

Westlaw Delivery Summary Report for COOK,GENEVIEVE L

Date/Time of Request:	Monday, September 7, 2009 12:29 Central
Client Identifier:	GENEVIEVE COSTALES
Database:	AL-ST-ANN
Citation Text:	AL ST s 13A-12-22
Lines:	630
Documents:	1
Images:	0

The material accompanying this summary is subject to copyright. Usage is governed by contract with Thomson Reuters, West and their affiliates.



Code of Alabama [Currentness](#)

Title 13A. Criminal Code. ([Refs & Annos](#))

Chapter 12. Offenses Against Public Health and Morals. ([Refs & Annos](#))

[Article 2.](#) . Gambling Offenses.

[Division 1.](#) . General Provisions. ([Refs & Annos](#))

➔ **§ 13A-12-22. Promoting gambling.**

- (a) A person commits the crime of promoting gambling if he knowingly advances or profits from unlawful gambling activity otherwise than as a player.
- (b) Promoting gambling is a Class A misdemeanor.

CREDIT(S)

(Acts 1977, No. 607, p. 812, § 6106; Acts 1979, No. 79-471, p. 862, § 1.)

13A-12-21 AND 13A-12-22 COMMENTARY

The Alabama Code contains over 75 criminal statutes on the subjects of gambling and lotteries. See generally, former Tit. 13, ch. 7, art. 2, Alabama Code.

Existing Law--Billiard Rooms:

Title 34, Chapter 6, of the Alabama Code deals with billiard rooms. Billiard games are defined (§ 34-6-1) and rooms for playing are subject to licensing (§§ 34-6-31 through 34-6-34), inspection (§ 34-6-2) and operating requirements (§§ 34-6-3 and 34-6-4). Restrictions, which must be posted (§ 34-6-11), are placed upon billiard room playing by minors (§ 34-6-9), and certain other games, *i.e.*, dice, cards, etc., may not be played in billiard rooms, although in some counties domino games are permissible (§ 34-6-12). Some provisions govern the sanitation (§ 34-6-5) and interior arrangements (§§ 34-6-6 and 34-6-7) of billiard rooms. With regard to operating such rooms, it is a misdemeanor to operate without a license (§ 34-6-30) nor may a license be issued when a city ordinance prohibits billiard rooms, (§ 34-6-35), but a few exceptions exist, *e.g.*, clubs (§ 34-6-15). Billiard room keepers violating any governing statutes may receive misdemeanor punishment in the way of a fine ranging from \$50.00 to \$250.00 plus licensing ineligibility (§ 34-6-16). Licensees who knowingly permit the presence of a § 34-6-12 type gambling device in a billiard room, or who permit a table to be used for gambling, likewise are subject to misdemeanor punishment of a fine between \$50.00 and \$500.00 and up to 12 months hard labor. A second conviction invokes felony punishment, a fine of \$100.00 and up, plus a one to two years penitentiary sentence (§ 34-6-13). It is a misdemeanor to bet money or other things of value at billiards or any other game (§ 34-6-14), or to keep, operate, or exhibit any billiard table outside of an incorporated municipality for public use, (§ 34-6-8) (certain exceptions are noted). Operators who knowingly permit minors to play may be fined (§ 34-6-10).

Existing Law--Horse Racing:

Horse racing receives attention in former Tit. 13, ch. 7, art. 2, div. 2. Buying or selling an interest or share in a pool, or making or taking book, on a horse run inside or outside the state, is a misdemeanor carrying a fine of from \$50.00 to \$500.00 and a possible jail term up to six months (former § 13-7-50). Former § 13-7-51 made it plain that the person giving the bet (money or other thing of value) as well as one receiving it has committed a misdemeanor punishable under former § 13-7-50. Carrying on a business of book-making or pool-selling, or keeping “a place to which persons shall resort for engaging in such practices” or for betting, also is a misdemeanor carrying fine and jail punishment (former § 13-7-52) (the offense is distinguished from taking or making a bet in [Carr v. State, 46 Ala.App. 4, 237 So.2d 116 \[1970\]](#)). And former § 13-7-53 provided for the forfeiture of its charter should any corporation violate any of this division’s provisions.

