous manner and therefore I ruled by March 15, 1982 Substantive Order that a clear violation occurred.

Cooperating with the Commission (DGE Complaint, Count III, paragraphs 5, 6, 7, and 8)

DGE alleged that the following BRC employee action constituted violations of N.J.S.A. 5:12-80(d): (1) BRC contumaciously refused to take action when advised that a patron was traversing the pit (paragraph 5); (2) BRC employees told a Commission Inspector to leave the area of the gaming tables (paragraph 6); (3) BRC employees told a Commission Inspector to view a game from inside the pit (paragraph
7); and (4) BRC employees "denied, for a period of time," a Commission Inspector's request to place gaming activities on the Commission's closed circuit TV monitors (paragraph 8).

Preliminarily, I note that on March 15, 1982 by Substantive Order I ruled that under the circumstances of this case, it would not be a violation of N.J.S.A. 5:12-80(d) even if it were found that BRC contumaciously refused to take action when advised that a patron was traversing the pit. I believed that it would be unfair to find a violation for a failure to cooperate when the patron's action, assuming it occurred, was not precluded by statute or regulation (see above). Should the Commission disagree with me, a remand will be necessary to provide BRC with an opportunity to present its defense.

With regard to the allegations in paragraphs 6, 7, and 8, DGE contends that N.J.S.A. 5:12-80(d) requires instantaneous compliance by casino employees with any legal request by Commission Inspectors. BRC, however, argues that the statute is unforceable since it is unconstitutionally vague as applied and is being used to prosecute mere speech.

N.J.S.A. 5:12-80(d) provides that:
All applicants, licensees, registrants, and any other person who shall be qualified pursuant to this act shall have the continuing duty to provide any assistance or information required by the commission or division and to cooperate ... in any inquiry, investigation or hearing conducted by the commission, (emp. added).

There is nothing in the definitions section, N.J.S.A. 5:12-2 to 49, or in the available legislative materials which is of assistance in construing the underlined terms. In its absence, reference was made to case law in other areas.

In State v. Maravola, 29 Ohio App. 2d 412, 198 N.E. 2d 88, 89 (1963), the court defined "assistance" as help, aid, support, cooperation or relief. As such, assistance seems to connote some activity or effort. In DeFazio v. Haven Savings and Loan Ass'n, 22 N.J. 511, 520 (1956), the court noted that all definitions of "information" were extremely broad and included books, records, or any item of knowledge.

"Inquiry" has been construed as a question, query, or request for information, Reiser Co. v. Baltimore Radio Show, Inc., 169 Md. 306, 313, 181 A. 465, 468 (1935) and as the act or an instance of seeking the truth or asking for information about something. Webster's Third New International Dictionary, p. 1167 (1971). "Investigation" refers to the process of inquiring into or tracking down through inquiry.

Applying the facts of this case to the statutory language, it is clear that the Commission was not holding a “hearing” and I believe that BRC is correct when it asserts that there is no evidence of any “inquiry,” or “investigation” being conducted by the Commission in this case. The Commission Inspectors were performing their normal function of observing casino operations pursuant to N.J.S.A. 5:12-63(f) when the incidents mentioned in paragraphs 6, 7 and 8 allegedly occurred. Inspector observations may be a part of an “inquiry” or “investigation,” but the terms are broader in meaning than daily routine inspector observations. I believe that the terms “inquiry” or “investigation” as used in section 80(d) refer to a more active, inquisitive process than Inspectors making regular, routine on-site observations of the casino practices. The charges in paragraphs 6 and 7 arose out of BRC’s attempt to manipulate Commission observations. A request for information may arise out of an inquiry or investigation but there was no evidence of “any inquiry” or “investigation” being pursued. Indeed, it is only in paragraph 8 (TV monitor charge) where any verbal request by a Commission Inspector was made of any BRC personnel. It seems to me that the request to display a gaming table on a TV monitor seeks “assistance” or “information” rather than answers to questions, which are the normal goals of an inquiry or investigation. Furthermore, to construe “inquiry” as including all requests for “assistance” or “information,” would render “inquiry” indistinguishable from “assistance” and “information,” which licensees have a duty to provide under the first part of N.J.S.A. 5:12-80(d). Such a construction would render the first part of section 80(d) inoperative and should be avoided. Hoffman v. Hock, 8 N.J. 397, 406-7 (1952). Consequently, there was no “hearing,” “inquiry,” or “investigation” for BRC to cooperate in, and if any violation has occurred, it must be because BRC failed to provide “assistance or information” required by the Commission.

I further believe that requests for “assistance or information” from the “Commission” should not be limited to requests from high-ranking officials. “Commission” is simply defined as “The New Jersey Casino Control Commission.” N.J.S.A. 5:12-14. While in many aspects of the statute, the duties to be performed by the “Com-
mission” obviously contemplate action by the five-member board, when it comes to investigatory and supervisory activities, it is lower-level employees who are the “eyes and ears” of the Commission. N.J.S.A. 5:12-63f requires the Commission “to be present through its inspectors and agents at all times during the operation of any casino for the purpose of certifying the revenue thereof, receiving complaints from the public, and conducting such other investigations into the conduct of the games and the maintenance of the equipment as from time to time the Commission may deem necessary and proper. . . .” (emp. added). Emergency matters can easily be foreseen where requiring an Inspector to contact a high-level official, who in turn would make some request of the casino, would result in an unnecessary and undesirable delay. Therefore, I conclude that for purposes of determining whether a casino failed to comply with a request for assistance or information, it should make no difference whether the request came from a Senior Inspector or an Inspector. Obviously, should the Commission prefer that certain requests be made by higher ranking officials, the Commission may set such internal working procedures. I only conclude that for purposes of determining whether a violation of N.J.S.A. 5:12-80(d) has occurred, the status of the Commission official is not alone determinative.

BRC contends, however, that paragraphs 6 and 7 allege a violation of N.J.S.A. 5:12-80(d) solely because of statements made by BRC personnel to Commission Inspectors. BRC argues that if 80(d) is construed to reach mere words, serious constitutional questions arise. See Hess v. Indiana, 414 U.S. 105, 107-8 (1973). Such a construction, however, is both unnecessary and unwarranted. To determine whether a casino failed to provide assistance or information required by the Commission, I believe that the casino’s actions must be assessed in light of all the surrounding circumstances. State v. Lashinsky, 81 N.J. 1, 18 (1979) and State v. Caes, 81 N.J. Super. 315, 321 (App. Div. 1963). The licensee’s conduct must be considered together with the Commission’s need for the assistance or information. The circumstances preceding the request, the reasonableness and clarity of the request itself and the occurrences following the request are all relevant factors. In addition, N.J.S.A. 5:12-80(d) is obviously limited to assistance and information reasonably related to the Commission’s authority. If a Commission Inspector asked a dealer to paint his or her personal residence, for example, a violation of 80(d) would not occur on the dealer’s refusal. Similarly, a Commission request for assistance that was incomprehensible and not reasonably understood
by a casino employee could not in fairness form the basis of an 80(d) violation. As construed, section 80(d) does not punish mere words and is therefore not unconstitutional on this basis.

BRC further contends that section 80(d) is too vague. The vagueness doctrine generally requires that a statute be precise enough to give fair warning to actors that contemplated conduct is proscribed and to provide adequate standards to enforcement agencies, fact finders and reviewing courts. Lanzetta v. N.J. 306 U.S. 451, 453 (1939). I believe that as construed above, section 80(d) provides adequate guidelines to licensees. Cases involving either economic regulation or civil sanction are subject to a lesser test for vagueness. Village of Hoffman v. Flipside, Hoffman Estates, 50 U.S.L.W. 4267, 4269-70 (1982). The fact that numerous requests might fall within the statute’s proscription does not make the act unenforceable since a broad scope is not necessarily unconstitutional. Village of Hoffman, at 4269, n. 9. Licensees should be on notice that any clearly stated request for assistance or information from the Commission, which seems reasonably related to Commission business and responsibility should be honored.

I find it unnecessary to consider BRC’s contention that section 80(d) is invalid because it could result in violations for failure to comply with requests impinging upon either the 5th amendment or the right to privacy. It is sufficient to state that no such requests were made in this case.

The facts in this case, however, demonstrate that a request was made by the Commission only in conjunction with the TV monitoring incident. The other allegations, paragraphs 6 and 7, involve attempts by BRC personnel to “adjust” the location which a Commission Inspector selected to observe a gaming table. Thus, BRC contends that since there was no request by the Commission, there can be no violation of any “continuing duty to provide any assistance or information required by the Commission.” However, for assistance or information to be required, a formal request need not be made. I believe that section 80(d) permits a violation if the casino understood that the assistance or information which was not provided was implicitly required by the Commission. Many of the Commission activities are “continuous, ongoing and necessarily thorough.” In re Application of Antonio Tufi, A-1541-80T1 at 13 (App. Div., Feb. 10, 1982). Since licensees have a continuing duty to cooperate and the Commission has an ongoing duty to observe casino operations, “assistance” by implication, should include lack of interference with the
Commission’s function. Therefore, the fact that no formal request was made for assistance or information would not necessarily be controlling.

Applying the facts to the law as construed, I conclude that one violation of N.J.S.A. 5:12-80(d) occurred when BRC attempted to have a Commission Inspector moved from a gaming table and attempted to obscure the Inspector’s view of that gaming table. There is no evidence of any wrongdoing by the Commission Inspector. All that was proved is that the Commission Inspector may have unintentionally annoyed a patron, who apparently was extremely temperamental. Furthermore, the annoyance of the patron was a direct result of BRC’s action in attempting to isolate Caltagirone’s gaming from the public and the Commission by placing security guards around the table.

