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May 10, 2017

TO: Senate General Government & Accountability Committee Members

DATE: May 10, 2017

RE: **Support for HB 2190**

Good afternoon Chairman Riley, members of the committee, thank you for allowing me to testify in support of HB 2190 today. My name is Tom Rask, and for the past five years I have been involved in the effort address the problem of illegal gambling; this activity has been allowed to flourish under the cover of the social gaming's exception to unlawful gambling, ORS 167.117 (21). I represent the card rooms in La Center, Washington who value the integrity of the gaming industry.

BACKGROUND

The following is a brief history of the social gaming statute. The "Social game" exception to the criminal gambling statutes was adopted by the Oregon Legislature in 1971. The concept of a social game was centered around the idea that if people wanted to get together to play cards in a person's home with no house bank, no house player, and no house income from the operation of the game.

Just two years later, in 1973, representatives of the hotel, restaurant and workers unions asked the legislature to allow social games to be played in businesses and to allow for an operating profit of up to 25%. Once the opportunity for income was injected into the social gaming situation, illegal gambling exploded within less than a year. The situation was so out of control that during 1974's legislative special session the legislature passed the social gaming legislation that exists today.

To be clear today's law clearly states that there can be no house income whatsoever that arises from the game. Oregon's history with allowing income from a social game for just the one year between 1973 to 1974 clearly demonstrated what can and will happen when profits and income are mixed with social gaming. It leads to serious problems because a profit motive is illegal and contrary to what is the core of social gaming.

So, you might ask, how did this situation escalate into the rampant unregulated and illegal activity currently facing the state today? It really started in 2009 and 2010 when poker grew in popularity and was being advertised on ESPN. Individuals and entities started applying for social game licenses not for the purpose of what it was originally intended which was five people sitting in the back of an Elks Lodge or the their home, but with intention of trying to make a profit which is clearly prohibited under the statute.

RECENT EVENTS

In 2010, at the request of the Oregon Lottery, the Attorney General reviewed the applicable statutes and opined on this matter. A copy of the AG opinion is attached to my testimony. The opinion confirmed, among other things, that absolutely no income, direct or indirect, is allowed. Even selling food or beverages at a higher amount then normally charged constitutes a violation of the unlawful gambling statute and is a Class C Felony.

Starting in 2011, as a result of my past experience representing charities in bingo operations here in Oregon, I began to investigate the situation further and discovered that many of these social game poker rooms are really a front for illegal gambling activity. One has to wonder why anyone would open a business when they cannot legally make a profit? Our investigation over the last several years has revealed the following significant illegal activity:

1. Illegal profit from the games by charging tournament fees and/or cover charges which are income derived simply from the games played;
2. Illegal tipping of dealers;
3. The playing of cash/no-limit games;
4. Illegally calling dealers "volunteers" when in actuality they are employees as determined by BOLI-with no state or federal tax withholdings and no minimum wage or required benefits being paid to employees;
5. House cheating by placing "house players" in the games to make money for the house;
6. Illegal skimming of player "buy-ins" into tournaments; and
7. No withholding of state or federal taxes from gambling winnings or wage earnings.

CONCLUSION

Over the last four years this social gaming statue has been used and abused by individuals to conduct illegal gambling for a profit. Local governments clearly do not have the resources to appropriately regulate this problem. It is clear it's time for the Legislature to address this important public safety and labor problem.

We urge your support for HB 2190 for three main reasons:

- 1. This bill takes the profit motive out of social gaming by having charities and non-profits run the social games-institutions that have a great deal to lose if they fail to follow the law and it still allows the games to continue.**
- 2. Cities and counties lack the resources to manage this illegal activity.**
- 3. This bill appropriately places social gaming with religious, charitable and fraternal organizations that are extremely unlikely to be consumed with making a "profit" to stay afloat.**

HB 2190 enjoyed bipartisan support in the House of Representatives and we urge the committee's support of this legislation. Illegal gambling activity that provides no benefit to the state of Oregon, its cities or counties and has negative social consequences due to a lack of enforcement should be eliminated. HB 2190 is the responsible answer for social gaming purposes. Please support HB 2190. Thank you for the opportunity to testify before you today I would be pleased to answer any questions the committee may have.



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

January 22, 2010

Lieutenant Glenn Chastain
Oregon State Lottery/Security Division
500 Airport Road SE
Salem, OR 97301

Re: Opinion Request OP-2010-1

Dear Lieutenant Chastain:

Gambling is unlawful in Oregon unless the legislature specifically authorizes it. *See* ORS 167.122 (participating in unlawful gambling as a player is a Class A misdemeanor); ORS 167.127 (promoting or profiting from unlawful gambling is a Class C felony); ORS 167.117(24) (“unlawful” means “not specifically authorized by law”). For these purposes, gambling does not include “social games.” ORS 167.117(7)(c).

To qualify as a “social game,” a game must be “between players” and must not have any “house player,” “house bank,” “house odds,” or “house income.” ORS 167.117(21). But the legislature did not define any of those terms except “player.” This raises questions as to whether certain games qualify as social games. You ask us to interpret several key terms in the definition to clarify the circumstances in which a game will meet the criteria for the social-game exception. Below, we set out your specific questions and our short answers, followed by a discussion.

QUESTIONS AND SHORT ANSWERS

As used in ORS 167.117(21)’s definition of “social games,” what do the following mean:

Question 1: The requirement that the “game” be “between players?”

The requirement that a social game be “between players” means that any person betting in a social game must qualify as a “player” under ORS 167.117(16).

Question 2: “House?”

As used in the definition of “social games,” “house” means: (1) all private businesses, private clubs, and places of public accommodation where social games occur, including their owners, managers and employees; and, (2) any person who operates what would otherwise be a social game for profit rather than for social purposes. “Operates” for those purposes includes any action described in ORS 167.117(18) that materially aids the game.

“Social game” is defined by ORS 167.117(21) to mean:

- (a) A game, other than a lottery, between players in a private home where no house player, house bank or house odds exist and there is no house income from the operation of the social game; and,
- (b) If authorized pursuant to ORS 167.121, a game, other than a lottery, between players in a private business, private club or place of public accommodation where no house player, house bank or house odds exist and there is no house income from the operation of the social game.

ORS 167.121 permits cities and counties to authorize social games in private businesses, private clubs or places of public accommodation.¹⁷ The requirements for social games are the same in those places and private homes. You ask us to clarify the requirement that the game be “between players” and the prohibitions on “house” activity.

