

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 52

CHARITABLE ORGANIZATIONS - Section 23-5-413, MCA, does not allow charitable organizations to use real property as raffle prizes;

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GAMBLING - Using real property as a raffle prize not authorized by section 23-5-413, MCA;

RAFFLES - Real property not allowed as a raffle prize under section 23-5-413, MCA;

MONTANA CODE ANNOTATED - Sections 1-2-101, 23-5-413.

HELD: The language in section 23-5-413(2)(c), MCA, cannot be interpreted to allow the use of real property as raffle prizes.

23 February 1982

Ted O. Lympus, Esq.
Flathead County Attorney
Flathead County Courthouse
Kalispell, Montana 59901

Dear Mr. Lympus:

You have asked my opinion on the following question:

Can the language in section 23-5-413(2)(c), MCA, referring to tangible personal property, be interpreted to refer only to the type of personal property used as the prize, if in fact personal property is to be the prize, and not to be a prohibition on the use of the real property, such as a residence, as the prize instead of personal property?

The above subsection was added by the 1981 Legislature to exempt charitable organizations from the value limits placed on raffle prizes. 1981 Mont. Laws, ch. 510. § 1. The amendment, part of the "Bingo and Raffles Law," states:

The proceeds from the sale of the raffle tickets are to be used only for charitable purposes or to pay for prizes. The raffle prize must be in tangible personal property only and not in money, cash, stock, bonds, evidence of indebtedness, or other intangible personal property. None of the proceeds may be used for the administrative cost of conducting the raffle.

Your question, simply put, is whether the section can be interpreted to allow real property to be used as a

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raffle prize. The statute draws distinctions between the types of personal property that can be used but is silent on the use of real property. However, applying the general rules of statutory construction it is clear the statute does not include real property in its description of raffle proceeds.

The function of any court in construing a statute is to give effect to the intent of the Legislature, Chennault v. Sager, 37 St. Rptr. 857, 861, 610 P.2d 173, 176 (1980). § 1-2-101, MCA. That intent is best evidenced by looking at the plain meaning of the statute. A court "is simply to ascertain and declare what in terms or in substance is contained in the statute and not insert what has been omitted." Security Bank and Trust v. Connors, 170 Mont. 59, 67, 550 P.2d 1313, 1317 (1976). Section 23-5-413(2)(c), MCA, clearly states that raffle prizes "must be in tangible personal property only...." [Emphasis added.]

The statute does not specifically mention real property prizes but its express wording admits to no other construction. Prizes must be in tangible personal property only. "If the statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left...to construe." Shannon v. Keller, 37 St. Rptr. 1079, 1081, 612 P.2d 1293, 1294 (1980). The use of real property as a raffle prize is not authorized within section 23-5-413, MCA. In order to offer such prizes it will be necessary to seek curative legislation.

THEREFORE, IT IS MY OPINION:

The language in section 23-5-413(2)(c), MCA, cannot be interpreted to allow the use of real property as raffle prizes.

Very truly yours,

MIKE GREELY
Attorney General