



STATE OF OREGON
Legislative Counsel Committee

January 8, 2024

To: Representative John Lively
Chair, House Interim Committee on Gambling Regulation

From: David Fang-Yen, Senior Deputy Legislative Counsel

Subject: Statutory definition of "casino"

Enclosed is a draft of LC 214, which would provide a statutory definition for the term "casino" for purposes of prohibiting the operation of casinos in Oregon.

As you know, casinos are prohibited under Article XV, section 4 (10), of the Oregon Constitution. As I discussed with Andrew Hickerson, the constitutional term "casino" has a meaning that must be elucidated by courts and cannot be modified by statute.

The effect of this draft would be to create a parallel statutory prohibition on casinos. A statutory prohibition can be more stringent, but not less stringent, than the constitutional prohibition. Thus, the statutory prohibition in this draft takes, as a starting point, the constitutional meaning of "casino" that the Oregon Supreme Court provided in *Ecumenical Ministries v. Oregon State Lottery Commission*, 318 Or. 551, 562 (1994) (defining casinos as "establishments whose dominant use or dominant purpose, or both, is for gambling"). Additionally, it adopts the definition of "gambling" used by the court in the same opinion. *Id.* at 561 (defining gambling as "the act of playing a game and consciously risking money or other stakes on its outcome").

The draft excludes pari-mutuel wagering on live animal racing from the definition of gambling. If such wagering were not excluded, then all race tracks would have a dominant use or purpose of gambling and would constitute casinos. As I previously described to the Joint Interim Committee on Gambling Regulation, I think that prohibiting pari-mutuel wagering on animal racing was likely not the intent of the constitutional casino ban, and therefore such wagering should not constitute gambling within the meaning of *Ecumenical Ministries*.

Because your request highlighted chance as a major consideration, the draft also excludes games that are predominantly skill-based. This is, of course, not a bright-line distinction, although most games that are currently offered in traditional casinos would probably not qualify as predominantly skill-based (with the probable exception of standard forms of poker). If desired, the draft could specifically call out certain games as being, or not being, predominantly skill-based.

Encl.