

PUBLIC HEARING AND

WORK SESSION ON SJR 28-A TAPES 161 - 162 A/B

SENATE REVENUE COMMITTEE

MAY 27, 1997 - 9:00 A.M. - HEARING ROOM B - STATE CAPITOL BUILDING

Members Present: Sen. Ken Baker, Chair

Sen. Neil Bryant, Vice Chair

Sen. Joan Dukes (arrived 9:17 a.m.)

Sen. Verne Duncan

Sen. Tom Hartung

Members Excused: Sen. Randy Leonard

Witnesses: Chris Lyons, Director, Oregon Lottery

David Hooper, Public Affairs Manager, Legislative Liaison, Oregon Lottery

Mike McCallum, Executive Director of Government Affairs,

Oregon Restaurant Association

Staff: Jim Scherzinger, Legislative Revenue Officer

Carol Phillips, Committee Assistant

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005 Chair Baker Opened meeting at 9:12 a.m.

OPENED PUBLIC HEARING ON SJR 28

018 Chris Lyons Has been with the Lottery Commission for eighteen months. For first ten years of its existence, Oregon Lottery and the Lottery Commission were in a growth mode and went from small organization with \$35 million in annual sales to very large one with a huge impact on Oregon revenues. The statute on video poker changed Lottery operations significantly and caused the huge growth. Lottery growth has leveled off and this has been attributed largely to the availability of tribal gaming.

044 Lyons Now that growth has leveled off, the Lottery Commission is working on making operations more efficient, how to run a more mature organization, and now are beginning to worry about the social impacts of gambling, which was not an issue ten years ago. Lyons came from Oregon Liquor Control Commission ("OLCC"), which balanced regulatory issues and making organizational changes so more efforts could be turned toward regulating and not just to generating revenue.

060 Lyons By constitution the Lottery is limited to spending 16% of its sales on Administration. When video games were added sales increased dramatically. On traditional games (Scratch Games, Mega Bucks, Powerball) the Lottery Commission spends about 16% of those sales on Administration, but on the video side because sales are so huge costs don't come anywhere near 16%. Running about 10.5% administrative expenses on the video games, after distribution of prizes. Due to the way the gambling industry handles its financial statements, the actual administrative expense is about 6% of total sales of all games.

091 David Hooper Added that the law requires Lottery Commission to account for video games and traditional games separately. The 16% administrative cost limitation encompasses not only the direct operating expenses of the Lottery, staff, buildings and facilities, and advertising, but also includes retailer commissions which are about 5% of gross, and fees and payments to the vendors who provide the games of about 5% of gross. In last fiscal year the Lottery spent \$5 million on TV, radio, print, and billboard advertising. That accounts for about 1% of traditional game sales, which are at \$355 million. Lottery does not advertise video games.

109 Chair Baker Asked if in talking about advertising, many players will "reinvest" winnings back into games, and wondered if that was calculated into total sales?

112 Lyons Replied that it was taken into consideration. It is called "churn" in the industry. All of that money that is reinvested or when someone wins, whether real money or just a Win and they reinvest it, goes toward sales.

122 Chair Baker Said the (-A6) Amendments starts to address the issue of gambling addiction and asked for some history on what other states may be doing along those lines.

129 Lyons Stated that the amount in the budget for problem gambling is \$4 million.

Added that when video lottery legislation was passed in 1991, the Legislature realized there could be repercussions with addictive gambling behaviors associated with video games. Three percent of net receipts were originally earmarked for counties to fund problem treatment centers. Unfortunately, that allocation was made out of the state Lottery fund, which is the fund used to administer the Lottery. It was not made out of the economic development fund, which is the profit side at the Legislature's disposal. A lawsuit against the Lottery trying to ban video games went to the Supreme Court, but did not prevail. In looking at the issue the Supreme Court said you cannot use Lottery

131 Hooper administrative funds to run other state programs, so that invalidated the 3%. The Emergency Board allocated some funds in the 1993-95 biennium to keep the program running. In the 1995-97 biennium \$4 million was allocated for the program. Believes the Governor's budget includes another \$4 million for problem gambling treatment. Other states have not been as aggressive as Oregon in trying to deal with problem gambling. Many states have no funding for treatment. Also, many states do not have video poker or video lottery games, so their needs may not be as great. Believes that of the 36 counties in Oregon, 34 have some type of treatment program in place. Questions and discussion interspersed.

193 Sen. Dukes Stated that although more money has been directed toward mental health in general, does not believe Oregon has significantly increased programs for gambling addiction. In light of dramatic increase in gambling addiction Oregon has experienced which occurred about the same time video poker came on-line, does not believe that specific problem is being addressed adequately.

