Chapter 465

1967 REPLACEMENT PART

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GAMBLING AND LOTTERIES

465.010 Property used for gambling declared a nuisance. Any premises, room, house, building, boat, vehicle, structure or place of any kind, which is used and maintained for profit and for the purpose of gambling or a lottery, as defined in ORS 167.405 and 167.505 by any person, partnership or corporation organized for profit and wherein take place any of the acts or wherein are kept, stored or located any of the games, devices or things which are forbidden by or made punishable by ORS 167.405 and 167.505, are declared to be a common nuisance. Any person who maintains or assists in maintaining said place, is guilty of maintaining a common nuisance.

465.020 Commencement of proceedings to enjoin nuisance. (1) The Attorney General or the district attorney of the county wherein a common nuisance under ORS 465.010 exists, is kept or maintained, or where such nuisance has existed but has temporarily ceased and there is good and sufficient cause to believe that such nuisance will be maintained in the future, may institute a suit in equity in the circuit court for such county in the name of the state to abate and temporarily and permanently to enjoin such nuisance.

(2) The court may make temporary and final orders, as in other injunction proceedings.

(3) The plaintiff is not required to give bond in such suit.

465.030 Application for temporary injunction; ex parte restraining order. (1) After a suit is commenced pursuant to ORS 465.020, application for a temporary injunction may be made to the court, which shall grant a hearing thereon within 10 days thereafter.

(2) Where such application for a temporary injunction has been made, the court, on application of the plaintiff, may issue an ex parte order restraining the defendants and all other persons from removing or in any manner interfering with the personal property and the contents of the premises, room, house, building, boat, vehicle, structure or place of any kind where such nuisance is alleged to exist, until the decision of the court granting or refusing such temporary injunction and until the further order of the court.

465.040 Service of order; inventory; contempt; supplementary orders; bond. (1) The restraining order issued pursuant to ORS 465.030 may be served by delivering a copy of the order to any person in charge of the place where the nuisance is alleged to exist or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place.

(2) The officer serving the restraining order may enter such place and forthwith shall make and return to the court an inventory of the personal property and contents situated in and used in conducting or maintaining the common nuisance.

(3) Any violation of such order or mutilation or removal of such order so posted shall be a contempt of court, if the posted order contains a notice to that effect.

(4) If a temporary injunction is granted, the court may issue further orders restraining the defendants and all other persons from removing or in any way interfering with the personal property and contents located in the place where such nuisance is alleged to exist.

(5) The court forthwith may issue an order closing such place against its use for any purpose until the final decision, or the court may allow such place to be occupied or used during the pendency of the injunction proceedings by requiring the defendants to furnish bond with sufficient surety, to be approved by the court, in the penal sum of not less than $2,500, payable to the state. The bond shall be conditioned that any acts, games, devices or things forbidden by and made punishable by ORS 167.405 and 167.505 will not thereafter take place, or be kept or located, thereon or therein, and that the defendants will pay all fines, costs and damages assessed against them for any violation of such conditions, and that the state, in an action brought by the Attorney General or the district attorney, may take whatever steps necessary to recover the whole amount as a penalty for the use of the county wherein the premises are situated.

465.050 Final decree; duration of injunction; bond; suit on breach of bond. (1) If a final decree against the defendants is granted, the court shall order that the premises, room, house, building, boat, vehicle, structure or place of any kind shall be closed for all or part of a period not exceeding one year and until the owner, lessee, tenant or occu-

pant thereof gives bond, with sufficient surety to be approved by the court making the order, in the penal sum of not less than $2,500, payable to the state. The bond shall be conditioned that any acts, or games, devices or things forbidden by and made punishable by ORS 167.405 and 167.505 will not thereafter take place, or be kept or located, thereon or therein, and that the defendants will pay all fines, costs and damages assessed against them for any violation of such conditions.

