

## Opinion No. 18.

## Licenses—Theaters—Motion Picture Theaters.

HELD: A motion picture house which periodically presents vaudeville shows must pay a theater license of \$100 per annum and a motion picture license of \$25 per annum.

January 3, 1935.

Mr. George J. Allen  
County Attorney  
Livingston, Montana

You have asked my opinion regarding the license fee to be paid by a theater in Livingston, Montana, a city of a population of about 6,000. This place has a regular motion picture every day. Approximately every two weeks this picture is supplemented by a vaudeville show, ordinarily of about five acts, including music, dancing, juggling, etc. The admission charged for regular moving pictures is 25¢ and 35¢, while on the night the vaudeville is given, the price is increased to 40¢.

Section 2434, R. C. M. 1921, relating to theater licenses, was enacted in 1903, before the day of moving pictures. After moving pictures began to be shown generally, the legislature evidently felt that this section did not apply to them, or that they should pay a different license and therefore enacted Section 2439 R. C. M. 1921, which applies to moving pictures exclusively. As long as a place exhibits moving pictures, the \$25 per annum license is therefore all that it would be required to pay.

When a regular moving picture house presents vaudeville shows approximately every two weeks or twenty-six times annually, the question then arises, should such house discontinue its classification as a "moving picture show", or should such place be classified as a "moving picture show and theater" or a "moving picture show and variety theater" or just "theater" or just "variety theater".

Since there is no change in the moving picture show business and it continues to show pictures daily, it would seem that this place should still be

classified as a moving picture show, although it has undertaken a double role by showing vaudeville every two weeks. Since it exhibits pictures the same as before, it would seem that it should continue to pay the regular moving picture show license.

By presenting vaudeville shows, does it become a "theater" or "variety theater" within the meaning of Section 2434? The legislature did not define what is meant by a "variety theater". Variety and concert theaters are required to pay a license fee of \$75 per month or \$900 a year, a sum which is practically prohibitive for most places presenting vaudeville about every two weeks and then only as a part of the picture show program. When vaudeville is the only performance of the theater, I do not think such theater can legitimately be classed as a variety theater. While a vaudeville is an exhibition of a variety of things, it does not necessarily follow that a vaudeville theater is a variety theater. If variety of types of program should give a theater such classification then it would seem that the presentation of different productions, such as dramatic performances, opera, vaudeville, etc., would be necessary in order to give it that classification. By presenting vaudeville only, it is no more than an ordinary theater. It is possible, however, that by the designation "variety theater" the legislature had in mind something in the nature of a bawdy-house or a place where women of bad repute are employed. See *Ex parte Bell*, 22 S. W. 1040, 1041; 32 Texas Cr. R. 308; 40 Am. St. Rep. 778.

So far as I am aware, officers over the state who have been charged with the enforcement of the statute, have never held that a vaudeville theater is a variety theater. In the construction of a statute, the construction given to it over a period of years by the executive officers whose duty it is to enforce the law, is entitled to more or less weight and should not be disregarded except for the most cogent reasons. (59 C. J. 1025.) In view of this fact, as well as the practically prohibitive license fee required of a variety theater, if there is any doubt about its classification, it should be resolved against the classification "variety theater".

It is therefore my opinion that the place you have described should be classed as a moving picture show and theater and be required to pay only the license of \$100 per annum as a theater, in addition to the motion picture license of \$25 per annum.

NOTE: See Vol. 2, Official Opinions, page 267; and Vol. 4, p. 496.