The location of its Inspectors is the Commission’s responsibility, obligation and authority. The Casino had no business attempting to coerce an Inspector into a different location. N.L.R.B. v. Copes-Vulcan, Inc., 611 F. 2d 440, 443 (3rd Cir. 1979) was cited by BRC for the proposition that there must be “some room for play in exchanges between union and management personnel.” I agree that casino personnel should be free to talk to Commission personnel and to alert Commission personnel to any problems that Commission actions may be causing. However, the evidence in this case goes far beyond that type of communication. There is no question that BRC was forceful and wanted Inspector Scimines moved from the table. The evidence is replete with indications that BRC was terribly concerned about the close monitoring of Caltagirone by the Commission. BRC wanted Caltagirone to be “satisfied.” In their language, he was a “good customer,” meaning he was placing at risk substantial sums. This was BRC’s overriding concern—to keep Caltagirone gambling. The fact that the Commission suffered no apparent detriment by BRC’s action is not necessarily determinative, but merely one of the factors to be considered in assessing whether a violation occurred. Because Senior Inspector Ford was not coerced, but maintained Inspector Scimines at the table should not benefit BRC. The licensee’s overall conduct might clearly have forced a less courageous Senior Inspector to remove an Inspector. Such conduct should not be condoned. It should be kept in mind that at the time BRC was attempting to convenience its patron by removing a Commission Inspector, and by blocking her view of the table, a violation of the regulations was occurring (“no more bets”).
I conclude that BRC's attempt to move a Commission Inspector further from the table or into the pit area and the attempted blocking of the Inspector's view by a BRC security guard violated N.J.S.A. 5:12-80(d) by unjustifiably interfering with the Commission's functions. BRC should have known that its attempted interference with an Inspector's observations was a failure to provide impliedly required assistance.

With regard to the TV monitor incident, Count III, paragraph 8, DGE Complaint, a request was made for BRC personnel to place Caltagirone's table play on the Commission's TV monitors. I have previously determined that this request was not made for "recreational purposes" and therefore was clearly related to Commission business. For 13 minutes, BRC delayed complying. The short period of the refusal is not determinative, since the full circumstances must be evaluated and the time frame is only one factor to be considered. However, it should be noted that a 13-minute delay is a substantial time period, especially when the patron the Commission wished to observe was betting between $5,000 and $20,000 on each roll of the roulette wheel.

Under section 80(d), "assistance" was required by the Commission and BRC delayed in honoring this request, which if complied with would have not placed any burden upon BRC's operating procedures. I, therefore, CONCLUDE that by delaying Senior Inspector Ford's request, BRC violated N.J.S.A. 5:12-80(d).

**PENALTY DETERMINATION**

In this case, I do not believe that the misconduct of the licensee merits either revocation or suspension of its license. In my opinion, the possible and appropriate sanctions under N.J.S.A. 5:12-129 for the above-mentioned violations are:

(a) Suspension of the certificate of operation;
(b) Civil penalties and fines;
(c) Cease and desist orders; and
(d) Letters of reprimand or censure. See N.J.S.A. 5:12-129(4), (5), (7) and (8).

In determining an appropriate sanction for the violations detailed above, I must consider the following factors as specified in N.J.S.A. 5:12-130:

(a) The risk to the public and to the integrity of gaming operations created by the licensee's conduct;
(b) The seriousness of the conduct and whether the conduct was
purposeful and with knowledge that it was in contravention of the act or regulations;
(c) Any justification or excuses;
(d) Prior history of the licensee with respect to gaming activities;
and
(e) Any corrective action to prevent further similar misconduct.

DGE contends that in assessing a penalty, I must send a message to the casino industry that this conduct shall not be tolerated. BRC argues that the sanction standards do not permit such a consideration and an administrative agency may not go beyond the standards prescribed by the Legislature. In re Suspension of Heller, 73 N.J. 292, 310 (1977); In re Suspension of Wolfe, 160 N.J. Super. 114, 119 (App. Div. 1978). N.J.S.A. 5:12-129(5), however, permits me to consider deterrence of future violations as a factor in assessing civil penalties. Deterrence is normally directed not only at the immediate wrongdoer, but also at those who might follow thereafter. State v. Ivan, 33 N.J. 197, 201-202, (1960).

I would be lax if I did not note before assessing any penalty that much of the dispute in this case was caused by escalating tempers. As BRC attempted to accommodate Caltagirone and as the Commission seemed to be attempting to thwart BRC’s interests, friction and hard feelings developed. Some friction between the regulator and the regulatee is obviously unavoidable. Hopefully, this opinion, especially the construction of N.J.S.A. 5:12-80(d), provides some guidance to casino floor personnel and Commission Inspectors. In the absence of special regulations, however, there is no justification for treating certain gamblers differently from others, just because they are placing at risk more money than many people see in a lifetime. I suggest, however, that the Commission study whether the needs and concerns of the high roller merit special regulation.

The 1.2 Million Dollar Consolidation
(Count I, paragraphs 11-16)

When BRC accepted the Caltagirone checks, I believe that there was risk to the public. The reason that such transactions are supposed to occur at the cage is to foster security. By going to a hotel room, the casino placed the entire transaction in an unsecure area. Similarly, by accepting these checks, the casino increased its collection risk, Resorts International Hotel, Inc. v. Salomone, 178 N.J. Super. 598 (App. Div. 1981), thereby also jeopardizing the collection of the State’s taxes, which in this case, amounted to $96,000.
I also conclude that there was no doubt that every BRC person in Caltagirone's hotel room knew that to accept the checks would violate the Casino Control Act and regulations. The justification or excuse after accepting the checks was that the casino had no other choice. They could have, however, refused to accept Caltagirone's personal checks and attempted to collect on the counter checks. \textit{N.J.S.A.} 5:12-101(f). Instead, BRC accepted the personal checks.

No evidence of any BRC prior difficulties with the Casino Control Act was presented by DGE. Respondent's brief indicates that BRC commenced gaming operations in 1979 and in nearly three years of operation, there have been only three complaints made. The first alleged certain check-cashing violations during BRC's first few weeks of casino operation. That complaint was settled. The second complaint alleged improper storage of 16 bottles of wine and that complaint was settled. The third complaint involved this proceeding.

I know of no corrective action taken by BRC except for a meeting with then Chairman Lordi and DGE's Assistant Director to discuss this matter. It was BRC's position that it was coerced into this arrangement and that there ought to be an amendment to the rules permitting such conduct.

Because this incident appears to be an isolated occurrence, I do not believe that a suspension of the Certificate of Operation permitting credit is appropriate. I also find no ongoing conduct to cease, but I do believe that the offense is far too serious to merit a reprimand. Accordingly, a fine shall be imposed. Under \textit{N.J.S.A.} 5:12-129(5), a $50,000 limit is present for each violation, amounting to a $150,000 maximum for the three violations, which occurred in conjunction with the consolidation. In addition, when imposing a fine, I must consider the severity of the misconduct and the financial means of the licensee. The parties stipulated that BRC for the last ten quarters reported a net worth of approximately 44 million dollars. I do not believe BRC's conduct represents the most serious offense that could occur under the Casino Control Act, since there was no risk to the integrity or to the public confidence in gaming operations. In addition, the licensee's prior history is good. Furthermore, I doubt strongly that BRC will engage in similar conduct in the future. However, I also believe that in civil penalty cases under the Casino Control Act, deterrence to others is an appropriate consideration, \textit{N.J.S.A.} 5:12-129(5), and that "penalties must be of sufficient magnitude to eliminate the possibility that a penalty becomes simply a cost of doing
business in this State.” Second Interim Report, Staff Policy Group, p. 54-55.

Accordingly, after considering all the factors required to assess penalties as explained above, I believe that a $105,000 fine is an appropriate sanction, calculated at $35,000 for each offense.

Dating, Initialling, Time Stamping and Endorsing the Checks
(Count I, paragraphs 17 and 18)

I believe that there was minimal risk to the public, since these checks were being handled separately by high-level casino employees. The testimony indicates that because of the confusion surrounding the three checks, and the circumstances of their arrival at the cage, the cage personnel forgot to perform this mechanical function. It was therefore a mistake without an intent to violate the act. Under the circumstances, I believe that a letter of reprimand is an appropriate penalty for these three violations.

Completing the Patron Credit Reference Card
(Count I, paragraph 20)

I find this to be a technical violation, with no risk to the public or to the integrity of gaming operations. The total amount of the three checks was indicated as was the date and word “CONSOL.” I do not know why the records were kept in such a manner. However, any future violations of this kind should not occur since BRC should now understand that each check in a multi-check consolidation must be recorded. Accordingly, I conclude that a letter of reprimand is an appropriate penalty for this violation.

Calling “no more bets”
(Count II, paragraph 5)

Here, only Caltagirone was gambling and he spoke only Italian. No other offense was charged—there is no allegation of cheating by Mr. Caltagirone or by BRC in connection with the dealer’s failure. The conduct, however, was intentional, even though the circumstances are so unique that it is highly unlikely that they will be repeated. Nevertheless, the conduct cannot be condoned and a fine of $500, in my opinion, is an appropriate penalty.
Wearing the License Badge
(Count II, paragraph 9)

The wearing of the casino license is an important requirement for personnel on the casino floor. The badge must be worn by authorized persons at all times or the public could not distinguish casino employees from Commission employees from other members of the public. The public could not seek out appropriate casino employees when they needed them and Commission Inspectors might be unable to distinguish the public from casino employees.

The pit boss who removed his badge did so to assist a patron at the insistence of a superior. Presumably, this was done because the superior did not wish anyone to see a pit boss performing the curator of the shoe function. Most likely the conduct was purposeful and in knowing violation of the regulation. I find this conduct to be dangerous to the ability of the Commission to regulate the floor area and believe that a civil penalty is appropriate. After considering all of the required statutory factors, I conclude that a $2,000 penalty is appropriate.

Cooperating with the Commission

DGE Complaint, paragraphs (6) and (7)—the moving of the Commission Inspector

Here, BRC security guards attempted to block a Commission Inspector from viewing a table. In addition, casino officials attempted to move an Inspector either farther from the table or into the pit area, when a violation of the regulation was occurring. This is a serious violation.

While the Commission should certainly consider the convenience of the gaming public and the casino's operational needs in the placement of its Inspectors, allowing the regulatee to control the "eyes and ears" of the regulator has obvious risks to the public and to the integrity of gaming operations. I also find the conduct here to be purposeful since the Casino's main concern was to convenience the patron. I find no justification and no excuse offered except that Caltagirone was temperamental.