(2) If any condition of the bond is violated, the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated. In any such suit process to nonresident defendants may be served by publication in a newspaper of general circulation in the county having jurisdiction of the injunction proceedings to be published once each week for two consecutive weeks, or for such time as the court, by order, may prescribe.

465.060 Owner's appearance and plea against injunction. The owner of any real or personal property closed or restrained under ORS 465.050 or to be closed or restrained, may appear at any time between the filing of the complaint and the trial and show cause why the court should cancel or refrain from issuing any decree orders as against him. Such owner, in order to obtain such relief, must prove to the satisfaction of the court that he is the lawful owner of the property, and, further, that with reasonable care and diligence he could not have known of the illegal use of his property.

465.070 Evidence of reputation admissible. Evidence of the general reputation of the premises upon which a nuisance is alleged to exist shall be admissible in evidence for the purpose of proving the existence of the nuisance, and of knowledge of and acquiescence and participation therein on the part of the persons charged with maintaining a nuisance or assisting in the maintenance of a nuisance.

465.090 Gambling contracts unenforceable; exception. All notes, bills, bonds, mortgages or other securities or other conveyances, the consideration for which shall be money or other thing of value, won by playing at any games listed in ORS 167.505 shall be void and of no effect as between the parties to the same and all other persons, except holders in good faith, without notice of the illegality of such contract or conveyance.

ABATEMENT OF HOUSES OF PROSTITUTION AND PLACES OF UNLAWFUL ABORTIONS

465.110 Houses of prostitution, places where illegal abortions are performed and their contents are nuisances. (1) Whoever erects, establishes, continues, maintains, owns or leases any building, erection or place used for the purpose of lewdness, assignation or prostitution or any other immoral act, or place where any person administers to any woman, whether pregnant with child or not, any medicine, drug or substance whatever, or uses or employs any instrument or other means, with intent thereby to destroy a child of such woman, unless the same is necessary to preserve the life of such woman or unless such is done for the relief of a woman whose health appears in peril because of her pregnant condition after due consultation with another licensed physician under the conditions and restrictions prescribed in subsection (2) of ORS 677.190, is guilty of maintaining a nuisance. The building, erection or place, or the ground itself, in or upon which or in any part of which such lewdness, assignation or prostitution or place is conducted, permitted or carried on, continued or exists, or in any part of which such medicine, drug or substance is administered or such instrument or other means is used or employed, as aforesaid, and the furniture, fixtures, instruments, appliances, medicines, drugs and contents of such premises are also declared a nuisance, and shall be enjoined and abated as provided in ORS 465.120 to 465.180.

(2) This section shall not be deemed to modify, alter or amend by implication any of the provisions of ORS 163.060, nor to affect prosecutions thereunder.

[Amended by 1953 c.540 §5; 1967 c.470 §62]

465.120 Suit to enjoin nuisance. Whenever a nuisance exists under ORS 465.110, the district attorney shall or any taxpayer of the county may maintain a suit in equity in the name of the state to perpetually enjoin such nuisance, the persons conducting or maintaining the same, and the owner, lessee

or agent of the building or ground upon which the nuisance exists.

465.130 Preliminary injunction; issuance; continuance. (1) No preliminary injunction or restraining order shall issue without notice, but when such order is prayed for in the complaint and it appears from the facts shown by affidavits or by the complaint that a nuisance exists and that the public interest and good morals require its prompt abatement, the court or judge thereof shall make an order fixing the time for the hearing of such application not less than three nor more than five days after service of notice on the defendant. Upon such hearing the court shall inquire into and dispose of the matter and for that purpose may receive evidence in the form of affidavits, oral or documentary testimony.

(2) If it appears to the satisfaction of the court that such nuisance exists and that public morals and good order require that it be promptly abated, the court shall issue the preliminary injunction as prayed for.

