

Gambling, Pool Game Not. Pool Game Not Gambling.

The anti-gambling law prohibits certain enumerated games and any game of chance. Pool games are not specially prohibited, nor are they games of chance.

Helena, Montana, June 27, 1908.

Hon. S. P. Wilson,
County Attorney,
Deer Lodge, Mont.

Dear Sir:—

Your letter of the 2nd inst. requesting opinion upon the following proposition, received:

Two or more persons enter into a game of pool in which they wager on the outcome of the game, and the winner receives a given amount of money from each of the other participants—the proprietor of the table being paid a certain amount per game, or a certain amount per hour, for the use of his table, and having no interest in the outcome of the game?

Does such a state of facts constitute a violation of the gambling law, either on the part of the players or on the part of the proprietor?

Is there any difference whether it is minors or adults who participate in such a game?

The anti-gambling law now in force in this state (Chapter 115, Laws 1907), specifically enumerates certain gambling games and gambling devices which it prohibits persons from carrying on, opening or causing to be opened. And further provides that "any game of chance played with cards, dice or any device whatsoever, is prohibited." From the language of the law it is apparent that it is only the games and gambling devices specifically mentioned, or "games of chance," which are prohibited. The law does not specifically mention the game of pool or billiards, and therefore such games are not covered by such law unless they come within the meaning of "games of chance." The great weight of authority holds that billiards and pool are games of skill and not games of chance.

The supreme court of the state of North Carolina in *State vs. Guptom*, 30 N. C. 271, said:

“Though our knowledge on such subjects is very limited, yet we believe that, in the popular mind, the universal acceptance of a ‘game of chance’ is such a game, as is determined entirely or in part by lot or mere luck, and in which judgment, practice, skill, or adroitness have honestly no office at all, or are thwarted by chance. As intelligible examples, the games with dice, which are determined by throwing only, and those in which the throw of the dice regulates the play, or the hand at cards depends upon a dealing with the face down, exhibit the (two) classes of games of chance. A game of skill, on the other hand, is one in which nothing is left to chance; but superior knowledge and attention, or superior strength, agility, and practice, gain the victory. Of this kind of games, chess, draughts or chequers, billiards, fives, bowles, and quoits may be cited as examples.”

You are therefore advised that the betting on a pool game, under the conditions stated in your letter, is not a violation of the anti-gambling law.

Nor does the anti-gambling law make any distinction between minors and adults. However, if the place in which the game of pool was played was a saloon, gambling house, or other place of resort where intoxicating liquors are sold by retail, or games of chance are played, then the proprietor of such place would be guilty of a misdemeanor under Section 540 of the Penal Code if he permitted minors to play the game of pool or resort or stop in his place of business.

Very truly yours,

ALBERT J. GALEN,

Attorney General.