Because of the isolated nature of the occurrence, however, a suspension of the Certificate of Operation is inappropriate. Nevertheless, I consider the offense too serious for a cease and desist or a letter of reprimand or censure. A fine must be imposed. The only mitigating factor is the good prior record of BRC. BRC's conduct
must be punished and deterrence considered. Accordingly, under the circumstances, a fine of $20,000 is assessed.

*DGE Complaint, Count III, paragraph 8
—The TV Incident*

Risk to the public and to the integrity of gaming operations by BRC’s conduct is present in this offense. A request by a Senior Inspector to view the gaming table was not honored immediately. In 13 minutes, thousands of dollars could have been wagered and numerous offenses could have occurred. I believe also that the conduct was purposeful.

The Commission monitors were voluntarily installed in the Commission’s booth by BRC so that the Commission could observe its Inspectors in the hard and soft countrooms. Thereafter, BRC surveillance personnel, upon request, would place a table game on the Commission’s TV monitors. Some of these requests by Commission personnel may have been made for recreational purposes. Other requests were undoubtedly made to assist the Commission in making its observations when Inspectors were either absent or otherwise committed. Nevertheless, no Commission rules or regulations were in effect during May 1981. Therefore, Mr. Mancari must have believed that he had some flexibility in handling Commission Inspector TV monitoring requests. Currently, BRC has a policy requiring BRC surveillance personnel to honor all table monitoring requests from Senior Inspectors.

In the absence of a clear Commission policy controlling TV monitor requests, however, it is unjust for BRC to be severely penalized for its actions. In addition, BRC’s current policy renders unlikely the reoccurrence of such activity. Because of the seriousness of the offense, and the need for deterrence, however, I believe that a fine is appropriate, and accordingly, I impose a $10,000 fine for this misconduct.

I also bring to the Commission’s attention some testimony which indicates BRC’s confusion over DGE and Commission TV monitoring roles. I suggest that the Commission determine whether such confusion exists and after consulting with DGE decide whether their mutual interest in TV monitoring can be preserved, coordinated, and handled in a cost-effective manner.
ORDER

For the reasons explained above, it is on this 8th day of June 1982

ORDERED

That the following paragraphs in the DGE Complaint shall be and are hereby dismissed:
Count I, paragraph 19
Count I, paragraph 21
Count II, paragraph 3
Count II, paragraph 7
Count III, paragraph 5; and

ORDERED

That BRC shall pay to the Casino Control Commission on or before July 28, 1982 $137,500 as a civil penalty for the various offenses detailed above; and

ORDERED

That this opinion shall constitute an appropriate letter of reprimand for the violations mentioned in the DGE Complaint, Count I, paragraphs 17, 18 and 20 and that this opinion shall be made a permanent part of BRC’s file in accordance with N.J.S.A. 5:12-129(8).
This recommended decision may be affirmed, modified or rejected by the CASINO CONTROL COMMISSION, which by law is empowered to make a final decision in this matter.

ORDER OF REMAND BY THE CASINO CONTROL COMMISSION:

This matter having been opened to the New Jersey Casino Control Commission upon the Initial Decision of the Office of Administrative Law filed June 10, 1982, recommending that the Respondent be found in violation of various sections of the Casino Control Act, N.J.S.A. 5:12-1 et seq. and that specific civil penalties be assessed against the Respondent pursuant to N.J.S.A. 5:12-129; and both the Respondent and the Division of Gaming Enforcement having filed exceptions to the Initial Decision on June 28, 1982 and replies to the respective exceptions on July 7, 1982; and the Commission having carefully considered the entire record of the proceedings and the legal argu-
ments of the parties; and the Commission having resolved at its public meeting of July 20, 1982, to reserve certain rulings by the ALJ as set forth herein, and to remand the counts of the Complaint related to said rulings for further proceedings and to suspend any consideration of the remainder of the Initial Decision, pending the filing by the Office of Administrative Law of its findings and conclusions on the remanded issues,

IT IS on this 2nd day of August 1982 ORDERED that the following rulings in the Initial Decision be and hereby are rejected:

1. The conclusion of law that a breach of an Operation Certificate or any of its conditions is not a sanctionable violation be rejected. The Commission finds that a breach of an Operation Certificate or any conditions imposed thereby upon a casino licensee or permittee is a violation of an order of the Commission that is sanctionable by revocation pursuant to N.J.S.A. 5:12-129(2), or, by implication, any of the lesser sanctions set forth in N.J.S.A. 5:12-129.

2. The conclusion of law that nothing in the Casino Control Act or Commission regulations preclude a licensed, employed pit boss from performing the function of curator of the shoe in the game of baccarat be rejected. The Commission finds the term “participant” as used in the rules of the game of baccarat, N.J.A.C. 19:47-3.1 et seq. to mean a wagering player. Pursuant to N.J.S.A. 5:12-100(n), a licensed employed casino employee directly involved in the conduct of gaming is prohibited from wagering.

3. The conclusion of law that N.J.A.C. 19:45-1.28(b) is inconsistent with N.J.S.A. 5:12-101(c) and invalid as applied to the facts in this case be rejected. The Commission finds that the promulgation of N.J.A.C. 19:45-1.28(b) constitutes a valid exercise of the Commission’s power and expertise under N.J.S.A. 5:12-70(g) and 101. The Commission, in N.J.A.C. 19:45-1.28(b), interprets the general term “bank” for purposes of the deposit of patron checks and counterchecks to mean the casino licensee’s bank.

IT IS FURTHER ORDERED that in light of the above findings by the Commission, the following paragraphs of the Complaint in this matter be and hereby are remanded to the Office of Administrative Law for further proceedings consistent with these findings:

1. Count I, Paragraph 3
2. Count I, Paragraph 19
3. Count II, Paragraph 7
4. Count III, Paragraph 5
IT IS FURTHER ORDERED that the consideration of the remainder of the Initial Decision be and hereby is continued until such time as the Commission takes final action on the Office of Administrative Law's additional findings of fact and conclusions of law regarding the remanded issues.

IT IS FURTHER ORDERED that copies of this Order be served upon the Respondent and the Division of Gaming Enforcement within five (5) days of the date herein.

LEFELT, ALJ:

On September 15, 1982 in Atlantic County the parties were provided with an opportunity to address the issues raised by the August 2, 1982 Casino Control Commission Order remanding certain portions of Division of Gaming Enforcement v. Boardwalk Regency Corporation, OAL Dkt. No. 6325-81 (June 8, 1982). After the parties presented whatever evidence and oral arguments they could on the remanded issues, I closed the record on September 15, 1982. For the following reasons I now hold that: (1) BRC's failure to deposit the $400,000 undated check in its bank account was a violation of N.J.A.C. 19:45-1.28(b); (2) Mr. Fornasiero, a pit boss licensed in roulette and blackjack, did not violate any regulation or statute when without gambling or wagering he dealt baccarat cards to accommodate a customer; (3) BRC violated condition 29 of its Certificate of Operation when it permitted a customer to enter the pit; (4) BRC's conduct in failing to preclude the customer from continuing to walk across the pit was not a violation of N.J.S.A. 5:12-80(d); and (5) Mr. Fornasiero properly asserted his fifth amendment privilege in this proceeding.

DGE COMPLAINT COUNT I, PARAGRAPH 19
The Failure to Deposit the $400,000 Undated Check in the Casino's Bank Account

Most of this Count's facts are included in the Initial Decision at OAL Dkt. No. 6325-81 and shall not be repeated. However, I had found at page 4 in the Initial Decision that the $400,000 undated check was cashed by Mr. Fornasiero who carried the money from Monte Carlo to New Jersey. Exhibits admitted into evidence at the September 15, 1982 hearing together with counsels' stipulations indicate that $400,000 minus certain charges was wired from Monte Carlo to BRC's bank. Accordingly, I modify my previous finding to reflect this uncontested fact.
Since the Casino Control Commission has indicated that the applicable regulation is authorized and valid, my previously found facts, as corrected here, compel the conclusion that a violation of N.J.A.C. 19:45-1.28(b) occurred—BRC failed to deposit the $400,000 check in its bank account.

Because of the expeditious, secure and costly manner in which BRC undertook to cash this check, BRC, in my opinion, vigorously protected both its interests as well as the State’s. I believe that the public’s interest was only minimally endangered by this technical deviation from the regulations. Accordingly, I conclude that a letter of reprimand is an appropriate penalty.

DGE COMPLAINT, COUNT II, PARAGRAPH 7
Pit Boss Performing Curator of the Shoe Function

Here also, the facts previously found need not be repeated, except to note that there was absolutely no evidence of Mr. Fornasiero gambling or wagering. Accordingly, I specifically find that when Mr. Fornasiero dealt from the baccarat shoe he was not gambling or wagering.

The overwhelming weight of the evidence also shows that Fornasiero was not instructing Caltagirone as Mr. Resnick imagined in his deposition. There is no other support in the record for Mr. Resnick’s views. Neither Mr. Fornasiero nor any other BRC employee supports the instruction hypothesis. Rather, the record rings with the conclusion that Fornasiero was accommodating Caltagirone who wished to change his luck by having someone else deal the cards, and I so find.

The Commission has determined that “participant” under N.J.A.C. 19:47-3.1 et seq. means a wagering player and that N.J.S.A. 5:12-100(n) prohibits Mr. Fornasiero, a licensed pit boss, from wagering. Thus, there is no statute or regulation precluding Mr. Fornasiero who was neither gambling nor wagering from dealing baccarat cards to accommodate a patron. Technically, Mr. Fornasiero was not curator, since he was not gambling. Just as Mr. Fornasiero assisted Caltagirone by interpreting for him, he also assisted the patron by dealing a few hands of cards. I find neither regulation nor statute precluding this conduct, and thus I conclude that if the Commission wishes pit bosses to perform only those functions for which they are licensed, a regulation must be promulgated. Count II, paragraph 7 should be dismissed.
DGE COMPLAINT, COUNT II, PARAGRAPH 3
Traversing the Pit
(Inadvertently Referred to as Count I, paragraph 3 in the Commission Remand Order)

After considering the evidence including the available testimony, depositions and exhibits, I find as uncontested fact that on May 15, 1981 when Mr. Caltagirone was playing roulette, he changed tables often, apparently in a futile attempt to reverse his monumental bad luck. Sometime during this "play," Mr. Caltagirone, holding in his hands chips worth thousands of dollars, entered the pit area to obtain access to another roulette table across the pit. As he entered, he unhooked the rope and a security officer followed relatching the rope. Mr. Fornasiero accompanied Mr. Caltagirone across the pit.