(3) No continuance of a hearing on such application shall be granted at the instance of a defendant except for good cause shown, and in no event for a longer period than 10 days in the aggregate unless on consideration the restraining order issue as a matter of course, which order shall be enforced pending the hearing.

(4) When an injunction has been granted, it shall be binding on the defendant throughout the judicial district in which it was issued.

465.140 Prompt trial; evidence; withdrawal and substitution of prosecuting witness; costs. (1) A suit under ORS 465.120 shall be promptly tried.

(2) In such suit common fame shall be competent evidence in support of the complaint.

(3) If the complaint is filed by a taxpayer, it shall not be dismissed except upon a sworn statement made by the complainant and his attorney setting forth the reasons why the suit should be dismissed, and the dismissal approved by the district attorney in writing or in open court. If the court is of the opinion that the suit ought not to be dismissed, he may direct the district attorney in writing to prosecute said suit to judgment.

(4) If the suit is continued more than one term of court, any citizen of the county or the district attorney may be substituted for the complaining party, and prosecute said suit to judgment.

(5) If the suit is brought by a taxpayer and the court finds that there was no reasonable ground or cause for said suit, the costs may be taxed to such taxpayer.

465.150 Order of abatement; closure; sale of contents; entering prohibited. (1) If the existence of the nuisance is established in a suit under ORS 465.120, an order of abatement shall be entered as a part of the judgment in the case. This order shall direct:

(a) Removal from the building or place of all fixtures, furniture, instruments, appliances, medicines, drugs, contents or movable property used in conducting the nuisance.

(b) Sale of the property removed in the manner provided for the sale of chattels under execution.

(c) The effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released.

(2) No person shall break and enter or use a building, erection or place so directed to be closed.

(3) For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property for execution. For closing the premises and keeping them closed a reasonable sum shall be allowed by the courts.

[Amended by 1953 c.540 §5]

465.155 Appearance by owner of closed property for relief from closure order. The owner of any real or personal property so closed or restrained, or to be closed or restrained, may appear at any time between the filing of the complaint and the trial and show cause why the court should cancel or refrain from issuing any decree or orders as against him. Such owner, in order to obtain such relief, must prove to the satisfaction of the court that he is the lawful owner of said property and, further, that with reasonable care and diligence he could not have known of the illegal use of his property.

[1953 c.540 §4]

465.160 Summary trial for violation of injunction. Violation of any injunction granted under ORS 465.110 to 465.180 is a contempt and the court, or in vacation, a judge thereof, may summarily try and punish the offender. The proceedings shall be com-

menced by filing with the clerk of the court an information under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may demand the production and oral examination of witnesses.

465.170 Application of proceeds of sale of personal property. The proceeds of the sale of the personal property, as provided in ORS 465.150 shall be applied in payment of the costs of the suit and abatement. The balance, if any, shall be paid to the defendant.

465.180 Delivery of premises and cancellation of abatement order on payment of costs and bond. If the owner or lessee of the premises appears and pays all costs of the proceeding, and files a bond with sureties to be approved by the clerk in such sum as the court may deem necessary, not to exceed the full value of the property to be ascertained by the court, or in vacation, by the clerk of the court, conditioned that he will immediately abate said nuisance and prevent the same from being established or kept therein within a period of one year thereafter, the court, or in vacation, the judge, may, if satisfied of his good faith, order that the premises which have been closed under the order of abatement be delivered to the owner or lessee and that said order of abatement be canceled so far as it may relate to said property. If the bond is given and costs therein are paid before judgment and order of abatement, the suit shall be thereby abated as to said building and owner only.

PENALTIES

465.990 Penalties. A party found guilty of contempt under ORS 465.160 or a person violating subsection (2) of ORS 465.150 shall be punished by a fine of not more than $1,000 or by imprisonment in the county jail for not more than six months, or by both. [Amended by 1953 c.540 §5]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1967.

Robert W. Lundy
Legislative Counsel

CHAPTERS 466 TO 470

[Reserved for expansion]