“BETWEEN PLAYERS” REQUIREMENT

1. Statutory interpretation

In interpreting the phrase “between players” (as well as the other terms about which you inquire), we follow the statutory interpretation method set out by the Oregon Supreme Court in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993), and subsequently refined in *State v. Gaines*, 346 Or 160, 171-172, 206 P3d 1042 (2009). The first step is an examination of the statute’s text and context. *PGE*, 317 Or at 610-11. In doing so, we apply statutory and judicial rules for reading the text and context, including giving terms of common usage their plain meanings. *Id.* The second step is to consider legislative history where it appears useful to the analysis of the statute. *Gaines*, 346 Or at 171-172. The third and final step is resort to general maxims of statutory construction to aid in resolving any uncertainty as to the legislature’s intent that remains “after examining text, context, and legislative history.” *Id.*

2. Defined

a. “Between”

While the statutory definition of “social games” was initially enacted in 1973 and amended in 1974 (as discussed at length later in this opinion), the “between players” statutory language predates that definition and was enacted in 1971. When we consider the plain meaning of a statute’s text under the interpretational method described in *PGE* and *Gaines*, we are directed to consult dictionaries in existence around the time of the enactment of the statute. *See, e.g., State v. Perry*, 336 Or 49, 53, 77 P3d 313 (2003). Accordingly, we consult the 1961 edition of WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (UNABRIDGED), but note that the pertinent definitions in the 1961 edition are identical to those in the most current edition published in 2002. Beginning with “between,” the most apt plain meaning is “involving the

We conclude that, for purposes of ORS 167.117(21)'s definition of "social game," the legislature likely intended "gambling," as used in ORS 167.117(16)'s definition of "player" to mean gambling as defined by ORS 167.117(7), excluding the social game exception in subsection (7)(c). Applying that definition, a "player" in a social game must stake or risk something of value upon the outcome of the contest, *i.e.*, bet, in the game.

A "player" must engage in gambling "solely as a contestant or bettor." That means, first, that the person may not receive or become entitled to receive "any profit therefrom other than personal gambling winnings." That requirement distinguishes a "player" from one who "profits from unlawful gambling," which is defined as when:

**** a person, acting other than solely as a player, accepts or receives money or other property pursuant to an agreement or understanding with another person whereby the person participates or is to participate in the proceeds of unlawful gambling.*

ORS 167.117(17) (emphasis added).

(2) No material assistance

The second requirement for a person to engage in gambling "solely as a contestant or bettor" is that the person not "render[] any material assistance to the establishment, conduct or operation of the particular gambling activity." That requirement distinguishes a player from a person who "promotes unlawful gambling," which is defined as:

**** a person, acting other than solely as a player, engages in conduct that materially aids any form of unlawful gambling. Conduct of this nature includes, but is not limited to, conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases or toward any other phase of its operation. A person promotes unlawful gambling if, having control or right of control over premises being used with the knowledge of the person for purposes of unlawful gambling, the person permits the unlawful gambling to occur or continue or makes no effort to prevent its occurrence or continuation.*

ORS 167.117(18) (emphasis added).

A "person who gambles at a social game of chance on equal terms with the other participants" does not "render material assistance" by arranging or facilitating the game, such as by "inviting persons to play, permitting the use of [their] premises," or "supplying cards or other equipment" to be used in the game as long as they do so for free. The requirement that such

Consequently, if a group of friends gathers to play and one does not want to bet in the game, but offers to deal the cards, the game would qualify as a social game if all other requirements are met. But as discussed further below, such a dealer may not receive a tip or any fee, due to language in the definitions of “player” and “social games” (*i.e.*, the “house” prohibitions) that forbid anyone from dealing cards for a fee or remuneration.

b. Bankrolled players

A second issue arising from the “between players” requirement is whether a social game may have a player who is not betting their own money but is “bankrolled” (who plays with capital supplied in whole or part by someone else who shares any winnings). We addressed that issue in a previous opinion and concluded that a social game may not have any bankrolled players; we adhere to that conclusion. 38 Op Atty Gen 1455, 1457-1460 (1977). Although not expressly stated in the prior opinion, the conclusion rests implicitly – at least in part – on the rationale that only the people who play in the social game may stand to win or lose any money from the game. To qualify as a “player” a person must engage in gambling (risk something of value) solely as a contestant or bettor without receiving or becoming entitled to receive any profit other than “personal” gambling winnings. “Personal” means “of or relating to a particular *person*.” WEBSTER’S at 1686 (emphasis added). There is no question that the “particular person” referred to in the definition of player is the contestant or bettor, not a third party. A bankrolled player does not risk his or her own funds (at least to the extent of the “bankroll”). Moreover, the presence of a bankrolled player makes the game take on a professional, rather than social, flavor. 38 Op Atty Gen at 1457-60.

c. Fee or advantage by person arranging or facilitating game

Finally, the “between players” requirements makes clear that if a person who gambles in a social game receives any fee or remuneration for arranging or facilitating a game, the game is not a social game because the person would no longer qualify “solely as a player,” and the game would not be “between players.” Similarly, if one who arranges or facilitates the game has some advantage in the game, he or she is not playing on equal terms with other players, and the game is not social.

We interpret “facilitating” the game to include dealing the cards. The “player” definition exempts from prosecution for materially assisting unlawful gambling (*i.e.*, promoting) persons who perform “acts directed toward the arrangement or facilitation of the game” if they gamble in social games on equal terms with other players and receive no fee or remuneration for facilitating or arranging the game. Although dealing the cards is not one of the listed examples of arranging or facilitating the game, as discussed above, “conduct[ing] the playing phases” is listed as an act that “materially aids unlawful gambling” under ORS 167.117(18), and dealing the cards is part of conducting the playing phase of the game. Consequently, a person who gambles in a social game and also deals the cards must not have any advantage in the game or receive any fee or remuneration for dealing. This means that for games like blackjack where the dealer has an inherent advantage, no player may hold the deal; rather the deal *must* rotate. It is not enough for

this context is a “gambling house,” which is “a place where gambling is carried on or allowed as a business[.]” WEBSTER’S at 932. Obviously all of those definitions are closely related, differing only in whether they refer to the personnel of a gambling establishment, the place itself, or both. “House” in the sense of “operator of a gambling game,” differs from those definitions in that the “house” is not tied to any particular place, but includes any person who operates a game for profit.

It is not readily apparent whether the legislature intended “house” to encompass all of those plain meaning senses or not. The context suggests that *none* of those definitions are completely satisfactory. Specifically, ORS 167.117(21) expressly prohibits the “house” from receiving *any* income from operating a social game, but in *all* relevant definitions, a “house” operates the game for profit. In other words, ORS 167.117(21)’s requirement that the “house” not receive any income from operating a social game effectively prevents there from being a “house” – as Webster’s would define it – in a social game.

The legislature may have intended “house” to mean any private business, private club or place of public accommodation where a social game occurs even if the place makes no income from the game. That interpretation would stretch the plain meaning of “house” to include any business where social games occur, rather than only places that operate gambling games as a business. It is true that those places operate for a profit and, if they allow social games, do so from a profit motive (*e.g.*, the sale of food and drink) even if they derive no income directly from the game. Although that interpretation solves the problem of reconciling the definition of “house” with the prohibition on “house” income, it gives no effect to the “house” prohibitions that apply to games in private homes pursuant to ORS 167.117(21)(a).

