March 29, 2017

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Testimony in Support of HB 2190

Members of the House Business & Labor Committee:

My name is Kelly Hinton and I am a former (5th) district commander for the American Legion (in the State of Washington which encompassed Southwest Washington (which included Clark, Skamania, Pacific, Cowlitz counties) as well as a former manager of a substantial non-profit bingo operation at Post 176 out of Salmon Creek.

I am testifying in support of this legislation.

While reading the recent story in Willamette Week by Nigel Jaquiss (see attached), I was struck by the fact that in Oregon, a social gaming permit could be an exceptional opportunity as a very large fund raising mechanism that could raise substantial monies for Legion programs, including Boys State, Girls State, Americanism and support of our hospitalized veterans in the Veteran's Administration system.

Lacking any administration of these card rooms and what amounts to zero serious oversight, administration and auditing of these for-profit card rooms; the idea that non-profits, which would be under the chartable administrative oversight of the State of Oregon, could not compete with organizations that seemed to be successfully ignoring the rules and ordinances

But it was also clear that there was no discernible way for Legion efforts to compete with the large operations which appeared to be ignoring the laws and ordinances governing social gaming permits with impunity.

This bill would address both the issue of ignoring the law in the running of these card rooms as well as opening up the market by leveling the playing field.

This bill would lend itself to administering non-profit card rooms by both the city and the state, which would help to insure that volunteer dealers are true volunteers; the games are scrupulously honest, that tipping is eliminated and that the handling of monies is regulated and transparent, unlike now with the for-profit card rooms.

Thank you for bringing this bill forward and offering non-profits the opportunity to benefit from this system.

Portland's Poker Rooms Are Licensed by the City, Wildly Popular—and Too Illegal to Last

The downfall and death of card-room impresario John Ogai reveals a maze of contradictory laws around gambling.

By Nigel Jaquiss |
5:35 AM

Evgeny "John" Ogai was a lousy poker player. Yet more than anyone, he established the game in Portland.

After visiting Las Vegas nearly a decade ago, Ogai, a slight, intense Russian-born entrepreneur, saw an opportunity. And in October 2010, he opened the Encore Poker Club at Northwest 16th Avenue near Glisan Street.

His wasn't the first poker club in Portland, but it was the first to draw big crowds. "When poker clubs started, they were cruddy, low-rent spaces," says Steven Harper, a longtime local poker player.

Not Encore. Ogai went upscale. He leased a 5,500-square-foot-space along the western edge of the Pearl District, renting it for $88,000 a year.

Ogai told people he spent $30,000 on the restrooms alone. He bought padded leather chairs and stocked top-shelf liquor.

He became the first in Portland to capitalize on tournament poker, attracting a large and regular group of players to Encore.

"It was by far the most professional place in town," says Grant Denison, a longtime Portland poker pro. "It was packed all the time."

Final Table. (Natalie Behring)

Ogai's success inspired competitors. More than a dozen poker rooms have operated in Portland since 2010—a little slice of Vegas in Stumptown.

Although licensed, Encore and other poker clubs appear to have operated in violation of the law for years, thanks to inattentive regulators.

But the clubs' heyday is over.

Portland poker faces extinction because of a lethal combination—aggrieved competitors across the Columbia River and energized government regulators who have finally mastered a legal framework more complicated than the permutations of Portland's poker game of choice, Texas Hold 'em.

Unlike the shadowy underground clubs featured in movies such as *Rounders*, Portland poker clubs are licensed by the city and the Oregon Liquor Control Commission and operate out in the open.

Yet officials say nearly everything about them regularly violates city ordinances and state law.

Illogical as it may seem, the clubs are both legal and yet operating illegally.

Maybe you've never played poker or hate gambling. But the issues facing Portland's 13 licensed poker clubs illustrate the dilemmas of the "gig economy," which is characterized by short-term contracts and freelance work.

Like other businesses that operate in gray areas—such as cannabis before legalization, and Airbnb today—poker clubs' existence raises a question: If companies operate outside the law, is that a reflection of poor enforcement or archaic laws?

Competitors say the appropriate response is clear—shut them down.

But lobbyist Geoff Sugerman, who helped Ogai derail a 2013 bill that would have killed poker outright, says laws prohibiting willing participants from competing against each other in a game of skill are the problem.

