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Sent: Sunday, May 21, 2017 9:25 AM
To: sen.chuckriley@state.or.us; Sen DeBoer; Sen.MarkHass@state.or.us; Sen.KimThatcher@state.or.us
Cc: SGGG Exhibits
Subject: HB 2190 - Revisions to ORS 167 - Social Gaming

Good morning Senators,

I have been following HB 2190 and attended the public hearing on 5/10 and watched the working session on 5/17. Please consider the following before your next working session on HB 2190.

In short, the crux of the problem stems from the 2010 DOJ opinion of what the legislature meant in ORS 167.117. Specifically, the DOJ wrote an opinion that said dealers who were not players in the game could not receive any fee or remuneration for facilitating the game. To reach that conclusion, the DOJ had to make several statutory interpretations of phrases and terms in ORS 167.117. In my opinion, the DOJ got it wrong.

Social card games, require a playing room, poker tables, chairs, playing cards, poker chips, and players. The game proceeds by dealing cards to the players. Therefore, a dealer is also needed. The dealer can be either, a wagering player or simply a card dealer who is not playing in the game.

The DOJ opinion recognized that the legislature was permitting social card games to be operated by private businesses and clubs provided that the house restrictions were met. In regard to house income, the DOJ wrote:

"Businesses where social games occur may not charge for participation in the game, a rental fee for the room, table, or equipment or otherwise extract money from social game participants. Those businesses may make money from selling food and drink to social game players on the same terms that they sell those goods to all other patrons."

The DOJ did not say that businesses could not have their employees clean the room, set up the tables and equipment, prepare and serve food and drink. But, they did say that their employees could not play in the game and they could not deal the cards as a non-player. Whether or not this statutory interpretation is legally accurate, it remains the crux of the problem when considering the DOJ versus BOLI decisions pertaining to ORS 167.117.

If the SGGG wants to provide new **brighter lines** in ORS 167.117, I recommend that you make clear that businesses are permitted to have room, equipment, and employees that facilitate the operation of the game. This does not mean that the house is receiving income from the operation of the game. To the contrary, the business experiences only expenses for room, equipment, and employees for the game's operation. The house income is strictly from other sources such as food and drink. The employee's salary is paid from food and drink income, not from a portion of bets made by the players. Finally, players are obviously allowed to tip wait people who serve them food and drink. I see little reason why a non-playing dealer, an employee of the business, should not be able to receive a tip from a player.

Please consider the law in Washington. From their 1973 Gambling Act: 9.46.0282 "Social card game."

"Social card game" as used in this chapter means a card game that constitutes gambling and is authorized by the commission under RCW [9.46.070](#). Authorized card games may include a house-banked

or a player-funded banked card game. No one may participate in the card game or have an interest in the proceeds of the card game **who is not a player or a person licensed** by the commission to participate in social card games.

Washington's law solves two problems identified in the 2010 DOJ opinion. Firstly, it states: "*means a card game that constitutes gambling and is authorized*" etc. This solves the "Conundrum posed by 'gambling' requirement" mentioned by DOJ. Secondly, it allows a for **licensed persons** to participate in the game which, other than a player, can be a licensed dealer, director, and other game facilitator. In Oregon, ORS 167.121 permits local ordinance *to provide for regulation and licensing of social games authorized*. It could be altered to make clear that persons facilitating the social games could be authorized and licensed.

Here are my comments on the most recent working session.

1. As Senator Riley pointed out, Oregon's constitution does not provide a definition for **casino**. A common definition is: **A public room or building where gambling games are played**. As ORS 167.117 (7) says, **social games are not gambling**. Therefore, an Oregon social gaming card room should not be considered a casino. Oregon card rooms are where *social games* are played and casinos are where *gambling games* are played.
2. ORS 167.117 (21) says: "Social game" means:
 1. (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
 2. (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.
3. Current ORS 167.121 permits: *counties and cities to authorize, by ordinance, **playing or conducting social games in a private business, private club, or place of public accommodation**. Such ordinances may provide for regulation and licensing of social games authorized*.

