

## REPORT

on

# PROHIBITING PINBALLS, CERTAIN OTHER MECHANICAL GAMES

AN ORDINANCE prohibiting all varieties of pinball games, digger machines and other electrical or mechanical amusement devices containing any inherent element of chance, bonus or prize, exempting transportation and warehousing and certain repairs for use outside city, but not prohibiting music, vending or service machines.

TO THE BOARD OF GOVERNORS  
THE CITY CLUB OF PORTLAND

An ordinance which prohibits all forms of pinballs and similar devices within the city is to be submitted to the voters of the City of Portland at the Municipal Nonpartisan Primary election and Special Municipal election on Friday, May 18, 1956.

## BACKGROUND

### State Regulation

All lotteries are prohibited by Article XV, Sec. 4., Oregon Constitution, and by state statutes, ORS 167.405 et seq. The word "lottery," as used in anti-gambling legislation, is generally construed by courts as including many things not considered to be a "lottery" within the ordinary meaning of the word. In 1938, the Oregon Supreme Court held, in *State vs. Coats*, 158 Or. 102, 122, that a pinball game a person paid to play, that paid out in cash when the ball dropped in a winning hole, and on which the player could not exert control over the ball after starting it in motion, was a lottery and was therefore illegal.

The only state anti-gambling statute specifically mentioning pinball games is ORS 167.555, which states:

"Regardless of whether their operation requires an element of skill on the part of a player, all games of chance such as slot machines, dart games, pinball games, or similar devices or games, when operated or played for a profit, either in cash, merchandise or other article of value, hereby are declared unlawful, and their licensing is prohibited."

In 1940 the Oregon Supreme Court held in *State vs. Fuller*, 164.383, that a pinball game played for amusement only, on which there was no opportunity for the player to win a prize in cash or merchandise, was not a lottery and did not violate any of the above statutes.

In addition to the state statutes already mentioned, ORS 167.505, aimed primarily at prohibiting gambling on cards, dice and roulette, and ORS 167.535, aimed primarily at prohibiting gambling on slot machines, contain general language that may be broad enough to cover gambling on pinball games. Each state anti-gambling statute carries its own penalty for violation, ranging up to a fine of \$1000 or imprisonment for one year for the first offense of carrying on a lottery, and imprisonment for three years for the second offense.

### City Regulation

On July 10, 1951, the City Council enacted an ordinance, Sec. 16-1129 of the Police Code, which prohibits certain coin-in-the-slot mechanical games and devices, including pinball games. Shortly thereafter, litigation was instituted challenging the power of the

City to enact such an ordinance, and ultimately the Oregon Supreme Court held that the City had such power. The case was then taken to the United States Supreme Court, but that tribunal declined to consider the case and the litigation was finally terminated in 1955. During the time this litigation was pending, an injunction prevented the City from enforcing the ordinance.

Prior to the lifting of the injunction, Portland pinball machine owners and operators installed various devices on the pinball machines so that the machines could be operated without using the coin-in-the-slot mechanism and the coin slots were plugged or covered over. The pinball games in operation today are of this type. When a person wishes to play a pinball game, he pays his money to an attendant who by means of a key or other device adjusts the control mechanism to permit the player to play the number of games for which he has paid. The City contends that the "coinless" pinball games as presently operating violate Sec. 16-1129 of the Police Code, while the pinball machine owners take the opposite position. This issue is presently before the Multnomah County Circuit Court in a suit brought by a pinball machine owner, Lou Dunis, for a declaratory judgment determining whether Sec. 16-1129 does or does not prohibit "coinless" pinball machines.

In addition to Sec. 16-1129 of the Police Code, the City has a general, anti-gambling ordinance, Sec. 16-1102 of the Police Code, which appears broad enough to cover gambling on pinball games.

### THE PROPOSED ORDINANCE

Because of the possibility that the courts will decide that a "coinless" pinball machine is legal under Sec. 16-1129, Commissioner Earl, in the summer of 1955, presented to the City Council the ordinance now before the people. Mr. Earl attached an emergency clause to the ordinance as first introduced, in order to prevent a referendum. The Council passed the ordinance, but without the emergency clause. In due course, referendum petitions were filed and the ordinance was referred to the people for their approval or rejection in the forthcoming election.

The proposed ordinance would prohibit the use and operation of "any mechanical or electrical game or amusement device which contains any element of chance, bonus or prize inherent in such game or device." The ordinance specifically permits, however, the transporting, warehousing and repairing of such machines for use outside the City, and also specifically permits operation of music and vending machines. The proposed amendment to the Police Code is supplementary to Sec. 16-1129 and does not amend, modify or repeal that section.

