Gambling—Dice—Cards—Pool and Billiards—Playing for Drinks or Cigars. Section 8416 of the Revised Codes as Amended Construed. H. B. 23 of the Fifteenth Legislative Assembly Construed.

It is unlawful for two or more persons to shake dice or to play an ordinary game of cards to determine who is to buy the drinks or cigars.

It is unlawful for two or more persons to play a game of pool or billiards, the loser of the game paying the regular price charged for the use of the table for such game.

March 7, 1917.

Mr. B. E. Berg,
County Attorney,
Columbus, Montana.

Dear Sir:

I am in receipt of your letter of recent date submitting the following questions:

First: Is it unlawful for two or more persons to shake dice, or to play an ordinary game of cards to determine who is to buy the drinks or cigars?

Second: Is it unlawful for two or more persons to play a game of pool or billiards, the loser of the game paying the regular price charged for the use of the table for such game?

Section 8416, as amended by the Fifteenth Legislative Assembly provides:

> "Every person who deals, plays, or carries on * * * any game of chance played with cards, dice or other device whatsoever * * * or keeps any slot machine, punch board or other similar machine or device or permits the same to be run or conducted for money, checks, credits or any representative of value, or for any property or thing whatsoever * * * and every person who plays or bets at or against any of said prohibited games is guilty of a misdemeanor."

This question has never been passed upon by the Supreme Court of this State, however, Statutes similar to the one quoted have been construed by the courts of States and it has uniformly held that shaking dice or playing cards for drinks, cigars or any other article constitutes gambling and is prohibited.

In the case of Commonwealth vs. Taylor, 80 Mass. 26, the Court in passing upon a similar statute held that "Playing cards, dice or any game of hazard, to determine who shall pay for liquor of for any other article was gambling."

> "Playing at cards, with an agreement that the losing party shall pay for drinks, constitutes gambling."
>
> State vs. Leicht, 17 Iowa 28.

Throwing dice to determine who shall pay for the drinks was held to be gambling in McDaniel vs. Commonwealth, 69 Ky. 326.

To the same effect are the following cases:

State vs. Ward, 43 Ark. 77;
Brown vs. State, 49 N. J. L. 61;
Hitchens vs. People, 39 N. Y. 454;
Vanevey vs. State, 41 Tex. 639;
Hamilton vs. State, 75 Ind. 586.

Playing for drinks, cigars, lunches, or other refreshments, or the fees for the use of the table, alley, or apparatus on which or with which a game is played is gambling."

20 Cyc. 889 (III).

It follows from the foregoing that your first question must be answered in the affirmative.

Section 1 and 2, House Bill 23, of the Fifteenth Legislative Assembly, approved February 15th, provides:

> "That any owner, proprietor, manager, or employee who permits, or any person who carries on, or conducts, or causes to be conducted or runs, as principal or agent or employee, any game of Pea Pool, Pay Pool, Kelly Pool, or any other game of chance, science or skill, played upon any pool table or upon any billiard table for money, checks, credits or any representative value, shall be deemed to be guilty of a misdemeanor and punished as provided in this Act.
>
> Section 2. That any person who shall participate as a player in the game prohibited by this Act shall be deemed guilty of a violation thereof and punished as provided in this Act."

This question has been before the courts of many states and almost without exception it has been held to constitute gambling, and in no state where the question has been decided do I find a statute as drastic or as far reaching as the one just quoted.

In Ward vs. State, 17 Ohio State 32, it was decided that "where a party keeps a billiard table, and permits persons to play upon it, for twenty cents a game, to be paid by the loser of the game, he is guilty of keeping such table for gain, within the meaning of Section 8 of the Act of March 12th, 1831, 'for the prevention of gaming,' although such keeper of the table does not permit players, as between themselves, to bet, and neither they nor other persons do bet on the issue of the game or games, in any other manner than that the loser of the game should pay twenty cents for the use of the table."

To the same effect is the case of State vs. Leighton, 23 N. H. (3 Fost) 167.

Mount vs. State, 7 Ind. 654, was a prosecution under a statute which provided "Every person who shall, by playing or betting at or upon any game or wager, * * * either lose or win any article of value shall be fined," etc. The information charged that one Groff owned and kept a tenpin alley for hire, that Mount and one Miller hired of Groff the use of the alley to play one game of ten-pins, for which they agreed to pay 10 cents, and that, in pursuance of said hiring, Mount and Miller played said game, by which Mount won of Miller 5 cents, the half of the hire of said alley, by then and there unlawfully betting and wagering with him the said 5 cents on the result of the game. The Court said "It is insisted that the information does not show a case within the Statute. To constitute unlawful gaming, there must be a game played, and upon its results some article of value must be lost or won. There was such game, and the only point of inquiry is, was any article of value won by the defendant. His liability to Groff was paid by Miller, because, in the event of being unsuccessful, he had stipulated to pay it. This payment, though made to Groff, was for the use of the defendant, and the transaction was, in effect, the same as if the amount lost and won had been paid to the defendant instead of Groff, and he had received it from the defendant."

Hamilton vs. State, Ind. 586.

Defendant was charged with keeping a certain house to be used for gaming and permitting persons to play the games of billiards, pool and corporal, in the said house, for money and for "the hire of the table" on which said games were played, which said hire was of the value of 5 cents.

The Court held:

> "We think that sound reason supports the authorities that hold such playing as is charged in this case to be gaming. The manifest purpose of the Legislature, in its various enactments on the subject of gaming, has been to make unlawful all games of chance by which money or other articles of value may be lost or won, and the evil effects of risking small sums on the result of skill at billiards is less in degree only than the hazard of larger stakes at other games. The weight of authority is also in favor of such construction of the statute under consideration."

In State vs. Records 4 Harrington, (Del.) 554 which was an indictment at common law for suffering a game of chance to be played about defendant's house, on which money was bet, it was held that, if the compensation for the use of a bowling alley was made to depend on the result of the game, and the inn-keeper permitted the game to be played, with knowledge of such risk, it was a violation of law.

In the case of State vs. Brooks, 41 Iowa 550, 20 Am. Rep. 609, it was said: "The defendant kept certain tables on which divers persons were in the habit of playing at what is called the game of 'pin pool'. That this is a 'game' there is no dispute, and there is no controversy about the fact that, for the use of the tables and other instruments of the game, the defendant charged and required the players to pay a certain sum of money for each cue, when, therefore, two or more persons played the game, they became jointly and severally bound to pay the sum or sums of money chargeable therefor. It is plain that, if they play the game or games in order to determine which of the players shall pay the entire sum or sums which they became jointly or severally bound to pay, they play for the sum each one would be bound to pay, and it does not change the matter that they play the game in advance of paying therefor. The principal is the same as if the money had been staked or put up before the game was played. It is gambling in the one case as well as in the other. Nor is it any less gambling that the sum of money played for is small."

See also the following cases:

State vs. Sanders, 111 S. W. 454 (Ark.) 19 L. R. A. (N. S.) 913, Annotated;

Hall vs. State, 34 S. W. 122 (Tex. Cr. App.);

Moys vs. State, 82 S. W., 515 (Tex.);

Hopkins vs. State, 50 S. E. 351, 69 L. R. A. 117;

State vs. Leighton, 23 N. H. (3 Fost) 167, 20 Cyc. 889 (III).

It follows from the foregoing that your second question must be answered in the affirmative.

Respectfully,
S. C. FORD,
Attorney General.