Existing Law--Miscellaneous Offenses:

There are a number of miscellaneous offenses collected in former Tit. 13, ch. 7, art. 2, div. 1. There is a comprehensive statute aimed at all gaming with dice or cards in a “public place” (former § 13-7-20) (gaming in private residence not prohibited). [City of Birmingham v. Richard, 44 Ala.App. 127, 203 So.2d 692 \(1967\)](#); [Bythwood v. State, 20 Ala. 47 \(1852\)](#). What constitutes a “public place” has been the subject of much judicial comment. *E.g.*, public school privy during vacation held not public house, [McDaniel v. State, 35 Ala. 390 \(1860\)](#); lawyer’s office excluded, [McCauley v. State, 26 Ala. 135 \(1855\)](#); private home not covered, *City of Birmingham v. Richard, supra*, [Ingram v. State, 45 Ala.App. 108, 226 So.2d 169 \(1969\)](#); public highway included by express statutory language and if spot where gaming covered may be seen from highway, accused is chargeable under two provisions of the section. [Lee v. State, 136 Ala. 31, 33 So. 894 \(1903\)](#); [Mosely v. State, 161 Ala. 74, 49 So. 807 \(1909\)](#).

Following a section on indictment and proof (former § 13-7-21), the offense of “keeping a gaming table” is created (former § 13-7-22), the first offense punishable as a misdemeanor but all others are punishable as felonies. The thrust of the statute being directed against gambling itself, it is immaterial where the gaming table is kept, be it public or private. [Lee v. State, 33 Ala.App. 183, 31 So.2d 375 \(1947\)](#). And the keeper is the person having possession of the tables and authority over its use. [Smith v. State, 29 Ala.App. 302, 196 So. 132 \(1940\)](#). Any table kept (and used?) for gaming is sufficient though not necessarily for any particular game. *Smith v. State, supra*. (See also former § 13-7-23 on the requirements of indictment and proof).

The bettor at a gaming table prohibited by former § 13-7-22, or at a game prohibited by former § 13-7-20, or at “Keno, or at any game of hazard or skill played on any steamboat... or in or on any railroad car,” was punishable under former § 13-7-24 as a misdemeanor. And an adult who bets money or a thing of value with a minor, or who allows a minor to bet at a gaming table kept by him, commits a misdemeanor (former § 13-7-25). Betting on any election is similarly prohibited (former § 13-7-26).

Section 13-7-27 placed an affirmative duty upon proprietors of taverns, hotels and other public houses to prevent gaming, for it punished as misdemeanors those who permit gaming as described in former §§ 13-7-20, 13-7-22, 13-7-24, 13-7-25 and 34-6-14. The statute extends to captains of steamboats, conductors on trains, and the “keeper, proprietor, owner, or superintendent of any public house or outhouse where people resort.” Owners or proprietors (but not “keepers” or “superintendents”) who rent a house, room, etc., for gaming purposes are likewise punishable under former § 13-7-28.

Sections 12-16-212, 12-16-213 and former 13-7-31 deal with special subjects, *i.e.*, immunity to grand jury

witnesses in gaming and lottery cases; misdemeanor punishment for grand jury witnesses who refuse to testify in such cases; and duty upon judicial and law enforcement officials to cause the arrest of persons violating former § 13-7-22 (keeping a gaming table).

Existing Law--Lotteries:

Comprehensive prohibition of lottery schemes and gift enterprises was contained in former § 13-7-32. It embraces those who set up, carry on, are “concerned” with either; who sell or “dispose” of a lottery or gift enterprise ticket; who receive money or take an order for a lottery or gift enterprise ticket; who are “interested or concerned in selling or disposing” of a lottery or gift enterprise ticket; and those who act for others in such activity. Penalties vary according to the number of convictions. See, [Grimes v. State, 235 Ala.192, 178 So. 73 \(1938\)](#) (lottery includes a prize, awarded by chance, for a consideration). The section has been applied to bank nights, [Grimes v. State, supra](#); punch boards, [Brewer v. Woodham, 15 Ala.App. 678, 74 So. 763 \(1917\)](#); slot machines, [Johnson v. State, 137 Ala. 101, 34 So. 1018 \(1903\)](#); and bottle caps with “lucky” numbers, [Try-Me Bottling Co. v. State, 235 Ala. 207, 178 So. 231 \(1938\)](#).

