MA ST 271 s 28
M.G.L.A. 271 § 28

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE I. CRIMES AND PUNISHMENTS
CHAPTER 271. CRIMES AGAINST PUBLIC POLICY

Current through 1998 2nd Annual Sess.

§ 28. **Lotteries** or **gaming;** complaints and indictments

No plea of misnomer shall be received to a complaint or indictment for violation of any law relative to **lotteries,** policy **lotteries** or policy, the selling of pools or registering of **bets,** or any form of **gaming;** but the defendant may be arraigned, tried, sentenced and punished under any name by which he is complained of or indicted. No such complaint or indictment shall be abated, quashed or held insufficient by reason of any alleged defect, either of form or substance, if the same is sufficient to enable the defendant to understand the charge and to prepare his defence. No variance between such complaint or indictment and the evidence shall be deemed material, unless in some matter of substance essential to the charge under the rule above prescribed.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1990 Main Volume

St.1895, c. 419, § 6.
R.L.1902, c. 214, § 28.

LAW REVIEW AND JOURNAL COMMENTARIES

Lottery as criminal offense (1960) 40 B.U.L.Rev. 121.

LIBRARY REFERENCES

1990 Main Volume

Gaming k84 et seq.
Lotteries k28.

C.J.S. **Lotteries** §§ 25, 26.
Comments.

Pleadings in **gaming** offenses, see M.P.S. vol. 32, Nolan and

Henry, § 502.

UNITED STATES CODE ANNOTATED

Lotteries, see 18 U.S.C.A. § 1301 et seq.

NOTES OF DECISIONS

Validity 1

1. Validity

R.L.1902, c. 214, § 28, providing that no complaint for violating the law relative to any form of **gaming** should have been quashed, if sufficient to enable the defendant to understand the charge and to prepare his defense, and no variance should have been deemed material, unless in substance essential to the charge, did not violate M.G.L.A. Const. Pt. 1, Art. 12, securing to an accused the right to have his offense fully and plainly, substantially and formally, described to him. Com. v. Coleman (1903) 68 N.E. 220, 184 Mass. 198.

M.G.L.A. 271 § 28

MA ST 271 § 28

END OF DOCUMENT

MA ST 10 s 38
M.G.L.A. 10 § 38

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE II. EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
CHAPTER 10. DEPARTMENT OF THE STATE TREASURER
BEANO

Current through 1998 2nd Annual Sess.

§ 38. Beano; licensing of certain organizations; restrictions; rules and regulations; violations; penalties; receipts and expenditures; records and reports

Any fraternal organization having chapters or branches in at least one other New England state, or any fraternal organization organized under the provisions of chapter one hundred and eighty, any religious organization under the control of or affiliated with an established church of the commonwealth and any veterans' organization incorporated or chartered by the Congress of the United States or listed in clause (12) of section five of chapter

forty, any volunteer, non-profit fire company or similar organization furnishing public fire protection, any voluntary association for promotion of the interests of retarded children, the Boston Firemen's Relief Fund, any volunteer, non-profit organization furnishing a public ambulance service, and non-profit athletic associations, desiring to operate or conduct the **game** commonly called beano, or substantially the same **game** under another name, in connection with which prizes are offered to be won by **chance**, may upon application to the state **lottery** commission be granted a license to conduct said **game** in a city or town which has voted to allow granting of licenses for the operation, holding or conducting of said **game** therein; provided, that the application of such organization is in the case of a city, other than the city of Boston, approved by the majority of the city council and approved by the mayor, in a town by the board of selectmen, and in the city of Boston by the licensing board for said city; and provided further, that such organization has been in existence for at least five years immediately prior to the date of making application for such license.

The fee for such license shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven. The proceeds of said fees shall be paid into the treasury of the commonwealth and shall be used by the commission to defray the cost of administering this section, subject to appropriation.

Such license may be revoked at the discretion of the director and shall be suspended or revoked upon written request to the director by the city or town approving authority as set forth above in this section. The action of the director in suspending or revoking a license shall be final, and the licensee shall not have a right of appeal.

Each organization licensed shall be limited to conducting such game to two days in each calendar week; provided, however, that on one of such days each license shall limit the playing of said game to the hours between six o'clock post meridian and twelve o'clock midnight and on the other of such days said license shall limit the playing of said game to the hours between one o'clock post meridian and six o'clock post meridian and said days and appropriate times shall be set forth in the license.

On not more than three occasions in one calendar year a licensee may change the date on which such beano game is to be conducted; provided, however, that the new date falls on the same day of the week according to the terms of the license; and provided, further, that said licensee shall notify the commission of such change no less than thirty days prior to said new date.

No licensee shall give a prize which exceeds fifty dollars in value, except that a licensee may give two prizes on any one day

as long as each prize does not exceed two hundred dollars in value, either in cash or merchandise or four prizes on any one day as long as each prize does not exceed one hundred dollars in value, either in cash or merchandise; except that if the first and last **game**, multiple **game** or series of **games** played on any day on which the licensee is allowed to conduct beano is a winner-take-all **game**, multiple **game** or series of **games,** all receipts from the sale of beano cards for said winner-take-all **game**, multiple **game** or series of **games,** less taxes due the commonwealth under the provisions of section thirty-nine, shall be awarded as prizes for said winner-take-all **game**, multiple **game** or series of **games,** except that no single prize so awarded may exceed five hundred dollars in either cash or merchandise, and provided, that when more than one player is to be a winner on the call of the same number, the designated prize shall be divided equally to the next nearest dollar, and provided further, that if a licensee so elects, no winner shall receive a prize which amounts to less than ten per cent of the announced prize and that in such case the total of said multiple prizes may exceed the statutory limit of said **game**. Multiple **games** may be played provided that the winner or winners of any individual **game** played in a multiple **game** shall not receive a prize in excess of the statutory limit except as otherwise provided in this paragraph. In addition to the prizes allowed by this paragraph, a licensee may award a door prize or prizes, the aggregate value of which shall not exceed two hundred dollars in cash or merchandise.

No alcoholic beverages shall be sold, dispensed or consumed in that portion of any building or premises of the licensee during the hours such game is being conducted.

No person under eighteen years of age shall be permitted in that portion of any building or premises of the licensee during such time as such game is being played.

No game shall be advertised or publicized by sign or billboard beyond the city or town limits covered by each license.

Any organization licensed under this section to conduct said game shall operate, manage and control said game by members of the local branch of said organization who have been such members for at least two years. Whoever, not being a member of such organization, operates said game under a license issued to such organization shall be punished by a fine of one thousand dollars and by imprisonment for not more than one year.

If an organization licensed to conduct beano fails to exercise exclusive control and management of said game, or fails to have one of its members in good standing in full control and management of the game at all times during its operation, it shall be punished by a fine of not more than one thousand dollars.

The profits of any game licensed to be conducted under this section shall be the property of the organization conducting said game, and shall be used for charitable, religious or educational purposes, and shall not be distributed to the members of such organization. No person shall be entitled to a percentage of any money received as a result of conducting said game.

Accurate records and books shall be kept by each licensee showing the total amount of all monies deposited by people who played, attended or participated in said games, the expenses incurred and the name and address of each person receiving said money. A separate checking account shall be kept of receipts and expenditures of beano and money for expenses shall be withdrawn only by checks having preprinted consecutive numbers and made payable to a specific person or corporation and at no time shall a check be made payable to cash. Proceeds from beano shall be kept in a separate bank account and the organization shall file an annual report in January of the charitable, religious or educational disbursements of the preceding year with the director and the mayor and council or selectmen in such form as the director may prescribe. Such annual report shall be a public record. All monies expended for said charitable, religious or educational purposes shall be duly and accurately recorded as to specific amounts expended and the purposes for which expended. A copy of such records shall be filed with the local licensing authority on or before December the thirty-first of each year. The director, the approving authority of the city or town wherein said game is conducted, or their duly authorized agents or representatives, shall at all times have access to said records and books of any licensee for the purpose of examining and checking the same.

Organizations composed of persons sixty years of age or older, commonly referred to as senior citizens' or golden age clubs, may operate or conduct beano games without a license between the hours of nine o'clock ante meridian and ten o'clock post meridian for the purpose of amusement and recreation of its members; provided, however, that the organization has applied for and received an identification number from said commission, that no player or other person furnished consideration in excess of five dollars for the opportunity to participate, that prizes awarded are up to but not more than one hundred dollars, that no person other than an active member of the organization participates in the conduct of the **game**, and that no person is paid for conducting or assisting in the conduct of the **games.** The tax imposed by section thirty-nine shall not apply to **games** operated or conducted under the provisions of this paragraph.

The commission may make such other rules and **regulations** for the conduct of said **game** as it may deem necessary to carry out the provisions of this section and section thirty-nine.

The director shall on or before March the first file a report

with the clerk of the house of representatives and the clerk of the senate showing the cities and towns which have licenses issued therein, the number of licenses by categories of organizations, the revenue received from these licenses, and such other information as he may deem relevant, together with his recommendations for any legislation he may deem appropriate. Whoever violates any regulation promulgated by the commission under this section may be punished by a fine not exceeding one thousand dollars.

CREDIT(S)

1996 Main Volume

Added by St.1973, c. 729, § 1. Amended by St.1973, c. 944, § 1; St.1973, c. 1002, § 6; St.1973, c. 1165, § 1; St.1974, c. 244, § 1; St.1977, c. 845; St.1980, c. 572, § 3; St.1982, c. 207; St.1983, c. 619; St.1984, c. 19; St.1989, c. 466; St.1991, c. 6, § 50; St.1993, c. 110, § 59.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1996 Main Volume

St.1973, c. 944, § 1, approved Oct. 24, 1973, rewrote the fourth paragraph, which prior thereto read:

"Each license shall limit the playing of said game to the hours between seven o'clock postmeridian and twelve o'clock midnight. Each such organization licensed hereunder shall be limited to conducting said games to one night, other than Sunday, in each calendar week and said night shall be set forth in the license."

St.1973, c. 1002, § 6, an emergency act approved Nov. 8, 1973, rewrote the first paragraph, which prior thereto read:

"Any fraternal organization having chapters or branches in at least one other New England state, or any fraternal organization organized under the provisions of chapter one hundred and eighty and in existence for a minimum of ten years, any religious organization under the control of or affiliated with an established church of the commonwealth and any veterans' organization incorporated or chartered by the Congress of the United States or listed in clause (12) of section five of chapter forty, any volunteer, non-profit fire company or similar organization furnishing public fire protection, any voluntary association for promotion of the interests of retarded children, the Boston Firemen's Relief Fund, any volunteer, non-profit organization furnishing a public ambulance service, and non-profit athletic associations, desiring to operate or conduct the **game** commonly called beano, or substantially the same **game**

under another name, in connection with which prizes are offered to be won by **chance**, may upon application to the state **lottery** commission be granted a license to conduct said **game** in a city or town which has voted to allow granting of licenses for the operation, holding or conducting of said **game** therein; provided, that the application of such organization is in the case of a city, other than the city of Boston, approved by the majority of the city council and approved by the mayor, in a town by the board of selectmen, and in the city of Boston by the licensing board for said city; and provided further, that such organization has been in existence for at least five years immediately prior to June the first, nineteen hundred and sixty-eight."

St.1973, c. 1165, § 1, an emergency act, approved Dec. 7, 1973, and by § 5, made effective Jan. 1, 1974, rewrote the fifth paragraph, which prior thereto read:

"No licensee shall give a prize which exceeds fifty dollars in value, either in cash or merchandise."

St.1974, c. 244, § 1, an emergency act, approved May 23, 1974, rewrote the fifth paragraph, which prior thereto read:

"No licensee shall give a prize which exceeds fifty dollars in value, except that a licensee may give two prizes on any one day as long as each prize does not exceed two hundred dollars in value, either in cash or merchandise."

St.1977, c. 845, an emergency act, approved Dec. 23, 1977, in the fifth paragraph, in the first sentence, inserted "or four prizes on any one day as long as each prize does not exceed one hundred dollars in value, either in cash or merchandise" following "either in cash or merchandise".

St.1980, c. 572, § 3, in the second paragraph, in the first sentence, substituted "determined annually by the commissioner of administration under the provision of section three B of chapter seven" for "fifty dollars per annum".

St.1980, c. 572, was approved July 16, 1980. Emergency declaration by the Governor was filed July 23, 1980.

St.1982, c. 207, an emergency act, approved July 1, 1982, in the fourth paragraph, in the first sentence, substituted "six o'clock" for "seven o'clock". [Repealed by St.1991, c. 6, § 50.]

St.1991, c. 6, § 50, was approved March 22, 1991, and by § 96 made effective upon enactment.

St.1983, c. 619, approved Dec. 17, 1983, inserted the thirteenth paragraph.

St.1984, c. 19, an emergency act, approved April 12, 1984, in the thirteenth paragraph, added the second sentence.

St.1989, c. 466, approved Oct. 31, 1989, rewrote the fourth paragraph, and inserted the fifth paragraph.

St.1993, c. 110, § 59, approved July 19, 1993, and by § 390 made effective as of July 1, 1993, in the fourteenth paragraph, in the first sentence, in the proviso, substituted "five dollars" for "twenty-five cents" and "up to but not more than one hundred dollars" for "of nominal value".

Related Laws:

St.1971, c. 486, § 4, approved July 1, 1971, as amended, provides:

"The following question shall be placed upon the official ballot to be used for the election of city or town officers at the next regular city or annual town election:--

'Shall licenses be granted in this city (or town) for the operation, holding or conducting a game commonly called beano?	YES. / NO.

"If a majority of the votes cast in a city or town in answer to said question is in the affirmative, such city or town shall be taken to have authorized the operation, holding or conducting of a game commonly called beano in accordance with the provisions of sections thirty-eight and thirty-nine of chapter ten of the General Laws, for the period ending December the thirty-first, nineteen hundred and seventy-five. In the year nineteen hundred and seventy-five, said question shall again be submitted to the qualified voters of the cities and towns at city or town elections in the same manner, and, if a majority of the votes cast in a city or town in answer to said question is in the affirmative, such city or town shall be taken to have authorized the operation, holding or conducting of a game commonly called beano in accordance with the provisions of sections thirty-eight and thirty-nine of chapter ten of the General Laws. In the event a city or town fails to place the required question upon its official ballot as required herein, it shall be placed on the official ballot for the next regular city or annual town election and such city or town shall be taken to have authorized the operation, holding or conducting of the game commonly called

beano until such time as the required question appears, provided that a majority of the votes cast in such city or town in answer to said question was in the affirmative the last time the question appeared on said official ballot.

"Beginning in the year nineteen hundred and seventy-nine, the city council of any city and the selectmen of any town shall, upon the filing with the city or town clerk of a petition signed by registered voters of such city or town equal in number to at least five per cent of the whole number of registered voters therein and conforming to the provisions of section thirty-eight of chapter forty-three of the General Laws relative to initiative petitions, requesting that the question of licensing the game of beano in such city or town be submitted to the voters thereof, cause to be so submitted at the regular city or town election the following question:--

'Shall licenses be granted in this city (or town) for the operation, holding or conducting of a game commonly called beano?'	YES. NO.

"The foregoing question shall not be submitted to the voters of any city or town oftener than once in four years. If a majority of the vote cast in answer to such question is in the affirmative, such city or town shall be taken to have authorized the game called beano, in accordance with the provisions of sections thirty-eight and thirty-nine of said chapter ten." [Amended by St.1974, c. 244, §§ 2, 3; St.1975, c. 779.]

St.1974. c. 244, an emergency act, was approved May 23, 1974.

St.1975, c. 779, an emergency act, was approved Dec. 18, 1975.

Prior Laws:
G.L. c. 147, § 52, as added by St.1971, c. 486, § 3.
St.1972, c. 93.
St.1972, c. 616, §§ 1, 2.

CROSS REFERENCES

Licensing of beano required, see c. 271, § 22B.

CODE OF MASSACHUSETTS REGULATIONS

Beano regulations, state lottery commission, see 961 CMR 3.01 et

seq.

NOTES OF DECISIONS

In general 1
Licensing 2

1. In general

The legislature had insured that any funds provided by beano games will be used only for the purposes intended under statute by requiring that domestic fraternal organizations be organized under the provisions of c. 180, § 1 et seq., governing the incorporation and existence of corporations devoted to charitable and certain other purposes. Op.Atty.Gen., Nov. 12, 1976, p. 104.

While the eight towns which failed to submit the question of whether to license "beano" games to the voters in 1975 would not be required to hold a special election in 1975 or submit the question at the next annual town election, they would be permitted to submit the question at the 1976 annual town election and beano games in those towns would be duly licensed only until December 31, 1975. Op.Atty.Gen., Sept. 30, 1975, p. 109.

2. Licensing

Fraternal organizations organized under c. 180, § 1 et seq. for less than five years, are not prohibited from receiving a beano license under statute if the organization has had a bona fide existence in some other form of organization for the five years immediately preceding its license application. Op.Atty.Gen., Nov. 12, 1976, p. 104.

Whether various games are so similar to beano as to come within language of c. 271, § 22B, thus preventing licensing of said games on Sunday, involves factual determinations to be made by Public Safety Commissioner and are not legal questions within province of Attorney General. Op.Atty.Gen., June 20, 1973, p. 148.

Even though c. 271, § 22B permitted playing of beano, license issued by Public Safety Commissioner under c. 147, § 52 was still required, and license to play beano on Sunday could not issue under c. 147, former § 52. Op.Atty.Gen., March 27, 1973, p. 88.

Chapter 147, § 52 left to factual determination of Public Safety Commissioner whether Boston Firemen's Relief Fund was qualified to receive license to conduct game of beano. Op.Atty.Gen., May 26, 1972, p. 142.

M.G.L.A. 10 § 38

MA ST 10 § 38

END OF DOCUMENT

MA ST 128A s 13
M.G.L.A. 128A § 13

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XIX. AGRICULTURE AND CONSERVATION
CHAPTER 128A. HORSE AND DOG RACING MEETINGS
GENERAL PROVISIONS

Current through 1998 2nd Annual Sess.

§ 13. Penalties for **wagering** or **betting** at race track except as permitted by chapter

Any person making a handbook, at any race track within the commonwealth, or holding or conducting a **gambling** pool or managing any other type of **wagering** or **betting** on the results of any horse or dog race, or aiding or abetting any of the foregoing types of **wagering** or **betting,** except as permitted by this chapter, shall for a first offence be punished by a fine of not more than two thousand dollars and imprisonment for not more than one year, and for a subsequent offence by a fine of not more than ten thousand dollars and imprisonment for not more than two years. Any jockey, trainer or owner of horses participating in horse or dog racing, if found guilty by the commission of unfair riding or crooked tactics, may be barred or suspended from further participation in racing throughout the commonwealth.

CREDIT(S)

1991 Main Volume

Added by St.1934, c. 374, § 3. Amended by St.1935, c. 454, § 7.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1991 Main Volume

St.1935, c. 454, § 7, an emergency act, approved July 26, 1935, in the second sentence, substituted "may" for "shall", and inserted "or suspended".

CROSS REFERENCES

Wagers on races in certain cases, penalties, see c. 271, § 31.

AMERICAN LAW REPORTS

Disciplinary proceedings against horse trainer or jockey. 52 ALR3d 206.

Validity, construction, and application of statutes or ordinances involved in prosecutions for transmission of **wagers** or **wagering** information related to bookmaking. 53 ALR4th 801.

MA ST 271 s 7A
M.G.L.A. 271 § 7A

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE I. CRIMES AND PUNISHMENTS
CHAPTER 271. CRIMES AGAINST PUBLIC POLICY

Current through 1998 2nd Annual Sess.

§ 7A. Raffles and bazaars; conduct by certain organizations

In this section the following words shall have the following meanings:

"Raffle", an arrangement for raising money by the sale of tickets, certain among which, as determined by **chance** after the sale, entitle the holders to prizes.

"Bazaar", a place maintained by the sponsoring organization for disposal by means of **chance** of one or both of the following types of prizes: (1) merchandise, of any value, (2) cash awards, not to exceed twenty-five dollars each.

Notwithstanding any other provisions of law, raffles and bazaars may be promoted, operated and conducted under permits issued in accordance with the provisions of this section.

No organization, society, church or club which conducts a raffle or bazaar under the provisions of this section shall be deemed to have set up and promoted a **lottery** and nothing in this chapter shall authorize the prosecution, arrest or conviction of any person connected with the operation of any such raffle or bazaar; provided, however, that nothing contained in this section shall be construed as permitting the **game** commonly known as "beano" or any similar **game** regardless of name.

No raffle or bazaar shall be promoted, operated or conducted by any person or organization, unless the same is sponsored and conducted exclusively by (a) a veterans' organization chartered by the Congress of the United States or included in clause (12) of section five of chapter forty of the General Laws; (b) a

church or religious organization; (c) a fraternal or fraternal benefit society; (d) an educational or charitable organization; (e) a civic or service club or organization; and (f) clubs or organizations organized and operated exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any member or shareholder. Such organization shall have been organized and actively functioning as a nonprofit organization in the commonwealth for a period of not less than two years before it may apply for a permit. The promotion and operation of the raffle or bazaar shall be confined solely to the qualified members of the sponsoring organization and no such member shall receive remuneration in any form for time or effort devoted to the promotion or operation of such raffle or bazaar. All funds derived from any raffle or bazaar shall be used exclusively for the purposes stated in the application of the sponsoring organization which purposes shall be limited to educational, charitable, religious, fraternal or civic purposes or for veterans' benefits. An organization which meets the qualifications required by this section and which desires to conduct or operate a raffle or bazaar within the commonwealth shall apply for a permit to conduct raffles and bazaars from the clerk of the city or town in which the raffle will be drawn or the bazaar held. The application form shall be approved by the commissioner of public safety and shall include the name and address of the applicant, the evidence on which the applicant relies in order to qualify under this section, the names of three officers or members of the organization who shall be responsible for the operation of the raffle or bazaar, and the uses to which the net proceeds will be applied. Unless otherwise established in a town by town meeting action and in a city by city council action, and in a town with no town meeting by town council action, by adoption of appropriate by-laws and ordinances to set such fees, a fee of ten dollars shall accompany each such application and shall be retained by the city or town, but in no event shall any such fee be greater than fifty dollars. Upon receipt of such application, the clerk shall determine whether it is in conformity with this section. If the clerk so determines, he shall forward the application to the chief of police of the city or town, who shall determine whether the applicant is qualified to operate raffles and bazaars under this section. If the chief of police so determines, he shall endorse the application and return it to the clerk, who shall forthwith issue a permit, which shall be valid for one year from the date of its issuance. The clerk shall retain a copy of the application and shall send a copy to the commissioner of public safety. If there is any change in the facts set forth in the application for a permit subsequent to the making of such application, the applicant shall forthwith notify the authority granting such permit of such change, and such authority shall issue such permit if the applicant is qualified, or, if a permit has already been issued and the change in the facts set forth in the application disqualify the applicant revoke such permit.

If an application is not acted upon within thirty days after it is submitted, or if the organization is refused a permit, or if a permit is revoked, any person named on the application may obtain judicial review of such refusal or revocation by filing within ten days of such refusal or revocation or within ten days of the expiration of such thirty day period a petition for review in the district court having jurisdiction in the city or town in which such application was filed. A justice of said court, after a hearing, may direct that such permit be issued, if he is satisfied that there was no reasonable ground for refusing such permit, and that the applicant was not prohibited by law from holding raffles or bazaars.

An organization issued a permit under this section shall within thirty days of the expiration of its permit submit a report on a form to be approved by the commissioner of public safety. Such form shall require information concerning the number of raffles and bazaars held, the amount of money received, the expenses connected with the raffle or bazaar, the names of the winners of prizes exceeding twenty-five dollars in value, the net proceeds of the raffles and bazaars, and the uses to which the net proceeds were applied. The organization shall maintain and keep such books and records as may be necessary to substantiate the particulars of such report, which books and records shall be preserved for at least one year from the date of such report and shall be available for inspection. Such report shall be certified to by the three persons designated in the permit application as being responsible for such raffle or bazaar and by an accountant. Two copies of said report shall be filed with city or town clerk. The clerk shall send one copy to the commissioner of public safety. Failure to file said report shall constitute sufficient grounds for refusal to renew a permit to conduct raffles or bazaars. The fee for renewal of such permit shall be ten dollars.

The authority granting any permit under this section shall immediately revoke the same for a violation of any provision of this section and shall not issue any permit to such permittee within three years from the date of such violation. Any person aggrieved by the action of such authority revoking such permit may appeal to the district court having jurisdiction in the city or town where the permit was issued; provided that such appeal shall be filed in such court within twenty days following receipt of notification by said authority. The court shall hear all pertinent evidence and determine the facts and upon the facts so determined annul such action or make such decision as equity may require. The foregoing remedy shall be exclusive.

Any organization conducting or operating a raffle or bazaar under this section shall file a return with the state lottery commission, on a form prepared by it, within ten days after the raffle or bazaar is held and shall pay therewith a tax of five

per cent of the gross proceeds derived from such raffle or bazaar.

All sums received by said commission from the tax imposed by this section as taxes, interest thereon, fees, penalties, forfeitures, costs of suits or fines, less all amounts refunded thereon, together with any interest or costs paid on account of such refunds, shall be paid into the treasury of the commonwealth.

Whoever violates any provision of this section or submits false information on an application or report required under this section shall be punished by a fine of not more than one thousand dollars or by imprisonment in the house of correction for not more than one year, or both.

No person who prints or produces tickets, cards or any similar article used in the conduct of a bazaar or raffle pursuant to a permit issued under the provisions of this section shall be subject to any penalty therefor, provided that a certified copy of such permit was presented to him prior to his undertaking to print or produce such tickets or cards.

No organization issued a permit under this section shall conduct more than three bazaars in any single calendar year nor shall such organization conduct more than one bazaar in any single calendar day. The operation of a bazaar shall be limited to five consecutive hours.

CREDIT(S)

1990 Main Volume

Added by St.1969, c. 810. Amended by St.1976, c. 415, § 96; St.1977, c. 219, § 6; St.1977, c. 279; St.1979, c. 280; St.1981, c. 351, § 98; St.1985, c. 222.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1990 Main Volume

St.1969, c. 810, an emergency act, was approved Aug. 26, 1969.

St.1976, c. 415, § 96, rewrote the eighth paragraph, which prior thereto read:

"Any organization conducting or operating a raffle or bazaar under this section shall file a return with the commissioner of corporations and taxation, on a form prepared by him, and approved by the state tax commission within ten days after the raffle or bazaar is held and shall pay therewith a tax of five

per cent of the gross proceeds derived from such raffle or bazaar."; and in the ninth paragraph, rewrote the first sentence, which prior thereto read, "The provisions of chapter sixty-two relative to the assessment, collection, payment, abatement, verification and administration of taxes, including penalties, shall, so far as applicable apply to the tax imposed by this section."

St.1976, c. 415, § 96, was approved Oct. 15, 1976, and by § 116, as amended by St.1977, c. 76, § 1, made effective Jan. 1, 1977. Emergency declaration by the Governor was filed Oct. 15, 1976.

St.1977, c. 76, § 1, an emergency act was approved March 28, 1977.

St.1977, c. 219, § 6, an emergency act, approved May 23, 1977, and by § 7 made effective Jan. 1, 1978, as amended by St.1980, c. 261, § 31, in the eight paragraph, substituted "file a return with the state lottery commission, on a form prepared by it, within ten days after the raffle or bazaar is held and shall pay therewith" for ", at the time provided for filing the return required by section eighteen of chapter sixty-two C, pay to the commissioner of corporations and taxation", and in the ninth paragraph, deleted the first sentence, which read, "All provisions of chapter sixty-two C relative to the administration of taxes shall, so far as pertinent and consistent, be applicable to taxes imposed by this section."; and in the present first sentence, deleted "received by said" following "sums".

St.1980, c. 261, § 31, an emergency act, was approved June 11, 1980.

St.1977, c. 279, an emergency act, approved June 13, 1977, rewrote the definition of Bazaar, which prior thereto read:

" 'Bazaar', a place maintained by the sponsoring organization for disposal of merchandise awards by means of chance."

St.1979, c. 280, approved June 13, 1979, in the first paragraph, in cl. (2) of the definition of Bazaar, substituted "twenty-five" for "five".

St.1981, c. 351, § 98, approved July 21, 1981, and by § 299 made effective as of July 1, 1981, in the fourth paragraph, rewrote the seventh sentence, which prior thereto read, "A fee of ten dollars shall accompany each such application and shall be retained by the city or town."

St.1985, c. 222, approved July 31, 1985, added the twelfth paragraph.

CROSS REFERENCES

Administrative provisions relating to state taxation, see c. 62C, § 1 et seq.

State **lottery,** suspension or revocation of raffle permit for violation of this section, see c. 10, § 39A.

AMERICAN LAW REPORTS

Validity and construction of statute exempting **gambling** operations carried on by religious, charitable, or other nonprofit organizations from general prohibitions against **gambling**. 42 ALR3d 663.

Construction and application of state or municipal enactments relating to policy or numbers **games.** 70 ALR3d 897.

NOTES OF DECISIONS

Bazaars 2
Raffles 1

1. Raffles

This section requires, as an element of the definition of "raffle", the "drawing" of the winning tickets; and, therefore, the so-called "treasury balance" **game** by which winning tickets are selected by matching numbers on the tickets with numbers published in daily newspapers, does not qualify as a raffle under this section. Op.Atty.Gen., Dec. 2, 1969, p. 71.

This section does not permit the sale or possession of **lottery** tickets called "Lucky-Seven", "Club Vegas", "Play Poker" or similar tickets, whether on or off organization premises, whereby the winning tickets are selected at the time **game** cards are printed and prior to sale through comparison of numbers on the cards, instead of by a "drawing" as required in order to constitute a "raffle" as defined by this section. Op.Atty.Gen., Dec. 2, 1969, p. 71.

2. Bazaars

The definition of "bazaar" in this section does not permit the disposal of cash awards by means of chance; only merchandise awards may be disposed of at a bazaar. Op. Atty. Gen., Dec. 2, 1969, p. 71.

M.G.L.A. 271 § 7A

MA ST 271 § 7A

END OF DOCUMENT

MA ST 4 s 7, cl. (10)
M.G.L.A. 4 § 7, cl. (10)

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE I. JURISDICTION AND EMBLEMS OF THE COMMONWEALTH, THE GENERAL COURT,
STATUTES AND PUBLIC DOCUMENTS
CHAPTER 4. STATUTES
§ 7. DEFINITIONS OF STATUTORY TERMS; STATUTORY CONSTRUCTION

Current through 1998 2nd Annual Sess.

Clause Tenth. **"Gaming",** "illegal **gaming", "**unlawful **gaming"**

Tenth, **"Gaming", "**illegal **gaming"** or "unlawful **gaming"** shall include every act punishable under any law relative to **lotteries,** policy **lotteries** or policy, the buying and selling of pools or registering of **bets.**

<For annotated materials relating generally to § 7, see annotations contained in MA ST 4 § 7, cl. (58).>

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1996 Main Volume

St.1895, c. 419, § 1.
R.L.1902, c. 8, § 5, cl. 2.

M.G.L.A. 4 § 7, cl. (10)

MA ST 4 § 7, cl. (10)

END OF DOCUMENT

MA ST 277 s 79
M.G.L.A. 277 § 79

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE II. PROCEEDINGS IN CRIMINAL CASES
CHAPTER 277. INDICTMENTS AND PROCEEDINGS BEFORE TRIAL
ARREST, ARRAIGNMENT AND OTHER PROCEEDINGS

Current through 1998 2nd Annual Sess.

§ 79. Application of annexed forms; schedule

The provisions of this chapter, and the forms hereto annexed, shall apply as well to complaints as to indictments, and such forms shall be sufficient in cases to which they are applicable. In other cases, forms as nearly like the forms hereto annexed as the nature of the cases and the provisions of law will allow may be used; but any other form of indictment or complaint authorized by law may be used.

SCHEDULE OF FORMS OF PLEADINGS.

CAPTION AND COMMENCEMENT OF INDICTMENT.

COMMONWEALTH OF MASSACHUSETTS.

(Suffolk,) to wit:

At the Superior Court holden at (Boston,) within and for the County of (Suffolk,) for the transaction of criminal business, on the day of in the year of our Lord one thousand, etc.

The jurors for the said Commonwealth on their oath present

CAPTION AND COMMENCEMENT OF COMPLAINT.

<(To a Police, District or Municipal Court.)>

COMMONWEALTH OF MASSACHUSETTS.

(Suffolk,) to wit:

To the court of holden at for the transaction of criminal business, within the County of , A. B. of in behalf of the Commonwealth of Massachusetts on the day of in the year , on oath complains that

<(To a Trial Justice.)>

To A. B., a Trial Justice in and for the County of and Commonwealth of Massachusetts, C. D. of (etc. as in form above).

<(To a Justice of the Peace commissioned to Issue Warrants.)>

To A. B., Justice of the Peace in and for the County of and Commonwealth of Massachusetts, designated and commissioned to issue warrants in criminal cases, C. D. of (etc. as in form above).

<(If the statute requires a particular person to make complaint, this should be alleged.)>

Gaming. (Under Chap. 139, § 15.)--That A.B., during the three months next before the finding of this indictment, at said (Boston), did keep and maintain a certain common nuisance, to wit, a tenement resorted to and used for illegal **gaming.**

Lottery. (Under Chap. 271, § 7.)--(1) That A.B. did set up and promote a **lottery** for money.

(2) That A.B. was **concerned** in the setting up (or managing or drawing) of a certain **lottery** for money.

(3) That A.B. did dispose of a certain horse of the value of ten dollars to C.D., by way of a **lottery.**

(4) That A.B., under the pretext of the sale of certain property, to wit: (state the property) to C.D., did dispose of to said C.D. certain other personal property, to wit: (state the property), with intent of said A.B. to make the said disposal of said (property) dependent upon a chance by lot, and that such chance was made an additional inducement to the disposal and sale of said (property).

31. **Gaming**

Indictments charging offense of being **concerned** with setting up of a number pool and with possession of **betting** apparatus consisting of slips of paper bearing notations of horse race **bets** charged offenses in the words of the statute and were sufficient. Com. v. Boyle (1963) 189 N.E.2d 844, 346 Mass. 1.

An averment in an indictment that a person has kept and maintained a tenement used for illegal **gaming** is insufficient, because not charging defendant as a keeper of a "common **gaming** house." Com. v. Stahl (1863) 89 Mass. 304, 7 Allen 304.

37. Lottery

On indictment charging defendant with setting up and promoting a lottery, the state need not elect any one transaction on the day named in the indictment, where the evidence does not show, with certainty, that all the transactions are not parts of one continuous offense. Com. v. Sullivan (1888) 15 N.E. 491, 146 Mass. 142.

END OF DOCUMENT

MA ST 271 s 31
M.G.L.A. 271 § 31

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE I. CRIMES AND PUNISHMENTS
CHAPTER 271. CRIMES AGAINST PUBLIC POLICY

Current through 1998 2nd Annual Sess.

§ 31. Racing horses for **bets** or stakes

Whoever, except in trials of speed of horses for premiums offered by legally constituted agricultural societies, or by corporations authorized thereto by section fourteen of chapter one hundred and eighty, engages in racing, running, trotting or pacing a horse or other animal of the horse kind for a **bet, wager** of money or other thing of value or a purse or stake made within the commonwealth, or whoever aids or abets therein, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

<General Materials (GM) - References, Annotations, or Tables>
HISTORICAL AND STATUTORY NOTES

1990 Main Volume

St.1846, c. 200.
G.S.1860, c. 167, § 9.
St.1865, c. 67.
P.S.1882, c. 209, § 11.
St.1900, c. 409.
R.L.1902, c. 214, § 30.

CROSS REFERENCES

Horse and dog racing meetings, see c. 128A, § 13A.

