

Opinion No. 75.**Gambling—Trade Stimulators.**

HELD: 1. Slot machines and pin tables are prohibited under the provisions of Chapter 155, Laws of 1937.

2. It is not required to procure a separate license for each trade stimulator, but a licensee is permitted to use more than one trade stimulator under a separate license.

3. Religious, fraternal and charitable organizations, and private homes are not required to procure license.

March 30, 1937.

Mr. I. W. Choate
County Attorney
Custer County
Miles City, Montana

Dear Mr. Choate:

You have submitted to this office an inquiry as to our opinion upon certain provisions of Chapter 155, or HB-241, prohibiting gambling games and providing for the playing of certain games for amusement and pastime, and the use in places of business of trade stimulators upon the payment of a license to the county treasurer, and which act also provides penalties for the violation thereof.

Your inquiry is, whether or not slot machines or pin tales paying in trade checks redeemable in merchandise, or slot machines and pin tables paying in money may be licenesd.

Section 1 of the act provides that it is unlawful for any person to run or conduct, or caused to be run or conducted, or keep any slot machine, punch board or other similar machine or device, or, permit the same to be run or conducted for money, checks, credits or any representatives of value or any property whatsoever. This section provides in the latter portion

thereof, that places of business may, upon the payment of a license fee therefor to the county treasurer in the sum of \$10.00 annually, exhibit for use and sale to all customers not minors, trade stimulators, such as pull boards and ticket boards where each board so used returns to the owner or business not to exceed the going retail price of the goods disposed of and sold and disposed of thru the use of the same, and which goods disposed of thru the use of the same must not be other than the goods constituting the usual stock in trade of the business using the same.

The first part of Section 1 expressly prohibits any person from operating any slot machine, punch board or similar machine or device, and the latter portion of section 1 referring to trade stimulators is qualified by the language, "such as pull boards and ticket boards."

In other words, pull boards and ticket boards qualify the words, "trade stimulators," and create a class in themselves, and the words, "slot machines," "punch boards" or "other similar devices" do not qualify the words, "trade stimulator," and therefore the words, "trade stimulator," is limited in its meaning by these qualifying words such as "pull boards" and "ticket boards," and "a similar class of devices," and there is no similarity between the slot machine and a pull board or a ticket board.

Sections 10519-10520 provide:

"In the construction of a statute or instrument, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

In the construction of a statute the intention of the legislature, and in the construction of the instrument the intention of the parties, is to be pursued if possible; and when a general and particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it."

It would appear on the face of the act, in accordance with the statutes above indicated, that it was the intention of the legislature to prohibit slot machines and pin tables, and it was not the intention of the legislature to prohibit trade stimulators such as pull boards and ticket boards where each board so used returns to the owner or business, not to exceed the going retail price of the goods disposed of, etc., as provided in the balance of said section 1 of said act.

Certain punch boards may be in a class of trade stimulators, and may be classed as ticket boards, and the distinction as to whether or not they are punch boards which are prohibited in the first part of section 1 of the act, and as to whether or not they are ticket boards or trade stimulators, depends upon how they are used and whether they come within the following language:

"Where each board so used returns to the owner or business not to exceed the going retail price of the goods disposed of and sold and disposed of through the use of the same, and which goods sold and disposed of through the use of the same must not be other than the goods constituting the usual stock in trade of the business using the same."

In addition to the question you have submitted to this office, there have been a number of inquiries upon other phases of this bill, and while your particular inquiry has made no reference to these other questions, as a matter of convenience this office will submit its views upon other phases of this act herein.

The inquiry has been made as to whether or not fraternal and charitable organizations are subject to the license provisions of this act. This office has held, in an opinion rendered to Wm. A. Lepper, County Treasurer of Havre, March 29, 1937, that fraternal and charitable organizations were not subject to any of the requirements or provisions of this act, and were not compelled to procure a license from the county treasurer. The further question has been submitted to this office as to whether or not the statute prohibits poker playing and permits the playing of black jack.

The first part of section 1 of the act expressly prohibits the playing of draw poker or the game commonly known as around the table poker or any banking or percentage game, or any game commonly known as a sure thing game or any game of chance played with cards, dice, etc., whereas the latter portion of section 1 of the act permits the playing of certain games upon the paying of a license, such as bridge whist, black jack, etc. However, playing of black jack is limited to that played for pastime and amusement by customers who are not minors, and for the maintenance of which a charge may be made, to be paid by the users, by the purchase of trade checks which must be redeemable in merchandise at the going retail price of such merchandise, which is the stock in trade of such businesses.

The further inquiry has been made to this office as to whether or not a merchant could display more than one trade stimulator at one time on a \$10.00 license. The statute expressly provides that places of business may upon the payment of license fee of \$10.00 annually, exhibit for use and sell to customers not minors ***** trade stimulators such as pull boards and ticket boards, and in section 2, the language is used, "Trade stimulators", "For the use of which license is paid."

In other words, following the rules of construction as referred to herein, the statute uses the language "trade stimulators" in the plural, and uses the language, "license," in the singular, which would indicate that it was the intention of the legislature that in every place of business more than one trade stimulator could be used for which only one license was required to be paid.

You are further advised that Section 3 excludes from any of the provisions of this act any religious, fraternal or charitable organizations, and all private homes.