

Opinion No. 22-3345

March 20, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Mr. M. O. Trujillo, Sheriff, Taos County, Taos, New Mexico.

Procedure in Prosecutions Violators Anti-Gambling Law.

OPINION

{*137} In reply to your letter of the 17th instant, stating that there is much gambling going on in Taos, in violation of the anti-gambling law, and requesting advice concerning the procedure to be adopted by you in filing complaints against the persons violating the law, and making arrests thereof, I wish to advise:

In order to authorize you to make a search to ascertain whether or not gambling is being indulged in in violation of Chapter 86, Laws 1921, it is necessary to file an affidavit in writing with the District Judge of the District, and immediately upon the filing of such affidavit, a warrant authorizing search must be issued. (Sec. 8, Chap. 86, Laws 1921).

If, however, you are satisfied that the law is being violated, it is not necessary, in order to make an arrest, for you to make the affidavit mentioned and procure a warrant based thereon. You are authorized to make arrests for violation of the law without a warrant, and after the arrests have been made, then to file a complaint before a justice of the peace and have a warrant issued by that officer.

You should present violators of the law to the justice of the peace unless your district court is in session, when violators may be presented direct to the judge of that court.

Another procedure is provided for in the act wherein district attorneys are required to institute proceedings by information against any and all persons charged by affidavit with violations of the antigambling law.

You may file such affidavit with the district court and then call the attention of the district attorney thereto and request him to file the information above mentioned.

I trust that the foregoing points out to you the procedure to be adopted by your office in meeting the conditions mentioned in your letter.