

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 105

CITIZENSHIP - Applicant for gambling license in Title 23, MCA, must meet both United States citizenship and Montana residency requirements;

GAMBLING - Applicant for gambling license in Title 23, MCA, must meet both United States citizenship and Montana residency requirements;

LICENSES - Applicant for gambling license in Title 23, MCA, must meet both United States citizenship and Montana residency requirements;

LOCAL GOVERNMENT - Applicant for gambling license in Title 23, MCA, must meet both United States citizenship and Montana residency requirements;

MONTANA CODE ANNOTATED - Sections 13-1-111, 16-4-408, 23-5-322, 23-5-422;

MONTANA CONSTITUTION - Article IV, section 2;

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MONTANA LAWS OF 1974 - Chapters 293, 294;
MONTANA LAWS OF 1975 - Chapter 387;
REVISED CODES OF MONTANA, 1947 - Section 4-412
(1975 supp.).

HELD: The language in sections 23-5-322 and 23-5-422, MCA, requires that an applicant for a gambling license meet both United States citizenship and Montana residency requirements. An alien who has resided in the state for 18 years does not meet both requirements and should be denied a license.

12 August 1988

James L. Tillotson
City Attorney
P.O. Box 1178
Billings MT 59103

Dear Mr. Tillotson:

You have requested my opinion on a confusing portion of the statutes which allow cities to issue gambling licenses for card games, bingo and raffles. In pertinent part, both sections 23-5-322 and 23-5-422, MCA, similarly provide that:

[N]o license may be issued to:

....

(e) a person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least 1 year immediately preceding the filing of the application for license[.]

Your specific question concerning these statutes is as follows:

Do sections 23-5-322 and 23-5-422, MCA, allow issuance of a gambling license to a legal alien who has been residing in Montana for 18 years?

The language used in the statutes is awkward and confusing, and I am unable to find any court decisions which are of assistance in interpreting it. Part of the confusion in the language arises from the use of the double negative (no license ... issued to a person ...

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not a citizen). Dropping the double negative for the purpose of analysis, the framework of the statute becomes more clear: A license ... may be issued ... to a person who ... is a citizen of the United States ... and ... is a resident of the state. Under that construction of the statute a person would have to be both a citizen of the United States and a resident of the state of Montana in order to qualify for licensing.

The language in question here was incorporated into comprehensive pieces of legislation which authorized limited and controlled gambling in Montana after the adoption of a new state constitution in 1972. Montana Card Games Act, 1974 Mont. Laws, ch. 293; Bingo and Raffles Law, 1974 Mont. Laws, ch. 294. The licensing provision in the gambling laws was based largely on the licensing requirements which then existed under the liquor laws. The specific language involved in this opinion request was adopted verbatim from the licensing portion of the liquor laws. § 4-412, R.C.M. 1947 (1973 supp.).

However, in 1975 the Legislature passed a bill "to recodify and generally revise the alcoholic beverage control laws." 1975 Mont. Laws, ch. 387. In section 90 of the law, now codified at section 16-4-401, MCA, the previous language was changed to an affirmative statement which reads in pertinent part:

The department must find ... that:

(2) the applicant is a resident of the state and is qualified to vote in a state election.

1975 Mont. Laws, ch. 387, § 90 (now contained in section 16-4-401, MCA). Since a person must be a citizen of the United States in order to vote in a state election (§ 13-1-111, MCA; Mont. Const. art. IV, § 2), the two-pronged test of state residency and national citizenship was preserved. What is important for our purposes is that in this clarifying act the Legislature clearly established that a person must be both a United States citizen (voter) and a resident of Montana to qualify. By inference, this result is what the Legislature had meant by its previous, less exact, language.

It is also relevant that in interpreting the language in the liquor regulations, the Department of Revenue's position during the administration of the previous language was that a person must meet both requirements in order to obtain a license. Letter from Tom Mulholland, deputy administrator of the Liquor Division

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of the Department of Revenue, to Attorney General Greely (July 19, 1988).

THEREFORE, IT IS MY OPINION:

The language in sections 23-5-322 and 23-5-422, MCA, requires that an applicant for a gambling license meet both United States citizenship and Montana residency requirements. An alien who has resided in the state for 18 years does not meet both requirements and should be denied a license.

Very truly yours,

MIKE GREELY
Attorney General