

Opinion No. 25-3836

June 15, 1925

BY: JOHN W. ARMSTRONG, Attorney General

TO: Requested by: Hon. Forrest Fielder, District Attorney, Deming, New Mexico, May 29, 1925.

Gambling includes solo, stud poker and draw poker when played for anything of value

OPINION

I am quoting in full your inquiry as follows:

"Since the report of the grand jury at Lordsburg, the sheriff seems to want to enforce the law strictly, with reference to gambling. After conferring with him, we have decided to stop all public card playing until I can get an opinion from you as to the legality of some of the games they desire to play.

They propose to play the games of solo, stud poker and draw poker according to the ordinary rules of the game upon the following basis:

Each player to be given a specified number of chips or counters which have no value and as soon as he loses his allotted number, he is required to buy as many trade checks as there are players in the game and to give them to the player having the greatest number of chips or counters. Another proposal is that the low man buy and give to each player one trade check. The trade checks are worth ten cents each in merchandise but are not redeemable in cash. They also propose to play dominoes and pool charging five cents per player, the players requiring the loser to pay for the game.

Kindly advise if these games played in this manner are prohibited by the gambling laws. I have instructed the sheriff to prohibit all slot machines. The pool room proprietors have a machine which can be played with nickels or trade checks. When played with nickels it pays an ordinary five cent package of mints or chewing gum. Whether played with nickels or trade checks occasionally it will pay from two to sixteen trade checks redeemable in merchandise only at the value of five cents each. I am informed that this machine can in about thirty seconds be converted so as to pay nickels and so as not to pay the gum or mints and so that it can not be played with trade checks making it a straight coin machine. Kindly advise if in your opinion, this machine is prohibited by the gambling laws."

The examples you present seem to come clearly within the prohibition of the gambling act found at § 1, Chap. 86, Session Laws 1921. The New Mexico Supreme Court holds that solo is gambling in a case no stronger than the one you present -- Grafe v. Delgado, 228 Pac. 601. In this opinion, the Supreme Court gives a very broad

significance to the general language of the Gambling Statute, the general language of the Gambling Statute being "or any other game or games of chance played with dice, cards, punch boards, slot machines or any other gaming device by whatsoever name known, for money or anything of value."

I have no doubt that the games of solo, stud poker and draw poker when played, as you mention, are gambling games within the meaning of the Statute. The slot machines and machines played with nickels or trading checks, mentioned by you, are likewise prohibited by the Gambling Act.