

VOLUME NO. 36

Opinion No. 16

GAMBLING — Pulltabs prohibited; GAMBLING — Charitable organizations, exempt from licensing; GAMBLING — Crimes and Criminal Procedure — Gambling, pull tabs prohibited. Chapter 7, Title 62; Sections 94-8-401, 94-8-403, Revised Codes of Montana, 1947. State v. Hovland, 118 Mont. 454, 169 P.2d 341 (1946); State ex rel. Replogle v. Joyland Club, 124 Mont. 122, 220 P.2d 988 (1950); State v. Israel, 124 Mont. 152, 220 P.2d 1003 (1950).

HELD: A non-profit, charitable organization may not sell pull tab devices for distribution to bars and taverns wherein the bar or tavern retains a portion of the proceeds.

August 26, 1975

Mr. J. Fred Bourdeau
Cascade County Attorney
Cascade County Courthouse
Great Falls, Montana 59401

ATTENTION: Brett C. Asselstine, Deputy

Dear Mr. Bourdeau:

I am in receipt of your recent letter in which you request my opinion on the following question:

Whether a nonprofit, charitable organization may sell pulltab devices to bars and taverns where the bar or tavern would retain a portion of the proceeds?

Pulltabs are a gambling device within the meaning of section 94-8-401, Revised Codes of Montana, 1947.

Section 94-8-403, R.C.M. 1947, states that:

Any religious, fraternal or charitable organization, and all private homes are not included within the provisions of this act.

That section, however, has been held not to authorize the operation of specifically prohibited gambling games but is rather an exception to the licensing provisions. **State v. Israel**, 124 Mont. 152, 220 P.2d 1003 (1950). There the court stated further that:

The payment of a license tax upon a business prohibited by statute is no justification for doing the forbidden act. **State ex rel. Replogle v. Joyland Club**, 124 Mont. 122, 220 P.2d (1950).

Even if the section were read to exempt such organizations from the gambling prohibition, the involvement of a private commercial establishment would not be authorized. **State v. Hovland**, 118 Mont. 454, 169 P.2d 341 (1946).

Finally, the use or operation of pulltabs is not a gambling game which is authorized by Chapter 7, Title 62, R.C.M. 1947, as an exception to the bar on gambling.

THEREFORE, IT IS MY OPINION:

A non-profit, charitable organization may not sell pulltab devices for distribution to bars and taverns wherein the bar or tavern retains a portion of the proceeds.

Very truly yours,
ROBERT L. WOODAHL
Attorney General