

SENATE COMMITTEE ON  
TRADE AND ECONOMIC DEVELOPMENT

March 23, 1995 Hearing Room 137  
8:00 a.m. Tapes 50-51

MEMBERS PRESENT: Sen. John Lim, Chair  
Sen. Bill Kenemer, Vice-Chair  
Sen. Bill Bradbury  
Sen. Gene Derfler  
Sen. Joan Dukes

MEMBERS EXCUSED:

STAFF PRESENT: Joseph Cortright, Executive Officer  
Bobby Sullinger, Committee Assistant

WITNESSES: Joseph Barkofski, Legislative Counsel  
Cindy Becker, Oregon State Lottery  
Steve Caputo, Oregon State Lottery

MEASURES HEARD: SJR15 - Proposes constitutional amendment to subject State  
Lottery administrative expenses to legislative control -

WS

SB 700 - Prohibits Oregon State Lottery from advertising lottery  
any broadcast or printed medium - PH & WS

These minutes contain materials which paraphrase and/or summarize  
statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings,  
please refer to the tapes.

TAPE 50, SIDE A

001 CHAIR LIM: Brings the committee to order at 8:05 a.m.

SJR15 - Proposes constitutional amendment to subject State Lottery  
administrative expenses to legislative control - Work Session

016 CHAIR LIM: Opens WORK SESSION on SJR15.

019 CORTRIGHT: Overviews Staff Measure Summary for SJR15 [EXHIBIT A].

028 Committee discussion relating to the constitutional changes imposed by  
the measure.

049 SEN. KENEMER: What would constitute imposing reasonable regulations on  
the amount of lottery funds expended for the administration and operation  
of the Oregon Lottery?

051 CORTRIGHT: I don't know. I assume it would be up to the courts to  
interpret.

054 SEN. BRADBURY: As I read this measure it clarifies that the legislature  
can establish an amount for administration.

069 CORTRIGHT: My understanding of this measure is that the only thing it  
will do is to change the constitution. It would not by its self impose any

restraints on the lottery. It would clarify the ability of further  
legislatures to insist that the budget be reviewed in the same manner as  
other budgets and to impose reasonable regulations.

075 SEN. DERFLER: It does give the legislature the responsibility to  
regulate the lottery and it is contrary to what the legislature has been  
doing this session. The Lottery Commission is doing a good job of keeping  
cost down.

088 SEN. KENEMER: To what degree would we be able to regulate the lottery?

Could we micro-manage the lottery? I am not happy with the amount of  
control the legislature has, but I am reluctant to introduce legislation to  
micro-manage the lottery.

111 CHAIR LIM: We have no way to control the lottery. We eventually are  
responsible if something goes wrong. The legislature needs more control  
over the lottery.

127 SEN. DUKES: The language in the measure is too general. I believe the  
public wants some oversight of the lottery.

160 CORTRIGHT: Overview Senate Joint Resolution 15 [EXHIBIT B].

190 CHAIR LIM: We think the lottery is doing a good job. I want  
legislative control in case something goes wrong.

204 SEN. DERFLER: I think the lottery is doing a good job. I do not see a

problem. We could ask for resignations if a problem arose.

214 SEN. DUKES: This is no different than ODOT or PUC. The legislature has control over their budgets.

234 CHAIR LIM: Let the people speak. Let the people decide if the legislature should have control over the lottery.

240 SEN. KENNEMER: What constitutes reasonable regulations?

259 CHAIR LIM: We could take out reasonable?

263 SEN. KENNEMER: The rational for using reasonable is we have a constitutional prohibition relating to legislative controls over the lottery.

268 CORTRIGHT: I assume there is case law on what reasonable means and how it would be applied.

276 Committee discussion relating to what "reasonable" means.

280 SEN. DERFLER: What does "operations" mean?

289 CORTRIGHT: The measure refers to regulations on the amount that can be spent on administration.

291 SEN. DERFLER: That is not how I read it.

293 CHAIR LIM: Maybe we can leave out the word "operations" as long as we can limit the amount they can spend on administrative expenses.

305 CHAIR LIM: Let's call Legislative Counsel to joint us in committee. Maybe we can get clarification on "operations" and "reasonable".