Both parties agreed that Caltagirone crossed the pit at least once. The gist of BRC's argument centers on whether Caltagirone placed bets from inside the pit and whether he crossed the pit more than once. There was some confusion in the evidence over whether Caltagirone was to the left or right of the tip box or adjacent to the dealer, when the Commission inspectors observed him placing bets. Furthermore BRC contended that its roulette tables were uniquely designed to permit an additional player at the spot Caltagirone was gambling. Contrary to BRC's arguments, however, I believe that the record demonstrates clearly that the roulette pit in this case was comprised of a number of roulette tables placed back-to-back with the space in between used for supervisory casino personnel, computer terminals and other control activities. Velvet ropes were stretched between the tables to assist BRC in maintaining pit security and demarcating the pit barrier between tables. The evidence is insufficient to conclude that Caltagirone was gambling from a permitted location. On the contrary, the evidence overwhelmingly demonstrates that Caltagirone placed roulette bets from inside the pit whether his exact location was adjacent to the dealer or to the left or right of the tip box.

Furthermore, the record compels a conclusion that high-level casino managers elected not to prevent Caltagirone from traversing the pit. When Fornasiero accompanied Caltagirone across the pit, he did urge Caltagirone not to cross the pit. Unfortunately Caltagirone ignored Mr. Fornasiero and continued to cross the pit. Thereafter, a security officer, when asked by Inspector Rivera whether Caltagirone had access to the pit area, shrugged his shoulders. Two other casino
employees, Mr. Parker and Mr. Siska, did nothing when Inspector Reed informed them of Caltagirone’s pit activities. Reed had observed Caltagirone crossing the pit more than once. Parker and Siska attempted to justify Caltagirone’s activities by stating “he’s a high-roller.” Finally, and most tellingly, the record contains another colorful remark by Mr. Resnick. Resnick stated in his deposition that he told Inspector Reed that “if Caltagirone wanted to roller skate around the casino, they would not stop him.” Based on this evidence together with the observations by Inspectors Reed and Rivera and other evidence explaining the personality and temperament of Mr. Caltagirone, I FIND that Caltagirone crossed the pit not once but twice and probably three or more times on May 15, 1981.

The Commission has indicated that a breach of a Certificate of Operation or any condition violates an order of the Commission and is therefore sanctionable. I agree with the parties that a fair reading of condition 29 of BRC’s Certificate of Operation prohibits patrons from traversing the pit. Accordingly, from the facts I must conclude that a violation of condition 29 in BRC’s Certificate of Operation occurred.

In considering an appropriate penalty for this violation, I have concluded that a very serious infraction occurred. The pit area has limited access to safeguard important casino activities, such as supervision over the casino games and financial controls. Patron entry to the pit might jeopardize control over these important functions and involve substantial risk to the public’s interest in casino activities. Good management clearly requires that patrons be totally excluded from the pit area.

Furthermore, in considering penalty, N.J.S.A. 5:12-130 requires me to consider the seriousness of the conduct and whether the conduct was purposeful and with knowledge that it was in contravention of the act or regulations. While Caltagirone’s initial entry into the pit area probably was unintentional and unknowing, there is no question that Caltagirone’s conduct was condoned and permitted to continue by BRC employees. While I originally concluded that the statutory scheme did not envision disciplinary actions for breaches of Certificates of Operation, there was never any question that BRC knew that entry into the pit by patrons was a violation of its Certificate. BRC thus purposely contravened its Certificate to keep a high-roller gambling. Had Caltagirone bolted once across the pit area, a possible justification or excuse could have been offered, since Caltagirone was clearly a difficult individual to control. However, I
must conclude that under these facts there was neither justification nor excuse for BRC’s conduct. BRC simply wished to keep Caltagirone gambling at any cost and he in fact “played” whether inside or outside the pit.

I believe that the only mitigating factor is that no further entries into the pit occurred during Caltagirone’s “plays” after May 15, 1981. Nevertheless, pit entry by patrons is fraught with danger and the casino industry must understand that such activity will not be condoned. Under the circumstances, particularly because of BRC’s flagrant conduct, I believe that a $40,000 fine for this violation is an appropriate penalty.

**DGE COMPLAINT, COUNT III, PARAGRAPH 5**

BRC’s Failure to Cooperate When Caltagirone Traversed the Pit

On the same facts detailed above under Traversing the Pit, DGE also charges BRC with failing to cooperate under N.J.S.A. 5:12-80(d) after the Casino inspectors advised BRC employees of Caltagirone’s presence in the pit. It is clear from reviewing the evidence that no inspector explicitly requested or demanded that Caltagirone be removed from the pit. DGE contends, however, that the evidence requires a finding that Inspector Lori Reed impliedly requested that BRC remove Caltagirone from the pit area.

The inspectors informed BRC employees that they had observed Caltagirone in the pit and the evidence is clear that the inspectors were extremely upset by the “defiant” attitude of BRC employees, particularly Mr. Resnick. Inspector Rivera stated that she felt that “Mr. Resnick made a laughingstock out of the Commission....” Lori Reed further comments that:

There seemed to be no reservations in Mr. Resnick’s mind that the Commission’s regulations only apply when it is convenient for the Casino to implement them. At all other times there is no reason for the Commission to even be present.

In my opinion, Mr. Resnick’s outright display of disrespect for the Commission Regulations should not be tolerated. The fact that ‘nothing happens’ when violations are written up is an example of Mr. Resnick’s write all the violations you want attitude. I feel it makes it that much easier for the casino
personnel to make a mockery of the Commission. Maybe an example should be made of the Boardwalk Regency.

May 15, 1982 Reed memo to Principal Inspector Plumb.

I believe that Inspector Reed’s statement and Inspector Rivera’s testimony indicate that they did not expect BRC to remove Caltagirone from the pit because of any explicit or implicit removal instructions. Rather, the record is clear that the inspectors were upset by the Casino’s flagrant violation of its Certificate of Operation. Official notification of alleged wrongdoing by casinos is in writing. Inspectors forward through their chain of command alleged violations which are transmitted by supervisory inspectors to the casino for its written response. Whether further action is taken by the Commission is decided thereafter. No evidence was presented concerning any warnings or violation reports which are made by the inspectors directly to casino personnel. In fact, the record indicates that such communication between inspectors and casino personnel is discouraged. Obviously, to permit inspectors to direct casino management on the casino floor would be a power that the Commission would find most difficult to control and supervise. Consequently, I conclude that the evidence does not demonstrate any implicit or explicit inspector demand or request to remove Caltagirone. Furthermore, BRC did not intentionally or unintentionally interfere with the Commission inspector’s functions. BRC’s misconduct did not impair the Commission’s “eyes and ears” on the casino floor. Its investigative functions continued unimpaired.

Did BRC fail to provide any “assistance or information” required by the Commission? BRC breached its duty to operate its Casino in accordance with the law and not to permit patron entry into pit areas. BRC’s duty, however, is continually present by virtue of the Commission’s regulations and statutes mandating lawful operation. To construe “assistance” in N.J.S.A. 5:12-80(d) as including breaches of the casino’s duty to operate lawfully would require an 80(d) violation each time a casino failed to remedy a violation immediately. A casino’s failure to correct violations promptly, must be considered under N.J.S.A. 5:12-130(b), (c) and (e) when determining an appropriate sanction for any violated regulation or statute. In fact, the Casino’s “defiance” led to my conclusion that BRC’s conduct was purposeful and therefore resulted in a substantially increased penalty for Count II, paragraph 3, Traversing the Pit. Had Mr. Caltagirone entered the
pit and been properly restrained by BRC, the penalty assessed would have been significantly reduced. To permit a violation of 80(d) in Count III, paragraph 5 would therefore result in punishing the same conduct twice and cause a construction of "assistance" that is overly broad and duplicitous of the general requirement placed upon all casinos to operate lawfully. All sections of the Casino Control Act must be read together in light of the general intent of the act so that the auxiliary effect of each individual part is made consistent with the whole. Febbi v. Bd. of Review, Div. of Employment Security, Dept. of Labor and Ind., 35 N.J. 601 (1961); Abrams v. Dept. of Civil Service, 70 N.J. Super. 559 (App. Div. 1961). I conclude that "assistance" under N.J.S.A. 5:12-80(d) does not include the general requirement placed on all casinos to abide by applicable regulations, statutes and Certificates of Operation. An implicit request which would justify a violation for failing to cooperate if refused by the casino must interfere more directly with specific Commission functions, beyond the Commission's general obligation to ensure lawful casino operation.

Accordingly, for all of the above reasons I CONCLUDE that Count III, paragraph 5 should be dismissed.

FIFTH AMENDMENT AND N.J.S.A. 5:12-80(d)

The evidentiary hearing in this case began and ended in perfect symmetry with A. Fornasiero asserting his fifth amendment privilege, initially on December 29, 1981 when he was called to the stand by DGE and again on September 15, 1982 after having been called to the stand by BRC's counsel.

Apparently, Mr. Fornasiero had agreed to testify on September 15, 1982 on behalf of his employer, BRC. Upon arrival of Mr. Fornasiero's counsel, Mr. Fornasiero was called to the stand by BRC. BRC intended to ask Fornasiero questions relating only to the traversing of the pit incident and I had previously agreed, upon BRC's motion, to restrict cross-examination to the scope of direct examination. Before testifying, Mr. Fornasiero expressed a desire to consult with his counsel. After this consultation with counsel, he rescinded his original agreement to testify voluntarily. Accordingly, at the request of BRC's counsel and with the concurrence of DGE, I issued an oral subpoena, nunc pro tunc, under my derivative subpoena powers, Hayes v. Gullif, 175 N.J. Super. 294 (Ch. Div. 1980), to compel Fornasiero's presence.