"It makes no sense at all in the modern context of how poker really works," Sugerman says. "The laws are completely outdated."

Next month, Portland poker goes on trial at a city hearing, where Portland's two biggest clubs will for the first time formally address the conflict between what's allowed and what's actually happening.

But Ogai, the man who did more than anybody to popularize poker in this town, won't be there.

He killed himself last year after losing a legal battle that put his club out of business.

Although Final Table, a poker club on Southeast 122nd Avenue shown here March 10, faces a city license suspension, players just want to play. (Natalie Behring)

Across Portland, a handful of the city's licensed poker clubs are following Ogai's focus on tournaments.

They draw an estimated 500 to 600 hardcore players, and thousands more who play semi-regularly.

The clubs are also—according to interviews with players, recent city inspections and a reporter's observations—breaking numerous laws.

A recent Friday night at Final Table, the biggest poker club in East Portland, illustrates the paradox.

As the clock ticks toward midnight March 3, nearly 300 players fill a room that smells like a mixture of air freshener, fear and fryer grease.

Located in a gritty strip mall on Southeast 122nd Avenue, just south of Division Street, between a Pizza Baron and an O'Reilly Auto Parts, Final Table is a long way from Vegas.

Dusty curtains cover the windows, and worn linoleum covers the floors. There's little decoration other than a framed poster of James Dean that reads, "The only greatness for man is immortality."

Menu choices include $5 Coors Light drafts, Rockstar and Red Bull energy drinks, and the $12 house special: tonight, a bacon-wrapped chorizo sausage with a side of mac 'n' cheese and a soft drink, delivered right to the poker table.

UFC brawlers battle silently on big screens lining the walls. A uniformed security guard watches the door, aware that there are tens of thousands of dollars in cash on the premises. Professional dealers shuttle from table to table, carrying their own decks and seat cushions.

On this night, players are competing in a $20,000 prize tournament that will continue long after the sun rises. Dozens of others play in a cash game of no-limit Texas Hold 'em, in which pots for single hands can top $1,000.

The players are ethnically diverse but nearly all male. They will lock in at the tables for eight hours or more, drifting away occasionally for a smoke, a restroom break or an ATM infusion.

There's grumbling among players—management posted a sign raising the cover to $15, after keeping it at $10 for years. That's painful if you're a regular who comes in a dozen times a month, and many do.

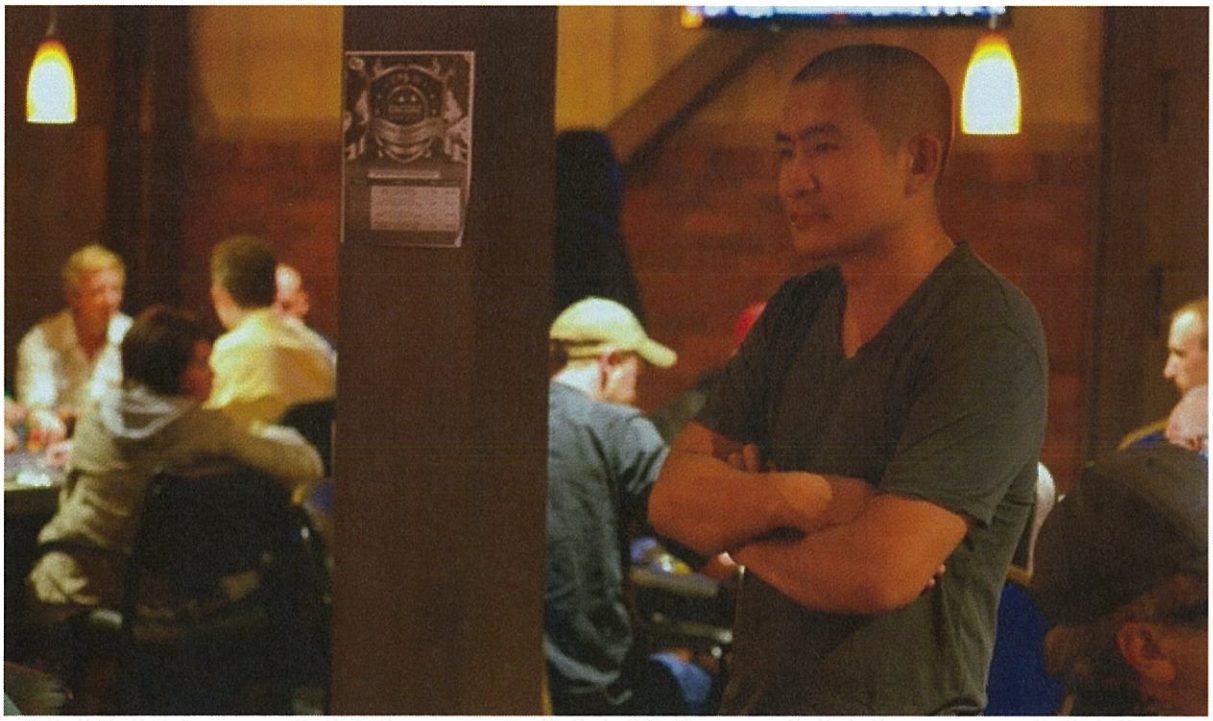
A sign on the door explains the price increase.

