

## Opinion No. 18-2116

August 5, 1918

**BY:** C. A. HATCH, Assistant Attorney General

**TO:** Honorable W. E. Lindsey, Santa Fe, New Mexico.

Construction of the Anti-Gambling Law.

### OPINION

Sir:

We have your favor of recent date enclosing a letter from Stone Mayes, of Santa Rita, wherein you desire information of our antigambling law.

Our present law is found in Chapter 110, of the Laws of 1917, which repeals all former laws. This Act prohibits the conducting or operating a game of chance for money, or anything of value. By expressly repealing the provisions of our former anti-gambling law, which was much more drastic than our present Act, the legislature undoubtedly meant only to prohibit the conducting or operating of a game of chance for money, or something of value, and not the playing of such a game. In our opinion it is no longer an offense to play a game of chance, subject, however, to the provisions of the statute prohibiting the conducting or operating of a game of chance, and even then the person operating the game would not be guilty, unless the game was operated for money, or something of value.

The Supreme Court of the State, in the matter of the application of Elmer E. Hamm, for a Writ of Habeas Corpus, Number 2226, had the following to say regarding Chapter 110, of the Laws of 1917:

"1. The first question presented is as to whether the action of the petitioner was a violation of any law of the State. It will be unnecessary to trace the history of the anti-gambling legislation of the State with any degree of detail. It will be sufficient to say that from time to time such legislation has varied, and at times the offense has consisted in the running of games, and at other times it has consisted in the playing of games. Immediately prior to the act of 1917, Chapter 24, Laws of 1913, compiled as Secs. 1757-1759, Code 1915, was in effect. That act made it an offense to play any game of chance for money or other things of value, and also an offense to conduct or operate any such game, or to knowingly permit any such game to be played upon the premises owned, leased or occupied by any person. The legislature of 1917, departed radically from these provisions. By Chapter 110, Laws of 1917, it is provided:

"That any person who for money or anything of value, conducts or operates any game of chance, by whatsoever name known or howsoever played, or who knowingly permits

any such game to be so conducted or operated upon premises of which he is the owner, lessee or occupant, upon conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than six months, or both such fine and imprisonment."

"Sec. 2 of the act expressly repeals Secs. 1757 and 1758, Code. 1915. It will be seen from an examination of this Section that the offense now consists in conducting a game of chance for money or anything of value. The playing of a game of chance is no longer an offense under the laws of this State. The playing of bridge whist for prizes is no longer prohibited by law, as possibly it was under the former statute. The playing of poker is no longer an offense, as it undoubtedly was under the former statute. Under these provisions the acts of the petitioner as shown by the testimony on the order to show cause were not violation of this statute. The petitioner made no money or anything of value out of the "take-off" of the game so far as appears from the evidence, and he violated no law when he played poker for money."

In view of the foregoing opinion, and our statutes, it is our opinion, the playing of kelly pool, poker or craps, constitutes no violation of the law in itself, but in order to violate our present law, it is necessary that the game be conducted or operated for money, or something of value, and the only person guilty is the person who conducts or operates the game.

The letter of Mr. Mayes, is returned herewith.