Should the proposed ordinance be defeated, the future operation of pinball machines will depend on the decision of the courts as to whether the "coinless" pinball game violates Sec. 16-1129.

### SCOPE OF STUDY

In the course of your Committee's study of the proposed ordinance, the following individuals were interviewed: Stanley Earl, City Commissioner; David H. Brewer, Assistant City Attorney; Stan Terry, Coin Machine Men of Oregon; Lloyd Hildreth, representative of the International Brotherhood of Teamsters, Miscellaneous Driver's Local No. 223; Ron Moxness, public relations; Miles Brandon, Oregon Licensed Beverage Association; Clyde DeGraw, Dekum Tavern; J. E. Bennett, former City Commissioner; Joe Dobbins, President, Committee to License Pinballs.

In addition your Committee contacted Judge Virgil H. Langtry, Court of Domestic Relations; Gus B. Lang, Administrator, Multnomah County Public Welfare; Wallace Turner and Herbert Lundy, the *Oregonian*. Members of the Committee also observed pinball play in various locations in the City.

## Arguments Advanced in Favor of the Proposed Ordinance

1. LAW ENFORCEMENT — The Oregon Constitution and statutes and city ordinances contain anti-gambling provisions rendering it unlawful to "pay off" on pinball games. Enforcement of these laws is extremely costly and time-consuming. As a result,

it is impractical to control illegally operated pinball games. Policing problems are greatly simplified by making the mere physical possession of pinball machines illegal.

2. **CITY COUNCIL'S INTENTIONS** — Litigation now in the court seeks to establish the legality of "coinless" pinball machines under the 1951 ordinance. It was the City Council's intention in 1951 to ban any and all types of pinball machines regardless of whether or not a "pay off" is involved and the new ordinance merely restates this intention in terms so drawn up as to "plug" all possible legal "loopholes" in the 1951 ordinance. If the court should rule that "coinless" pinball machines are not banned by the 1951 ordinance, they would still be banned by the new ordinance.

3. **ESTABLISH PUBLIC MANDATE** — A favorable vote on the ordinance under consideration would indicate that the citizens of Portland support the Council's stand on the pinball problem.

4. **RACKETEERING** — Allowing the illegal operation of pinball machines provides a foothold for organized criminal syndicates. In seeking to maintain and increase their illegally earned profits, organized gambling interests attempt to control candidates and elections and encourage the breakdown of law enforcement by payment of graft for protection. Accomplishment of these goals by the gambling interests would result in the introduction of other forms of gambling and illicit operations to the detriment of the majority of law abiding Portland citizens. Recent revelations of organized gambling activity as reported in the local press indicate the existence of such organized gambling interests.

5. **PERSONAL ECONOMIC HARDSHIPS** — Many homes are broken up because the wage earner squanders all or considerable portions of his income on pinball machines. Dependents of such individuals are often forced on public welfare rolls for financial assistance.

6. **EFFECT ON YOUTH** — If pinball machines are allowed to operate freely in the City, minors will have free access to these machines in local grocery and confectionery stores and would be encouraged to gamble away their money.

7. **PINBALLS ARE FRAUDULENT DEVICES** — The "sucker" doesn't have a chance to win on a pinball machine.

8. **MORALITY** — Pinballs are a gambling device and all gambling is immoral and should be prohibited by law.

## **Arguments Advanced Opposing the Proposed Ordinance**

1. **ECONOMIC LOSS** — Many taverns, small restaurants, cigarette shops and other small business enterprises are dependent on pinball machines for a supplementary, if not major, portion of their income.\* In addition to the proprietors and employees of these establishments, other individuals earn their livelihood through the servicing of these businesses. Loss of pinball income would force the closure or reduce the operations of many of these small establishments. As a result, large numbers of culinary workers, truck drivers, salesmen and warehousemen would be deprived of a livelihood.

2. **LOSS OF TAX REVENUE** — Since 1951 the City has lost over \$600,000 in tax revenue by refusing to accept the license fees tendered by the pinball operators. Refusal to accept these fees has thrown an additional burden on the already hard-pressed taxpayers of the City of Portland. With taxes continually on the increase, the City should not deprive itself of any source of tax income.

3. **DOUBLE STANDARDS** — Gambling in the form of horse racing and dog racing is authorized under the state constitution. It is an act of discrimination to point out the pinball machine for public opprobrium. Far more money is squandered on dog racing in the City of Portland than is spent on pinball machines. Authorities overlook gambling in the form of lotteries conducted by churches and other groups. In a like manner various forms of gambling are allowed to exist in the numerous private social clubs in the city.

