

Opinion No. 83

**Board of Equalization—Slot Machines
—Enforcement, Chapter 142,
Laws of 1945.**

Held: The state board of equalization is, by the Title and terms of Chapter 142, Laws of 1945, authorized, empowered and directed to enforce the provisions of said Chapter 142, Laws of 1945, by making effective the provisions of the Act by its agents gathering the information of violations thereof and making complaint to the proper county attorney and sheriff, and furnishing to such officers the necessary evidence for prosecution of any violations.

November 24, 1947

Honorable Sam C. Ford
Governor of Montana
Capitol Building
Helena, Montana

Dear Governor Ford:

You have submitted the following question for my opinion:

“Is it the duty of the State Board of Equalization to enforce the provisions of Chapter 142, Laws of the 29th Legislative Assembly, as amended by Chapter 285, Laws of 1947?”

In answering your question it should be noted that Chapter 285, Laws of 1947, amended only Section 4 of Chapter 142, Laws of 1945, by eliminating only the last paragraph of Section 4 of Chapter 142, and substituting therefor the following:”

"All licenses issued under this act shall expire on the first day of January following the issuance of said license and a full year's license fee shall be charged regardless of when said license is issued."

Therefore, we direct our attention to Chapter 142, Laws of 1945.

The title of the Act, provides in part, "Providing penalties for the violation of this Act and Procedure for the Enforcement thereof by the State Board of Equalization."

Section 1 of Chapter 142 provides:

"Section 1. No slot machine shall hereafter be used, operated, kept or maintained for use or operation within the State of Montana by any person or persons whomsoever save and except as in this act provided. In addition to its ordinary meaning the word 'persons' includes both natural and artificial persons and embraces all partnerships, corporations, associations, societies and all other persons of every sort and kind." (Emphasis supplied).

Section 2 of the Act then provides:

"The provisions of the so-called 'Hickey Law,' Section 11159, Revised Codes of Montana of 1935 as amended by Chapter 153, Session Laws of Montana of 1937, prohibiting the running, keeping or operating of slot machines, are hereby declared to be in full force and effect."

Section 3 of the Act provides, that, before using, operating, keeping and maintaining for use, slot machines, religious organizations, fraternal organizations, charitable, or non-profit organizations must first procure the license and pay the license fee provided by the Act.

Section 4 of the Act provides:

"The State Board of Equalization is hereby authorized, empowered and directed to collect the license fees herein provided for. All monies received from said state license, shall be paid over by the State Board of Equalization to the state treasurer and deposited to the credit of a fund hereby created, known as the 'slot machine license

fund.' Out of said fund there shall be paid, on claims regularly presented against the state and approved by the state board of examiners, the cost of enforcing this act, including the salaries and traveling expenses of all agents or employees necessarily employed by the State Board of Equalization, and all other expenses of enforcing the provisions of this act. (Emphasis supplied).

As noted, Section 1 sets forth the provision that, "not slot machine shall hereafter be used, operated, kept or maintained for use or operation within the State of Montana by any person or persons whomsoever save and except as in this act provided."

The foregoing provision is to be enforced by the state board of equalization as well as any other provision of the Act; the legislature made no distinction as to any provisions not being enforced, but provided specifically, that, "... the costs of enforcing this act, including salaries and traveling expenses of all agents or employees necessarily employed by the State Board of Equalization and all other expenses of enforcing the provisions of this act."

The act under consideration is similar to many other license acts which are administered and enforced by the State Board of Equalization. The "store" license act requires every person operating a "store" to procure a license, the failure or refusal to procure such a license is made a misdemeanor. If such an occasion arises the information would be given, and complaint by the agent of the State Board of Equalization made to the county attorney of the county in which the unlicensed store was situated for prosecution.

So with the act under consideration; by Section 10 thereof it is provided in part; "any person, partnership, club, society, fraternal order, corporation, cooperative association or any other individual or organization which has not been issued a license under this act and which maintains for use or permits the use of any slot machine as herein defined, or any place or premises owned, occupied or

controlled by him or it, shall be guilty of a misdemeanor."

From the mandate of the legislature expressed in Section 4, the Board of Equalization is provided with the agents or employees and the funds necessary for the enforcement of the provisions of the act and charged with the duty to enforce each provision of the act.

It should be pointed out that the provisions of this act under consideration differ materially in regard to the duty of the board in enforcement of the act with the provisions of a similar act passed at the 30th legislative session, namely Chapter 298, Laws of 1947, dealing with trade stimulators, including punch boards, for said act, Chapter 298, provides for the enforcement thereof by the State Board of Equalization, or any authorized representative thereof, the county treasurer in any county of this state, the sheriff (including undersheriff and deputies) and the county attorney of any county in the state. No such provision appears in Chapter 142, Laws of 1945.

Thus, it is clear that the legislature, as to Chapter 142, Laws of 1945, intended the enforcement to be in the State Board of Equalization. If it had intended otherwise, it could have so provided, as it did in Chapter 298, Laws of 1947.

Insofar as enforcement is concerned the provisions of Chapter 142 are no different than many other penal statutes, among which may be noted specifically the various statutes coming within the functions of the Department of Agriculture, Labor and Industry (Chapter 306, Vol. 2, Political Code, Revised Codes of Montana, 1935). Section 3564 of that Chapter, creating the Division of Farming and Dairying, specifically provides, "the department of agriculture, labor and industry, through the division of farming, shall enforce all the laws of Montana . . . enacted for the protection and regulation of the farming industry. . . ." Like provisions appear in Section 3573, creating the division of grain standards, etc.; Section 3635, creating the Division of Labor, etc.

By the term "enforcement," it is not necessarily meant the power to arrest. Gathering information of violations and instituting prosecutions through the county attorney, or causing arrests by the sheriff upon such information, is certainly enforcing the law.

By authorizing the board to employ "agents or employees", and pay their salaries and expenses out of the license funds, in my opinion, is a clear indication that the legislature intended the board to employ a staff of agents sufficient to enforce the provisions of the act—one of which, as pointed out, is that "no person, partnership, club, society, etc." shall operate or keep slot machines without a license.

"The duty assigned to them to enforce the ordinance means that the officers shall make complaint and cause the institution of legal proceedings whenever they find or believe that the ordinance is not being complied with." "Territory v. Hop Kee, 21 Haw. 206).

Therefore, it is my opinion the State Board of Equalization is, by the Title and terms of Chapter 142, Laws of 1945, authorized, empowered and directed to enforce the provisions of said Chapter 142, Laws of 1945, by making effective the provisions of the Act by its agents gathering the information of violations thereof and making complaint to the proper county attorney and sheriff, and furnishing to such officers the necessary evidence for prosecution of any violations.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General