Fornasiero's counsel indicated that his client was in a difficult
position since Fornasiero was employed by BRC and wished to cooperate, but that he was strongly advising Fornasiero not to testify. Mr. Fornasiero then asserted his fifth amendment right and refused to answer all questions beginning with whether he was employed by BRC on May 15, 1981, the date of the traversing incident. Fornasiero read a statement, written by his attorney, indicating that he would not testify unless immunity was given to him by the Casino Control Commission.

Having observed the situation, I believe that BRC's counsel was surprised by this turn of events. BRC's counsel indicated that his defense was hampered by this action and asserted that there was no other witness who could sufficiently counter the charges. Upon inquiry, counsel indicated that Caltagirone's presence was currently unknown and that his last known address was in New York, beyond New Jersey's subpoena power.

BRC's counsel placed a proffer of Fornasiero's expected testimony on the record and joined in Fornasiero's request for immunity so BRC could properly defend this matter.

I believe that Mr. Fornasiero properly asserted his fifth amendment privilege and have concluded that unless N.J.S.A. 5:12-80(d) is read to permit such assertions, the statute would be unconstitutional.

While misconduct on the licensee's part might be grounds for a license revocation proceeding, such disciplinary hearings may not entail a forfeiture or penalty. See, Manning Engineering, Inc. v. Hudson Cty. Park Comm., 74 N.J. 113, 136 (1977). However N.J.S.A. 5:12-122 states that "any person who violates any provision of this act the penalty for which is not specifically fixed in this act is guilty of a disorderly persons offense." As used in that section, "act" is not limited to sections 5:12-111-130 as argued by DGE, but refers instead to the entire statute. See, Dept. of Treasury v. Reinking, 109 Ind. App. 63, 67 32 N.E. 2d 741, 743 (1941).

The Division, in reliance on N.J.S.A. 2C:1-4(b), which states that "disorderly persons offenses and petty disorderly persons offenses are petty offenses and are not crimes within the meaning of the Constitution of this State," has argued that the privilege against self-incrimination would not apply where the threatened prosecution is one for a disorderly persons offense. Preliminarily, of course, the fifth amendment is a federal constitutional right that has been applied to the states through the fourteenth amendment. Malloy v. Hogan, 378 U.S. 1 (1964). The fact that our State eliminates disorderly persons offenses from the meaning of crimes in the State Constitution has no bearing
on the characteristics of inculcation necessary for a person to invoke his or her federal constitutional fifth amendment privilege. Nevertheless, since criminal statutes must be strictly construed, *State v. Carbone*, 38 N.J. 19 (1962), I believe that our Legislature intended only what it said in *N.J.S.A. 2C:1-4(b)*, namely, that disorderly persons offenses are not crimes as that word is used in the State Constitution. This conclusion is buttressed by the next sentence of *N.J.S.A. 2C:1-4(b)* which states that the State constitutional guarantees of a right to indictment by a grand jury and the right to trial by jury for criminal offenses do not apply to disorderly persons offenses. Thus, the Legislature intended only to clarify that the criminal code did not reverse the existing rule which precluded indictment and jury trial for disorderly persons offenses. See, *State v. Rodgers*, 91 N.J.L. 212, 214 (E. & A. 1917). The Legislature neither intended to preclude the invocation of the privilege for disorderly persons offenses nor to affect other constitutional rights. For example, "no person may be imprisoned for any offense whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." *Argersinger v. Hamlin*, 407 U.S. 25 (1972) and *Scott v. Illinois*, 440 U.S. 367 (1979).


Fornasiero accompanied Caltagirone as his interpreter almost constantly during Caltagirone’s stay at BRC. Fornasiero has already been found to have removed his casino employee’s license when he dealt from the baccarat shoe, OAL Dkt. No. 6325-81 at p. 3, a violation
of N.J.A.C. 19:41-1.3(d). The Commission inspectors observed Fornasiero accompanying Caltagirone into the pit area and Fornasiero’s own deposition confirms this conduct and that Fornasiero knew that Caltagirone should not remain in the pit. Fornasiero’s subsequent conduct, after his initial warning of Caltagirone, is not contained in the record. If he were to testify, DGE could question him on these subsequent events, perhaps disclosing whether he aided Caltagirone’s presence in the pit. Thus, I believe that Fornasiero reasonably feared further action against him individually, the consequences of which could result in sufficient penalty to invoke his fifth amendment privilege. I hold that N.J.S.A. 5:12-80(d), which requires cooperation with the Commission, does not require a waiver of the fifth amendment. In seeking “information or assistance,” the Commission must be sensitive to the constitutional rights of persons in the casino industry.

Since Fornasiero in essence was seeking immunity as well as asserting his fifth amendment privilege, I did not rule on whether each question presented a reasonable basis for apprehension or fear of incrimination, as would normally be required. State v. Craig, 107 N.J. Super. 196 (App. Div. 1969). Furthermore I take no position on whether Fornasiero should be granted immunity in this action since no record was developed before me and such a request is beyond the scope of this proceeding. N.J.S.A. 5:12-67. I note however, as DGE argues, that it would be unusual for immunity to be granted in order to facilitate the defense.

In addition, DGE was in a similar position on January 22, 1982 when I ruled that Mr. Fornasiero’s deposition would be admissible against BRC. I ruled that under N.J.A.C. 1:1-15.8(a) hearsay evidence is admissible subject to a valid claim of privilege. (There was no serious question that the probative value of the deposition offered against BRC outweighed any risk of undue consumption of time, undue prejudice or confusion, N.J.A.C. 1:1-15.2.) The privilege against self-incrimination cannot be asserted by a corporation. N.J. Builders, Owners and Managers Assoc. v. Blair, 60 N.J. 330, 340-41 (1972). The privilege is personal, Burton v. Sills, 53 N.J. 86, 104 (1968), app. dismissed, 394 U.S. 812 (1969), and thus only Mr. Fornasiero and not the respondent may assert it here. See, State v. Marchese, 14 N.J. 16, 23 (1953).

Since BRC has no fifth amendment rights, I further ruled that it could not suppress the deposition for any alleged fifth amendment violations involving Mr. Fornasiero. That the deposition may have been unconstitutionally obtained did not confer any greater rights


In declaring this deposition admissible against BRC, I specifically stated for the guidance of any subsequent proceedings, that I did not decide whether Mr. Fornasiero’s fifth amendment rights were violated at the deposition or whether he waived his fifth amendment rights at the deposition. I left those questions for Mr. Fornasiero to raise should anyone attempt to use the deposition against him. I noted only that when this deposition would be admitted against BRC in this proceeding, the only damage to Mr. Fornasiero would be publicity; and injury to reputation is not covered by the privilege. In re Vince, 2 N.J. 443, 445 (1949). I further noted that BRC’s constitutional rights were not violated at the deposition and that there was no evidence that the Division obtained the deposition through an intentional hostility to Mr. Fornasiero’s constitutional rights. Cf. Mesarosh v. U.S., 352 U.S. 1 (1956). After this ruling, DGE elected not to call Mr. Fornasiero to the stand and presumably elected not to seek immunity for Mr. Fornasiero.

I further note that Mr. Fornasiero’s testimony according to counsel’s proffer would be merely an elaboration of his deposition which is already in evidence. Thus, DGE and BRC are in similar positions, both relying on Fornasiero’s deposition, and I see no inequity in their mutual positions.

ORDER

For the reasons explained above, I ORDER on this 21st day of October 1982 that: (1) Count III, paragraph 7 and Count II, paragraph 5, be dismissed; (2) for the violations of Count II, paragraph 3, Traversing the Pit, BRC shall pay the Casino Control Commission $40,000 as a civil penalty in addition to the $137,500 ordered on July 28, 1982; and (3) this opinion shall along with OAL Dkt. No. CCC 6325-81 constitute an appropriate letter of reprimand for the violations mentioned in the DGE Complaint, Count I, Paragraph 19 and that this opinion shall be made a permanent part of BRC’s file in accordance with N.J.S.A. 5:12-129(8).

This recommended decision may be affirmed, modified or rejected by the CASINO CONTROL COMMISSION, which by law is empowered to make a final decision in this matter.
FINAL DECISION BY THE CASINO CONTROL COMMISSION:

PROCEDURAL HISTORY

The Division of Gaming Enforcement (DGE) filed with the Commission a complaint against Respondent Boardwalk Regency Corporation (BRC) on June 10, 1981. That complaint alleges various violations of the Casino Control Act, Commission regulations and BRC's Certificate of Operation on the weekend of May 15-18, 1981, in connection with the activities of a visiting patron named Gaetano Caltagirone. BRC filed a Notice of Defense and a request for a hearing on July 8, 1981. Two prehearing conferences were held before then Acting Chairman Don M. Thomas. Thereafter, on September 21, 1981, the Commission transmitted the matter to the Office of Administrative Law (OAL) for the conduct of a hearing.

The first initial decision was filed with the Commission on June 10, 1982. In that decision, Administrative Law Judge (ALJ) Steven L. Lefelt dismissed portions of the DGE's Complaint, found BRC in violation of sections of the Casino Control Act and Commission regulations, ordered letters of reprimand and assessed fines totalling $137,500 against BRC. By Order of Remand dated August 2, 1982, the Commission rejected certain conclusions of law made by ALJ Lefelt, made specific interpretations of the Act and Commission regulations and remanded portions of the case to the OAL for future proceedings consistent with the Commission's determinations.

Judge Lefelt filed a second Initial Decision with the Commission on October 25, 1982, in which he recommended an additional $40,000 fine and a letter of reprimand as sanctions for additional violations found. In addition, the ALJ dismissed several paragraphs of the complaint.