204 Hooper Responded that although Sen. Dukes' points are well taken, does not believe Lottery Commission is not the best organization to address the problem. Believes mental health programs are better suited.

208 Sen. Dukes Stated it seems ironic that Oregon Lottery creates major form of gambling in Oregon, but is completely distanced from the effects it causes.

217 Chair Baker Pointed out that Oregon has been dealing with alcoholism for the last fifty years and knows how to proceed in that area. The question on gambling addiction is, "Does the state really know what it is doing and are there some hidden issues that have not been brought to light yet."

228 Lyons Replied that last year the Governor's task force on gambling discovered how little actual information there is on problem gambling, particularly in Oregon, and how many people are affected. The task force was unable to come up with anything concrete. Oregon Lottery along with Spirit Mountain casino is funding a prevalent study that will for the first time give policy makers in Oregon solid information on the degree of the problem. Treatments are not as defined as those with alcohol. People in Department of Human Resources can probably describe treatment mechanisms available.

261 Hooper Added that the problem gambling prevalent study is in the field now and being conducted by an international expert in the subject. The study is being conducted by the Gambling Addiction Treatment Foundation, which was a result of the Governor's task force. Problem gambling is a very different disease from other types of addictive behaviors.

285 Sen. Bryant Regarding the language on line 6 of the (-A6) Amendments, it says the "Commission shall be subject to direction and oversight by the Legislative Assembly." Asked what the Lottery Commission's thoughts may be regarding that wording.

292 Lyons Stated philosophically the Lottery Commission should have active communication, dialogue, interaction, and involvement with the Legislature. Does have some worries about degree of involvement in business decisions the Lottery needs to make on an on-going basis. Has been told there was not much communication in the past, and has no objection to developing a closer relationship. Believes the Legislature could be helpful in setting policy and direction, but not the day-to-day running of the Lottery.

320 Sen. Bryant Stated he asked the question because the initiative that created this and placed it in the constitution was very cleverly written so that the role of the Legislature would be minimal. Whenever the Legislature talks about becoming more involved, the subject of unconstitutionality is always brought up.

341 Lyons Believes the Legislature has already given the Lottery direction and limits. The Legislature has told the Lottery Commission video poker and Sports Action could be established. The Legislature has told Oregon Lottery their offices must be in Salem. But Lyons believes the fundamental business decisions should be handled by the Lottery, not the Legislature. As an example, leases on certain video lottery terminals are expiring now, so Lottery is making business decisions on who to lease with and how many to buy, etc. Believes those are fundamental operational decisions, and debating those issues with the Legislature as to who the Lottery is going to do business with and how many terminals to buy would impede the Lottery Commission in its ability to effectively manage the Lottery.

372 Chair Baker Provided two illustrations using OLCC and Oregon Department of Transportation ("ODOT"). Both have Legislative oversight, but the Legislature does not micromanage those agencies. However, the Legislature occasionally makes major decisions regarding policy within those agencies. Asked the Lottery Commission if it would cause them great concern if the Legislature were to follow that type of involvement.

383 Lyons Responded she believes the Legislature does that now. Although the Legislature does not approve the Lottery Commission's budget, in terms of policy the Legislature does have the ability to set policy and the Lottery Commission would be required to follow it.

397 Chair Baker Stated this subject is being debated today because four years ago a Representative tried to get budget policy information from the Lottery Commission and was denied that information. At that time the Legislature did not have an effective tool to get that information and examine budgets in a constructive process like is available with OLCC and ODOT.

408 Lyons Replied their budget does not go through the legislative process, but is discussed between Lottery staff and Lottery Commission. In fact, those are public documents and all it would take is a phone call to the Commission to examine them.

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013 Sen. Dukes Added that the Lottery Commission has plans to take up the issue of line games after this legislative session ends. It bothers many legislators that the Lottery Commission which has been silent on that issue this whole session; and whether correctly or not is being perceived by many that this was a deliberate action. Given the fact that so much of Oregon's revenues are derived from Lottery games, it makes some Members very nervous that they are being excluded from the line games issue.

028 Lyons Responded that she made the decision to delay discussion on line games until October. Did not believe there would be as thorough a discussion on rule making. Wanted six months to gather all the necessary information. Because there was so much work to do to prepare for the hearing she wanted it as a public process later in the year. She deliberately did not want the discussion to occur during the middle of the legislative session because it would be only about money. The discussion should focus on the social impacts and the player impacts. The October date was not supposed to be an "end run" around the legislative process.

