

Gambling Law. Pool Selling on Horse Racing.

The Anti-gambling Law (Laws of 1901, page 166) does not apply to horse racing or pool selling on the results of such races.

Helena, Mont., August 23, 1906.

A. J. Walwrath, Esq., County Attorney, Bozeman, Mont.;

Dear Sir—I am in receipt of your letter of the 15th instant, in which you submit for consideration of this office the following question:

“Is the sale of pools on horse races at the county fairs throughout the State of Montana a gambling scheme or device within the purview of the provisions of Senate Bill No. 74, Session Laws of 1901?”

There is no law in this state prohibiting horse racing, or betting thereon, unless the act to which you refer (Laws 1901, page 166), is broad enough to include these matters.

The first three sections of this act are the prohibiting sections.

Section 1 of the act enumerates certain games, nickel-in-the-slot machines, etc., that are prohibited, and this section cannot by any possible construction include horse racing, or the betting thereon.

Section 3, by its terms, relates only to games, devices, etc. played or manipulated “by use of cards or other instruments or implements.” This cannot include horse racing.

Section 2 of the act provides:

“Every person who carries on, opens, or causes to be opened, or who conducts or causes to be conducted, any game of faro, roulette, draw poker, stud horse poker, or what is commonly called round-the-table poker, or any game of chance played with cards, dice, or any device whatever, or who runs or conducts any nickel-in-the-slot machine or other similar machine or permits the same to be run or conducted, other than the games commonly known as sure thing games, for money, checks * * * * * and any person owning or in charge of any saloon, beer hall, bar room, cigar store or other place of business where drinks are sold or served,”

is punishable as provided in the Section.

If we select from the Section only that part which can by any possible construction include horse racing, the Section will read:

“Every person who carries on * * * * * or who conducts or causes to be conducted * * * * * any game of chance played with * * * * * any device, etc.”

Does this prohibit horse racing or betting thereon?

It is well established that a General Statute prohibiting games, unless limited in its application, includes horse racing.

Swaggart v. Hancock, 25 Mo. App. 596.

Hayden v. Little, 35 Mo. 418.

Swigart v. the People, 50 Ills. App. 181.

State v. Shaw, 39 Minn. 153.

Ellis v. Beale, 18 Me. 337, 36 Am. Dec. 726.

Richardson v. Kelley, 85 Ills. 491.

Cheesum v. State, Black (Ind.) 332, 44 Am Dec. 771.

State v. Williams, 35 Mo. App. 541.

But is the phrase "a game of chance played with a device" broad enough to include horse racing?

The primary meaning of the word "device" is "to divide, separate, explain, distinguish."

Baxter v. Ellis, III N C. 124, 15 S E. 938, 17 L. R. A. 382.

The ordinary signification of the word, unless given a different meaning by the context, is "something invented and constructed for a special purpose; an instrument or combination of instrumentalities formed with intelligence and design; contrivance."

—Standard Dictionary.

The way in which the word is used frequently gives it a broader meaning so as to include "a plan or scheme in promotion of a definite purpose, an artifice or strategem; a plot; a project." But it is elementary that words must be given their ordinary meaning unless it appears that a different meaning was intended.

"A gambling device is something formed by design and has reference to something worked out for exhibition or show."
Porters v. State, 27 Ark. 360.

"Gaming devices are the tools of professional gamblers, and are adapted, designed, devised or used for the purposes named."

State v. Hardin, 1 Kans. 474,

In State v. Williams, 35 Mo. App. 541, it is said:

"While horse racing and cock fighting may be classed generally as games, in the sense that they are amusements, diversions or sports, yet they are not such games as are commonly understood may be "played at" and in this sense they were understood by the lawmaker."

Under our Statute, the game prohibited must be one that is "played with." If a horse race is not a game that can be "played at," can it be "played with?"

In Section 3 of the Act now under consideration, the word "device" is used and the emanating there given to the word by the Act itself is "cards or other instruments or implements." A horse race is not played by the use of cards, nor by the use of instruments nor by the use of implements, and if the word "device," as used in Section 3 of the Act, means cards, instruments or implements, why should this word be given a different meaning in another section of the same Act?

Furthermore, the last part of Section 2 of this Act prohibits the playing of any of the games mentioned in that section "in or about such saloon, beer hall, bar room, cigar store or other place of business."

It cannot be said that a horse race is a game played in or about a saloon, beer hall, bar room, cigar store or other place of business. This language of the Statute seems to indicate that the games referred to in the Section are such games as may be played in saloons, beer halls, bar rooms, cigar stores or other places of business.

Section 5209, Revised Statutes of Mo. 1889 provides:

"Any person who shall lose any money or property at any game or gambling device may recover the same by a civil action."

The Supreme Court of Missouri in passing upon this Statute, uses this language:

"It is a great perversion of language to call a horse race a gambling device. If the Legislature desires to prohibit horse races, it is easy for them to say so in plain terms. No one would even suppose that penalties inflicted upon keepers of faro banks, tables, and such like gaming devices, were intended to apply to horse races, or foot races, or boat races. A criminal code cannot be so loosely interpreted."

State v. Hayden, 31 Mo. 25.

See also Connor v. Black, 32 Mo. 150, 20 Cyc. 884.

In State v. Shaw, 39 Minn. 153, the defendant was informed against for "pool selling." The information charged that the defendant did "for gain and reward gamble with gambling devices, to-wit:

boards and lists containing the names of horses which were to race on a given day, and at a time and place then and there named."

Other counts in the information charged the defendant with keeping and maintaining gambling devices, etc. The Statute prohibited the gambling with cards, dice, gaming tables, or any other gambling device whatever.

The court in passing upon the question has alluded to the doctrine of "EJUSDEN GENERIS" and cited the case of *In re Le Tong*, 18 Fed. Rep. 253, but independently of this doctrine, the Court said:

"A horse race is not a gambling device nor are descriptive lists of such races, nor statements or announcements of the particulars thereof, from which those desiring to bet on the races may more conveniently obtain information in respect to the same ;and we are unable to see that the boards, lists, or records of the pools sold described in the indictment are anything more * * * * * The defendant's methods undoubtedly serve to facilitate gambling, and so does the fact that they keep upon a place for gambling, and the same may be said of the published schedule of races and games, and many other acts and things, which, however, cannot be denominated 'gambling devices' within the meaning of the statute."

The betting is on the races exclusively, and the result is in no way determined by the use of the instrumentalities in question, and no additional element of chance is introduced thereby.

This is a Penal Code and it is elementary that such Statute must be strictly enforced.

And as we have no Statute in this state prohibiting betting, except on the games or matters enumerated in the Statute, or included in the Statute, and as horse racing is neither named nor included, it must be held that there is no statutory prohibition against betting on horse races, nor is there any prohibition against pool selling on such races, for pool selling cannot be more than betting.

Respectfully Submitted,

ALBERT J. GALEN,

Attorney General.