

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 17

GAMBLING - Authority of city to license the conduct of raffles;
GAMBLING - Limitation on value of raffle prizes;
MUNICIPAL GOVERNMENT - Authority of city to regulate raffles;
MONTANA CODE ANNOTATED - Sections 23-5-402(1)(b), 23-5-413, 23-5-421;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 6 (1987).

- HELD: 1. Pursuant to section 23-5-421, MCA, a city may require an organization seeking to conduct a raffle to obtain a license only if the drawing for prizes is held on premises which are subject to licensure for the sale of liquor, beer, food, cigarettes, or other consumable products.
2. Regardless of whether a license to conduct a raffle may be required by a city pursuant to its authority under section 23-5-421, MCA, prizes for the raffle may not exceed \$1,000 in value unless the organization conducting the raffle obtains a license from the board of county commissioners pursuant to section 23-5-413(2), MCA.

19 May 1987

Robert G. Dwyer
Dillon City Attorney
125 North Idaho Street
Dillon MT 59725

Dear Mr. Dwyer:

You have asked my opinion on two questions concerning the city's authority to regulate the conduct of raffles. Your questions arise from my recent opinion, 42 Op. Att'y Gen. No. 6 (1987), which held that a town does not have authority under section 23-5-421, MCA, to regulate otherwise lawful bingo games conducted on premises which are not subject to licensure for the sale of liquor, beer, food, cigarettes, or other consumable products.

I have restated your questions as follows:

1. May the city require a license to be issued, pursuant to section 23-5-421,

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MCA, to an organization seeking to conduct a raffle and to sell raffle tickets at various locations, including bars and restaurants?

2. If a city license is not required to conduct a raffle, is the \$1,000 limitation on the value of the raffle prize suspended as to that raffle?

The Montana Bingo and Raffles Law, §§ 23-5-401 to 431, MCA, authorizes raffles to be conducted in accordance with its provisions. Section 23-5-421, MCA, permits the city to require that licenses be obtained for raffles "to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable products."

The reasons for my holding in 42 Op. Att'y Gen. No. 6 would apply as well to the regulation of raffles, and I conclude that the city does not have authority to license and regulate raffles conducted on premises which are not subject to licensure for the sale of consumable products.

By statutory definition, raffles are "conducted" by drawing for prizes. § 23-5-402(1)(b), MCA. It follows that the city's licensing authority extends only to raffles in which the drawing for prizes takes place on premises which have been licensed for the sale of consumable products. If an organization seeking to conduct an otherwise lawful raffle does not hold its drawing on such premises, the city would not have the authority to require the organization to obtain a license. The fact that raffle tickets are sold on licensed premises, such as bars and restaurants, does not change this result; the determining factor is the location of the drawing.

With respect to your second question, it is important to distinguish between licenses which may be issued by a city or other local governing body pursuant to section 23-5-421, MCA, and the special raffle licenses which are required by section 23-5-413(2), MCA. Subsection (1) of section 23-5-413, MCA, generally limits raffle prizes to tangible personal property not exceeding \$1,000 in value. In 1981 the Legislature enacted an exception to this limitation; subsection (2) of section 23-5-413, MCA, now allows a nonprofit corporation, religious corporation sole, or other nonprofit organization to apply to the board of county commissioners for a license to conduct a raffle in which the prizes exceed \$1,000 in value. This license is separate from any license which

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may be required under section 23-5-421, MCA. The provisions of section 23-5-413, MCA, apply even if a city license is not required to conduct the raffle. Raffle prizes may not exceed \$1,000 in value unless an eligible corporation or organization complies with the requirements of section 23-5-413(2), MCA, and obtains the necessary license from the board of county commissioners.

THEREFORE, IT IS MY OPINION:

1. Pursuant to section 23-5-421, MCA, a city may require an organization seeking to conduct a raffle to obtain a license only if the drawing for prizes is held on premises which are subject to licensure for the sale of liquor, beer, food, cigarettes, or other consumable products.
2. Regardless of whether a license to conduct a raffle may be required by a city pursuant to its authority under section 23-5-421, MCA, prizes for the raffle may not exceed \$1,000 in value unless the organization conducting the raffle obtains a license from the board of county commissioners pursuant to section 23-5-413(2), MCA.

Very truly yours,

MIKE GREELY
Attorney General