055 Sen. Dukes Said she would like to believe that, but knows of a previous situation where the Lottery Commission encouraged legislators to contact them with views and opinions with who should be maintaining the games, and their views and opinions were totally ignored.

059 Chair Baker Stated he appreciated Lyons' deliberative style in discussing this issue, but the people elected the legislators to represent them in the process.

063 Lyons Agrees that the Lottery Commission should spend more time interacting with legislative committees and individuals, and they intend to do that in the future.

067 Sen. Hartung Asked if the state took more profit from line games than it does from video games, would that discourage the playing of line games at retail outlets?

075 Lyons Stated the analysis of that question is not complete, but believes there will be some "cannibalization" that some players will switch from video poker to line games. Video poker tends to attract a more serious player because the game is a little more complicated. Also believes there will be new play because line games attract a different demographic which is female, 28-35 years of age. Commission will be examining impact of new players and percentage of those who become addicted to video games.

098 Sen. Dukes Asked if Commission has done analysis to see who is not playing any of the games offered.

101 Lyons Replied it would be more effective to do it in reverse and see who does play. Governor's task force spent a lot of time in trying to determine if video poker was more

addictive in nature than video line games and were unable to conclude which type was more addictive.

115 Sen. Dukes Assumed that with video poker male players would predominate and that line games would have mostly female players. Believes line games would not necessarily detract from other games but bring in money from a whole new group of players.

126 Chair Baker Added that in being tied to OLCC license requirements, has there been any thought in extending game placements to restaurants or hardware stores or those types of establishments with different clientele from bars and taverns?

131 Lyons Stated emphatically, "No." There is a limitation in the law which dictates certain kinds of liquor licenses necessary to have video terminals present. The idea was to keep them away from minors. Would oppose any legislation to remove those restrictions. No matter how many games there are, a business cannot make more than 66% of its revenue from all Lottery games. There is a limit to the amount of money the Lottery Commission will allow retailers to make off Lottery games.

163 Sen. Dukes Asked how many video poker games it is possible to play in one minute.

164 Hooper Answered that with video poker it takes five seconds to complete a hand. In other words, about 12 or more a minute is possible.

168 Sen. Dukes Asked how much a game costs.

169 Hooper Answered a maximum bet is \$2.00, minimum bet 25 cents.

170 Sen. Dukes Asked what the odds are of winning.

170 Hooper Answered about one in two-and-a-half.

179 Sen. Dukes Asked if that was true for line games; i.e. same amount of time to play a game and same odds of winning.

180 Lyons Answered that the percentages can be set whether for poker games or line games indiscriminately. They can be set anywhere from 99% or 100% pay-out down to 90% pay-out. On average line games pay out a little better than poker games. The pay-out percent for video poker is 90%, so the state keeps 10%. That could be set higher where the pay-out could be 95% with the state keeping 5%. There are two games at around 94% pay-out. Maximums are set by rule; the Lottery Commission's business plan requires pay-outs be set annually; the staff is not allowed to make adjustments to those

percentages without Commission approval. Questions and discussion.

- 226 Mike
McCallum Said that the questions being asked today are good ones that have been and are being addressed under current status. Concurred completely with Administrator Lyons that the Legislature does have oversight and policy direction to the Lottery now. When addressing operational areas, however, it is a very complex business and unlike other entities commonly dealt with. Has learned some of the intricacies over last five or six years and considers himself only marginally knowledgeable. Suggested that the learning curve on technical issues will be virtually impossible to impart to legislators on a regular business to have clear insight as to actively participating in Lottery decisions. Believes that in terms of policy direction, the Oregon legislature has exerted hard policy direction over the past six years and should continue to do so, but it does not require an amendment to the constitution to continue to do that.
- 282 Chair
Baker Stated that with those agencies the legislature has regular budgetary review (OLCC, ODOT, etc.) , believes that the laymen on the panels develop within their legislative careers some understanding of the agencies. As an example tax policy is very complicated, but legislators take it upon themselves to learn the process. By having legislators review on a regular basis what happens in the Lottery Commission, the legislators would learn the expertise necessary to make valid decisions.
- 307 McCallum Agreed with Chair Baker's comments and believes there is a willingness from the Lottery Commission to provide all the information legislators could possibly want. In terms of setting up a committee to regularly review the Lottery Commission, that can be done today. But the point is that does not need a constitutional amendment to make it happen.
- 319 Lyons Pointed out ORS 461.140 addresses the Lottery's biennial budget report to the legislative assembly. There is a whole statute that requires Oregon Lottery Commission to prepare in even numbered years a budget report and that the Commission will submit it in a form approved by the Legislative Fiscal Officer and that the budget and any other material shall be presented to the legislative assembly, etc.
- 336 Chair
Baker Stated that simply by the Lottery Commission submitting a report that does not provide any ownership within the legislature for that product. He receives hundreds of documents every year from agencies that he is not interested in because the legislature has absolutely nothing to do with them.
- 343 Lyons Said what she is trying to communicate to Chair Baker is that not only does the language address that issue but also talks about a representative of the Lottery Commission making that person available to Ways and Means and other committees. Was unaware of the statute until Hooper just handed her a copy.
- 353 Chair
Baker Pointed out that Lyons has been in her position at the Lottery Commission for sixteen months and is an able administrator, but her unawareness of the issue illustrates exactly what Chair Baker is talking about. Basically, there was no need for her to be aware of the statute because she never had to report to the Legislature; therefore, the policy

