

Licenses, Moving Picture Show. Theatre, License for Moving Picture Show. Moving Picture Show, License For.

Under Subdivision 2 of Section 4062, Political Code, as amended by Chapter CXVII, Laws 1903, a theatre fitted up and used for exhibiting moving pictures is liable for a license at the rate of one hundred dollars per annum.

Helena, Montana, May 2, 1908.

Hon. T. E. Collins,
State Examiner,
Helena, Montana.

Dear Sir:—

Your letter of the 30th ult. received, requesting opinion upon the following question:

In Great Falls the "Orpheum Theatre" or moving picture show pays no license. In several counties the treasurer has exacted a license of one hundred dollars per annum or twenty-five dollars per quarter from the manager or lessee of a house or building used for the purpose of exhibiting moving pictures. You state that such procedure has been approved by your office and now ask whether these shows should pay a license, and if so, the rate.

If the house in which the moving picture show is exhibited is subject to the county license it is under the provisions of Subdivision 2 of Section 4062, Political Code, as amended by Chapter CXVII, Laws of 1903. Subdivision 2 of said section provides that the manager or lessee of every theatre, except variety and concert theatres, must pay one hundred dollars per annum or two dollars for each single performance where no monthly or annual license is paid. It further provides that for each single exhibition of opera or concert singer a fee of three dollars must be collected when such exhibition is not held in a theatre where a yearly license is paid. It further provides that minstrels, legerdemain, or shows not herein provided for, five dollars for each single performance when not in a theatre where license is paid. It further provides that each variety or concert theatre must pay seventy-five dollars per month, and that circuses or menageries must pay one hundred and twenty-five dollars per day, and then exempts the following from any licenses: amateur exhibitions, concerts for schools or charitable or religious purposes.

It is apparent that the legislature intended by this exemption to name all kinds and classes of exhibitions, concerts, etc., which were intended to be exempt from the license.

The question then is, whether a house used for the exhibition of moving pictures is embraced in the term "theatre" or under the term "shows not herein provided for." If a house fitted up with a stage or platform and seats for the use of the spectators, so arranged that they have a view of the platform upon which the moving pictures are exhibited is not a "theatre," then it is apparent that the exhibition of moving pictures given in such a house would be a "show not herein provided for" and subject to a license of five dollars for each single performance, because it would not be in a theatre where a yearly license is paid.

If, on the other hand, a house is fitted up as mentioned above comes under the term "theatre" then exhibitions of moving pictures given therein would undoubtedly come under the term "shows not

herein provided for" given in a theatre where a yearly license is paid. The Century Dictionary defines "theatre" as follows:

"1. A building appropriated to the representation of dramatic spectacles; a play house.

"2. A room, hall, or other place with a platform at one end, and ranks of seats rising stepwise as the tiers recede from the center, or otherwise so arranged that a body of spectators can have an unobstructed view of the platform."

And the same dictionary defines the word "show" as follows:

"A sight, a spectacle; an exhibition; a pageant; a play; as, the Lord Mayor's Show; specially, that which is shown for money; as, a traveling show; a flower show; a cattle show."

It is apparent from the language of said law that the word "theatre" refers to a house in which an exhibition or show is given. The law does not attempt to define just what classes of performances or exhibitions must be given in the building in order to bring it under the term "theatre."

However, in our opinion, a moving picture show, given upon a platform, with seats in the room for spectators who are charged admission, comes within the class of entertainment that may be properly given in a theatre.

The Supreme Court of Pennsylvania in the case of *Bell vs. Mahn*, 1 L. R. A. 364, in determining whether an "opera" is a "theatrical exhibition," used the following language:

"The legislature having determined as to the propriety and policy of requiring a license fee for all theatrical exhibitions, it would be difficult to state any reasonable ground for a distinction between the spoken and the lyrical drama which would justify the exaction of a license fee from one and the exemption of the other. They are exhibitions of the same general character, and there is no reason why one should bear the public burden more than the other. Both are places of popular amusement, and both collect large assemblages of the people and require additional police protection. These considerations are proper in determining the intent of the legislature."

See also *Jaco vs. State*, 22 Alabama 73.

You are therefore advised that a house fitted up as above mentioned for the purpose of giving exhibitions of moving pictures may properly be licensed as a theatre at a rate of one hundred dollars per annum or twenty-five dollars per quarter, and when it is so licensed moving picture shows given therein are exempt from the five dollar license for each single performance for the reason that they would be given in a theatre where a yearly license is paid.

Very truly yours,

ALBERT J. GALEN,
Attorney General.