313 CHAIR LIM: Closed WORK SESSION on SJR15.

SB 700 - Prohibits Oregon State Lottery from advertising lottery games in any broadcast or printed medium - Public Hearing

329 CHAIR LIM: Opens WORK SESSION on SB 700.

345 CORTRIGHT: Overviews Staff Measure Summary for SB 700 [EXHIBIT C].

366 CORTRIGHT: SB 700: Limits on Lottery Advertising Expenses - Summary of Proposed Amendments [EXHIBIT D].

369 CORTRIGHT: Analysis of SB 700 - Effect of a Limit on Lottery Advertising Spending [EXHIBIT E].

390 CORTRIGHT: Overviews Summary of Lottery Finances, Fiscal Years 1986 to 1993 [EXHIBIT F].

425 SEN. KENNEMER: Can you explain the outside review of the effectiveness of the lottery's advertising.

430 CORTRIGHT: Your question can best be answered by reviewing SB 700-1 amendments. Overviews Proposed Amendments To Senate Bill 700-1 [EXHIBIT G]. They mirror language that is currently in statute which require the lottery spend approximately 3.5 percent of its revenue on advertising until

an outside review of the effectiveness of the advertising was done, and the agency selecting the study be the Division of Audits which is part of the Secretary of States Office.

462 CHAIR LIM: What is current spending on lottery advertising?

463 CORTRIGHT: It is 2.63 percent of revenues.

464 CHAIR LIM: How much money is spent on lottery advertising?

465 CORTRIGHT: The lottery spent about 9.1 million dollars on advertising last year.

TAPE 51, SIDE A

007 SEN. KENNEMER: Is it true the lottery does not advertise Video Poker games?

008 CORTRIGHT: Yes.

009 SEN. KENNEMER: The 9.1 million dollars was spent on Kino, Megabucks, etc.?

010 CHAIR LIM: Yes.

015 SEN. BRADBURY: We had lengthy testimony from the lottery. They made a very clear decision. When their revenues increase as a result of Video Poker they had a choice. They could discontinue all the other games or they could advertise them effectively and keep profits up. In-fact, profits have been increasing.

021 SEN. KENNEMER: If we do not advertise will the games be eliminated? Is that what you are implying?

026 SEN. BRADBURY: The implication is that the lottery has clearly identified the need for advertising to keep games fresh and on peoples minds. If you reduce the advertising it will effect revenues.

035 SEN. DERFLER: If our goal is to eliminate the lottery we could eliminate the advertising.

050 SEN. BRADBURY: We have to advertise.

053 CHAIR LIM: I do not believe we want to eliminate advertising. More than seventy percent of revenues are derived from Video Poker without any advertising. The Video Poker revenues are expected to increase but at the same time we are spending more and more on advertising games that are not providing the increased revenues. Is there any clear evidence that the advertising is effective? Is it ethically and morally right for the state to advertise gambling?

070 SEN. DERFLER: I think the lottery sends the wrong message, and I would rather not have a lottery. The people elected to have a lottery.

077 CHAIR LIM: We do not allow certain advertisements for cigarettes and liquor. Should we treat the promotion of gambling any different?

080 SEN. DERFLER: We advertise cigarettes, wine, and beer. They are just as addictive, maybe more so, than the lottery.

086 CHAIR LIM: We do not advertise cigarettes and liquor.

087 Committee discussion relating to advertising cigarettes on television.

089 CHAIR LIM: Closed WORK SESSION on SB 700.

091 CHAIR LIM: Opens WORK SESSION on SJR15.

092 JOE BARKOFSKI: Overviews the term "reasonable".

117 SEN. KENNEMER: What you are saying is that under this language the legislature could do anything it wishes and that would stand unless the Lottery Commission or a citizen brought an action against the legislature?

121 BARKOFSKI: The initial determination as to what "reasonable" means would be determined by the legislature. The action in court would be on the grounds that the legislature in its interpretation of the word "reasonable" unduly restricted the operations of the State Lottery.

127 SEN. BRADBURY: Could you interpret page two, lines 20-22 of SJR15.

143 BARKOFSKI: Overviews interpretation of "continuously appropriated" as opposed to "may be appropriated".

156 SEN. BRADBURY: If we were to keep the current language relating to "continuously appropriated" and added the language "subject to the authority of the Legislative Assembly to impose reasonable regulations on the amount of lottery funds expended for administration and operation" how would it change your interpretation?

166 BARKOFSKI: It seems to me it would be a contradiction, and I do not know how the courts would construe that language.

178 SEN. DUKES: How would this differ from PUC or ODOT. The money is continuously appropriated to them because they collect it, but they cannot spend it until the legislature gives them the authority.

184 BARKOFSKI: Responds to committee discussion relating to continuous appropriations for a purpose.

192 SEN. DUKES: There is a constitutional limitation on what gas tax, for example, can be spend on, but it does not authorize the agency to spend the money without limitations from the legislature.

196 BARKOFSKI: Responds to committee discussion relating to legislative limitations.

214 SEN. DERFLER: If this were to pass could we as the legislature tell the Lottery Commission that we want them to double their lottery games or cut them in half?