AMERICAN LAW REPORTS

Right or duty to refuse telephone, telegraph, or other wire service in aid of illegal **gambling** operations. 30 ALR3d 1143.

Validity, construction, and application of statutes or ordinances involved in prosecutions for transmission of **wagers** or **wagering** information related to bookmaking. 53 ALR4th 801.

Persons liable 1

1. Persons liable

R.L.1902, c. 214, § 30, provided that whoever, except in trials of speed of horses for premiums offered by corporations authorized thereto, engaged in racing a horse for a **bet** of money or other valuable thing, should have been punished, etc., therefore where a corporation authorized so to do caused trials of speed of horses to be had for premiums offered by the association, one who made **bets** at such trials of speed was liable to the punishment imposed by the statute. Commonwealth v. Rosenthal (1907) 80 N.E. 814, 195 Mass. 116.

M.G.L.A. 271 § 31

MA ST 271 § 31

END OF DOCUMENT

MA ST 271 s 1
M.G.L.A. 271 § 1

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE I. CRIMES AND PUNISHMENTS
CHAPTER 271. CRIMES AGAINST PUBLIC POLICY

Current through 1998 2nd Annual Sess.

§ 1. **Gaming** or **betting;** forfeiture

Whoever, on a prosecution commenced within eighteen months after the commission of the crime, is convicted of winning at one time or sitting, by **gaming** or **betting** on the sides or hands of those **gaming,** money or goods to the value of five dollars or more, and of receiving the same or security therefor, shall forfeit double the value of such money or goods.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1990 Main Volume

C.L. c. 57, § 2; c. 58, § 1.
St.1785, c. 58, § 3.
R.S.1836, c. 50, § 14.
G.S.1860, c. 85, § 3.
P.S.1882, c. 99, § 3.
R.L.1902, c. 214, § 1.

AMERICAN LAW REPORTS

Forfeiture of property for unlawful use before trial of individual offender. 3 ALR2d 738.

Forfeiture of money used in connection with gambling or lottery, or seized by officers in connection with an arrest or search on premises where such activities took place. 19 ALR2d 1228.

Criminal conspiracies as to gambling. 91 ALR2d 1148.

Bridge as within gambling laws. 97 ALR2d 1420.

Retaking of money lost at gambling as robbery or larceny. 77 ALR3d 1363.

LAW REVIEW AND JOURNAL COMMENTARIES

Self-incrimination; registration of gamblers for tax purposes. (1968) 82 Harv.L.Rev. 196.

Statute of limitations, see M.P.S. vol. 17A, Bishop, § 1467.

Texts and Treatises

5 Mass Jur, Criminal Law § 37:2.
38 Am Jur 2d, **Gambling** §§ 1-3, 27.
19 Am Jur Proof of Facts 647, Unlawful **Gambling Games.**
1 Proof of Cases in Massachusetts § 926.

NOTES OF DECISIONS

Penalty 2
Validity 1

1. Validity

G.L.1921, c. 271, § 1, relating to forfeiture in case of winning at **gambling game** was not unconstitutional as violation of due process or as denial of equal protection. Com. v. Novak (1930) 172 N.E. 84, 272 Mass. 113.

G.L.1921, c. 271, § 1, relating to forfeiture by one winning at **gambling game** was not ex post facto as to offense committed after enactment. Com. v. Novak (1930) 172 N.E. 84, 272 Mass. 113.

That defendant found guilty under G.L.1921, c. 271, § 1, relating to forfeiture in case of winning at **gambling game**, was to stand committed until complying with order was immaterial as respected validity of statute. Com. v. Novak (1930) 172 N.E. 84, 272 Mass. 113.

Commonwealth cannot impose criminal penalties upon **lottery** activities conducted entirely within the State of New Hampshire

under c. 271, § 1 et seq., of the General Laws. Op.Atty.Gen. Sept. 9, 1964, p. 84.

2. Penalty

Penalty under G.L.1921, c. 271, § 1, requiring forfeiture of double amount won in **gambling game** was not excessive. Com. v. Novak (1930) 172 N.E. 84, 272 Mass. 113.

M.G.L.A. 271 § 1

MA ST 271 § 1

END OF DOCUMENT

MA ST 271 s 6B
M.G.L.A. 271 § 6B

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE I. CRIMES AND PUNISHMENTS
CHAPTER 271. CRIMES AGAINST PUBLIC POLICY

Current through 1998 2nd Annual Sess.

§ 6B. Skilo and similar **games**

Whoever, except as provided in section twenty-two B, sets up or promotes the **game** commonly known as skilo or any similar **game** regardless of name, shall be held to have set up and promoted a **lottery** and shall be punished as provided in section seven.

CREDIT(S)

1990 Main Volume

Added by St.1953, c. 243. Amended by St.1971, c. 486, § 1.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1990 Main Volume

St.1953, c. 243, was approved April 10, 1953. Emergency declaration by the Governor was filed April 13, 1953.

St.1971, c. 486, § 1, approved July 1, 1971, inserted ", except as provided in section twenty-two B,".

AMERICAN LAW REPORTS

Validity of pyramid distribution plan. 54 ALR3d 217.

Construction and application of state or municipal enactments relating to policy or numbers **games.** 70 ALR3d 897.

5 Mass Jur, Criminal Law § 37:30.
38 Am Jur 2d, **Gambling** §§ 5-9.
1 Proof of Cases in Massachusetts § 928.

M.G.L.A. 271 § 6B

MA ST 271 § 6B

END OF DOCUMENT

MA ST 271 s 5A
M.G.L.A. 271 § 5A

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE I. CRIMES AND PUNISHMENTS
CHAPTER 271. CRIMES AGAINST PUBLIC POLICY

Current through 1998 2nd Annual Sess.

§ 5A. **Gambling** devices; forfeiture; antique slot machines

Whoever manufactures, transports, sells, offers for sale, stores, displays, repairs, reconditions, possesses or uses any **gambling** device or parts for use therein shall be punished by a fine of not more than five thousand dollars; provided, however, that fifty percent of the said fine shall be remitted to the city or town in which the violation occurred. The remaining fifty percent shall be remitted to the general fund of the commonwealth. As used in this section, the term "gambling device" means any so called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and which, when operated, may deal, as a result of the application of an element of **chance**, any money or property; or by the operation of which a person may become entitled to receive, as the result of the application of an element of **chance**, any money or property; or any sub- assembly or essential part intended to be used in connection with any such machine or mechanical device. Any **gambling** device or parts for use therein manufactured, transported, sold, offered for sale, stored, displayed, repaired, reconditioned, possessed or used in violation of this section shall be seized and be forfeited to the commonwealth and disposed of in the manner provided under the provisions of chapter two hundred and seventy-six. In respect to their constitutionality, the provisions of this section are

hereby declared to be separable.

It shall be a defense to any prosecution under this section to show that the slot machine is an antique slot machine and was not operated for gambling purposes while in the defendant's possession. For the purposes of this section, a slot machine shall be presumed to be an antique slot machine, if it was manufactured at least thirty years prior to either the arrest of the defendant, or seizure of the machine.

CREDIT(S)

1990 Main Volume

Added by St.1951, c. 483. Amended by St.1964, c. 557, § 7; St.1979, c. 373.

1999 Electronic Pocket Part Update

Amended by St.1995, c. 38, § 201.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999 Electronic Pocket Part Update

1995 Legislation

St.1995, c. 38, § 201, approved June 21, 1995, and by § 358 made effective July 1, 1995, in the first paragraph, in the first sentence, substituted "thousand dollars;" for "hundred dollars", and added the proviso, and inserted the second sentence.

1990 Main Volume

St.1951, c. 483, was approved July 3, 1951.

St.1964, c. 557, § 7, in the first paragraph, in the third sentence, substituted "under the provisions of chapter two hundred and seventy-six" for "for the seizure, forfeiture and disposition of alcoholic beverages under the provisions of chapter one hundred and thirty-eight".

St.1964, c. 557, was approved June 16, 1964. Emergency declaration by the Governor was filed June 23, 1964.

St.1979, c. 373, approved July 5, 1979, added the second paragraph.

CROSS REFERENCES

Automatic amusement devices, licensing, see c. 140, § 177A.

AMERICAN LAW REPORTS

Forfeiture of money used in connection with **gambling** or **lottery** or seized by officers in connection with an arrest or search on premises where such activities took place. 19 ALR2d 1228.

Coin-operated pinball machine or similar device, played for amusement only or confining reward to privilege of free replays, as prohibited or permitted by antigambling laws. 89 ALR2d 815.

Paraphernalia or appliances used for recording **gambling** transactions or receiving or furnishing **gambling** information as **gaming** "devices" within criminal statute or ordinance. 1 ALR3d 726.

Constitutionality of statutes providing for destruction of **gambling** devices. 14 ALR3d 366.

Validity of criminal legislation making possession of **gambling** or **lottery** devices or paraphernalia presumptive or prima facie evidence of other incriminating facts. 17 ALR3d 491.

NOTES OF DECISIONS

1. **Gambling** device

Where Massachusetts enacted this section forbidding the use of any **gambling** device and defined **gambling** device as a "slot machine", this section by not mentioning "diggers", did not affirmatively provide an exemption for "diggers" from federal statute providing for confiscation of certain defined **gambling** devices unless they are being transported into a state providing for the exemption of such state from the provisions of federal statute, and therefore diggers transported into Massachusetts in interstate commerce were subject to forfeiture. U.S. v. Two Hollycrane Slot Machines, D.C.Mass.1955, 136 F.Supp. 550.

Device which displayed flashing lights and electronic numbers when coin was inserted, and sometimes disgorged coins as prizes, was not a "gambling device" within meaning of this section prohibiting possession or use of such device, as it lacked moving "reel or drum" as required under this section. Com. v. Frate (1989) 537 N.E.2d 1235, 405 Mass. 52.

2. Licenses

Under G.L. (Ter.Ed.) c. 140, § 177A, providing for the licensing of "automatic amusement devices" devices offering a **chance** for a

prize in violation of this section prohibiting certain types of **gaming** devices, could not be legally licensed, and acts of Massachusetts municipal offices in granting such licenses were void and of no effect. U.S. v. Two Hollycrane Slot Machines, D.C.Mass.1955, 136 F.Supp. 550.

M.G.L.A. 271 § 5A

MA ST 271 § 5A

END OF DOCUMENT

MA ST 224 s 19
M.G.L.A. 224 § 19

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART III. COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES
TITLE II. ACTIONS AND PROCEEDINGS THEREIN
CHAPTER 224. ARREST ON MESNE PROCESS AND SUPPLEMENTARY PROCEEDINGS IN CIVIL ACTIONS

Current through 1998 2nd Annual Sess.

§ 19. Charges of fraud; procedure; sentence; appeal

At any time pending the examination of the defendant or debtor, the plaintiff or creditor or a person in his behalf may allege charges, to wit:

First, That, since the debt was contracted or the cause of action accrued, the defendant or debtor has fraudulently conveyed, concealed or otherwise disposed of the whole or a part of his or its property, with intent to secure it to his or its own use or to defraud his or its creditors; or

Second, That, since the debt was contracted or the cause of action accrued, the defendant or debtor has hazarded his or its money or other property to the value of one hundred dollars or more in some kind of gaming prohibited by the laws of this commonwealth; or

Third, That, if the action was founded on contract, the defendant or debtor contracted the debt with intent not to pay it.

Such charges shall be in writing, subscribed and sworn to by the plaintiff or creditor or by a person in his behalf, and shall be considered in the nature of an action at law, to which the defendant or debtor may plead that he or it is guilty or not

guilty, and the court may thereupon hear and determine the same. The plaintiff or creditor shall not upon the hearing give evidence of a charge which is not made or filed as herein provided, nor of a fraudulent act of the defendant or debtor which was committed more than three years before the commencement of the original action.

If the court finds that the defendant or debtor, if a natural person, is guilty of the charges so alleged, he shall be sentenced to imprisonment in the common jail for not more than one year, and if the defendant or debtor is a corporation or trust with transferable shares and found guilty of the charges so alleged, it shall be fined not more than one thousand dollars; and the proceedings for the examination of the defendant or debtor as to his or its property or ability to pay may be continued by the court to enable the defendant or debtor to appear.

A party aggrieved by a judgment rendered under this section may appeal therefrom to the superior court in the same manner as from a judgment of a district court in civil actions. If the plaintiff or creditor appeals, he shall before allowance thereof recognize with sufficient sureties to enter and prosecute his appeal, to file therewith a copy of all the proceedings on said charges, and to pay all costs if judgment is not reversed. If the defendant or debtor appeals, he or it shall recognize in like manner, and with the further condition that if final judgment is against him, if a natural person, he will, within thirty days thereafter, surrender himself to be taken on execution and abide the order of the court, or, if a corporation or trust with transferable shares, it will, within like time, pay the fine previously ordered, or pay to the plaintiff or creditor the amount due him upon the claim or execution as the case may be. In the superior court trial shall be by a jury or, with the consent of both parties, by the court.

CREDIT(S)

1985 Main Volume

Amended by St.1974, c. 414, § 5.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1985 Main Volume

St.1788, c. 16, § 3.
R.S.1836, c. 98, §§ 23, 27, 28, 30 to 36.
St.1844, c. 154, § 11.
St.1848, c. 168.
St.1855, c. 444, §§ 2, 8.

St.1857, c. 141, §§ 12 to 16, 18.
G.S.1860, c. 124, §§ 20, 31 to 34.
St.1872, c. 281, §§ 1, 2.
P.S.1882, c. 162, §§ 49 to 52.
R.L.1902, c. 168, §§ 52 to 55.
St.1917, c. 326.
G.L.1921, c. 224, §§ 6, 40 to 43.
St.1927, c. 334, § 2.

St.1974, c. 414, § 5, approved June 25, 1974 in the third paragraph, inserted "if a natural person" and the words "and if the defendant or debtor is a corporation or trust with transferable shares and found guilty of the charges so alleged, it shall be fined not more than one thousand dollars"; and, in the third sentence of the fourth paragraph, inserted "if a natural person" and "or, if a corporation or trust with transferable shares, it will, within like time, pay the fine previously ordered".

CROSS REFERENCES

Appeals to superior court, see c. 231, § 97.

Fraudulent transfers, see c. 109A, § 1 et seq.

Gaming and **games** of **chance**, generally, see c. 137, § 1 et seq.; c. 271, § 1 et seq.

LAW REVIEW AND JOURNAL COMMENTARIES

Poor debtor law. Bernard Ginsburg (1928) 8 B.U.L.Rev. 23.

NOTES OF DECISIONS

1. Validity

The provisions of G.S.1860, c. 124, §§ 31 to 34, which concerned charges of fraud against a person applying to take the oath for the relief of poor debtors, were not unconstitutional in allowing the creditor to appeal from the decision of the magistrate in favor of the debtor, and to have a new trial of the charges by a jury. Stockwell v. Silloway (1868) 100 Mass. 287.

2. In general

Assignment by judgment debtor to judgment creditor by order of the poor debtor court could convey no legal or equitable title as against the grantees named in the alleged fraudulent deed. Bress v. Gersinovitch (1919) 121 N.E. 525, 231 Mass. 563.

A magistrate had no authority to administer the poor debtor's oath concurrently with his finding the debtor guilty upon the charge of fraud (P.S.1882, c. 162, §§ 39, 52), and his act in administering the oath under such circumstances was a mere nullity. Noyes v. Manning (1893) 34 N.E. 682, 159 Mass. 446.

Under R.S.1836, c. 98, when charges of fraud were alleged against a party who sought to take the poor debtor's oath, and the examining magistrates rendered a judgment in his favor, it was their duty to administer the oath to him and to make a certificate thereof to the jailer, although the creditor appealed from their judgment, and the debtor was thereupon to be discharged from imprisonment; or, if he was at large on bail when the oath was taken, his bail was thereby discharged.

Ingersoll v. Strong (1845) 50 Mass. 447, 9 Metc. 447.

Bail was released by the discharge of the principal as a poor debtor, under Rev.St. c. 98, although the creditor appealed from the decision of the magistrates, having filed charges of fraud against the debtor. Ingersoll v. Strong (1845) 50 Mass. 447, 9 Metc. 447.

Where a debtor imprisoned on execution suddenly became heir to property by the death of his father, and also on the same day committed an escape and the next morning his attorney applied in haste to the creditor to compromise by paying part of the execution, and assigned other reasons for the haste, purposely concealing the facts, which were not known to the creditor and the latter accepted part payment in satisfaction of the whole, and discharged the execution and the debtor, the discharge was voidable on account of the fraud, and that the bail bond was forfeited by the escape. Lewis v. Gamage (1823) 18 Mass. 347, 1 Pick. 347.

3. Jurisdiction

If a magistrate before whom a hearing upon the application of a person to take the oath for the relief of poor debtors was appointed adjudged the creditor in default upon his failure to appear, he had no further jurisdiction, except to discharge the debtor, and could not proceed to administer the oath and to render a judgment upon charges of fraud filed against the debtor, under G.S.1860, c. 124, § 31; and no appeal lay to the superior court by the creditor from such judgment. Longley v. Cleavland (1882) 133 Mass. 256.

4. Nature of proceedings

Charges of fraud in supplementary "proceedings" are by statute in nature of action at law, although they may result in imprisonment of debtor, and are essentially civil and not criminal, so that after plea in district court plea need not be entered in superior court. Restuccia v. Bonner (1934) 192 N.E. 17, 287 Mass. 592.

Proceedings under charges of fraud are civil and not criminal. Morse v. O'Hara (1924) 142 N.E. 40, 247 Mass. 183.

Poor-debtor proceedings are in their main features of a civil, and not of a criminal nature, though, if a debtor is found guilty upon a charge of fraud, he may be imprisoned. Noyes v. Manning (1894) 37 N.E. 768, 162 Mass. 14.

The provision of P.S.1882, c. 162, § 52, for imprisonment on conviction on charges of fraud, filed by the creditor on application of the debtor to take the poor debtor's oath, was incidental to such proceedings, and did not authorize

imprisonment after discharge of the debt in insolvency proceedings; the proceedings on such charges being declared to be in the nature of a suit at law, and appeal being to a civil term, with a recognizance by the debtor, if defeated, to surrender himself or pay the judgment. Everett v. Henderson (1890) 23 N.E. 318, 150 Mass. 411.

5. Pending examination

The examination of a poor debtor before a magistrate must, within the meaning of P.S.1882, c. 162, § 49, be treated as pending up to the time of the announcement of the decision of the magistrate, and the creditor may file charges of fraud at any time before the announcement of the decision, although the hearing of evidence and arguments had closed, and the magistrate had continued the case for the purpose of considering the questions of law and fact involved therein. Andrews v. Cassidy (1886) 7 N.E. 545, 142 Mass. 96.

6. Charges--In general

Where R.L.1902, c. 168, § 17, cl. 2, provided for the arrest of a judgment debtor where the debtor had fraudulently disposed of his property since the debt was contracted or the cause of action accrued and § 52 provided that, where the debtor was charged with fraud, the charges should be considered in the nature of an action at law to which the debtor might plead and § 55 provided that, if the debtor voluntarily made default at a time appointed for the hearing, or was found guilty, he should have no benefit of the proceedings for the relief of poor debtors, an affidavit of the creditor for the arrest of the debtor charged fraud under § 17, supra, and the debtor defaulted at the time appointed for the hearing, and the poor debtor's oath was refused, another court, to which the debtor subsequently applied to be permitted to take the oath, was without jurisdiction to grant the relief sought. Radovsky v. Sperling (1905) 72 N.E. 949, 187 Mass. 202.

If a husband, who had paid the whole amount of alimony awarded to his wife in a decree of divorce, was arrested on an execution issued upon a decree for additional alimony, and, upon his application to take the oath for the relief of poor debtors, charges of fraud were filed against him, acts relied on to support the charges, the latest of which was done three months before the petition for additional alimony was filed, were not done "since the cause of action accrued," within the meaning of G.S.1860 c. 124, § 5, cl. 2. Foster v. Foster (1881) 130 Mass. 189.

Where charges of fraud were filed, under G.S.1860, c. 124, § 31, against a person applying to take the oath for the relief of poor debtors, the first of which alleged that since the debt was contracted, or cause of action accrued, for which the debtor had been arrested, he had fraudulently conveyed, concealed, or

otherwise disposed of some part of his property and estate, with a design to secure the same to his own use or defraud his creditors and the fourth charge alleged that the debtor on a certain day made a conveyance of certain personal property (describing it) to a certain person, and that the conveyance was made after the debt was contracted and the cause of action accrued, for which the debtor was arrested, and with a design to secure the same to his own use and to defraud his creditors, and that the said conveyance was made without consideration; but did not allege that the property was the property of the debtor, the fourth charge was in the nature of a specification under the first, and must be construed in connection with it. Clatur v. Donegan (1878) 126 Mass. 28.

Charges of fraud alleged against a debtor, upon his application to take the poor debtor's oath, may be signed and sworn to by one of several partners in behalf of his firm. Brown v. Tobias (1861) 83 Mass. (1 Allen) 385.

A charge of fraud, made by a creditor against his debtor, on his application to be admitted to take the poor debtor's oath, "that at the time when the debt was contracted, for which the said debtor is now committed, he did not intend to pay the same," or "that he contracted said debt, having no intention to pay the same, and having no expectation that it would be paid," was not substantially a charge, within R.S.1836, c. 98, § 31, "that the debtor contracted the debt, with an intention not to pay the same;" and was bad, even after verdict. Chamberlain v. Hoogs (1854) 67 Mass. 172, 1 Gray 172.

7. ---- Amendment of charges

And the fraudulent acts were sufficiently alleged as facts by an averment, under the oath of the creditor, that he "believes, and has good reason to believe, and charges" them, may be specified by reference to documents annexed, need not be alleged with any venue; and, if alleged in time as "on or about" a day named within the limitation prescribed in G.S.1860, c. 124, § 31, the defect was not necessarily fatal, but might be cured by amendment. Stockwell v. Silloway (1868) 100 Mass. 287.

The omission to allege in charges of fraud that a fraudulent conveyance was made since the debt of the creditor was contracted may be supplied by an amendment. Brown v. Tobias (1861) 83 Mass. 385, 1 Allen 385.

8. ---- Sufficiency of charges

On trial of charges of fraud on an application of a debtor to take the oath for the relief of poor debtors, a motion to dismiss because of the insufficiency of the charges of an objecting debtor should be overruled, where the charges and specifications were afterwards amended. Lamagdelaine v. Tremblay (1894) 39 N.E.

38, 162 Mass. 339.

On trial of charges of fraud filed by a creditor on the application of a debtor to take the poor debtor's oath, the question whether the charges of fraud were sufficient in form cannot be raised on motion in arrest of judgment. Lamagdelaine v. Tremblay (1894) 39 N.E. 38, 162 Mass. 339.

If a charge of fraud filed by a judgment creditor in poor-debtor proceedings does not by reference to the action or otherwise furnish the particulars necessary to enable the debtor clearly to understand of what he is accused, the creditor may be required to file specifications, and, if he fails so to do, the charge may be quashed if seasonable objection is made. Noyes v. Manning (1894) 37 N.E. 768, 162 Mass. 14.

Charges of fraud under G.S.1860, c. 124, §§ 31 to 34, against a person applying to take the oath for the relief of poor debtors, were sufficient if stated with such fullness, clearness, and precision as to inform him of the nature and particulars of the transaction intended to be proved against him, without being in a form appropriate to an indictment or criminal complaint. Stockwell v. Silloway (1868) 100 Mass. 287.

9. ---- **Gaming** charges

P.S.1882, c. 162, § 17, cl. 3, precluding a debtor from taking the poor debtor's oath where it was proved that since the debt was contracted he had hazarded and paid $100 or more in **gaming** prohibited by the laws of the state, and also subjecting the debtor to imprisonment for not over a year (Id. § 52) did not apply to **gaming** by a nonresident in another state. Bradley v. Burton (1890) 24 N.E. 778, 151 Mass. 419.

A charge of fraud filed against a person on his application to take the oath for the relief of poor debtors, alleging that defendant "hazarded and paid the sum of," naming it, "in a certain unlawful **game** played with cards and called 'draw poker' or 'bluff,' " and that defendant "did hazard and pay the said sum," naming it, "in said **gaming** as aforesaid, which is prohibited by the laws of this commonwealth," sufficiently alleges that the defendant had hazarded and paid money in some kind of **gambling** prohibited by the laws of the commonwealth. Chapin v. Haley (1882) 133 Mass. 127.

10. ---- Abandonment of charges

Where a creditor had examined the debtor so far as he saw fit to, and had filed charges of fraud, which he had permitted to lie without plea for three years and more; the case having been continued from time to time at the request of the debtor and at the time and place to which the hearing was adjourned the debtor appeared, but the creditor did not, this was an abandonment of

his charges, and of all opposition to the discharge of the debtor; and that promises of the debtor to pay the execution did not change the legal aspect of the case. O'Connell v. Hovey (1879) 126 Mass. 310.

11. Burden of proof

Charges of fraud under G.S.1860, c. 124, §§ 31 to 34, against a person applying to take the oath for the relief of poor debtors, were in the nature of civil proceedings, and need not be proved beyond a reasonable doubt; and the debtor and his wife might, under St.1870, c. 393, be called as witnesses by the creditor. Anderson v. Edwards (1877) 123 Mass. 273; Morse v. Dayton (1878) 125 Mass. 49.

In supplementary proceedings after judgment, where plaintiffs file charges of fraud against defendant pending his examination, burden of proof, which is on plaintiffs, is satisfied by proof by preponderance of evidence. Little v. Mathews (1944) 59 N.E.2d 13, 317 Mass. 422.

At a trial under G.S.1860, c. 124, §§ 31 to 34, of a charge that the defendant, who was arrested on mesne process and made application to take the poor debtor's oath, contracted a debt due the plaintiff with an intention not to pay the same, the plaintiff must prove that the debt was contracted as alleged. Horton v. Weiner (1878) 124 Mass. 92.

12. Evidence--In general

Parol evidence offered by judgment debtors in superior court on matter of recognizance furnished by creditor for appeal from municipal court could not serve to contradict record of proceedings in municipal court. Toy v. Green (1946) 65 N.E.2d 558, 319 Mass. 354.

A judgment creditor, wishing judgment debtor's testimony on appeal to superior court from judgment on charges of fraud against defendant pending his examination in supplementary proceedings, may summon debtor as witness. Little v. Mathews (1944) 59 N.E.2d 13, 317 Mass. 422.

Upon a trial under G.S.1860, c. 124, §§ 31 to 34, of a charge that a debtor had conveyed his estate with a design to defraud his creditors, the plaintiff might show that other fraudulent conveyances had been made by the debtor at about the same time and as a part of the same fraudulent scheme. Stockwell v. Silloway (1873) 113 Mass. 384.

In a trial under G.S.1860, c. 124, §§ 31 to 34, of a charge that a debtor had conveyed his estate with a design to defraud the creditor, a record of his former conviction on a similar charge at the suit of the same creditor on an arrest on another

execution was conclusive evidence that the conveyances then found to be fraudulent were so in fact. Stockwell v. Silloway (1873) 113 Mass. 384.

13. ---- Admissibility of evidence

On the issue of fraud, under G.S.1860, c. 124, § 31, in a purchase of goods, where a general scheme of fraud on the part of the poor debtor was shown, evidence was admissible that he soon after made purchases of goods of other parties; that he told a creditor that on a certain day he would pay all his creditors in full, on which day a meeting of his creditors was called; also, subsequent schedules, and his assignee's testimony that there were no assets. Horton v. Weiner (1878) 124 Mass. 92.

At the trial of charges of fraud under G.S.1860, c. 124, §§ 31 to 34, the alleged fraud being that the debtor had bought land and had caused it to be conveyed to his wife in fraud of his creditors, if it appeared that a part of the consideration was procured by means of a mortgage to a third person by the debtor and his wife, given to secure the debtor's sole note, which it was contended that he afterwards paid, the mortgage was admissible in evidence. Anderson v. Edwards (1877) 123 Mass. 273.

Where on trial of charges of fraud filed under G.S.1860, c. 124, §§ 31 to 34, against a poor debtor, there was evidence tending to show that the property alleged to be fraudulently conveyed was incumbered by a mortgage given to secure the purchase money of certain real estate bought by the defendant and another, that a large part of the mortgage had been paid from the proceeds of sales of such real estate, and that the mortgagee had received all the proceeds of such sales, the deeds of such real estate were not admissible in evidence to show, from the consideration therein expressed, how much had been paid on the mortgage. Sheldon v. Grady (1874) 116 Mass. 136.

14. ---- Sufficiency of evidence

Evidence was insufficient, insofar as wife or husband were concerned, to sustain finding that conveyance of real estate to realty corporation by husband and wife as judgment debtors was fraudulent as to creditor. Toy v. Green (1946) 65 N.E.2d 558, 319 Mass. 354.

Where a charge of fraud filed by a judgment creditor, under P.S.1882, c. 162, against his debtor, upon the latter's application to take the oath for the relief of poor debtors, alleged that the debtor after the debt was contracted fraudulently conveyed a watch with the design to secure it to himself and to defraud his creditors and there was evidence at the trial that after the debt accrued he was in possession, and the owner, of a watch and he admitted that he had owned the watch; and testified at the trial that he sold it in the latter

part of 1881, which was before the present cause of action accrued and in his examination before the magistrate he had testified that he sold it in the latter part of 1882, which was after the cause of action accrued, the jury were justified in finding the debtor guilty. Taylor v. Jacobs (1884) 138 Mass. 148.

15. Imprisonment

A discharge of a debtor in proceedings under the United States bankrupt act was no bar to his being imprisoned, where charges of fraud were filed by the creditor, under G.S.1860, c. 124, §§ 31 to 34. Stockwell v. Silloway (1870) 105 Mass. 517.

16. Actions against third parties

An action will not lie against a defendant for purchasing or fraudulently concealing the property of the plaintiff's debtor, and aiding him to abscond, in order to prevent the plaintiff from securing his debt by attaching the property or arresting the person of his debtor. Lamb v. Stone (1831) 28 Mass. 527, 11 Pick. 527; Wellington v. Small (1849) 57 Mass. 145, 3 Cush. 145, 50 Am.Dec. 719; Naylor v. Dennie (1829) 25 Mass. 198, 8 Pick. 198, 19 Am.Dec. 319.

17. Questions of fact or law

Fraud in a conveyance without consideration is generally a question of fact and is never presumed but must be proved by the party who relies upon it. Toy v. Green (1946) 65 N.E.2d 558, 319 Mass. 354.

Questions of law arising at the trial in the superior court of charges of fraud under G.S.1860, c. 124, §§ 31 to 34, against a person applying to take the oath for the relief of poor debtors, might be reported to the supreme judicial court after verdict, under G.S.1860, c. 115, § 6. Morse v. Dayton (1878) 125 Mass. 47.

18. Instructions

On charges of fraud filed against one on his application to take the poor debtor's oath, an instruction that if the jury "found the **game** of draw poker, as described by witnesses, to be a **game** of **chance** on which money was hazarded upon the kind of cards held by the respective players, or by **betting** on the hands so held, and if chips redeemable in money were used by the players in place of money, then it was **gaming** prohibited by the laws of this commonwealth," is proper. Chapin v. Haley (1882) 133 Mass. 127.

19. Verdicts

Where at the trial in the superior court of charges of fraud,

filed under G.S.1860, c. 124, § 31, the jury returned a verdict of guilty on several of the charges, and on the defendant's motion for a new trial, the judge set aside the verdict as to some of the charges, and, on the plaintiff's motion, ordered these charges to be stricken from the record, the granting of the order was within the discretion of the court, and not subject to exception. Chapin v. Haley (1882) 133 Mass. 127.

20. Harmless error

Error, if any, in superior court's ruling that plaintiffs in supplementary proceeding to enforce payment of judgment against defendant who was charged with fraud pending his examination, could not prove acts of fraud committed before plaintiffs' cause of action accrued or over three years before action was brought, was harmless to plaintiffs in absence of showing in bill of exceptions that any evidence possessed by plaintiffs was excluded because of such ruling. Little v. Mathews (1944) 59 N.E.2d 13, 317 Mass. 422.

21. Review--In general

On appeal from decree allowing motions made by defendants in superior court that issuance of execution on final decree after rescript be stayed in order that application might be made to the supreme judicial court for leave to file bill of review, the case was not a "moot case" by reason of fact that the extension of time within which execution should not be issued had expired after entry of appeal in the supreme judicial court but before case was reached for argument, since supreme judicial court could not say that allowance of motions which, if effective, would change or affect the final decree after rescript, if permitted to stand unreversed on the docket of the court, might not affect the substantive rights of the parties. City of Boston v. Santosuosso (1941) 31 N.E.2d 572, 308 Mass. 202.

Upon an appeal from the finding of a municipal court on a charge of fraud filed by a creditor, under P.S.1882, c. 162, § 17, upon his debtor's application to take the oath for the relief of poor debtors, it was within the discretionary power of the superior court to remove at the same term in which it was entered a nonsuit of the creditor upon which no judgment had been entered. Noyes v. Manning (1893) 34 N.E. 682, 159 Mass. 446.

Where, upon two charges of fraud, filed by a judgment creditor against his debtor pending his application to take the oath for the relief of poor debtors, he is convicted on one charge and acquitted on the other, and sentenced to jail, the creditor cannot appeal to the superior court. Smith v. Dickinson (1885) 3 N.E. 40, 140 Mass. 171.

No appeal lay to the superior court from the judgment of a magistrate who discharged a debtor without an examination, and

adjudged the creditor in default for not appearing at the time and place fixed for the examination of the debtor upon his application for the poor debtor's oath, and who refused to render a judgment upon charges of fraud filed and G.S.1860, c. 124, § 32, in terms gave an appeal only when a hearing was had. Longley v. Cleavland (1882) 133 Mass. 256.

22. ---- Issues, review

An appeal from the judgment of a magistrate upon charges of fraud under G.S.1860, c. 124, §§ 31 to 34, against a person applying to take the oath for the relief of poor debtors, by which the debtor was adjudged guilty of some of the specifications in the charges and not guilty of others, vacated the whole judgment, and opened the case for trial upon all the charges, although the other party did not appeal. Morse v. Dayton (1878) 125 Mass. 47; Clatur v. Donegan (1878) 126 Mass. 28.

Examination of judgment debtor in supplementary proceedings, brought in district court, must end in such court and cannot be transferred to superior court by appeal, and after appeal to such court from district court judgment on charges of fraud against defendant, such charges become separated from examination and nothing goes to superior court except questions of guilt and sentence. Little v. Mathews (1944) 59 N.E.2d 13, 317 Mass. 422.

A defendant, entering in municipal court a plea of not guilty of fraud, with which he was charged pending his examination in supplementary proceeding to enforce payment of judgment against him, need not plead again in superior court on appeal from municipal court judgment finding him guilty and sentencing him to imprisonment in jail. Little v. Mathews (1944) 59 N.E.2d 13, 317 Mass. 422.

After trial on the merits, on appeal from district court to superior court, of charges of fraud in supplementary proceedings against debtor, whether there has been no plea of guilty or not guilty in superior court would not be considered. Restuccia v. Bonner (1934) 192 N.E. 17, 287 Mass. 592.

23. ---- Recognizances, review

Under this section, providing that before allowance of appeal by creditor to superior court he shall recognize with sufficient sureties to enter and prosecute his appeal, to file therewith a copy of all the proceedings on the charges and to pay all costs if judgment is not reversed, the filing of such copies is made merely a term of the recognizance and is not a condition precedent to jurisdiction in the superior court. Toy v. Green (1946) 65 N.E.2d 558, 319 Mass. 354.

Judgment creditor appealing to superior court from municipal

court was not required to give separate recognizances to each of two judgment debtors, but one recognizance given jointly and severally was sufficient. Toy v. Green (1946) 65 N.E.2d 558, 319 Mass. 354.

