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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.

Question 3: The prohibition on a "house player?"

The prohibition on a "house player" means that the house may not in any circumstance bet in a social game.

Question 4: The prohibition on a "house bank?"

We interpret the prohibition on a "house bank" to mean that the house may not act as a banker in a social game by having any involvement in the financial aspects of the game, including selling, keeping, and redeeming chips even if the house makes no profit from doing so.

Question 5: The prohibition of "house odds?"

We interpret this prohibition to mean that the house may not have any advantage in a social game or establish the ratio between the amount of a bet and the payoff amount.

Question 6: The prohibition of "house income?"

This prohibition means that the house may not make any money directly from operation of the game or from its participants. 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. 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.

SOCIAL GAME DEFINITION

ORS 167.117(7) defines the term "gambling" for purposes of the gambling offense statutes, ORS 167.108 to 167.164, and excludes "social games from that definition:

> "Gambling" means that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under the control or influence of the person, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome. *Gambling does not include:*
>
> * * *
>
> *(c) Social games.*

(Emphasis added.)

"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.[1/] 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

reciprocal action of: involving as participants: jointly engaging <the job was completed *between* the two of them> <two years of quiet talks *between* the three>." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 209 (unabridged 1961). As the examples illustrate, "between" implies exclusivity; accordingly "between players" means between players *only*.

b. "Player"

ORS 167.117(16) defines "player" to mean:

> [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, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein. A person who engages in bookmaking is not a player.

(1) Conundrum posed by "gambling" requirement

The first requirement for a "player" is that the person must engage in gambling – that is stake or risk something of value upon the outcome of the game in return for the chance to receive something of value if they win. The requirement that a "player" must "gamble" creates a recurring conundrum in interpreting the term "social game." Namely, ORS 167.117(7)(c) excludes "social games" from the definition of "gambling," so a person who plays in a social game does not engage in "gambling." But ORS 167.117(21) defines "social game" as a game "between players," and ORS 167.117(16) defines "player" to require that a player engage in "gambling." In short, no game could *ever* qualify as a "social game" under those definitions, because no one who plays in a social game is a "player," but social games must be "between players."[2/]

The obvious solution is to interpret "gambling," as used in ORS 167.117(16)'s definition of "player" to mean "gambling," as defined in ORS 167.117(7), *omitting the exclusion for social games contained in subsection (7)(c)*. It might be argued that such an interpretation requires us to omit words that have been inserted in the definition of "gambling" in violation of the rule that we refrain from doing just that. *See* ORS 174.010 (in construing statute, judges should not "omit what has been inserted"). But ORS 167.117 provides that its definitions apply "[a]s used in ORS 167.108 to 167.164" "*unless the context requires otherwise*." (Emphasis added.) The context here requires us to adopt a modified definition of "gambling" for the purposes of the social game definition. Also, we must adopt a construction that gives effect to all provisions of a statute, if possible. ORS 174.010 ("where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all").

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

persons gamble in the game on equal terms means that they must gamble on the same or like terms as other players and have no advantage. WEBSTER'S at 766 (defining "equal" to mean "of the same measure, quantity, amount, or number as another or others : LIKE * * * like, as great as, or the same as another or others in degree, worth, quality, nature, ability, or status * * * like, as great, or the same for each member of a group or class[.]"). If the gambler who arranges or facilitates the game does not gamble on equal terms as the other players, the person is not a "player," but instead a promoter, and the game does not qualify as a social game. The same result occurs if the person receives any fee or remuneration for arranging or facilitating the game.

3. "Between players" applied

a. Dealers who do not gamble in the game

We next apply the "between players" requirement to various scenarios that we are informed may arise, beginning with the situation where a person deals cards but does not gamble in the game. Such a dealer is not a "player" because he does not gamble in the game as players must. The question is whether the requirement that the "game" be "between players" precludes a non-player dealer in a social game, or stated alternatively, may only players deal in a social game?

As discussed above, "between" means "involving the reciprocal action of: *involving* as participants[.]" WEBSTER'S at 209 (emphasis added). Thus, the question becomes whether being "involved" in the "game" means playing in the game as a contestant or bettor, or whether it also includes performing acts that materially assist the game. We conclude that the legislature likely intended the former. The legislature did not define "game." The pertinent ordinary definition is "a physical or mental competition conducted according to rules in which the participants play in direct opposition to each other, each side striving to win and to keep the other side from doing so -- see GAME OF CHANCE." WEBSTER'S at 933. A "game of chance" is one where "chance rather than skill determines the outcome." *Id.* We glean from that definition that participating or being involved in a social "game" means "play[ing] in direct opposition," *i.e.*, taking part in the competition as a contestant or bettor.