The purpose of this Decision is to set forth the Commission's modifications to the two Initial Decisions. Those modifications consist basically of (1) a rejection of the ALJ's legal analysis of the violations concerning the removal and redemption of the counter checks and the improper processing of the non-conforming checks accepted by BRC; (2) rejection of the ALJ's dismissal of the violation regarding a casino employee acting as curator of the shoe in baccarat; and (3) modification of some of the assessed fines.

FACTS

The Commission, after reviewing all the testimony and documents in evidence, adopts the ALJ's findings of fact in this case. Never-
theless, for purposes of clarity and completeness, we will briefly outline the events of May 15-18, 1981, which gave rise to the subject complaint.

On May 15, 1981, Gaetano Caltagirone arrived at Caesars' Boardwalk Regency Hotel and Casino for a long weekend of gambling at baccarat and roulette. Mr. Caltagirone was known by BRC officials to be a "high roller" and a credit line of $1.5 million was established for him. Mr. Caltagirone only spoke Italian and Alessandro Fornasiero, a BRC pit boss licensed in roulette and blackjack, was assigned to act as interpreter. At the end of his four-day stay, Mr. Caltagirone had lost $1.2 million.

On the evening of May 15, 1981, Mr. Caltagirone was observed by Inspector Myrna Rivera and Senior Inspector Lori Reed walking through the pit and placing roulette bets from a position next to the dealer inside the pit. Security personnel within the pit were advised of Caltagirone's activities, and they took no action.

On May 17, 1981, Mr. Caltagirone's gaming at roulette was observed by Inspector Sally Scimenes. Inspector Scimenes was asked to move away by a BRC security person who also attempted to block her view of the gaming activity. During Inspector Scimenes' observations, Anthony Leone, BRC games manager, approached the Commission booth and told Senior Inspector Gloria Ford, the supervisor for the Commission inspectors for that shift, to back Inspector Scimenes off Caltagirone's table. After discussions with Inspector Scimenes, Ford instructed Scimenes to return to the table and continue her observations. Upon returning to the table, Inspector Scimenes witnessed Cheryl Hood, the dealer of the roulette table, failing to call "no more bets." After a further discussion with Mr. Leone and Mr. Bernard Resnick, Acting Casino Manager, Ford requested that Mr. Caltagirone's play be placed on the monitor in the Commission booth and BRC surveillance complied without delay.

That same night, Senior Inspector Doris Rice Garlick observed that Alessandro Fornasiero, the pit boss serving as translator for Mr. Caltagirone, was also acting as curator of the shoe in the game of baccarat. She also observed that Fornasiero was not wearing his casino key employee license credential as required by N.J.A.C. 19:41-1.3(d).

1The curator of the shoe is responsible for dealing the cards from the shoe in accordance with the rules of the game and on the instructions of the dealer calling the game. N.J.A.C. 19:47-3.6(c).
On May 18, 1981, Senior Inspector Ford again requested BRC surveillance to place Mr. Caltagirone's roulette play on the Commission monitors. However, on this occasion the request was met with a demand for reasons and confirmation by Ms. Ford's supervisor. BRC complied with Ford's request only after Principle Inspector Plumb spoke with surveillance personnel. Thirteen minutes had elapsed between the inspector's request and BRC's compliance.

Finally, on May 18, 1981, Mr. Caltagirone called Mr. Fornasiero and stated that he wished to have his counter checks brought to his hotel room so that he could settle his gambling debts. The counter checks, amounting to $1.2 million, were removed from the cage and brought to Mr. Caltagirone's room by Larry W. Woolf, Vice President of Casino Operations, Charles Horton, Assistant to the Treasurer of the casino, Mr. Resnick and Mr. Fornasiero.

Mr. Caltagirone executed three personal checks, each in the amount of $400,000. All three were made out to Mr. Caltagirone and unrestrictedly endorsed; one was undated and two were postdated. The checks were then given to the BRC officials in order to consolidate and redeem his counter checks. After consultation, BRC officials agreed to take the checks and gave the counter checks to Mr. Caltagirone, who ripped them up. The BRC officials then returned to the cage with the three personal checks. None of the checks were initialed, time and date stamped or restrictively endorsed. The undated check was dated on the next day and cashed at Mr. Caltagirone's bank in Monte Carlo. The two postdated checks were redeemed several days later by an individual, claiming to be Mrs. Caltagirone, with $600,000 cash and a $200,000 cashier's check.

**DETERMINATION OF CHECK VIOLATIONS**

The ALJ determined for the purpose of assessing a penalty that BRC's removal of the counter checks and acceptance in Mr. Caltagirone's hotel room of his three personal checks, each of which was improperly drawn and dated, constituted three offenses: the location of the transaction, the acceptance of improperly dated checks and the acceptance of checks not made payable to the casino licensee. For each violation, Judge Lefelt assessed a $35,000 fine, for a total of $105,000. The DGE and BRC have both excepted to this finding by the ALJ. The DGE contends that merger of the acceptance of three checks into one transaction is improper under N.J.S.A. 5:12-101(b). Rather, it argues that nine violations resulted from BRC's actions. BRC, on the other hand, contends that only a single violation oc-
curred, namely, a $1.2 million consolidation in which BRC accepted non-conforming checks.

The Commission has examined the facts and applicable law and has reached a result different from any of the above. Our analysis leads us to conclude that there are two distinct problem areas, namely: (1) the acceptance of checks which were not prepared in accordance with N.J.S.A. 5:12-101 and pertinent Commission regulations; and (2) the removal of the counter checks from the cashier's cage. We shall address these problem areas following a general discussion of the legal principles involved.

1. Acceptance of checks

Judge Lefelt identified the correct test to determine the merger of violations issue, but, in our opinion, misapplied it. The hearing officer, in evaluating the acts alleged, should look to "whether the legislative intent is to punish individual acts separately or to punish only the course of conduct which they constitute." State v. Wright, 154 N.J. Super. 174, 178 (App. Div. 1977). Judge Lefelt looked to the civil penalties section of the Casino Control Act (N.J.S.A. 5:12-129 and -130), determined that these sections "demonstrate an intense concern over the 'conduct' of casino licensees . . ." and concluded that there were three violations. In the ALJ's view, the three violations arose not because there were three checks accepted but because, considering the three checks as one, three different regulatory mandates were disobeyed. We believe, however, that upon an analysis of N.J.S.A. 5:12-101 which gives the definition and scope of the offenses, the true legislative intent may be ascertained and the proper parsing of the violations may be achieved.

"Since it is the legislative branch that defines the unit of prosecution or 'offense' and ordains its punishment, we must first determine whether the legislature has in fact undertaken to create separate offenses. . . ." State v. Davis, 68 N.J. 69, 77-78 (1975). In State v. Davis, the New Jersey Supreme Court looked to the definitions of the offenses of possession and distribution of a controlled dangerous substance found in N.J.S.A. 24:21-20 and N.J.S.A. 24:21-19(a)(1) to determine if they merged into one offense or were separate and distinct crimes. In State v. Perlman, 169 N.J. Super. 190 (Law Div. 1979), the court looked to §§113 and 123 of the Casino Control Act (N.J.S.A. 5:12-113, -123) to determine whether four acts of swindling and cheat-
ing at blackjack in one day were separate offenses or offenses of a continuous nature.\(^2\)

"The appropriate unit of prosecution can best be ascertained by analysis of those provisions rendering defendant's alleged conduct criminal." *State v. Perlman, supra*., at 203. This complaint alleges civil violations of the credit and internal control sections of the Casino Control Act and pertinent Commission regulations. Therefore, it is appropriate to look to the provisions set forth in §101.

Subsection 101(b), appearing in the section entitled "Credit," sets forth the following restrictions:

b. *No casino licensee* or any person licensed under this act, and no person acting on behalf of or under any arrangement with the casino licensee or other person licensed under this act, *may accept a check*, other than a recognized traveller's check or other cash equivalent, from any person to enable such person to take part in gaming activity as a player, or may give cash or cash equivalent in exchange for such check *unless*:

1. The check is made payable to the casino licensee;
2. The check is dated, but not postdated;
3. The check is presented to the cashier or his representative and is exchanged only for a credit slip or slips which total an amount equal to the amount for which the check is drawn, which slip or slips may be presented for chips at a gaming table; and
4. The regulations concerning check cashing procedures are observed by the casino licensee and its employees and agents

... [emphasis added]

With regard to a redemption or consolidation of gaming checks, subsection (c) of §101 states in pertinent part:

... [the drawer of the check] may issue one check which meets the requirement of subsection b. of this section in an amount sufficient to redeem two or more checks drawn to the order of the casino licensee.

In the context of a civil violation case, §101 should be read as a penal statute and its language strictly construed as a matter of due

\(^2\)The court read *N.J.S.A. 5:12-123(a)* to apply only to continuing offenses, not all offenses under the Casino Control Act. The effect of §123(a) was not to merge separate, distinct violations committed on a single day into one offense but to divide an offense continuing over several days, such as unlawful possession of illegally manufactured devices or equipment under *N.J.S.A. 5:12-116*, into separate daily offenses. *State v. Perlman, supra*, at 203-204. The court concluded that swindling and cheating as defined in §113 was not an offense of a continuous nature. *Ibid.*
process. *In Re Suspension of DeMarco*, 83 N.J. 25, 36 (1980). As the Court in that case outlined the proper analysis:

The question ultimately is one of fairness, given the statute and its provisions, and given the situation of the defendant. Should he have understood that his conduct was proscribed, should he have understood that the penalty about to be imposed was the sanction intended by the Legislature? The test is whether the statute gives a person of ordinary intelligence fair notice that his conduct is forbidden and punishable by certain penalties. The test, however, does not consist of a linguistic analysis conducted in a vacuum. It includes not simply the language of the provision itself, but related provisions as well, and especially the reality to which the provision is to be applied. [83 N.J. at 37].

The DGE contends that the language of §101 speaks of individual instruments and not in general terms. It cites for support *State v. Wright*, supra, at 179. *In State v. Wright*, the court had to determine whether uttering four bad checks resulted in four separate and distinct offenses or one offense. The Court looked to the difference in the language defining “forgery” as opposed to “uttering.” The forgery statute spoke in terms of individual instruments whereas the uttering statute used more general terms. *Ibid.* The uttering was found to be a single course of conduct constituting one offense whereas forgery of four individual checks would constitute four separate crimes.