Alternatively, the legislature may have intended “house” very broadly to include any place where a social game occurs, including a private home. Although that interpretation gives effect to the house prohibitions in ORS 167.117(21)(a), it creates other problems. First, that definition does not fall within any of the plain meanings. Second, subsection (a) prohibits a “house player” in games in private homes and interpreting “house” to include any place where a social game occurs to mean that the person who invited friends into his or her home to play a “social game” could not play. That interpretation would conflict with the definition of “player” which, understandably, recognizes that a person who hosts a social game in his or her home may play.

Finally, the legislature may have intended “house” to include any business establishment where a social game occurs (including the owners, managers and employees of the place) *and* any person who operates a game for profit rather than for social purposes. That interpretation gives effect to the house prohibitions, both in business establishments and private homes, and reconciles the prohibition on a house player in a private home and the definition of “player” because only a person who sought to make a profit in a private home would be prohibited from playing. But that definition continues to have a rather nonsensical application to the house income prohibition, because that prohibition would literally mean that anyone who operates a game for profit cannot make any income from operating the game. No potential definition of “house” that gives effect to all prohibitions remedies that problem. Because the legislature’s

food and beverages sold in card rooms. *See, e.g.*, Minutes, Senate and Federal Affairs Committee (SB 803), May 10, 1973, at 5-6.

Some opposed the amendment, arguing that allowing social games in public places would encourage professional gambling. *Id.* at 6. But John Runstein, the president of a private social club, testified that “[c]ard room owners thin[k] that if these social games are permitted on their premises and a reasonable service charge is required for the use of the premises and for the labor involved of not more than 25% of the total income of the overall operation of the complete premises, that anything like professional gambling would be eliminated.” *Id.* at 5.

The legislature agreed. It retained the “social game” language in the definition of player, amended the gambling laws to exclude social games from the definition of “gambling,” and provided the following definition of “social games,” which allowed social games in public places:

[a social game is] a game, other than a lottery, between players in a private home or private business, private club or in a place of public accommodation where no house player, house bank, or house odds exist and the gross income from the operation of the social game does not exceed 25 percent of the gross income of *the private business, private club or public accommodation.*

Or Laws 1973, ch 788, § 1 (emphasis added).⁴¹

That definition was somewhat ambiguous about whether the “house” prohibitions applied to games in private homes or only to business establishments. The income limitation, at least, expressly applied only to private businesses, private clubs, and places of public accommodation. The legislature did not discuss whether the prohibitions applied to games in private homes. Nor did it discuss the meaning of “house.” But when the legislature first used the term “house,” public places expressly *could* make income from operating a social game as long as that income was a small percentage of their overall business. Thus, in 1973, “house” could have referred to a place that operates a social game for profit.

The reason given for limiting the income that those places derived from social games was to prevent professional gambling in Oregon. Unfortunately, that purpose was not achieved. In the 1974 special legislative session, House Speaker Eymann told the House Rules Committee that the 1973 legislation had allowed large stakes professional gambling to take place in Oregon and that the Attorney General had received numerous requests for corrective legislation. Minutes, House Rules Committee (LC 283), February 7, 1974 at 7; Minutes, House Rules Committee (LC 283), February 11, 1974 at 5; and Minutes, House Committee on Judiciary Special Session (LC 283), February 11, 1974 at 2. Phil Roberts, representing the District Attorneys Association, stated that enforcement of the 1973 legislation’s income limitations had been difficult “because of the various ways a house may collect money, such as charging to enter an establishment or charging an amount per hour for use of a table. Accounting of funds collected in such ways would be almost impossible.” *Id.* at 3.

easier to enforce. It is evident that these were primary considerations in defining social games. Accordingly, we keep those purposes in mind when interpreting the house prohibitions.

Based on the text, context, and legislative history, we interpret "house" to include: (1) all private businesses, private clubs, and places of public accommodation where social games occur, including their owners and personnel; and (2) any one who operates a social game for profit rather than for social purposes. "Operates" for those purposes would include any action that materially aids the game as described in ORS 167.117(18).

2. "House income from operation of the social game"

Having interpreted "house," we now examine the prohibitions on "house" activity in a social game, beginning with the prohibition on "house income from operation of the social game." The plain meaning of "income" is "a gain or recurrent benefit." WEBSTER'S at 1143. Hence, the house may not receive any gain or benefit from the operation of a game. In a 1974 opinion, this office opined that:

no "house income" * * * mean[s] precisely that: counties and cities cannot, by ordinance, authorize an establishment to charge for the privilege of holding or participating in a social game. Whatever benefit the business derives must be a consequence of the mere existence of the game, not revenue specifically exacted from the game or its participants. So construed, the Act prohibits not only a [\$1.00 per hour per player fee to defray expenses of the operation of the social game] but also, *inter alia*, the raising of prices charged for some or all of the establishment's regular services in a manner to coincide with the hours during which social games are permitted on the premises.

Attorney General opinion letter dated April 17, 1974 to Honorable Robert Elliott. That interpretation accords with the plain language, context, and legislative history of the provision. In addition, since *anyone* who attempts to operate a social game for profit is the "house," the prohibition on house income effectively prevents *anyone at any place* from making any income from operation of a social game.

3. "House player"

The prohibition on a "house player" prevents the house from gambling in a social game. Again, "player" means:

A person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein is a person who does not otherwise render material assistance to the establishment, conduct or operation thereof by performing,

themselves sell, keep and redeem. That interpretation gives effect to the legislative purpose for the prohibitions – ease of enforcement and preventing professional gambling – while still recognizing that the house may provide equipment for a game if it handles no money and does so free of charge.

5. “House odds”

Finally, no “house odds” may exist in a social game. Potentially pertinent definitions of “odds” are: (1) the “amount of difference by which one thing exceeds or falls short of another: amount in excess or defect”; (2) the “difference favoring one of two opposed things : balance of advantage or weight of opposition”; (3) “the probability that one thing is so rather than another or that one thing will happen rather than another : balance of probability : greater likelihood CHANCES”; (4) “the ratio existing between the amount to be paid off for a winning bet and the amount of the bet placed <the horse was running at *odds* of 6 to 1.” WEBSTER’S at 1563. No context or legislative history clarifies which meaning the legislature intended. Nor could we find any definition of “house odds” in the texts that we consulted on gambling law.^{5/}

Again, our guiding rule is to give this provision some independent meaning, if possible, that is not subsumed by the other prohibitions.^{6/} To give “house odds” independent effect, we interpret it to preclude the house from having any involvement in establishing the ratio between the pay off for a winning bet and the amount of the bet placed even when it has no money at stake in the game. For example, this prohibition would preclude the house from setting odds governing pay-out for a bet between players or awarding a prize or gift certificate to the winner of a game.