Recognizance provided by judgment creditor for appeal to superior court from municipal court as revealed by record of the municipal court was sufficient to confer jurisdiction on superior court. Toy v. Green (1946) 65 N.E.2d 558, 319 Mass. 354.

This section, relating to recognizance for appeal to the superior court, contemplates that substance of the contents of the paper should be available in the superior court in the event of appeal. Toy v. Green (1946) 65 N.E.2d 558, 319 Mass. 354.

A judgment debtor, failing to furnish recognizance with sureties required by this section, when he claimed appeal to superior court from municipal court judgment finding him guilty of fraud, charged by judgment creditors pending examination of debtor in supplemental proceeding, perfected timely appeal by furnishing such recognizance on sixth secular day after sentence on such finding. Little v. Mathews (1944) 59 N.E.2d 13, 317 Mass. 422.

Since examination of judgment debtor in supplementary proceedings forms no part of appeal to superior court from district court's judgment on charges of fraud against defendant, recognizance required on such appeal binds appellant only to enter and prosecute appeal and says nothing about personally appearing or not departing without leave. Little v. Mathews (1944) 59 N.E.2d 13, 317 Mass. 422.

A judgment debtor, appealing from judgment against him on charges of fraud pending his examination in supplementary proceedings, is required by terms of recognizance to surrender himself to be taken on execution and abide court's order only in case of final judgment against him on appeal. Little v. Mathews (1944) 59 N.E.2d 13, 317 Mass. 422.

Where defendant against whom judgment had been rendered was found guilty, in proceeding on supplementary process in municipal court, of plaintiff's charge of fraud and was sentenced to imprisonment, and on appeal to the superior court defendant recognized without sureties, the appeal was properly dismissed because defendant failed to recognize with surety since compliance with requirement of this section, that defendant recognize with sufficient sureties was essential to give jurisdiction to the superior court. Clearwater Laundry Co. v. Wiley (1941) 37 N.E.2d 500, 310 Mass. 255.

Where this section, required that the defendant, appealing to superior court after defendant had been found guilty, in proceeding on supplementary process in municipal court, of plaintiff's charge of fraud, recognize with sufficient sureties,

a recognizance without sureties was not sufficient compliance to give superior court jurisdiction. Clearwater Laundry Co. v. Wiley (1941) 37 N.E.2d 500, 310 Mass. 255.

Where defendant against whom judgment had been rendered was found guilty, in proceeding on supplementary process in municipal court, and on appeal to superior court defendant recognized without sureties, principles applicable to waiver of defects of form did not apply to absence of sureties, but even if such principles were applicable, there was no waiver of sureties where motion to dismiss was seasonably made. Clearwater Laundry Co. v. Wiley (1941) 37 N.E.2d 500, 310 Mass. 255.

24. ---- Discharge in bankruptcy, review

A discharge in bankruptcy, obtained by a debtor under the bankrupt act of 1867, pending an appeal in the superior court, from the judgment of a magistrate, on criminal charges of fraud preferred against him, under G.S.1860, c. 124, §§ 31 to 34, was no bar to the prosecution of the appeal, whether or not it exonerated him from the demand for relief against which he applied to take the poor debtor's oath. Stockwell v. Silloway (1870) 105 Mass. 517.

Proceedings in bankruptcy, commenced by a debtor under the federal bankrupt act of 1867, pending an appeal in the superior court from the judgment of a magistrate in his favor on a charge of fraud preferred against him under G.S.1860, c. 124, §§ 31 to 34 (providing for a hearing upon charges of fraud against persons applying to take the oath for the relief of poor debtors), did not bar the prosecution of the appeal, especially if the charges were filed before the bankrupt act took effect. Stockwell v. Silloway (1870) 105 Mass. 517.

M.G.L.A. 224 § 19

MA ST 224 § 19

END OF DOCUMENT

MA ST 137 s 3
M.G.L.A. 137 § 3

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XX. PUBLIC SAFETY AND GOOD ORDER
CHAPTER 137. **GAMING**

Current through 1998 2nd Annual Sess.

§ 3. Validity of notes, bills, bonds, mortgages, securities or

conveyances won by **gaming**

Notes, bills, bonds, mortgages or other securities or conveyances the whole or part of the consideration of which is money or goods won by **gaming** or playing at cards, dice or any other **game**, or by **betting** on the sides or hands of persons **gaming,** or for repaying or reimbursing money knowingly lent or advanced for **gaming** or **betting,** or lent and advanced at the time and place of such **gaming** or **betting** to a person so **gaming** or **betting,** shall be void as between the parties thereto, and as to all persons except such as hold or claim under them in good faith and without notice of the illegality of the consideration.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1991 Main Volume

St.1736-7, c. 17, § 1.
St.1742-3, c. 27, § 1.
St.1785, c. 58, § 1.
St.1800, c. 57, § 5.
R.S.1836, c. 50, § 15.
G.S.1860, c. 85, § 4.
P.S.1882, c. 99, § 5.
R.L.1902, c. 99, § 3.
St.1918, c. 257, § 340.
St.1919, c. 5.
St.1920, c. 2.

AMERICAN LAW REPORTS

Recovery of loan for **gambling** purposes. 53 ALR2d 345.

NOTES OF DECISIONS

Notice of illegality 2
Validity of notes 1

1. Validity of notes

Where debt, to wit, borrowing of money for use in gambling activities, was incurred in the Bahama Islands, validity of contract to repay money lent was governed by the laws of Bahama Islands. Dicker v. Klein (1972) 277 N.E.2d 514, 360 Mass. 735.

Statute law of the Bahama Islands voiding all notes, bills, bonds, judgments, mortgages, all other securities or conveyances whatsoever for reimbursement of money lent or advanced for **gaming** or **gambling** also voids the underlying debt. Dicker v. Klein

(1972) 277 N.E.2d 514, 360 Mass. 735.

Under R.L.1902, c. 73, § 202, and c. 99, § 3, a note or check executed and delivered as part of **gaming** transaction was founded on **gambling** consideration, and as between parties was not merely voidable, but void. Kemp v. Hammond Hotels (1917) 115 N.E. 572, 226 Mass. 409.

Where the keeper of a billiard saloon, also licensed to sell intoxicating liquors, played with a customer upon the terms that the defeated party should pay for the use of the table, and for liquors and cigars to be used by the prevailing party, and the customer was the loser, and the keeper charged him with the price of such table, liquors, and cigars, and the account, which also included other items, was settled between them by the customer's giving a promissory note to the keeper for the amount thereof, which note was successively renewed by other notes, the original note and the renewals thereof were void as between the parties by force of P.S.1882, c. 99, § 5. Murphy v. Rogers (1890) 24 N.E. 35, 151 Mass. 118.

Playing billiards or pool, where the defeated party was to pay for the use of the table or implements used in playing the **game**, or for any liquors or cigars used by the prevailing party, amounts to **gaming,** within the meaning of P.S.1882, c. 99, § 5, which provided that all notes, bills, or bonds in which the whole or part of the consideration was money or goods won by **gaming** should be void as between the parties, and notes given in renewal of a note in settlement of such charges, together with other items, were void. Murphy v. Rogers (1890) 24 N.E. 35, 151 Mass. 118.

Collateral promotional agreement between seller and purchasers under a conditional sales contract covering purchase of a colored television set, whereby purchasers would be credited certain amounts against the purchase price for each additional customer they procured for seller, did not violate c. 271, § 6A, which prohibits a lottery, and such alleged violation could not be asserted against assignee of conditional sales contract who had no knowledge of the promotional agreement. First Finance Corp. of Mattapan v. Harrigan (App. Div. 1966) 36 Mass.App.Dec. 26.

2. Notice of illegality

Maker of check not party to **gaming** in which it was indorsed by payee could set up illegality. Haller v. Workingmen's Co-op. Bank (1928) 160 N.E. 324, 263 Mass. 37.

Finding for defendant was proper, where plaintiff holder of check won in **gaming** did not show bona fide holding. Haller v. Workingmen's Co-op. Bank (1928) 160 N.E. 324, 263 Mass. 37.

M.G.L.A. 137 § 3

MA ST 137 § 3

END OF DOCUMENT

MA ST 10 s 24
M.G.L.A. 10 § 24

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE II. EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
CHAPTER 10. DEPARTMENT OF THE STATE TREASURER
STATE LOTTERY

Current through 1998 2nd Annual Sess.

§ 24. Powers and duties of commission

The commission is hereby authorized to conduct a state lottery and shall determine the types of lottery or lotteries, to be conducted, the price, or prices, of tickets or shares in the lottery, the numbers and sizes of the prizes on the winning tickets or shares, the manner of selecting the winning tickets or shares, the manner of payment of prizes to the holders of winning tickets or shares, the frequency of the drawings or selections of winning tickets or shares and the type or types of locations at which tickets or shares may be sold, the method to be used in selling tickets or shares, the licensing of agents to sell tickets or shares; provided, however, that no tickets or shares, other than season tickets, so-called, shall be sold, offered for sale, or purchased from a licensed sales agent or the lottery commission by telephone or by the use of computer or facsimile services; provided, further, that said restriction shall not govern the transmittal of lottery information and sales through telephone services strictly between the lottery commission and its duly licensed sales agents; provided, further, that no person under the age of eighteen shall be licensed as an agent, the manner and amount of compensation, if any, to be paid licensed sales agents, and such other matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares; provided, however, that the amount of compensation, if any, to be paid to licensed sales agents as a commission pursuant to this section shall be calculated on the total face value of each ticket or share sold and not on any discounted price of any such ticket or share sold. The commission is authorized to operate the daily numbers **game** seven days a week. Each state **lottery** ticket or share shall have imprinted thereon the state seal and a serial number. The

commission may establish, and from time to time revise, such rules and **regulations** as it deems necessary or desirable and shall file the same with the office of the state secretary. The commission shall advise and make recommendations to the director regarding the operation and administration of the **lottery.** The commission shall report monthly to the governor, the attorney general and the general court, the total **lottery** revenues, prize disbursements and other expenses for the preceding month, and shall make an annual report to the same which shall include a full and complete statement of **lottery** revenues, prize disbursements and other expenses, including such recommendations as it may deem necessary or advisable. The commission shall report immediately to the governor and the general court any matters which require immediate changes in the laws of the commonwealth in order to prevent abuses and evasions of the **lottery** law or rules and **regulations** promulgated thereunder or to rectify undesirable conditions in connection with the administration or operation of the state **lottery.**

The commission is authorized to carry on a continuous study and investigation of said **lottery** throughout the commonwealth in order (1) to ascertain any defects in the state **lottery** law or in the rules and **regulations** issued thereunder whereby any abuse in the administration and operation of the **lottery** or any evasion of said law or said rules and **regulations** may arise or be practiced, (2) to formulate recommendations for changes in said law and the rules and **regulations** promulgated thereunder to prevent such abuses and evasions, and (3) to guard against the use of said law and rules and **regulations** issued thereunder as a cloak for the carrying on of organized **gambling** and crime.

The commission shall make a continuous study and investigation of the operation and administration of similar laws in other states or countries, of any literature on the subject which from time to time may be published or available, of any federal laws which may affect the operation of the lottery, and of the reaction of citizens of the commonwealth to existing and potential features of the lottery with a view to recommending or effecting changes that will tend to better serve and implement the purposes of the state lottery law.

The concurrence of the chairman and of not less than two other members of the commission shall be required for all official actions of the commission. A copy of the minutes of each meeting of the commission, including any rules and regulations adopted by the commission or any amendments thereof, shall be forthwith transmitted, by and under the certification of the secretary thereof, to the governor.

The commission shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before it in any matter over which it has jurisdiction, control or supervision. The

commission shall have the power to administer oaths and affirmations to persons whose testimony is required.

The commission is hereby authorized and directed to conduct a lottery for the benefit of the arts and shall determine the types of lottery or lotteries to be conducted, the price, or prices, of tickets or shares in the lottery, the numbers and sizes of the prizes on the winning tickets or shares, the manner of selecting the winning tickets or shares, the manner of payment of prizes to the holders of winning tickets or shares, the frequency of drawings or selections of winning tickets or shares, and the type or types of locations at which tickets or shares may be sold, and all other matters authorized by law. The commission shall report monthly to the governor, the attorney general, the general court, and the Massachusetts arts lottery council, the total revenues of the lottery or lotteries conducted for the arts, prize disbursements, and other expenses for the preceding month, and shall make an annual report to the same which shall include a full and complete statement of such arts lottery revenues, prize disbursements, and other expenses, including such recommendations as it may deem necessary or advisable.

CREDIT(S)

1996 Main Volume

Added by St.1971, c. 813, § 2. Amended by St.1974, c. 156; St.1979, c. 790, § 1; St.1981, c. 351, § 293; St.1983, c. 635; St.1990, c. 150, § 222; St.1991, c. 461, § 1.

1999 Electronic Pocket Part Update

Amended by St.1998, c. 305, §§ 1, 2.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999 Electronic Pocket Part Update

1998 Legislation

St.1998, c. 305, § 1, approved Aug. 18, 1998, in the first sentence, substituted "shares; provided, however, that no tickets or shares, other than season tickets, so-called, shall be sold, offered for sale, or purchased from a licensed sales agent or the lottery commission by telephone or by the use of computer or facsimile services; provided, further, that said restriction shall not govern the transmittal of lottery information and sales through telephone services strictly between the lottery commission and its duly licensed sales agents; provided, further, that" for "shares, provided that".

Section 2 of St.1998, c. 305, in the first sentence, added the last proviso.

1996 Main Volume

St.1974, c. 156, approved April 30, 1974, in the first paragraph, in the first sentence, in the proviso, substituted "types of lottery or lotteries" for "type of lottery", and substituted "eighteen" for "twenty-one".

St.1979, c. 790, § 1, approved Nov. 15, 1979, inserted the sixth paragraph.

St.1981, c. 351, § 293, approved July 21, 1981, and by § 299 made effective as of July 1, 1981, rewrote the sixth paragraph, which prior thereto read:

"The commission is hereby authorized and directed to conduct a lottery for the arts which shall be known as the arts lottery. The arts lottery shall be conducted weekly and tickets shall be sold at a minimum price of five dollars per ticket. Subject to the provisions of section thirty-five A, the arts lottery shall be conducted and the revenues therefrom distributed in accordance with the general provisions of the state lottery law."

; and added the seventh paragraph.

St.1983, c. 635, an emergency act, approved Dec. 19, 1983, in the second sentence of the first paragraph, deleted "and each coupon or receipt thereof" preceding "shall have".

St.1990, c. 150, § 222, approved Aug. 1, 1990, and by § 383 made effective as of July 1, 1990, in the first paragraph, inserted the second sentence.

St.1991, c. 461, § 1, approved Dec. 30, 1991, and by § 4 made effective Jan. 1, 1993, deleted the seventh paragraph.

CROSS REFERENCES

Production of documents, etc., in civil actions, see R.Civ.P. Rule 34.

CODE OF MASSACHUSETTS **REGULATIONS**

Rules and **regulations**, state **lottery** commission, see 961 CMR 2.01 et seq.

AMERICAN LAW REPORTS

State **lotteries:** actions by ticketholders against state or contractor for state. 40 ALR4th 662.

LIBRARY REFERENCES

1996 Main Volume

Lotteries k5.
C.J.S. **Lotteries** § 13.
Texts and Treatises

6 Mass Jur, Property § 12:7.

NOTES OF DECISIONS

In general 1
Bonds 2
Payment of prizes 3

1. In general

State Lottery Commission's activities in conducting state lottery were driven by legislative mandate, not business or personal objectives, and thus statute prohibiting person from engaging in unfair or deceptive acts or practices in conduct of any trade or commerce did not apply to Commission's activities. Bretton v. State **Lottery** Com'n (1996) 673 N.E.2d 76, 41 Mass.App.Ct. 736, review denied 676 N.E.2d 55, 424 Mass. 1103.

State Arts **Lottery** Council does not have authority under § 35A of this chapter creating such Council, to permit art organizations which act as ticket sales agents to receive more than regular sales commissions established by **Lottery** Commission under statute, the general state **lottery** law. Op.Atty.Gen., Aug. 4, 1980, p. 102.

Lottery Commission has authority to implement Instant **Game**, and permit nonstate employees at claim centers to countersign checks for $100 prizes without violating c. 29, or § 35 of this chapter, or Const. Amend. Art. 63, or Const. Pt. 2, c. 2, § 1, Art. 11, since state **lottery** fund dealing with prize money has no direct connection with budget of Commonwealth or with appropriation and expenditures of state funds, and is not collected pursuant to taxation. Op.Atty.Gen., April 26, 1973, p. 114.

2. Bonds

Because lottery claims centers are, in effect, custodians of Commonwealth funds entrusted to State Treasurer, bond of Treasurer, pursuant to § 2 of this chapter, as well as bonds of licensed claims centers would be applicable to payments not authorized by § 35 of this chapter. Op.Atty.Gen., April 26, 1973, p. 114.

3. Payment of prizes

Statute provides authority for Lottery Commission to establish procedure for payment of prizes which utilizes non-state employees to countersign $100 prize checks. Op.Atty.Gen., April 26, 1973, p. 114.

Constitutional and statutory provisions pertinent to State Treasury are not applicable to payments of $2 and $10 prizes in Instant **Game lottery,** since such payments are made by vendors from their own funds and do not involve monies either paid to **Lottery** Commission or in control of the State Treasurer. Op.Atty.Gen., April 26, 1973, p. 114.

M.G.L.A. 10 § 24

MA ST 10 § 24

END OF DOCUMENT

MA ST 140 s 177A
M.G.L.A. 140 § 177A

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XX. PUBLIC SAFETY AND GOOD ORDER
CHAPTER 140. LICENSES
AUTOMATIC AMUSEMENT DEVICES

Current through 1998 2nd Annual Sess.

§ 177A. Amusement devices; license; definition; fee; view and inspection; **gambling**; nonapplicability of **lottery** statute

(1) The licensing authorities of any city or town may grant, and after written notice to the licensee, suspend or revoke a license to keep and operate an automatic amusement device for hire, gain or reward, approved by the director of standards and necessaries of life under section two hundred and eighty-three of chapter ninety-four.

(2) The term "automatic amusement device" as used in this section shall be construed as meaning any mechanism whereby, upon the deposit therein of a coin or token, any apparatus is released or set in motion or put in a position where it may be set in motion for the purpose of playing any game involving, in whole or in part, the skill of the player, including, but not exclusively, such devices as are commonly known as pinball machines including free play pinball machines.

(3) Licenses granted under this section, unless sooner revoked, shall expire on December thirty-first of each year. Every such license shall specify the street and number of the premises where

the automatic amusement device is to be kept or offered for operation or give some particular description of such premises, shall state the type of the automatic amusement device to which it relates, and shall cover any automatic amusement device of the same type which as a substitute or replacement for the automatic amusement device licensed, may, during the term of the license, be kept or offered for operation on the premises specified; but such license shall under no circumstances cover an automatic amusement device of a type other than the type stated in such license; and such license shall not cover the automatic amusement device if in any place other than the premises from time to time specified in such license. No such license shall specify more than one premises at one time. Upon written application, the licensing authority may from time to time amend any license granted under this section by changing the premises specified.

(4) The annual fee for a license under this section for any automatic amusement device licensed hereunder, or any renewal thereof, shall be twenty dollars, unless otherwise established in a town by town meeting action and in a city by city council action, and in a town with no town meeting by town council action, by adoption of appropriate by-laws and ordinances to set such fees, but in no event shall any such fee be greater than one hundred dollars. The fee for every change of premises shall be two dollars.

(5) Automatic amusement devices licensed under this section shall be so installed on the premises described in the license as to be in open view at all times while in operation, and shall at all times be available for inspection.

(6) No person keeping or offering for operation or allowing to be kept or offered for operation any automatic amusement device licensed under this section shall permit the same to be used for the purpose of gambling.

(7) The provisions of section seven of chapter two hundred and seventy-one of the General Laws shall not apply to machines licensed under the provisions of this section.

(8) Any violation of any provision of this section or of chapter one hundred and thirty-six of the General Laws by any person managing or controlling any premises where an automatic amusement device licensed under this section is kept or offered for operation shall be cause for the revocation of all licenses for automatic amusement devices kept or offered for operation on such premises.

CREDIT(S)

1991 Main Volume

Added by St.1949, c. 361. Amended by St.1981, c. 351, § 83; St.1981, c. 520.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1991 Main Volume

St.1949, c. 361, was approved May 27, 1949.

St.1981, c. 351, § 83, approved July 21, 1981, and by § 299 made effective as of July 1, 1981, in par. (4), in the first sentence, added "unless otherwise established in a town by town meeting action and in a city by city council action, and in a town with no town meeting by town council action, by adoption of appropriate by-laws and ordinances to set such fees, but in no event shall any such fee be greater than one hundred dollars".

St.1981, c. 520, approved Nov. 5, 1981, in par. (4), deleted the second sentence, which read, "The fee for any license issued after January thirty- first in any year shall be prorated on the basis of the number of months in which the license is to be in force compared with twelve months."

LAW REVIEW AND JOURNAL COMMENTARIES

Jurisdiction over licensing of video **games** in Boston. Paul Baccari (1983) 27 Boston B.J. No. 4, p. 5.

Licensing. Richard G. Huber, 9 Ann.Surv.Mass.L. 258 (1962).

Regulation and control of **lotteries.** (1960) 40 B.U.L.Rev. 113, 115.

NOTES OF DECISIONS

1. Validity

This section empowering licensing authorities of any city or town to grant and, after written notice to the licensee, suspend

or revoke licenses to keep and operate automatic amusement devices for hire, gain, or reward is not overbroad, vague, or standardless. Malden Amusement Co., Inc. v. City of Malden, D.C.Mass.1983, 582 F.Supp. 297.

This section is not unconstitutionally vague; since statute is **concerned** with impact of particular video **game** or video **game** arcade in particular community and freedoms under U.S.C.A.Const.Amend. 1 are not involved, statute did not have to specify with great particularity relevant considerations in evaluating license application, but, rather, statute does and may confer upon licensing authorities quasi-judicial authority to determine facts and to pass upon application in each instance under serious sense of responsibility imposed upon them by their official positions and delicate character of duty entrusted to them. Caswell v. Licensing Com'n for Brockton (1983) 444 N.E.2d 922, 387 Mass. 864.

This section does not violate potential patrons' rights to free assembly and freedom of association; even if there was an identifiable group of patrons, gathering in an amusement arcade for purpose of playing video games would not advance social, legal, and economic benefits of group's members in a way that freedom of association contemplates. Caswell v. Licensing Com'n for Brockton (1983) 444 N.E.2d 922, 387 Mass. 864.

2. Purpose

Town bylaw's prohibition of keeping and use of coin-activated, mechanical and electronic amusement devices was not in conflict with this section which was enacted to remove coin-activated amusement devices from ambit of **gambling** laws and which was intended to allow localities to license **games.** Marshfield Family Skateland, Inc. v. Town of Marshfield (1983) 450 N.E.2d 605, 389 Mass. 436, appeal dismissed 104 S.Ct. 475, 464 U.S. 987, 78 L.Ed.2d 675.

This section was enacted for the purpose of permitting the use and maintenance of automatic amusement devices, such as pinball machines, including "free play" pinball machines, if duly licensed and if used for amusement only. Com. v. Macomber (1955) 130 N.E.2d 545, 333 Mass. 298.

3. Applications

This section providing that city licensing commission "may" grant, suspend or revoke licenses to operate pinball machines did not give commission authority to suspend issuing of such licenses entirely, but required commission to act upon each application and gave the commission the right to deny a particular license in its discretion based not only upon suitability of applicant but upon general good, order and welfare of community. Turnpike Amusement Park, Inc. v. Licensing Commission of Cambridge (1962)

179 N.E.2d 322, 343 Mass. 435.

4. License fees

Amusement company which did not comply with limitations in ordinance in its application for license to operate video game machines lacked standing to challenge licensing fee as being excessive. Malden Amusement Co., Inc. v. City of Malden, D.C.Mass.1983, 582 F.Supp. 297.

Mayor of Boston has authority to set fees for entertainment licenses. G.J.T., Inc. v. Boston Licensing Bd. (1986) 491 N.E.2d 594, 397 Mass. 285.

5. Pinball machines

One who offers as entertainment or amusement the use of a machine requiring license under this section governing automatic amusement devices such as pinball machines, including "free play" pinball machines, must obtain license under entertainment licensing statute [M.G.L.A. c. 140, § 181; St.1908, c. 494, § 1]. G.J.T., Inc. v. Boston Licensing Bd. (1986) 491 N.E.2d 594, 397 Mass. 285.

6. Lotteries

Chapter 271, § 7, imposing a penalty for promoting and setting up a lottery for money or other property of value, is applicable to one operating a pinball machine licensed under this section, if money is paid out to winners. Com. v. Macomber (1955) 130 N.E.2d 545, 333 Mass. 298.

7. Prizes

Under this section, providing for the licensing of "automatic amusement devices", devices offering a **chance** for a prize in violation of c. 271, § 5, prohibiting certain types of **gaming** devices, could not be legally licensed, and acts of Massachusetts municipal offices in granting such licenses were void and of no effect. U.S. v. Two Hollycrane Slot Machines, D.C.Mass.1955, 136 F.Supp. 550.

8. Review

Matter of whether city licensing commission properly denied application for license for automatic amusement devices would be remanded for reconsideration by commission since it could not be determined that safety concerns actually motivated commission in its denial of application. Caswell v. Licensing Com'n for Brockton (1983) 444 N.E.2d 922, 387 Mass. 864.

9. Video poker machines

Video poker machines involved element of skill, qualifying machines for licensure as automatic amusement devices; machines rewarded prudent calculations of probability of filling in various "dealt" hands through discards and draws weighed against known rewards if draws were favorable, and paid off winners only with free games. Com. v. Club Caravan, Inc. (1991) 571 N.E.2d 405, 30 Mass.App.Ct. 561.

M.G.L.A. 140 § 177A

MA ST 140 § 177A

END OF DOCUMENT

MA ST 272 s 80F
M.G.L.A. 272 § 80F

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE I. CRIMES AND PUNISHMENTS
CHAPTER 272. CRIMES AGAINST CHASTITY, MORALITY, DECENCY AND GOOD ORDER

Current through 1998 2nd Annual Sess.

§ 80F. Giving away live animals as prize or award

No person shall offer or give away any live animal as a prize or an award in a game, contest or tournament involving skill or chance. The provisions of this section shall not apply to awards made to persons participating in programs relating to animal husbandry.

Whoever violates the provisions of this section shall be punished by a fine of not more than one hundred dollars.

CREDIT(S)

1990 Main Volume

Added by St.1977, c. 112.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1990 Main Volume

St.1977, c. 112, an emergency act, was approved April 19, 1977.

AMERICAN LAW REPORTS

What constitutes statutory offense of cruelty to animals. 82 ALR2d 794.

Measure and elements of damages for killing or injuring dog. 1 ALR3d 997.

Amount of damages for killing or injuring dog. 1 ALR3d 1022.

Measure, elements, and amount of damages for killing or injuring cat. 8 ALR4th 1287.

Applicability of state animal cruelty statute to medical or scientific experimentation employing animals. 42 ALR4th 860.

Who "harbors" or "keeps" dog under animal liability statute. 64 ALR4th 963.

LIBRARY REFERENCES

1990 Main Volume

Animals k40.
WESTLAW Topic No. 28.
C.J.S. Animals §§ 99 to 107.
Texts and Treatises

5 Mass Jur, Criminal Law §§ 29:2, 29:25.
27 Am Jur 2d, Animals §§ 27-30.
52 Am Jur 2d, Malicious Mischief § 11.
78 Am Jur 2d, Veterinarians § 6.
1B Am Jur Pl & Pr Forms (Rev), Animals, Forms 171-198.

NOTES OF DECISIONS

In general 2
Validity 1

1. Validity

This section, providing that no person shall offer or give away any live animal as a prize or an award in a **game**, contest or tournament involving skill or **chance** did not violate due process because of vagueness with respect to concessionaire, as the general scope of the statute is substantially clear, and there was no constitutional problem as to future application to concessionaire intending to award goldfish as a prize in a **game** of **chance**. Knox v. Massachusetts Soc. for Prevention of Cruelty to Animals (1981) 425 N.E.2d 393, 12 Mass.App.Ct. 407.

2. In general

In situation where Society for Prevention of Cruelty to Animals informed concessionaire that awarding goldfish as a prize in a

game of **chance** at fair would violate this section providing that no person shall offer or give away any live animal as a prize or an award in a **game**, and where concessionaire sought a temporary restraining order against enforcement of the statute, declaratory relief was appropriate, as the question of the scope of the statute was of continuing **concern** to all the parties. Knox v. Massachusetts Soc. for Prevention of Cruelty to Animals (1981) 425 N.E.2d 393, 12 Mass.App.Ct. 407.

Granting of injunctive relief to prevent enforcement of this section, providing that no person shall offer or give away any live animal as a prize or an award in a **game**, contest or tournament involving skill or **chance** was improper in absence of "very special circumstances," despite fact that criminal prosecution was threatened against movant, as such threat is not in itself ground for relief. Knox v. Massachusetts Soc. for Prevention of Cruelty to Animals (1981) 425 N.E.2d 393, 12 Mass.App.Ct. 407.

The word "animal," within meaning of this section, providing that no person shall offer or give away any live animal as a prize or an award in a **game**, contest or tournament involving skill or **chance**, applies to goldfish. Knox v. Massachusetts Soc. for Prevention of Cruelty to Animals (1981) 425 N.E.2d 393, 12 Mass.App.Ct. 407.

M.G.L.A. 272 § 80F

MA ST 272 § 80F

END OF DOCUMENT

MA ST 128C s 3
M.G.L.A. 128C § 3

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XIX. AGRICULTURE AND CONSERVATION
CHAPTER 128C. SIMULCAST **WAGERING** OF HORSE AND DOG RACING

Current through 1998 2nd Annual Sess.

§ 3. Commingling of **pari-mutuel** pools; rules

All **wagers** on simulcast races accepted by a racing meeting licensee within the commonwealth or by a **pari-mutuel** licensee in another jurisdiction when such licensee is operating as a guest track shall be included in the **pari-mutuel** pool of the racing meeting licensee which conducts the live race, unless the commission approves a different procedure.

The commission shall promulgate rules as are necessary to facilitate the commingling of **pari-mutuel** pools, to ensure the proper calculations and distributions of payments and takeouts on such **wagers** and to **regulate** the distribution of net proceeds as provided in this chapter.

CREDIT(S)

1999 Electronic Pocket Part Update

Added by St.1992, c. 101, § 5.

<General Materials (GM) - References, Annotations, or Tables>

EXPIRATION

<This section expires December 31, 1999. See Historical and Statutory Notes following § 1 of this chapter.>

LIBRARY REFERENCES

1991 Main Volume

Texts and Treatises

38 Am Jur 2d, **Gambling** §§ 17-19, 44-47.

M.G.L.A. 128C § 3

MA ST 128C § 3

END OF DOCUMENT

MA ST 271 s 2
M.G.L.A. 271 § 2

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE I. CRIMES AND PUNISHMENTS
CHAPTER 271. CRIMES AGAINST PUBLIC POLICY

Current through 1998 2nd Annual Sess.

§ 2. **Gaming** or **betting** in public conveyance or place or while trespassing in private place; arrest without warrant

Whoever, in a public conveyance or public place, or in a private place upon which he is trespassing, plays at cards, dice or any other **game** for money or other property, or **bets** on the sides or hands of those playing, shall forfeit not more than fifty dollars or be imprisoned for not more than three months; and whoever sets

up or permits such a **game** shall be punished by a fine of not less than fifty nor more than one hundred dollars or by imprisonment for not less than three nor more than twelve months. If discovered in the act, he may be arrested without a warrant by a sheriff, deputy sheriff, constable or any officer qualified to serve criminal process, and held in custody, in jail or otherwise, for not more than twenty-four hours, Sunday and legal holidays excepted, until complaint may be made against him for such offence.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1990 Main Volume

St.1869, c. 382.
P.S.1882, c. 99, § 4.
R.L.1902, c. 214, § 2.
St.1907, c. 366.
St.1913, c. 370.
St.1918, c. 257, § 456.
St.1919, c. 5.
St.1920, c. 2.

AMERICAN LAW REPORTS

Bridge as within **gambling** laws. 97 ALR2d 1420.

Gambling in private residence as prohibited or permitted by **anti-gambling** laws. 27 ALR3d 1074.

LAW REVIEW AND JOURNAL COMMENTARIES

Arrest without warrant in Massachusetts. (1960) 40 B.U.L.Rev. 70.

NOTES OF DECISIONS

Arrest without warrant 1

1. Arrest without warrant

The misdemeanor offense of registering **bets** did not of itself involved breach of peace and was not such a common nuisance as constituted breach of peace and was not playing at cards or dice or any other **game**, so that officers in whose presence the offense was committed could not arrest without warrant. Com. v. Mekalian (1963) 194 N.E.2d 390, 346 Mass. 496.

M.G.L.A. 271 § 2

MA ST 271 § 2

END OF DOCUMENT

MA ST 276 s 1
M.G.L.A. 276 § 1

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE II. PROCEEDINGS IN CRIMINAL CASES
CHAPTER 276. SEARCH WARRANTS, REWARDS, FUGITIVES FROM JUSTICE, ARREST,
EXAMINATION, COMMITMENT AND BAIL. PROBATION OFFICERS AND BOARD OF PROBATION
SEARCH WARRANTS

Current through 1998 2nd Annual Sess.

§ 1. Complaint; warrant for designated property or articles; search incident to arrest; documentary evidence subject to privilege

A court or justice authorized to issue warrants in criminal cases may, upon complaint on oath that the complainant believes that any of the property or articles hereinafter named are concealed in a house, place, vessel or vehicle or in the possession of a person anywhere within the commonwealth and territorial waters thereof, if satisfied that there is probable cause for such belief, issue a warrant identifying the property and naming or describing the person or place to be searched and commanding the person seeking such warrant to search for the following property or articles:

First, property or articles stolen, embezzled or obtained by false pretenses, or otherwise obtained in the commission of a crime;

Second, property or articles which are intended for use, or which are or have been used, as a means or instrumentality of committing a crime, including, but not in limitation of the foregoing, any property or article worn, carried or otherwise used, changed or marked in the preparation for or perpetration of or concealment of a crime;

Third, property or articles the possession or control of which is unlawful, or which are possessed or controlled for an unlawful purpose; except property subject to search and seizure under sections forty-two through fifty-six, inclusive, of chapter one hundred and thirty-eight;

Fourth, the dead body of a human being.

Fifth, the body of a living person for whom a current arrest warrant is outstanding.

A search conducted incident to an arrest may be made only for the purposes of seizing fruits, instrumentalities, contraband and other evidence of the crime for which the arrest has been made, in order to prevent its destruction or concealment; and removing any weapons that the arrestee might use to resist arrest or effect his escape. Property seized as a result of a search in violation of the provisions of this paragraph shall not be admissible in evidence in criminal proceedings.

The word "property", as used in this section shall include books, papers, documents, records and any other tangible objects.

Nothing in this section shall be construed to abrogate, impair or limit powers of search and seizure granted under other provisions of the General Laws or under the common law.

Notwithstanding the foregoing provisions of this section, no search and seizure without a warrant shall be conducted, and no search warrant shall issue for any documentary evidence in the possession of a lawyer, psychotherapist, or a clergyman, including an accredited Christian Science practitioner, who is known or may reasonably be assumed to have a relationship with any other person which relationship is the subject of a testimonial privilege, unless, in addition to the other requirements of this section, a justice is satisfied that there is probable cause to believe that the documentary evidence will be destroyed, secreted, or lost in the event a search warrant does not issue. Nothing in this paragraph shall impair or affect the ability, pursuant to otherwise applicable law, to search or seize without a warrant or to issue a warrant for the search or seizure of any documentary evidence where there is probable cause to believe that the lawyer, psychotherapist, or clergyman in possession of such documentary evidence has committed, is committing, or is about to commit a crime. For purposes of this paragraph, "documentary evidence" includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films or papers of any type or description.