"We have waited to raise our fees for as long as we could," reads the message. "But it has become apparent that doing so is necessary if we are going to continue to keep our doors open."

The club is raising money for lawyers and its April showdown with the city of Portland.

That showdown has been inevitable since the city began licensing clubs in 2008, because poker is in direct conflict with numerous city and state legal prohibitions (see "House Rules," below).

But John Ogai didn't see it coming.



John Ogai in 2014 at Encore Poker Club.

After graduating from Portland State University in 2001 with a degree in information technology, Ogai sold used computers online, brokered real estate, launched an internet startup for language translation, and tried to perfect a dating app.

"He was constantly looking for investments," said a friend, Chris Vetter. "He was looking at starting a soda company. He called the drink 'Sex.'" (Vetter died of complications related to diabetes in February.)

Ogai frequented high-end restaurants like El Gaucho and Andina. He spoke with an accent and was often blunt to the point of rudeness.

"He liked vodka," Vetter said. "He was Russian to the core—not very communicative or emotionally expressive."

Typical of Ogai's bluntness was an email exchange with a former Encore waitress named Kristen Shull, who questioned his management style. She posted his reply on Facebook.

"I work hard. I play hard," Ogai wrote. "I spend my hard earned money however the fuck I please... so fuck off, Kristen."

In 2009, Ogai bought a North Portland bar called the Six Point Inn. That's where he got his start in poker, running an unlicensed game. (Ogai had no criminal record, although documents show Portland police investigated a rape accusation against him in September 2010. The case was dropped when the alleged victim stopped cooperating.)

Ogai took what he learned about poker at the Six Point Inn and applied for a social gaming license in 2010, soon after the city opened the door to poker clubs.

Televised coverage of the World Series of Poker had generated national interest, catapulting Texas Hold 'em beyond casual games and some illegal, big-money games between serious players.

Although Oregon law prohibits non-tribal casino gambling, in 1973 state lawmakers passed a "social gaming" statute to allow nonprofits and private clubs to host poker games. Portland started licensing poker clubs in 2008.

"Before the issuance of permits, poker was 'underground' and could be a dangerous activity," Terri Williams, deputy director of the Portland Revenue Division, which licenses poker, says in a statement. Williams adds that her bureau expected the clubs to follow the law. "Business plans submitted did not indicate these violations would take place."

The early Portland clubs were sketchy, attracted few customers and had a high failure rate.

Numerous players say Ogai revolutionized the business when he opened Encore. Part of his success certainly stemmed from having an attractive club in a central location.

But more important was his decision to organize big-dollar tournaments, which attracted hundreds of players.

In tournament poker, dozens or even hundreds of players pay a fixed entry fee, say $100, for the right to play for a pot of $10,000 or $20,000. The enticement of those big pots—which Ogai would eventually increase to more than $100,000—brought players from all over the metro area and even from other states.

Before Portland began licensing poker clubs, players seeking a legal game had to drive to card rooms in La Center, Wash., or to a tribal casino. Ogai offered the same experience, but right here in Portland. And, crucial to his success, he didn't charge players a per-hand tax known as "the rake" (see "Raked," page 15).

He also opened Encore at just the right time.

April 15, 2011, is known among serious poker players as "Black Friday." On that day, the U.S. Department of Justice shut down the three biggest online poker sites, leaving players throughout the U.S. with fewer places to play. "It was a very dark day for poker players," says Denison, who until Black Friday earned a living without leaving his couch.

