

Opinion No. 69**License—Zoological Gardens—Menagerie**

Held: A permanent zoological garden is not to be classified in the same category as a menagerie within the meaning of Section 2434 of the Revised Codes of Montana of 1935, as amended by Chapter 74 of the Session Laws of Montana of 1949, and therefore is not required to pay a license fee of \$125.00 a day as in said section provided for.

November 4, 1949.

Mr. Charles B. Sande
County Attorney
Yellowstone County
Billings, Montana

Dear Mr. Sande:

You have asked my opinion as to whether an amusement center, which is to contain a zoological garden where wild animals are to be kept, displayed and exhibited, is to be considered a menagerie to the extent of being subject to payment of a license fee as provided by law. The provision for the payment of a fee by menageries is contained in Sub-division (2) of Section 2434 of the Revised Codes of Montana, 1935, as reenacted by Chapter 94 of the Session Laws of 1945 and by Chapter 74 of the Session Laws of 1949.

Sub-division (2) of Section 2434, as amended by Chapter 94 of the Session Laws of 1945, and Chapter 74 of the Session Laws of 1949, provides in part as follows:

Section 2434, "Licenses must be obtained for the purposes hereinafter named for which the County treasurer must require payment as follows: 2. . . ; for every circus or menagerie, including sideshows one hundred and twenty-five dollars a day; . . ."

Webster's New International Dictionary, 2nd Edition, defines menagerie as , "A place where animals are kept and trained, especially

for exhibition." Zoological garden is defined as, "A garden or park where wild animals are kept for exhibition." The words are not synonymous according to the New Century Dictionary list of synonyms. Both Webster and the New Century Dictionaries define Zoo as the popular term for a Zoological Garden. The question rests, primarily, on whether the legislature intended a zoo to be in the same category as a menagerie so as to be subject to a payment of the license fee as by law provided. A zoo, although intended to return revenue, is nonetheless beneficial to the people. The license fee provided for in Section 2434 was not intended for zoos but rather for shows that limit their engagements to one or two or a few days and are designed to gross large sums of money to the operator or operators.

In *National Exhibition Co. v. City of St. Louis*, 235 Mo. A. 485, 136 S. W. 2nd 396; the court in interpreting an ordinance similar to our Sub-section 2 of Section 2434, *supra*, said:

"The lawmakers who enacted the ordinance involved herein did not define the word 'circus,' so we must take the word in its ordinarily defined meaning. When we speak of a circus or menagerie or both combined, we ordinarily have in mind performances given by traveling companies on vacant lots within tents, or some other temporary enclosure, wherein trained lions, tigers, elephants, horses, dogs and other animals, and frequently seals, are made to perform under the whip or command of a ringmaster or trainer."

It is apparent from what the court in the above quotation said that they did not include all animal shows under the heading of menagerie but rather included only traveling shows of wild animals in such a classification. This is a reasonable classification of the term under the statute. Such a classification would include a zoo.

"When a reasonable construction can be put upon a statute, it is the one to be adopted, to the exclusion of others . . ." *Special Road District No. 8 v. Millis*, 81 Mont. 86, 87, 216 Pac. 885.

"In the construction of a statute the primary duty of the court is to give effect to the intention of the legislature in enacting it. The intention is to be sought in the language employed and the apparent purpose to be subserved." *State ex rel. Carter v. Kall*, 53 Mont. 162, 166, 162 Pac. 385.

Vol. 16 of the Reports and Official Opinions of the Attorney General interpreted the statute in regard to whether the license fee on variety theaters was meant to apply to a theater that featured a vaudeville performance bi-weekly in addition to its regular movie features. The license fee for variety theaters in the statute was seventy-five dollars a month which is quite small compared to the fee that a menagerie is required to pay. The Attorney General had this to say about the classification of the shows for purpose of the licenses.

"As far as I am aware, officers over the State who have been charged with the enforcement of this statute, have never held that a vaudeville theater is a variety theater. In the construction of a statute, the construction given to it over a period of years by the executive officers whose duty it is to enforce the law, is entitled to more or less weight and should not be disregarded except for cogent reasons. (59 C. J. 1025) In view of this fact, as well as the practically prohibitive license fee required of a variety theater, if there is any doubt about its classification, it should be resolved against the classification 'variety theater.'"

Twice since this opinion was written the legislature has amended the statute and in neither amendment have they altered any of the portions of the statute covered by the opinion. This can lead but to the reasonable conclusion that the legislature did not disagree with the opinion or they would have amended the statute to clarify its meaning. The statute has been amended twice. The first time in Chapter 94 of the Session Laws of 1945 which amended the statute to provide that the County Treasurer shall not issue licenses to circuses or menageries within a period of thirty days prior to any local, county, district or state fair or rodeo without obtaining the written consent of the County Commissioners.

This clearly shows the legislature intended to license traveling shows and did not intend the statute to apply to such a permanent organization as a zoo necessarily is. When the legislature referred to menageries, they were speaking of traveling animal shows.

It is my opinion that a permanent zoological garden is not subject to the payment of the license fee required by Section 2434, Revised Codes of Montana, 1935, as amended by Chapter 94 of the Session Laws of 1945 and Chapter 74 of the Session Laws of 1949 to be paid by menageries. The legislature did not intend a permanent zoological garden to be the subject of such a fee.

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