

Opinion No. 21-3082

August 10, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. Arthur J. Evans, Mayor, Elida, New Mexico.

Betting on Results Base Ball Game Violation of Gambling Act.

OPINION

{*83} In reply to your letter of the 8th instant asking if, in my opinion, betting upon the results of a ball game would be a violation of the provisions of Chapter 86, Laws 1921, the new gambling law, I wish to advise you as follows:

While the act mentioned does not specifically prohibit the placing of bets, in my opinion that part thereof which makes it unlawful to play at any game or games of chance played with any gambling devise by whatsoever name known, for money or anything of value, would, by implication, include betting upon ball games.

In the case of Joseph vs. Miller, 1 N.M., 621, the Territorial Supreme Court held that a horse race was a "gambling device" where wagers were laid upon the results thereof. The court, in passing upon the question used the following language:

"We are unable to discover any distinction in general principle between the various methods that may be adopted for determining by chance who is the winner and who the loser of a bet -- whether it be by throwing dice, flipping a copper, turning a card or running a race. In either case it is gambling. This is the popular understanding of the term 'gambling device' and does not exclude any scheme, plan or contrivance for determining by chance which of the parties has won and which has lost a valuable stake. That a horse race, when adopted for such a purpose is a 'gambling device' there can be no doubt. Shropshire v. Glascock & Garner, 5 Mo. 536, and cases there referred to."

We are of the opinion that the same rule would apply to a baseball game as to a horse race under similar circumstances.

District Judge Hickey of Bernalillo County, recently handed down an opinion holding that playing a game of solo with cards for a thing of value was not a violation of the Gambling Act, and if this view should be sustained by the Supreme Court on appeal, then our opinion above would scarcely be considered sound. Until the Supreme Court rules to the contrary, however, it is the purpose of {*84} this office to rule that all gambling or any kind or nature is within the prohibition of the Gambling Act.