CONCLUSION

We summarize our conclusions as follows:

Private businesses, private clubs or places of public accommodation that allow social games and their personnel may not: (a) derive any income from the game (including charging cover, usage or rental charges for the place or equipment), or extract any money directly from the participants other than for the sale of food and drink on the same terms as all other patrons (even if an establishment sells food and drink on the same terms to all patrons, if it charges inflated prices in relation to other similar establishments and its only patrons are social game players that may be evidence that the establishment is in fact making income from operation of social games); (b) compete or bet in the game; (c) act as “banker,” by being involved in the financial aspects of a social game, including selling, keeping and redeeming chips even if it makes no profit from doing so; or (d) have any advantage or set the ratio between the payout and bet amount;

- Anyone who attempts to operate a social game for profit – no matter where – will be deemed to be the “house” and subject to the same prohibitions;

A casino earns money by paying winners at "house odds." This is an amount that is slightly less than the true odds of winning the contest. Let's say we're flipping a coin and the bet is one dollar. The true odds of winning are 1 to 1, but the house odds might be 0.95 to 1. In other words, a loss to the casino costs \$1, but the casino will only pay 95 cents when a player wins. That's the house edge. Sometimes professional gamblers can use strategy to shift the edge away from the casino, but in most situations the casino has an advantage.

<http://casinogambling.about.com/od/oddsandends/a/houseedge.htm>. Whatever clarity that definition provides, the courts are unlikely to rely on gambling website definitions. And, since the house may not bet at all in the game under the prohibition on "house player" that definition gives no independent meaning to the prohibition on "house odds."

^{6/} The house cannot gamble in a social game, nor may it pay off winning bets. Consequently, the prohibitions on a house player and house bank effectively preclude the house from having any advantage in a social game. House odds must mean something more than simply having an advantage in a game or it adds nothing to those prohibitions.

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3
4
BEFORE THE COMMISSIONER
OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON

In the Matter of:

Case No. 55-16

**THE UNDERGROUND, LLC dba
ENCORE CLUB dba PDX POKER
CLUB and KING OF CLUBS
DEALERS GROUP,**

**NOTICE OF INTENT TO ASSESS
CIVIL PENALTIES**

Respondents.

5
6 TO: The Underground, LLC
7 535 NW 16th Ave.
8 Portland, OR 97209

9
10 John Ogal, Registered Agent
11 The Underground, LLC
12 535 NW 16th Ave.
13 Portland, OR 97209

14
15 King of Clubs Dealers Group
16 535 NW 16th Ave.
17 Portland, OR 97209

18
19 Sean A. Gentry, Registered Agent
20 King of Clubs Dealers Group
21 1709 SW Morrison St. Apt. 303
22 Portland, OR 97205
23

24 **THIS WILL NOTIFY YOU** that the Commissioner of the Bureau of Labor and
25 Industries (Commissioner) intends to assess civil penalties against KING OF CLUBS
26 DEALERS GROUP AND THE UNDERGROUND, LLC DBA ENCORE CLUB DBA PDX
27 POKER CLUB ("Respondents") in the aggregate amount of \$59,000.00 pursuant to the
28 provisions of ORS 653.025, ORS 653.045(1) ORS 653.256, OAR 839-020-1000; OAR
29 839-020-1010(1)(a), (e) and OAR 839-020-1020. Assessment of civil penalties will take

1 place 20 (twenty) days from the date this Notice is served unless a hearing is requested
2 within the time provided in this Notice.

3 1.

4 **JURISDICTION**

5 Respondents were at all material times subject to the relevant provisions of ORS
6 chapters 652 and 653, and OAR chapter 839. The allegations are within the jurisdiction
7 of the Bureau of Labor and Industries, specifically, ORS 653.025 and OAR 839-020-
8 0010 relating to paying the applicable minimum wage rate for all hours worked and ORS
9 653.045(1) and OAR 839-020-0080 relating to making, keeping and maintaining
10 records.

11 At all times material, Respondents "employed" workers pursuant to ORS
12 653.010(2) and was an employer pursuant to ORS 653.010(3) within the state of
13 Oregon.

14 2.

15 **RESPONDENT'S IDENTITY**

16 Respondent THE UNDERGROUND, LLC is an Oregon domestic limited liability
17 company that registered with the Oregon Corporation Division on April 19, 2010.
18 ENCORE CLUB is Respondent's assumed business name which was registered with
19 the Oregon Corporation Division on June 28, 2010. PDX POKER CLUB is
20 Respondent's assumed business name which was registered with the Oregon
21 Corporation Division on April 7, 2016. John Ogai is Respondent's sole member and
22 registered agent.

1 Respondent KING OF CLUBS DEALERS GROUP is an Oregon domestic
2 nonprofit corporation that registered with the Oregon Corporation Division on June 25,
3 2012. Sean Aaron Gentry is Respondent KING OF CLUBS DEALERS GROUP's
4 registered agent and President.

5 Respondent THE UNDERGROUND, LLC dba ENCORE CLUB dba PDX POKER
6 CLUB and Respondent KING OF CLUBS DEALERS GROUP ("Respondents") are joint
7 employers.

8 3.

9 **THE BASES FOR ASSESSMENT OF CIVIL PENALTIES ARE:**

10 Willful failure to pay the applicable minimum wage for all hours worked.

11 Respondents failed to pay the applicable minimum wage for all hours worked to fifty-
12 nine (59) employees in violation of ORS 653.025 and OAR 839-020-0010.
13 Respondents' violations were willful because Respondents knew or should have known
14 of the requirement to pay the applicable minimum wage for all hours worked. **CIVIL**
15 **PENALTY OF \$29,500.00.** Fifty-nine (59) violations at \$500.00 per violation. ORS
16 653.256; OAR 839-020-1000; OAR 839-020-1010(1)(a) and OAR 839-020-1020.

17 4.

18 Willful failure to keep, maintain and make required records available.

19 Respondents failed to make, keep and maintain records required by ORS 653.045(1)
20 and OAR 839-020-0080 for fifty-nine (59) employees it employed during the period of
21 February 7, 2012 to the present. Respondents' violations were willful because
22 Respondents knew or should have known of the requirement to make, keep and
23 maintain records for its employees as it had other employees. **CIVIL PENALTY OF**

1 \$29,500.00. Fifty-nine (59) violations at \$500.00 per violation. ORS 653.256; OAR
2 839-020-1000; OAR 839-020-1010(1)(e) and OAR 839-020-1020.