CREDIT(S)

1994 Main Volume

Amended by St.1934, c. 235, § 1; St.1934, c. 303, § 2; St.1943, c. 508, § 5; St.1947, c. 93; St.1963, c. 96, § 1; St.1964, c. 557, § 1; St.1974, c. 508; St.1982, c. 260; St.1986, c. 691.

<General Materials (GM) - References, Annotations, or Tables>

St.1823, c. 40, § 1.
R.S.1836, c. 142, §§ 1, 2.
G.S.1860, c. 170, §§ 1, 2.
St.1862, c. 168, §§ 2, 4.
St.1865, c. 127, § 2.
St.1866, c. 253, § 2.
St.1869, c. 364, § 2.
St.1879, c. 159, § 2.
P.S.1882, c. 212, §§ 1, 2.
St.1885, c. 342, § 2.
St.1890, c. 284.
St.1894, c. 491, § 14.
St.1899, c. 359, § 8.
St.1899, c. 408, § 16.
R.L.1902, c. 217, § 1.
St.1919, c. 179, § 1.
St.1919, c. 323, § 4.
St.1924, c. 94, § 2.

St.1934, c. 235, § 1, approved May 23, 1934, in the first paragraph, in clause Eleventh, inserted ", including money".

St.1934, c. 303, § 2, approved June 12, 1934, in the first paragraph, inserted "or justice of the peace".

St.1943, c. 508, § 5, approved June 11, 1943, in clause Sixth, substituted "two weeks" for "four weeks".

St.1947, c. 93, approved Feb. 27, 1947, in the first paragraph, added clause Sixteenth.

St.1963, c. 96, § 1, approved March 4, 1963, in the first paragraph, substituted ", place, or motor vehicle" for "or place".

St.1964, c. 557, § 1, rewrote the section, which prior thereto read:

"A court or justice or justice of the peace authorized to issue warrants in criminal cases may, upon complaint or oath that the complainant believes that any of the property or articles hereinafter named are concealed in a particular house, place, or motor vehicle, if satisfied that there is reasonable cause for such belief, issue a warrant to search for the following property or articles:

"First, Personal property stolen, embezzled or obtained by false pretences.

"Second, Personal property hired or leased or held as collateral security and fraudulently concealed.

"Third, Personal property insured against loss or damage by fire which the complainant has reasonable cause to believe has been removed or is concealed for the purpose of defrauding the insurer.

"Fourth, Counterfeit or spurious coin, forged bank notes and other forged instruments, or tools, machines or materials prepared or provided for making them.

"Fifth, Counterfeits or imitations of a lable, trade mark, stamp or form of advertisement recorded pursuant to the statutes of the commonwealth, goods upon which such counterfeit or imitation has been impressed, affixed or used, and any dies, plates, brands, moulds, engravings, printing presses, types or other tools, machines or materials prepared or provided for making such counterfeit or imitation.

"Sixth, Diseased animals or carcasses thereof, or any tainted, diseased, corrupted, decayed or unwholesome meat, fish, vegetables, produce, fruit or provisions of any kind, or the meat of any calf killed when less than two weeks old or any product thereof, if kept or concealed with intent to kill, sell or offer the same for sale for food.

"Seventh, Diseased animals.

"Eighth, Books, pamphlets, ballads, printed papers and other things containing indecent, impure or obscence language, or indecent, impure or obscene prints, pictures, figures or descriptions manifestly tending to corrupt the morals of youth, and intended to be sold, exhibited, loaned, circulated or distributed, or introduced into any family, school or place of education, and the type, forms, press, woodcuts, raw material and mechanical apparatus used and employed in printing and publishing such books, ballads, pamphlets or printed papers.

"Ninth, Drugs, medicines, instruments and other articles intended to be used for self-abuse, or for the prevention of conception, or for causing unlawful abortion, and the raw materials, tools, machinery, implements, instruments and personal property used or intended to be used in the manufacture of such drugs, medicines, instruments or other articles.

"Tenth, **Lottery** tickets or other materials unlawfully made, provided or procured for the purpose of drawing a **lottery.**

"Eleventh, **Gaming** apparatus or implements used or kept and provided to be used in unlawful **gaming** in any **gaming** house, or in any building, apartment or place resorted to for the purpose of

unlawful **gaming,** and the furniture, fixtures and personal property, including money, found in such place at a time when persons are engaged in unlawful **gaming.**

"Twelfth, Pool tickets or other materials unlawfully made, provided or procured for the purpose of buying or selling pools.

"Thirteenth, An unreasonable number of rifles, shotguns, pistols, revolvers or other dangerous weapons or an unnecessary quantity of ammunition, if kept or concealed for any unlawful purpose.

"Fourteenth, Bombs and explosives illegally kept.

"Fifteenth, Oleomargarine colored in imitation of yellow butter, and uncolored oleomargarine, coloring matter and utensils used or intended to be used in making such colored oleomargarine, which the complainant has reasonable cause to believe are intended for unlawful sale or use.

"Sixteenth, A rifle, shotgun, pistol, revolver, implement or dangerous weapon used in the commission of a felony."

St.1964, c. 557, was approved June 16, 1964. Emergency declaration by the Governor was filed June 23, 1964.

St.1974, c. 508, approved July 10, 1974, inserted the second paragraph.

St.1982, c. 260, approved July 6, 1982, in the first paragraph, inserted clause Fifth.

St.1986, c. 691, approved Jan. 7, 1987, added the fifth paragraph.

24. ---- Insufficient affidavits

Where affidavit in support of search warrant showed only that on the occasion person at one address received telephone call and placed two **bets,** and person at such address received, 15 days later, results of horse race, such facts did not constitute probable cause to believe that **gaming** operations were conducted at the address even when coupled with facts that telephone calls were made by convicted gambler from premises at which it reasonably appeared **gaming** operations were conducted; judge could not conclude from common knowledge and experience that bookies do not call customers to receive **bets** and to disclose race results so as to demonstrate that the calls must have been from one part of **gambling** operation to another. Com. v. Taglieri (1979) 390 N.E.2d 727, 378 Mass. 196, certiorari denied 100 S.Ct. 288, 444 U.S. 937, 62 L.Ed.2d 197.

Testimony that, during telephone calls, horse race **bets** were

placed and that results of race were given did not establish probability that premises on which tapped telephone was located contained equipment for registering **bets** or conducting other **gaming** operations, and affidavit provided insufficient basis for search warrant. Com. v. Taglieri (1978) 381 N.E.2d 1118, 6 Mass.App.Ct. 934, affirmed 390 N.E.2d 727, 378 Mass. 196, certiorari denied 100 S.Ct. 288, 444 U.S. 937, 62 L.Ed.2d 197.

Fact that affidavit submitted to issuing judge as part of application for search warrant of defendant's residence related that more than one month prior to receipt of first tip and one month and a half prior to application for warrant fellow police officers of affiant had observed defendant engaged in transaction which gave some indication that heroin might be found at his residence at that earlier time did not overcome insufficiency of informant's tips, since such related event was too remote in time to corroborate tips and to establish that there was probable cause for presence of heroin in defendant's residence at time of search. Com. v. Zayas (1978) 380 N.E.2d 1329, 6 Mass.App.Ct. 931.

Affiant's allegation that known dealer in cocaine was, on one occasion, observed by him leaving building in which defendants' apartment was located was not sufficiently corroborative of informant's statements contained in affidavit submitted in support of application for search warrant where affidavit did not indicate that individual known to police as drug dealer had been observed frequenting defendants' address. Com. v. Gisleson (1978) 378 N.E.2d 1012, 6 Mass.App.Ct. 911.

Affidavit of police officer, in support of application for search warrant, was deficient in stating facts essential to showing probable cause for issuance of warrant, where language of affidavit did not state what information was communicated to affiant by eyewitnesses, how either eyewitnesses or affiant had any reason to know where items sought were likely to be found, what investigations had been made and by whom, what opportunity informants, eyewitnesses, and affiant had to observe or ascertain incidents or facts relevant to probable cause, what relation items sought bore to robbery, or why informants were considered reliable. Com. v. Causey (1969) 248 N.E.2d 249, 356 Mass. 125.

55. ---- **Gaming,** warrants

Where officers authorized by search warrant to seize **gambling** paraphernalia in apartment heard telephones ringing in very low tone and found telephones without number discs or earpieces, officers were warranted in checking telephone terminal box prior to seizure and, on being satisfied that telephones were implements of **gaming,** were warranted in seizing them. Com. v. Todisco (1973) 294 N.E.2d 860, 363 Mass. 445.

Search warrant was not too general on its face, because it authorized police to search for "any **lottery,** policy or pool tickets, slips, checks, manifold books or sheets, memoranda of any **bet,** or other implements, apparatus or materials of any form of **gaming** * * *," nor was application for warrant invalid for such reason. Com. v. Daly (1971) 266 N.E.2d 870, 358 Mass. 818.

Affidavits containing detailed information as to **gaming** activities carried on in cafe justified issuance of warrant for search of first floor rooms of cafe, which consisted of two dining rooms, two restrooms, and a kitchen, rather than only kitchen and dining area. Com. v. Pica (1970) 265 N.E.2d 379, 358 Mass. 809.

Chapter 271, § 23, authorizing issuance of search warrants where applicant swears that he suspects or has probable cause to suspect violations of gaming law requires presentation of satisfactory evidence before warrant is issued. Com. v. Coco (1968) 235 N.E.2d 555, 354 Mass. 78.

Where in an action under G.S.1860, c. 170, § 2, as amended by St.1869, c. 364, § 2, the complaint alleged the belief that "gaming apparatus and implements are used, kept, and provided to be used in unlawful gaming in certain rooms resorted to for the purpose of unlawful gaming in a certain building situated at No. 13 1/2 in H. Place, in Boston--that is to say in the rooms in the second, third, and fourth stories of said building--and also that furniture, fixtures, and personal property are contained therein, and may be found therein, at a time when persons may there be found playing at some unlawful game, which said rooms are occupied by some person whose name is to your complainant unknown," and the warrant issued on this complaint directed the search of the rooms mentioned in the complaint, and the seizure of said gaming apparatus, implements, etc., the premises to be searched were sufficiently described. Com. v. Gaming Implements (1876) 119 Mass. 332.

In a complaint under R.S.1836, c. 142, §§ 1, 2, to authorized the issuing of a warrant to search for and seize lottery tickets, the complainant was required to make oath to his belief of the facts stated in the complaint and it was not sufficient for him to swear that he had reasonable cause to suspect, and did suspect, that the facts stated therein were true. Com. v. Lottery Tickets (1850) 59 Mass. 369, 5 Cush. 369.

Lottery tickets which had been seized under the provisions of R.S.1836, c. 142, §§ 1, 2, and brought into court or before a magistrate to be used as evidence on a warrant illegally issued, were not liable to be burnt or destroyed under the provisions of § 5 of the same chapter. Com. v. **Lottery** Tickets (1850) 59 Mass. 369, 5 Cush. 369.

Game cocks were not implements of **gaming** within the meaning of

R.S.1836, c. 50, § 19, and chapter 142, § 2, and could not be lawfully seized on a warrant commanding the seizure of such implements. Coolidge v. Choate (1846) 52 Mass. 79, 11 Metc. 79.

Books kept in relation to the proceedings respecting a lottery were "materials for a lottery," within the meaning of R.S.1836, c. 142, and could be seized on a search warrant. Com. v. Dana (1841) 2 Metcalf 329, 43 Mass. 329.

60. Forfeiture of property seized

The municipal court of the city of Boston had jurisdiction to enforce the destruction of gaming apparatus and implements seized in a gaming house on a search warrant issued from and returned to that court, under G.S.1860, c. 170, §§ 1 to 5, and St.1869, c. 364, and also the forfeiture and sale of furniture, fixtures, or personal property seized, on the warrant, in such a house at a time when persons were there found playing at an unlawful game. Com. v. Gaming Implements (1876) 119 Mass. 332; Attorney General v. Justices of Municipal Court of City of Boston (1869) 103 Mass. 456.

Where money was used in connection with unlawful gaming and was seized at place resorted to for unlawful gaming, seizure was proper and money rightly forfeited, although money was not seized at a time when persons were engaged in unlawful gaming. Com. v. Alleged Gaming Apparatus and Implements and Money (1957) 139 N.E.2d 715, 335 Mass. 223.

In proceedings for forfeiture of $2,600 in money seized in police raid on claimant's home where case was presented on statement of agreed facts, agreed facts were sufficient to establish that the money was seized at a place resorted to for unlawful gaming and that the money was used in connection with unlawful gaming. Com. v. Alleged Gaming Apparatus and Implements and Money (1957) 139 N.E.2d 715, 335 Mass. 223.

Electric typewriter used to record results of horse races, but not to determine whether a better should win or lose, was not subject to forfeiture as "gaming apparatus or implements used or kept in unlawful gaming", irrespective of whether gaming was carried on where typewriter was seized. Commonwealth v. Certain Gaming Implements (1944) 57 N.E.2d 542, 317 Mass. 160.

An electric typewriter if classed as "furniture, fixtures and personal property," when used only to record results of races, which was seized under search warrant of premises allegedly used for taking **bets** on horses, at time when no **gambling** actually was carried on, was not subject to forfeiture. Commonwealth v. Certain **Gaming** Implements (1944) 57 N.E.2d 542, 317 Mass. 160.

In proceeding to forfeit **gaming** implements, money seized as well

as other property was properly forfeited. Commonwealth v. Certain **Gaming** Implements and Personal Property (1943) 47 N.E.2d 939, 313 Mass. 409.

Where P.S.1882, c. 212, § 2, and chapter 99, § 10, as amended by St.1887, c. 448, provided for the seizure of the **gaming** implements and furniture found in **gaming** houses and P.S.1882, c. 212, § 9, as amended by St.1885, c. 66, relating to the forfeiture of property seized, provided that any articles not found to have been unlawfully used or intended for an unlawful use shall be delivered to the owner, property unlawfully used in a gaming house was subject to forfeiture, without proof of guilty knowledge on the part of the owner. Com. v. Certain Furniture (1892) 29 N.E. 468, 155 Mass. 165.

Money seized in a gaming house on a search warrant under G.S.1860, c. 170, §§ 1 to 5, and St.1869, c. 364, was not subject to forfeiture. Attorney General v. Justices of Municipal Court of City of Boston (1869) 103 Mass. 456.

A court of competent jurisdiction, to which is returned a search warrant under those statutes on which gaming apparatus and implements have been seized in a gaming house, cannot lawfully cause them to be destroyed without first causing such notice to be given as is reasonable and likely to inform the parties interested, and affording to them an opportunity to be heard; and furniture, fixtures, or personal property seized on the warrant cannot lawfully be forfeited and sold, except on written application, describing the things, and when, where, and wherefore they were seized; and sufficient generally to inform any claimant what it is to which he must answer in order to defend his right, and upon a judicial hearing with reasonable notice to claimants and opportunity for them to have their rights determined by jury trial. Attorney General v. Justices of Municipal Court of City of Boston (1869) 103 Mass. 456.

61. Standing to object

Defendant had standing to contest validity of search warrant authorizing search of his girl friend's residence. Com. v. Farrell (1982) 441 N.E.2d 789, 14 Mass.App.Ct. 1017.

Defendant did not lack standing to challenge warrantless seizure of shotgun in apartment where not only did he have a proprietary interest in apartment by reason of his presence therein as established by evidence for prosecution, but his status therein was not that of a trespasser in that apartment was occupied by a friend who was in apartment at time police arrived. Com. v. Franklin (1978) 385 N.E.2d 227, 376 Mass. 885.

Defendant who was charged with receiving stolen property found in search of barn which he allegedly rented had standing to question validity of seizure of merchandise from barn. Com. v.

Sandler (1975) 335 N.E.2d 903, 368 Mass. 729.

Defendant, who was prosecuted for possession of burglary tools found in automobile, had standing to object to constitutionality of search even though he did not own automobile and was only passenger. Com. v. Lanoue (1969) 251 N.E.2d 894, 356 Mass. 337.

Defendant, whose interest in automobile owned in part by his mother was at most that of occasional bailee, and who did not have possession at time of search, lacked standing to contest legality of its search and seizure. Com. v. Campbell (1967) 226 N.E.2d 211, 352 Mass. 387.

Defendant, who was only occasional passenger in automobile searched, lacked standing to contest legality of search. Com. v. Campbell (1967) 226 N.E.2d 211, 352 Mass. 387.

Defendant could not complain that his constitutional rights were violated by search of hotel room, where he denied that he had registered for that room or was in it. Com. v. Mayer (1965) 207 N.E.2d 686, 349 Mass. 253, certiorari denied 87 S.Ct. 97, 385 U.S. 853, 17 L.Ed.2d 81.

62. Pleading

Complaint seeking to enjoin county district attorney and city police commissioner from prosecuting criminal proceedings pending against plaintiffs in state court charging violation of state obscenity statute and to enjoin use in criminal proceeding of documents seized under search warrants issued pursuant to state statute on ground that state statutes were unconstitutional, was insufficient to state a claim upon which relief could be granted. Jacobs v. Sullivan, D.C.Mass.1961, 193 F.Supp. 765.

63. Motion to suppress evidence--In general

Motion to suppress evidence obtained without search warrant must be made before trial, unless defendant had no knowledge that evidence was unlawfully procured until evidence was offered. Durkin v. U.S., 1932, 62 F.2d 305.

Defendant was not entitled to suppression of a bullet that had been surgically removed from his body where the removal of the bullet was necessitated by good medical practice and was performed solely for medical reasons and where nothing suggested that the police played any role in the decision to operate and the conduct of hospital physicians in keeping police notified and in turning the bullet over to them were not the result of any official pressure or duress but were merely actions of cooperative private citizens. Com. v. Storella (1978) 375 N.E.2d 348, 6 Mass.App.Ct. 310.

Affidavit submitted by police officer as basis for search

warrant, even taking into account matters of which the clerk could reasonably take judicial notice such as the general location of riots and disorders then in progress in city, was insufficient as basis for issuing of search warrant particularly in asserting facts having a tendency to show the described conduct to be criminal, and hence a motion to suppress a pistol found under back seat of defendant's automobile when automobile was searched pursuant to warrant issued after defendant's arrest should have been granted. Com. v. Stevens (1972) 281 N.E.2d 224, 361 Mass. 868.

Where search of apartment was undertaken pursuant to a warrant because officers had previously ascertained that a large quantity of drugs was likely to be found there and not simply because defendant had told officers at time of his arrest that he lived there, evidence seized was not subject to motion to suppress on theory that search was a product of defendant's illegal arrest. Com. v. Franklin (1970) 265 N.E.2d 366, 358 Mass. 416.

Denial of defendant's trial motion to suppress evidence of fictitious bill of sale for stolen 1964 model automobile was not improper, where defendant had ample notice that the bill of sale obtained by police at approximately same time as other real evidence was in government's possession, but neglected to include bill of sale in three other pretrial motions to suppress. Com. v. Penta (1967) 225 N.E.2d 58, 352 Mass. 271.

In absence of evidence that search of defendant's apartment and seizure of his clothing were not made pursuant to valid warrant, motion to suppress all evidence was properly denied. Com. v. Nunes (1966) 221 N.E.2d 752, 351 Mass. 401.

A motion to suppress evidence is properly made before trial. Com. v. Kiernan (1964) 201 N.E.2d 504, 348 Mass. 29, certiorari denied 85 S.Ct. 901, 380 U.S. 913, 13 L.Ed.2d 800.

64. ---- Requisites, motion to suppress evidence

Inquiry of court on motion to suppress wiretap evidence should be directed toward determining, among other things, whether particular procedure involved is a central or functional safeguard to prevent abuses in electronic surveillance as opposed to a procedural or reporting mechanism, whether purpose procedure was designed to effect has been accomplished in spite of error, whether statutory requirement was deliberately ignored and, if so, whether this was done to gain an unfair technical advantage. Com. v. Vitello (1975) 327 N.E.2d 819, 367 Mass. 224.

Pretrial motion to suppress based on alleged illegal search and seizure should specify evidence sought to be suppressed, and hearing should be directed to the specified evidence and to the grounds alleged for its suppression, without free-wheeling expedition by defendant to search out all evidence which state

has against him. Com. v. Cefalo (1970) 257 N.E.2d 921, 357 Mass. 255.

Defendant's motion merely asking for order suppressing certain evidence which prosecution intended to introduce was inadequate for failure to specify evidence sought to be suppressed and grounds for suppression and could have been denied for that reason alone. Com. v. Slaney (1966) 215 N.E.2d 177, 350 Mass. 400.

Motions to suppress should be specific lest they become illegitimate probes of Commonwealth's evidence. Com. v. Slaney (1966) 215 N.E.2d 177, 350 Mass. 400.

Evidence which has been obtained as result of an allegedly illegal search and seizure is properly subject of pre-trial motion to suppress, but judge is not required to make, and in nature of things cannot be required to make, decision on such motion where evidence sought to be suppressed was not identified by moving party. Com. v. Roy (1965) 207 N.E.2d 284, 349 Mass. 224.

Pre-trial motion to suppress evidence, based on an alleged illegal search and seizure, should specify evidence sought to be suppressed, and pre-trial hearing should be directed to specified evidence as to grounds alleged for its suppression. Com. v. Roy (1965) 207 N.E.2d 284, 349 Mass. 224.

65. ---- Burden of proof, motion to suppress evidence

When items in plain view are seized but are not described in warrant, Commonwealth bears burden of showing at hearing on motion to suppress that, at time of seizure, it was apparent that items bore nexus to crime committed. Com. v. Cefalo (1980) 409 N.E.2d 719, 381 Mass. 319.

It was for defendant on motion to suppress to raise issues that there was insufficient connection between the defendant and the apartment searched, that there was no evidence of the defendant's dominion or control over the controlled substances seized in the attic, and that the contraband was not in plain view. Com. v. Scala (1980) 404 N.E.2d 83, 380 Mass. 500.

Defendant seeking suppression on ground of misstatements in search warrant affidavit should be obliged to make preliminary showing, ordinarily in affidavit form, that he has case worthy of full hearing, and otherwise hearing should be denied. Com. v. Reynolds (1977) 370 N.E.2d 1375, 374 Mass. 142.

Defendants had burden of proof on motion to suppress evidence that was seized during search authorized by warrant; part of that burden was to show "standing" to make the challenge by demonstrating a possessory interest in premises searched or in

property seized, a reasonable expectation of freedom from governmental intrusion, or "presence" at scene at time of search. Com. v. Corradino (1975) 332 N.E.2d 907, 368 Mass. 411, post-conviction relief denied.

On motion to suppress, burden of establishing that evidence has been illegally obtained is on moving party. Com. v. Nunes (1966) 221 N.E.2d 752, 351 Mass. 401.

Burden of showing unreliability of police officer's informant was on defendants seeking to suppress evidence disclosed by search. Com. v. Owens (1966) 216 N.E.2d 411, 350 Mass. 633.

Defendant had burden of proving facts showing that evidence which he sought to suppress had been illegally obtained. Com. v. Mitchell (1966) 215 N.E.2d 324, 350 Mass. 459.

Burden of establishing that evidence has been illegally obtained is on party moving to suppress evidence. Com. v. Fancy (1965) 207 N.E.2d 276, 349 Mass. 196.

66. ---- Jeopardy, motion to suppress evidence

Allowance of defendant's motion to suppress in district court followed by dismissal of complaint by same court without trial on merits did not place defendant in jeopardy and thus did not constitute bar to subsequent indictment and trial of defendant in superior court for same offense. Com. v. Ballou (1966) 217 N.E.2d 187, 350 Mass. 751, certiorari denied 87 S.Ct. 760, 385 U.S. 1031, 17 L.Ed.2d 679.

67. Trial, in general

Where evidence objected to consisted of ordinary objects likely to be found in many households, was not of great significance, officer had probable cause to arrest male defendant without warrant, and attempt to exclude evidence as illegally obtained was made for first time when evidence was offered at trial, judge's refusal to hold voir dire during trial was not error. Com. v. Moore (1971) 269 N.E.2d 636, 359 Mass. 509.

Alleged fact that wiretap conducted by district attorney's office produced information which led to warrant and arrest of defendant and codefendant, did not require that defendant's trial be severed from that of codefendant, where no conversations from wiretap were produced at trial. Com. v. Franklin (1970) 265 N.E.2d 366, 358 Mass. 416.

68. Evidence--In general

Searches in foreign countries by police of foreign countries do not have to comply with American requirements, and exclusionary rule has no application, except if circumstances attending search

and seizure are such that they shock judicial conscience, or if American police participate in search in foreign country, or if authorities in foreign country who conduct search in fact are acting under direction of their American counterparts, and as their agents. Com. v. Gagnon (1983) 449 N.E.2d 686, 16 Mass.App.Ct. 110, review granted 452 N.E.2d 1158, 389 Mass. 1105, affirmed 465 N.E.2d 1180, 391 Mass. 869.

Violation of the New Hampshire statute (RSA N.H. 595-A.5) governing searches and seizures is not ground for exclusion of evidence. Com. v. Hicks (1979) 384 N.E.2d 1206, 377 Mass. 1.

Evidence establishing probable cause for search need not be evidence which would be admissible on issue of guilt at defendant's trial. Com. v. Ortiz (1978) 380 N.E.2d 669, 376 Mass. 349.

Where alleged statement by police officer to defendants that fingerprints had been obtained was made approximately four hours prior to conversation with another police officer in which one defendant allegedly inquired whether fingerprints had been obtained, there was no abuse of discretion in exclusion on relevance grounds of testimony as to the prior conversation, offered for the limited purpose of qualifying the meaning of subsequent admissions to the second officer. Com. v. Murphy (1978) 375 N.E.2d 366, 6 Mass.App.Ct. 335.

Where nexus between conduct of police deemed illegal and discovery of challenged evidence is so attenuated as to dissipate taint, evidence is admissible. Com. v. Haas (1977) 369 N.E.2d 692, 373 Mass. 545.

Evidence that rooms in which gaming implements are found were resorted to for unlawful gaming contrary to this section, at times previous to the day of the seizure of such implements, tends to prove that on that day the implements were kept for use in unlawful gaming, and is competent. Com. v. Certain Gaming Implements (1886) 5 N.E. 475, 141 Mass. 114.

An officer who maker a seizure under a search warrant and makes a return thereon, may testify as to what he found upon the premises searched. Com. v. McCue (1876) 121 Mass. 358.

69. ---- Search incident to arrest, evidence

Firearm discovered in search incident to lawful arrest for shoplifting was admissible in trial for larceny of property under $100 in value and unlawfully carrying firearm; purpose of search was to remove weapon. Com. v. Hampton (1988) 525 N.E.2d 1341, 26 Mass.App.Ct. 938, review denied 529 N.E.2d 1345, 403 Mass. 1102.

This section requiring exclusion of evidence of unrelated crime found during search incident to lawful arrest, unless search was

conducted to gather evidence of first crime or to look for weapons, does not preclude admission of evidence of crime for which defendant was lawfully arrested that was found during search incident to that arrest. Com. v. Madera (1988) 521 N.E.2d 738, 402 Mass. 156.

If there is constitutionally permissible basis for search apart from constitutionally proper search incident to arrest, this section does not require exclusion of evidence obtained in course of such search, even though search may also have been made incident to arrest. Com. v. Toole (1983) 448 N.E.2d 1264, 389 Mass. 159.

Where police lacked probable cause to believe that search of wallet would yield any evidence or fruits of any crimes for which defendant had been arrested, false license removed without warrant from inside defendant's wallet after he had been taken to police station should have been suppressed, there being no evidence that license was discovered by inadvertence or in course of lawful inventory of defendant's personal effects. Com. v. Pigaga (1981) 427 N.E.2d 760, 12 Mass.App.Ct. 960.

This section making inadmissible property seized as result of an invalid search conducted incident to an arrest, does not make inadmissible any evidence seized in a search incident to an arrest other than evidence related to the crime which justified the arrest. Com. v. Puleio (1978) 378 N.E.2d 999, 6 Mass.App.Ct. 909.

Inasmuch as search and arrest warrant was valid, search incidental to arrest under it was lawful and property taken during incidental search was admissible. Com. v. Pope (1968) 241 N.E.2d 848, 354 Mass. 625.

Where defendant was searched as incident of his invalid arrest and during such search evidence was obtained which led to subsequent search of apartment where suitcase which was opened by key taken from defendant and which contained proceeds of robbery was found, admission of evidence obtained as result of search of defendant and of apartment was prejudicial error as to such defendant. Com. v. Dirring (1968) 238 N.E.2d 508, 354 Mass. 523.

Where it appeared that only information garnered from wiretap pertained not to probable cause but only to defendant's whereabouts, seizure of incriminating evidence in San Antonio, from where defendant was making calls, was incident to a lawful arrest, and line between alleged illegality of wiretap and discovery of questioned evidence had become so attenuated as to dissipate the taint. Com. v. Glavin (1968) 235 N.E.2d 547, 354 Mass. 69.

Where police officers were able to see contents of suitcase and filing cabinet because of defendant's voluntary acts, which were

incidental to reasonable and brief on-the-street inquiry by officers, and no arrest had then taken place, contents of suitcase and filing cabinet were admissible in evidence. Com. v. Roy (1965) 207 N.E.2d 284, 349 Mass. 224.

70. ---- Obscene materials, evidence

Obscene pictures taken from defendant's unlocked apartment by police without a search warrant and not incident to a valid arrest were illegally seized and were inadmissible in state court prosecution for possession of obscene pictures. Com. v. Spofford (1962) 180 N.E.2d 673, 343 Mass. 703.

Even though record failed to show that defendant's permission to enter his apartment was obtained by police threats, duress, coercion or promises while defendant was being questioned at police station following an earlier illegal search by police at which time first group of obscene pictures had been discovered, second group of obscene pictures, turned over to police at time of second entry, were offshoot of original illegal search was seizure, and all pictures were inadmissible. Com. v. Spofford (1962) 180 N.E.2d 673, 343 Mass. 703.

71. ---- Stolen property, evidence

Defendant under arrest, could, if free of compulsion, voluntarily surrender a stolen article, and if the police came into possession of it by such voluntary surrender it would be admissible in evidence, but if not so volunteered and seized without proper warrant, it had to be excluded. Com. v. Lehan (1964) 196 N.E.2d 840, 347 Mass. 197.

72. ---- Trespass, evidence

Even if officers who went on certain premises were trespassers, the evidence they obtained while on the premises was not thereby rendered inadmissible where officers inspected the underside of a trailer and noted the serial number found there, which inspection of the surface of the vehicle constituted neither an "entry" nor a "search". Com. v. Dolan (1967) 225 N.E.2d 910, 352 Mass. 432.

73. ---- Admissions, evidence

Defendant's admission of participation in break into and larceny from household made admissible against him several items of property which were identified by homeowner as having been stolen from dwelling on that day, and likewise made admissible against defendant screw driver which had been purchased, taped and used to gain entry into dwelling and purposely left there. Com. v. Roy (1965) 207 N.E.2d 284, 349 Mass. 224.

74. ---- Objections to evidence

After officer, without objection, testified to all that occurred, it was too late to raise question that search was unlawful. Durkin v. U.S., 1932, 62 F.2d 305.

Where defendant was in fact shown a copy of the inventory of the items seized during search in New Hampshire and where the return on the search warrant was sworn to before a justice of the peace, although he inadvertently failed to sign it, fact that inventory of items seized might not have been made in defendant's presence and that the signature of the justice of the peace was missing from the return on the warrant did not require suppression of the evidence, even though both of those facts resulted in violations of the New Hampshire statute (RSA N.H. 595-A.5). Com. v. Hicks (1979) 384 N.E.2d 1206, 377 Mass. 1.

Renewal of specific objections to introduction of illegally obtained evidence when evidence was offered at trial was not necessary to preserve defendant's rights already saved by exceptions to denial of motions to suppress, particularly where renewal would have been wholly ineffective prior to a subsequent United States Supreme Court decision. Com. v. Jacobs (1963) 191 N.E.2d 873, 346 Mass. 300.

75. ---- Exceptions, evidence

Defendant's counsel could rely upon earlier exception to denial of motion to suppress and there was no occasion for saving any additional exception when seized narcotics, materials, and instruments were offered in evidence. Com. v. Mitchell (1966) 215 N.E.2d 324, 350 Mass. 459.

76. ---- Harmless error, evidence

Even if sugar cubes, which were found in refrigerator during warrantless search conducted after defendant was arrested, were not found in area from which defendant might have gained possession of weapon or destructible evidence, admission of such cubes, in prosecution for unlawful possession of narcotic drug and unlawful possession of narcotic drug with intent to sell, was harmless error, in view of other overwhelming evidence against defendant. Com. v. Cohen (1971) 268 N.E.2d 357, 359 Mass. 140.

A defendant's subsequent testimony indicative of assent to search of certain packages did not constitute error in denial of motion to suppress evidence obtained as result of searches of such packages harmless where such testimony was given at the trial when the issue of suppressing the evidence was not before the court, as defendant was entitled to have the question of consent ruled on by the judge when the issue of admissibility of the seized articles was before him. Com. v. Lehan (1964) 196 N.E.2d 840, 347 Mass. 197.

77. Jury instructions

Failure of trial judge to instruct jury concerning principles governing evidence seized or obtained in alleged violation of c. 276, § 1 et seq. or provisions of Const., pt. 1, Art. 14, was not error, since question whether evidence had been lawfully obtained was question voir law for trial judge after proper voir dire examinations. Com. v. Rogers (1967) 222 N.E.2d 766, 351 Mass. 522, certiorari denied 88 S.Ct. 484, 389 U.S. 991, 19 L.Ed.2d 483, post-conviction relief denied.

78. Questions of law

Question of whether there was illegal search was for judge and not for jury. Shaw v. Com. (1968) 238 N.E.2d 876, 354 Mass. 583.

79. Review

Appellate review of search based exclusively upon "any person present" language of search warrant demands strict scrutiny of warrant's supporting affidavit in order to determine whether search was valid. Com. v. Souza (1997) 675 N.E.2d 432, 42 Mass.App.Ct. 186, review denied 678 N.E.2d 1334, 424 Mass. 1107.

Judicial examination of veracity of underlying facts contained in search warrant affidavit is limited to whether affidavit did in fact contain misstatements by affiant and whether misrepresentations were intentional or reckless, and only if both these inquiries are answered affirmatively will court consider appropriate remedy. Com. v. Corriveau (1985) 486 N.E.2d 29, 396 Mass. 319.

In analyzing the information contained in the arrest and search warrants, the Supreme Judicial Court accepts the reasonable inferences that a judge could draw as a common sense conclusion from the information set forth in the affidavit. Com. v. Burt (1985) 473 N.E.2d 683, 393 Mass. 703.

In reviewing sufficiency of affidavits for search warrant, court must limit its inquiry to the face of affidavit and must examine affidavit with a common sense, nontechnical, ungrudging, and positive attitude. Com. v. Norris (1978) 383 N.E.2d 534, 6 Mass.App.Ct. 761.

Trial court's subsidiary findings of fact relevant to application of plain view doctrine had to be accepted by appellate court absent clear error. Com. v. Moynihan (1978) 381 N.E.2d 575, 376 Mass. 468.

Although it was not altogether clear that judge had in mind allocation of burden upon defendant when proceedings turned to seizure of items as in plain view, which might well call for a demonstration of legality on part of Commonwealth, judge's mistake, if there was one, was harmless where result would be

same if burden were considered to be shifted since what had to be shown was more than a suspicion of criminal involvement, something definite and substantial, but not a prima facie case of commission of crime, let alone a case beyond a reasonable doubt. Com. v. Bond (1978) 375 N.E.2d 1214, 375 Mass. 201.