\*There are approximately 2000 pinball machines in operation within the Portland city limits. Estimates of the annual revenues received from these machines as reported to your Committee ranged from about \$850,000 to \$10,000,000. Your Committee has no means of determining the accuracy of any of these estimates.

Since the local tavern serves as the workingman's club, banning pinball machines deprives its patrons of relaxation and amusement to which they are as much entitled as members of private clubs.

4. **FREEDOM OF THE INDIVIDUAL** — The ordinance is an unwarranted invasion of the freedom of the individual to enjoy recreation of his own choice.

5. **SCOPE OF THE ORDINANCE** — The proposed ordinance is faulty in that the broad wording of the ordinance bans many other types of entertainment devices such as shuffleboards, mechanical pinsetters in bowling alleys and other amusement devices.

## DISCUSSION

1. Pinball machines are supposedly played "for amusement only," and every machine is so labeled. Rewarding a player in cash or merchandise for his play or score violates state and city anti-gambling statutes and ordinances. Nevertheless, it is the general practice in the City of Portland to "pay off" on pinball play. While an occasional individual might play a pinball machine in order "to watch the pretty lights flash on and off," the average player anticipates the possibility of running up a winning score and "cashing in." Most pinball operations are violating the law and are illegal under existing state statutes and city ordinances. No witness before the Committee denied this fact.

2. To prosecute successfully, there must be evidence of "pay off" and the only way practical to obtain such evidence is for the arresting officer to witness the "pay off" and so testify in court. While there may be some degree of validity to this argument, your Committee has concluded that law enforcement officials, except for sporadic activity have demonstrated little desire to clamp down on illegal pinball operation.\* Committee members had no difficulty in witnessing pinball "pay offs" at various locations, and they assume that law enforcement personnel would find it no more difficult to do the same, at an expense of time and money commensurate with that required for other enforcement activities.

Although a license to serve alcoholic beverages may be revoked for illegal activity on the part of the licensee, and although gambling is illegal, nevertheless, illegal pinball operations in local taverns apparently continue unmolested.

3. It has been pointed out to your Committee that a number of taverns, small restaurants and other establishments are dependent on the income received from pinball operations, as, indirectly, are the individuals employed in servicing these establishments. The sale price of these establishments is in part determined by the anticipated income from pinball games. It is said that removal of pinball machines and the subsequent loss of revenue would force the closure of many of these small establishments and deprive a number of individuals of their livelihoods. No person has a vested right to continue operation of any enterprise which may be considered to be inimical to the public interest, and anyone entering into a business dependent to any degree upon receipts from such activities must be assumed to do so with the knowledge that governing laws and regulations are subject to change and that enforcement of these laws might at any time deprive him of this income.

No governmental body should become dependent to any degree upon revenues obtained from the licensing or taxing of any illegal activities. To use the argument that pinball machines are a source of revenue and for that reason should be allowed to operate would suggest that the city encourage other types of illicit operations in order that they too may be subjected to taxation.

4. It is asserted that leaders in the Teamsters Union control the local pinball "industry." Establishment of such control supposedly follows a pattern reported developing elsewhere in the county. (See Appendix A.)

The original ordinance banning pinball operations was passed by the City Council on July 1, 1951. While pinball interests have resorted to litigation in an effort to circumvent the intentions of this ordinance, it is undeniable that the City Council originally intended to ban any and all types of pinball machines. It was subsequent to the passage of this ordinance by the City Council that the pinball operators were taken into the Miscellaneous Drivers Local No. 223 of the International Brotherhood of Teamsters. Your

\*In 1955, sixteen arrests were made. In 1956, two arrests have been made.

Committee is unable to understand or justify the reasoning by which a recognized labor organization would associate itself with any type of "fringe" activity, especially one whose very existence is maintained only by the drawnout process of judicial procedures.

5. Your Committee questions the moral attitude of the City Council in presenting an ordinance which states that the operation of pinballs within the City of Portland is an evil thing and therefore would prohibit such operation, while at the same time the ordinance by allowing the warehousing, transporting and repairing thereof, fosters the operation of pinball machines anywhere beyond the city limits.

6. The ordinance would apply against any person who as proprietor, lessee, lessor or employe (or agent of any of them), or as operator, user or player, shall perform any of the following prohibited acts within the city: maintain, control, lease, use, operate or play (or allow any of such acts as to) any of the games or devices described in the next paragraph.

