

slot machines may be issued for the year 1946 and subsequent years, after the 15th day of January of the year for which licenses are applied. It is the duty of the State Board of Equalization to consider and pass upon all applications for licenses prior to the date fixed by statute for the issuance of licenses, and to issue licenses to these found eligible on or before that date.

July 16, 1945.

Mr. Sam D. Goza, Chairman
State Board of Equalization
State Capitol
Helena, Montana

Dear Mr. Goza:

You have requested my opinion on the following questions pertaining to Chapter 142, Laws of 1945, the Slot Machine License Law:

1. In a case where the application for a license, accompanied by a check in the correct amount, is received by the board prior to July 15 but where it is necessary to secure additional information and that license could not be issued prior to July 16 and it is shown that the applicant qualifies under the law, may we issue a license?
2. Where subsequent to July 16, an applicant fully qualifies, except as to date stated in the law, July 1, to July 15, are we authorized to issue said license?
3. Where a qualified slot machine operator desires to increase the number of machines he operates and so determines subsequent to July 15 and applies for and accompanies the application with full payment, may we issue him a license?

An answer to these questions requires an interpretation of that part of Section 4 of Chapter 142 relating to issuance of licenses.

In the interpretation of statutes there are well defined rules laid down by the courts. It is only necessary to interpret a statute, however, when its language is ambiguous. (*Ulman v. National Surety Co. of New York*, 3 F. Supp. 348; *United Missouri River Power Co. v. Wisconsin Bridge & Iron*

Opinion No. 56.

**Gambling—Slot Machines—Licenses,
Slot Machines, when issued.**

Held: Under Chapter 142, Laws of 1945, no license for the operation of slot machines may be issued by the State Board of Equalization for the year 1945 after the 15th day of July, 1945. No license for the operation of

Co., 44 Mont. 343, 119 Pac. 796.) Our courts merely declare terms of statutes, and may not change an act which is plain and unambiguous, nor read into a statute words not found therein either expressly or impliedly. (*Chmielewska v. Butte & Superior Mining Co.*, 81 Mont. 36, 261 Pac. 616; *Sullivan v. Anselmo Mining Corporation*, 82 Mont. 543, 268 Pac. 495.)

With these rules of interpretation in mind we may consider the provisions of Section 4, Chapter 142, Laws of 1945. This section provides:

"All licenses, both state, county and city, provided for by this act, shall be issued, and the license fee for same shall be paid annually not later than the fifteenth (15th) day of January of the year for which such license is obtained. Licenses for the year 1945 shall however be issued on or before July 15, 1945, and shall be issued for the remainder of the year 1945 and at one-half (½) of the license fees provided for by this act." (Emphasis mine.)

This language seems to be clear and unambiguous and, under the above rules, needs no interpretation. It seems to me the legislature could have used no plainer words to express its intention. Section 5 provides the amount of licenses to be paid for each machine, depending upon the population of the city or town in which located. The license fee is on an annual basis. By Section 4 the legislature has provided when the licenses shall be issued and when the fee therefor shall be paid, viz., "not later than the fifteenth (15th) day of January of the year for which such license is obtained."

In view of the fact the act does not take effect until July 1, 1945, the legislature in this same section provided for the issuance of licenses for the half year commencing July 1, 1945, but again specifically limited the time for the issuance of such licenses in plain language, when it said, "Licenses for the year 1945 shall however be issued on or before July 15, 1945, and shall be issued for the remainder of the year 1945 and at one-half (½) of the license fees provided for by this act." (Emphasis mine.) The use of the word "all" in the first part of the section is significant.

By the use of the word "shall" rather than "may" it is significant that the

legislature has commanded the board to do an act at a specific time and at no other, because it also used the words "not later than" and "on or before." Had the legislature intended that licenses could be issued at any time, it could easily have so provided in clear language, as it did in other licensing statutes. For example, under the motor vehicle registration and licensing statutes, Section 1760, Revised Codes of Montana, 1935, as amended, after providing the amount of the license fees, specifically provided, "If any dealer, or motor vehicle, or trailer, or semi-trailer is originally registered six (6) months after the time of registration as set by law, the registration fee for the remainder of such year shall be one-half (½) of the regular fee above given." In the absence of any restricting words such as are found in the act here considered, it is clear that in the Motor Vehicle Act, the legislature intended that motor vehicles could be registered at any time after the date provided.

Again, under Chapter 153, Laws of 1937, which amended Section 11159, Revised Codes of Montana, 1935, and permitted certain gambling games to be conducted by religious, fraternal or charitable organizations, and permitted the use of punch boards and providing a license therefor on an annual basis, the legislature used language clearly indicating that licenses could be issued at any time during the year. Section 2 of that act provides, "The license fee provided for in the preceding section shall be paid to the treasurer of the county in which such licensee operates, before any of the acts or things herein licensed and permitted shall be done." (Emphasis mine.) This plain language clearly indicates that the fee, while not required to be paid at any specific date, must be paid before doing the acts or things permitted.

Under Chapter 183, Laws of 1937, relating to registration and licensing of barbers, it is provided that each person registered as a barber, or barber apprentice, must renew his certificate annually and "shall on or before the first day of July of each year pay a license fee of three dollars (\$3.00) for the renewal of his certificate . . ." It then provides if he shall fail to renew his certificate before the first day of August, he may renew such certificate thereafter, but only upon condition that

he pay a penalty of five dollars in addition to the license fee of three dollars. Here are words of restriction, but a provision for payment at another time upon a condition.

Chapter 142, Laws of 1945, is what might be called a companion measure to Chapter 153, Laws of 1937. By Chapter 142 the legislature has imposed a license on gambling devices, i. e., slot machines, which it has permitted under Chapter 153 certain classes to operate and maintain contrary to the general gambling law. In restricting the time and manner in which licenses for these gambling devices shall be obtained by this special class, the legislature must have intended just what it said.

To interpret the meaning of Section 4 of the act to be that licenses may be issued at times other than therein stated, would require one to insert therein words which the legislature has not seen fit to put in. This we may not do. Our Supreme Court in the case of *Mills v. State Board of Equalization*, 97 Mont. 13, 33 Pac. (2d) 563, said, "This court will not read into a statute words necessary to make it conform to a supposed intention of the legislature. (Sec. 10519, Rev. Codes, 1921.)"

After a full consideration of the provisions of Chapter 142, Laws of 1945, and particularly Section 4 thereof, in the light of wording of statutes of similar import, I am compelled to answer your questions in the negative.

It is therefore my opinion:

1. Under Chapter 142, Laws of 1945, no license for the operation of slot machines may be issued by your board for the year 1945, after the 15th day of July, 1945.

2. No license for the operation of slot machines may be issued for the year 1946 and subsequent years, after the 15th day of January of the year for which licenses are applied.

3. It is the duty of your board to consider and pass upon all applications for licenses prior to the date fixed by statute for the issuance of licenses, and to issue licenses to those found eligible on or before that date.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General