Order reversing district court's order granting defendants' motion to suppress evidence on ground that affidavits supporting application for search warrant did not contain facts sufficient to establish reliability of informant, and hence failed to show probable cause, was nonappealable interlocutory order. Com. v. Frado (1977) 362 N.E.2d 206, 372 Mass. 866.

If determining correctness of trial court's ruling on motion to suppress, appellate court considers only the search warrant, application and affidavit and reasonable inferences arising therefrom. Com. v. Smith (1976) 348 N.E.2d 101, 370 Mass. 335, certiorari denied 97 S.Ct. 364, 429 U.S. 944, 50 L.Ed.2d 314.

Record on motion to suppress evidence was insufficient to establish that officers who removed bags of groceries from automobile in supermarket lot did not have probable cause to make warrantless search of automobile. Com. v. Pignone (1972) 281 N.E.2d 572, 361 Mass. 566.

Where defendants made no motion to suppress evidence before trial and did not seek voir dire when evidence was offered, question of legality of search was not properly before reviewing court. Com. v. Connolly (1970) 255 N.E.2d 191, 356 Mass. 617, certiorari denied 91 S.Ct. 87, 400 U.S. 843, 27 L.Ed.2d 79, certiorari denied 91 S.Ct. 93, 400 U.S. 843, 27 L.Ed.2d 79.

Where affidavit seeking search warrant is not purely conclusory, reviewing courts should be slow to jettison warrants which lack "elaborate specificity." Com. v. Von Utter (1969) 246 N.E.2d 806, 355 Mass. 597.

Reviewing court was not bound by reasons given for ruling by judge who heard and sustained motion to suppress evidence. Com. v. Wilbur (1967) 231 N.E.2d 919, 353 Mass. 376, certiorari denied 88 S.Ct. 1260, 390 U.S. 1010, 20 L.Ed.2d 161.

On appeal defendant could not assert new grounds for alleged illegality of seizure of clothing where such grounds were not intimated to trial judge, and none of new grounds would be considered. Com. v. Grant (1967) 226 N.E.2d 197, 352 Mass. 434.

Even where defendant's counsel objected to admission of defendant's clothing on ground that clothing was obtained on basis of only a search warrant and not search and seizure warrant, new and expanded arguments and question of validity of search warrant could not be urged in reviewing court for first time. Com. v. Nunes (1966) 221 N.E.2d 752, 351 Mass. 401.

It was not necessary inference from record of proceedings on motions to suppress evidence that building described in search warrants was a multiple family dwelling, and neither judge hearing proceedings nor reviewing court was obliged to draw that inference for purposes of defendants' contention that search warrants did not particularly describe place to be searched. Com. v. Owens (1966) 216 N.E.2d 411, 350 Mass. 633.

Supreme Judicial Court was required to consider motion seeking suppression of seized documents in light of United States Supreme Court decision though motions were heard and indictment tried before that decision. Com. v. Jacobs (1963) 191 N.E.2d 873, 346 Mass. 300.

Admission into evidence generally, apparently with respect to all counts of all indictments, of materials seized under invalid warrants was prejudicial even as to counts not dealing with illegally seized material so as to require reversal of all judgments and entry of judgments for defendants on all counts which did not relate to four publications as to which seizure was not shown to be illegal. Com. v. Jacobs (1963) 191 N.E.2d 873, 346 Mass. 300.

Defendants did all that they could reasonably have been required to do, in the then state of law, to save their rights for suppression of seized evidence against possibility of later decisions, when they filed motion to quash indictment and suppress evidence obtained by search warrant in optimistic anticipation of decisions by United States Supreme Court. Com. v. Jacobs (1963) 191 N.E.2d 873, 346 Mass. 300.

Illegal search constituted violation of Fourteenth Amendment so infecting proceedings as to require setting aside of finding of guilty and entry of judgment for defendant. Com. v. Dorius (1963) 191 N.E.2d 781, 346 Mass. 323.

Where on a complaint on P.S.1882, c. 212, § 2, alleging belief that "gaming apparatus and implements were used, kept," etc., for use in unlawful gaming, the claimant appeared and pleaded in the municipal court, from the judgment of which he appealed, the claimant, having appeared and pleaded in the municipal court, could not, for the first time in the superior court, upon appeal, object that the notice of the information was not properly served by posted copy. Com. v. Certain Gaming Implements (1886) 5 N.E. 475, 141 Mass. 114.

80. Interception of communications

When law enforcement officials seek to transmit and record oral communications pursuant to one-party consent exception of statute specifically for interception of oral communications, they may do so under authority of general search warrant statute and common

law. Com. v. Penta (1996) 669 N.E.2d 767, 423 Mass. 546.

M.G.L.A. 276 § 1

MA ST 276 § 1

END OF DOCUMENT

MA ST 137 s 2
M.G.L.A. 137 § 2

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XX. PUBLIC SAFETY AND GOOD ORDER
CHAPTER 137. **GAMING**

Current through 1998 2nd Annual Sess.

§ 2. Liability of owner, tenant or occupant of **gaming** house

The owner, tenant or occupant of a house or building where money or goods are lost, paid or delivered in any form of **gaming** referred to in the preceding section, or by **betting** on the sides or hands of those **gaming,** with the knowledge or consent of said owner, occupant or tenant, shall be liable in the same manner and to the same extent as the winner or receiver thereof is liable under the preceding section.
Mass.App.Ct. 420.

MA ST 271 s 6
M.G.L.A. 271 § 6

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE I. CRIMES AND PUNISHMENTS
CHAPTER 271. CRIMES AGAINST PUBLIC POLICY

Current through 1998 2nd Annual Sess.

§ 6. **Gaming** relative to cattle shows, military muster or public gathering; arrest without warrant

Whoever, during or within twelve hours of the time of holding a cattle show, military muster or public gathering, within one mile of the place thereof, practices or engages in any **gambling** or unlawful **game**, shall forfeit not more than twenty dollars. If discovered in the act, he may be arrested without a warrant by any sheriff, deputy sheriff, constable or any officer qualified to serve criminal process, and held in custody, in jail or

otherwise, for not more than twenty-four hours, Sunday and legal holidays excepted, until a complaint may be made against him for such offence.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1990 Main Volume

St.1853, c. 27.
G.S.1860, c. 85, § 9.
St.1861, c. 127, § 2.
P.S.1882, c. 99, § 11.
R.L.1902, c. 214, § 6.

LAW REVIEW AND JOURNAL COMMENTARIES

Arrest without warrant in Massachusetts. (1960) 40 B.U.L.Rev. 70.

LIBRARY REFERENCES

1990 Main Volume

Arrest k62 et seq.
Gaming k62 et seq.

5 Mass Jur, Criminal Law § 37:6.

M.G.L.A. 271 § 6

MA ST 271 § 6

END OF DOCUMENT

MA ST 276 s 2B
M.G.L.A. 276 § 2B

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE II. PROCEEDINGS IN CRIMINAL CASES
CHAPTER 276. SEARCH WARRANTS, REWARDS, FUGITIVES FROM JUSTICE, ARREST,
EXAMINATION, COMMITMENT AND BAIL. PROBATION OFFICERS AND BOARD OF PROBATION
SEARCH WARRANTS

Current through 1998 2nd Annual Sess.

§ 2B. Affidavit in support of application for warrant; contents and form

A person seeking a search warrant shall appear personally before a court or justice authorized to issue search warrants in criminal cases and shall give an affidavit in substantially the form hereinafter prescribed. Such affidavit shall contain the facts, information, and circumstances upon which such person relies to establish sufficient grounds for the issuance of the warrant. The person issuing the warrant shall retain the affidavit and shall deliver it within three days after the issuance of the warrant to the court to which the warrant is returnable. Upon the return of said warrant, the affidavit shall be attached to it and shall be filed therewith, and it shall not be a public document until the warrant is returned.

The affidavit in support of the application for a search warrant shall be in substantially the following form:

THE COMMONWEALTH OF MASSACHUSETTS.

(COUNTY), ss. (NAME) COUR
T.

....., (insert year
).

I, (name of applicant) being duly sworn, depose and say:

1. I am (describe position, assignment, office, etc.)

2. I have information, based upon (describe source, facts indicating reliability of source and nature of information; if based on personal knowledge and belief, so state).

3. Based upon the foregoing reliable information (and upon my personal knowledge) there is probable cause to believe that the property hereinafter described (has been stolen, or is being concealed, etc.) and may be found (in the possession of A.B. or any other person) at premises (identify).

4. The property for which I seek the issuance of a search warrant is the following: (here describe the property as particularly as possible).

Wherefore, I respectfully request that the court issue a warrant and order of seizure, authorizing the search of (identify premises and the persons to be searched) and directing that if such property or evidence or any part thereof be found that it be seized and brought before the court; together with such other and further relief that the court may deem proper.

.....Name.

Then personally appeared the above named ..... and made oath that the foregoing affidavit by him subscribed is true.

Before me this ..... day of ....., (insert year).

Justice or Special Justice, Clerk or Assistant Clerk of the ..... Court.

CREDIT(S)

1994 Main Volume

Added by St.1964, c. 557, § 3. Amended by St.1965, c. 384.

1999 Electronic Pocket Part Update

Amended by St.1998, c. 463, § 192.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999 Electronic Pocket Part Update

1998 Legislation

St.1998, c. 463, § 192, an emergency act, approved Jan. 14, 1999, a corrections bill, substituted "(insert year)" for "19 " in two places.

1994 Main Volume

St.1964, c. 557, § 3, was approved June 16, 1964. Emergency declaration by the Governor was filed June 23, 1964.

St.1965, c. 384, approved April 28, 1965, in the affidavit, substituted:

"Before me this _____ day of _____, 19__.

Justice or Special Justice,

Clerk or Assistant Clerk

of the _____ Court."

for

"Before me, _____
Notary Public."

AMERICAN LAW REPORTS

Disputation of truth of matters stated in affidavit in support of search warrant--modern cases. 24 ALR4th 1266.

Validity of, and admissibility of evidence discovered in, search authorized by judge over telephone. 38 ALR4th 1145.

Propriety of state or local government health officer's warrantless search-- post-Camara cases. 53 ALR4th 1168.

LAW REVIEW AND JOURNAL COMMENTARIES

Constitutional rights of the accused. (1975) 60 Mass.L.Q. 19.

Exclusionary rule; remedy for misstatements in search warrant affidavit: First circuit, 1974-1975 term. (1976) 10 Suffolk U.L.Rev. 405.

Illegal search and seizure. Walter H. McLaughlin, Jr., 13 Ann.Surv.Mass.L. 373 (1966).

Search warrant. Richard C. Driscoll, Jr., 13 Ann.Surv.Mass.L. 172 (1966).

Search warrants. Reuben Goodman, 13 Ann.Surv.Mass.L. 159 (1966).

LIBRARY REFERENCES

1999 Electronic Pocket Part Update

Comments.

Search pursuant to search warrant, see Alperin and Shubow, 14A Massachusetts Practice § 9.32 (3d ed.).

1994 Main Volume

Comments.

Application for arrest warrant, see M.P.S. vol. 30, Smith, § 82.
Illegally obtained evidence, see M.P.S. vol. 19, Hughes, § 261 et seq.
Texts and Treatises

68 Am Jur 2d, Searches and Seizures §§ 63-66.
22 Am Jur Pl & Pr Forms (Rev), Searches and Seizures, Form 3.

UNITED STATES SUPREME COURT

Prosecutorial immunity, application for arrest warrant, false statements of fact, see Kalina v. Fletcher, U.S.Wash.1997, 118 S.Ct. 502.

Search warrant affidavits, intentional false statements, hearings, see Franks v. Delaware, 1978, 98 S.Ct. 2674, 438 U.S. 154, 57 L.Ed.2d 667, on remand 398 A.2d 783.

NOTES OF DECISIONS

1. In general

So long as material containing information supporting probable cause in addition to affidavit is before issuing magistrate, it does not violate statute which requires all facts supporting probable cause to be in affidavit. Com. v. McRae (1991) 581 N.E.2d 502, 31 Mass.App.Ct. 559, review denied 586 N.E.2d 10, 411 Mass. 1105.

Upon filing with the court, affidavit offered in support of search warrant is a public document both by this section and under the common law. Newspapers of New England, Inc. v. Clerk-Magistrate of the Ware Div. of the Dist. Court Dept. (1988) 531 N.E.2d 1261, 403 Mass. 628, certiorari denied 109 S.Ct. 2064, 490 U.S. 1066, 104 L.Ed.2d 629.

In case of a search warrant, as distinguished from arrest warrant, affidavit must, in order to establish probable cause, contain enough information for issuing magistrate to determine that items sought are related to criminal activity under investigation, and that they may reasonably be expected to be located in place to be searched. Com. v. Cefalo (1980) 409 N.E.2d 719, 381 Mass. 319.

It was not error for district court clerk to examine both affidavits in support of search warrants for searches of two apartments in which alleged moving gaming activities were conducted. Com. v. DiAntonio (1979) 395 N.E.2d 358, 8 Mass.App.Ct. 434.

Point of search warrant affidavit is practical, not formal, to furnish proper basis for issuing warrant, and conveyancer's precision of language is not to be expected. Com. v. Pellier (1972) 289 N.E.2d 892, 362 Mass. 621.

Before search warrant should be issued on ground of probable cause on basis of affidavit, there should be compliance with requirements of this section dealing with affidavit in support of application for warrant and prescribing affidavit's content and form. Com. v. Cuddy (1967) 231 N.E.2d 368, 353 Mass. 305.

2. Affiant

Use of affidavit by telephone "security representative" in support of application for search warrant to supply basic information establishing probable cause was both proper and commendable where he had direct knowledge of facts since, where feasible, it is better practice to produce more direct evidence for magistrate to act upon. Com. v. Bond (1978) 375 N.E.2d 1214, 375 Mass. 201.

3. Scrutiny and evaluation of affidavits

Applications for search warrants and accompanying affidavits should not be subjected to hypertechnical scrutiny, as if they were professionally drawn legal documents, but rather are to be assessed in common sense and realistic fashion. Com. v. McRae (1991) 581 N.E.2d 502, 31 Mass.App.Ct. 559, review denied 586 N.E.2d 10, 411 Mass. 1105.

Affidavit offered in support of a search warrant is not to be parsed and its severed components subjected to hypercritical analysis; rather, affidavit is to be read as a whole, and in a commonsense and realistic fashion. Com. v. Kiley (1981) 416 N.E.2d 980, 11 Mass.App.Ct. 939.

Two-pronged test for evaluating affidavits used as basis for search warrants requires that affidavit set forth some of underlying circumstances from which affiant concluded that informant was reliable and some of underlying circumstances from which informant concluded that defendant was engaged in criminal activity. Com. v. Scanlan (1980) 400 N.E.2d 1265, 9 Mass.App.Ct. 173.

Affidavit in support of search warrant must be examined as a whole to determine if probable cause existed to issue warrant; not if there was evidence of guilt beyond reasonable doubt. Com. v. Scanlan (1980) 400 N.E.2d 1265, 9 Mass.App.Ct. 173.

Judges should keep in mind judicial policy of encouraging use of warrants and shunning hypertechnical reading of warrants and supporting affidavits; a casuistic approach should likewise be avoided in interpreting facts behind affidavits. Com. v. Reynolds (1977) 370 N.E.2d 1375, 374 Mass. 142.

Affidavits in support of search warrant are to be approached with a view toward common sense and should be read in their

entirety, not in a hypertechnical fashion, and considerable latitude should be allowed for drawing of reasonable inferences on their faces. Com. v. Smith (1976) 348 N.E.2d 101, 370 Mass. 335, certiorari denied 97 S.Ct. 364, 429 U.S. 944, 50 L.Ed.2d 314.

An affidavit in support of a search warrant which seeks to authorize a search of any persons present is to be strictly scrutinized and will be held valid only where underlying circumstances related to issuing judge or clerk clearly demonstrate probable cause to search named premises and to believe that all persons present are involved in criminal activity afoot. Com. v. Smith (1976) 348 N.E.2d 101, 370 Mass. 335, certiorari denied 97 S.Ct. 364, 429 U.S. 944, 50 L.Ed.2d 314.

A conveyancer's precision of language is not to be expected in an affidavit in support of the search warrant or on the face of the warrant. Com. v. Gill (1974) 318 N.E.2d 628, 2 Mass.App.Ct. 653.

Affidavits for search warrants must be tested and interpreted by magistrates and courts in common sense and realistic fashion without technical requirements of elaborate specificity. Com. v. Sepeck (1971) 271 N.E.2d 755, 359 Mass. 757.

Sufficiency of affidavit for search warrant is to be decided on the basis of a consideration of all its allegations as a whole, and not by first dissecting it and then subjecting each resulting fragment to a hypertechnical test of its sufficiency standing alone. Com. v. Stewart (1971) 267 N.E.2d 213, 358 Mass. 747.

Affidavit for search warrant should be interpreted in a common sense manner rather than in a hypertechnical way. Com. v. Mele (1970) 263 N.E.2d 432, 358 Mass. 225.

Affidavit for search warrant should be viewed in common sense and realistic fashion. Com. v. Von Utter (1969) 246 N.E.2d 806, 355 Mass. 597.

Warrants and affidavits in support of them must be tested in a common sense and realistic fashion. Com. v. Saville (1968) 233 N.E.2d 9, 353 Mass. 458.

Search warrants and the affidavits upon which they are based must be read in a common-sense way rather than technically. Com. v. Wilbur (1967) 231 N.E.2d 919, 353 Mass. 376, certiorari denied 88 S.Ct. 1260, 390 U.S. 1010, 20 L.Ed.2d 161.

Affidavit for search warrant should be viewed in a common-sense and realistic fashion. Com. v. Cuddy (1967) 231 N.E.2d 368, 353 Mass. 305.

Affidavit in support of application for search warrant is to be dealt with in its entirety. Com. v. Cuddy (1967) 231 N.E.2d 368, 353 Mass. 305.

4. Purpose

Purpose of affidavit in support of search warrant is to provide issuing magistrate with information from which he can decide whether there is probable cause to issue search warrant. Com. v. Cefalo (1980) 409 N.E.2d 719, 381 Mass. 319.

The legislative purpose as disclosed in this section is to make sure that the commonwealth can demonstrate by a writing that any given search and seizure was reasonable and was based on probable cause. Com. v. Monosson (1966) 221 N.E.2d 220, 351 Mass. 327.

5. Admissibility of evidence

Massachusetts statute governing content of search warrant affidavits (M.G.L.A. c. 276, § 2B) requires suppression of evidence seized pursuant to a search warrant not based on probable cause. Com. v. Upton (1985) 476 N.E.2d 548, 394 Mass. 363.

Negligent misrepresentation in affidavit of fact material or necessary to finding of probable cause to issue search warrant would not, under law of Commonwealth, require suppression of evidence seized pursuant to such warrant. Com. v. Nine Hundred and Ninety-Two Dollars (1981) 422 N.E.2d 767, 383 Mass. 764.

In prosecution for conspiracy to steal merchandise, admission of letters which were seized under deficient warrant was prejudicial error, where letters could have played a substantial role in convincing judge that defendant and two other men had known each other before date of alleged commission of the theft, as was admission of two clothing labels found in automobile which were also seized under deficient warrant. Com. v. Colardo (1966) 217 N.E.2d 775, 351 Mass. 76.

Search warrant was not based on probable cause where issued upon police officer's affidavit which stated that two reliable informants had stated that defendant, whose name was misspelled on affidavit, was taking horse and number play and that officer had probable cause to believe that certain described property which was not, in fact, described would be found in defendant's possession and evidence obtained by use of warrant should have been excluded. Com. v. Maneatis (1966) 216 N.E.2d 452, 350 Mass. 780.

6. Burden of persuasion

Burden of persuasion should be on defendant to justify suppression based on misstatements in affidavit underlying search

warrant. Com. v. Reynolds (1977) 370 N.E.2d 1375, 374 Mass. 142.

7. Probable cause

This statute, M.G.L.A. c. 276, § 2B, which prescribes in general terms the form and content of applications for search warrants, does not establish any standard for the determination of probable cause. Com. v. Upton (1985) 476 N.E.2d 548, 394 Mass. 363.

8. Omissions or other irregularities

Failure to omit the inapplicable words "has been stolen" from affidavit presented in support of application for issuance of warrant did not invalidate search warrant; it was clear from the affidavit as a whole that the search was requested for illegal property rather than for stolen property, and failure to strike the inapplicable words created little danger of confusion or prejudice to the defendant. Com. v. Truax (1986) 490 N.E.2d 425, 397 Mass. 174.

Mere fact that copy of affidavit in support of application for search warrant which was given to defendant's counsel by prosecution following pretrial conference was unsigned and unsworn did not indicate any irregularity in the original affidavit, which was filed in the district court and bore signature and oath of affiant. Com. v. Miller (1984) 459 N.E.2d 136, 17 Mass.App.Ct. 991.

Even if automobile registration number referred to in affidavit for search warrant was not obtained from defendant as alleged, where defendant did not argue that this information was incorrect or obtained illegally, disputed sentence in affidavit could be characterized as, at worst, an inconsequential inaccuracy and, thus, suppression of evidence obtained as a result of warrant issued on basis of affidavit containing defendant's alleged statement would not be required. Com. v. Brown (1982) 434 N.E.2d 973, 386 Mass. 17.

Unintentional inaccuracies in police officer's search warrant affidavit were not material to a showing of reliability in light of fact, apparent on face of court records furnished the judge, that person named in affidavit had been arrested for and found guilty of possession of heroin. Com. v. Grillo (1978) 383 N.E.2d 546, 6 Mass.App.Ct. 959.

Officer's failure to sign search warrant affidavit did not render affidavit invalid where in fact warrant was issued upon facts sworn to in affidavit and where identity of affiant was clear from other parts of affidavit. Com. v. Young (1978) 383 N.E.2d 515, 6 Mass.App.Ct. 953.

Even though affidavit in support of search warrant described apartment to be searched as "on the second floor" of a certain

building, while apartment was actually on third floor, and even though both the affidavit and the warrant contained an incorrect surname for one of the occupants, where the warrant described the premises as "Apartment No. 2 over stores on street" at a specified address and in absence of any indication of deliberate misrepresentation in connection with use of incorrect surname to describe the apartment's occupant and where the misnomer was not material because the evidence seized was not taken from the person of the occupant but from the premises and inaccuracy complained of did not affect integrity of warrant as a whole or tend to undermine existence of probable cause to search, warrant met constitutional requirements. Com. v. Cohen (1978) 382 N.E.2d 1105, 6 Mass.App.Ct. 653.

Document, purporting to be affidavit, on which jurat was unsigned and which erroneously called for acknowledgement before notary public was inadequate as basis for search warrant. Com. v. Dozier (1977) 366 N.E.2d 1270, 5 Mass.App.Ct. 865.

Where evidence supported finding that misstatement of fact in that portion of affidavit forming part of application for search warrant which was addressed to credibility or reliability of affiant's informant was not a deliberate falsehood and was not intentional but was the result of negligence and was an honest mistake, where misstatement did not go to the integrity of affidavit as a whole or destroy probable cause for search, and where prophylactic value of excluding evidence in case would have been nil, motion to suppress was properly denied. Com. v. Sheppard (1977) 358 N.E.2d 480, 5 Mass.App.Ct. 765.

Factual inaccuracies not going to integrity of affidavit do not destroy probable cause for search. Com. v. Rugaber (1976) 343 N.E.2d 865, 369 Mass. 765.

Omission of affiant's name and date in acknowledgement on affidavit did not vitiate search warrant. Com. v. Hanscom (1974) 311 N.E.2d 95, 2 Mass.App.Ct. 840.

Fact that affidavit in support of warrant to search a certain apartment for narcotics in no way mentioned defendant's name as occupant of premises to be searched did not render affidavit inadequate. Com. v. Franklin (1970) 265 N.E.2d 366, 358 Mass. 416.

9. Knowledge of officers

Affidavit submitted by detective in connection with application for a search warrant which named several police officers who related conversations and information to him satisfied two-pronged test of Aguilar v. Texas despite fact that each specific statement in the affidavit was not attributed to a particular officer, since when read as a whole, it was obvious that detailed and specific information was relayed to detective

by police officers who were not paid informants. Com. v. Wright (1983) 444 N.E.2d 1294, 15 Mass.App.Ct. 245.

Evidence of drugs seized from hand-carved wooden figureheads would not be suppressed because testimony of officer who signed affidavit in support of warrant which stated that he believed defendant had been keeping or selling cocaine suggested that he did not have any knowledge of that fact at suppression hearing since officer was not required to have actual knowledge to state that he had probable cause to believe fact to be true as asserted in warrant. Com. v. Weeks (1982) 431 N.E.2d 586, 13 Mass.App.Ct. 194, review denied 440 N.E.2d 1175, 386 Mass. 1101.

In evaluating whether affidavit in support of search warrant provides probable cause for its issuance, weight must be given to special experience of law enforcement officer who has executed the affidavit. Com. v. Taglieri (1979) 390 N.E.2d 727, 378 Mass. 196, certiorari denied 100 S.Ct. 288, 444 U.S. 937, 62 L.Ed.2d 197.

Where police officers received tip from reliable informant that defendant would be returning from Boston at specified time with a load of heroin, but officers were not told of underlying facts or circumstances on which informant based such tip, officers observed defendant alight from car driven by a known drug user, but there was nothing suspicious about defendant's appearance as he walked in the direction of his apartment, and there was nothing to suggest that defendant was carrying a "load" of anything, police officers were without probable cause to arrest defendant in absence of a warrant. Com. v. Flaherty (1978) 375 N.E.2d 353, 6 Mass.App.Ct. 876.

Valid search warrant for seizure of clothes at cleaning establishment was not precluded because officers applying for warrant did not know name of owner of clothes. Com. v. Perez (1970) 258 N.E.2d 1, 357 Mass. 290.

10. Delay

If delay in executing search warrant in particular case is found to have been unreasonable, evidence seized pursuant to that search warrant must be suppressed only if defendant can demonstrate that he has suffered legal prejudice as result of delay; fact that search uncovered prejudicial evidence does not warrant suppression unless presence of evidence is attributable to delay. Com. v. Cromer (1974) 313 N.E.2d 557, 365 Mass. 519.

11. False statements

In hearing to determine whether affiant has made false statement with reckless disregard for truth in affidavit in support of search warrant, defendant meets the burden of proof by showing that affiant did not have reasonable grounds for believing

material, false statement. Com. v. Nine Hundred and Ninety-Two Dollars (1981) 422 N.E.2d 767, 383 Mass. 764.

Where claim was made that police affiants made false statements negligently or in reckless disregard for truth in affidavits in support of search warrant, hearing on veracity of affiant was not required in absence of showing that affiant had any reason to doubt truth of statements given to him or that any other police officer providing information to affiant had any such reason. Com. v. Nine Hundred and Ninety-Two Dollars (1981) 422 N.E.2d 767, 383 Mass. 764.

The right to challenge truthfulness of statements contained in search warrant affidavit is limited to cases where defendant can make substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, has been included by affiant in affidavit, which claimed misstatement must be shown by defendant to be crucial to existence of probable cause and not merely of peripheral relevance. Com. v. Abdelnour (1981) 417 N.E.2d 463, 11 Mass.App.Ct. 531.

In absence of anything to suggest existence of false statement of fact in affidavit in support of application for search warrant, defense counsel was precluded from offering evidence in support of motions to suppress items which had been seized pursuant to search warrant. Com. v. Servidori (1979) 384 N.E.2d 226, 6 Mass.App.Ct. 969.

Search warrant was not invalid as resting upon affidavit containing deliberate misrepresentation merely because officers, who knew that bloody clothing had been taken from cleaners by officers before warrant for such taking had been issued, stated in application for second warrant, to search apartment, that prior search warrant had been obtained to confiscate blood-stained clothing from cleaners, where police had believed that warrant was necessary to justify continued retention of clothes taken from cleaners without warrant. Com. v. Perez (1970) 258 N.E.2d 1, 357 Mass. 290.

Statement in affidavit in support of search warrant that automobile was in possession of bailee at police barracks was not rendered false merely because bailee was not present at barracks when officers returned with warrant. Com. v. Campbell (1967) 226 N.E.2d 211, 352 Mass. 387.

12. Multiple affidavits

Even if affidavit in support of application for warrant to search defendant's print shop was not sufficient by itself, in view of fact that such affidavit and affidavits in support of applications concerning informer's premises considered as a group established that informer had told a police officer that

defendant had given him counterfeit bills at defendant's print shop and that informer had been arrested that day with 40 such bills in his possession, affidavits adequately revealed facts relied upon to show probable cause, and hence evidence seized at print shop was admissible in prosecution for violation of laws against counterfeiting. Com. v. Saville (1968) 233 N.E.2d 9, 353 Mass. 458.

13. Federal requirements

Both prongs of the Aguilar standard, relative to an affidavit supporting a search warrant, were satisfied, where the informant was an average citizen, where the affidavit and facts stated therein provided sufficient indicia of the informant's credibility, and where the reliability of the information which he provided was shown by his ability to give a detailed description of the vehicle known to have been used in the robbery and of the unique homemade license plate it bore; moreover, the affidavit was further buttressed by a recitation of police officer's independent observations made in the course of his investigation. Com. v. Higginbotham (1981) 415 N.E.2d 229, 11 Mass.App.Ct. 912.

Affidavits in support of applications for search warrants, in addition to complying with state statutory requirements, must satisfy requirement of Federal Constitution and decisions of Supreme Court of the United States. Com. v. Causey (1969) 248 N.E.2d 249, 356 Mass. 125.

14. Facts, information and circumstances--In general

Fact that affiant truthfully reported in affidavit in support of search warrant what another law enforcement officer told him should not insulate such other officer's statements from scrutiny as to their truthfulness or recklessness; police affiant thus cannot become "bona fide purchaser" of intentionally or recklessly false statements made to him by another police officer. Com. v. Nine Hundred and Ninety-Two Dollars (1981) 422 N.E.2d 767, 383 Mass. 764.

Affidavit for search warrant need not contain all the information possessed by the officer seeking a search warrant as long as there is enough information to inform the magistrate of the basis of the informant's tip. Com. v. Norris (1978) 383 N.E.2d 534, 6 Mass.App.Ct. 761.

Affidavit accompanying application for search warrant need not demonstrate that items sought are in fact on the defendant's premises at the time, but need only provide issuing magistrate with substantial basis for concluding that any of such articles is probably there; whether that test has been met must be determined by a common sense, rather than a hypertechnical reading of the affidavit. Com. v. Blye (1977) 362 N.E.2d 240, 5

Mass.App.Ct. 817.

It is highly undesirable to fail to state in an affidavit, in support of a search warrant, just who did what, since the failure to do so might result in an ambiguity casting doubt on the validity of the warrant. Com. v. Houston (1974) 312 N.E.2d 223, 2 Mass.App.Ct. 845.

Affiant seeking search warrant must produce more than mere statement of belief; he must set forth underlying circumstances which produce such belief. Com. v. Von Utter (1969) 246 N.E.2d 806, 355 Mass. 597.

If application for search warrant lacks underlying facts, information and circumstances, and indication of source of applicant's information or personal knowledge, warrant is invalid. Com. v. Von Utter (1969) 246 N.E.2d 806, 355 Mass. 597.

Information to be furnished in obtaining search warrant for violation of gaming laws should satisfy this section providing that affidavit shall contain facts and circumstances upon which person relies to establish sufficient grounds for warrant. Com. v. Pope (1968) 241 N.E.2d 848, 354 Mass. 625.

Affidavit supporting search warrant may not be merely conclusory but must state underlying information which has led officer to believe that search is warranted; however, technical accuracy in affidavit is not required. Com. v. Brown (1968) 237 N.E.2d 53, 354 Mass. 337.

Affidavits upon which search warrants were issued, which were based solely upon applicant officer's alleging that he believed and had reasonable cause to believe that stolen goods were hidden in premises to be searched, failed on their face to show the facts, information and circumstances which were required as a basis for applicant officer's personal beliefs, and did not show the underlying circumstances which would be necessary to validate them had they been based upon word of an informant. Com. v. Colardo (1966) 217 N.E.2d 775, 351 Mass. 76.

Under circumstances, including fact that police officer told clerk that his informant was participant in robbery, there was sufficient information before clerk to enable him to determine existence of probable cause, and under law existing prior to 1964 amendment, search warrants were properly issued, notwithstanding fact that applications only recited that officer "believed" that weapons used in commission of robbery and cloth bank bags taken were located on premises to be searched. Com. v. Owens (1966) 216 N.E.2d 411, 350 Mass. 633.

15. ---- Staleness of information

Elapse of 12 days between attack and search of defendant's

apartment did not make inference that defendant's clothing and knife used in attack would be found in his residence too remote, particularly given leeway employed in after- the-fact review of applications for warrants. Com. v. McRae (1991) 581 N.E.2d 502, 31 Mass.App.Ct. 559, review denied 586 N.E.2d 10, 411 Mass. 1105.

Fact that the contraband in question was stolen cash did not in and of itself make stale crime participant's information in support of search warrant, even though 12 days elapsed between the time of participant's arrest and the time of search. Com. v. Higginbotham (1981) 415 N.E.2d 229, 11 Mass.App.Ct. 912.

In considering "staleness" in determining the existence of probable cause for the issuance of a search warrant, supporting affidavit need not demonstrate that the items sought are in fact on defendant's premises at the time, but need only provide the issuing magistrate with a substantial basis for concluding that any of such articles is probably there. Com. v. Higginbotham (1981) 415 N.E.2d 229, 11 Mass.App.Ct. 912.

16. ---- Hearing, facts, information and circumstances

Once defendant makes substantial preliminary showing that false statement was knowingly and intentionally, or with reckless disregard for truth, included by affiant in warrant affidavit, and if allegedly false statement is necessary to finding of probable cause, U.S.C.A. Const.Amend. 4 requires that hearing be held at defendant's request; if, after hearing is held, charge of making knowingly false statement or statement in reckless disregard of truth is established, and, with affidavit's false material set aside affidavit is insufficient to establish probable cause, fruits of search must be excluded. Com. v. Honneus (1983) 453 N.E.2d 1053, 390 Mass. 136.

Defendants, by merely alleging in effect that a defendant was not at home on day in question, but, rather, was at a public lounge and that he had never sold red capsules as alleged in affidavit in support of issuance of search warrant, had failed to make sufficient preliminary showing that affiant had made a false statement knowingly or intentionally or with reckless disregard for the truth so as to require, as a matter of constitutional right, that defendants be afforded a hearing on question of veracity of affiant's statements in affidavit. Com. v. Douzanis (1981) 425 N.E.2d 326, 384 Mass. 434.

17. ---- Presentation of facts

Subject to common sense limitations and usual rules for evaluating reliability, information accompanying affidavit for search warrant may include written, drawn, or printed information incorporated by reference, explicitly or implicitly, or even information on application form, which, being sworn, is itself an affidavit. Com. v. McRae (1991) 581 N.E.2d 502, 31 Mass.App.Ct.

559, review denied 586 N.E.2d 10, 411 Mass. 1105.

Incorporation by reference in second affidavit in support of search warrant to first search warrant without attachment was sufficient to establish probable cause for issuance of second search warrant, where information as to time and place to be searched could be found in court records concerning first warrant, supporting affidavit of first warrant was available to magistrate because of statutory requirement that person issuing warrant retains supporting affidavit, warrants were issued within two hours of each other, and affidavit in support of second warrants, sworn to by police officer, stated that police officer pursuant to first warrant had made observations leading him to have probable cause to believe defendant was trafficking in controlled substances. Com. v. Jordan (No. 2) (1986) 492 N.E.2d 351, 397 Mass. 494.

Police officer's oath and description of goods to be seized which appeared on printed affidavit form did not have to be repeated on attached sheets used for additional information on which to base issuance of search warrant. Com. v. DeCologero (1985) 473 N.E.2d 219, 19 Mass.App.Ct. 956.

