

No. 119

**GAMBLING—AMUSEMENT, card tables as—PENIE
ANTE—STUD POKER—DRAW POKER**

Held: Trade checks are not to be used in playing the games permitted by Chapter 153, Laws of 1937, but are only the rental value of the tables maintained, as the games are to be played only for amusement and pastime. Betting at or against such games is strictly prohibited.

May 20, 1941.

Mr. John M. Comfort
County Attorney
Madison County
Virginia City, Montana

Dear Mr. Comfort:

You have submitted the following question for my opinion:

"In view of the recent attitude toward gambling several operators of poolhalls and beer parlors have contacted the sheriff and myself as to what the conditions would be under which they could legally play the game of penie ante, that is, they wish to operate under the 'hickey' gambling law specified under the 1937 amendment to Section 11159. Therefore, I am asking your assistance to be able to tell these operators exactly what conditions your office will expect so they will not be violating the law. The questions that have arisen concerning penie ante are as follows:

- "1. After an ante of a chip or counter has been made at the beginning of the game will such penny limit apply during the course of the entire game, that is, whether the game be stud-poker, draw-poker or similar?
- "2. If an ante of one penny was made at the beginning of the game would the players be able to call a penny bet and be able to raise the bet 5c or any other figure?
- "3. If a player bought a stack of chips for \$1.00 and each chip or counter had a value of one cent would this still comply with the penie ante limit regardless of the amount bet during the course of the game?"

Chapter 153 of the Laws of 1937 is an Act amending Section 11159, Revised Codes of Montana, 1935, prohibiting gambling games, said amendment providing for the playing of certain games for amusement and pastime, and the use in places of business of trade stimulators upon the payment of a license to the county treasurer, and providing penalty for the violation thereof.

Section 1 of the Act makes it a misdemeanor for any person to deal, operate, conduct, carry on, open, or run certain named games, "or any game of chance played with cards" for "money, checks, credit, or any representative of value, or any property or thing whatsoever." It also provides that "any person owning or in charge of any cigar store, drug store, or other place of business, or any place where drinks are sold or served, who permits any of the games prohibited in this section to be played, in or about such cigar store, drug store, or other place of business, . . . and every person who plays or bets at or against said prohibited games or devices, except as hereinafter provided, is guilty of a misdemeanor."

It is further provided under Section 1 of the act:

"It shall be lawful for cigar stores, fraternal organizations, charitable organizations, drug stores and other places of business, upon the payment of a license fee therefor to the County Treasurer in the sum of ten dollars (\$10.00) annually per table used or operated in

such place of business, to maintain and keep for the use and pleasure of their customers and patrons, card tables and cards with which and at which such games as rummy, whist, bridge whist, black jack, euchre, pinochle, pangene or pangeni, seven-up, hearts, freeze-out, casino, solo, cribbage, five hundred, penie ante, dominos, high-five and checkers may be played for pastime and amusement by customers who are not minors, and for the maintenance of which a charge may be made, to be paid by the users by the purchase of trade checks which must be redeemable in merchandise at the going retail price of such merchandise, which is the stock in trade of such business; and that places of business may, upon the payment of a license fee therefor to the county treasurer in the sum of ten dollars (\$10.00) annually, exhibit for use and sale to all customers not minors, trade stimulators, such as pull boards and ticket boards, where each board so used returns to the owner or business not to exceed the going retail price of the goods disposed of and sold and disposed of through the use of the same must not be other than the goods constituting the usual stock in trade of the business using the same."

I know of no better way to answer the questions propounded here than to quote from our Supreme Court in *State v. Aldahl et al.*, 106 Mont. 390, 78 Pac. (2nd) 935, wherein the Court said:

"We are unable to find anything in Chapter 153 from which it can be said that it is legal to conduct or run a game of blackjack for checks, credits, or other representative of value in a place of business such as is involved here. The first part of that Chapter expressly prohibits it. The proviso, Section 1, contains no language authorizing it. The proviso simply states that it shall be lawful for places of business to maintain and keep for the use and pleasure of their customers and patrons, card tables and cards upon the payment of annual license fees. It makes it lawful for blackjack to 'be played for pastime and amusement by customers who are not minors.' It then contains this clause: 'And for the maintenance of which (meaning the card tables and cards) a charge may be made, to be paid by the users by the purchase of trade checks which must be redeemable in merchandise at the going retail price of such merchandise, which is the stock in trade of such business.' This language does not suggest that the trade check might be used in playing the game. They, in effect, constitute the rental value of the use of the table and cards at which the game is played. In that manner and to some extent they constitute a trade stimulator. But in the face of the positive prohibition in the first part of Section 1 against the use of checks, credits, or other representative of value, it cannot be said that the use of these checks in betting on the games was authorized directly or indirectly by the language of the proviso contained in that section. The title of Chapter 153 also indicates clearly that it was designed merely to permit the playing of the enumerated games 'for amusement and pastime.'"

The provisions of Chapter 153 of the Laws of 1937 permit proprietors of business establishments to obtain a license from the county, making it lawful for them to keep and maintain in their place of business card tables for the use and pleasure of their customers at which certain enumerated games may be played for amusement and pastime, and for the maintenance of which a charge may be made, to be paid by the purchase of trade checks redeemable in merchandise.

Therefore, it is my opinion trade cheks are not to be used in playing the games permitted, but are only the rental value of the tables maintained, as the games are to be played only for **amusement and pastime** and betting at or against such games is strictly prohibited. The three questions submitted under your query all contain elements of gambling

which are not permitted under the 1937 amendment to Section 11159 of the Revised Codes of Montana, 1935.

Sincerely yours,

JOHN W. BONNER
Attorney General