By contrast, in ORS 167.117(18) the legislature described acts that materially aid the game, including "conducting the playing phases of the game," which would include dealing the cards. The legislature expressly allows private businesses, private clubs, and places of public accommodation to materially aid social games by providing their premises (and presumably the tables and equipment as well) if cities or counties authorize it. But, at the same time, as we will discuss below, the legislature prohibited the persons connected with those places from being players. Thus, the legislature distinguished between playing in the game and materially aiding the game, and intended to allow non-players to facilitate the game at least in some ways.[3/] For that reason, it appears from the text and context that the legislature intended the "between players" requirement to ensure that only the contestants and bettors in social games meet the requirements of ORS 167.117(16). We consulted legislative history for guidance and found none to alter our conclusion based on the text and context.

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

the dealer to offer the deal to other players, who then may decline to accept it. If the deal in a game like blackjack does not in fact rotate, the game is not a social game.

HOUSE PROHIBITIONS

1. House

a. Text and context

We turn now to the prohibitions on "house" involvement in a social game. Specifically, a social game must have no "house player," "house bank," "house odds," or "house income from operation of the social game." Because all of those prohibitions are on "house" activity, we begin our analysis with the meaning of "house." Two rules for construing statutory text and context are particularly pertinent here. First, we assume that when the legislature uses the same word in related statutory provisions enacted as part of the same law, it intends the word to have the same meaning in all provisions. *Tharp v. PSRB*, 338 Or 413, 422-23, 110 P3d 103 (2005). Where, as here, the legislature used the same word repeatedly in the same provision, that assumption is particularly strong. Second, we assume that the legislature did not intend any portion of its enactments to be meaningless surplusage and should adopt a construction, if possible, that gives effect to all provisions. ORS 174.010 ("where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all"). *See, e.g., State v. Connally*, 339 Or 583, 593, 125 P3d 1254 (2005) (stating rule against surplusage). Several of the "house" prohibitions established in ORS 167.117(21) potentially overlap and the latter rule guides us to adopt a construction that gives each some independent meaning if possible.

"House" has three plain meanings in the gambling context: (1) "the operators of a gambling game"; (2) "the management of a gambling establishment"; and, (3) "a gambling establishment: CASINO." WEBSTER'S at 1096. Beginning with "operators of a gambling game," the most relevant definition of "operator" is "a person that actively *operates* a business * * * whether as owner, lessor, or employee." WEBSTER'S at 1581 (emphasis added). The relevant definition of "operate" is "to manage and to put or keep in operation whether with personal effort or not[.]" *Id.* "Business" means "a [usually] commercial or mercantile activity customarily engaged in as a means of livelihood and typically involving some independence of judgment and power of decision" as well as "a place where such an enterprise is carried on [.]" *Id.* at 302. The relevant definition of "commercial" is "from the point of view of profit : having profit as the primary aim." *Id.* at 456. In sum, "house" in the sense of an "operator of a gambling game," means a person who manages, puts, or keeps in operation a gambling game as a means of livelihood with profit as the primary aim.

The second and third potential meanings of "house" are a "gambling establishment" and "the management of a gambling establishment." The former encompasses the latter as "establishment" means "a more or less fixed and usually sizable place of business or residence *together with all the things that are an essential part of it (grounds, furniture, fixtures, retinue, employees)*." WEBSTER'S at 778 (emphasis added). Another potential meaning of "house" in

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

intended meaning of "house" is ambiguous after examining the text and context, and the legislative history may help us understand the intended meaning of "house," we consult that history.

b. Legislative history

The "social game" exception (but not the statutory definition of the term) first appeared in Oregon law in 1971. In 1970, the Criminal Law Revision Commission drafted a proposed criminal code for Oregon, accompanied by an explanatory commentary, both of which it submitted to the 1971 legislature. Article 30 of the proposed code concerned gambling offenses and was adopted by the legislature. Or Laws 1971, ch 743, §§ 263-265. Sections 264 and 265 criminalized *promoting or profiting* from unlawful gambling; *participating as a player* was not unlawful under those provisions. *Id.* at §§ 264 and 265. Article 30 did not exempt social games from the definition of "gambling"; rather the definition of "player" – which was important at the time to describe behavior that would not be subject to criminal sanction – contained a social games exception that provided then, as now, that a person who gambles on equal terms in social games does not promote gambling by arranging or facilitating the game for free. Or Laws 1971, ch 743, § 263(7). The commission explained the social game exception in its commentary on Article 30:

> The underlying purposes of the sections [264 and 265] are to get at the professional who exploits the popular urge to gamble. *The individual citizen who places a bet is not criminal* * * *. *Neither are friendly social games criminal under the draft* and a person does not promote gambling if he merely invites friends in for a game and provides cards or other paraphernalia. This results from the definition of "player" in § 263(7) * * *. The Michigan revisers neatly state the case for excluding the friendly social game: "*Private* consensual games are generally accepted as socially if not legally proper, and there is no point in preserving the fiction that they are undesirable." *Id.* at 257 (quoting Michigan Revised Criminal Code at 465 (emphasis in original)).

Criminal Law Revision Commission, Proposed Oregon Criminal Code, Final Draft and Report, Article 30, § 263(7) (1970) (emphasis added).

Therefore, in 1971, the social game exception appeared to be confined to games in "private" homes, and only players could "invite friends in" for a game without subjecting themselves to criminal sanction. The social game exception did not expressly allow social games in public places like card rooms.

At the next legislative session in 1973, representatives of hotel, restaurant, and bar workers' unions, as well as representatives of private clubs, asked the legislature to amend the gambling laws to allow social games in business establishments. They informed the legislature that card rooms had been shut down due to the 1971 legislation and those closures had caused unemployment among waitresses, bartenders, card room attendants, and workers who made the

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).[4/]

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.

Legislative Counsel Rich Gatti testified that to remedy professional gambling and enforcement problems that "the broad definition" of social games had caused, he and the Attorney General's office had drafted a bill that deleted the provision allowing social games in public places and the corresponding income limitations on those places. *Id.*

In subsequent hearings, legislators voiced their support for allowing social games in businesses as well as private homes for the limited purpose of allowing people to play a social game of cards in a warm place where food was served. *See, e.g.*, House Judiciary Committee Minutes HB 3327 Hearing (HB 3327), February 18, 1974 at 3 (statements of Senator Keith Burns and Representative Grace Peck to that effect). Pat Randall, Representing the Oregon AFL-CIO, favored allowing only playing rummy and pinochle in taverns, as those games had been happening in bars in Oregon for many years. Minutes, House Judiciary Committee Special Session (HB 3327), February 20, 1974 at 1. The minutes from that meeting reflect the following remarks by Representative Paulus:

> [T]he last session of the legislature had amended the gambling law specifically to take care of the problem in the Portland area where the district attorney had raided and closed down all card games. The law as enacted by the 1973 regular session, she said, was doing exactly what the opponents of the measure had predicted – bringing big time, professional gambling into Oregon. The thrust of that amendment, as advanced by its proponents, was to allow exactly the type of gambling Mr. Randall was advocating, and the result was that in order to allow a few individuals to play a game of cards in the warmth of a tavern, the law had permitted organized, professional gambling to come into Oregon, which was not the intent of the legislature. The current problem had been forced upon the local governments by the action of the legislature, and she believed it was the responsibility of the legislature to undo the harm that had been done.

Id. at 2. Although various amendments were proposed, at the end of the day the legislature "undid the harm" caused by the 1973 legislation by continuing to allow social games in business establishments, but by amending the social game exception to prohibit the "house" from receiving *any* income from operation of a social game. Or Laws 1974 (spec sess), ch 7, § 1(now codified as ORS 167.117(21)). The amendment also expressly applies the "house" prohibitions to games in private homes.

In sum, the legislature never discussed what it intended "house" or any of the house prohibitions to mean, except the prohibition on house income. But its discussion of that prohibition reflects a clear intention to apply the prohibition to private businesses, private clubs, and places of public accommodation. Thus, the Assembly considered those places to be the "house." And even though the legislature's discussions focused solely on games in those places, it expressly applied the same prohibitions to games in private homes. It appears, then, that the legislature intended a broader definition of "house" than merely the business establishments where social games may occur. Finally, the history demonstrates that the legislature intended the prohibition on "house income" to prevent professional gambling and to make the gambling laws

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,

> without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefore and supplying cards or other equipment.