3

4 Respondents are entitled to a contested case hearing before the Commissioner
5 or a designated representative, as provided by the Administrative Procedures Act, ORS
6 chapter 183. Oregon law provides that all corporations, unincorporated associations,
7 partnerships, limited liability companies and government agencies MUST be
8 represented either by an attorney or by an "authorized representative" at all stages of
9 the hearing, including the filing of an answer and request for hearing. ORS 9.320 and
10 ORS 183.457. OAR 839-050-0110 sets forth this requirement and defines who may
11 appear as an authorized representative. Before appearing in the case, an authorized
12 representative must provide written authorization for the named representative to
13 appear on behalf of the Respondent. This authorization must be provided no later than
14 the time that an answer and request for hearing is filed. If you desire a hearing, you
15 must notify the Commissioner in writing within 20 days of the date you receive this
16 Notice or the date it was mailed to you, whichever is earlier, that you request a hearing.

17 FAILURE TO MAKE A WRITTEN REQUEST TO THE COMMISSIONER FOR A
18 CONTESTED CASE HEARING WITHIN THE TIME SPECIFIED SHALL CONSTITUTE
19 A WAIVER OF YOUR RIGHT TO A CONTESTED CASE HEARING. UNLESS YOUR
20 WRITTEN REQUEST FOR A CONTESTED CASE HEARING IS RECEIVED BY THE
21 COMMISSIONER WITHIN THE TIME SPECIFIED, THIS NOTICE SHALL BECOME A
22 FINAL ORDER IMMEDIATELY.

1 IF YOU MAKE A TIMELY REQUEST FOR HEARING BUT LATER WITHDRAW
2 THAT REQUEST, THE AGENCY'S FILE, INCLUDING THE MATERIALS SUBMITTED
3 BY YOU, AND ALL MATERIALS FILED WITH THE FORUM UP TO THE TIME YOUR
4 WITHDRAWAL REQUEST IS MADE WILL BE DESIGNATED AS THE RECORD OF
5 THE CASE. THIS ORDER SHALL BECOME FINAL, A FINAL ORDER ON DEFAULT
6 WILL BE ISSUED, AND NO HEARING WILL BE HELD.

7 IF YOU FILE A REQUEST FOR HEARING AND AN ANSWER, BUT LATER
8 NOTIFY THE AGENCY OR CONTESTED CASE COORDINATOR THAT YOU WILL
9 NOT APPEAR AT THE TIME AND PLACE SPECIFIED FOR HEARING, OR FAIL TO
10 APPEAR AT HEARING WITHOUT PRIOR NOTIFICATION, THE AGENCY'S FILE,
11 INCLUDING ALL MATERIALS IN THE AGENCY'S INVESTIGATIVE FILE, THE
12 AGENCY CHARGING DOCUMENT AND YOUR ANSWER, AND ALL MATERIALS
13 FILED WITH THE FORUM BY THE AGENCY OR YOU UP TO THE TIME SET FOR
14 HEARING, WILL BE DESIGNATED AS THE RECORD OF THE CASE. NO HEARING
15 WILL BE HELD, YOUR REQUEST FOR HEARING WILL BE DISMISSED, AND A
16 FINAL ORDER ON DEFAULT WILL BE ISSUED.

17 If you request a hearing, such request must also include a written
18 "answer" to the factual determinations stated in this notice. Such written answer must
19 include an admission or denial of each factual allegation contained herein, and shall
20 affirmatively allege a short and plain statement of each affirmative defense which the
21 Respondent will assert at the contested case hearing.

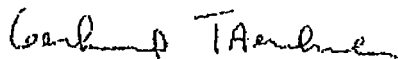
22 Except for good cause, the factual determinations set out in this Notice
23 and not denied in the answer shall be deemed admitted; failure to raise an affirmative

1 defense shall be deemed a waiver of such affirmative defense; any affirmative
2 defense alleged in the answer shall be deemed denied by the Commissioner of the
3 Bureau of Labor and Industries without necessity of further pleading; evidence shall
4 not be taken on any factual or legal issue not raised in this Notice or the Respondent's
5 answer.

6 Upon receipt of your request for a contested case hearing, the Commissioner will
7 notify you of the time and place for the hearing. Before the commencement of the
8 hearing, you will be given more information on the procedures, right of representation
9 and other information concerning the rights of a party relating to and in a contested
10 case hearing, as required by ORS 183.413(2).

11
12 Dated this 17th day of June, 2016.

13
14 Brad Avakian, Commissioner
15 BUREAU OF LABOR AND INDUSTRIES

16
17
18
19 

20
21
22

Gerhard Taeubel, Administrator
23 Wage and Hour Division

24
25
26 ANY REQUEST FOR A HEARING MUST BE IN WRITING AND MUST BE
27 DIRECTED TO:

28
29 Contested Case Coordinator
30 Bureau of Labor and Industries
31 1045 State Office Building
32 800 NE Oregon Street
33 Portland, Oregon 97232

BEFORE THE COMMISSIONER
OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I SERVED A COPY OF THE ATTACHED:

NOTICE OF INTENT TO ASSESS CIVIL PENALTIES

In the Matter of
**THE UNDERGROUND, LLC dba ENCORE CLUB dba PDX POKER CLUB and KING
OF CLUBS DEALERS GROUP,**
FILE #: 55-16

BY HAND DELIVERING OR PLACING IT IN INTERNAL STATE MAIL SERVICES TO EACH PERSON AT THE ADDRESS LISTED BELOW:

Adriana Ortega Administrative Prosecutor Bureau of Labor and Industries 1045 State Office Building 800 NE Oregon Street Portland, OR 97232 971-673-0801	Gerhard Taeubel, Wage & Hour Division Administrator, Bureau of Labor and Industries 1045 State Office Building 800 NE Oregon Street Portland, OR 97232
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------

AND BY PREPARING AND PLACING IT IN THE OUTGOING BUREAU OF LABOR AND INDUSTRIES MAIL TO EACH PERSON OR ENTITY AT THE ADDRESSES LISTED BELOW:

The Underground, LLC 535 NW 16th Ave. Portland, OR 97209 via Regular & Certified Mail Certified Mail # 7016 0750 0000 8128 7589	John Ogai, Registered Agent The Underground, LLC 535 NW 16th Ave. Portland, OR 97209 via Regular & Certified Mail Certified Mail # 7016 0750 0000 8128 7572
King of Clubs Dealers Group 535 NW 16th Ave. Portland, OR 97209 via Regular & Certified Mail Certified Mail # 7016 0750 0000 8128 7619	Sean A. Gentry, Registered Agent King of Clubs Dealers Group 1709 SW Morrison St. Apt. 303 Portland, OR 97205 via Regular & Certified Mail Certified Mail # 7016 0750 0000 8128 7565
Laura Salerno Owens Markowitz Herbold PC 1211 SW Fifth Avenue, Ste. 3000 Portland, OR 97204 via Regular & Certified Mail Certified Mail # 7016 0750 0000 8128 7596	Renee E. Starr, LLC 7128 SW Gonzaga Ste. 230 Portland, OR 97223 via Regular & Certified Mail Certified Mail # 7016 0750 0000 8128 7602

On Friday, June 17, 2016

Diane M. Anicker

Diane M. Anicker, Contested Case Coordinator, Bureau of Labor and Industries, 971-673-0865



Oregon

Bureau of Labor and Industries
Brad Avakian
Commissioner

Warning! Enclosed are important documents concerning your legal rights and responsibilities. You may need to respond to these documents within a limited time. If you do not read English, you should have a qualified person interpret them for you as soon as possible.