220 BARKOFSKI: Yes.

222 SEN. DERFLER: We would be able to get into the day-to-day operations of the lottery?

224 BARKOFSKI: Overviews the constitution as it relates to legislative control over the lottery operations.

248 SEN. DERFLER: Could we say we did not want them to build a new building for their operation?

255 Committee discussion relating to legislative controls over the lottery.

285 SEN. KENNEMER: I am concerned this bill deals with the wrong issue. We should try to direct the lottery's mission as it relates to public concerns.

312 BARKOFSKI: Overviews the State Lottery Commission and the controls the legislature has over it.

326 CHAIR LIM: If we deleted the word "operation" could we still accomplish

what we want?

340 Committee discussion relating to language enabling legislative control over the lottery.

424 SEN. BRADBURY: By defining the word "administration" the measure could be used as a way to limit administrative expenses.

442 BARKOFSKI: Yes.

TAPE 50, SIDE B

030 SEN. KENNEMER: I am not comfortable with this bill. I would like to define the mission of the lottery.

046 CHAIR LIM: Closed WORK SESSION on SJR15.

051 CHAIR LIM: Opens WORK SESSION on SB 700.

052 SEN. KENNEMER: Would you like a motion on SB 700-1 amendments? I want the lottery to use 2.5% of revenues for administrative expenses.

060 SEN. DERFLER: I think it should be 3%.

065 Committee discussion relating to the appropriate percentage of revenues to use for administrative expenses of the lottery.

074 SEN. DUKES: I think the issue is: should the lottery advertise or should the lottery not advertise. I am opposed to the state promoting gambling.

111 Committee discussion relating to the appropriate percentage of revenues to use for administrative expenses of the lottery, and the independent review of the effectiveness of lottery advertising.

166 SEN. DUKES: I do not like studies. We have a commission. If they are doing something wrong the Governor can ask for resignations.

190 SEN. KENNEMER: I am not sure what this study will tell us? Current law requires the lottery do these studies. Have they been done? I think the committee should send a letter to the Office of the Director and ask why these studies have not been done.

220 CHAIR LIM: Have you ever completed a study on the effectiveness of lottery advertising?

226 STEVE CAPUTO: The original study was conducted in 1985. We have not done a study of that nature since. We have elected to do annual studies on advertising and its effectiveness in terms of its ability to promote lottery products.

235 CINDY BECKER: The study that was originally done in 1985 looked at the communication aspect and what type of communication occurred between the lottery and its agencies. We have not done a formal study since.

243 CHAIR LIM: Why does our state spend more per capita on advertising than most state?

249 CINDY BECKER: I sent you a letter relating to this after your last hearing. We are not comparing apples-to-apples. We calculated we are the 14th highest state not the 2nd highest.

255 CHAIR LIM: 14th highest is too high for me.

256 SEN. DUKES: The existing language talks about the first study and then says similar shall be conducted from time-to-time. Is there any reason to believe the lottery might be interested in conducting another study in compliance with statute?

260 CAPUTO: We have elected to look at the effectiveness of advertising.

268 SEN. DUKES: Statutory language says similar studies will be conducted from time-to-time. You have had 10 years. Are you planning on conducting a similar study?

273 BECKER: We are putting together our financial plan for the next fiscal year and we have budgeted a study on advertising effectiveness.

275 SEN. DUKES: Will it be similar to the first study that was done?

276 BECKER: Yes.

277 SEN. KENNEMER: I would like a letter from the Lottery Commission as to why the statutes have been ignored as it relates to this study?

294 CAPUTO: We will provide the committee with a letter describing why the lottery has not complied with statutes.

297 CHAIR LIM: Closed WORK SESSION on SB 700.

298 CHAIR LIM: Adjourns committee meeting at 10:30 a.m.

Submitted by

Bobby Sullinger  
EXHIBIT LOG

EXHIBIT A - Staff Measure Summary for SJR15, Presented by Joseph Cortright,  
1 page.

EXHIBIT B - Senate Joint Resolution 15, Presented by Joseph Cortright, 3  
pages.

EXHIBIT C - Staff Measure Summary for SB 700, Presented by Joseph Cortright,  
1 page.

EXHIBIT D - SB 700: Limits on Lottery Advertising Expenses - Summary of  
Proposed Amendments, Presented by Joseph Cortright, 1 page.

EXHIBIT E - Analysis of SB 700 - Effect of a Limit on Lottery Advertising  
Spending, Presented by Joseph Cortright, 1 page.

EXHIBIT F - Summary of Lottery Finances, Fiscal Years 1986 to 1993,  
Presented by Joseph Cortright, 1 page.

EXHIBIT G - Proposed Amendments To Senate Bill 700-1, Presented by Joseph  
Cortright, 1 page.