ORS 167.117(16). Assuming, however unlikely, that the house could ever qualify *solely* as a player, it is expressly prohibited from doing so. Thus, in addition to being prevented from making any income from *operation* of a social game, the house is prohibited from betting and becoming entitled to receive gambling winnings from competing in the game.

That prohibition prevents games where players bet against the house from qualifying as social games. For example, a bar, restaurant, hotel, private club, or any person who attempts to operate a game for profit could not supply a dealer in a blackjack game, because the house would be competing to receive gambling winnings. More broadly, the prohibition on a house player prevents the house from betting in any social game, even games where players bet against each other, rather than the house, because the house may never compete for gambling winnings.

4. "House bank"

Next, a social game may have no "house bank." Webster's contains several definitions of "bank" that specifically apply in the gambling context: (1) "GAMBLING HOUSE" [which, as discussed above, is a place where gambling is carried on or allowed as a business]; (2) "a person or persons conducting a gambling house or game; *specif:* DEALER"; (3) "the sum of money in certain gambling games (as chemin de fer) that is deposited or stated by the dealer as a fund from which to pay his losses"; and, (4) "the whole supply of chips available for purchase and use by players in a game played with chips (as poker)." WEBSTER'S at 172.

In addition, the verb "bank" in the gambling context means "to act as banker for (as a gambling game)." *Id.* And, "banker" in the gambling context has three meanings: (1) "the player who keeps, sells, and redeems the supply of chips used in a game – compare BANK (referring to the meaning of the whole supply of chips available for purchase and use by players in a game played with chips (as poker)"; (2) "the person who agrees to cover the bets of all players up to a certain limit established as the bank"; and, (3) "a dealer (as in blackjack) or a gambling house or its representative against whom all bets must be placed." *Id.*

The most natural meaning of "house bank" in this context is the house acting as the banker for a game. Some prohibitions on activities that the house might do as the banker are duplicative of other prohibitions. For example, the house player prohibition prevents the house from competing in a social game, thus, bets may not be placed against a house dealer. And covering bets or selling chips to the extent that the house would make a profit from doing so is precluded by the prohibition on house income. But we construe the house bank prohibition to go further and *to preclude the house from having any involvement in the financial aspects of a social game*, even if the house makes no profit from its involvement. This construction gives the house bank prohibition some independent meaning. For example, the house could not keep, sell or redeem chips in a social game, even if the house makes no profit from doing so. On the other hand, the house does not appear to be prohibited from simply supplying chips that the players

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 person who invites friends in for a social game in the person's home may bet in the game as long as the person is not operating the game for profit and may arrange the game and provide the necessary equipment as long as the person receives no fee or remuneration for doing so and plays on equal terms with the other players;

- Any social game players who deal in a game where the dealer has an inherent advantage, such as blackjack, must pass the deal and receive no fee or remuneration for dealing; and,

- All persons who bet in a social game must stand to gain only their own personal gambling winnings and no other profit from the game.

Sincerely,

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[1/] ORS 167.121 provides that "[c]ounties and cities may, by ordinance, authorize the playing or conducting of a social game in a private business, private club or in a place of public accommodation. Such ordinances may provide for regulation or licensing of the social games authorized."

[2/] Obviously, if no participants in a game are betting, the game does not meet the general definition of "gambling" and requires no legislative exemption or authorization to be lawful.

[3/] We also recognize that we have answered this question differently before. *See* Letter of Advice dated September 17, 1982, to Polk County District Attorney Doug Dawson (OP-5409) at 3-4 (rejecting that notion that a "dealer does not participate because he handles the cards, supervises and * * * inevitably works for tips"); Letter of Advice dated April 14, 1983, to Senator Fred Heard (OP-5460) at 5 (concluding that providing a role for anyone other than "players" – in that case dealers – "takes the activity out of the social gaming exception"). Those opinions were issued prior to *PGE* and *Gaines* and did not examine the issue using their methodology. To the extent that the opinions are inconsistent with this opinion, we overrule them.

[4/] Changes in statutory text over time are considered part of the context of the statute. *Krieger v. Just*, 319 Or 328, 336, 876 P2d 754 (1994). We discuss the change in statutory text in our discussion of legislative history, because the statutory change alone does not eliminate ambiguity and it makes more sense to do so.

[5/] Several gambling websites do discuss "house odds." A typical website explains "house odds" this way:

> 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.