Existing Law--Slot Machines:

Slot machines, wheels of fortune, other devices of chance, and raffle schemes were controlled by former § 13-7-33; persons operating any of these commit a misdemeanor. Apparently to emphasize the legislative determination to suppress gambling, former § 13-7-34 removed any discretion possessed by the grand jury in finding indictments for violation of the slot machine and lottery sections.

Existing Law--Wagering on Sports:

Principals or their agents who sell tickets or chances on pools, or make or place bets, or enter into any transaction wherein money, etc., may be won or lost because of a prize fight, or other contest, or one who acts as agent in placing such a ticket or chance, or even aids another in entering a betting transaction on a horse race, baseball game, etc., are subject to misdemeanor punishment ranging from a \$25.00 fine to 60 days hard labor (former § 13-7-35).

Also, it is a misdemeanor to make a loan of money by using a lottery or scheme of chance (former §§ 13-7-36 and 13-7-37).

Existing Law--Suppression of Gambling Devices:

Several statutes with the view of suppressing gambling devices are collected in former Tit. 13, ch. 7, art. 2, div. 3. In nine parts former § 13-7-70 defined extensively such devices, the definitions themselves appearing repetitious in some instances, *e.g.*, “(2) Any machine, mechanical device, contrivance, appliance or invention... which determines the result of winning or losing money or property by chance, lot, or luck, in which neither the will nor skill of man can operate to influence the result of winning or losing... (5) Any machine, mechanical device, contrivance, appliance or invention, whatever its name or character, where money or property is hazarded on chance or risked on an uncertain event....” This section is primarily directed against pinball machines, slot machines, and similar devices, [State v. One 5¢ Fifth Inning Base Ball Machine, 241 Ala. 455, 3 So.2d 27 \(1941\)](#), and though broad in scope, nevertheless it is limited to those which fall within its terms. [Walker v. State, 285 Ala. 315, 231 So.2d 882 \(1970\)](#) (does not include lottery equipment referred to in former § 13-7-110).

Former § 13-7-71 made it unlawful “to possess, keep, own, set up, operate or conduct, or permit to be set up, operated or conducted,” any such device, the penalty for which being declared in former § 13-7-79 a misdemeanor carrying a penalty of fine up to \$500.00 and jail up to six months. Moreover, the sheriff was directed by former § 13-7-72 to seize any gambling device and report the circumstances to the district attorney, who, under former § 13-7-73, was directed to seek certain injunctive relief concerning such devices, following which their disposition, and that of the contents, was directed by former § 13-7-74. There was a further definitive statute, former § 13-7-75, which excludes machines and devices which cannot be played for money or other tokens of value, or in which chance is absent. Otherwise, condemnation results in destruction of the machine (former § 13-7-77); costs are taxed against the party who was in possession or the owners and contestants (former § 13-7-78); and appeal lies to the court of appeals (former § 13-7-76).

Existing Law--Suppression of Gambling Places:

The statutes in former Tit. 13, ch. 7, art. 2, div. 4 involve the suppression of gambling places. Places maintained for gambling, and places where gambling tables or devices are kept for play, are declared common nuisances and subject to abatement by injunction (former § 13-7-90) (the owner's ignorance no defense), [State v. Guardian Realty Co., 237 Ala. 201, 186 So. 168 \(1939\)](#). And §§ 13-7-90 (now repealed) and 28-4-232 (abatement of liquor nuisance) authorize the seizure and condemnation of money and lottery paraphernalia. *Walker v. State*, supra.