It is incumbent upon affiants, in executing affidavit in support of application for search warrant, to make full presentation of facts in affidavit itself, and magistrates and clerks, engaged in issuing warrants, have duty to make real scrutiny of affidavits presented to them, to insist upon sufficient statement of basis of affiant's knowledge and to refuse warrants when affidavits do not make full presentation of facts. Com. v. Causey (1969) 248 N.E.2d 249, 356 Mass. 125.

18. ---- Summary of facts

This section requires that at least a written summary of facts relied upon be included or referred to in application for search warrant and filed with issuing officer, and this section would not be satisfied by mere exhibition of written statements as to sale of heroin at apartment to be searched. Com. v. Mitchell (1966) 215 N.E.2d 324, 350 Mass. 459.

19. Reliability of informant--In general

Search warrant and its supporting affidavit were inadequate where information contained in affidavit concerning purchase of cocaine was furnished not from the "reliable informant," but from informant's friend, and where affidavit was silent as to reliability of the friend. Com. v. Kuszewski (1982) 434 N.E.2d 203, 385 Mass. 802.

To sustain affidavit in support of search warrant, it is not necessary for affiant to allege that informant was believed to be reliable. Com. v. Scanlan (1980) 400 N.E.2d 1265, 9 Mass.App.Ct.

173.

Where affidavits in support of search warrants described six specific occasions on which informant had furnished police with accurate information regarding **gambling** activities in specific area leading to arrest and conviction of six named persons on wide range of **gambling** charges, including conviction of immediate defendant on charges of being found with apparatus for registering **bets** and using telephones for **gaming** purposes, and details of the informant's story matched pattern of facts developed by independent police investigation, the affidavits contained sufficient information to establish reliability of the informant. Com. v. DiAntonio (1979) 395 N.E.2d 358, 8 Mass.App.Ct. 434.

Fact that informant who provided information appearing in affidavit for search warrant had already been arrested when he came forth with his statement did not operate to prevent a magistrate from finding reliability despite claim that, given his arrest, informant had a strong motive to furnish information, however, unreliable, in order to curry favor with authorities. Com. v. Norris (1978) 383 N.E.2d 534, 6 Mass.App.Ct. 761.

Personal observation is a sufficient basis upon which to predicate a finding of reliability of the informant and to support a finding of probable cause for the issuance of a search warrant. Com. v. Martin (1978) 381 N.E.2d 1114, 6 Mass.App.Ct. 624.

Where reliability of informant was established by reason of his having recently provided police with information leading to at least three arrests, informant's information was grounded on his personal observations which were corroborated by police observations, and affiant's shift from the use of past tense to the use of the present tense during course of his narration of information he had received from informant warranted inference that heroin would be found in apartment at time of application for warrant, search warrant was valid. Com. v. Flaherty (1978) 375 N.E.2d 353, 6 Mass.App.Ct. 876.

Where affidavit in support of issuance of search warrant with respect to alleged violation of gaming laws set out underlying circumstances from which informant drew his conclusions and contained statements concerning observations of police officers for period of about four months, even though characterization of informer as being "very reliable" did not satisfy requirement of proof of credibility of informant, affidavit was sufficient to support issuance of warrant. Com. v. Pope (1968) 241 N.E.2d 848, 354 Mass. 625.

Police officer's affidavit based on information received by detective from "reliable informant who in the past has given him information that resulted in the arrest and convictions of other

defendants" that laundry bags containing stolen fur coats were concealed in apartment at specified address was sufficient to warrant issuance of search warrant. Com. v. Brown (1968) 237 N.E.2d 53, 354 Mass. 337.

Affidavit, which stated that reliable informer, whose story was corroborated, had told affiant that defendant had taken part in robbery, that victim had identified defendant as one of the robbers, and that affiant knew that defendant and other man accused of robbery were close associates, complied with requirements of this section dealing with affidavit in support of application for search warrant insofar as it established probable cause for involvement of defendant, and language of affidavit and warrant was sufficient to justify legal search and seizure of items which were produced. Com. v. Cuddy (1967) 231 N.E.2d 368, 353 Mass. 305.

20. ---- Veracity, reliability of informant

Independent police corroboration of detailed information provided by unidentified informant satisfied veracity prong of test for determining whether unidentified informant's statement could be used to support finding of probable cause to issue search warrant; individual operating vehicle identified as vehicle to transport heroin to dealer was known by police to be heroin dealer and user, and others identified by informant as customers of occupants of second floor apartment were independently known to the police to be heroin dealers. Com. v. Carrasco (1989) 540 N.E.2d 173, 405 Mass. 316.

21. ---- Basis of information, reliability of informant

Even assuming reliability of informant, identified only as "J" in affidavit submitted to issuing judge as part of application for search warrant of defendant's residence, other information contained in affidavit was insufficient to lend credibility to two tips received from "J" by police to effect that heroin was being kept at defendant's residence, where there was nothing in affidavit to suggest that "J's" information was based upon his personal knowledge or to disclose underlying facts and circumstances upon which tips were based amounting to probable cause that heroin would be found at that location. Com. v. Zayas (1978) 380 N.E.2d 1329, 6 Mass.App.Ct. 931.

Affidavit which alleged that affiant bought package of cigarettes with counterfeit stamp from defendant's truck driver and obtained from him the defendant's name and address of his warehouse did not disclose mere "tip" by "informer" but furnished reliable information usable in affidavits and showed probable cause for issuing warrants to search defendant's truck and warehouse for cigarettes being sold with counterfeit tax stamps. Com. v. Morris (1970) 263 N.E.2d 458, 358 Mass. 219.

Affidavit of police officer, in support of application for search warrant, was deficient in stating facts essential to showing probable cause for issuance of warrant, where language of affidavit did not state what information was communicated to affiant by eyewitnesses, how either eyewitnesses or affiant had any reason to know where items sought were likely to be found, what investigations had been made and by whom, what opportunity informants, eyewitnesses, and affiant had to observe or ascertain incidents or facts relevant to probable cause, what relation items sought bore to robbery, or why informants were considered reliable. Com. v. Causey (1969) 248 N.E.2d 249, 356 Mass. 125.

22. ---- Incriminating admissions, reliability of informant

Informant's statement in search warrant affidavit that he was in defendant's apartment "to get turned on with cocaine," did not indicate that he committed a crime, and thus was not a statement against his penal interest providing a basis for determining that his information was reliable. Com. v. Nowells (1983) 458 N.E.2d 1186, 390 Mass. 621.

With regard to a search warrant affidavit, if an informant's statement does not provide a ground for concluding that he committed a crime, it is not a statement against his penal interest, does not carry its own indicia of credibility, and does not provide a basis for determining that his information is reliable. Com. v. Nowells (1983) 458 N.E.2d 1186, 390 Mass. 621.

Incriminating admissions by one who asserts participation tend to show reliability of his statements, and it was no valid objection to issuance of search warrants that informant of police officer applying for warrants had participated in robbery. Com. v. Owens (1966) 216 N.E.2d 411, 350 Mass. 633.

23. ---- Identity, reliability of informant

Affidavit based on information obtained by trooper from unidentified informant contained enough evidence of illegal activity to establish probable cause to search apartment; information was based on personal observation, it was detailed, and was significantly corroborated by independent police observation. Com. v. Carrasco (1989) 540 N.E.2d 173, 405 Mass. 316.

Reports of named citizen living at stated address that he had come upon direct evidence of criminal activity on stepbrother's premises did not have to be subjected to same degree of investigation of his reliability as those of nameless informer in order to establish probable cause for issuance of search warrants. Com. v. Grzembski (1984) 461 N.E.2d 248, 17 Mass.App.Ct. 1029, review granted 464 N.E.2d 73, 391 Mass. 1104, affirmed 471 N.E.2d 1308, 393 Mass. 516.

Unnamed informants' detailed statements corroborating each other in significant, detailed respects, particularly as to criminal conduct or as to admission of serious wrongdoing by a person, can alone support a finding of probable cause by establishing the veracity of the informants. Com. v. Nowells (1983) 458 N.E.2d 1186, 390 Mass. 621.

Information provided by a potential codefendant of party whose property was to be searched could be relied upon to establish probable cause for issuance of search warrant. Com. v. Norris (1978) 383 N.E.2d 534, 6 Mass.App.Ct. 761.

Information provided by one who is a potential codefendant of person to be searched may be relied upon to establish probable cause for issuance of search warrant. Com. v. Von Utter (1969) 246 N.E.2d 806, 355 Mass. 597.

The identity of an informant need not be disclosed in affidavit for search warrant provided the basis for believing the informant is disclosed in the affidavit. Com. v. Monosson (1966) 221 N.E.2d 220, 351 Mass. 327.

24. Hearsay

Although probable cause to issue a search warrant may be established by hearsay statements of an informant, affidavit must inform magistrate of some of the underlying circumstances from which affiant concluded that informant was credible or information reliable and from which informant concluded that property subject to warrant is where it is claimed to be. Com. v. Norris (1978) 383 N.E.2d 534, 6 Mass.App.Ct. 761.

Hearsay may be relied on to establish probable cause for issuance of search warrant. Com. v. Von Utter (1969) 246 N.E.2d 806, 355 Mass. 597.

Hearsay may be basis for search warrant but magistrate must be informed of some underlying circumstances from which informant drew his conclusions and some of underlying circumstances from which officer concluded that informant, whose identity may not be disclosed, was credible or his information reliable. Com. v. Pope (1968) 241 N.E.2d 848, 354 Mass. 625.

Hearsay may be basis for search warrant. Com. v. Owens (1966) 216 N.E.2d 411, 350 Mass. 633.

"Probable cause" did not exist for issuance of warrants to search for gaming implements where the applications were based in major part upon a hearsay report of F.B.I. agent, and applications contained no indication of basis of agent's knowledge, or of his conclusion that racing information was being transmitted, or of applicant's knowledge of then current activities of defendant and his employee, and there was no

description of any surveillance of defendant or his associates by applicant or others. Com. v. Rossetti (1965) 211 N.E.2d 658, 349 Mass. 626.

25. Oral testimony

Oral statements given to magistrate issuing search warrant may be considered when they do not bear on probable cause determination. Com. v. Cefalo (1980) 409 N.E.2d 719, 381 Mass. 319.

Facts constituting probable cause to support issuance of arrest warrant are not required to be made a part of complaint on which warrant is issued or part of any affidavit or other document; complaints on which warrants are based may be issued on basis of oral testimony under oath. Com. v. Baldassini (1970) 260 N.E.2d 150, 357 Mass. 670.

Contents of affidavit supporting search warrant cannot be buttressed by oral testimony as to what was stated to magistrate at time search warrant was issued. Com. v. Penta (1967) 225 N.E.2d 58, 352 Mass. 271.

Testimony of assistant court clerk as showing addition to affidavit of phrase "obtained in the commission of a crime" after search warrant was issued was of doubtful effect to impugn search warrant where there was nothing about affidavit in record to corroborate clerk's testimony. Com. v. Penta (1967) 225 N.E.2d 58, 352 Mass. 271.

Where affidavit which furnished basis for search warrant failed to comply with this section, court could not consider the sworn testimony presented to the magistrate in addition to the information contained in the written affidavit in making its decision as to probable cause for issuance of warrant. Com. v. Monosson (1966) 221 N.E.2d 220, 351 Mass. 327.

26. Sufficiency of affidavits--In general

Even though typewritten pages attached to "Affidavit In Support of Application for Search Warrant" form were not sworn to and contained no jurat, typewritten pages were incorporated into printed affidavit form and thus, were properly sworn to so as to sustain warrant. Com. v. Bass (1987) 512 N.E.2d 519, 24 Mass.App.Ct. 972.

Issuance of warrant to search defendant's apartment for evidence connected to armed robbery was supported by affidavit; affidavit contained victims' descriptions of robber's mask and gun, recited that anonymous informant told police that defendant had committed the robbery and that defendant's apartment contained items matching descriptions provided by robbery victims, recited statements by defendant's landlord to police that defendant had

large amounts of cash when he rented the apartment shortly after the robbery, and stated that defendant had extensive criminal record, which included theft and weapons offenses; police investigated and corroborated anonymous informant's information. Com. v. Germain (1985) 486 N.E.2d 693, 396 Mass. 413.

An affidavit for search warrant must contain enough information for an issuing magistrate to determine that the items sought are related to the criminal activity under investigation and that they reasonably may be expected to be located in the place to be searched at the time the search warrant issues. Com. v. Cinelli (1983) 449 N.E.2d 1207, 389 Mass. 197, certiorari denied 104 S.Ct. 186, 464 U.S. 860, 78 L.Ed.2d 165.

Where there were no circumstances set out in affidavit which might indicate that storage of blasting caps in trailer was unlicensed and where only other circumstance set out in affidavit was that trailer to be searched under warrant was near other trailers which contained pesticides characterized by officer as "illegal," affidavit was not sufficient to support warrant to search defendant's premises or to support seizure of dynamite on basis of that warrant. Com. v. Marra (1981) 426 N.E.2d 1180, 12 Mass.App.Ct. 956.

Affidavit submitted by police officer as basis for search warrant, even taking into account matters of which the clerk could reasonably take judicial notice such as the general location of riots and disorders then in progress in city, was insufficient as basis for issuing of search warrant particularly in asserting facts having a tendency to show the described conduct to be criminal, and hence a motion to suppress a pistol found under back seat of defendant's automobile when automobile was searched pursuant to warrant issued after defendant's arrest should have been granted. Com. v. Stevens (1972) 281 N.E.2d 224, 361 Mass. 868.

Affidavit for warrant to search motor vehicle was sufficient where affiant stated that one of three men whom officer had arrested for breaking and entering in the nighttime with intent to commit a felony had a motor vehicle on property which had been broken into that another defendant ran to the automobile when coming from property which had been broken into, that affiant observed burglar tools in automobile and that one defendant said "I hope they don't get the machine gun" even though it ultimately was established that larceny was effected at building neighboring the building from which officer observed one defendant coming. Com. v. Gizicki (1970) 264 N.E.2d 672, 358 Mass. 291.

Affidavit for search warrant was sufficiently precise to render it adequate even though it referred to some information received by affiant about five months earlier, where it also recited information received "this past week" and identified a house as being occupied by defendant where, in presence of informer, "at

this time" (within a week) defendant allegedly had narcotics in his possession and solicited the informer for a purchase. Com. v. Misci (1970) 263 N.E.2d 445, 358 Mass. 804.

Search affidavits, which recited information obtained by police during four- month period defendants were under surveillance in connection with suspected auto theft ring, were not inadequate. Com. v. Guerro (1970) 260 N.E.2d 190, 357 Mass. 741.

Affidavit of FBI agent which stated that information from unnamed informant had proved reliable over five year period and that information furnished had resulted in convictions of others was sufficient to show basis upon which client believed informant to be reliable. Com. v. Moran (1967) 228 N.E.2d 827, 353 Mass. 166.

Addition of phrase "obtained in the commission of a crime" to affidavit after search warrant supported by such affidavit was issued was not significant addition to the affidavit relating to prima facie illegal articles, and did not invalidate search warrant. Com. v. Penta (1967) 225 N.E.2d 58, 352 Mass. 271.

27. ---- Attached documents, sufficiency of affidavits

Cumulative effect of defects in affidavit for search warrant for residence, including that two pages attached to affidavit containing information which could not fit on warrant form were not signed, and that description of property sought was transposed with description of location to be searched, and that phrase requesting that warrant permit search of "the bodies of any parties other than the owners located at the above premises at time of service of warrant" was included without probable cause for such search, did not render affidavit insufficient to support issuance of warrant. Com. v. Truax (1986) 490 N.E.2d 425, 397 Mass. 174.

Where, besides search warrant application and affidavit, there was reference to "attached reports," reports were part of affidavit, and affidavit, including report by officer himself dated day before application, was sufficient to justify issuance of search warrant. Com. v. Daly (1971) 266 N.E.2d 870, 358 Mass. 818.

28. ---- Connection between premises and defendant, sufficiency of affidavits

Search warrant application sufficiently stated connection between defendant and apartment to be searched, even though affidavit did not mention defendant's connection with apartment, where application form referred to apartment as occupied by or in possession of defendant. Com. v. McRae (1991) 581 N.E.2d 502, 31 Mass.App.Ct. 559, review denied 586 N.E.2d 10, 411 Mass. 1105.

In that it was impossible for police to predict what person or persons would be at apartment at given time and heroin described in warrant as target of search could be concealed on the person, affidavit which asserted that informant had been inside apartment on two occasions within ten days prior to signing of affidavit and seen occupants selling heroin to other persons present in apartment and that persons trafficking in heroin had been seen entering and leaving apartment established probable cause for search of all persons found in apartment, rendering search of defendant pursuant to premises search warrant authorizing search of "any person present" valid. Com. v. Smith (1976) 348 N.E.2d 101, 370 Mass. 335, certiorari denied 97 S.Ct. 364, 429 U.S. 944, 50 L.Ed.2d 314.

Officer's affidavit that he had observed defendant entering certain dwelling and third floor apartment occupied by defendant's girl friend several times within month and had observed automobile wanted in connection with theft parked in driveway of dwelling provided ample justification for magistrate to conclude that there was probable cause to believe that stolen goods would be found in apartment and justified issuance of search warrant despite defendant's lack of possessory interest in premises. Com. v. DeMasi (1972) 283 N.E.2d 845, 362 Mass. 53.

Affidavit in support of search warrant stating that affiant was informed by reliable informant that named person was in possession of heroin, that such person had moved by the time police officers went to his address, and that named person was observed entering specified lodging house did not present reasonable grounds for magistrate to infer that defendant, who occupied fourth floor of the lodging house, was same person named by informant and did not state facts essential to establish probable cause for issuance of warrant; thus, evidence found in search of defendant's apartment was not admissible in prosecution for possession of heroin and drug paraphernalia. Com. v. Perada (1971) 268 N.E.2d 334, 359 Mass. 147.

29. ---- Source of information, sufficiency of affidavits

Informant's tip failed to disclose adequate basis of knowledge to infer probable cause to believe defendant possessed drugs but, rather, stated only that informant "had been told" the information; thus, police lacked probable cause to search trunk of defendant's automobile, and evidence found in his house during search predicated on marihuana discovered in trunk search was to be suppressed. Com. v. Reddington (1985) 480 N.E.2d 6, 395 Mass. 315.

Where affidavit in support of search warrant was based on personal observations of actions consistent with those of persons engaged in illegal act of registering **bets** on athletic contests, and such observations were made by police officers with special experience in investigating **gambling** activity, the affidavit,

when viewed in common sense and realistic fashion, revealed sufficient data to justify finding of probable cause. Com. v. Lotfy (1979) 391 N.E.2d 1249, 8 Mass.App.Ct. 126.

Affidavit of FBI special agent stating that agent personally knew defendant and that defendant had been under investigation by agent for five years was sufficient to show basis for personal belief of agent that defendant was engaged in illegal gaming activities. Com. v. Moran (1967) 228 N.E.2d 827, 353 Mass. 166.

Affidavit which showed that source of police officer's information and knowledge was that he personally saw stolen automobiles in garage was sufficient to support issuance of search warrant. Com. v. Penta (1967) 225 N.E.2d 58, 352 Mass. 271.

Affidavit which did not disclose source of police officer's information or personal knowledge, and which did not state that police officer saw automobile, was not sufficient to support issuance of search warrant pursuant to which garage was searched and automobile in question was seized. Com. v. Penta (1967) 225 N.E.2d 58, 352 Mass. 271.

Application for search warrant in narcotics case was inadequate where there was complete failure to describe (1) source of officer's information, (2) any facts indicating reliability of that source and (3) nature of information upon which officer was acting. Com. v. Mitchell (1966) 215 N.E.2d 324, 350 Mass. 459.

Affidavit given by police officer stating his belief that premises to be searched were unlawfully used as common gaming house without stating facts, information and circumstances upon which he relied to establish his belief was insufficient to permit issuance of search warrant. Com. v. Dias (1965) 211 N.E.2d 224, 349 Mass. 583.

30. ---- Controlled substances, sufficiency of affidavits

Affidavits read as whole provided sufficient basis to justify warrant for search of defendant's apartment, where Drug Enforcement Administration agent's affidavit reported tip from informant who had been working for agent for over six months as cooperating individual and was responsible for three arrests and federal indictments, informant stated he had negotiated with defendant within past week for purchase of drugs in excess of $4,000 and believed defendant was storing at his apartment drugs informant was going to buy, and police officer's affidavit indicated police officer himself had found hashish at defendant's apartment when defendant was arrested on unrelated charge. Com. v. Saleh (1985) 486 N.E.2d 706, 396 Mass. 406.

There was nothing in affidavit indicating basis of informant's knowledge that controlled substances were located in defendant's

apartment, and record supported findings that informant never told affiant that alleged "middleman" in drug transaction said he had obtained cocaine from defendant in defendant's apartment, and that misrepresentation in affidavit to effect that informant told affiant that "middleman" said he got drugs from defendant was intentional; therefore, statement attributed to "middleman" was properly excised, and as result, affidavit did not establish probable cause to believe that police would find controlled substances in defendant's apartment. Com. v. Honneus (1983) 453 N.E.2d 1053, 390 Mass. 136.

For affidavit to be sufficient, as a basis for issuance of a warrant authorizing search for narcotics, the affidavit must set forth some of the underlying circumstances from which informant has concluded that narcotics are where he claims that they are and some of the underlying circumstances from which officer has concluded that informant, whose identify need not be disclosed, is credible or that his information is reliable. Com. v. Conway (1980) 412 N.E.2d 903, 10 Mass.App.Ct. 738.

Affidavit of police officer, stating that he had received undetailed tips from two informants that accused was involved in drug trafficking and setting forth other information gathered by police, was insufficient to furnish probable cause for issuance of search warrant. Com. v. Kaufman (1980) 408 N.E.2d 871, 381 Mass. 301.

Affiant's allegation that known dealer in cocaine was, on one occasion, observed by him leaving building in which defendants' apartment was located was not sufficiently corroborative of informant's statements contained in affidavit submitted in support of application for search warrant where affidavit did not indicate that individual known to police as drug dealer had been observed frequenting defendants' address. Com. v. Gisleson (1978) 378 N.E.2d 1012, 6 Mass.App.Ct. 911.

Affidavit of police officer sufficiently established probable cause for issuance of warrant to search specified house, where it appeared from the affidavit that the affiant had received information from an informant that a certain car bearing a specified registration number was being used to deliver drugs from the house to specified area, where the affidavit then stated that the car was followed from the house to the area where known narcotics dealers were observed to approach the car and pass what appeared to be money and receive what appeared to be bundles of heroin, and where the affidavit stated that the observations were made from an undercover vehicle. Com. v. Houston (1974) 312 N.E.2d 223, 2 Mass.App.Ct. 845.

Affidavit which recited that informant, known to have been reliable in past and to have furnished information leading to previous arrests of drug offenders, believed that narcotics were being sold on premises of named barber shop, and that police

officers had observed numerous known drug addicts entering and leaving barber shop, was sufficient to support issuance of valid warrant to search barber shop. Com. v. Snow (1973) 298 N.E.2d 804, 363 Mass. 778.

Search warrant affidavit stating that informant, who had proved reliable in connection with previous arrests, had observed heroin sale by identified person in apartment and that officer had seen drug-connected persons entering and leaving building, justified issuance of warrant. Com. v. Pellier (1972) 289 N.E.2d 892, 362 Mass. 621.

Affidavit for search warrant executed by state police officer stating the underlying circumstances from which informers drew their conclusions and on which they based statements which they gave to police relative to presence of drugs and other contraband at apartment and stating circumstances from which affiant concluded that informants were credible and their information was reliable justified conclusion that probable cause existed to search the apartment. Com. v. Stewart (1971) 267 N.E.2d 213, 358 Mass. 747.

Search affidavit, which recited in some detail substance of information police had from a reliable informer as to a transaction in a large quantity of marihuana which was due to take place morning of search, and which contained a further confirmation of every detail of information received except fact that marihuana had been taken out of apartment rather than another one, established probable cause to search apartment, and was not insufficient. Com. v. Franklin (1970) 265 N.E.2d 366, 358 Mass. 416.

Affidavit setting forth that defendant was considered major source of narcotics in area, that defendant had admitted use and possession of narcotics to police officers, that he was often seen with known addicts, and that information supplied by reliable informant led to arrest of two men with 24 bags of heroin in their possession who were identified by informant as "pushers" for defendant was sufficient for issuance of search warrant, and evidence seized as result of warrant was admissible. Com. v. Ellis (1970) 254 N.E.2d 408, 356 Mass. 574.

31. ---- Gaming, sufficiency of affidavits

Affidavit for search warrant, which indicated only that defendant had been observed in proximity to man acting furtively in premises suspected of illegal gaming, did not establish probable cause for search of defendant; there was no indication that defendant was engaged in business with furtive man, that defendant had been present repeatedly in suspected premises, or that he was already known to police as taker of **bets.** Com. v. Sampson (1985) 481 N.E.2d 521, 20 Mass.App.Ct. 970.

Where affidavit in support of search warrant showed only that on one occasion person at one address received telephone call and placed two **bets,** and person at such address received, 15 days later, results of horse race, such facts did not constitute probable cause to believe that **gaming** operations were conducted at the address even when coupled with facts that telephone calls were made by convicted gambler from premises at which it reasonable appeared **gaming** operations were conducted; judge could not conclude from common knowledge and experience that bookies do not call customers to receive **bets** and to disclose race results so as to demonstrate that the calls must have been from one part of **gambling** operation to another. Com. v. Taglieri (1979) 390 N.E.2d 727, 378 Mass. 196, certiorari denied 100 S.Ct. 288, 444 U.S. 937, 62 L.Ed.2d 197.

Testimony that, during telephone calls, horse race **bets** were placed and that results of race were given did not establish probability that premises on which tapped telephone was located contained equipment for registering **bets** or conducting other **gaming** operations, and affidavit provided insufficient basis for search warrant. Com. v. Taglieri (1978) 381 N.E.2d 1118, 6 Mass.App.Ct. 934, affirmed 390 N.E.2d 727, 378 Mass. 196, certiorari denied 100 S.Ct. 288, 444 U.S. 937, 62 L.Ed.2d 197.

Affidavit to effect that affiant officer observed certain person enter certain premises at about 11:00 A.M. and 11:05 A.M. on February 21st, 23rd, and 24th, take bets on both horses and numbers from workers and accept money from them, write such bets on small notebook carried on his person, and put money given him into his pocket was sufficient to justify issuance of search warrant. Com. v. Sepeck (1971) 271 N.E.2d 755, 359 Mass. 757.

Search warrant was not too general on its face because it authorized police to search for "any **lottery,** policy or pool tickets, slips, checks, manifold books or sheets, memoranda of any **bet,** or other implements, apparatus or materials of any form of **gaming *** * *," nor was application for warrant invalid for such reason. Com. v. Daly (1971) 266 N.E.2d 870, 358 Mass. 818.

Affidavits containing detailed information as to **gaming** activities carried on in cafe justified issuance of warrant for search of first floor rooms of cafe, which consisted of two dining rooms, two restrooms, and a kitchen, rather than only kitchen and dining area. Com. v. Pica (1970) 265 N.E.2d 379, 358 Mass. 809.

Affidavits for search warrant stating that named defendant had bookmaking office, was engaged in transmission of horse racing information, was operating illegal activity through particular phone number at particular address and was seen entering room at the address during hours on particular dates within horse racing season and during hours in which races are held and that defendant had been convicted of contempt for refusal to answer

questions of grand jury investigating gambling was sufficient to show probable cause for issuance of warrant. Com. v. Moran (1967) 228 N.E.2d 827, 353 Mass. 166.

Where affidavits of police officer and FBI agent did not contain ancient information based solely on report of anonymous informer but stated that alleged gaming offenses were of continuing nature and that defendant was under police surveillance, search warrant was not defective for lack of sufficient dates of offenses in the supporting affidavits. Com. v. Moran (1967) 228 N.E.2d 827, 353 Mass. 166.

Where warrant was invalid because affidavit accompanying its issuance was insufficient, arrest of defendants for **gaming** and **lottery** law violations and seizure of evidence were unlawful. Com. v. Dias (1965) 211 N.E.2d 224, 349 Mass. 583.

32. ---- Obscene materials, sufficiency of affidavits

Once an affidavit for search warrant provides a sufficiently detailed factual description of an allegedly obscene film to allow magistrate to focus searchingly on whether a film is obscene, a further description of film, addressing other elements of the three-part definition of obscenity, is not necessary. Com. v. Dane Entertainment Services, Inc. (No. 1) (1983) 452 N.E.2d 1126, 389 Mass. 902.

Affidavit which described each scene in allegedly obscene film in exhaustive detail, including graphic depictions of repeated acts of fellatio, cunnilingus, masturbation, and sexual intercourse, provided a sufficiently detailed factual description of film to allow magistrate to focus searchingly on whether film was obscene and fully supported magistrate's finding of probable cause to believe that film was obscene. Com. v. Dane Entertainment Services, Inc. (No. 1) (1983) 452 N.E.2d 1126, 389 Mass. 902.

33. Inferences

If affidavit in support of issuance of a search warrant fails to explain exactly how the informant has acquired the information, magistrate may infer, from the promptness of the information, the specificity of the observations and the particularity of detail as to the location, that it is based on personal knowledge. Com. v. Conway (1980) 412 N.E.2d 903, 10 Mass.App.Ct. 738.

Fact that statement, which was within affidavit in support of issuance of search warrant and which was to effect that defendant has been selling specific classes of controlled substances in recent past, was not phrased in present tense did not indicate that the information was stale and of no probative value; when read with other portions of the affidavit, all phrased in present tense, information that defendant had been selling controlled

substances in recent past raised inference of continuing observation on part of the informant. Com. v. Conway (1980) 412 N.E.2d 903, 10 Mass.App.Ct. 738.

Where police officer with special experience in investigating gambling activity states in affidavit that he has drawn inferences from facts which inexperienced person might not draw from those facts, magistrate considering issuance of search warrant based on the affidavit may rely on those inferences. Com. v. Lotfy (1979) 391 N.E.2d 1249, 8 Mass.App.Ct. 126.

In determining whether affidavit supports issuance of search warrant, judge or magistrate may apply common knowledge and may draw reasonable inferences from facts before him; however, peculiar experience and knowledge of issuing judge or magistrate cannot support issuance of warrant. Com. v. Taglieri (1979) 390 N.E.2d 727, 378 Mass. 196, certiorari denied 100 S.Ct. 288, 444 U.S. 937, 62 L.Ed.2d 197.

It was not necessary that magistrate be informed specifically that informant mentioned in affidavit for search warrant had seen stolen tickets since magistrate was permitted to draw reasonable inferences such as fact that informant had knowledge of both defendant's identity and location of stolen tickets. Com. v. Norris (1978) 383 N.E.2d 534, 6 Mass.App.Ct. 761.

Fact that one of informants upon whose statement affidavit in support of application for search warrant was based had been to defendants' address during previous week and had reported that male defendant was "in good shape with grass" was inadequate to support inference that informant observed any controlled substance at that location. Com. v. Gisleson (1978) 378 N.E.2d 1012, 6 Mass.App.Ct. 911.

In passing on sufficiency of affidavits for search warrants for trucks and warehouse of defendant in which there were cigarettes with counterfeit tax stamps, it could be inferred that information concerning motor vehicle registration of defendant's trucks and address of defendant's warehouse was contained in state corporation and motor vehicle registration records. Com. v. Morris (1970) 263 N.E.2d 458, 358 Mass. 219.

Affidavit supporting search warrant should be considered in its entirety; information in affidavit taken as a whole together with inferences which reasonably could be drawn from information by judicial mind may justify conclusion that probable cause exists to make search. Com. v. Brown (1968) 237 N.E.2d 53, 354 Mass. 337.

34. Presumptions

Although it may not be easy to determine when an affidavit accompanying application for search warrant demonstrates

existence of probable cause in a particular case, resolution of doubtful or marginal cases should be determined largely by the preference to be accorded to warrants. Com. v. Blye (1977) 362 N.E.2d 240, 5 Mass.App.Ct. 817.

In absence of showing of invalidity of search warrant, its validity would be presumed. Com. v. Coco (1968) 235 N.E.2d 555, 354 Mass. 78.

35. Signatures

Failure of affiant who made affidavit presented to support search warrant application to sign papers attached to warrant application did not affect the validity of search warrant, particularly where the supplemental pages which contained information that could not fit on warrant form were referred to by the language "see attached page" which appeared in appropriate places in the affidavit form. Com. v. Truax (1986) 490 N.E.2d 425, 397 Mass. 174.

36. Review

In determining whether affidavit in support of search warrant, which directed seizure from insurance agency proprietor-defendant's home of all records and papers of insurance agency, was sufficient to establish probable cause for its issuance, Appeals Court, in examining affidavit, viewed information contained therein with commonsense, nontechnical, ungrudging and positive attitude, and information was to be evaluated as whole, and it was permissible to draw reasonable inferences therefrom. Com. v. Kenneally (1980) 406 N.E.2d 714, 10 Mass.App.Ct. 162, appeal decided 418 N.E.2d 1224, 383 Mass. 269, certiorari denied 102 S.Ct. 170, 454 U.S. 849, 70 L.Ed.2d 138.

In determining whether affidavit in support of search warrant, which directed seizure from insurance agency proprietor-defendant's home of all records and papers of insurance agency, was insufficient to establish probable cause for its issuance, that is, whether scope of search was impermissibly broadened beyond foundation of probable cause, Appeals Court bore in mind requirement of certain case that there must be cause to believe that "mere evidence" which was to be seized pursuant to warrant would aid in particular apprehension or conviction. Com. v. Kenneally (1980) 406 N.E.2d 714, 10 Mass.App.Ct. 162, appeal decided 418 N.E.2d 1224, 383 Mass. 269, certiorari denied 102 S.Ct. 170, 454 U.S. 849, 70 L.Ed.2d 138.

Defendant seeking suppression on ground of misstatements in search warrant affidavit should be obliged to make preliminary showing, ordinarily in affidavit form, that he has case worthy of full hearing, and otherwise hearing should be denied. Com. v. Reynolds (1977) 370 N.E.2d 1375, 374 Mass. 142.

Order reversing district court's order granting defendants' motion to suppress evidence on ground that affidavits supporting application for search warrant did not contain facts sufficient to establish reliability of informant, and hence failed to show probable cause, was nonappealable interlocutory order. Com. v. Frado (1977) 362 N.E.2d 206, 372 Mass. 866.

If police are to be encouraged to use warrant procedure it seems good policy to allow a certain leeway or leniency in the after-the-fact review of sufficiency of applications for warrants. Com. v. Corradino (1975) 332 N.E.2d 907, 368 Mass. 411, post-conviction relief denied.

Inquiry into validity of search warrant is ordinarily limited to those facts which issuing magistrate had before him in affidavit in support of application for search warrant. Com. v. Fleurant (1974) 311 N.E.2d 86, 2 Mass.App.Ct. 250.

Defendant, at trial and in his 1967 appeal, should have made contention that second and third of three affidavits supporting separate search warrants were based on knowledge obtained during illegal search under first warrant, but where his failure to do so was probably because his counsel expected that all warrants would be held invalid, doubts would be resolved in defendant's favor, and defendant's conduct at trial and on appeal did not constitute waiver of his constitutional claim. Com. v. Penta (1972) 282 N.E.2d 674, 361 Mass. 894.

Where affidavit seeking search warrant is not purely conclusory, reviewing courts should be slow to jettison warrants which lack "elaborate specificity." Com. v. Von Utter (1969) 246 N.E.2d 806, 355 Mass. 597.

In determining sufficiency of information of affidavit for issuance of search warrant, reviewing court need not isolate each individual statement and determine whether it is a conclusion, but court should deal with affidavits in their entirety and draw inferences therefrom. Com. v. Moran (1967) 228 N.E.2d 827, 353 Mass. 166.

