

**Gambling, Players May Conduct the Game. Gambling, Information Where Game Is Conducted by Players Themselves.**

A game of cards may be conducted by the players themselves, in which event they can be prosecuted for opening, carrying on and conducting a gambling game.

Helena, Montana, January 11, 1910.

Hon. George A. Horkan,  
County Attorney,  
Forsyth, Montana.

Dear Sir:

I am in receipt of your letter of January 8th, containing form of information which you have prepared to file against one A. Hellinger, charging him with the crime of gambling, and in which you request our opinion as to the sufficiency of such information, where the facts were that the parties were all simply players in the game without any evidence to show that any one of them conducted or managed the game. In our opinion the information as prepared by you is sufficient, or, if you so desire, all of the parties who actually participated in the game could be charged against in one information. I notice, however, that you have alleged that the defendant did "on the 20th and 21st day of August," etc. I would suggest that you eliminate one of these dates and allege "on or about the 20th day of August," as it might be held that the playing on the 20th and also on the 21st were separate offenses, whereas, if you allege, "on or about the 20th" and the proof shows any date about that time and before the filing of the information it is sufficient.

This question was raised by the appellant in the case of the State v. Rose, where the information alleged "on or about the 8th day of April," and the testimony showed that the offense was actually committed on the 10th day of April. While the opinion does not discuss this point the judgment was affirmed. In our brief we cited State v. Thompson, 10 Mont. 549; People v. Squires, 33 Pac. 1092; 22 Cyc. pp. 314-315, and 20 Cyc. p. 911

In an opinion given to County Attorney O. M. Harvey, where he had arrested several parties who were caught in playing a game of chance for money and no evidence to show that any one of the players was actually conducting or managing the game, we said:

"The game is not automatic and to be played must be carried on and conducted by some person or persons. Under the circumstances contained in your letter I think there is no question but that each of the players is equally liable and all come within the operation of the statute."

In that case Mr. Harvey charged all the players in one information and they demurred to the information, which demurrer Judge Henry overruled and the parties all entered pleas of guilty.

I also understand that Mr. Mulroney, county attorney of Missoula county, filed a similar information against a number of players, charging them with conducting a game, and they were convicted.

If you charge all the players in one information, I would suggest that you eliminate that part of the information which I have marked out with pencil. In fact the parties in this case are not players at a game conducted by Hollinger, but were conducting the game as much as he was.

If there is any question as to what particular game of chance was being played, the safer practice is not to name any of the games mentioned in the statute, but to allege that "he did \* \* \* carry on, open, play and conduct a certain game of chance, played with cards for money, checks, credits and representatives of value, the name of said game of chance being to informant unknown," etc.

See State v. Radmilovich, 105 Pac. (Mont.) 91.

Very truly yours,

ALBERT J. GALEN,

Attorney General.