

June 14, 1943.

Mr. John D. Stafford
County Attorney
Cascade County
Great Falls, Montana

Dear Mr. Stafford:

You request my opinion covering the following matters:

1. The legality of fraternal organizations conducting and operating gambling games and devices, both with respect to their own membership and outsiders.
2. Whether police officers, including sheriffs and constables, have authority to seize and confiscate gambling devices, such as slot machines, which are run and operated in the establishments of bona fide fraternal organizations.
3. Are slot machines subject to seizure by such officers, if in possession of and operated exclusively by the membership of fraternal organizations?
4. If in the possession of and operated by such organizations, but available to the patronage of non-members.

Your inquiry is based upon the proper construction of the exception appearing in the general statute covering gambling, and now appearing as Chapter 153, Laws of 1937, the exception being made by Section 3 of the chapter, which provides a fraternal organization is not included within the provisions of the act.

The exception was referred to in the case of State v. Aldahl, 106 Mont. 390, 78 Pac. (2d) 935, and the Supreme Court apparently holds the statute does not prohibit the acts when carried on by a fraternal organization.

The term "fraternal organization" is not defined in the chapter in question, and it, therefore, becomes necessary to turn to other sources for such definition.

Webster's New International Dictionary defines "fraternal society, association or order" as "a society organized for the pursuit of some common object by working together in brotherly union; specifically, a benefit organization, with a representative form of government and not carried on for profit, and often consisting of members of some trade or occupation or allied ones."

Opinion No. 67.

**Gambling—Fraternal Organizations—
Hickey Gambling Law.**

Held: Fraternal organization which permits non-members to engage in gambling activities is subject to prosecution and punishment, the machines and devices to seizure, confiscation and destruction, and the premises to abatement.

Black's Law Dictionary defines "fraternal" as "brotherly, relating or belonging to a fraternity or an association of persons formed for mutual aid and benefit but not for profit." (See also 26 C. J. 1049.)

And these definitions agree with the popular idea of a fraternal order as an organization of an idealistic nature, with requirements and formalities for admission, providing benefits, either of a material or spiritual nature, to the members, and in turn requiring faithful observance on the part of members of the duties of membership, but with these privileges and duties confined solely to members who are in good standing in accordance with the constitution and by laws of the order.

In the absence of definition appearing in Section 3 of Chapter 153, Laws of 1937, it must be assumed the legislature intended the generally accepted meaning of "fraternal organization," as set forth above. Section 15, Revised Codes of Montana, 1935, provides:

"Words and phrases used in the codes or other statutes of Montana are construed according to the context and approved usage of the language . . ."

That gambling and betting are evils always condemned by the public policy of Montana is apparent by an examination of the statutes and laws of the state. Thus, Section 600, Penal Code of Montana, 1895, prohibited certain acts, therein defined as gambling. Section 600 with amendments made from time to time, now appears as Chapter 153, Laws of 1937, the act under examination. The chapter is not materially different in condemning the forms of gambling prohibited by Section 600, as originally enacted, but makes an exception of "fraternal organizations." We, therefore, have a statute prohibiting general gambling, but permitting it under certain circumstances.

The rule of statutory construction of the exception must be strictly construed, so as to prevent any extension of the legislative sanction. (117 A. L. R. 829; 24 Am. Jur. 403.)

A similar situation confronted our Supreme Court in State v. Gemmell, 45 Mont. 210, 122 Pac. 268, wherein the legislation commonly referred to as the "anti pool room law" was under examination. The law prohibited certain acts relating to wagering on races, un-

less the races were held within an inclosed race track or fair grounds, and all acts relating to the wager were done on the day of the contest and within the same enclosure, there being a time limit for races. The Court quoted from State v. Dycer, 85 Md. 246, 36 Atl. 763, as follows:

"The comprehensive, absolute, and unqualified expressions used by the legislature show that they regarded this species of gambling as a serious evil, and that they desired to suppress it. But for reasons which they considered satisfactory they saw fit to permit it under certain circumstances for the space of thirty days in any one year. Now, when they made in a guarded manner this exception to the general scope and operation of (the) statute, they certainly did not intend to nullify its provisions altogether. They conceded, to certain persons whose tastes and wishes they desired to gratify, a license under certain prescribed conditions for the space of thirty days in a year. During this period, if they complied with the statute, they would be exempt from penalties; its operation would be suspended so far as their actions were concerned. But it was not intended that they should have the power to free themselves entirely from its authority. If such were the case, the statute would be abortive and nugatory. If an owner of a race course can extend the exemptions of the statute to two race courses, he has the same right to a dozen, or twenty, or as many more as he chooses to have. And consequently, instead of having a remission of the penalties of the law for only thirty days in a year, he would be beyond its control during the entire period. That is to say, it would not bind him at all, or in any respect. And a few persons cooperating together might with impunity carry on in every county in the state, without constraint or limit, the gambling denounced by the statute. We think it would be an irrational construction if we should give to an exception, which by its terms is limited in time and place, the effect of overthrowing the entire body of the law."

So, as to the act under examination, it is apparent the members of the legislature regarded the prohibited acts

as a serious evil, which they desired to suppress. However, for reasons which they considered satisfactory, they saw fit to permit it under certain circumstances; but they did not intend to nullify the provisions of the act altogether and permit indiscriminate and open gambling by allowing a "fraternal organization" to throw open its doors to nonmembers. The opposite intention is apparent, i. e., the exception only applies to a "bona fide fraternal organization," where the permitted acts are merely incidental to the main purposes of the organization, and where the only participants are "bona fide" members of the organization.

The thought has been expressed by the Supreme Court of Tennessee, in State v. Mountain City Club, 188 S. W. 580, in the following statement cited from an earlier case in that Court:

"We are satisfied from the uncontested facts in the record that the Knoxville Lodge of Elks, like the present lodge, is a bona fide association, organized for social, fraternal, and benevolent purposes, and that the furnishing of refreshments, inclusive of intoxicants, to its members, is purely incidental, and that the lodge was not engaged in the 'handling of liquor for sale' within the sense of the revenue act of 1907."

The legislature, having spoken, we must take the law as we find it.

It is, therefore, my opinion the exception applying to "fraternal organizations" must be strictly interpreted to mean the acts are only permitted when confined to actual "bona fide" members of a "bona fide fraternal organization," and when such an organization permits nonmembers to participate, such organization and its officers are:

1. Subject to prosecution and punishment, under the penal provisions of Chapter 153, Laws of 1937.

2. The machines and devices used in the play are subject to seizure, confiscation and destruction, under Sections 11166 and 11167 and 11167.1, Revised Codes of Montana, 1935.

3. The premises are subject to abatement under Sections 11123 and 11133, Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY
Attorney General