[English]

Aviso! Adjuntos encontrará documentos importantes sobre sus derechos legales y obligaciones. Es posible que tenga que responder a estos documentos dentro de un plazo limitado. Si no puede leer los documentos en inglés, debería hacer que una persona apta se los traduzca lo antes posible.

[Spanish]

Внимание! Внутри содержатся важные документы относительно ваших законных прав и обязанностей. Возможно, что ответ на посланные вам документы будет ожидаться в течении ограниченного времени. Если Вы не читаете по-английски, то вам следует воспользоваться, как можно скорее, услугами компетентного лица для перевода этих документов.

[Russian]

Lưu Ý ! Đính kèm theo đây là những tin tức quan trọng liên quan đến quyền lợi và trách nhiệm về pháp lý của quý vị. Quý vị có thể phải trả lời những hồ sơ này trong một gian giới hạn. Nếu quý vị không đọc được tiếng Anh, quý vị phải có một người đủ trình độ dịch những giấy tờ này cho quý vị càng sớm càng tốt.

[Vietnamese]

ការព្រមាន! ក្រដាសដែលបានភ្ជាប់មកនេះគឺជាឯកសារសំខាន់ស្តីពីសិទ្ធិនិងការទទួលខុសត្រូវរបស់អ្នក។ អ្នកប្រហែលជាត្រូវឆ្លើយតបចំពោះឯកសារនេះក្នុងរយៈពេលដែលកំណត់។ បើអ្នកមិនចេះអានភាសាអង់គ្លេសទេ អ្នកត្រូវឱ្យជនដែលមានសមត្ថភាពបកប្រែឯកសារនេះឱ្យអ្នកឱ្យបានឆាប់រហ័ស។

[Cambodian]

注意！信中附有與你的法律權利和責任相關的重要文件。你可能需要在限定的時間範圍之內予以答覆。如果你不能夠閱讀英文，你應該盡快請一位合格的人士幫你把这些文件翻譯出來。

[Chinese]

경고합니다! 동봉한 서류들은 귀하의 법적 권리 및 의무에 관한 중요한 것들입니다. 귀하가 이들 서류에 대한 응답을 일정 기간 내에 하지 않으면 안될 수도 있습니다. 귀하가 영어를 이해하지 못하는 경우에는, 귀하에게 이들을 해석해 줄 수 있는 사람을 가능한 한 빠른 시간 내에 찾지 않으면 안됩니다.

[Korean]

ຄຳຕື່ອນ! ຕອກະສານທີ່ຜ່ານມານີ້ເປັນຕອກະສານສຳຄັນກ່ຽວກັບສິດທິທາງກົດໝາຍຜະລິດຊອບຂອງທ່ານ. ທ່ານອາດຕ້ອງຕອບຮັບຕອກະສານເຫຼົ່ານີ້ພາບໃນເວລາທີ່ກຳນົດໄວ້. ຖ້າທ່ານອ່ານພາສາອັງກິດບໍ່ໄດ້, ທ່ານຄວນຊອກຫາຜູ້ທີ່ມີຄວາມຮູ້ພຽງພໍເປັນຜູ້ແປໃຫ້ທ່ານຝັງໃຫ້ໄວທີ່ສຸດເທົ່າທີ່ຈະໄວໄດ້.

[Lao]

PORTLAND
600 NE Oregon St Suite 1045
Portland, OR 97232-2180
(971) 673-0761
Fax (971) 673-0762

SALEM
3865 Wolverine St. NE; E-1
Salem, OR 97305-1268
(503) 378-3292
FAX (503) 373-7636

EUGENE
1400 Executive Parkway, Suite 200
Eugene, OR 97401-2158
(541) 686-7623
FAX (541) 686-7980

BEND
Apprenticeship and Training
Worksource Bend
1645 NE Forbes Rd, Ste 106
Bend, OR 97701-4990
(541) 312-2435
FAX (541) 359-8265

Oregon Relay TTY:711

MEDFORD
Apprenticeship and Training
119 N Oakdale Ave.
Medford, OR 97501-2629
(541) 776-6201
FAX (541) 776-6284

www.oregon.gov/boli
AN EQUAL OPPORTUNITY EMPLOYER

Digniin! Waxaa la socda warqaddo muhiim ah oo la xiriira xuquuqdaada sharci iyo waajibaadkaaga. Waxay tahay in aad warqadahaani kaga soo jawaabto wakhtiga kooban ee loo qabtay. Haddii aadan akhriyi karin Ingiriisiga, waa in aad sida ugu dhakhsaha badan u haysataa qof khibrad leh oo kuu turjuma.

[Somali]

تنبیه! مرفق طئه مستندات هامة بشأن حقوقكم ومسؤولياتكم القانونية. قد يتطلب منكم أن تجاوبوا على هذه المستندات في غضون فترة زمنية محدودة. إذا كنتم لا تجيدون قراءة اللغة الإنجليزية، فينبغي عليكم أن تطلبوا من شخص مؤهل أن يترجم محتوى هذه المستندات لكم في أقرب وقت ممكن.

[Arabic]

သတိ! ပူးတွဲပါစာရွက်စာတမ်းများမှာ သင်၏ ဥပဒေအရ ရပိုင်ခွင့်များ၊ တာဝန်များတို့နှင့် သက်ဆိုင်သည့် အရေးကြီးသည့် စာရွက်စာတမ်းများ ဖြစ်ပါသည်။ ကန့်သတ်ထားသည့်အချိန်အတွင်း ၎င်းစာရွက်စာတမ်းများအပေါ် သင်တုံ့ပြန်ရန် လိုအပ်နိုင်ပါသည်။ သင်အင်္ဂလိပ်လိုမဖတ်တတ်ပါက အရည်အချင်းမီသူတစ်ဦးအား သင့်အတွက် အဖြန်ဆုံး စကားပြန်ပေးရန် အကူအညီတောင်းပါ။

[Burmese]

FILING AN ANSWER AND REQUEST FOR HEARING
THROUGH AN AUTHORIZED REPRESENTATIVE

Partnerships, corporations, limited liability companies (LLCs), unincorporated associations, and governmental agencies may choose to be represented by an "authorized representative" at a BOLI contested case hearing. An authorized representative must be a member of a partnership, or an authorized officer or regular employee of a Respondent corporation, LLC, unincorporated associations, or governmental agency. Respondents who choose to be represented by an authorized representative must provide written authorization for the authorized representative to appear on their behalf. This written authorization must be provided when an answer and request for hearing is filed. OAR 839-050-0110.