Persons maintaining bells, wires, signals, etc. for communication with rooms or places used for gaming are guilty of a felony, punishable by one to five years imprisonment (§ 13A-12-50). A district attorney who receives reliable information of such implements is directed to seek an injunction (§ 13A-12-51). The exhibition of cards, dice, or other gambling implements in barred rooms or houses making entry by officers difficult, or protected by alarm devices, is prohibited by § 13A-12-52 and violators are declared felons subject to one to five years imprisonment. There is a felony sanction against the owner, etc., of any public house permitting another to bar a gaming room or knowingly permit another to equip a room with warning devices (§ 13A-12-53). Section 13A-12-54 provides for examination by a magistrate of an affiant swearing to offenses contained in this division, and officers executing a warrant thereunder are directed to enter the house, seize the gambling devices and the parties found therein (§§ 13A-12-55 and 13A-12-56), and after a hearing the magistrate is to bind over the accused for grand jury action if it appears they are guilty (§ 13A-12-57). In any subsequent trial, the general reputation of a person occupying such a room that he is a gambler is admissible, and the presence of warning devices, e.g., bells, wires, etc., is declared prima facie evidence that gambling was being carried on by such a person (§ 13A-12-58.)

Existing Law--Lottery Paraphernalia:

The possession or transportation of lottery slips, etc., is covered in former Tit. 13, ch. 7, art. 2, div. 5. While mere possession is not an offense, [Smith v. State, 41 Ala.App. 487, 136 So.2d 907 \(1961\)](#), by its terms it penalizes one who (1) within three years last past (2) is (or has been) engaged in the (a) setting up, (b) conducting or (c) operation of a numbers game or other like lottery, or (3) is (or has been) an employee of a person meeting the definition of (2). Penalties range from \$100.00 to \$1,000.00 and jail up to 12 months (former § 13-7-110). Transportation of such paraphernalia, or possession in a vehicle by such a person, is a misdemeanor; all such vehicles are declared contraband and are to be seized by law enforcement officials, no actual movement being necessary (§§ 13A-12-70 and 13A-12-71). There are sections on the procedure for condemnation (§ 13A-12-72) and sale (§ 13A-12-73), and for the disposition of the proceeds of sale (§ 13A-12-74). A saving section excludes the transportation of articles not commonly used in lotteries (§ 13A-12-75).

Existing Law--Possession, etc., of Federal Wagering Stamp:

The principal purpose of former Tit. 13, ch. 7, art. 2, div. 6 is to create a prima facie presumption of violating the gambling laws of Alabama against one “holding, owning, having in possession of, or paying the tax for a (federal) wagering occupational tax stamp.” (§ 13A-12-90). The grand jury is authorized to indict the holder of such a stamp (§ 13A-12-91), and upon his trial proof of holding may be offered by two witnesses who have seen the stamp on the accused's person or by other specified means (§ 13A-12-92). The stamp itself may be used in evidence. [Long v. State, 39 Ala.App. 372, 105 So.2d 136 \(1958\)](#).

However, while the Federal Wagering Tax Act and its sections on registration, Title 26 U.S.C., are still constitutional, for all practical purposes they have been invalidated by the United States Supreme Court in [Marchetti v. United States, 390 U.S. 39 \(1968\)](#), and [Grosso v. United States, 390 U.S. 62 \(1968\)](#) (conviction federal offenses of failure to pay occupational tax, [26 U.S.C. § 4411](#), and to register before engaging in gaming business, [26 U.S.C. § 4412](#), reversed; the statutory obligations to register and pay the tax violated defendant's Fifth Amendment privilege against self-incrimination as federal and state prosecuting officers could use such information against him in prosecutions for anti-gambling laws). Since all bookmakers will, of course, invoke the privilege if prosecuted, there are few registrations and no prosecutions.

Relationship to Existing Law:

The Criminal Code continues the statutory plan suppressing gambling, with some significant changes. The committee considered, but rejected, a proposal to exclude from liability the mere player on the theory that there is no contemporary social condemnation of the citizen who hazards his money. It does eliminate from the substantive anti-gambling law matters dealing primarily with procedure, and leaves such subjects as adults gambling with minors to other controls such as the juvenile laws. It removes the criminal sanction from the person who keeps or provides gambling paraphernalia, *e.g.*, tables, cards, dice, for social games.

