Opinion No. 64-32

March 11, 1964

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E Payne, Assistant Attorney General

TO: Mr. Patrick F. Hanagan, District Attorney, Chaves County Court House, Roswell, New Mexico

QUESTION

QUESTIONS

(1) If a bowling establishment has on the premises four billiard or pool tables as an incidental amusement, is it considered a pool room for purposes of § 40A-20-6 of the Criminal Code?

(2) If a billiard or pool table which is located in a bowling establishment is in use, are minors under the age of eighteen restricted from using the bowling lanes at the same time?

(3) If a billiard or pool table which is located in a bowling establishment is in use, are minors under the age of eighteen restricted from using the snack bar at that time?

(4) If a billiard or pool table which is located in a bowling establishment is in use, are minors under the age of eighteen restricted from merely observing the activities at the bowling lanes?

CONCLUSIONS

(1) No.

(2) No.

(3) No.

(4) No.

OPINION

ANALYSIS

In your opinion request you relate the following background information. An establishment is devoted primarily to the sport of bowling but the building also contains

four billiard or pool tables, and a snack bar. The building is clean, well lighted and open to view from all parts.

Section 40A-20-6, N.M.S.A., 1953 Compilation, enacted as a portion of the 1963 Criminal Code, provides in pertinent part as follows:

"Loitering of minors consists of . . . the owner or operator of any poolroom permitting a minor under the age of eighteen years to attend, frequent or loiter in or about such premises without being accompanied by the parent or guardian of such minor."

Actually, however, such legislation has been on the statute books of New Mexico since 1913 without any court decisions on the question of what constitutes a "pool room." See Sections 40-10-3 and 40-10-4, repealed by Chapter 303, Section 1, Laws 1963.

The prohibition is against the loitering of minors in or about establishments which are "pool rooms." Under the decisions, the criterion frequently used in a determination of whether an establishment is a pool room is the principal business or purpose test. If the principal purpose of the establishment is oriented to the playing of pool, then the establishment is usually said to be a pool hall or pool room, the two terms having become synonymous by usage. **Wright v. Aaron,** Ark, 215 S.W. 2d 725; for example, in the case of **Recreation Club v. Miller,** Miss., 5 So. 2d 678, the court in holding the establishment to be a pool room noted that the ratio of billiard tables to checker boards was seven to one.

In our opinion, the only workable method of classifying the establishment one way or the other is the principal business and purpose test. Otherwise, any establishment that operated one or more pool tables would be susceptible to classification as a pool room. Obviously such is not the case. Our research has disclosed that not only do lodges such as Elks and Moose contain pool tables, but so do YMCA Clubs and the like. In addition, some 430 colleges have billiard or pool tables on their premises, including some all-girls' schools.

Under the facts related, and our opinion of necessity must be limited to these specific facts, the principal business and purpose of the establishment is not the playing of pool and thus the establishment is not a pool room.

In view of this answer to question 1, the answer is negative to your other three questions.