

Gambling, What is.

Where two or more persons agree together to play a game of cards for money or other evidence of value, it is a joint enterprise, and all are guilty as principals, under Section 8416, Revised Codes of 1907.

February 23, 1916.

Hon. Frank Arnold,
County Attorney,
Livingston, Montana.

Dear Sir:

I am in receipt of your communication under date the 14th instant, asking for an interpretation of the gambling law of this state. The

question raised by you may be stated as follows:

"Whether it is necessary that a percentage or rake-off be received by someone of the players or the proprietor of the premises, to make a game played for money or other evidence of value gambling within the meaning of our statute?

In the case of *State v. Wakely*, 43 Montana, 427, the Supreme Court of this State held under our statute, Section 8416, Revised Codes, 1907, that:

"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 whatsoever."

It becomes necessary, therefore, to define and distinguish if possible, between the words, "mere player", as used in the *Wakely* case, and the terms "person who opens or causes to be opened, etc", as used in the statute. As has heretofore been held by this office in an opinion to Hon. Charles A. Taylor, County Attorney, found in Volume 4, Opinions Attorney General at page 255, circumstances may arise where even the players themselves become guilty. Under the ordinary banking game, where one person conducts the game as banker, a person entering such game, would not be guilty under the *Wakely* decision. However, if a number of persons agree together to play a game of cards for money or other evidence of value, it is a joint enterprise, and all are equally responsible for the opening, conducting or carrying on of the same. Our statute makes no distinction between such a game, and one promoted by a single individual who takes a percentage or fee for operating the game, and since a number of persons are equally responsible, all are guilty under the statute, and I am of the opinion that all are liable to prosecution and punishment. The distinction between a "mere player" as that term is used in the *Wakely* case, and a principal, arises from the connection of the particular person with the opening, conducting or carrying on of the game. Where several persons jointly open, conduct or carry on such a game, all are principals. See also Vol. 3, Opinions p. 281.

Yours very truly,

J. B. POINDEXTER,

Attorney General.