The thrust of the Criminal Code is toward those who either “profit” from gambling or who “advance” gambling. Each of these is defined in § 13A-12-20 which gathers in one place all the definitions of other subjects peculiar to gambling. Thus, simple gambling, § 13A-12-21, punishes the actor who “knowingly advances or profits from unlawful gambling as a player.” Those who “advance” a private social game have a defense; others are given low-grade misdemeanor punishment. In the original section, promoting gambling, § 13A-12-22, imposed felony punishment upon those who engage in bookmaking, lotteries, pari-mutuel betting, policy or through any other form advances or profits from unlawful gambling activity as defined in § 13A-12-20. However, the 1979 Legislature reduced the penalty to a Class A misdemeanor.

One “advances gambling activity” if he “materially aids any form of gambling activity.” This covers conduct proscribed in § 34-6-12 (gambling in billiard room), § 34-6-14 (betting at billiards, dice, horse races), former § 13-7-52 (bookmaking), former § 13-7-22 (keeping gaming table), former § 13-7-27 (proprietors of public establishments permitting gambling), former § 13-7-28 (renting room, house for gaming), former § 13-7-32 (lotteries), former § 13-7-35 (wagers on sports, horse race, etc.), former § 13-7-71 (possession of gambling device), § 13A-12-50 (maintaining communication facilities in gambling rooms) and §§ 13A-12-52 and 13A-12-53 (exhibiting gambling implements in barred rooms).

Sections 13A-12-21 and 13A-12-22 require a finding of knowledge which eliminates liability for recklessness or mere negligence, a change from existing law. Compare former §§ 13-7-25 and 13-7-32 with §§ 13-7-27 and 13-7-28.

“Gambling” is comprehensively defined in § 13A-12-20(4), rendering unnecessary reference to any particular game. This definition refers to a “contest of chance,” also defined in § 13A-12-20(3), and substantially conforms to the existing definition, [State v. One 5¢ Fifth Inning Base Ball Machine, 241 Ala. 455, 3 So.2d 27 \(1941\)](#). Additionally, “gambling” under the Criminal Code exempts expressly such legally recognized activities as insurance, securities and commodity transactions. And while “gambling” usually involves the risk of money, the definition of “something of value,” § 13A-12-20(11), is broad enough to include all other forms of stakes. See [Grimes v. State, 235 Ala.192, 178 So. 73 \(1938\)](#) (increased patronage of theatres held sufficient consideration to support lottery enterprises even though prize might go to a non-paying patron).

CROSS REFERENCES

As to offenses relating to gambling places, see [§ 13A-12-50 et seq.](#)

As to transportation of lottery paraphernalia, see [§ 13A-12-70 et seq.](#)

As to possession, etc., of federal wagering occupational tax stamps, see [§ 13A-12-90 et seq.](#)

RESEARCH REFERENCES

Treatises and Practice Aids

[Criminal Offenses and Defenses in Alabama § G70](#), Gambling, Promoting.

CASENOTES

[I. GENERAL CONSIDERATION 1-30](#)

[II. DECISIONS UNDER PRIOR LAW 31-70](#)

[I. GENERAL CONSIDERATION](#)

<Subdivision Index>

Evidence [3](#)

Indictment or complaint [1](#)


Lottery [2](#)

[1. Indictment or complaint](#)


Because indictment clearly alleged unlawful gambling activity in setting out the nature of the offense, the failure to reallege that element in the factual allegations was not a fatal defect; the indictment, when read as a whole, clearly charged the defendant with promoting unlawful gambling activity by soliciting or inducing others to participate in the Florida lottery. [Henderson v. State, 616 So.2d 406 \(Ala.Crim.App.1993\)](#).

[2. Lottery](#)

Game which allowed players to choose or have computer select eight numbers to match with twenty numbers called by announcer to win grand prize was not game “commonly known as bingo” under city ordinance, but rather was

illegal lottery, despite fact that each number drawn had one letter from word “bingo” attached to it; in light of state's strong public policy against lotteries, definition of “bingo” in city ordinance was not attempt to expand common, ordinary definition of that game. [Barrett v. State, 705 So.2d 529 \(Ala.Crim.App.1996\)](#), rehearing denied , certiorari quashed. [Lotteries](#) 3

3. Evidence

Defendant's conviction for promoting gambling was supported by evidence that defendant was facility manager and owner of bingo hall, that defendant signed paychecks issued to employees of hall, and that defendant was observed on floor of bingo hall while illegal lottery was being played. [Foster v. State, 705 So.2d 534 \(Ala.Crim.App.1997\)](#), rehearing denied , certiorari quashed. [Lotteries](#) 20