M.G.L.A. 276 § 2B

MA ST 276 § 2B

END OF DOCUMENT

MA ST 271 s 24
M.G.L.A. 271 § 24

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE I. CRIMES AND PUNISHMENTS

CHAPTER 271. CRIMES AGAINST PUBLIC POLICY

Current through 1998 2nd Annual Sess.

§ 24. Race tracks; owners, proprietors of, or persons present

This chapter shall not authorize the arrest or conviction of the owner or proprietor of a race track or trotting course for the reason that another person has without his knowledge or consent violated any of its provisions relative to the buying and selling of pools or the registering or making of **bets** or to any offence mentioned in the preceding section; nor the arrest or conviction of a person for being present on a race track or trotting course where pools are sold or **bets** registered or made on trials of speed or endurance between horses or other animals; but this exception shall not apply to a person in any way participating or assisting in the buying or selling of pools or registering of **bets.**

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1990 Main Volume

St.1895, c. 419, § 9.
R.L.1902, c. 214, § 24.

AMERICAN LAW REPORTS

Validity, construction, and application of statutes or ordinances involved in prosecutions for transmission of **wagers** or **wagering** information related to bookmaking. 53 ALR4th 801.

LIBRARY REFERENCES

1990 Main Volume

C.J.S. **Gaming** §§ 1, 80 et seq.
Comments.

Horse and dog racing, see M.P.S. vol. 32, Nolan and Henry, § 495.

M.G.L.A. 271 § 24

MA ST 271 § 24

END OF DOCUMENT

MA ST 128C s 2
M.G.L.A. 128C § 2

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XIX. AGRICULTURE AND CONSERVATION
CHAPTER 128C. SIMULCAST **WAGERING** OF HORSE AND DOG RACING

Current through 1998 2nd Annual Sess.

§ 2. Simulcast **wagering** by racing meeting licensees; restrictions

A racing meeting licensee shall have the right to simulcast live races, for **wagering** purposes or otherwise, within the commonwealth and to and from **pari- mutuel** licensees or other licensed **wagering** facilities located outside the commonwealth. Such right shall only be exercised on any calendar day on which it conducts a racing performance, a dark day or during a dark season; provided, however, that any violation of the provisions of this chapter shall be cause for the commission to invoke its power to suspend or revoke its operating license pursuant to section eleven of chapter one hundred and twenty- eight A. Where two racing meeting licensees in Norfolk county use the same track during a calendar year, each of said licensees shall have the same rights to simulcast during any period of time between racing meetings. A racing meeting licensee shall make simulcasts of live races conducted by such racing meeting licensee available to all otherwise eligible racing meeting licensees, including greyhound racing meeting licensees who have successfully made application to the commission to simulcast, on the same terms, to include economic terms, and conditions. Such right to simulcast is subject to the following exceptions and conditions:

Each racing meeting licensee shall comply with the following applicable provisions.

All licensees licensed to conduct running horse racing meetings in Suffolk county, and, all licensees licensed to conduct running horse racing meetings or harness horse racing meetings in Norfolk county, not including running horse or harness horse racing meetings held in connection with a state or county fair, may simulcast live running horse or live harness horse races which are conducted at a host track, only.

All licensees licensed to conduct greyhound dog racing meetings, not including greyhound dog racing meetings held in connection with a state or county fair, may simulcast greyhound dog racing with the permission of the state racing commission. With respect to horse racing, the greyhound racing meeting licensee located in Suffolk county may simulcast up to fifty racing cards and up to

fifteen special events of national significance as determined by the commission; provided, however, that said fifteen special events shall be in addition to any special events simulcast by said licensee which are shown as part of a live program from a host track, during a racing season only; provided, further, that each of these racing cards or special events shall be subject to application to and approval by the commission. Said greyhound racing meeting licensee located in Suffolk county shall not be permitted to simulcast any thoroughbred or harness horse racing cards from a host track, whether within or without the commonwealth, in any calendar year, during the running horse racing meetings held in Suffolk county. With respect to horse racing, the greyhound racing meeting licensee located in Bristol county may simulcast with the permission of the commission every live running horse racing card of the running horse racing meeting licensee located in Suffolk county. With the permission of the running horse racing meeting licensee located in Suffolk county, and subject to the approval of the commission, the greyhound racing meeting licensee located in Bristol county may simulcast a companion card from a **pari-mutuel** running horse facility located outside the commonwealth; provided, however, that if the running horse racing meeting licensee located in Suffolk county grants a companion card to the greyhound racing meeting licensee located in Bristol county, the running horse racing meeting licensee in Suffolk county shall grant an identical companion card to the harness horse racing meeting licensee located in Norfolk county. Said greyhound racing meeting licensee located in Bristol county shall be prohibited from simulcasting any running horse race during the dark days and dark season of the running horse racing meeting licensee in Suffolk county; provided, however, that such greyhound racing meeting licensee located in Bristol county may simulcast up to fifteen special events of national significance as determined by the commission; provided, further, that said fifteen special events shall be in addition to any special events simulcast by said licensee which are shown as part of a live program from a host track.

Whenever a racing meeting licensee within the commonwealth is conducting a full schedule of live racing performances of horses of either class, any other racing meeting licensee, whether during his racing season or his dark season, shall, if the licensee chooses to simulcast, simulcast the live racing performance from within the commonwealth and shall not simulcast any other race of the same class as the live racing performance until the end of the live racing performances within the commonwealth for that day; provided, however, that the harness horse racing meeting licensee located in Norfolk county may simulcast an entire racing card from a running horse racing meeting located in the state of California during the live racing performance of the running horse racing meeting licensee located in Suffolk county; provided, further, that, with the permission of the running horse racing meeting licensee located in Suffolk

county, and subject to the approval of the commission, the harness horse racing meeting licensee located in Norfolk county may simulcast a companion card from a **pari-mutuel** running horse facility located outside the commonwealth; provided, further, that if the running horse racing meeting licensee located in Suffolk county grants a companion card to the harness horse racing meeting licensee located in Norfolk county, the running horse racing meeting licensee located in Suffolk county shall grant an identical companion card to the greyhound racing meeting licensee located in Bristol county, unless, there is a special event of the same class as the live racing performance, in which case, the special event shall be available to all otherwise eligible racing meeting licensees, including greyhound racing meeting licensees who have successfully made application to the commission to receive said special events, on the same terms, to include economic terms, and conditions that the out-of-state track makes the simulcast available to any other guest track.

All racing meeting licensees, whether acting as a host or guest track for simulcasting purposes shall file with the commission, clerk of the senate and clerk of the house of representatives a copy of all contracts, agreements, or conditions pursuant to which simulcast events are broadcast, transmitted or received which shall include provisions for takeout, commissions and charges.

No racing meeting licensee, whether acting as a guest track or a host track shall simulcast live races unless said licensee conducts a full schedule of live racing performances during a racing season except that if the commission determines that a licensee cannot conduct a full schedule of live racing performances due to weather conditions, race track conditions, strikes, work stoppages, sickness or quarantine not within the control of the licensee, the commission may permit the licensee to continue simulcasting, and if it appears that a racing meeting licensee is or will become unable to conduct a full schedule of live racing performances, the commission shall suspend such right to simulcast until said licensee conducts or resumes a full schedule of live racing performances; provided, further, that no racing meeting licensee shall simulcast live races in the nineteen hundred and ninety-six through nineteen hundred and ninety-nine racing seasons unless each said racing meeting licensee, in each of those racing seasons, is licensed to conduct no fewer than a total of one hundred and fifty racing performances; provided, however, that where two racing meeting licensees in Norfolk county use the same track during the calendar year, each thoroughbred horse racing meeting licensee, in each of those racing seasons, shall be licensed to conduct no fewer than a total of fifty racing performances and each harness horse racing meeting licensee, in each of those racing seasons, shall be licensed to conduct no fewer than a total of one hundred racing performances.

All simulcasts shall comply with the provisions of the Interstate Horseracing Act of 1978, 15 U.S.C. Sec. 3001 et seq. or other applicable federal law; provided, however, that all simulcasts from states whose racing associations do not require approval in compliance with the Interstate Horseracing Act of 1978, 15 U.S.C. Sec. 3004 (a) (1) (A), except simulcasts during the month of August, shall require the approval of the New England Horsemen's Benevolent and Protective Association prior to being simulcast to any racing meeting licensee within the commonwealth; provided, further, that if said association agrees to approve such simulcast for one racing meeting licensee, it shall approve the simulcast for all otherwise eligible racing meeting licensees.

Each racing meeting licensee shall pay a fee for those days, whether a dark day, a day during a dark season, or any day between periods of racing pursuant to an operating license, when no live races are conducted but simulcast races are shown and simulcast wagers are accepted. Such fee shall be determined by the commission in accordance with the license fees charged pursuant to the provisions of chapter one hundred and twenty-eight A. No other daily fee shall be assessed.

Notwithstanding any general or special law to the contrary, any host track that simulcasts a race to any out-of-state **wagering** facility that is within one hundred miles of said host track shall pay to the representative breeders association of the same class as is simulcast, a sum equal to one-quarter of one percent of the total amount **wagered** at the receiving **wagering** facility.

CREDIT(S)

1999 Electronic Pocket Part Update

Added by St.1992, c. 101, § 5. Amended by St.1993, c. 473, § 1; St.1994, c. 60, § 131; St.1995, c. 268, §§ 3 to 6; St.1997, c. 19, § 58.

<General Materials (GM) - References, Annotations, or Tables>

EXPIRATION

<This section expires December 31, 1999. See Historical and Statutory Notes following § 1 of this chapter.>

HISTORICAL AND STATUTORY NOTES

1999 Electronic Pocket Part Update

1993 Legislation

St.1993, c. 473, 1, approved Jan. 14, 1994, in the fifth paragraph, inserted "greyhound dog racing with the permission of

the state racing commission. With respect to horse racing, such greyhound licensee may simulcast", and "horse" preceding "racing cards" and "simulcasting days", substituted "such " for "said" preceding "facility", deleted "said" preceding "fifty racing cards", and substituted "meetings" for "meeting" preceding "held in Suffolk county".

Section 4 of St.1993, c. 473, provides:

"The provisions of this act shall expire on December thirty-first, nineteen hundred and ninety-five."

1994 Legislation

St.1994, c. 60, § 131, approved July 10, 1994, and by § 315 made effective as of July 1, 1994, in the eighth paragraph, inserted "except that if the commission determines that a licensee cannot conduct a full schedule of live racing performances due to weather conditions, race track conditions, strikes, work stoppages, sickness or quarantine not within the control of the licensee, the commission may permit the licensee to continue simulcasting".

Section 133 of St.1994, c. 60, which provided:

"The provisions of sections one hundred and thirty-one and one hundred and thirty-two of this act shall expire on December thirty-first, nineteen hundred and ninety-five.",

was amended by St.1994, c. 126, § 45, to read:

"The provisions of section one hundred and thirty-two of this act shall expire on December thirty-first, nineteen hundred and ninety-five."

1995 Legislation

St.1995, c. 268, § 3, deleted the second paragraph, which read:

"Each racing meeting licensee shall participate in the thoroughbred and standardbred horse and greyhound dog racing sweepstakes **lottery** as provided in section seven. In addition, each racing meeting licensee shall cooperate with the state **lottery** commission in establishing said **lottery."**

Section 4 of St.1995, c. 268, in the fourth paragraph, rewrote the second sentence, which prior thereto read, "With respect to horse racing, such greyhound licensees may simulcast up to fifty racing cards and up to fifteen special events of national significance with purses of one hundred thousand dollars or more, during a racing season only; provided, however, that each of these horse racing cards or special events shall be subject to application to and approval of the commission; provided,

further, that where two or more greyhound dog racing meeting licensees in Bristol county use the same track during a calendar year, the total number of horse simulcasting days permitted at such facility shall be limited to fifty racing cards and fifteen special events; provided, further, that the greyhound racing meeting licensee in Bristol county shall not be permitted to simulcast any thoroughbred or harness horse racing cards from a host track, whether within or without the commonwealth, in any calendar year, during the running horse racing meeting held in Norfolk county; provided, further, that the greyhound racing meeting licensee in Suffolk county shall not be permitted to simulcast any thoroughbred or harness horse racing cards from a host track, whether within or without the commonwealth, in any calendar year, during the running horse racing meetings held in Suffolk county."; and added the third to sixth sentences.

Section 5 of St.1995, c. 268, in the fifth paragraph, inserted the first to third provisos.

Section 6 of St.1995, c. 268, in the seventh paragraph, substituted "ninety- six through nineteen hundred and ninety-nine" for "ninety-three, nineteen hundred and ninety-four, and nineteen hundred and ninety-five".

St.1995, c. 268, was approved Nov. 22, 1995, and by § 21 made effective Jan. 1, 1995. Emergency declaration by the Governor was filed Nov. 28, 1995.

1997 Legislation

St.1997, c. 19, § 58, an emergency act, approved June 6, 1997, in the fourth paragraph, in the fourth sentence, substituted "live running horse" for "live running hose".

LIBRARY REFERENCES

1991 Main Volume

Texts and Treatises

38 Am Jur 2d, Gambling §§ 17-19, 44-47.

NOTES OF DECISIONS

Full week 4
Live races 3
Mootness 2
Suspension 1

1. Suspension

State Racing Commission's decision to allow horse racing track to begin early its dark season, or period between racing seasons,

did not violate statute requiring suspension of licensee's simulcasting privileges when licensee cannot maintain live racing, pending licensee's resumption of full schedule of performances, inasmuch as obligation to suspend simulcasting privileges remained in force only during racing season; once racing season ended, horse racing track could simulcast during dark season. Taunton Dog Track, Inc. v. State Racing Com'n (1997) 674 N.E.2d 226, 424 Mass. 54.

2. Mootness

Action by dog racing companies against State Racing Commission and two horse racing tracks for alleged violations of statutes governing simulcasting was not rendered moot by amendment to statute governing simulcasting of horse and dog racing, which empowered State Racing Commission to permit simulcasting when licensee cannot conduct full schedule of live racing performances due to specified conditions, given dog racing companies' claims for damages under consumer protection statutes. Taunton Dog Track, Inc. v. State Racing Com'n (1997) 674 N.E.2d 226, 424 Mass. 54.

3. Live races

Horse racing track did not violate statute barring track from simulcasting of horse or dog races unless it conducted at least four separate live racing performances each full week during racing season, even though track conducted two or more of its required four separate performances on single day; statute did not expressly require that racing performances be conducted on separate days. Taunton Dog Track, Inc. v. State Racing Com'n (1997) 674 N.E.2d 226, 424 Mass. 54.

Material issue of fact regarding whether horse racing track conducted two separate live racing performances on single day, or whether races were conducted in manner that made them single program, precluded summary judgment on issue of whether track violated statute preventing simulcasting of horse or dog races unless track conducts at least four separate live racing performances each full week during racing season in dog racing companies' action against track and State Racing Commission based on alleged violations. Taunton Dog Track, Inc. v. State Racing Com'n (1997) 674 N.E.2d 226, 424 Mass. 54.

4. Full week

State Racing Commission could reasonably adopt, and apply to horse racing track's disputed performances, definition of term "full week" as covering any seven consecutive days for purposes of statute barring racing track from simulcasting races unless track conducts at least four separate live racing performances each full week during racing season, inasmuch as Commission could reasonably conclude that many racing weeks are not full, due to

weather and other unforeseen conditions that force cancellation of scheduled racing performances. Taunton Dog Track, Inc. v. State Racing Com'n (1997) 674 N.E.2d 226, 424 Mass. 54.

M.G.L.A. 128C § 2

MA ST 128C § 2

END OF DOCUMENT

MA ST 128C s 5
M.G.L.A. 128C § 5

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XIX. AGRICULTURE AND CONSERVATION
CHAPTER 128C. SIMULCAST **WAGERING** OF HORSE AND DOG RACING

Current through 1998 2nd Annual Sess.

§ 5. Simulcast **wagering** at guest track for harness horse races from host track; payments to winning patrons, commission, host track and harness horse capital improvements trust fund

Each racing meeting licensee within the commonwealth acting as a guest track and simulcasting a live harness horse race from a host track within the commonwealth shall pay daily from such simulcast **wagers** the total sum of the breaks, as defined in section five of chapter one hundred and twenty-eight A, and a sum equal to one-half of one percent of the exotic **wagering** pool into the trust fund known as the Harness Horse Capital Improvements Trust Fund under the direction and supervision of the state racing commissioners.

Each such racing meeting licensee acting as a guest track shall return to the winning patrons **wagering** on such simulcast race all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which such **pari-mutuel** or certificate system has been operated, less the such breaks and less an amount not to exceed nineteen percent of the total amount so deposited by patrons **wagering** on the speed or ability of any one harness horse, also known as a straight **wager,** and each such licensee shall return to the winning patrons **wagering** on the speed or ability of a combination of more than one horse in a single pool, also known as an exotic **wager,** all sums so deposited as an award or dividend, less such breaks and less an amount not to exceed twenty-six percent of the total amount so deposited.

The licensee shall pay to the commission on behalf of the commonwealth on the day following each day of simulcasting a sum

equal to three-eighths of one percent; a sum equal to one-quarter of one percent to the breeders association of the most recent live performance at the guest track for the purpose of promoting the respective breeding of such animals in the commonwealth pursuant to law; a sum equal to five percent shall be paid to the horse owners for purses at the host track in accordance with the rules and established customs of conducting harness horse racing meetings; a sum equal to five and seven-eighths percent shall be paid to the racing meeting licensee at the host track; a sum equal to seven and one-half percent shall be retained by the racing meeting licensee at the guest track; provided, however, that not less than three and one-half percent shall be paid to the horse owners of the most recent live racing performance at the guest track, for purses, said percentages to be paid from the nineteen percent withheld from the straight wager as provided in this section.

The licensee shall pay to the commission on behalf of the commonwealth on the day following each day of simulcasting a sum equal to three-eighths of one percent; a sum equal to one-half of one percent to the Harness Horse Promotional Trust Fund under the direction and supervision of the state racing commissioners; a sum equal to three-quarters of one percent to the breeders association of the most recent live racing performance at the guest track for the purpose of promoting the respective breeding of such animals in the commonwealth pursuant to law; a sum equal to six percent to be paid to the horse owners at the host track for purses in accordance with the rules and established customs of conducting harness horse racing meetings; a sum equal to six and seven-eighths percent shall be paid to the racing meeting licensee at the host track; a sum equal to eleven percent shall be retained by the racing meeting licensee at the guest track; provided, however, that not less than three and one-half percent shall be paid to the horse owners, of the most recent live racing performance at the guest track, for purses, said percentages to be paid from the twenty-six percent withheld from the exotic wager pool as provided in this section.

Each racing meeting licensee within the commonwealth acting as a guest track and simulcasting a live harness horse race from a host track from outside the commonwealth shall pay daily from such simulcast wagers the total sum of such breaks into the trust fund known as the Harness Horse Capital Improvement Trust Fund under the direction and supervision of the state racing commissioners.

Each such licensee shall return to the winning patrons all sums so deposited less such breaks and less either an amount not to exceed nineteen percent of the straight **wagering** pool and twenty-six percent of the exotic **wagering** pool or the amount which would be paid under the laws of the jurisdiction exercising regulatory authority over such host track; provided, however, that from the total of such percentages withheld the sum of

three-eighths of one percent shall be paid daily to the commission on behalf of the commonwealth; the sum of one-half of one percent of the exotic **wagering** pool shall be paid to the Harness Horse Promotional Trust Fund under the direction and supervision of the state racing commissioners; the sum of one-half of one percent of the exotic **wagering** pool shall be paid daily to the Harness Horse Capital Improvement Trust Fund under the direction and supervision of the state racing commissioners; the sums of one-quarter of one percent of the straight **wagering** pool and three-quarters of one percent of the exotic **wagering** pool shall be paid daily to the breeders association of the most recent live racing performance at the guest track for the purposes of promoting the respective breeding of such animals in the commonwealth pursuant to law; and the remaining percentages shall be retained by the racing meeting licensee as his commission; provided, however, that not less than three and one-half percent shall be paid to the horse owners, of the most recent live racing performance at the guest track, for purses, and the remaining portion shall be applied to the expenses as the racing meeting licensee is required to pay pursuant to contracts negotiated with the host track.

CREDIT(S)

1999 Electronic Pocket Part Update

Added by St.1992, c. 101, § 5.

<General Materials (GM) - References, Annotations, or Tables>

EXPIRATION

<This section expires December 31, 1999. See Historical and Statutory Notes following § 1 of this chapter.>

LIBRARY REFERENCES

1991 Main Volume

Texts and Treatises

38 Am Jur 2d, Gambling §§ 17-19, 44-47.

M.G.L.A. 128C § 5

MA ST 128C § 5

END OF DOCUMENT

MA ST 128A s 17
M.G.L.A. 128A § 17

PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XIX. AGRICULTURE AND CONSERVATION
CHAPTER 128A. HORSE AND DOG RACING MEETINGS
MASSACHUSETTS HORSE RACING AUTHORITY

Current through 1998 2nd Annual Sess.

§ 17. Definitions

The following words or terms as used in sections seventeen to thirty-two, inclusive, shall have the following meanings, unless a different meaning clearly appears from the context:

"Act" means the Massachusetts Horse Racing Authority Law.

"Authority" means the Massachusetts Horse Racing Authority created by section three of this act.

"Bonds" means bonds issued by the Authority pursuant to this act.

"Projects" means and includes any project which the Authority is authorized to undertake pursuant to this act.

"Notes" means notes issued by the Authority pursuant to the act.

"Commonwealth" means the state of Massachusetts.

"Racing Commission" means the Massachusetts Racing Commission.

"Revenues" all charges and other receipts derived by the Authority from the operation of racetrack facilities and from all other activities or properties of the Authority including, without limiting the generality of the foregoing, proceeds of grants, gifts or appropriations to the Authority investment earnings and proceeds of insurance or condemnation, and the sale or other disposition of real or personal property.

"Racing Meeting" shall include every meeting within the commonwealth where horses are raced and where any form of **betting** or **wagering** on the speed or ability of horses shall be permitted, but shall not include any meeting where no such **betting** or **wagering** is permitted even though horses or their owners, are awarded certificates, ribbons, premiums, purses, prizes or a portion of gate receipts for speed or ability shown.

"Race Track" shall include the track grounds, auditorium, amphitheatre and/or bleachers, if any, and adjacent places used in connection therewith, where a horse racing meeting may be held.

"Advisory Board" the advisory board established by section twenty-eight.

CREDIT(S)

1991 Main Volume

Added by St.1987, c. 680, § 5.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1991 Main Volume

St.1987, c. 680, § 5, an emergency act, adding this section and §§ 18 to 31 of this chapter, was approved Jan. 6, 1988.

AMERICAN LAW REPORTS

Judicial review of administrative ruling affecting conduct or outcome of publicly **regulated** horse, dog, or motor vehicle race. 36 ALR4th 1169.

LIBRARY REFERENCES

1991 Main Volume

Theaters and Shows k1, 2, 3.10.
WESTLAW Topic No. 376.
C.J.S. Theaters and Shows §§ 3 to 15, 22.
Texts and Treatises

38 Am Jur 2d, **Gambling** §§ 44-47.
4 Am Jur 2d, Amusements and Exhibitions § 28.
12 Am Jur Legal Forms 2d, Licenses and Permits § 164:76.

M.G.L.A. 128A § 17

MA ST 128A § 17

END OF DOCUMENT

MA ST 128A s 3
M.G.L.A. 128A § 3

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XIX. AGRICULTURE AND CONSERVATION
CHAPTER 128A. HORSE AND DOG RACING MEETINGS
GENERAL PROVISIONS

§ 3. Issuance of license; contents; conditions; bond; recording

If any application for a license, filed as provided by section two, shall be in accordance with the provisions of this chapter, the commission, after reasonable notice and a public hearing in the city or town wherein the license is to be exercised, may issue a license to the applicant to conduct a racing meeting, in accordance with the provisions of this chapter, at the race track specified in such application; provided, that if the commission has already taken action on an application for any calendar year, after such notice and public hearing, no other public hearing need be held on any other application from the same applicant relating to the same premises filed prior to the expiration of said year; and provided, further, that on an application for a license to conduct a horse or dog racing meeting in connection with a state or county fair the applicant shall show a certificate from the commissioner of food and agriculture that (1) such fair is a state or county fair as defined in section one, (2) such fair has been operating for each of the five consecutive years immediately preceding the date of filing such application and had received for each of said five consecutive years assistance from the agricultural purposes fund, (3) such fair is properly qualified as hereinafter in this paragraph provided and (4) the location where such racing meeting is to be held is annually approved by him and by the board of agriculture; and provided, further, that on an application for a license to conduct a horse or dog racing meeting in connection with a state or county fair by an applicant to whom a prior license to conduct such a racing meeting at the race track specified in said application has been granted by the commission, no hearing need be held, unless a request, signed by at least one per cent of the registered voters of the city or town in which the track is located, is filed with the commission not later than thirty days following the granting of said license. In determining whether a fair is properly qualified under this paragraph, the commissioner of food and agriculture shall consider the number of days such fair has operated each previous year, the area of the land used for fair purposes, the number of entries in agricultural show events in previous years, the number and value of prizes offered in such events and whether or not the granting of a racing license would tend to promote the agricultural purposes of the fair.

Such license shall state--

(1) The name of the person to whom the same is issued,

(2) The location of the race track where the racing meeting thereby authorized is to be held,

(3) The days on which such meeting may be held or conducted,

(4) The hours of each day between which racing may take place at such meeting, and

(5) That the required license fee has been received by the commission.

No license shall be issued which would permit a racing meeting to be held or conducted except under the following conditions:

(a) Such a meeting may be held or conducted on a weekday or weekdays or on a Sunday or Sundays.

(b) Such a meeting as may be for running horses shall be between the hours of ten o'clock ante meridian and seven o'clock post meridian. Such a meeting as may be for harness horses may be between twelve o'clock noon and seven o'clock post meridian or between seven o'clock post meridian and twelve o'clock midnight; provided, however, that the commission may, in its discretion, on written application from a harness horse racing licensee made at least seven days prior to the date or dates of any proposed change of time stated in said harness horse racing license and without necessity for any further public hearing, change the hours of conducting such harness horse race meeting between any of the aforesaid hours, notwithstanding the hours set forth on the license.

(c) Dog racing at such meeting may be between the hours of seven o'clock post meridian and twelve o'clock midnight only; provided, that if by reason of national emergency night illumination is forbidden by public authority, then the commission may, in its discretion, issue a license to permit dog racing at such hours as said commission may determine, between the hours of twelve o'clock noon and twelve o'clock midnight. In addition to the foregoing, the commission may, in its discretion, issue to any licensee licensed for dog racing in other periods of the year a license for a dog racing meeting between the hours of twelve o'clock noon and seven o'clock post meridian, provided that no such license shall be issued for any day on which a dog racing meeting is to be held in the same location after seven o'clock post meridian. Such dog racing meeting shall hereinafter be referred to as matinee dog racing. Said meeting shall be considered a separate day of racing for the purpose of imposing the fee provided for in section four, for the purpose of computing the sums payable to the commission pursuant to section five, and for purposes of clause (g) of section three.

(d) Deleted by St.1972, c. 813, § 1.

(e) Such dog racing meetings may be held only between the first day of April and the thirtieth day of November, both dates

inclusive, in any year; provided, however, that matinee dog racing dates, as defined in clause (c) of this section, may only be awarded between the sixth day of July and the nineteenth day of September, both dates inclusive, in any one year.

(f) No license shall be issued for more than an aggregate of two hundred race days in any one year at all running horse racing meetings combined, not including running horse racing meetings held or conducted at state or county fairs.

(g) No licenses shall be issued for more than three hundred and thirty-five days in any one year nor for more than two hundred and ten racing days in any one county at all dog racing meetings combined, not including dog racing meetings at state and county fairs; provided, however, that not more than two hundred and seventy-five such racing days in any one year nor more than one hundred and fifty racing days in any one county shall be issued for all dog racing meetings combined which are held between the hours of seven o'clock post meridian and twelve o'clock midnight, not including dog racing meetings at state and county fairs; and not more than sixty such racing days may be awarded for all dog racing meetings combined conducted between the hours of twelve o'clock noon and seven o'clock post meridian.

(h) No licenses shall be issued to permit running horse racing meetings to be held or conducted, except in connection with a state or county fair, at the same time at more than one race track within the commonwealth, nor at any time at a race track located within fifty miles of another race track within the commonwealth, one mile or more in circumference; provided, that licenses may be issued to permit such meetings to be held or conducted at the same time at not more than two race tracks if such tracks are seventy-five miles apart.

(i) No licenses shall be issued to permit dog racing meetings to be held or conducted, except in connection with a state or county fair, at the same time at more than one race track within the same county or within twenty-five miles of another dog race track, nor at any time at more than three race tracks within the commonwealth, nor at a dog race track having a racing strip of less than three sixteenths of a mile for outdoor tracks and one fifth of a mile for indoor tracks.

(j) No licenses shall be issued for more than an aggregate of two hundred and twenty-four racing days in any one year at the harness horse racing meetings combined; not including harness horse racing meetings at state or county fairs; provided, however, that sixty such racing days may only be awarded for racing in Hampden, Hampshire or Franklin counties; and provided, further, that of the remaining one hundred and sixty-four days, not less than one hundred and four racing days shall be held during the months of January, February, March and December in any calendar year.

No license shall be issued to permit harness horse racing meetings to be held at the same time that a dog racing meeting or a running horse racing meeting is being held at a race track within ten miles of the track at which such harness horse racing meeting is to be held. Except for harness horse racing meetings at state or county fairs, no license shall be issued to permit harness horse racing meetings to be held or conducted at the same time within twenty-five miles of another harness horse racing meeting.

(k) No license shall be issued to any person who is in any way in default, under the provisions of this chapter, in the performance of any obligation or in the payment of any debt to the commission.

(l) No license shall be issued to any person who has, within ten years of the time of filing the application for such license, been convicted of violating the provisions of section five of this chapter in retaining more than twelve and fifteen per cent, plus any additional amount that may be required by law, of sums deposited by patrons as wagers at a horse or dog racing meeting plus breaks, as defined in said section.

(m) No license shall be transferable, except with the approval of the commission.

(n) No licenses shall be issued to permit horse or dog racing meetings to be held on premises owned by the commonwealth or any political subdivision thereof.

(o) No licenses shall be issued to permit dog racing meetings to be held or conducted in any location where the surrounding property is substantially of a residential character, as determined by or defined by a zoning ordinance or by- law, if any, controlling such location.

(p) Deleted by St.1976, c. 217, § 2.

(q) No license shall be issued to hold or conduct a horse or dog racing meeting in connection with a state or county fair, or any exhibition for the encouragement or extension of agriculture if said racing meeting is to be conducted at a race track located outside of the county, or any county bordering thereon, where said licensee conducted its fair prior to December thirty-first, nineteen hundred and sixty-one.

No license shall be issued to any person to hold or conduct a horse or dog racing meeting in connection with a state or county fair, or any exhibition for the encouragement or extension of agriculture, under the reduced license fee provided in section four, unless the applicant shall first satisfy the commission that the main purpose of such fair or exhibition is the

encouragement or extension of agriculture and that the same constitutes a bona fide exhibition of that character. No such license shall be issued to any person to hold or conduct such a horse or dog racing meeting for more than ten days in any calendar year.

No license shall be issued unless the person applying therefor shall have executed and delivered to the commission a bond, payable to the commission in the amount of one hundred and twenty-five thousand dollars, with a surety or sureties approved by the commission conditioned upon the payment of all sums which may become payable to the commission under this chapter; provided that the amount of such bond, in the case of any person holding or conducting a racing meeting in connection with a state or county fair shall be twenty-five thousand dollars.

Every license shall be recorded in the office of the clerk of the city or town in which such racing meeting is held or conducted at a time not less than five days before the first day of such meeting or forthwith upon the issuance of such license if the same shall be issued after such time. After such license is so recorded, a duly certified copy thereof shall forthwith be conspicuously displayed and shall be kept so displayed continuously during said racing meeting in the principal business office at the race track where such meeting is held and at all reasonable times shall be exhibited to any person requesting to see the same.

Every licensee shall keep conspicuously posted in various places on its premises a notice containing the name and numbers of the council on compulsive gambling and a statement of its availability to offer assistance.

CREDIT(S)

1991 Main Volume

Added by St.1934, c. 374, § 3. Amended by St.1935, c. 239; St.1935, c. 454, §§ 2 to 4; St.1935, c. 471, § 1; St.1936, c. 405, § 3; St.1939, c. 505, §§ 1, 2; St.1941, c. 382; St.1943, c. 269; St.1946, c. 575, §§ 2 to 4; St.1953, c. 663; St.1958, c. 116; St.1958, c. 208, § 2; St.1958, c. 229, § 2; St.1959, c. 295, § 2; St.1961, c. 1; St.1963, c. 805, § 2; St.1964, c. 686, § 1; St.1965, c. 209, § 1; St.1967, c. 14; St.1971, c. 76; St.1971, c. 87, §§ 1, 2; St.1971, c. 542; St.1971, c. 721, §§ 1, 2; St.1971, c. 951, § 2; St.1971, c. 955; St.1971, c. 986; St.1972, c. 383; St.1972, c. 813, §§ 1, 2; St.1973, c. 214, §§ 1, 2; St.1973, c. 327, § 1; St.1975, c. 706, §§ 202, 203; St.1975, c. 852, §§ 2B to 2D; St.1976, c. 217, §§ 1, 2; St.1981, c. 783, § 1; St.1983, c. 594, § 3; St.1987, c. 680, § 2; St.1990, c. 150, § 305.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999 Electronic Pocket Part Update

Related Laws:

St.1978, c. 494, § 13, appearing in the main volume, provides:

"Section 13. Notwithstanding the provisions of clause (5) of the first paragraph of section two and of clauses (a) to (q), inclusive, of the third paragraph of section three of chapter one hundred and twenty-eight A of the General Laws during the calendar years nineteen hundred and ninety-six through nineteen hundred and ninety-nine, licenses to conduct racing meetings shall only be issued under the following conditions:--

<Text of cl. (a) as amended by St.1992, c. 101, § 6.>

"(a) no license shall be issued for more than an aggregate of two hundred and seventy-five days in any one year at all running horse racing meetings combined, not including running horse racing meetings held in connection with state or county fairs; provided, however, that up to two hundred days may be awarded in Suffolk county only; provided, further, that up to seventy-five days may be awarded in Norfolk county only; provided, further, that the seventy-five days which may be awarded in Norfolk county shall be for live racing which commences no earlier than seven p.m. eastern standard time on each such day; provided, further, that if the best interest of the licensee and the commonwealth would be served by racing conducted at earlier hours, then the commission, no sooner than fourteen days after application and after public hearing, may authorize such earlier hours for the conduct of live racing.

<Text of cl. (a) as amended by St.1992, c. 292, § 1>

"(a) no license shall be issued for more than an aggregate of two hundred days in any one year at all running horse racing meetings combined, not including running horse racing meetings held in connection with state or county fairs; provided, however, that up to two hundred days may be awarded in Suffolk county only.

"(b) no license shall be issued for more than an aggregate of two hundred racing days in any one year at all harness horse racing meetings combined, including harness racing meetings at state or county fairs; provided, however, that up to two hundred days may be awarded in Norfolk county only.

"(c) no license shall be issued for more than an aggregate of one thousand one hundred and ninety racing days in one year at all dog racing meetings combined, excluding dog racing meetings

conducted at a racetrack owned and operated by a state or county fair in Essex county; provided, however, that two hundred and ten such days may be awarded only for racing in Hampden county during the period between the fifteenth of April and the twenty-first day of October, and five hundred and twenty of the remaining such days may be awarded only in Bristol county; provided, further, that the remaining four hundred and sixty days may be awarded only in Suffolk county; provided, further, that up to sixty additional days may, in the discretion of the commission, be awarded only in Suffolk county; provided, further, that in addition to the total number of racing days provided above the commission may issue a license for an additional sixty days of racing in Bristol county.

