Opinion No. [30-79]

July 21, 1930

BY: M. A. OTERO, JR., Attorney General

TO: Clement H. Congdon, Esq., Sunday Transcript, Real Estate Trust Building, Philadelphia, Pa.

SABBATH OBSERVANCE -- Sec. 35-4002, Code 1929.

OPINION

Your favor of the 15th inst. addressed to the Governor of New Mexico, wherein you request copies of our laws relative to Sabbath Observance, has been referred to me.

In reply thereto will say that section 35-4002 of our Code 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 worshiping 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 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 particular statute was enacted in 1887 and has been on our statute books ever since. It has been variously interpreted by our Supreme Court and, in the days before prohibition, our courts held that it prohibited the selling of liquor on Sunday. Another holding by our Supreme Court regarding this proposition is as follows:

"The legislature by the use of the words 'horse racing or cock fighting' point out the class of sports which they intend to prohibit, and they intended to prohibit only such sports as tend to immortality. It does not prevent engaging in innocent and harmless sports such as base ball."

"A person who plays base ball on Sunday is not attending a public meeting or exhibition within the meaning of this statute.

Recreation or amusement is not transformed into labor because the persons indulging in it receive pay for so doing. The playing of base ball is not labor within this statute."

Trusting that this gives you the information you desire, I am