

Opinion No. 14-1320

September 14, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Thomas G. Lackland, Columbus, New Mexico.

SUNDAY LAW.

Operation of pool rooms on Sunday.

OPINION

{*178} I have just received your letter of the 11th instant in which you request information as to whether or not it is against the state laws to operate a pool room on Sundays, as to which you say, also, that the laws of your county permit the same to be open as far as you can ascertain, and there is no town ordinance on the subject.

There are no county laws relating to this or other subjects. The only laws which could be invoked are those of the state, formerly territory, or city or town ordinances.

The statute on the subject of the observance of Sunday is to be found in Section 1368 of the Compiled Laws of 1897, which is as follows:

"Any person or persons who shall be found on the first day of the week, called Sunday, engaged in any sports, or in horse racing, cock fighting, or in any other manner disturbing any worshipping assembly, or private family, or attending any public meeting, or public exhibition, excepting for religious worship, or instruction, or engaged in any labor except works of necessity, charity or mercy, shall be punished by a fine not exceeding fifteen dollars, nor less than five dollars, or imprisonment in the county jail of not more than fifteen days, nor less than five days, in the discretion of the court, upon conviction before any district court."

I have had occasion twice in the past to consider the enforcement of this statute with regard to the operation of moving picture {*179} shows, first in June, 1911, and next in May, 1913, and what I then said appears to me to be applicable to the operation of a pool hall if conducted in an orderly and inoffensive manner. I then said that a literal reading of the law would make it a violation for anyone to be engaged in such labor as the conducting of a moving picture show, and this is certainly applicable also to a pool hall, but that experience has shown that it is advisable that there should be some discretion exercised in the enforcement of such statutes as this. Intelligent members of a community who favor the observance of the Sabbath generally realize that attempts at rigid and undeviating enforcement of such a law is likely to result in a condition of public sentiment which might either bring about a repeal of all laws on the subject or make it impossible to secure conviction even in cases where the violation of the law is flagrant

and very offensive. I believe that in many of our towns picture shows and pool halls are in operation on Sunday, and I have not heard of any complaint being made on that account. The sale of such things as cigars, tobacco, soda water and candies is general and appears not to have caused any difficulty, although such occupations are literally within the provisions of the statute.

Laws of this kind are enforceable only when the public sentiment of a community is in favor of their enforcement. It might be quite injudicious for the authorities to attempt to enforce the law against comparatively innocent amusements or occupations unless they are so carried on as to be offensive to the public. A pool room might be so conducted as to be something bordering upon a public nuisance on Sunday, and in such a case the law would probably be successfully invoked to punish the operators.