

### Dances—Sunday Observance.

The maintenance of a dance hall involves the idea of proprietorship. Therefore, ticket sellers, musicians, doorkeepers, et cetera, cannot be arrested under section 11039 R. C. M. 1921 for aiding in maintaining a dance hall on Sunday without proof that such persons had something to do with keeping the dance hall open.

April 13, 1928.

Edward M. Tucker, Esq.,  
County Attorney,  
Hamilton, Montana.

My dear Mr. Tucker:

You have submitted further inquiries regarding the enforcement of the Sunday dance law.

You ask whether ticket sellers, doorkeepers, musicians, floor managers, etc., can be arrested for **aiding** in opening or maintaining a dance hall on Sunday.

Section 11039 contains the following language:

“Every person, who on Sunday \* \* \* keeps open or maintains or who **aids** in opening or maintaining any dance hall,” etc.

is guilty. It will be observed that the section does not in express terms prohibit dancing on Sunday, nor does it forbid the conducting, maintaining or carrying on of a dance on that day. The act prohibited is the opening or maintaining of a **dance hall** or **dance house**.

In my opinion, the maintaining of a dance hall involves the idea of proprietorship. It therefore follows that in order to convict ticket sellers, doorkeepers, musicians, floor managers, etc. who **aid** in the maintaining of a dance hall, it would be necessary to prove that the persons named had something to do with keeping the dance hall open to the public.

If the evidence showed that the persons mentioned were salaried employees only (as is usually true of the musicians who play for a dance), it is my opinion that they could not be said to be **aiding** in maintaining the dance hall, although they might be aiding and assisting in conducting the dance.

It is therefore my conclusion that the persons named in your letter cannot be prosecuted under section 11039 except upon proof that they are in some manner connected with the proprietorship of the dance hall.

In view of the conclusion reached on the above question, answer to your inquiry relative to fines becomes unnecessary. Section 11753 R. C. M. 1921 applies to arrests for all public offenses, and necessarily includes offenses committed in violation of section 11039.

Very truly yours,

L. A. FOOT,  
Attorney General.