While state's evidence tended to show that defendant took orders for “Florida lottery tickets,” there was absolutely no evidence offered by the state as to the mechanics of the Florida lottery; it was incumbent upon the State of Alabama to prove how the Florida lottery worked so the jury could reach the factual conclusion whether it was gambling activity, and because the state failed to prove one of the elements of the charged offense, the judgment of the trial court was reversed and a judgment of acquittal rendered in favor of the defendant. [Henderson v. State, 616 So.2d 406 \(Ala.Crim.App.1993\)](#).

II. DECISIONS UNDER PRIOR LAW


<Subdivision Index>


- Admissibility of testimony [41](#)
- Agent or servant [40](#)
- Complaint [38](#)
- Control of premises and game [39](#)
- Defenses, lotteries, lottery [37](#)
- Evidence [42](#)
- Gifts, lottery [33](#)
- Lottery [31](#)
 - Lottery - Defenses [37](#)
 - Lottery - Gifts [33](#)
 - Lottery - Punch boards [35](#)
 - Lottery - Sale of tickets [32](#)
 - Lottery - Slot machines [36](#)
 - Lottery - Theater bank nights [34](#)
- Punch boards, lottery [35](#)
- Sale of tickets, lottery [32](#)
- Slot machines, lottery [36](#)
- Theater bank nights, lottery [34](#)


31. Lottery, decisions under prior law

The public policy of Alabama was emphatically against lotteries or any scheme in nature of lottery. [Try-Me Bottling Co. v. State, 235 Ala. 207, 178 So. 231 \(Ala.1938\)](#). [Lotteries](#) 6

Stamping numbers under bottle crowns. See [Try-Me Bottling Co. v. State, 235 Ala. 207, 178 So. 231 \(Ala.1938\)](#).

Elements of a “lottery” included a prize, awarded by chance, for a consideration. [Grimes v. State, 235 Ala.192, 178 So. 73 \(Ala.1937\)](#). [Lotteries](#) 

A “lottery” or scheme in the nature of a lottery was a plan in which a prize was set up and awarded by chance, for the right to participate in which a consideration was paid. [Grimes v. State, 28 Ala.App. 4, 178 So. 69 \(Ala.App.1937\)](#), certiorari denied 235 Ala.192, [178 So. 73](#). [Lotteries](#) 

The setting up and operation of a lottery or any scheme or gift enterprise in the nature of a lottery was a violation of the law no matter by what name it might be called. [Grimes v. State, 28 Ala.App. 4, 178 So. 69 \(Ala.App.1937\)](#), certiorari denied 235 Ala.192, [178 So. 73](#). [Lotteries](#) 

The species of lottery, which was intended to be prohibited by former § 13-7-32 embraced only schemes in which a valuable consideration was paid for the chance to draw a prize. [Yellow-Stone Kit v. State, 88 Ala.196, 7 So. 338, 16 Am.St.Rep. 38 \(Ala.1890\)](#).

[32](#). ---- Sale of tickets, lottery, decisions under prior law

The sale of his interest by one co-owner to another co-owner was not prohibited if not in contravention of former § 13-7-32. [Gipson v. Knard, 96 Ala. 419, 11 So. 482 \(Ala.1892\)](#).


A resale of a ticket in a lottery not authorized by the legislative authority of the state, by a third person totally disconnected from the lottery, was not a violation of former § 13-7-32, when the previous purchase extinguished all interest of ownership of every agent, conductor, manager or proprietor in the ticket; but otherwise it was. [Salomon v. State, 28 Ala. 83 \(Ala.1856\)](#).


Sale of tickets came within former § 13-7-32. The sale of lottery tickets was being “concerned in carrying on” a lottery. [Salomon v. State, 27 Ala. 26 \(Ala.1855\)](#).


[33](#). ---- Gifts, lottery, decisions under prior law

A “gift enterprise” in the nature of a lottery, as prohibited by former § 13-7-32, included a lottery in aid of a legitimate business, through colorable gifts, which were in fact prizes awarded by chance for a price. [Grimes v. State, 235 Ala.192, 178 So. 73 \(1937\)](#); [Dozier v. Troy Drive-in-Theatres, Inc., 265 Ala. 93, 89 So.2d 537 \(1956\)](#).