The machines against which the ordinance is directed are those which possess the following characteristics: (1) games or amusement devices which are either mechanical or electrical; (2) games or amusement devices which contain any element of chance bonus or prize; (3) the element mentioned in (2) must be inherent in the game or device described in (1).

The key to the understanding of the ordinance lies in the use of the word "inherent" — which merely means that the thing itself (the element of chance, bonus or prize) is intrinsic to the machine or device and necessarily exists within it. If a machine or device even though mechanical or electrical does not necessarily contain within itself an element of chance, bonus, or prize, it is not banned by this ordinance.

The type of game or device aimed at is that which by its very nature and operation must put into play any of the elements of chance or gain or prize. That this is the intention of the ordinance is indicated by the express provision that the ban would include pinball games and digger machines or grabbing devices but shall of course not be limited to them, and also by the express provision that it would exempt music devices or mechanical or electrical devices vending, supplying or measuring services, commodities, merchandise or privilege, unless, of course, there be an inherent element of chance, bonus or prize therein. The acts banned by the ordinance do not include the following: (1) warehousing such games or devices at a warehouse devoted solely to warehousing or to warehousing and repairing; (2) transporting such games or devices; (3) repairing such game or device for use outside the City of Portland, but such repair shall not be done at a retail establishment unless such establishment is devoted exclusively to repair service.

7. The question arises as to the justification for banning pinball machines when gambling on horse racing and dog racing is sanctioned by law and police authorities overlook other types of gambling. If pinballs are to be banned simply because they may be used for gambling purposes, why not playing cards? They certainly could be and are used for gambling.

The majority of your Committee does not feel this comparison to be analagous. It is a fact accepted by our entire Committee that pinballs generally "pay off." These "pay offs" violate anti-gambling statutes and ordinances. This means that the pinball machines in the city are being operated in violation of the law. Organized illegal activity of any sort encourages the creation of a system of buying protection from those charged with law enforcement. Once developed, such a system paves the way for general graft and corruption of enforcement authorities, and an extension of illicit operations.

Justification of the proposed ordinance must be viewed in light of the existing situation. With this viewpoint in mind, the majority of your Committee considers the proposed ordinance to be a reasonable exercise of the Council's "police power."

### MAJORITY CONCLUSION

A majority of your Committee concludes:

1. That, in general, pinball machines are operated in an illegal manner.
2. That such illegal operation creates an environment conducive to the corruption of law enforcement personnel which provides a wedge to be used in expending illicit activities.
3. That law enforcement personnel are not actively enforcing the anti-gambling statutes and ordinances affecting pinball play in the City of Portland.

4. That by absolutely prohibiting pinball machines, there should be no difficulty in enforcing the law.

5. That the proposed ordinance would ban only pinball machines, digger machines and similar devices, and its wording is not to be construed as outlawing shuffleboards, mechanical pin setters in bowling alleys, toys, and other amusement equipment.

6. That while the proposed ordinance is not perfect, the advantages accruing from its passage outweigh its faults.

### MAJORITY RECOMMENDATION

The majority of your Committee recommends that the City Club go on record as favoring the passage of the ordinance, and urge a vote of 53 X Yes.

Respectfully submitted,

BRUCE H. RUSSELL

WM. K. SHEPHERD

BYRON L. VAN VLEET

MORTON T. ROSENBLUM, *Chairman*

### Minority Report

In the opinion of the dissenting member of the Committee, the primary objection to the proposed ordinance is that it would constitute unwarranted governmental interference with the freedom of the individual. This conclusion is based first of all on the principle that the American system of government permits and tolerates any conduct on the part of an individual that does not infringe upon the personal or property rights of others, or violate the moral standard of the community; and, secondly, upon the corollary to that principle, that any attempt by government to prohibit conduct that neither infringes on personal or property rights, nor violates the community's moral standard, should be resisted.

It is not out of place to note in passing that one of the basic differences between our system of government and the police-state system, is that we seek to preserve the freedom of the individual wherever possible, whereas the police-state disregards individual freedom. Under the police-state system a law can be justified solely because it makes the policeman's job easier, but not under the American system.

Before reaching a decision on the merits of the proposed ordinance, it is necessary to determine exactly what change in the law it would produce. Gambling and paying off to a winner on a pinball game are already prohibited by state law and city ordinance, and will continue to be prohibited by other laws whether this ordinance is adopted or rejected. The only significant change in the law that would result from passage of this ordinance is that playing a pinball game without gambling on it would be prohibited, and maintaining a pinball game without paying off to winners would be prohibited.

It would appear that such conduct on the part of an individual could not possibly infringe on the personal or property rights of others, nor violate the moral standard of the community, and that the ordinance should therefore be rejected.

