

Opinion No. 17-2006

June 20, 1917

BY: HARRY L. PATTON, Attorney General

TO: Mr. C. E. Haynes, Tularosa, New Mexico.

Motion Pictures Prohibited on Sunday

OPINION

I am in receipt of your letter of the 12th inst., in which you ask advice as to whether or not there is any law in this State prohibiting the operation of motion picture shows on Sunday.

In reply, will say that Section 1789, Code 1915, reads 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 of 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."

This question was before the Supreme Court of this State in the case of Territory v. Davenport, 17 N.M. 214, 124 Pac. 795, in which the court construed the section quoted by me. In that case, it was held that engaging in the sport of playing baseball did not constitute a violation of the statute. The court based its decision upon the theory that recreation or amusement is not transformed into labor because the persons indulging in the recreation or amusement receive pay for so doing. I think, however, that this case may be distinguished from one in which the question involved is the operation of a picture show. The show is unquestionably a place of amusement to those who patronize the same. On the other hand, the person who operates the same is not indulging in recreation or amusement like one who engages in the pastime of playing baseball, as pointed out by the court in the Davenport case. In my opinion, the person operating a motion picture show on Sunday does not come within the exception pointed out in the Davenport case, and is engaged in labor not a work of necessity, charity or mercy, and such act constitutes a violation of our statute.