Respondent(s) can satisfy this written authorization requirement by completing the appropriate form below and returning it with their answer and request for hearing.

AUTHORIZED REPRESENTATIVE STATEMENT FOR PARTNERSHIPS

I, _____, am a member of a partnership named
(print name)
as a Respondent in BOLI case number _____ and am hereby authorized to represent
Respondent as its authorized representative in this contested case proceeding.

(signature of authorized representative) *(date)*

(name of partnership)

**AUTHORIZED REPRESENTATIVE STATEMENT FOR CORPORATIONS, LLCs,
UNINCORPORATED ASSOCIATIONS and GOVERNMENTAL AGENCIES**

I, _____, am an authorized officer or regular employee of a
(print name)
corporation, LLC, unincorporated association, or governmental agency named as a Respondent in
BOLI case number _____ and am hereby authorized to represent Respondent as its
authorized representative in this contested case proceeding.

(signature of authorized representative) *(date)*

(name of corporation, LLC, or governmental agency)



RESPONDING TO A NOTICE OF INTENT

THIS SUMMARY IS WRITTEN FOR PERSONS WHO RECEIVE A NOTICE OF INTENT ISSUED BY THE BUREAU OF LABOR AND INDUSTRIES, WAGE AND HOUR DIVISION. IT EXPLAINS HOW TO RESPOND TO THE NOTICE AND THE CONSEQUENCES OF NOT RESPONDING.

1. WRITTEN ANSWER AND REQUEST FOR HEARING REQUIRED

If you wish to contest the allegations in the Order or Notice, YOU MUST TIMELY FILE A WRITTEN ANSWER AND WRITTEN REQUEST FOR HEARING at the address set out in the Notice. An answer and request for hearing is filed when it is postmarked or hand-delivered to the Wage & Hour Division at the address set forth in the Notice. Your answer must admit or deny each fact alleged in the Notice and must state all factual or legal defenses you intend to claim. OAR 839-050-0130. OAR 839-050-0130. IF YOU FAIL TO TIMELY FILE AN ANSWER AND REQUEST FOR A HEARING IN WRITING, YOUR RIGHT TO A HEARING IS WAIVED.

2. REPRESENTATION BY AN ATTORNEY OR AUTHORIZED REPRESENTATIVE

All Respondents may be represented by an attorney. Legal aid organizations may be able to assist a party with limited financial resources.

Individual Respondents may choose whether or not to be represented by an attorney.

All government agencies, partnerships, corporations, and unincorporated associations MUST be represented either by an attorney or by an "authorized representative" at all stages of the hearing, INCLUDING THE FILING OF AN ANSWER AND REQUEST FOR HEARING. OAR 839-050-0110. An enclosed insert explains the special requirements concerning authorized representatives, including restrictions on who may act as an authorized representative and the limitations on an authorized

representative, and also defines who may act as an authorized representative.

3. NOTICE OF INTENT TO ASSESS CIVIL PENALTIES, TO REFUSE TO RENEW, TO SUSPEND OR REVOKE A LICENSE, OR TO PLACE ON COMMISSIONER'S LIST OF INELIGIBLES

If you have received a Notice proposing to take any of these actions, you must file a written answer and written request for hearing within 20 days of the date you receive this notice or the date it was mailed to you, whichever is earlier. OAR 839-050-0070; 839-050-0130.

4. NOTICE OF INTENT TO DENY A LICENSE

If you have received a Notice proposing to deny a license, you must file a written answer and written request for hearing within 60 days of the date you receive this notice or the date it was mailed to you, whichever is earlier. OAR 839-050-0070; 839-050-0130.

5. NOTICE OF HEARING

If you file a timely answer and request a hearing, a hearing will be scheduled and a notice of that hearing sent to you at your address stated on the Notice. OAR 839-050-0080. If this is an incorrect address, you should state your correct address in your answer and request for hearing to insure that the Notice of Hearing is sent to your correct address. If your address changes after you file your answer and request for hearing, you MUST notify the Contested Case Coordinator within 10 days of your change of address. OAR 839-050-0030.

6. DEFAULT

If you fail to file an answer and make a timely request for a hearing, your right to a hearing is waived. The Agency's file will be designated as the record of the case in support of a prima facie case and the Notice will become a Final Order by Default that may be recorded as a judgment. If you file an answer and request a hearing, but later withdraw your request for a hearing, the Agency's file will be designated as the record of the case and the Notice will become a Final Order by Default that may be recorded as a judgment. OAR 839-050-0430.

8. RELIEF FROM DEFAULT

You may request relief from default, based on "good cause," by making a written request within 10 days after the administrator of the Wage and Hour Division issues a Final Order by Default. "Good cause" means that a required act was not performed "due to an excusable mistake or a circumstance over which a participant had no control." Your request must be accompanied by a written statement, together with appropriate documentation, setting forth the facts supporting your claim of good cause. It must be addressed to the administrator of the Wage and Hour Division and will be ruled upon by the presiding administrative law judge. OAR 839-050-0340.



Oregon

Bureau of Labor and Industries
Brad Avakian
Commissioner

ATTENTION - MILITARY SERVICEMEMBERS!

1. Notification of Federal Servicemembers Civil Relief Act (SCRA)

The Servicemembers Civil Relief Act (SCRA) provides for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

As defined by the SCRA, the term "uniformed services" means:

- (A) The armed forces (Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard);
- (B) The commissioned corps of the National Oceanic and Atmospheric Administration; and
- (C) The commissioned corps of the Public Health Service.

If you are a current member of the uniformed services, or were recently released or terminated from the uniformed services, the protections granted by the SCRA may apply to you in this contested case proceeding. The rights and protections of the Act may also apply if you are a reserve who has been ordered to report for military service, if you have been ordered to report for induction, or if you are a U.S. citizen serving with allied forces.

Protection under the SCRA must be requested during the member's military duty or within 30 to 180¹ days after military service ends, depending on the protection being requested. Information on SCRA may be found at <http://www.iagcnet.army.mil/TJAGSA> or <http://www.iagcnet.army.mil/legal>.

2. Oregon National Guard servicemember rights to relief from contested case proceeding under Oregon law.

Under Oregon law, a member of the Oregon National Guard who is called into active service inside or outside the state of Oregon may, while in active service or active duty, or within six months after that service or duty ends, apply to the Bureau of Labor and Industries for: (1) relief with respect to any obligation or liability incurred by the member before the period of active service or duty began; or (2) a stay of a contested case proceeding in which the Bureau has issued an Order of Determination, Notice of Intent, or Formal Charges that names the member as a party. ORS 399.238(1)&(2).