On the other hand, BRC agrees with Judge LeFelt’s analysis that what was involved in this case was a single consolidation transaction. The fact that three checks were accepted instead of one does not magnify the conduct. BRC goes on to argue from its interpretation of §101(b) that more than one infirmity with the consolidation does not increase the number of violations. BRC’s analysis is that the violation is the acceptance of a non-conforming check regardless of the number of reasons for the checks non-compliance, and therefore, only one violation should be found.

The clear legislative purpose of §101 and the regulations promulgated thereunder is the strict regulation and control of an important part of licensed gambling activities, the extension of credit, in order to further public confidence and trust in those operations. *See, Resorts International Hotel, Inc. v. Salomone*, 178 N.J. Super. 598 (App. Div. 1981). This statute is unusually detailed in the procedure to be followed by a casino licensee, outlining the limitations on checks which may be accepted. The regulations promulgated under §101 are equally detailed in their requirements for the extension and control
of credit. See, N.J.A.C. 19:45-1.25 to -1.30. Non-compliance with the conditions of §101 has resulted not only in the voiding of the checks received by the casinos but the rendering of the “underlying obligation” incurred by a patron unenforceable. Id. at 603.

The Commission reads subsections 101(b) and (c) to be principally concerned with assuring that a casino licensee only accepts properly drawn, dated and processed checks. “No casino licensee . . . may accept a check . . . unless . . .” the requirements listed in the subsection are met. N.J.S.A. 5:12-101(b). The casino licensee violates the statute when it accepts a non-conforming check. We agree with BRC’s contention that the number of the check’s infirmities are not pertinent in calculating the number of violations. However, those failings are relevant in determining the penalty to be assessed against the casino licensee for accepting the non-conforming check.3

The Commission also construes subsections 101(b), (c) and (d) to be concerned with each individual check accepted by the casino licensee. The statute speaks in terms of individual instruments, e.g., “the check” and “a check”, as opposed to using general, descriptive terms. This construction, we note, is consistent with the court’s interpretation of N.J.S.A. 5:12-101(f) in Resorts International Hotel, Inc. v. Solomone, supra., at 606-607.

Therefore, based upon the foregoing analysis, the Commission finds that the acceptance by BRC of three non-conforming checks constitutes three violations. While our analysis differs from that of Judge Lefelt, we nevertheless arrive at the same number of violations and believe that his recommended assessment of $35,000 per violation is appropriate.

3 N.J.S.A. 5:12-130 provides in pertinent part as follows:
In considering appropriate sanctions in a particular case, the commission shall consider:

a. The risk to the public and to the integrity of gaming operations created by the conduct of the licensee;

b. The seriousness of the conduct of the licensee, and whether the conduct was purposeful and with knowledge that it was in contravention of the provisions of this act or regulations promulgated hereunder;

c. Any justification or excuse for such conduct by the licensee;

d. The prior history of the particular licensee involved with respect to gaming activity;

e. The corrective action taken by the licensee to prevent future misconduct of a like nature from occurring; and

f. In the case of a monetary penalty, the amount of the penalty in relation to the severity of the misconduct and the financial means of the licensee.
2. Removal of Counter Checks

The removal of counter checks from the cage area presents an entirely different problem from the acceptance of non-conforming checks. *N.J.A.C. 19:45-1.25(f)(6)(i) [now 1.25(h)(6)(i)] provides:

The original, redemption, and acknowledgement copies of the Counter Check shall be expeditiously transported to the cashiers' cage where the original and redemption copies shall be maintained and controlled by the Check Bank Cashier.

Francis X. Fee, Director of the Commission's Division of Financial Evaluation and Control, testified at the hearing that the removal of counter checks from the casino cage is a serious violation. He stated that:

Part of that regulation is for security reasons because you are in the casino cage in a secure area, securing a document that is obviously worth a great deal of money in some cases that can be converted into cash and is one of the three assets you are trying to protect in the casino. . . .

Mr. Fee also testified, in answer to a hypothetical question, that removal of counter checks at the direction of the Vice President of financial operations or his personal representative would still be a breach of Commission regulations that would endanger casino operations.

ALJ Lefelt recognized the security risk in the improper removal of the counter checks from the cage. He found that in making the exchange in Mr. Caltagirone's room, "the casino placed the entire transaction in an unsecure area".

The casino licensee is charged with the responsibility under *N.J.A.C. 19:45-1.25*, of maintenance and control over each counter check in the casino cashier's cage. The breach of security for each check was complete upon removal from the casino cage area. Caltagirone's destruction of the properly accepted and valid counter checks would have been less likely, if not impossible, under the carefully controlled conditions extant in the cage area. Thus, the removal of the counter checks was neither a necessary nor included act in the redemption violation. The separate objective served by the cage maintenance requirement was frustrated, quite apart from the improper redemption itself.

Accordingly, consistent with our construction of subsection 101(b), the improper removal of 37 counter checks by Mr. Resnick and Mr. Horton would constitute 37 separate violations. There is no evidence that these actions by BRC's management were anything other than
purposeful and deliberate. Therefore, we should impose a fine of $1,000 per check, or $37,000 for the improper removal of the 37 counter checks. Moreover, even if we were to view the removal of the 37 counter checks as a single violation, we would not alter the amount of the penalty assessed. We find the improper removal of counter checks to be an egregious breach of casino internal controls and security such that under the facts in this case a $37,000 fine is appropriate.

3. Processing of Checks

BRC’s failure to restrictively endorse, to initial, and to date and time stamp each of the three personal checks received from Mr. Caltagirone would result, consistent with our analysis above, in nine violations. N.J.A.C. 19:45-1.25(d)(1)(i), (ii) and (iii) requires separate and distinct acts to be done by the casino licensee as part of the procedure in the cage after the acceptance of a check. The various subsections of the regulation are independent and the proofs on the violation of one subsection are not necessary ingredients or integral parts of the evidence on the violation of any other subsection. See, State v. Davis, supra., at 81.

The ALJ recommended that the appropriate penalty for these violations be a letter of reprimand kept in the Commission’s permanent file on BRC. We view the violations as more serious than that. BRC’s failure to follow N.J.A.C. 19:45-1.25(1) could have endangered its collection of the checks. Moreover, this failure to follow the proper cage procedures occurred after the acceptance of Caltagirone’s checks which BRC management knew to be deficient. Thus, their conduct here hardly appears inadvertent or innocent. We believe a more stringent sanction is in order. Accordingly, we assess a fine of $1,000 for each violation for a total of $9,000 for improperly processing checks.

GAMES VIOLATIONS

1. Pit Boss As Curator of the Shoe

In Count II, paragraph 7 of the complaint, the DGE alleges that Mr. Fornasiero, a pit boss licensed in the games of roulette and blackjack, acted as curator of the shoe in the game of baccarat. In the first initial decision, Judge Lefelt dismissed this count, finding that neither the Casino Control Act nor Commission regulations preclude a licensee from “participating” in the game of baccarat as the curator.
In his Order of Remand dated August 2, 1982, we rejected this conclusion of law. We construed the term “participant” as used in the rules of the game of baccarat, N.J.A.C. 19:47-3.1 et seq., to mean a wagering player. Further, the Order noted that a licensed, employed casino employee directly involved in the conduct of gaming is prohibited from wagering by N.J.S.A. 5:12-100(n).

In the second Initial Decision, Judge Lefelt again found that neither Commission regulations nor the Casino Control Act precluded Mr. Fornasiero from dealing baccarat cards to accommodate a patron. He reasoned that “[t]echnically, Mr. Fornasiero was not curator, since he was not gambling”. Judge Lefelt concluded that “if the Commission wishes pit bosses to perform only those functions for which they are licensed, a regulation must be promulgated” and dismissed the count.

The Commission rejects the ALJ’s reasoning on this point. Commission regulations require that the dealer calling the game must offer the shoe to the participant at seat No. 1, and if he rejects it, “to each of the other participants in turn counterclockwise around the table until one of the participants accepts it”. N.J.A.C. 19:47-3.6(b). The participant acting as curator deals the cards in accordance with the regulations and the instructions of the dealer calling the game. N.J.A.C. 19:47-3.6(c). After any round of play, a participant may continue as curator or pass the shoe, unless required to pass the shoe under the regulations. N.J.A.C. 19:47-3.11. As noted, we have interpreted the term “participant” to mean a wagering player.

It is reasonable to define a wagering player to be, at the very least, a player who is permitted to place bets. To participate as curator in this game, the player must be permitted to wager. Pursuant to §100(n) of the Casino Control Act, a licensed, employed casino employee directly involved in the conduct of gaming is prohibited from wagering.

Admittedly, the functions of the curator of the shoe involve no discretionary decisions and are purely mechanical in nature. The very fact that casino patrons are required to perform as curators under our regulations as opposed to licensed casino employees reflects the relative unimportance of that function from an internal control or security perspective. However, it is quite apparent from the record that the BRC employees involved were well aware that Mr. Fornasiero should not have been permitted to act as curator of the shoe. For example, in his deposition, Mr. Fornasiero testified that he removed his badge on instructions from the baccarat pit boss, John Groom,
so that no one could see that "a floorperson or pit boss [was] dealing the shoe. . . ."

In light of the extensive regulation by the Commission over the conduct of the games, BRC's actions cannot be condoned. Therefore, we reverse the ALJ's finding on this issue and conclude instead that a violation of N.J.A.C. 19:47-3.6 did indeed occur. However, because the danger to casino integrity created by BRC's improper conduct was minimal, we believe that a letter of reprimand is an appropriate regulatory response to this impropriety.

2. Failure to Call "No More Bets"

ALJ Lefelt found that roulette dealer Cheryl Hood failed to call "no more bets" when dealing the game to Mr. Caltagirone on May 17, 1981. He further found the conduct to be intentional. His recommended sanction was a fine of $500.

