

**OPINION
47-221**

February 20, 1947 (OPINION)

SUNDAY ROLLER SKATING

RE: Private Sport

You have inquired whether the establishment by the city of Bismarck of a local skating rink with a small admission fee for those participating in roller skating will contravene the Sunday laws of the state of North Dakota.

Public sports are prohibited by section 12-2115 of the North Dakota Revised Code of 1943. Subsection 2 thereof defines public sports as, "including shooting, sporting horse racing, or other public sports, circuses, and street carnivals. Baseball when conducted in a quiet and orderly manner so as not to interfere with the peace, repose, and comfort of the community may be played between the hours of one o'clock p.m. and 6 o'clock p.m. on the Sabbath day, if played more than five hundred feet away from any church edifice."

The question arises whether or not roller skating comes within the meaning of "public sports" or whether it is in the nature of a "private sport."

"A 'public sport,' game, show, or entertainment is one held out and given to the public." People v. Poole 89 N.Y.S. 773, 774, 44 Mics. 118.

"'Private sports' are those which are engaged in for the entertainment and pleasure of those who participate, but 'public sports' are those which are engaged in for the entertainment and pleasure of the public." Cheeves v. State, 114 P. 1125, 1126, 5 Okl. Cr. 361.

Undoubtedly, a baseball game is a public sport. So is a football game or a basketball game.

"A moving picture show is not a 'public show' within the meaning of those words as used in Pen. Code, section 265, prohibiting all shooting, hunting, fishing, playing, horse racing, gaming, or other public sports, exercises, or shows on Sunday." People v. Hemleb, 111 N.Y.S. 690, 691, and other cases cited. (35 Permanent Edition Words and Phrases, page 347.

It would seem to me that providing a roller skating rink for the personal entertainment and pleasure of those who like to roller skate would not come within the terms of section 12-2115 of the North Dakota Revised Code of 1943 as a "public sport." It is rather a private sport, and in the nature of an amusement for those who participate.

I am aware of an opinion rendered by this office on January 5, 1942, which is contrary to the view herein expressed. This opinion is

found at page 117 of the attorney general's report covering the period from July 1, 1940, to June 30, 1942. In that opinion is cited the case of Cheeves v. State, referred to supra. However, that case is not in point, as it refers to a baseball game played on the Sabbath where an attendance fee was charged to those who witnessed the game, and the case differentiates, as indicated by the quotation above, between "public sports" and "private sport."

It is the opinion of this office that the maintenance of a local roller skating rink by the city of Bismarck on Sunday, to which an admission fee is charged to those participating, does not come within the Sabbath-breaking statute - section 12-2115 - and is not in the nature of a "public sport" prohibited thereby.

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