Contact the Bureau of Labor and Industries Administrative Prosecutor in this contested case immediately if you think you have rights under the SCRA or Oregon law that entitle you to be temporarily shielded from this legal proceeding. The Administrative Prosecutor will attempt to determine your status as it pertains to this proceeding, based on the information you provide. You should also consult with an attorney to determine your legal rights, as the Bureau cannot give legal advice. The Oregon State Bar's Lawyer Referral number is 1-800-452-7636.

¹ Section 202 of SCRA provides that a servicemember named as a party in a contested case proceeding may be entitled to a stay of the proceeding when the servicemember receives notice of the action and, at time of filing application for stay, is currently in the military or within 90 days of termination or release. ORS 399.238 defines "service member" as "(a) a member of the organized militia who is called into active service of the state by the Governor under ORS 399.054(1) for 30 or more consecutive days" or "(b) a member of the Oregon National Guard who is called into active federal service under Title 10 of the United States Code."

BOLI SCRA Notification (September 2008)

PORTLAND
800 NE Oregon St. Suite 1045
Portland, OR 97232-2180
(971) 673-0761
Fax (971) 673-0762

SALEM
3865 Wolverine St. NE, B-1
Salem, OR 97305-1268
(503) 378-3292
FAX (503) 373-7636

EUGENE
1400 Executive Parkway, Suite 200
Eugene, OR 97401-2158
(541) 686-7623
FAX (541) 686-7980

BEND
Apprenticeship and Training
Worksource Bend
1645 NE Forbes Rd, Ste 106
Bend, OR 97701-1990
(541) 322-2435
FAX (541) 389-8265

Oregon Relay TTY:711

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BUREAU OF LABOR AND INDUSTRIES
DIVISION 50
CONTESTED CASE HEARINGS RULES
As Filed With Oregon Secretary of State on September 4, 2014

839-050-0000 Statement of Purpose

(1) The purpose of OAR 839-050-0000 to 839-050-0440 is to ensure that the contested case procedures of the Bureau of Labor and Industries comply with ORS 183.413 to 183.470, to provide clear guidelines and an understanding of what is expected of participants, and to provide for thorough and timely hearings.

(2) In an effort to provide timely hearings, OAR 839-050-0000 to 839-050-0440 establish time limits that will be strictly followed. Waiver or extension of set time limits will be granted only under the limited circumstances set forth in these rules.

Stat. Auth.: ORS 183; 279C.815, 279C.817; & 651.060(4), 658.407(3), 658.820, 659A.805
Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 659A.845 & 659A.850

Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0020; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 5-2014, f. & cert. ef. 4-15-14

839-050-0010 Model Rules of Procedure

The Attorney General's Model Rules of Procedure for contested cases adopted pursuant to OAR 839-002-0005 govern contested case proceedings of the Bureau of Labor and Industries except to the extent they conflict with or are modified by rules in this division or any other division of chapter 839 of the Oregon Administrative Rules. The rules for contested case proceedings are set forth in OAR chapter 839, division 50.

The Attorney General's Model Rules for Agency Declaratory Rulings govern Declaratory Rulings.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Bureau of Labor and Industries.]

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279C.860, 279C.865, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0022; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 7-2006, f. 3-16-06 cert. ef. 3-20-06; BLI 5-2014, f. & cert. ef. 4-15-14

839-050-0020 Definitions

Unless the context requires otherwise, the following definitions apply to OAR 839-050-0000 through 839-050-0445:

(1) "Administrative law judge" means the commissioner or an individual or a special tribunal designated by the commissioner to preside over any or all aspects of a contested case hearing including motions, oral or written hearings, preparation of the Proposed Order and assistance in preparation of the Final Order. The administrative law judge may or may not be an employee of the Agency, except that when a case involves a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, the administrative law judge or anyone appointed as a hearings officer or member of a special tribunal to hear the matter must be an employee of the Agency.

Mail Tribune

Ashland poker club shut down

Tuesday

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ASHLAND — A state agency's ruling that a poker club's activities violated state law led to the shutdown of the gaming business.

By Grayson Berry **ASHLAND —** A state agency's ruling that a poker club's activities violated state law led to the shutdown of the gaming business.

The Oregon Department of Justice's Charitable Gaming Unit said that some membership dues and fees charged by The Downtown Poker Club were outside the rules established for social gaming clubs. Following that ruling, the Ashland Elk's Lodge, which owns the building on Will Dodge Way, declined to renew the poker club's lease.

The club was funded by each member paying nightly table fees of \$20, which were collected by taking a small percentage of each pot played, also known as the "rake." Any money collected in excess of \$20 per player was placed in a player's fund to be redistributed among the players through parties and refreshments.

Because the club was not making a profit from these fees, and only paying for rent, expenses and improvements, Russell Bjerke, co-owner of the Downtown Poker Club, had previously said he felt the practice was legal.

The state disagreed.

"The DOJ investigator said that the club was in violation of the Monte Carlo rules because they were a social gaming club and were taking income from the game," said Detective Bon Stewart of the Ashland Police Department, who accompanied a state investigator to the club.

The poker club met the city of Ashland's requirement as a "charitable, fraternal or religious organization," and was allowed to host social games such as poker. However, the owners' practice of charging nightly fees to play in the games meant that the card games were a source of income, which is a violation of the state's charitable gaming laws for non-profit organizations.

Pending further investigation, the club could face fines from the state of Oregon. No decision has yet been made by the Justice Department.

After closing in April, the owners of the club reportedly attempted to reformulate their business plan so it would meet the law's guidelines, but were stymied when they tried to renew their lease in May.

The Downtown Poker Club rented its space from the Elk's Lodge, which is upstairs from the club and owns the building.

Fred Hatfield, chairman of the lodge's board of trustees, said that in addition to the problems with the state, the poker club had failed to build a rest room for its players as it had promised.

Before the club could reopen, the Elk's board of trustees reviewed what would essentially be a new business and opted not to renew the lease.

The Elk's Lodge hosts poker games in its facilities and was also investigated because of concerns that the dealers were paid for their services at the lodge, according to the Department of Justice. Those concerns proved to be unfounded.

"The dealers have never been paid," said Judy Corallo, a dealer at the Elk's poker tournaments.

Hatfield said dealers receive compensation only through tips from the players.

"The investigator initially told me that the dealers 'could not profit in any manner,'" said Hatfield. "I simply asked him how I could control what players do with their money. He said that as long as we give the players all of the money in the prize pool, then what those players do with the money after it has been given to them is their business."

The weekly and monthly games that take place at the Elk's Lodge have been deemed legal and will continue.

According to the city of Ashland, the Downtown Poker Club was renamed The Private Club and purchased a business license in April. The current owners have declined to comment on their plans.

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