

TAXATION COMMITTEE  
45TH LEGISLATURE

Rep. E. N. Dassinger, vice-chairman, called the Taxation Committee to order at 9 a.m., March 31, 1977, in Room #434 of the Capitol, Helena. This was an executive meeting to continue discussion of Senate Bill 97. All committee members were present except Rep. Huennekens, who had a Senate meeting and returned to the committee meeting shortly.

Dave Cogley, Legislative Council attorney, was present at the request of the committee to explain the gambling laws. There are 3 different acts that were adopted in 1974 dealing with card games, sports pools, and bingo and raffles set up with certain restrictions.

Rep. Sivertsen asked how keno got into the gambling act. Mr. Cogley said under 62-716, Bingo and Raffles, bingo is defined as a game of chance as determined by the Attorney General's Office, and this definition was broad enough to include keno. A Supreme Court case which basically confirmed the Attorney General's opinion made the playing of keno legal.

Rep. Williams asked if SB 97 was not passed if it would leave the state open for a lot more gambling. Mr. Cogley said he did not think so. It might encourage it, but wouldn't leave it wide open.

Rep. Lien asked if the payoff were raised from \$100 to \$1,000 a game if it would be feasible for local governments to increase the fees for licenses. Mr. Cogley said they would follow whatever regulation the local governing body would impose, but it would have to be some reasonable fee and provide for the welfare health and safety of the local people. A case in Alabama came up when some operators were charged \$500 for a license and others were charged \$40. The court ruled that the \$500 was too high by the Supreme Court and lowered it. If you raise it too high it can be taken to court because it would violate the equal protection provisions.

Rep. Sivertsen said Billings has one of the highest license fees in the state. How do they justify this? Mr. Cogley said there is a fine line between what is reasonable or not reasonable. The local governing body could impose rules and regulations.

Rep. Williams asked if a city could refuse a license if they did not want any gambling. Mr. Cogley said they could. The statute reads: Games can be conducted if a license is obtained and if a city does not issue a license there can be gambling. The statutes do not mandate cities to issue licenses.

In answer to a question from Rep. Lien, Mr. Cogley said a city could authorize one kind of gambling without authorizing others.

60.- March 31, 1977

Page 2

He also said as long as they are issuing licenses, they could not hold out a license for one establishment. They would have to issue a license to anyone if they issued any license for a certain type of gambling.

Rep. Dassinger asked if a local governing body could stop gambling when the state authorized it. Mr. Cogley said 62-719 says any city, town or county may issue a license for any games provided in this act.

Rep. Fabrega asked if one table was licensed, then other tables were added, is the license for one table or is there one for each table. Must there be a license for each machine in an establishment. Does each machine constitute a game. Mr. Cogley said the statute does not answer that. He guessed that each machine would be licensed rather than one overall license.

Rep. Bertelsen said any license can be repealed for cause. Rep. Uhde asked if a built-in paper card with 40 numbers that the customer checked off would be legal. Would it be legal for someone to check on each consecutive game to check the exact same numbers? Mr. Cogley said he thought so. He said the definition of bingo is very simple and it is already apparent that it is very broad and many things come under it. What exactly does come under it will have to be decided in court. He said the definition of bingo refers to two games authorized, which are bingo and raffles and both are games of chance. Bingo is where prizes are awarded on the basis of numbers or symbols which conform to numbers or symbols selected at random.

Rep. Williams asked if "card" means card. Mr. Cogley said he thinks the definition of card means the physical card, not something where you just punch numbers.

Rep. O'Keefe questioned the word "cash." Mr. Cogley said a cash payoff would be illegal. You can play with chips and tokens as long as you purchase them with cash. If you pay cash for a card and get paid in poker chips, you do have to trade them for cash. It is illegal for the award to be in silver and gold bars, but this has not been challenged.

Rep. Williams asked if keno is defined in the bingo act, why they can pay cash in keno games. Mr. Cogley said he does not know.

In answer to a question from Rep. Dassinger, Mr. Dowling said a machine was contemplated in connection with bingo. The Attorney General's opinion was the first time they knew keno could be played under the bingo law. There is a potential for abuse, but none has developed. The major problem with the bill is the merchandise. The Attorney General said tokens could be used. The local governing body is the licensing agent and can put on restrictions as they see fit. Half of the revenue goes

into the Agriculture Department.

Rep. O'Keefe said there is no revenue and no control over machines in East Helena. Mr. Dowling said they have no ordinance covering gambling. It is under the control of the local government.

Rep. Fabrega asked if a gambling commission would be necessary. He said passage of this bill would not clear up the problems. Mr. Dowling said there is no real ability to examine gambling the way it is now. Rep. Fabrega then asked if slot machines are coming. Mr. Dowling said he does not see this as a possibility. Mr. Cogley said there is another law prohibiting slot machines.

Rep. O'Keefe asked if no license is issued, can a place still have machines without any control. Mr. Cogley said yes. There is a statute setting forth issuance of a license but there is a gap just by virtue of the fact that the statute does not speak to that specific question. Rep. Bertelsen said the intent was that a locality could prohibit gambling in their vicinity. Mr. Cogley said he thought the Legislature was giving control to the local governing body, but it appears that there was an oversight in the drafting of the law. Mr. Dowling said if the city wanted to control it, they would have to enact an ordinance, but most of the major cities have ordinances. They do not have any discretion as to whether a local body can say there can be gambling or not. The city can only prohibit it by ordinance.

In answer to a question from Rep. Uhde, Mr. Dowling said keno is a game of 80 numbers and numbers are selected. If the game meets this definition, it is legal. How the numbers are drawn seems to be unspecified.

Senator Turnage, in answer to a question, said selecting numbers for keno by hand would be too slow. Mr. Dowling said there must be 20 numbers selected in a particular game.

Rep. O'Keefe said people in Kalispell say they cannot control gambling. Mr. Dowling said Lewis and Clark County has had no trouble and can control any abuses.

Senator Brown said there is a lot of concern in Flathead County. They had gamblers from Las Vegas infiltrating, or at least that was the rumor. He said he could not vouch for it specifically. Mr. Dowling said they have found no evidence of organized crime coming into Montana; it is just not worthwhile for them to come.

Senator Turnage said the Supreme Court has made slots legal. He said he objects to common-law slot machines we have now, and the question is how many should we have.

Rep. Dassinger asked Mr. Cogley if the games can continue to be played in the city whether the city regulates or not. Mr. Cogley said under the statutes the cities are given authority

60.-March 31, 1977

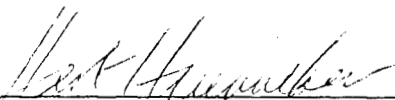
Page 4

to license the games if they wish. If they do not, the people are still not going to stop playing the games.

Chairman Herb Huennekens returned and assumed the chair. There is a motion by Rep. Vincent before the committee. It is to amend the bill to provide for an effective date of January 1, 1978. Reps. Harrington, Sivertsen, Huennekens voted no. The motion carried.

Rep. Bertelsen moved to recommend that Senate Bill 97 AS AMENDED BE CONCURRED IN. The motion failed by an 8 to 9 vote. Without objection, the vote was reversed and the recommendation is that Senate Bill 97 AS AMENDED, BE NOT CONCURRED IN.

The meeting adjourned at 9:55 a.m.

  
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REP. HERB HUENNEKENS, CHAIRMAN