

## Opinion No. 15-1611

August 5, 1915

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. L. McNeill, Encino, N. M.

**Minors loitering about pool rooms, and as to whether "string tables" are to be classed as lotteries.**

### OPINION

{\*184} I have today received your letter of the 31st ult. which appears to have been delayed in transmission. Without attempting to repeat your questions, I will endeavor to answer them as briefly as possible.

By Section 1268 of the compiled Laws of 1897, which reappears as Section 2915 in the new codification of the statutes, it is made a criminal offense for any saloon-keeper to permit any minor under the age of twenty-one years, to play billiards, pool or any game of cards or dice, or any other game on his premises, and by Section 3 of Chapter 3 of the laws of 1901, which is Section 2917 in the new codification, it is made an offense for the proprietor or manager of any saloon to permit any minor or any pupil in any school, to loiter upon or frequent the premises belonging to such saloon. These sections are not directly on the question that you ask, but relate somewhat to the same matter so that I thought it well to call your attention to them. That about which you specifically ask is answered by reference to Sections 1 and 2 of Chapter 15 of the Laws of 1913 which reappear as Sections 1814 and 1815 of the new codification. The first one, in very few words, declares: "Minors under the age of eighteen years are hereby prohibited from attending, frequenting or loitering in or about any poolroom in New Mexico." The other section makes it a criminal offense for any owner or proprietor of any pool-room to permit such minors to attend, frequent or loiter in or about the pool room.

I do not know of any special license tax for the vending of cold drinks and confections. One selling such things or any other merchandise, would be subject to the payment of a merchant's license tax, but under such a general merchant's license the merchant is not limited to any particular kind of merchandise but may {\*185} sell anything else except intoxicating liquors and drugs and poisons, for which special licenses are required.

As to the device which you call a "string table," and which you describe at some length, it appears to me that there is such an element of chance in its operation as to bring it within the definition of a lottery. Of the many numerous attempts to define lotteries, perhaps the best one is that it embraces all schemes for the distribution of prizes by chance, such as policy playing, gift exhibitions, prize concerts, raffles at fairs and other like methods. It cannot be said that the conduct of your "string table" involves any sort of skill on the part of the purchaser who would evidently be attracted by the chance of

getting something that he would like to have and would be probably attracted by the uncertainty which has a great attraction to the average mind. Lotteries are distinctly forbidden by the statutes of New Mexico. It might also reasonably be held that your device is one forbidden by the antigambling act of 1913 which makes it an offense for any person to play for money or other things of value at any game of chance, and which also makes it an offense for any person to conduct or operate any such game.