MAKING A CAREER IN GAMING LAW: AN INTERVIEW WITH SUSAN HENSEL

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Pennsylvania Gaming Control Board Director of Licensing Susan Hensel talks to Gaming Law Review about her career in gaming and her newly expanded gaming law class at Widener University.

STEVE RUDDOCK: Thank you for taking the time to chat with Gaming Law Review. Could you give readers who might be unfamiliar with your career some background on how you became involved in gaming and your career arc as it relates to gaming law?

SUSAN HENSEL: I began my career as a television news reporter and later attended law school at Widener Commonwealth School of Law as an evening student while working full time for the Commonwealth. After graduation and serving a few years as a lawyer for the state, I was serving as an assistant general counsel in the Governor’s Office of General Counsel when the Racehorse Development and Gaming Act became law. A month later, I was selected by the Governor’s Office to be the first person in Pennsylvania to begin working on gaming implementation issues. This predated the creation of the Gaming Control Board.

When the Board came into existence, I was hired as the Board’s first employee serving as a special assistant. In our first year of operation, the Gaming Act was undergoing a constitutional challenge and we worked with a skeletal staff pending the outcome of the challenge. During that time, we focused on putting in place the regulations, applications, technologies, and other regulatory components necessary to stand-up gaming. With the constitutional challenge behind us, we began the process of implementing the law and I was appointed director of licensing.

Since that time, I have been fortunate to be the first woman selected as the president of the International Association of Gaming Regulators [IAGR], a position I held for two terms. IAGR is a worldwide organization that focuses on improving the efficiency and effectiveness of gaming regulation and brings together gaming regulators from all parts of the planet. I recently stepped down as a trustee of IAGR and have also served the association as vice president and secretary. Today I am proud to be a member of the steering committee of the All-In Diversity Project, a global, data-driven organization working to promote diversity in the gaming industry.

From the initial passage of the Gaming Act to the constitutional challenge to the expansions of gaming in Pennsylvania from first table games to now Internet gaming, sports wagering, and much more, I have been in many ways at the center of the evolution of gaming law and I am proud to now have the opportunity to give back to Widener Commonwealth School of Law as an adjunct professor teaching gaming law and regulation.

STEVE RUDDOCK: How has the field of gaming law evolved since your appointment to the Pennsylvania Gaming Control Board [PGCB] following the passage of the state’s Gambling Act in 2004?

SUSAN HENSEL: Gaming law at both the state and federal level has seen a lot of changes since Pennsylvania first opened its doors as a gaming jurisdiction. In Pennsylvania, we started out as a bricks-and-mortar, slots-only state. The legal issues at that time were limited to just that one activity. Since then, we have witnessed substantial changes to our authorizing statute that has resulted in numerous gaming verticals being made available or soon to be made available to the public. This includes not only online gaming and sports wagering, but also video gaming terminals.

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at truck stops, satellite casinos, fantasy sports regulation, and airport gambling. With this expansion have come new legal implications as we work to understand and regulate the new gaming segments and the ancillary gaming products that accompany them including mobile apps, geolocation, facial recognition and know-your-customer technologies, and even affiliate services.

This expansion in gaming products and the laws that cover them is playing out in other states and countries as well. Matters that we did not have to previously think about, such as how technologies can legally work across jurisdictional lines and opportunities for cooperation between jurisdictions when products are virtual, are now ripe for consideration.

Also impacting the field of gaming law is the increase in the number of mergers and acquisitions we are seeing and the new participants entering the U.S. gaming industry as more foreign and non-gaming companies become involved in the gaming space. In addition, at the federal level we have witnessed the elimination of PASPA [the Professional and Amateur Sports Protection Act] and have unsettled questions regarding the Wire Act which has seen two very different interpretations in recent years. Gaming law will continue to evolve as more jurisdictions authorize new forms of gambling and new technologies and participants are introduced into the industry.

STEVE RUDDOCK: In addition to your obligations with the PGCB, you’re on the advisory board of the nonprofit All-In Diversity, pen articles on gaming, and keep a busy speaking schedule. Yet, a couple of years ago—when you were also still active with the International Association of Gaming Regulators—you began teaching a gaming law course at your alma mater. What was the impetus behind that decision?

SUSAN HENSEL: Being president of the International Association of Gaming Regulators offered a great perspective on the many legal issues that are part of a gaming lawyer’s practice. Whether it be assisting with licensing applications and suitability investigations in multiple jurisdictions or counseling a client on the implications of the Wire Act or educating a foreign company on how to do business in a new part of the world, the role of the lawyer runs far and wide. That perspective, coupled with the expansion of gaming technology and the sharing of liquidity across state lines, made it clear that there were a great many opportunities on the horizon for new attorneys. I am quite grateful for the legal education that I got at Widener and the many doors this education opened for me. With all of that in mind, it seemed logical that I would explore giving back to my law school through teaching.

Also, one of the great joys of my job has been working through issues of first impression and debating those issues with the lawyers in my office. This was especially true in the earlier years of the agency. Discussion, debate, challenging one another to reach the best conclusion has been particularly rewarding. Interacting with law students as they think through the course materials provides those same types of personal rewards.

