

Opinion No. 58

Taxation—Slot Machines—Veterans' Organizations

Held: 1. Slot machines legally owned and legally operated by veterans' organizations are not exempted from taxation by virtue of the provisions of Section 1998, Revised Codes of Montana, 1935, wherein the clubhouse or building together with the furniture and the library necessarily used therein are exempt from taxation if the property is used exclusively for educational, fraternal, benevolent, or purely public charitable purposes, rather than for gain or profit. However, should the Supreme Court of the State of Montana hold that slot machines are lotteries, then slot machines could not be legally owned or legally operated by anyone or any organization, including veterans' organizations, and slot machines would not be subject to taxation of any kind and being prohibited by the Constitution would be subject to confiscation and destruction by proper law enforcement officials acting under court order. A lottery can only be legalized by a Constitutional amendment.

September 22, 1949.

Mr. John C. Comfort
County Attorney
Virginia City, Montana

Dear Mr. Comfort:

You have requested my opinion upon a question of law arising out of the following factual situation:

"A veteran's group has made provisions for the use of premises for a veteran's club in which are operated slot machines under license from the State. The veteran's group does not own the building or premises upon which the club is conducted but does own the slot machines. The County Assessor is assessing personal property to owners thereof and has assessed these slot machines in the name of the veteran's organization. The position is taken by the club that such property should be exempt from taxation."

The questions asked by you with reference to the above stated facts are as follows:

- a. Are slot machines operated by a veteran's club on premises not owned by the club exempt from taxation?
- b. If the slot machines were operated on premises owned by the veteran's club would this fact make the slot machines exempt from taxation?

This opinion is rendered and predicated upon the assumption that slot machines are not lotteries and may be subject to taxation in that

they have a taxable value in the eyes of the law. The question of whether or not a slot machine is a lottery has not been before the Supreme Court of the State of Montana at this date. It has been held that slot machines are lotteries and are prohibited by the Montana Constitution by at least one District Court of the State of Montana. If, and when, it is decided by the Supreme Court of Montana that slot machines are lotteries, this opinion will be of no further force and effect as slot machines will not then be subject to taxation and it will become the duty of the law enforcement officials under proper court order to cause such equipment to be seized and destroyed. If the Supreme Court declares slot machines to be lotteries, the legislature does not have the power to legally provide for possession and operation of said machines by clubs, veterans' organizations, or otherwise, and any legislation authorizing the possession and operation of such machines will be unconstitutional and void and can only be legalized by a Constitutional amendment.

Section 1998, Revised Codes of Montana, 1935, is the sole statutory provision in this State which provides for exemption from taxation. It is as follows in part:

"The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the State of Montana, and public art galleries and public observatories not used or held for private or corporate profit are exempt from taxation, . . . and also when a club house or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain, or profit, together with the library and furniture necessarily used in any such building. . . ."

The portion of Section 1998, *supra*, which deals with the exemption allowed certain property held by an organization of honorably discharged servicemen refers first to the club house or building belonging to the organization and secondly to the library and furniture necessarily used therein. I believe that this should be interpreted to mean that the furniture and library of such an organization may be exempt from taxation even though the building was not owned by the organization but merely rented for the same purposes. That is, I doubt if the legislature intended to exempt such furniture and library only if the building wherein it was housed was owned by the organization of veterans. The important consideration is the ownership of the furniture and library and the use made thereof, not the ownership of the

building, and thus in this instance I attach no importance to the fact that the slot machines were contained in rented premises.

However, the question remains whether slot machines are such property as is exempted by Section 1998, *supra*. As stated above, the exemption granted to veterans' organizations which used their property for certain enumerated purposes, refers to the clubhouse or building together with the library and furniture necessarily used in such building. If slot machines are to be exempted it must be determined that they fall into one of these categories of property. In making this determination the rules of construction commonly applied to exemption statutes must be kept in mind.

The general rule is well stated in 51 Am. Jur., Taxation, Section 524, Page 526, as follows:

"The fundamental theory of the tax structure of the several states is that all taxable property should bear its fair share of the cost and expense of government; and while property is taxable only when declared so by legislative enactment, the law does not read into the taxing statutes any implied exemption of particular property or particularly property owners unless the intentment of the statutes to make an exemption is plain. When the statute purports to grant an exemption from taxation, the universal rule of construction is that the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption, . . ."

The principle followed in Montana is that taxation is the rule and exemption is the exception and every exemption must be denied unless granted so clearly as to leave no room for doubt. In *Re Wilson's Estate* 102 Mont. 178, 56 Pac. (2d) 733; *Buffalo Rapids Irrigation District v. Coleran*, 85 Mont. 466, 279 Pac. 369; *Town of Cascade v. Cascade County*, 75 Mont. 304, 243 Pac. 306.

To grant an exemption in the instant case would necessitate a finding that slot machines were either furniture or were included in the library of the veterans' organization. Applying the rules of strict construction to be followed in construing exemption statutes, it is at once obvious that slot machines cannot be placed into either of the above categories. Even if the broadest and most liberal interpretation were to be applied to the terms, I cannot see how slot machines could be classified as furniture or as part of the library.

Therefore, it is my opinion that slot machines owned by a veterans' club are not exempted from taxation under the provision of Section 1998, Revised Codes of Montana, 1935, regardless of whether or not the veterans' club owns the premises wherein the slot machines are located.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.