

Anti-Gambling Law, Construction Of. 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 the game then being played.

Patrons who take part in carrying on, opening, or causing to be opened the prohibited game may be prosecuted for a violation of the anti-gambling law.

August, 26th, 1911.

Mr. Charles A. Taylor,
County Attorney,
Billings, Montana.

Dear Sir:

I acknowledge receipt of your letter of the 23rd inst., in which you state there are several cases pending in your county wherein informations have been filed against certain defendants with violation of anti-gambling laws, and you make inquiry concerning the decision of the supreme court in the recent case of State vs. Wakely wherein the matter of the guilt of a player was discussed.

The impression seems to prevail that by reason of this decision it is impossible to convict for the violation of this act persons participating in a gambling game other than a regularly run or conducted game, that is a public game. However, in my opinion the supreme court in the Wakely decision did not construe this law in a different manner than this office construed it on October 10th, 1907, in an opinion rendered to Hon. John W. James, county attorney of Anaconda, Montana. This opinion may be found in Vol. 2, Opinions of Attorney General, at page 172. In that opinion we used the following language:

"The laws of 1907 above referred to does 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, etc., as principal, agent or employee.

However, of coursé, 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 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."

With reference to this phase of the proposition in the Wakely case the supreme court used the following language:

"Under our statute the mere player who does not take part in carrying on, opening or causing to be opened, conducting or causing to be conducted operating or running the prohibited game as principal, agent or employee, is guilty of no offense whatever."

You will notice the supreme court uses the language "who does not take part in" so that it is apparent that there may be circum-

stances or facts which when taken into consideration may show that even the players have taken part in carrying on, opening or causing to be opened the prohibited game, and in that event it is my opinion that prosecution could be successfully had against such players.

The decision in the Wakely case has not as yet been published but in all probability will be in the next advance sheet of the Pacific Reporter.

Yours very truly,

ALBERT J. GALEN,

Attorney General.