

Pool and Billiard) Persons, voluntary associations or incor-
Tables) porated bodies must obtain a license to keep
and operate.

December 17, 1937

12-18



Hon. B.G. Dilworth
Prosecuting Attorney
Dent County
Salem, Missouri

Dear Sir:

This department is in receipt of your letter of December 11, 1937, in which you request an opinion as follows:

"There is being formed now in Salem, Dent County, Missouri, an athletic club, which is taking the form of a voluntary unincorporated association. This club, it is my understanding, intends to operate on a non-profit basis, proceeds merely to be used to pay expenses.

"This club intends to set-up and operate pool and billiard tables in its club-room for the exclusive use of their members. A membership fee is to be charged members, which money will go to payment on the club-room and other operating expenses.

"I would like to have your opinion as to whether or not such a club is required to obtain a pool and billiard table license from the County Court in order to so operate.

"In the event that such an association would incorporate on a non-profit basis, would the requirement as to license be any different."

Section 14272, R.S. Missouri 1929, is in part as follows:

"The county court shall have power to license the keepers of billiard tables, pigeonhole tables, jenny lind tables, and all other tables kept and used for gaming, upon which balls and cues are used."

Section 14280, R.S. Missouri 1929, is as follows:

"This chapter shall not apply to any person having set up in his own private residence any one of such tables mentioned in Section 14272, when used for his own private use and for the use of his family, and upon which no charge is made for playing."

Section 14278, R.S. Missouri 1929, provides that any person who violates the provisions of Section 14272 by operating any of the tables therein mentioned without a license, shall forfeit and pay not less than fifty, nor more than four hundred dollars, to be recovered by indictment or information.

We find two cases in this state which have reached the appellate courts in which persons have been charged with keeping a pool or billiard table without a license.

In *State v. Shotts*, 128 S.W. 245, 143 Mo. App. 346, the defendant was tried (and convicted) upon information with having kept a billiard table without a license. The defendant operated a tobacco store. In conjunction with his tobacco business, defendant set up a billiard table for the use of the public, for which use he made no charge, either directly or indirectly. Also, defendant kept a reading table where he furnished reading matter at no charge to the public. In disposing of this case, the court said at l.c. 346:

"The fact that defendant made no charge to the patrons of his business as a merchant for the use of his table for playing games of billiards thereon was immaterial. It was permitting the playing of such games by defendant as the keeper of the tables without a license therefor that the statute comprehended. Had he been licensed as such keeper he would have been authorized to have charged for the use of his tables or he could have permitted the use free of charge to his patrons although the statute is silent as to that matter. It was the business the Legislature had in view and not whether the licensee realized any profit from it,".

In *State v. Clarkson*, 102 S.W. 2nd 159 (Mo. App.), the *Shotts* case, *supra*, was cited and reaffirmed. In this case, a voluntary association known as a "Recreation Club" was formed. Each member paid the sum of one dollar - out of which was purchased two pool tables. The members of the club then signed an agreement whereby each was to pay one dollar per month to defray the cost of upkeep on the tables, rent, lights, heat, etc. The monthly fee was paid to defendant who rented quarters, set up the tables and paid all expense incident to the operation of the club out of said money. He was not required to account for any surplus, if any, in said fund. No other charge was made for the privilege of using the club's facilities. No one except members of the club and their invited guests used the tables. The defendant was convicted in the trial court of keeping and permitting to be kept and used, pool tables without a license. The appellate court affirmed this conviction.

The statute is directed against the keeping and using of said table at any other place than in the home by a person for his own use or the use of his family. The question of operation for profit is immaterial.

December 17, 1937

The license provided is upon the keeper of the table, whether it be a person, voluntary association, or an incorporated body. We do not think that the fact the keeper of the table is a corporation makes any distinction in the law. The law requires that all the tables, mentioned in Section 14272 must be licensed, except those set up in a private residence by a person for his own use or for his family. The tables kept by voluntary associations or non-profit corporations do not fall within this exception.

CONCLUSION

Therefore, it is the opinion of this department that all the tables, included within the provisions of Section 14272, R.S. Missouri 1929, must be licensed by the county court to operate. The only exceptions are those mentioned in Section 14280, R.S. Missouri, 1929, that is, those set up in a private residence for a person's own use or the use of his family.

Respectfully submitted,

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APPROVED by:

J.E. TAYLOR
(Acting) Attorney General

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