[34](#). ---- Theater bank nights, lottery, decisions under prior law

The possibility of participation in a theater bank night drawing by purchase of matinee ticket was not controlling on issue of whether operation was supported by sufficient consideration to authorize conviction for conducting a “lottery” but was an illustrative feature of the plan. [Grimes v. State, 235 Ala.192, 178 So. 73 \(Ala.1937\)](#). [Lotteries](#) 

The operation of a theater bank night was supported by sufficient consideration moving to the operation thereof to authorize conviction for conducting a “lottery” by reason of the increased patronage resulting from the operation, notwithstanding that prize could go to someone who had paid nothing. [Grimes v. State, 235 Ala.192, 178 So. 73 \(Ala.1937\)](#). [Lotteries](#) 

The conducting of a “jack pot night” by theater on certain night each week through drawing of name of winner from hopper in which stubs containing names of those who had been permitted to register free were placed, prize being less than \$50.00 cash, where those of theater patrons who did not expect to be present at or within “two minutes distance” of drawing in the evening were required to get their chance by paying the price of a matinee ticket and signing a matinee registration card, authorized conviction of manager for conducting a “lottery,” regardless of whether price was regarded as paying for the chance plus the matinee ticket or vice versa. [Grimes v. State, 28 Ala.App. 4, 178 So. 69 \(Ala.App.1937\)](#), certiorari denied [235 Ala. 192, 178 So. 73. Lotteries](#) 


[35.](#) ---- Punch boards, lottery, decisions under prior law

One who sold a punch board consisting of a board with holes in which blank slips calling for prizes were inserted, the price for punching a hole being 10¢, and the purchasers receiving either nothing or a fixed prize, was concerned in setting up a lottery within former § 13-7-32. [Brewer v. Woodham, 15 Ala.App. 678, 74 So. 763 \(Ala.App.1917\)](#), certiorari denied [200 Ala. 695, 75 So. 1003. Lotteries](#) 

[36.](#) ---- Slot machines, lottery, decisions under prior law

A slot machine could be so operated as to come within the provisions of former § 13-7-32. [Reeves v. State, 105 Ala. 120, 17 So. 104 \(1895\)](#); [Loiseau v. State, 114 Ala. 34, 22 So. 138 \(1897\)](#); [Johnson v. State, 137 Ala. 101, 34 So. 1018 \(1903\)](#).

[37.](#) ---- Defenses, lottery, decisions under prior law

The fact that defendant, admitting that he wrote and sold lottery ticket to state's witness in trial for carrying on lottery, failed to turn in his book in time for such ticket to participate in lottery did not justify or excuse such acts. [Harris v. State, 28 Ala.App. 528, 189 So. 787 \(Ala.App.1939\)](#). [Lotteries](#) 

[38.](#) Complaint, decisions under prior law

Sufficiency of complaint. See [Holt v. State, 28 Ala.App. 219, 181 So. 514 \(1938\)](#); [Harris v. State, 28 Ala.App. 528, 189 So. 787 \(1939\)](#); [Reynolds v. State, 29 Ala.App. 139, 193 So. 192 \(1940\)](#); [Long v. State, 39 Ala.App. 372, 105 So.2d 136 \(1955\)](#), rev'd on other grounds, [268 Ala. 1, 105 So.2d 144 \(1957\)](#), cert. denied, [268 Ala. 692, 105 So.2d 145 \(1958\)](#).

[39.](#) Control of premises and game, decisions under prior law

A keeper, etc., must have done something more than merely to forbid or remonstrate against the card playing. He must have used all legal and peaceable means to prevent it. [Wilcox v. State, 50 Ala. 142 \(Ala.1874\)](#).

Manifestly, the house or premises in, or on, which it was charged the prohibited offense was knowingly suffered to be committed must have been “his house or his premises,” in such a sense as gave to the person being the keeper, etc., the legal right to have interposed, and prevented the commission of the alleged offense. [Perez v. State, 48 Ala. 356 \(Ala.1872\)](#).

