

Opinion No. 111

**Board of Equalization—Non-Profit
Organizations—Licenses.**

Held: Whether or not any applicant is a non-profit corporation for the purpose of procuring a license under the provisions of Chapter 142, Laws of 1945, as amended by Chapter 285, Laws of 1947, is—under the said legislation—for the State Board of Equalization to decide, after the Board has developed all of the facts and circumstances which it deems necessary for making its determination.

April 23, 1948

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

Dear Mr. Goza:

You have submitted the following information and have asked for my opinion:

“In view of the above facts which show that the aggregate membership dues of the charter members is \$14.00, and that there would be approximately one slot machine for each three members, the location of the place of business, etc., is it your opinion that this is a non-profit organization and that this Board is authorized to issue the licenses applied for?”

“Your opinion upon this matter at your earliest convenience will be greatly appreciated.”

In the first place, you state that the residence of the incorporators is Lincoln County, Montana, but the mailing address is Moyie Springs, Idaho. This fact of residence should be ascertained by one of your agents.

Secondly, under Section 2, subdivisions 2 and 3 of Chapter 283, Laws of 1947, dealing with the incorporation of non-profit corporations, it is provided:

"2. The purposes for which it is formed and that it is a corporation which does not contemplate pecuniary gain or profit to the members thereof.

"3. The complete mailing address including the city or town and the county in this state where the principal office for the transaction of the business of the corporation is to be located." (Emphasis supplied).

It appears from the last above provision that a non-profit corporation is required to set forth not only the complete mailing address but also the city or town and the county in this state where the principal office is located.

The State Highway Department has informed me that they have not leased nor granted an easement on any lands on U. S. Highway No. 2 in Section 32, Township 34 North, of Range 34 West, Lincoln County, Montana, to the Curley Creek Club nor to anyone else.

Section 9, Chapter 142, Laws of 1945, provides, in part:

The State Board of Equalization, "may require the applicant for such license to state in his application such facts as the board may deem necessary to enable it (The State Board of Equalization) to pass upon such application, including the name and address of the applicant and the premises where said slot machine or machines are to be kept and operated and such other information as the board may require. The making of any false statement in said application shall constitute a misdemeanor and be punishable as provided in section 10 of this Act." (Emphasis supplied).

In view of the facts as you have given them to me, that is, that the

membership is only fourteen and the application is for four slot machines, the location of the building and the residence of all of the members, if they are residing in Idaho, would tend to imply that they expected most of their revenue to come from tourists.

If the board finds, as a matter of fact, after investigation, that any false statements have been made in the application it would, in my opinion, be sufficient grounds for the board to disallow the license.

The determination of such matters is within the sound discretion of the Board of Equalization in the first instance as the administrative agency of the state.

Whether or not this or any other applicant is a non-profit corporation for the purpose of procuring a license under the provisions of Chapter 142, Laws of 1945, as amended by Chapter 285, Laws of 1947, is—under the said legislation—for the State Board of Equalization to decide, after the Board has developed all of the facts and circumstances which it deems necessary for making its determination. See Opinion No. 36, Volume 21, Report and Official Opinions of the Attorney General.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General