

## Opinion No. 21-3025

July 2, 1921

**BY:** HARRY S. BOWMAN, Attorney General

**TO:** Mr. R. M. Parsons, Justice of the Peace, Roswell, New Mexico.

### Construction of Gambling Law.

#### OPINION

{\*71} I regret that reply to your letter of the 17th ultimo, asking my construction of certain provisions of the Gambling Law (Chapter 86, Laws 1921), has been delayed. I have been away from the office several days and have also been engaged in court matters, all of which have prevented a more prompt reply to your inquiries.

Many of your inquiries are impossible of being answered either by me or any other person.

You ask, "What is a game of chance and what is the distinction between a game of chance and a game of science, and are the games of science intended to be eliminated by section 1 of the above mentioned act?"

I know of no hard and fast rule to apply in the defining of games of chance and of games of science. In my opinion each case must necessarily be governed by the facts arising therein. In my opinion, however, the law is not to be applied to games of science. I am of the opinion, however, that card games played at private residences, such as bridge whist, rummy, etc., where a prize or anything {\*72} of value is given, or even a guest prize is given, if the persons playing had knowledge that such a prize is to be awarded to the winner, would constitute a violation of the act.

The provisions of the law would not be violated where a game is played with cards or any other of the devices mentioned in section 1 where there are no stakes or other things of value played for. In my opinion, prizes offered by clothes' clubs and other such clubs do not constitute a violation of the act as none of the devices mentioned in section 1 of the act are used in such cases.

In my opinion, chess, billiards, pool, domino, and baseball contain a sufficient element of chance to bring them within the prohibition of the act if they are played for anything of value.

A case has been before the court of Bernalillo county involving some of the questions contained in your letter, and we are hoping for a prompt disposition thereof in order that the law in question may be brought to the Supreme Court and a proper interpretation thereof promptly had.

In our opinion, billiard, pool, and domino halls are not within the provisions of section 3 of the act since they are not included within the games of chance played for money or anything of value enumerated in section 1 of the act.

We do not believe it is necessary to read into section 4, "for money or anything of value" since in our opinion the provisions of section 4 apply only to the games of chance mentioned in section 1, and those games of chance are not prohibited unless they are played for money or something of value. Section 9 does not require clubs, commercial, Masonic or Elk, to store away their billiard, pool or card tables as in our opinion they are not gambling equipment contemplated by this section of the act.

Your inquiry regarding section 11 appears to me to be frivolous. You, as a judicial officer, know that it would not be necessary for you to convict a person of the offense of gambling if one person should testify that he was gambling and three or four others testified to the contrary. Your duty would be to select the testimony of the witness that you believed and to rule accordingly. The statute does not require that a person be found guilty upon the uncorroborated or unsupported evidence of one of the participants; it provides only that conviction may be had upon such testimony.