With the authorization of new types of gaming and the expansion of gaming to new jurisdictions, this is an expanding area of the law. We need to ensure that there are bright, qualified legal minds ready to enter the field. In Pennsylvania alone there are opportunities to work for the regulator, the operators, manufacturers, suppliers, and ancillary service companies. The authorization of sports wagering and the growth of mobile gaming will present new legal challenges, as will the rapid changes we are seeing in gaming technology both online and in our bricks and mortar casinos. At the federal level, we have uncertainty about the future of the Wire Act and the sharing of liquidity across state lines. I wanted to give back to the university that trained me and help prepare a next generation to take on the many legal issues that swirl around this thing called gaming.

STEVE RUDDOCK: The university recently announced it’s expanding its gaming law course, and in the Spring 2020 semester, it will be offered as a full-semester, two-credit course. How will that impact the curriculum and what are your expectations for the class?

SUSAN HENSEL: The first course I taught was a one-credit intersession class that was presented over the course of 16 hours on two consecutive Saturdays. The course exposed the students to a broad overview of gaming and why and how we regulate. We looked at regulatory models, suitability, background investigations, advantage play, compliance, enforcement, problem gambling, and emerging gaming products such as online gaming, sports wagering, and esports.
I was fortunate to have a great compliment of guest speakers. However, given the time constraints, we were not able to delve as deeply into the case law and regulations that have helped to shape gaming as we know it today.

This semester, we will be able to put a greater emphasis on reading and discussing cases and regulations to create a deeper understanding for the students as to how the law has developed and where we might be going. We will also hear from a number of speakers who will offer real-life examples of the importance and impact of gaming regulation as either regulators or the regulated. We will even hear from the editor of this publication, Steve Ruddock, who will give students a unique perspective on the intersection between bricks-and-mortar and Internet gaming and the realities of gaming legislation.

STEVE RUDDOCK: I look forward to it!

Pennsylvania passed a monumental gaming reform law in 2017 that authorized online lottery, online casino, online poker, retail and online sports betting, daily fantasy sports, mini-casinos, as well as making regulatory changes to the state’s existing casinos. How was the PGCB able to handle an expansion of gambling on this scale?

SUSAN HENSEL: First and foremost, we rolled up our sleeves and really got to work to attack a seemingly insurmountable task. We did this without the luxury of being able to materially increase our staff. Having regulated casinos in the state for more than a decade, we had a core team of skilled professionals who were able to begin to address the many challenges before us. We also borrowed from our many regulatory relationships throughout the world, learning from fellow regulators domestically and internationally. Equally as important, we worked closely with the industry to understand the technologies they would be bringing to Pennsylvania and how to leverage those technologies in compliance with our regulations without requiring wholesale changes to their products.

Finally, we were smart in our deployment of the new verticals. We worked simultaneously on all fronts but within those efforts prioritized the launch of the products. This required open communication with the industry to understand its timelines for the various products so that we could time the launch of the particular vertical for when the industry was ready. Despite what some have suggested, introducing new gaming products into a jurisdiction requires a great deal of effort for both the regulator and the industry. We both took the time necessary to ensure Pennsylvania’s success rather than focusing on being the fastest.

STEVE RUDDOCK: What advice would you give fellow regulators in a state whose legislature might be considering some or all of these gaming options?

SUSAN HENSEL: My first suggestion would be to talk with the jurisdictions that have come before you to learn from and build on their experiences. We were fortunate to have New Jersey, Nevada, and Delaware in operation with online gaming when our law passed and each was helpful in assisting us in navigating along our learning curve. Although there are nuances between the jurisdictions and how and what we regulate, we are all basically working toward the same goals of ensuring that operators are suitable, operations are suitable, games are fair, taxes and fees are appropriately accounted for and collected, and protections are in place for the vulnerable. Even though there are differences in how we achieve these goals, there are also a lot of opportunities to learn from one another. We are also often regulating the same companies, and to the extent that we can have harmonization across jurisdictions on matters that don’t negatively impact the integrity of gaming, it creates regulatory efficiency for our licensees. It is also important to establish early on an open dialogue with the industry. The regulator must understand the products and the best way to gain that knowledge is through conversations with the companies that will do business in the jurisdiction.

STEVE RUDDOCK: With the spread of sports betting across the U.S. and, to a lesser extent, online lottery, casino, and poker, there is a high demand for gaming law experts. What are some of the old and new career paths within the industry that are available to gaming law students?

SUSAN HENSEL: There are countless opportunities for lawyers interested in practicing gaming law, and I see those opportunities only growing. The technologies, the international character of many of the industry participants, and the financial arrangements being deployed by gaming and traditionally
non-gaming companies that are today entering the field are all getting more complex. This leads to the need for both legacy and new legal skill sets among those practicing in the field. The technologies, particularly as Internet gaming grows, are rapidly evolving and the implications of those technologies have to be understood and regulated in real time. This requires lawyers on both the private and public sector sides who are not only legally competent but technologically savvy. In addition, we have seen a flurry of merger and acquisition activity as U.S. and foreign companies partner to offer the full range of gaming products under one umbrella. We have also seen innovative financial designs and an expansion of the types of companies that are involved in gaming. This is particularly true with the introduction of Internet gaming and sports wagering products in the United States. These trends will likely continue. All of this means that there are numerous options available for law students interested in studying gaming.

STEVE RUDDOCK: What advice would you give someone considering a career in gaming law?

SUSAN HENSEL: Jump in with both feet and learn everything you can about the ever-evolving field. This is a great career path for a new lawyer with a range of opportunities in the public and private sectors.