

Opinion No. 14-1220

May 5, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Rev. Frank Talmage, Secretary of Roswell Ministerial Alliance, Roswell, New Mexico.

SUNDAY LAW.

Violation of Sunday law by persons engaged in sports upon that day.

OPINION

{*79} I have received your letter of the 2nd inst. enclosing a newspaper clipping setting out a program of field sports and athletic events {*80} on the preceding Sunday afternoon, as to which you ask my judgment and suggestion as to what the course of the Ministerial Alliance should be in the premises.

Observance of the Sabbath can be regulated only by statute. In the absence of any statute in New Mexico there would be no restriction whatever upon the people as to what they should do, or not do, on Sunday. Our statute on this subject will be found in Sections 1368 to 1374 of the Compiled Laws of 1897, and in Chapter 33 of the Laws of 1913, which is an amendment of Section 1372. Section 1372 declared that Sunday, for the purposes of the act, should be regarded as the time between sunrise and midnight of the day, while, as amended in 1913, it covers the time between 11:59 P. M. of Saturday and 12:00 P. M. Sunday.

The essential part of the statute is in Section 1368, which reads as follows:

"Any person or persons who shall be found on the first day of the week, called Sunday, engaged in any sports, or in horse racing, cock fighting, or in any other manner disturbing any worshipping assembly, or private family, or attending any public meeting, or public exhibition, excepting for religious worship, or instruction, or engaged in any labor, except works of necessity, charity or mercy, shall be punished by a fine not exceeding fifteen dollars, nor less than five dollars, or imprisonment in the county jail of not more than fifteen days, nor less than five days, in the discretion of the court, upon conviction before any district court."

At the first glance it would seem that the carrying out of a program of field sports on Sunday afternoon would fall within the prohibition of this section, but our Supreme Court has held, in the case of Territory vs. Davenport, 17 N.M. 214, that the statute does not prohibit all sports on the Sabbath day, but only those which are of a kind like horse racing, cock fighting, which tend to immorality, as gambling and betting frequently attend such sports. That case was one brought to the Supreme Court from Curry

County, the defendant having engaged in playing in a game of base ball on Sunday, the court holding that he had not thereby offended against the law. The court in that case comments upon the peculiar wording of the statute as not being entirely clear, but on the contrary ambiguous.

Applying that decision of the court to the statute and to the program of field sports set out in the newspaper clipping which you send me, it would seem that no offense against the statute was committed. Even if it could be reasonably contended that the statute had been violated, it would then become a serious question whether it would be advisable to make any attempt to prosecute the offenders. Statutes of this character, for their enforcement, must depend upon the public sentiment of the community, and any rigid and indiscriminate course as to the enforcement of such a law, running counter to public sentiment would, almost certainly result in its general disregard.

An illustration of the necessity of a public sentiment to assist in the enforcement of laws of this class, is to be found in New Mexico as to this particular statute with regard to its violation by retail liquor {*81} dealers. Ten or twelve years ago there was probably not a saloon where liquors were sold at retail anywhere in the state, then territory, which was not open on Sunday. I had this specially pressed on my attention while I was District Attorney at Albuquerque. Grand juries would not indict saloon-keepers for keeping open on Sunday, nor would the trial juries convict. Since that time there has been a sufficient change in public sentiment so that saloons are not kept open on Sundays, and if their keepers violate the law it is in surreptitious and secret ways. With an increase of sentiment against such violations even those will cease.

Of course, I do not know definitely what the public sentiment in Roswell may be as to these athletic sports, but I would be much surprised to find that it was strongly against them on Sunday, because if there had been a general sentiment in the community against this Sunday performance I do not believe it could have taken place. Believing, as you evidently do, that such things should not be tolerated, the only practical suggestion I can make is that you should try to create public sentiment in favor of your views.