

Gambling Games, Accessories. Accessories to Gambling.

Patrons of card games who have no other connection therewith except as players are not accessories with those who operate, conduct, or run, etc., the game then being played.

Helena, Montana, Oct. 10, 1907.

Hon. John W. James,
County Attorney,
Anaconda, Montana.

Dear Sir:—

I am in receipt of your favor of September 30th, in which you ask the opinion of this office as to whether the provisions of "Chapter 115, Laws 1907, or sections 41 and 1225 of the Penal Code, apply to individuals who are engaged in gambling, but who are not principal, agent or employe?"

The laws of 1907, above referred to, do not in terms prohibit gambling or the playing of games, but are directed solely against persons who carry on, open, or cause to be opened, or who conduct, or cause to be conducted, or who operate or run, etc., as principal, agent or employee.

Section 41 and 1225 of the Penal Code above referred to cannot be construed to apply to persons who have no connection with the games except as players. However, of course, it is possible that the playing may be done under such circumstances as will make the players liable as persons who carry on, open, or cause to be opened, or who conduct operate or run, etc. the game then being played. But the mere act of playing, unattended by any other circumstances or fact, would not be sufficient to make the players liable under said section of the Penal Code.

12 Cyc. 448 note 78.

In State vs. Woodman, 26 Mont. 348, the Supreme Court in dealing with this question stated that there was "ground for argument; that though the section does not in terms include the patrons they might

still be held guilty of aiding in the commission of the act declared a misdemeanor and punished under Section 19 and 1225 of the Penal Code." But the court did not answer the argument nor decide upon the question of the liability of patrons of the game.

Very truly yours,

ALBERT J. GALEN,

Attorney General.