

Opinion No. 9**Slot Machine Act—License, Slot
Machine—Gambling—Non-
Profit Club.**

Held: The Stockman's Club, Cascade County, is a non-profit club, but the State Board of Equalization may go behind the certificate of incorporation in order to determine whether or not it qualifies within the provisions of Chapter 142, Laws of 1945.

January 16, 1947.

Mr. Sam D. Goza, Chairman
State Board of Equalization
State Capitol
Helena, Montana

Dear Mr. Goza:

You have requested my opinion as to whether or not the Stockman's

Club, Cascade County, is a non-profit club and if such your board is compelled to issue a license under the circumstances.

While you do not so state in your request, I assume from conversation with members of your board that you desire to be advised as to whether or not, under the facts, you are compelled to issue a license under the provisions of Chapter 142 of the Laws of 1945, an act known as the "Slot Machine Act."

Though the meaning of "profit" and "non-profit" is one of varied definition, we must turn to the laws of Montana to find the definition of the same for purposes of taxation. Chapter 92, Laws of 1937, an act which relates to the corporation license tax, provides for an exemption of non-profit organizations from payment of said license fees. For the purpose of this act non-profit clubs of this nature are defined in Section 9 as those:

" . . . organized and operated exclusively for pleasure, recreation and other non-profitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members." (Emphasis mine.)

This, then, we shall take to be the meaning of non-profit as used in Chapter 142 of the Laws of 1945.

From our examination of the Articles of Incorporation of the Stockman's Club, Cascade County, it is my opinion that such club has complied with the requisites of the law and as such is duly created as a non-profit club. Section 9 of Chapter 142, Laws of 1945, provides:

"The form of licenses to be issued under this act shall be prescribed by the state board of equalization. Said board shall also promulgate the forms to be used in applying for such licenses and may require the applicant for such license to state in his application such facts as the board may deem necessary to enable it to pass upon such application, including the name and address of the applicant and the premises where said slot machine or machines are to be kept and operated and such other information as the board may require."

By the language used by the legislature as quoted above, it was the evident intention to grant the board broad authority to determine whether or not the applicant qualified as such organization mention in the act.

While it is generally held a court may not go behind the certificate of incorporation, except when property rights are involved, the Supreme Court of Montana, in the case of State ex rel. Bottomly v. District Court, 115 Mont. 400, 143 Pac. (2d) 559, which was a proceeding for supervisory control, involving the right of the Attorney General in an abatement proceeding under the anti-gambling laws of the state, to inquire in the manner in which the corporation was conducting its business to determine if the gambling laws were being violated, said:

"The question to be determined in this proceeding is, not whether the certificate of incorporation issued to the Brotherhood was obtained through bad faith or not, but whether the duly organized fraternal organization is permitting practices in its club rooms that are in violation of the gambling laws of this state. We think the Attorney General is entitled to present evidence as to such alleged violations." (Emphasis mine.)

In view of the authority granted your board to require an applicant to furnish "such facts as the board may deem necessary to enable it to pass upon such application . . ." it is my opinion the board has authority to require the applicant, Stockman's Club, or any other applicant, to furnish such facts as the board deemes necessary to determine whether or not such applicant is a non-profit organization as that term is herein defined. If the applicant refuses to furnish such facts, or if the board is satisfied from facts furnished that the applicant is not such non-profit organization, it may deny the application.

It is therefore my opinion the Stockman's Club, Cascade County, is a non-profit club, but the State Board of Equalization may go behind the certificate of incorporation in order to determine whether or not it quali-

fies within the provisions of Chapter
142, Laws of 1945.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General.