

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 6

GAMBLING - Authority of towns to regulate bingo games;  
MUNICIPAL GOVERNMENT - Authority of towns to regulate  
bingo games;  
MONTANA CODE ANNOTATED - Sections 7-1-112(5), 23-5-142,  
23-5-411, 23-5-412, 23-5-421;  
OPINIONS OF THE ATTORNEY GENERAL - 35 Op. Att'y Gen. No.  
86 (1974).

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HELD: 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 product.

30 January 1987

Arnie A. Hove  
City Attorney  
P.O. Box 184  
Circle MT 59215

Dear Mr. Hove:

You have requested my opinion concerning a question which I have phrased as follows:

Does a town 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 product?

I conclude that a town does not have such authority.

Under the Montana Bingo and Raffles Law, §§ 23-5-401 to 431, MCA, bingo games are permitted if various conditions are satisfied, including a limitation on the value of prizes and price of individual bingo cards. §§ 23-5-411, 23-5-412, MCA. County, city and town governments are, however, authorized under section 23-5-421(1), MCA, to impose licensing requirements under certain circumstances:

Any city, town, or county may issue licenses for games of chance provided for in this part to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable products. Within the cities or towns, such licenses may be issued by the city or town council or commission. Licenses for games conducted on premises outside the limits of any city or town may be issued by the county commissioners of the respective counties. When a license has been required by any city, town, or county, no game of chance as provided for in this part may be conducted on any premises

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which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable product without such license having first been obtained.

The issue presented here is whether local governments have the power to regulate otherwise lawful bingo operations conducted on premises not required to be licensed for the sale of liquor, beer, food, cigarettes, or any other consumable product.

35 Op. Att'y Gen. No. 86 (1974) concluded that the predecessor provision to section 23-5-421, MCA, was not intended to limit the regulatory authority of local governments to premises of the kind specified in subsection 1. Nonetheless, subsequent to issuance of that opinion section 7-1-112(5), MCA, was adopted and states that local governments with self-government powers are not authorized "to regulate any form of gambling, lotteries, or gift enterprises" unless specifically permitted by law. Although section 7-1-112(5), MCA, addresses only those entities with self-government powers, there is no reason to conclude that local governments with general powers are intended to have greater authority. The Legislature's determination to limit local government power in gambling matters is further reflected in section 23-5-142, MCA, which provides that "[n]o ordinance regarding gambling or gambling houses may be passed by any city, or town, county, or other political subdivision of the state except in compliance with parts 3, 4, and 5 of this chapter." When sections 7-1-112(5) and 23-5-142, MCA, are read together, there can be no reasoned dispute that the authority of local governments to regulate bingo is restricted to that permitted under section 23-5-421, MCA. This interpretation of section 23-5-421, MCA, is also consistent with accepted canons of statutory construction. E.g., State ex rel. Jones v. Giles, 168 Mont. 130, 133, 541 P.2d 355, 357 (1975) ("[i]n determining legislative intent, an express mention of a certain power or authority implies the exclusion of nondescribed powers"); Reed v. Reed, 130 Mont. 409, 413, 304 P.2d 590, 592 (1956) (same). Consequently, to the extent 35 Op. Att'y Gen. No. 86 holds to the contrary, it is modified.

THEREFORE, IT IS MY OPINION:

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 product.

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Very truly yours,

MIKE GREELY  
Attorney General