

Houses of Ill Fame.

Section 567, Penal Code, providing a penalty for the letting of a house for the purposes of prostitution and assignation is not broad enough to warrant the prosecution of a person selling real estate with the knowledge that the same is to be used for such purposes.

Helena, Montana, July 18, 1908.

Hon. B. B. Law,
County Attorney,
Bozeman, Montana.

Dear Sir:—

I am in receipt of your letter of July 15th, wherein you submit for the consideration of this office the following question:

"A, owning certain premises, meets B, who desires the premises, for the purpose of establishing and conducting a house of prostitution and assignation. B tells A about the purpose for which he desires to purchase the premises, and holds out to A the inducement that there will be no opposition from the people in the immediate vicinity to the operation of such a house at that point.

The deal is closed and A sells and conveys by deed the premises to B, who establishes said house on said premises.

Can A be prosecuted under said section prohibiting the 'letting' of property for this purpose knowingly?"

In my opinion the provisions of Section 567, Penal Code, are not broad enough to cover the facts of the case stated by you. This section provides that any person who lets any apartment or tenement, knowing that it is to be used for the purpose of assignation or prostitution, is guilty of a misdemeanor. This statute was not intended, we believe, to impose any restriction upon the free alienation of property.

Atl. Air Line Railway Co. vs. Harrison, 76 Ga. 757, says the following:

"To lease is to let; to farm out; to rent."

Gray vs. LaFayette County, 27 N. W. 311, defines a lease as a "conveyance by the owner of an estate to another of a portion of his interest therein for a term less than his own, in consideration of certain annual or stated rent for a recompense, clearly showing that the lessor retains an interest in the property, and in view of such interest he could be reached by the provisions of Section 567, supra. However, when an absolute conveyance is made the interest of the vendor in the property ceases and he could not be held responsible for any uses to which the property might afterwards be put, even though he had knowledge of the contemplated use of the property before sale. The use to which the property is put is no part of the consideration paid, nor was it a condition imposed upon the property by the owner. I therefore advise you that in my opinion the courts would not extend the provisions of Section 567, Penal Code, to cover the case stated in your letter.

Yours very truly,

ALBERT J. GALEN,

Attorney General.