

Opinion No. 83.**Cities and Towns—Gambling.**

HELD: Incorporated cities or towns are prohibited from licensing gambling.

April 13, 1937.

Mr. Peter M. Rigg
City Attorney
Hill County
Havre, Montana

Dear Mr. Rigg:

You request an opinion upon the following matter, to-wit: Does Chapter 153, 1937 Session Laws, take hickey games and trade stimulators, licensed thereunder, out of the category of gambling, so as to permit cities also to license those amusements?

Section 5039.1, R. C. M. 1935, authorizes a city or town to levy and collect taxes, and Section 5039.2 authorizes the city and town to license all industries, pursuits, professions and occupations.

Section 5039.15 authorizes the city or town to license and tax pool halls, soft drink parlors, etc.

Section 11159 prohibits gambling.

Section 11179 provides:

“Upon the passage of this act, all ordinances and parts of ordinances of cities and towns in this state regarding gambling and gambling houses shall be inoperative and void, and thereafter no ordinance regarding gambling or gambling houses shall be passed by any city or town.”

Chapter 153 is an amendment to Section 11159, and this amendment does permit certain businesses, upon the payment to the county treasurer of a

certain license fee, to engage in and operate certain kinds of games. This amendment does not declare, nor attempt to declare, that those games which may be operated and licensed are not gambling. The amendment does permit and authorize certain kinds of gambling. In other words, the games permitted to be operated continue to be gambling, but are legalized.

Section 11179 has not been repealed, nor amended, by Chapter 153, expressly or by implication, and while the city or town generally has the power to license such occupations or businesses, as are licensed by the state, inasmuch as the amendment did not expressly or impliedly repeal or amend Section 11179, it follows that a city or town has no authority to regulate any of the licensed games provided for in Chapter 153.

It was the purpose and intent of Chapter 153 to stimulate trade by authorizing business to engage in the operation of certain gambling. To impose a multitude of license fees upon these trade stimulators would in effect retard rather than stimulate business. It appears that it was not the intention of the Legislature to create heavy taxes upon the persons who operate gambling by the use of trade stimulators.

Therefore, it is my opinion that a city or town is without authority to regulate, through ordinances, gambling or gambling houses, and the only license fee that may be imposed upon persons who are gambling in the manner provided for by Chapter 153 shall be the license as is provided therein.