

Opinion No. 71.**Gambling—Exemptions from
License Fee.**

HELD: Charitable, fraternal and religious organizations, and private homes are exempt from the payment of the license fees under the provisions of Chapter 153, Laws of 1937.

March 29, 1937.
Mr. Warren A. Lepper
Treasurer, Hill County
Havre, Montana

Dear Mr. Lepper:

You have submitted a request for an opinion on the interpretation of certain provisions of Chapter 153 (HB-241) and state that there is a discrepancy in or conflict between certain provisions of said Act.

Among other things, this act provides that:

"It shall be lawful for cigar stores, fraternal organizations, charitable organizations, drug stores, and other places of business upon the payment of a license fee therefor to the county treasurer in the sum of \$10.00 annually, per table used or operated in such places of business to maintain and keep for the use and pleasure of customers and patrons, card tables."

Section 3 of said Act provides:

"That any religious, fraternal, or charitable organization and all private homes are not included within the provisions of this Act."

In other words, the paragraph first above quoted, requires fraternal or-

ganizations and charitable organizations, among others, to pay a license fee to the county treasurer, of \$10.00 annually, per table used or operated in such places, and section 3 expressly excludes fraternal or charitable organizations from the requirements of this act. It is obvious and apparent that section 3 is in conflict with the first quoted language of said act. As to whether or not fraternal or charitable organizations are required to pay this license fee must be determined by ascertaining the effect of the act under the rules of construing conflicting sections of a statute.

Section 10520 provides:

"In the construction of a statute, the intention of the legislature, and in the construction of the instrument the intention of the parties, is to be pursued if possible and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it."

Section 3 is a particular provision, and also specific. While its terms are not as definite as the quoted language in section 1, yet it is apparent that the language used in section 3 is the language of a particular nature. Therefore we have the situation where in two particular provisions or sections of one act have particular provisions, and each is inconsistent and in conflict with the other.

Section 10710 provides:

"The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. All its provisions are to be construed according to the fair import of their terms, with a view to effect its object and to promote justice."

It has been held in the case of State ex rel Kurth v. Grinde, 96 Mont. 608, that the common law rule requiring penal statutes to be strictly construed has no application to the penal code. The general rule is recognized, however, that penal statutes must be strictly construed, see State v. Bowker, 63 Mont. 1. In the case of Lerch v. Missoula Brick & Tile Com-

pany, 45 Mont. 314, the Court has laid down the rule that the intention of the legislature is to be pursued, if possible. In conjunction with this rule, it appears that thruout the entire act, the legislature deliberately and expressly excepted religious organizations from the provisions of the same, and the language, "religious organizations," is not included in section 1 of said act, but is expressly used in section 3 of said act. It would appear, therefore, that it was the intention of the legislature that fraternal or charitable organizations should be placed upon the same basis as religious organizations. These two organizations, fraternal or charitable, would not be operating under the provisions of this act for profit, and their patronage would be more or less restricted, and distinguished from the patronage received by a person operating a private business such as a cigar store. For if a person was prosecuted as having operated a charitable or fraternal organization without having procured the requisite license, under the rule of reasonable doubt that he as a defendant would have, it would necessarily follow that repugnancy in the statute must be resolved in favor of the defendant, and the defendant would be entitled to a liberal interpretation of said statute.

Therefore, it is my opinion, that fraternal, religious and charitable organizations, and private homes are expressly exempted from the payment of license fees under the provisions of Chapter 153, Laws of 1937.