By 2013, Encore and other Portland clubs were booming. Online players migrated to the clubs, and Encore's tournaments grew ever larger.

Ogai had a steady flow of door fees and captive customers for his bar and grill. He told friends he was grossing $1 million a year.

"It feels like I have won the biggest tournament of my life so far," Ogai wrote on his LinkedIn page that year. "Luck was on my side all the way."

He was, perhaps, too successful.

The Encore Poker Club in Northwest Portland before it closed. (Sean Gentry)

Portland clubs were taking business away from card rooms in La Center. George Teeny, who owns two La Center card rooms, hired Portland lawyer Thomas Rask and a team of lobbyists, who went to Salem and argued that the Portland poker clubs were breaking the law.

"These places are just entirely illegal," Rask says. "They just cannot exist."

Rask pleaded his case to state lawmakers. They introduced a bill to limit poker rooms to nonprofits, such as an Elks Lodge or American Legion chapter, but it went nowhere. Then Rask voiced concerns about the all-cash business to the Internal Revenue Service, the Oregon departments of Justice and Revenue, and city officials, including the Portland Police Bureau. He even sued the city for failing to enforce its ordinances but lost at the trial, appeal and Oregon Supreme Court level.

Typical of the responses was a May 5, 2014, email from Capt. Mark Kruger, commander of the Police Bureau's Drugs and Vice Division, to the City Attorney's Office. "Gambling," Kruger wrote, "is not within our priorities."

But the fact is, Rask was right. Ogai and his peers were regularly violating state laws that prohibit poker clubs from acting as a bank, allowing bets larger than $1, running cash games, or earning money from holding games.

In the end, however, it wasn't Ogai's competitors that brought him down. It was his own dealers.

The owners of Final Table and Portland Meadows poker clubs are mum on the legal strategy that will keep them in business. (Natalie Behring)

Oregon law pertaining to poker is complicated, but the upshot is pretty clear: Poker clubs can exist if they follow certain rules. One of them involves dealers.

Poker clubs are not allowed to employ them. State law specifies that the game has to be "between players," meaning there cannot be professional dealers like the ones casinos employ.

For years, dealers at Encore and other Portland clubs were not paid by the clubs, but rather earned between $20 to $40 an hour in cash tips. It was up to them whether they reported their income to the IRS.

Encore had as many as 50 dealers working regularly at the club, records show.

In 2015, one of them filed a complaint with the Oregon Bureau of Labor and Industries, claiming Ogai owed him back pay and overtime.

Ogai said the dealers were volunteers who managed themselves.

"We are a bar/restaurant that attracts its clientele through offering poker tournaments," he wrote to a BOLI investigator on July 31, 2015. He said he'd scrupulously followed city rules, "including their explicit ban on hiring dealers as employees."

The dispute mirrors similar worker battles in Oregon—including fights waged by strippers, yoga instructors and Uber drivers. The question of who is and isn't an employee is at the heart of the gig economy, in which workers enjoy more freedom but have fewer legal protections. When there's a workplace dispute, BOLI decides the case.

After the agency investigated the dispute at Encore, it concluded dealers were in fact employees. In June 2016, it notified Ogai it planned to fine him $59,000. BOLI acknowledged that dealers were not on the poker club's payroll. But the fact that Ogai controlled who worked, when they worked and how much they got paid made them employees under the law.

BOLI's ruling had an impact on the city of Portland. Previously, city licensing staff had responded to complaints about poker clubs in a piecemeal fashion, but now they jumped on the issue of professional dealers.