There may be rare circumstances when the prohibition of innocent conduct can be justified on the ground that such prohibition is necessary in order to protect the public from some great danger, but such prohibition violates basic principles and resort should be had to such a prohibition, if at all, only in extreme circumstances. An illegal five cent wager on a pinball game does not appear to be such a great danger to the public, particularly in a community that has legalized betting on horse and dog racing.

For the sake of simplicity, the minority report thus far has treated the proposed ordinance as though it only applied to pinball games of the type that a person pays to play. The fact that the ordinance is much broader than this in scope presents another serious objection to its enactment. The proposed ordinance is limited neither to games a person pays to play, nor to pinball games. Absence of the first limitation brings the playing of certain toy games within the prohibition, and absence of the second limitation results in uncertainty. The lawyer members of the Committee, after considerable legal research, were unable to agree on the sort of games and amusement devices that would be prohibited, in addition to pinball games.

If the ordinance is aimed only at pinball games, as some proponents believe, then it

should be restricted by its terms to pinball games. If the ordinance is also aimed at other specific games or amusement devices, they should be specified so the public will, first of all, know what it is voting on, and secondly, if the ordinance is approved, know what is illegal.

The criticism of the broad scope of the ordinance cannot be answered by saying that the police will only enforce this ordinance as it applies to commercial pinball games. The duty of the policeman is to arrest all violators of an ordinance. If we create a situation wherein we expect the policeman to use his discretion and arrest certain violators but leave others unmolested, we have created a situation particularly conducive to graft and corruption.

### MINORITY CONCLUSION

For the reasons above, the proposed ordinance should be rejected.

Respectfully submitted,

JACK L. HOFFMAN

Approved May 3, 1956, by the Research Board for transmittal to the Board of Governors.

Received by the Board of Governors May 4, 1956, and ordered printed and submitted to the membership for discussion and action.

### APPENDIX A.

One instance where the union did apply pressure to a local tavern owner who was attempting to install his own coin-operated shuffleboard table involves a dispute between William Goeble, a member of the Coin Machine Men of Oregon and Clyde Degraw, owner of the Dekum Tavern, 6801 N. E. Union Avenue. Goeble, like all other members of the Coin Machine Men of Oregon — a non-profit trade association of businessmen owning coin-operated amusement devices — is a member of the Miscellaneous Drivers Local No. 223 of the International Brotherhood of Teamsters.

Committee members interviewed the late Clyde Degraw on March 29, 1956 at his place of business and obtained the following account of his dispute with the Miscellaneous Drivers Local No. 223 of the International Brotherhood of Teamsters:

For an extended period of time, Degraw had attempted to have Goeble either replace or refinish the shuffleboard set up in the Dekum Tavern. According to DeGraw's account, this machine was in such poor condition that his customers wouldn't play it. Because they went elsewhere to find amusement, he also suffered the loss of beer sales. Goeble simply ignored DeGraw's complaints.

DeGraw then purchased a shuffleboard from the American Shuffleboard Sales Company of Seattle, in September, 1955. Goeble refused to remove his machine and DeGraw hired a public transfer company to remove it. Goeble refused to accept delivery and the machine was placed in a public warehouse.

DeGraw's own machine wasn't even set up when Miscellaneous Drivers Local No. 223 pickets appeared in front of his establishment. The installing mechanics walked off the job and the picket line prevented delivery of beer and other supplies. The music machine, owned by another member of the Coin Machine Men of Oregon, was removed. Picketing was halted by an injunction obtained against the union from U. S. District Judge William G. East, who declared that the effect of the union's activities was to prevent DeGraw from owning and operating legitimate property and was therefore wrongful.

DeGraw owned, in addition to his shuffleboard table, his own music box and pool table. He claimed that while receipts from Goeble's old board averaged only \$35 a month, his own shuffleboard table, which was in good playing condition, grossed from \$215 to \$240 a month. At the same time, his beer sales had increased because his customers were now content to remain on the premises instead of going elsewhere to seek amusement.

Lloyd Hildreth, representative of the Miscellaneous Drivers Local No. 223, claims the two provisions found objectionable by Judge East\* have been deleted from the contract between the union and the Coin Machine Men of Oregon.

Your Committee has been informed that a union repair man will now service a non-union machine, but his bill is alleged to be several times higher than for similar work on a union machine.

\*Paragraph 3: Service to equipment on location shall be limited to installations of equipment owned by recognized Union operators under contract to Local No. 223 except where non-coin operated equipment is involved.

Paragraph 15: Employes shall service only equipment owned by their Employer and shall not service location owned equipment.