In the last working session Senators Thatcher and Riley discussed topic #1 and #2 above.

Regarding topic #3 above:

- Senators Prozanski and Riley were in favor of adding **bright lines** that could guide future regulations for local businesses that host social games. The vast majority of the poker supporters in attendance at the House and Senate hearings on HB 2190 welcomed such guidelines.
- Senator DeBoer voiced his opposition to HB 2190 while mentioning the fact that current law allows local ordinances to define regulations that could be made as clear and varied as necessary for their locales.
- Senator Hass did not voice an opinion in this session. However, I believe he stands with Senator DeBoer (based on my read as a poker player).

What, if anything, could or should be changed in ORS 167 that would help local communities regulate social games? Is it possible to add language that would curtail future challenges from Washington casinos and card rooms?

One problem stems from the definition of a Casino game:

1. ORS 167.117 (4) currently says: *Casino game means any of the traditional gambling-based games commonly known as dice, faro, monte, roulette, fan-tan, twenty-one, blackjack, Texas hold-'em, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck, Chinese chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panquinqui, red dog, acey-deucey, or any other gambling-based game similar in form or content.*

As shown above, in ORS 167.117 (21) we have the definition of a social game and in ORS 167.117 (4) we have a named list of casino games. The most common social game played in Oregon card rooms is tournament Texas Hold-em - a form of poker. While it is clear that Texas Hold-em is: *A game, other than a lottery between players ...* (i.e., a social game), it is also identified as a traditional gambling-based casino game. Listening to the testimonies from both sides it is apparent that confusion exists overall given the apparent contradiction.

What change to ORS 167 could address these bewilderments; card room versus casino and the social game of poker versus the casino game of poker? New wording in ORS 167 might make clear:

1. **Social games are played in card rooms and gambling games are played in casinos.**
2. **Social games, such as Texas Holdem, are predominantly games of skill with a subsidiary element of chance.**
3. **Casino games are predominantly gambling games of chance.**

Senator Prozanski also spoke of the BOLI versus DOJ findings on dealers as employees or volunteers. There are at least two solution alternatives that could be considered:

1. The DOJ opinion of 2010 is out-of-date. **It does not recognize that the dealer in Texas-Holdem is always a player.** The player who has the dealer button is the dealer for a given hand. The dealer button rotates around the table with each hand. The rotation order follows the well-known rules that control situations that arise when players enter or leave the game. The DOJ opinion does not recognize that a Texas-Holdem game always has a player who is the active dealer and may also have a non-playing person who is shuffling and pitching cards to facilitate the game (e.g., an inactive non-playing dealer). The DOJ opinion makes clear how rotation of the dealer is important in games such as Blackjack where the dealer has an inherent advantage. There is also an inherent advantage for the dealer in Texas-Holdem as the dealer acts last and therefore has more information on players who have acted previously. Again, the dealer button identifies the current dealer and always rotates around the table.
2. BOLI is certainly going to protect the rights of employees.

Given these two alternatives, **new wording in ORS 167 might make clear:**

- **Players in a social poker game will rotate the active dealer button according to the rules of the game, thereby rotating the dealers advantage.**
- **A non-playing card dealing persons can facilitate a social poker game provided that they are employees or independent contractors.**

I hope the Senators recognize the value of non-playing directors and non-playing dealers in tournament poker. I am a member of the Poker Tournament Directors Association (TDA). The TDA is the official association of poker tournament personnel. The Association is dedicated to the advancement of the industry and adoption of uniform poker tournament rules. The directors and dealers provide players with services that have the best interest of the game and fairness as the top priorities in decision-making and tournament facilitation. The TDA publishes a set of rules for tournament poker that are recognized as the industry standard amongst the world's largest casinos, poker rooms, tour circuits, online tournament platforms, and poker leagues.

Please let me know if I can answer any questions.

Best regards,

Bill Morrison