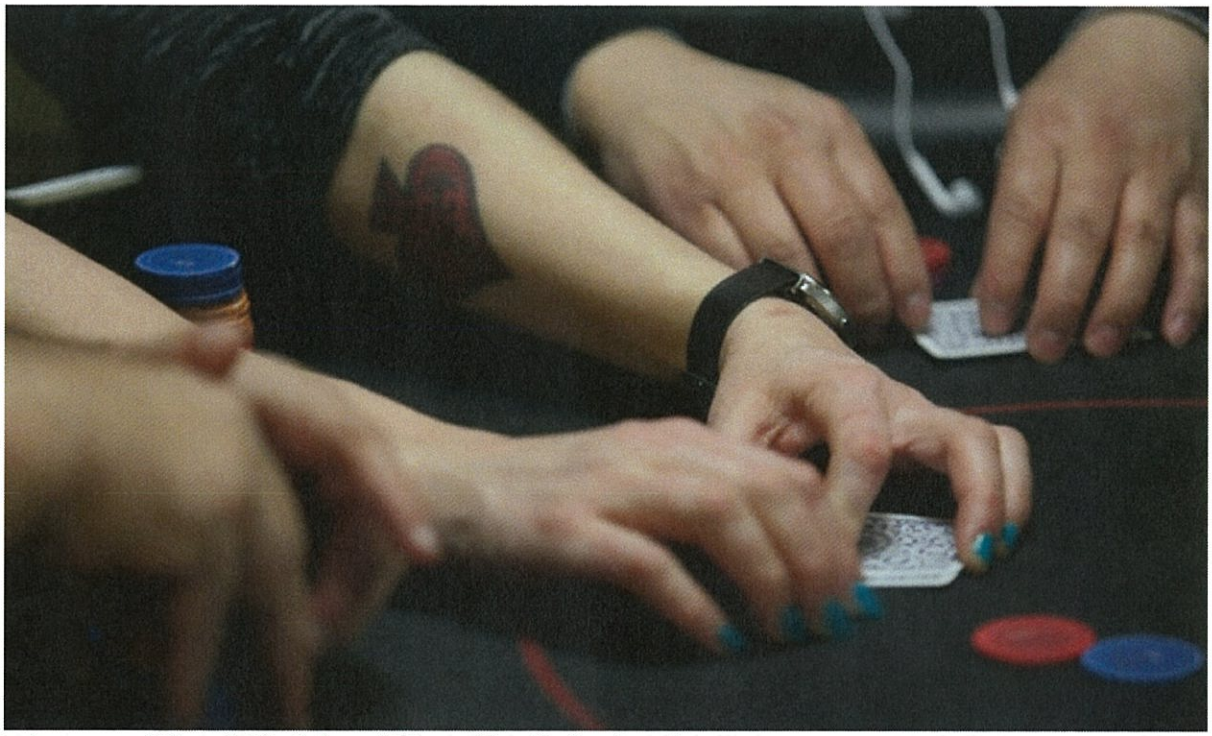
A month after BOLI's ruling, Anne Holm, who issues social game permits for the city, issued an ultimatum.

"Designated dealers are not allowed," Holm wrote to Ogai and other club owners on July 12, 2016. "The dealer must rotate among players." In other words, Holm said clubs could not have dealers who weren't also players.

Typically, poker players focus on playing, not dealing. Professional dealers manage what can be a complex and contentious game without having a financial interest in who wins.

Ogai delivered the bad news on Facebook to his customers.

"This rule effectively puts all of the social gaming in Portland out of business," he wrote on July 14, 2016. "In light of this, [Encore] is closing its doors effective today."



Poker at Final Table. (Natalie Behring)

Little more than a month after Encore shut down, Vetter, Ojai's friend, delivered stunning news on a 1,500-member Facebook page for local poker players: Ogai was dead.

The report puzzled the poker community—Ogai was a trim and vigorous 38 years old.

A police report obtained by *WW* from the Washington County Sheriff's Office provided an explanation: On Aug. 29, 2016, Ogai fatally shot himself.

Ogai's mother told a responding officer that for the previous month, Ogai had been severely depressed since "his business, the Encore Poker Club, had been shut down."

Despite the city's letter and Ogai's interpretation that it meant the end of legal poker in Portland, many of the city's other poker clubs conducted business as usual.

In fact, just a few months before Ogai's suicide, Portland Meadows started its own poker club.

In the fall, the city licensing office decided to step up enforcement, sending undercover private investigators into four clubs.

Records show the investigators visited each club three times and focused on the violation that took down Ogai—professional dealers.

On Dec. 16, the city proposed a penalty: The clubs would have to close for two weeks and begin complying with the law. Two clubs accepted the suspension. Final Table and Portland Meadows will fight the city at an April 17 hearing.

The owners of both clubs declined to comment, but their attorney, Joe Mabe, says they are seeking a positive resolution.

"My clients remain committed to operating social gaming clubs that are consistent with the city's oversight and regulation," Mabe says, "so that our community can continue to enjoy poker at safe, secure locations."