[40.](#) Agent or servant, decisions under prior law

Agent is not exonerated because of knowledge of principal. An agent or servant having the superintendence of one

of the places is not relieved from criminal liability because his principal had knowledge of the gaming and did not prevent it. [Wilcox v. State, 50 Ala. 142 \(Ala.1874\)](#).

41. Admissibility of testimony, decisions under prior law

Testimony concerning lottery slips and an expert witness connecting them with a lottery were enough showing of “corpus delicti” to precede the introduction of the defendant's confession which showed his criminal agency. [Long v. State, 39 Ala.App. 372, 105 So.2d 136 \(Ala.App.1955\)](#), reversed [268 Ala. 1, 105 So.2d 144](#), certiorari denied [268 Ala. 692, 105 So.2d 145](#).

Permitting state's witnesses, over defendant's objection to describe lottery in question, what constituted various phases thereof, use and purpose of paraphernalia found in defendant's possession, and what were the duties of the “writer in the lottery setup” constituted prejudicial error, where neither of the witnesses was shown by the evidence to be qualified to testify as an expert regarding the lottery in question. [Davis v. State, 30 Ala.App. 149, 2 So.2d 328 \(Ala.App.1941\)](#). [Criminal Law ¶1169.9](#)

In prosecution for carrying on or representing a lottery, witness was qualified to testify as to paraphernalia found in raided building and its uses in carrying on a lottery and that the articles were used or had been used recently in carrying on game prohibited by former § 13-7-32. [Reynolds v. State, 29 Ala.App. 139, 193 So. 192 \(Ala.App.1940\)](#). [Criminal Law ¶478\(1\)](#)

In prosecution for violating lottery law by being connected with a “policy racket,” testimony of qualified witness relating to how policy racket was carried on and to what paraphernalia seized by state was used for was not inadmissible as a conclusion. [Richmond v. State, 28 Ala.App. 562, 189 So. 914 \(Ala.App.1939\)](#). [Criminal Law ¶451\(1\)](#)

In prosecution for violating lottery law by being connected with a “policy racket” even if expert witness, following his detailed statement of facts incident to a “policy racket,” testified to conclusions, their admission would not require reversal because not injuriously affecting rights of accused. [Richmond v. State, 28 Ala.App. 562, 189 So. 914 \(Ala.App.1939\)](#). [Criminal Law ¶1169.9](#)

In prosecution for violating lottery law by being connected with a “policy racket,” testimony of expert witness descriptive of the “policy racket” was admissible as tending to prove character of gambling with which accused was charged. [Richmond v. State, 28 Ala.App. 562, 189 So. 914 \(Ala.App.1939\)](#). [Criminal Law ¶474.5](#)

42. Evidence, decisions under prior law

The introduction in evidence of a certified copy of the defendant's federal wagering tax stamps was without error since it had evidentiary value bearing on a holding out of oneself, even though it was an excise tax receipt and not a license. [Long v. State, 39 Ala.App. 372, 105 So.2d 136 \(Ala.App.1955\)](#), reversed [268 Ala. 1, 105 So.2d 144](#), certiorari denied [268 Ala. 692, 105 So.2d 145](#). [Lotteries ¶29](#)

Where there was testimony regarding certain purported lottery tickets or slips found in defendant's possession, but it nowhere appeared that those tickets were ever introduced in evidence or presented to the jury for its inspection and they were not a part of the record, the “corpus delicti” was not clearly established and defendant was entitled to have his request for a directed verdict honored. [Davis v. State, 30 Ala.App. 149, 2 So.2d 328 \(Ala.App.1941\)](#). [Lotteries ¶30](#)

Where evidence established that provisions of former § 13-7-32 against carrying on or representing a lottery had been violated but evidence connecting accused with commission of offense was insufficient, conviction would be reversed. [Reynolds v. State, 28 Ala.App. 556, 189 So. 793 \(Ala.App.1939\)](#).

Ala. Code 1975 § 13A-12-22, AL ST § 13A-12-22

Current through Act 2009-812 of the 2009 Regular and First Special Sessions, except Act 2009-513.

Copr (c) 2009 by State of Alabama. All rights reserved.

END OF DOCUMENT