Any failure to follow the rules of the game promulgated by this Commission is a serious matter. The purpose of this rule is to discourage the late posting of bets and to prevent any irregularities in the payout of winning wagers. The fact that this failure was found to be intentional adds to the gravamen of the violation.

In light of these considerations and the financial means of the licensee, the $500 fine recommended is, in our view, *de minimis*. Therefore, we assess a $1,000 fine as the suitable penalty for this violation.

3. Removal of license credentials

This violation took place when, at the instruction of the pit boss, Alessandro Fornasiero removed his license credential to act as curator of the shoe for Mr. Caltagirone. Casino key employees and casino employees are required to wear their license credential in a conspicuous manner "at all times while employed in the casino area" N.J.A.C. 19:41-1.3(d). ALJ Lefelt concluded that this purposeful and knowing violation of the regulation was "dangerous to the ability of the Commission to regulate the floor area" and recommended a $2,000 fine.

We agree that such calculated actions endanger the strict controls essential in the regulation of casino gaming. What is particularly alarming is the fact that casino key employees, the top supervisory personnel on the casino floor, were the actors in this incident. After considering all the required statutory factors, we conclude that the $2,000 fine is insufficient. We assess a monetary penalty of $5,000 for this violation.
COOPERATION WITH THE COMMISSION

N.J.S.A. 5:12-80(d) provides that:

All applicants, licensees, registrants, and any other person who shall be qualified pursuant to this act shall have the continuing duty to provide any assistance or information required by the commission or division, to cooperate in . . . any inquiry, investigation, or hearing conducted by the commission. [Emphasis added].

The ALJ found that BRC had failed to provide assistance or information to Commission inspectors when it (1) delayed honoring Senior Inspector Ford’s request for a table game to be placed on the monitor in the Commission’s booth; and (2) attempted to move a Commission inspector and block her observation of the conduct of gaming.

The ALJ rejected BRC’s argument that N.J.S.A. 5:12-80(d) is unconstitutionally vague and impermissibly restricts the licensee’s freedom of speech. He found it unnecessary to resolve the Fifth Amendment and right to privacy objections. After an extensive analysis of the terms “inquiry”, “investigation”, “hearing”, “assistance” and “information”, the ALJ concluded that, on the facts in this case, a violation of §80(d) could only result from the dereliction of BRC’s duty to provide the Commission with assistance and information, not under their duty to cooperate. He found that BRC is not limited to providing such assistance or information to high ranking Commission officials, but that requests from the Commission’s inspectors are contemplated by the statute as well. See, N.J.S.A. 5:12-63(f). Further, he inferred from the duty to provide assistance a duty not to interfere with the Commission’s functions.

We believe it is important to interpret §80(d) in the broadest possible fashion in order to maximize the casinos’ obligation to cooperate with the Commission and Division. This is in furtherance of the declaration of policy of the Casino Control Act, which permits participation in this strictly controlled and regulated industry conditioned in large part:

... upon the discharge of the affirmative responsibility of each such licensee to provide to the regulatory and investigatory authorities established by this act any assistance or information necessary to assure that the policies declared by this act are achieved. [N.J.S.A. 5:12-1(b)(8)].

With Judge Lefelt’s expansive reading of “assistance” and “information,” his result in this case is one in which we can concur. Therefore, we affirm both his findings of fact and conclusions of law on
this issue. We do, however, modify the sanction imposed for these violations.

The inspectors are the "eyes and ears" of the Commission on the casino floor. Section 63 requires the Commission "[t]o be present through its inspectors and agents at all times during the operation of any casino . . ." N.J.S.A. 5:12-63(f). Their function is integral to the statutory mandate of strict regulation and control over casino gaming. Interference with the performance of the inspectors' duties hinders and obstructs the functions of the Commission itself.

BRC's coercive actions are, in our opinion, deplorable and should be sanctioned accordingly. Judge Lefelt recommended a $20,000 fine for interference with Inspector Scimenes and a $10,000 fine for the delay in the monitor request. We increase the amount of these suggested sanctions to $40,000 and $20,000, respectively.

The justifications for such increases are the aggravating factors present in BRC's attempts to intimidate and interfere with Commission inspectors. Such direct interference with the Commission's functions impugns the integrity of the regulatory process and of casino operations. Moreover, BRC purposely and deliberately undertook these bullying tactics at the direction of high level supervisory personnel for the expressed purpose of favoring a valued patron. The motive was simple greed. Only the absence of any similar transgression by BRC before or after this incident and the dearth of precedent in sanctioning such conduct incline us to limit our response to a monetary sanction against this corporate respondent. We choose to believe that such a sanction will be sufficient to underline the gravity of this conduct and to deter future miscreance. If we are wrong in this judgment, we will not hesitate to join our dissenting colleague in any future case involving any such impudence and disrespect to the regulatory scheme.

CONCLUSION

For the reasons set forth above, the initial decisions of the Office of Administrative Law in this matter are modified in accordance with this decision. We order an additional $79,500 in civil penalties for violations outlined in Count I, paragraph 9 (removal of counter checks from the cage), Count I, paragraphs 17-18 (failure to date, time stamp, initial and restrictively endorse checks), Count II, paragraph 5 (failing to call "no more bets"), Count II, paragraph 9 (removing the license credential), and Count III, paragraphs 6-8, (cooperation with the
Commission). For Count II, paragraph 7 (casino employee acting as a curator of the shoe), this decision shall constitute an appropriate letter of reprimand. In all other particulars, the initial decisions in this matter are hereby affirmed.

**SEPARATE OPINION OF COMMISSIONER JACOBSON**

While I join with my colleagues in their findings of fact, legal analysis and conclusions of law in this case, I respectfully disagree with the penalty assessed by the majority against Boardwalk Regency Corporation. I find that a monetary penalty of $257,000 and letters of reprimand are insufficient to punish the misconduct of BRC and to deter future violations of this kind.

Section 130 of the Casino Control Act sets forth the standards to be applied by this Commission in imposing sanctions against a licensee. The conduct of the licensee is assessed in light of its seriousness, the risk to the public and to the integrity of casino gaming operations, whether the conduct was purposeful and with knowledge that it was violative of our statute and regulations and the prior history of the licensee. The conduct may be mitigated by the licensee’s justification for its conduct or by corrective action taken by the licensee to prevent like violations from occurring in the future.

The Commission is also provided with sound guidance by the policy statement of the staff policy group on casino gaming, in their Second Interim Report, where they advised “. . . penalties must be of sufficient magnitude to eliminate the possibility that the penalty becomes simply a cost of doing business in this State”. *Second Interim Report, Staff Policy Group on Casino Gaming*, at 54-55 (February 17, 1977).

In my judgment, the conduct of Boardwalk Regency Corporation’s personnel during Mr. Caltagirone’s visit constitutes the most serious violations ever presented before this Commission. Their actions on the casino floor resulted in substantial risk to the public and jeopardized the integrity of gaming operations. Their violations of casino security and internal controls procedures in removing $1.2 million in counter checks and knowingly accepting deficient personal checks outside the casino cage area destroyed the protections and limitations surrounding these important instruments.

In the four days of gambling, Boardwalk Regency Corporation’s favored patron lost $1.2 million. The penalty imposed by the majority is $257,000.

There isn’t a businessman in the world who wouldn’t, every day
in the week—or for that matter, every hour in the day—eagerly pay $257,000 as a cost of business to win $1.2 million, a return of almost 5 to 1.

The monetary fines imposed by the majority, therefore, emerge as nothing more than an insignificant cost of doing business.

Throughout this entire episode, the behavior of Boardwalk Regency Corporation and its personnel has been characterized by one dominant and recurring theme, namely a taunting and contumacious challenge to the authority of this Commission. The evidence chronicking this defiance of the Casino Control Commission is contained in the reports filed by our Commission Inspectors. Those reports reveal that because our inspectors were performing their duties on the casino floor in conformance with the instructions of this Commission, they became targets of intimidation, derision and denigration.

The motivation behind Boardwalk Regency Corporation’s orchestrated defiance was a conscious decision to cater to the whims of a favored patron.

In accepting the patronage and responding to the crude demands of this individual—whom the Casino’s legal representative has labeled “an obnoxious person”—Boardwalk Regency Corporation had a clear choice.

The choice was either to halt promptly and firmly this patron’s improper behavior and conform with this Commission’s authority, or to fawn over this favored patron and defy this Commission’s authority.

The evidence before us demonstrates that Boardwalk Regency Corporation made an unfortunate, unwise choice. The “obnoxious” patron went home after four days. This Commission meets every Tuesday.

I find no evidence to mitigate the casino management’s conduct. It is impossible to justify a two-tier system of regulation, one for the $2 bettor and another for the million-dollar high roller.

It is my opinion that Boardwalk Regency Corporation’s carefully calculated decision to curry this patron’s favor and to defy this Commission’s authority merits a response far more severe than the penalty imposed by the majority:

In addition to the monetary fines imposed by the majority, a proper penalty should include the temporary suspension of Boardwalk Regency Corporation’s operation certificate and the closing of the casino for a specified period of time, as provided for in Section 129(4).

I do not recommend such a drastic sanction lightly. I am aware
of the consequences to the employees of the casino hotel who may be adversely affected by such closing, and to the Casino Revenue Fund.

In order to avoid imposing unwarranted hardship upon innocent employees of this casino, I would further order a corresponding mitigation of the monetary fines when the licensee completed payment to its employees of all the wages and gratuities lost during the period of this suspension.

While it may be argued that suspension of casino operations will adversely affect revenues earmarked for the Casino Revenue Fund, the undermining of the integrity of gaming operations and the weakening of the authority of this Commission cannot be justified on such grounds. Effective regulation is paramount to the receipt of revenues.

In my judgment, the imposition of a monetary fine, the temporary suspension of the operation certificate and the payment of wages and gratuities lost by employees during the period of suspension, constitute the necessary warning that relaxed, haphazard compliance is unacceptable in Atlantic City, and that the New Jersey Casino Control Commission—not any bottom line oriented casino executive—is in charge here.

You must check the New Jersey Citation Tracker in the companion looseleaf volume to determine the history of this case in the New Jersey courts.