The Revenue Division's Williams says the best solution would be to simply shut down the game in Portland. "That would eliminate the gray area," Williams says. "And then it would be a police issue."

That would please Washington state's card rooms. But players say it would simply force Portland poker underground, where it flourished before licensing. That would be a little bit like criminalizing marijuana again.

"We'd go back to having what are effectively illegal casinos," says Mark Humphrey, Ogai's attorney in the BOLI investigation.

Denison and Levy, who produce a weekly poker podcast, say that as with marijuana, the better approach would be legalization, regulation and taxation.

The players say the demise of Encore and Ogai reveals a double standard. The Oregon Lottery promotes its product with the zeal of a carnival barker and is the state's second-largest revenue source, bringing in more than $500 million a year. Native American casinos across Oregon beckon gamblers. Horse and greyhound racing are legal, as is off-track betting. And every office tolerates gambling on fantasy football and NCAA Tournament basketball.

Yet poker is effectively illegal.

"From the player's perspective, it feels like hypocrisy," Denison says. "State-funded lottery is everywhere. Why not poker?"

Final Table. (Natalie Behring)

House Rules

Portland's poker rooms are licensed and operating openly. Yet several of their practices appear to violate the law.

- The "house" cannot act as a bank. A 2010 Oregon Department of Justice opinion—requested by the Oregon Lottery, a competitor of poker rooms—found that "acting as a bank" meant "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."

So, a player can't even legally exchange cash for chips, a practice in place at every Portland poker club.

- The city of Portland's social gaming ordinance says, "No player shall bet more than $1 in money or other thing of value in any one game."

In practice, players can't bet less than $1 per hand and usually bet substantially more.

- Clubs are also prohibited by city code from making money "from the operation of a social game."

Portland poker clubs earn money in two ways: by selling food and drinks to players, and by charging an entry fee, typically $10 to $15.

Yet the city says clubs cannot legally charge patrons a door fee if they are coming to the clubs only to play poker—doing so violates state law prohibiting "house income."

- Poker clubs are not allowed to employ dealers.

Dozens of dealers manage the games at Portland's card rooms. Operators dodge the rule by declaring the dealers independent contractors.

But the state disagrees—a big reason Encore Poker Club folded.

Portland Meadows (Natalie Behring)

Raked

When Hold 'em players go to Las Vegas or La Center, Wash., or visit one of Oregon's eight tribal casinos, to play a cash—i.e., non-tournament— game, the house takes a per-hand charge that players call "the rake."

But at Portland clubs, there is no rake—just a door charge, after which players can play until they drop or run out of money.

Jonathan Levy, a Harvard-educated autism consultant who made his living playing poker for the past decade in Portland and Las Vegas, says that, for regular players, not charging a rake is a "very significant" part of the appeal of Portland poker clubs.

The rake acts as a per-hand tax that quickly diminishes winnings. A player might play 30 hands per hour and sit for eight hours. That's 240 pots, and with the rake, the house gets a piece of all of them. Not in Portland.

Jeremy Harkin, a local poker pro, travels widely for tournaments. "The beauty here is, they don't take any money out of the pot," Harkin says. "People all over the country are amazed when I tell them we play rake-free poker in Portland."

Here's how the rake works: At a poker club in Portland, you pay $15 to get in the door and can play as long as you want, say, eight hours. If you played the same amount of time at a casino, where the house takes, for example, $4 from every pot, the math is much different: $4 times 30 hands an hour times eight hours divided by 10 players yields a cost of $96 per player for the same amount of poker.

The Long Game

Portland has a long and sordid history with gambling. Here are some key dates.

1904: *The Evening Telegram* reports, "Portland had five of the biggest gambling houses in the U.S."

1948: Mayor Dorothy Lee attacks Portland's organized crime, whose roots are "slot machines and punchboards."

1956: After a massive corruption scandal, Portland voters outlaw pinball machines that pay cash prizes.

1973: Lawmakers legalize "social gaming," i.e., nonprofit gambling for fun rather than money.

1984: State voters approve creation of the Oregon Lottery. Portland passes a social gaming ordinance that allows some card games.

1988: Federal law legalizes casinos on Native American reservations.

1994: The Cow Creek tribe opens Oregon's first Indian casino in Canyonville.

2008: Portland begins licensing poker clubs.

2016: BOLI rules that Encore Poker Club's dealers are employees. Encore closes.