makers of Oregon never had a fair chance to review what the Lottery Commission has been doing.

375 Lyons Said she was not trying to do anything other than point out that there may be mechanisms to get to the issues Chair Baker has brought up. Agrees that the Lottery Commission needs to be communicating more pro-actively not only on budget matters but other subjects as well.

382 Sen. Dukes Stated that what is happening is a lack of faith on the part of the Legislature. Several years ago the Legislature and the Lottery Director had an agreement on a deal, but as soon as the Legislature went home the deal "went south". It has only been when the Legislature has said "Yes, go ahead and do Sports Action or video poker" that any cooperation with the Lottery Commission happens. The Legislature is the beneficiary of those people who suddenly discover that their spouse has just spent their entire retirement at a video poker machine somewhere, or the woman whose son committed suicide because he could not deal with his gambling addiction. The Legislature gets the social tragedy end of the Lottery, but does not have any involvement with the rest of it. After a few years of this the Legislature feels it is entitled to be involved with the rest of it, but over the years the answer has been the same, "No".

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014 Sen. Duncan Stated that the thing that bothers him the most where there is no Legislative control is in advertising. As an educator he is appalled when he sees children used in lottery ads which advocate thanking the lottery for school funding.

020 Lyons Pointed out that the Lottery has stopped using children in ads because of some of the negative feedback. Has also stopped bill boards with cartoon characters because of the feedback. Lottery Commission is not in the business of offending, but in the business of advertising. They will continue to make adjustments as necessary.

033 McCallum Said regarding addiction treatment funding that the Restaurant Association has always been supportive of whatever level of addiction funding the treatment providers think is necessary. Restaurant Association feels the amount of funds will enable them to meet needs for customers coming forward, but may not be adequate to address every potential problem gambler out there. They have heard of certain counties with treatment programs that have been accessed by only one person during the year. Does not have treatment success figures.

057 McCallum The Restaurant Association has requested the Lottery Commission to proceed with new products and games. Regarding video games there are two types: video poker and video slots or line games. Fact is players like slot machines, which is evidenced by the fact that tribal casinos have 85% of their machines in slots, with the remaining 15% in video poker. Suggests this type of amendment to constitution will not stop people from playing line games. If Oregon Lottery does not provide line games, people will go to tribal casinos to play them. In terms of restricting what types of games people can play, this Amendment does not do that. All it does is restrict where people can play them.

- 079 McCallum Suggested that as this is being considered, understand two things: (1) Line games are desired by retailers because their customers want them; and (2) The Amendments do not restrict people's ability to access line games, it just says where they can be accessed. In closing, hopes none of his comments will be misconstrued. Thinks the Legislature should have policy direction and oversight over the Lottery Commission, and thinks it does now.
- 091 Sen. Hartung Thought tribal casinos could not have any games Oregon Lottery could not have, i.e. line games.
- 095 McCallum Replied this is one of those nuances he referred to earlier. There is no legal distinction between a video poker game and a line game. In fact the only difference is a computer chip which shows a different display on the terminal screen. Poker is somewhat intimidating to a section of the general public. Line games are more user friendly.
- 113 Chair Baker Adjourned meeting at 10:13 a.m.

Carol Phillips

Committee Assistant

Kim James

Office Manager

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Exhibit Summary:

- A. SJR 28, Yates, Staff Measure Summary, 1 page
- B. SJR 28, Yates, Revenue Impact Statement dated 5/9/97, 1 page
- C. SJR 28, Yates, Fiscal Impact Statement, 1 page
- D. SJR 28, Yates, (-A6) Amendments, (JB/ps) 5/27/97, 2 pages
- E. SJR 28, Yates, Revenue Impact Statement dated 5/24/97, 1 page