"(d) licenses shall permit racing meetings only between the hours of ten o'clock antemeridian and twelve o'clock midnight. The state racing commission shall grant authorized dates at such times that are consistent with the best interest of racing and the public; provided, however, that dates for racing meetings held in connection with a state or county fair may only be awarded during the period between the fifteenth day of June and the fifteenth day of October; provided, further, that the state racing commission shall not allow harness horse racing meetings to be held at the same time of day as a running horse racing meeting. Said commission may, in its discretion, on written application from a racing licensee made at least seven days prior to the date or dates of any proposed change of time stated in said racing license and without necessity for further public hearing, change the hours of conducting such race meeting between any of the aforesaid hours, notwithstanding the hours set forth on the license; provided, however, that if by reason of national emergency, night illumination is forbidden by public authority, then said commission may in its discretion, issue a license to permit racing at such hours as said commission may determine between the hours of ten o'clock antemeridian and twelve o'clock midnight. For the purpose of imposing the fee provided for in section four of chapter one hundred and twenty-eight A of the General Laws, computing the sums payable to the racing commission pursuant to section fourteen of this chapter, and counting the number of days authorized by clause (a), (b) or (c) of this section, any racing held after seven o'clock post meridian on the same day on which racing is held at the same racetrack prior to seven o'clock post meridian shall be considered a separate day of racing.

"(e) no licenses shall be issued to permit running horse race meetings to be held or conducted at the same time of day at more than one racetrack within the commonwealth except in connection with a state or county fair located at a distance greater than seventy-five miles from Suffolk county; provided, however, that in no case shall more than two such licenses be issued for meetings to be held or conducted at the same time of day.

"(f) no licenses shall be issued to permit dog racing meetings to be held or conducted at more than four racetracks within the commonwealth, excluding dog racing meetings held in connection with a state or county fair at a racetrack owned and operated by said fair, nor at a dog track having a racing strip of less than three-sixteenths of a mile for outdoor tracks and one-fifth of a mile for indoor tracks, nor at any location where racing has not been conducted for at least five years prior to the effective date of this act and where the surrounding property is substantially of a residential character, as determined by or defined by a zoning ordinance or by-law, if any, controlling such location; provided, however, that one such license may be issued only for racing in Hampden county; provided, further, that any such licenses issued in Bristol county shall require that racing shall be held or conducted at a single location which has winterized spectator areas and which has a heated racing surface, if the applicants for such licenses agree that any such races be held or conducted at a single location.

"(g) no license shall be issued to any person who is in any way in default, under the provisions of this act, in the performance of any obligation or in the payment of any debt to the racing commission; provided, however, that no license shall be issued to any person who has, within ten years of the time of filing the application for such license been convicted of violating the provisions of section five of chapter one hundred and twenty-eight A of the General Laws.

"(h) in granting authorized dates hereunder the state racing commission shall take into consideration, in addition to any other appropriate and pertinent factors, the following: the financial ability of an applicant to operate a racetrack, the maximization of state revenues, the suitability of racing facilities for operation at the time of the year for which dates are assigned; the circumstances that large groups of spectators require safe and convenient facilities; the interest of members of the public in racing competition honestly managed and of good quality; the necessity of having and maintaining proper physical facilities for racing meetings and the necessity of according fair treatment to the economic interest and investments of those who in good faith have provided and maintain such facilities. Notwithstanding the foregoing provisions of this section, the racing commission shall have the right to review and reconsider without further notice or public hearing any application made prior to October first for which racing dates have been requested for the following year; provided, however, that such application has had a public hearing prior to November fifteenth; provided, further, that any applicant who has been denied said racing dates makes a written request for review and reconsideration within ninety days of receiving notice of such denial; provided, further, that said commission shall reconsider and review said request within one hundred and eighty days of such denial." [Amended by St.1991, c. 114, § 2; St.1992, c. 101, § 6;

St.1992, c. 292, § 1; St.1995, c. 268, § 11.]

St.1995, c. 268, § 11, was approved Nov. 22, 1995, and by § 21 made effective Jan. 1, 1996. Emergency declaration by the Governor was filed Nov. 28, 1995.

For provisions of St.1978, c. 494, § 12A, as amended, requiring licensees to make daily payments, based on wagers, to certain trust funds, see the Historical and Statutory Notes following § 5 of this chapter.

St.1991, c. 114, §§ 3, 4, 9 and 10, provide:

"Section 3. During the calendar years nineteen hundred and ninety-six through nineteen hundred and ninety-nine, each running horse track licensee under section three of chapter one hundred and twenty-eight A of the General Laws, other than a licensee holding a racing meeting in connection with a state or county fair, shall daily pay: (a) the total sum of the breaks, so-called, as defined in section five of said chapter one hundred and twenty-eight A, less one hundred thousand dollars, into the trust fund known as the Running Horse Capital Improvements Trust Fund under the direction and supervision of the state racing commissioners, as they are individuals, as trustees of said trust; provided, however, that the aforementioned sum of one hundred thousand dollars shall be allocated, subject to appropriation, to an organization or organizations, as determined by the Massachusetts department of public health, which affords treatment or counseling to compulsive gamblers; provided, further, that any such organization receiving any such allocation from said amount shall make an annual report with the joint committee on government regulations and the house and senate committees on ways and means detailing its expenditures from said allocation; and (b) a sum equal to one-quarter of one percent of the total amount wagered by patrons so wagering into a trust fund known as the Running Horse Promotional Trust Fund under the direction and supervision of the state racing commissioners, as they are individuals, as trustees of said trust. Said trustees shall deposit all monies in said trust funds in one or more banks, at interest, within the commonwealth.

"Said trustees may expend without appropriation all or any part of the Running Horse Capital Improvements Trust Fund to a running horse track licensee in proportion to the amount deposited in said fund by said running horse track licensee for use as all or part of a capital expenditure for alterations, additions, replacements, changes, improvements or major repairs to or upon the property owned or leased by such licensee and used by it for the conduct of racing, but not for the costs of maintenance or of other ordinary operations, whether such costs have been incurred or not; and said trustees may expend without appropriation all or any part of the Running Horse Promotional Trust Fund to such licensee in proportion to the amount deposited in said fund by

said licensee for use in promotional marketing, to reduce the costs of admission, programs, parking and concessions, and to offer other entertainment and giveaways. Said trustees may expend to a licensee all amounts accumulated in such trust funds which are attributable to racing operations conducted at a running horse track.

"Said trustees shall prescribe terms and conditions for such grants and may designate specific capital improvements or promotions to be undertaken by a licensee; provided, however, that, prior to approving any expenditures from said trust funds for purposes not designated by the trustees, the trustees shall require the licensee to submit to them detailed business plans describing the specific promotions and capital improvements contemplated by the licensee and shall formally vote to permit such expenditures; provided, further, that under no circumstances shall the trustees permit the expenditure of trust funds for purposes not directly related to the improvement of running horse racing or for the raising of handles and attendance; and provided, further, that such terms and conditions for capital improvement projects shall include schedules of periodic payments to be prepared by the trustees in accordance with schedules contained in construction contracts for such capital improvement projects. Such licensee shall comply with all applicable provisions of chapter one hundred and forty-nine of the General Laws unless such compliance is waived by the commission for cause.

"No such expenditure for such capital improvements or for such promotions shall be approved by the trustees if such improvements or promotions are to be accomplished pursuant to a contract with a person, corporation, partnership, trust or any combination of the same or any other entity owned wholly or in part by a person, corporation, partnership, trust or any combination of the same or any other entity which owns or operates or holds any interest in any racetrack in the commonwealth.

"The trustees shall hire the services of such architectural and engineering consultants or the services of such other consultants as they deem appropriate to advise them generally and to evaluate proposed capital improvement and promotional projects submitted to them for their approval.

"Nothing herein contained shall preclude a running horse track from making capital improvements or undertaking promotional operations not funded in whole or in part from such funds; provided, however, that all sums approved by said trustees hereunder shall be expended in their entirety for capital improvements or for promotions; provided, further, that any revision by said licensee in the making of capital improvements or in promotional plans as hereinbefore provided, shall require separate written approval by the trustees therefor. All financial statements required under section six of chapter one hundred and

twenty-eight A of the General Laws shall be accompanied by a statement signed under the pains and penalties of perjury by the chief financial officer of the licensee, setting forth the capital improvements made and the promotions completed with funds obtained under this section and further certifying that such expenditures are treated as capital expenditures and promotional expenditures in the accompanying financial statements.

"The trustees shall require from a running horse racetrack such vouchers, cancelled checks or other documents as said trustees deem necessary to verify that the expenditures from said funds were carried out in accordance with the provisions of this section.

"Funds paid by licensees and deposited by the commission in the Running Horse Capital Improvements Trust Fund and in the Running Horse Promotional Trust Fund shall remain in said funds until expended under this section; provided, however, that any amount in said accounts as of December thirty-first, nineteen hundred and ninety-nine which has not been so expended or as to which no binding commitment has been made by said trustees shall thereupon be deposited in the General Fund." [Amended by St.1995, c. 268, §§ 14, 15.]

"Section 4. During the calendar years nineteen hundred and ninety-six through nineteen hundred and ninety-nine, each harness horse track licensee under section three of chapter one hundred and twenty-eight A of the General Laws, other than a licensee holding a racing meeting in connection with a state or county fair shall daily pay: (a) the total sum of the so-called breaks, as defined in section five of said chapter one hundred and twenty-eight A, and a sum equal to one percent of the total amount wagered by patrons wagering on the speed or ability of a combination of more than one harness horse in a single pool, exotic wagering, so-called, into the trust fund known as the Harness Horse Capital Improvements Trust Fund under the direction and supervision of the state racing commissioners, as they are individuals, as trustees of said trust; and (b) a sum equal to one percent of the total amount wagered by patrons so wagering on said exotic races into a trust fund known as the Harness Horse Promotional Trust Fund under the direction and supervision of the state racing commissioners, as they are individuals, as trustees of said trust. Said trustees shall deposit all monies in said trust funds in one or more banks, at interest within the commonwealth.

"Said trustees may expend without appropriation all or any part of the Harness Horse Capital Improvements Trust Fund to a harness horse track licensee for use as all or part of a capital expenditure for alterations, additions, replacements, changes, improvements or major repairs to or upon the property owned or leased by such licensee and used by it for the conduct of racing, but not for the costs of maintenance or of other ordinary

operations, whether such costs have been incurred or not; and said trustees may expend without appropriation all or any part of the Harness Horse Promotional Trust Fund to such licensee for use in promotional marketing, to reduce the costs of admission, programs, parking and concessions, and to offer other entertainment and giveaways. Said trustees may expend to a licensee all amounts accumulated in such trust funds which are attributable to racing operations conducted at a harness horse track.

"Said trustees shall prescribe terms and conditions for such grants and may designate specific capital improvements or promotions to be undertaken by the licensee; provided, however, that prior to approving any expenditures from said trust funds for purposes not designated by the trustees, the trustees shall require the licensee to submit to them detailed business plans describing the specific promotions and capital improvements contemplated by the licensee and shall formally vote to permit such expenditures; provided, further, that under no circumstances shall the trustees permit the expenditure of trust funds for purposes not directly related to the improvement of harness horse racing or for the raising of handles and attendance; provided, further, that such terms and conditions for capital improvement projects shall include schedules of periodic payments to be prepared by the trustees in accordance with schedules contained in construction contracts for such capital improvement projects. Such licensee shall comply with all applicable provisions of chapter one hundred and forty-nine of the General Laws unless such compliance is waived by the commission in writing for cause.

"No such expenditure for capital improvements or for promotions shall be approved by the trustees if such improvements or promotions are to be accomplished pursuant to a contract with a person, corporation, partnership, trust or any combination of the same or any other entity owned wholly or in part by a person, corporation, partnership, trust or any combination of the same or any other entity which owns or operates or holds any interest in any racetrack in the commonwealth.

"The trustees shall hire the services of such architectural and engineering consultants or the services of such other consultants as they deem appropriate to advise them generally and to evaluate capital improvement and promotional projects submitted to them for their approval.

"Nothing herein contained shall preclude a harness horse track from making capital improvements or undertaking promotional operations not funded in whole or in part from such funds; provided, however, that all sums approved by said trustees hereunder shall be expended in their entirety for capital improvements or for promotions; provided, further, that any revision by said licensee in the making of capital improvements

or in promotional plans as hereinbefore provided, shall require separate written approval by the trustees therefor. All financial statements required under section six of chapter one hundred and twenty-eight A of the General Laws shall be accompanied by a statement signed under the pains and penalties of perjury by the chief financial officer of the licensee, setting forth the capital improvements made and the promotions completed with funds obtained under this section and further certifying that such expenditures are treated as capital expenditures and promotional expenditures in the accompanying statements.

"The trustees shall require from a harness racetrack such vouchers, cancelled checks or other documents as said trustees deem necessary to verify that the expenditures from said funds were carried out in accordance with the provisions of this section.

"Funds paid by licensees and deposited by the commission in the Harness Horse Capital Improvements Trust Fund and in the Harness Horse Promotional Trust Fund shall remain in said funds until expended under this section; provided, however, that any amount in said accounts as of December thirty-first, nineteen hundred and ninety-nine which has not been so expended or as to which no binding commitment has been made by said trustees shall thereupon be deposited in the General Fund." [Amended by St.1995, c. 268, §§ 16, 17.]

"Section 9. The provisions of section seven of this act shall apply to licenses applied for or granted for harness horse or horse racing meetings during nineteen hundred and ninety-one. All other provisions of this act shall apply to licenses applied for or granted for racing to commence on or after January first, nineteen hundred and ninety-two.

"Section 10. The provisions of clause (b) of the first paragraph of section three of this act shall take effect on November first, nineteen hundred and ninety-two." [Amended by St.1992, c. 101, § 8.]

St.1991, c. 114, was approved July 8, 1991. Emergency declaration by the Governor was filed on July 9, 1991.

St.1992, c. 101, an emergency act, was approved July 6, 1992.

St.1992, c. 292, an emergency act, was approved Dec. 29, 1992.

St.1992, c. 292, § 2, provides:

"Notwithstanding any provisions of chapter one hundred and twenty-eight A of the General Laws to the contrary, a harness horse racing meeting licensee that has been awarded dates for calendar year nineteen hundred and ninety-three may submit, resubmit or amend its application for a license to hold or

conduct racing meetings for calendar year nineteen hundred and ninety-three and request that additional dates be licensed. The commission's procedure for hearings on all such applications shall be the same as the procedures on supplementary applications filed pursuant to said chapter one hundred and twenty-eight A."

St.1995, c. 268, was approved Nov. 22, 1995, and by § 21 made effective Jan. 1, 1996. Emergency declaration by the Governor was filed Nov. 28, 1995.

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St.1935, c. 239, approved May 1, 1935, in the third paragraph, added cl. (n).

St.1935, c. 454, § 2, an emergency act, approved July 26, 1935, in the first paragraph, inserted ", after reasonable notice and a public hearing in the city or town wherein the license is to be exercised," and added the proviso.

Section 3 of St.1935, c. 454, in the third paragraph, in cl. (f), substituted "ninety" for "seventy".

Section 4 of St.1935, c. 454, in the third paragraph, in cl. (h), inserted "within the commonwealth" preceding ", one" and added the proviso.

St.1935, c. 471, § 1, approved Aug. 9, 1935, in the third paragraph, added a second cl. (n).

St.1936, c. 405, § 3, approved June 24, 1936, in the third paragraph, redesignated cl. (n), added by St.1935, c. 471, § 1, as cl. (o).

St.1939, c. 505, § 1, an emergency act, approved Aug. 12, 1939, in the third paragraph, in cl. (e), rewrote the proviso, which prior thereto read, "provided, that no dog racing meeting shall be held between the fifteenth day of August and the thirtieth day of September, both dates inclusive, except in connection with a state or county fair".

Section 2 of St.1939, c. 505, in the third paragraph, in cl. (i), substituted "one fifth" for "one tenth".

St.1941, c. 382, approved June 13, 1941, in the third paragraph, in cl. (c), added the proviso.

St.1943, c. 269, an emergency act, approved May 14, 1943, in the first paragraph, in the proviso, inserted "from the same applicant" and substituted the second proviso for ", unless such other application is for an extension of more than ten days for the racing meeting or for an additional racing meeting".

St.1946, c. 575, § 2, an emergency act, approved June 14, 1946, in the third paragraph, rewrote cl. (b), which prior thereto read:

"Horse racing at such meeting may be between the hours of twelve o'clock noon and seven o'clock post meridian only."

Section 3 of St.1946, c. 575, in the third paragraph, in former cl. (d), inserted "harness" and "other than one at which the racing is not earlier than seven o'clock post meridian, and no running horse racing meeting".

Section 4 of St.1946, c. 575, in the third paragraph, rewrote cl. (j), which prior thereto read:

"No licenses shall be issued for more than an aggregate of forty-two racing days in any one year at the harness horse racing meetings combined, not including harness horse racing meetings at state or county fairs."

St.1953, c. 663, approved July 3, 1953, in the third paragraph, in former cl. (d), substituted "first" for "eighteenth", "thirtieth day of November" for "thirty-first day of October", "tenth" for "fifteenth" and "second Saturday after Labor Day" for "thirtieth day of September".

St.1958, c. 116, approved Feb. 24, 1958, in the third paragraph, in cl. (e), deleted the proviso, which read, "provided, that the commission shall order the suspension of a dog racing meeting, except one held in connection with a state or county fair, during any week, between the fifteenth day of August and the thirtieth day of September, both dates inclusive, in which a state or county fair is to be conducted by an incorporated agricultural or horticultural society within fifty miles of such racing meeting if on or before the fifteenth day of April preceding such meeting an affidavit is filed with the commission by the officers of such society stating that in their belief such dog racing meeting will be in competition with said fair".

St.1958, c. 208, § 2, approved March 28, 1958, and by § 3 made effective July 1, 1958, in the first paragraph, in the first sentence, rewrote the second proviso, which prior thereto read, "; and provided, further, that on an application for a license to conduct a horse or dog racing meeting in connection with a state or county fair no hearing need be held unless a request signed by at least one per cent of the registered voters of the city or town in which the track is located is filed with the commission at least thirty days prior to the first day on which the racing meeting requested is proposed to be held"; and added the third proviso; and added the second sentence.

St.1958, c. 229, § 2, approved April 1, 1958, in the third paragraph, in cl. (b), substituted "ten o'clock ante meridian"

for "twelve o'clock noon".

St.1959, c. 295, § 2, approved May 11, 1959, in the first paragraph, in the first sentence, rewrote the third proviso, which prior thereto read, "and provided, further, that no hearing need be held on any application for a license to conduct a horse or dog racing meeting in connection with a state or county fair, unless a request signed by at least one per cent of the registered voters of the city or town in which the track is located is filed with the commission at least thirty days prior to the first day on which the racing meeting requested is proposed to be held".

St.1961, c. 1, an emergency act, approved Jan. 26, 1961, in the third paragraph, added cl. (p).

St.1963, c. 805, § 2, approved Nov. 12, 1963, in the first sentence of the first paragraph, rewrote the provisos, which prior thereto read, "provided, that if the commission has already taken action on an application for any calendar year, after such notice and public hearing, no other public hearing need be granted on any other application from the same applicant relating to the same premises filed prior to the expiration of said year; and provided, further, that on an application for a license to conduct a horse or dog racing meeting in connection with a state or county fair by an applicant which has not operated a horse or dog racing meeting under the provisions of this chapter prior to July first, nineteen hundred and fifty-eight, the applicant shall show (1) that the state or county fair at which such racing meeting is to be held has operated for a period of at least five consecutive years; (2) that said fair has received financial assistance from the agricultural purpose fund for the same period of time; and (3) a certificate from the commissioner of agriculture that said fair is properly qualified and approved by him; and provided further, that on an application for a license to conduct a horse or dog racing meeting in connection with a state or county fair by an applicant to whom a prior license to conduct such a racing meeting at the race track specified in said application has been granted by the commission, no hearing need be held, unless a request, signed by at least one per cent of the registered voters of the city or town in which the track is located, is filed with the commission not later than thirty days following the granting of said license".

St.1964, c. 686, § 1, approved July 3, 1964, in the third paragraph, added cl. (q).

St.1965, c. 209, § 1, approved March 29, 1965, in the third paragraph, in cl. (l), substituted "twelve" for "ten" and inserted ", plus any additional amount that may be required by law,".

St.1967, c. 14, approved Feb. 21, 1967, in the third paragraph,

in cl. (i), substituted "three race tracks" for "four race tracks".

St.1971, c. 76, approved March 8, 1971, in the first paragraph, in the first sentence, in the first proviso, substituted "no other public hearing need be held on any other application from the same applicant relating to the same premises filed prior to the expiration of said year" for "no other application filed prior to the expiration of said year relating to the same premises shall be acted upon or considered without such notice and public hearing as hereinbefore provided".

St.1971, c. 87, § 1, an emergency act, approved March 10, 1971, in the third paragraph, in cl. (e), substituted "first" for "eighteenth", and "thirtieth day of November" for "thirty-first day of October".

Section 2 of St.1971, c. 87, in the third paragraph, in cl. (g), inserted "and seventy-five" and "nor for more than one hundred and fifty racing days in any one county".

St.1971, c. 542, approved July 21, 1971, purported to amend the fourth paragraph, but apparently intended to rewrite the fifth paragraph, which prior thereto read:

"No license shall be issued unless the person applying therefor shall have executed and delivered to the commission a bond, payable to the commission, in such amount, not exceeding thirty-five thousand dollars, as the commission may determine, with a surety or sureties approved by the commission conditioned upon the payment of all sums which may become payable to the commission under this chapter; provided that the amount of such bond, in the case of any person holding or conducting a harness horse racing meeting in connection with a state or county fair, any exhibition for the encouragement or extension of agriculture, or a grand circuit harness horse racing meeting shall not exceed five thousand dollars."

St.1971, c. 721, § 1, an emergency act, approved Aug. 31, 1971, in the third paragraph, rewrote cl. (d), which prior thereto read:

"Such horse racing meetings may be held only between the first day of April and the thirtieth day of November, both dates inclusive, in any year; provided, that no harness horse racing meeting other than one at which the racing is not earlier than seven o'clock post meridian, and no running horse racing meeting shall be held between the tenth day of August and the second Saturday after Labor Day, both dates inclusive, except in connection with a state or county fair."

Section 2 of St.1971, c. 721, in the third paragraph, in cl. (f), substituted "one hundred fifty" for "ninety", and inserted

"held or conducted".

St.1971, c. 951, § 2, an emergency act, approved Oct. 27, 1971, in the third paragraph, rewrote cl. (a), which prior thereto read:

"Such meeting shall be on a week day or on successive week days, Saturday and Monday being considered successive week days."

St.1971, c. 955, approved Oct. 27, 1971, in the third paragraph, in cl. (b), rewrote the first sentence, which prior thereto read, "Such a meeting as may be for running horses shall be between the hours of ten o'clock ante meridian and seven o'clock post meridian only, and such a meeting as may be for harness horses may be between twelve o'clock noon and seven o'clock post meridian or between seven o'clock post meridian and twelve o'clock midnight."; and added the second sentence.

St.1971, c. 986, an emergency act, approved Nov. 3, 1971, in the third paragraph, in cl. (j), rewrote the first sentence, which prior thereto read, "No licenses shall be issued for more than an aggregate of ninety racing days in any one year at the harness horse racing meetings combined, not including harness horse racing meetings at state or county fairs; and, except for harness horse racing meetings at state or county fairs, no license shall be issued to permit harness horse racing meetings to be held at the same time that a dog racing meeting or a running horse racing meeting is being held at a race track within ten miles of the track at which such harness horse racing meeting is to be held; and, except for state or county fairs, no licenses shall be issued to permit harness horse racing meetings to be held or conducted at the same time within twenty-five miles of another harness horse racing meeting."; and added the second and third sentences.

St.1972, c. 383, an emergency act, approved June 8, 1972, in the fourth paragraph, in the second sentence, added a proviso.

St.1972, c. 813, § 1, an emergency act, approved July 20, 1972, in the third paragraph, deleted cl. (d), which read:

"Such horse racing meetings may be held only between the first day of January and the fifteenth day of December, both dates inclusive, in any year."

Section 2 of St.1972, c. 813, in the third paragraph, rewrote cl. (j), which prior thereto read:

"No licenses shall be issued for more than an aggregate of one hundred and twenty racing days in any one year at the harness horse racing meetings combined, not including harness horse racing meetings at state or county fairs, provided, however, that not less than sixty racing days shall be held during the period

from January the first to March the thirty-first of any calendar year. No license shall be issued to permit harness horse racing meetings to be held at the same time that a dog racing meeting or a running horse racing meeting is being held at a race track within ten miles of the track at which such harness horse racing meeting is to be held. Except for harness horse racing meetings at state or county fairs, no license shall be issued to permit harness horse racing meetings to be held or conducted at the same time within twenty-five miles of another harness horse racing meeting."

St.1973, c. 214, § 1, an emergency act, approved April 25, 1973, in the third paragraph, in cl. (q), inserted ", or any county bordering thereon,".

Section 2 of St.1973, c. 214, in the fourth paragraph, substituted "ten" for "six" and deleted the proviso, which read, "provided, however, that any state or county fair, owning its own race track premises in fee, may be issued a dog, horse or harness horse racing license or licenses, for an aggregate of not more than ten days in any calendar year, if such racing under such license or licenses is conducted by such state or county fair itself, and not through or by a third party".

St.1973, c. 327, § 1, an emergency act, in the third paragraph, in cl. (f), substituted "two hundred race days" for "one hundred fifty racing days" and "racing meetings combined" for "race meetings combined".

St.1975, c. 706, § 202, an emergency act, approved Nov. 25, 1975, and by § 312 made effective as of July 1, 1975, in the first paragraph, in the first sentence, substituted "commissioner of food and agriculture" for "commissioner of agriculture".

Section 203 of St.1975, c. 706, in the first paragraph, in the second sentence, substituted "commissioner of food and agriculture" for "commissioner of agriculture".

St.1975, c. 852, § 2B, an emergency act, approved Dec. 31, 1975, in the third paragraph, in cl. (c), inserted the second to fourth sentences.

Section 2C of St.1975, c. 852, in the third paragraph, in cl. (e), added the proviso.

Section 2D of St.1975, c. 852, in the third paragraph, rewrote cl. (g), which prior thereto read:

"No licenses shall be issued for more than an aggregate of two hundred and seventy-five racing days in any one year nor for more than one hundred and fifty racing days in any one county at all dog racing meetings combined, not including dog racing meetings at state and county fairs."

St.1976, c. 217, § 1, an emergency act, approved June 28, 1976, in the third paragraph, in cl. (j), rewrote the first paragraph, which prior thereto read:

"No licenses shall be issued for more than an aggregate of one hundred and fifty racing days in any one year at the harness horse racing meetings combined, not including harness horse racing meetings at state or county fairs, provided, however, that not less than ninety racing days shall be held during the months of January, February, March and December in any calendar year."

Section 2 of St.1976, c. 217, in the third paragraph, deleted cl. (p), which read:

"No license shall be issued to permit a racing meeting to be held or conducted at any location within two miles of a church, school or housing development; provided, however, that this clause shall not apply to the issuance of a license to hold or conduct a racing meeting at any location at which a racing meeting had been held or conducted, pursuant to a license issued under the provisions of this chapter, prior to January first, nineteen hundred and sixty- one.

"As used in this clause the word "church" shall mean a church or synagogue building or chapel, dedicated to divine worship and regularly used for that purpose, the word "school" shall mean a recognized elementary, secondary or high school, public or private, and the words "housing development" shall mean multiple housing accommodations erected in whole or in part with funds provided by the commonwealth, by any county, city or town, or by the United States or any agency thereof."

St.1981, c. 783, § 1, approved Jan. 5, 1982, in the fourth paragraph, added the third sentence.

St.1983, c. 594, § 3, an emergency act, approved Dec. 17, 1983, in the fourth paragraph, deleted the third sentence, which read, "A race track in the town of Great Barrington shall be permitted an additional twenty days of horse racing in a calendar year, under the provisions of this paragraph; provided that preceding the granting of the twenty additional days of horse racing the voters in Great Barrington shall have approved said additional days in a referendum vote at an annual town election or at a special election called for that purpose."

St.1987, c. 680, § 2, an emergency act, approved Jan. 6, 1988, inserted the former sixth to ninth paragraphs, which read:

"Before issuing a license to conduct a running horse or a harness horse racing meeting, the commission may impose conditions to be met by the licensee during the term of the license. For the violation of any condition attached to such a

license by the commission as to which a promise to perform has been executed pursuant to subsection (a) below, and after a hearing conducted in accordance with the provisions of chapter thirty A of the General Laws, the commission shall impose upon such running horse or harness horse licensee a fine not to exceed ten thousand dollars a day for each day that the violation remains uncured; provided, that the commission may impose upon such a licensee a fine of fifteen thousand dollars for each performance the licensee fails to conduct without prior authorization from the commission. Such conditions may include, but shall not be limited to the following:

"(a) The commission shall require that an applicant execute a promise to undertake, during the term of the license, specific operations designated by the commission in the areas of maintenance, improvements, services and security, and to execute a promise to conduct all performances on all days awarded under the license;

"(b) The commission shall require an applicant to deliver to the commission a bond, duly executed, with surety approved by the commission and payable to the commission in the amount of one hundred and twenty-five thousand dollars, such bond to secure the payments of any fines imposed by the commission against the licensee during the term of the license, provided, however, that the licensee shall deliver to the commission a new bond, in the same amount, once the original bond in the amount of one hundred and twenty-five thousand dollars has been exhausted;

"(c) The commission shall require that an applicant obtain a duly executed guaranty for the lessors of a running horse or harness horse race track if the applicant is to be the lessee of such a race track, such guarantee to be given for the specific purpose of securing the payment of fines assessed by the commission against the lessee-licensee;

"(d) Every six months during the term of any license issued by the commission to a running horse or harness horse licensee, the commission shall require such licensee to submit, and such licensee shall submit, the following information; all current records of income and expenses and said records for the prior six months, all actual and proposed capital expenditures, all architectural and engineering studies, plans and drawings, a list of all employees by job category and duty, all rental agreements and leases, a list of all salaries, bonuses and dividends paid to corporate officers and the aggregate amount of distributions of dividends to shareholders.

"No fine or other liability may be imposed for a violation of a condition imposed pursuant to this section resulting from any cause or causes beyond the control of the licensee, including but not limited to, labor disputes, labor shortages which are not the result of any act of the licensee, horsemen's boycotts, inability

to fill racing cards which is not the result of any act of the licensee, fire or other casualty, accidents, adverse weather conditions, orders or regulations of any federal, state, county or municipal authority and the like; nor shall a fine be imposed for the cancellation of a performance by the licensee resulting from a good faith determination that track conditions were such that the health, welfare and safety of horsemen, patrons, employees or horses would be endangered by conducting a performance. No fine shall be imposed pursuant to this section after the revocation by the commission of any license.

"Notwithstanding the foregoing provisions of this section, in the event this act is amended to reduce the licensee's share of the total amount deposited by patrons wagering at a running horse or harness horse meeting, or if this act is otherwise amended and the licensee is materially and adversely affected thereby, the licensee may relinquish its license and in such event no fine may be imposed pursuant to this section after the date of receipt by the commission of the licensee's written notification of its intent to relinquish its license.

"A running horse or harness horse licensee may, within three days of written notification from the commission of the conditions to be attached to a license, refuse to accept such license, and in the event of such refusal to accept a license, the penalty provisions of this section shall not apply."

Section 14 of St.1987, c. 680, provides:

"The provisions of sections one, two, three, four, six, seven, eight, nine, ten, eleven, twelve and thirteen shall expire on December thirty-first, nineteen hundred and eighty-nine."

St.1990, c. 150, § 305, approved Aug. 1, 1990, and by § 383 made effective as of July 1, 1990, added the last paragraph.

Related Laws:

St.1978, c. 494, § 13, provides:

"Notwithstanding the provisions of clause (5) of the first paragraph of section two and of clauses (a) to (q), inclusive, of the third paragraph of section three of chapter one hundred and twenty-eight A of the General Laws, during the calendar years nineteen hundred and ninety-one through nineteen hundred and ninety-five, for clauses (c) and (f), and during the calendar years nineteen hundred and ninety-one through nineteen hundred and ninety-five, for clauses (a), (b), (d), (e), (g) and (h), licenses to conduct racing meetings shall only be issued under the following conditions:--

"(a) no license shall be issued for more than an aggregate of two hundred and fifty days in any one year at all running horse

racing meetings combined, not including running horse racing meetings held in connection with state or county fairs, at a racetrack owned and operated by said fair or at a racetrack in Berkshire county;

"(b) no license shall be issued for more than an aggregate of four hundred and forty racing days in any one year at all harness horse racing meetings combined, including harness horse racing meetings at state or county fairs; provided, however, that one hundred and thirty such days may be awarded only for racing in Hampden county during the period between the first day of January and the fourteenth day of April and between the twenty-second day of October and the twenty-first day of December; provided, further, that ten of the remaining three hundred and ten days may be awarded only in connection with a state or county fair; and, provided, further, that the harness racing days awarded in Norfolk county, not to exceed three hundred days, shall be awarded over a period of not fewer than forty-five weeks in any calendar year;

"(c) no license shall be issued for more than an aggregate of one thousand one hundred and ninety racing days in one year at all dog racing meetings combined, excluding dog racing meetings conducted at a racetrack owned and operated by a state or county fair in Essex county; provided, however, that two hundred and ten such days may be awarded only for racing in Hampden county during the period between the fifteenth of April and the twenty-first day of October, and five hundred and twenty of the remaining such days may be awarded only in Bristol county; provided, further, that the remaining four hundred and sixty days may be awarded only in Suffolk county; and provided, further, that up to sixty additional days may, in the discretion of the commission, be awarded only in Suffolk county, in proportion to the number of racing days under two hundred and fifty not applied for or used for running horse racing in Suffolk county in the same calendar year; and provided, further, that in addition to the total number of racing days provided above, the commission may issue a license for an additional sixty days of racing in Bristol county.

"(d) licenses shall permit racing meetings only between the hours of ten o'clock antemeridian and twelve o'clock midnight; provided, however, that, in awarding racing days in Suffolk county, the state racing commission shall not award dog racing days for performances to be conducted between ten o'clock antemeridian and seven o'clock postmeridian if running horse racing performances are to be conducted prior to seven o'clock postmeridian on the same days. The state racing commission shall grant authorized dates at such times that are consistent with the best interests of racing and the public; provided, however, that dates for racing meetings held in connection with a state or county fair may only be awarded during the period between the fifteenth day of June and the fifteenth day of October. Said

commission may, in its discretion, on written application from a racing licensee made at least seven days prior to the date or dates of any proposed change of time stated in said racing license and without necessity for further public hearing, change the hours of conducting such race meeting between any of the aforesaid hours, notwithstanding the hours set forth on the license; provided, however, that if by reason of national emergency, night illumination is forbidden by public authority, then said commission may, in its discretion, issue a license to permit racing at such hours as said commission may determine between the hours of ten o'clock ante meridian and twelve o'clock midnight. For the purpose of imposing the fee provided for in section four of chapter one hundred and twenty-eight A of the General Laws, computing the sums payable to the racing commission pursuant to section fourteen of this chapter, and counting the number of days authorized by clause (a), (b) or (c), of this section, any racing held after seven o'clock post meridian on the same day on which racing is held at the same racetrack prior to seven o'clock post meridian shall be considered a separate day of racing.

"(e) no licenses shall be issued to permit running horse race meetings to be held or conducted at the same time of day at more than one racetrack within the commonwealth except in connection with a state or county fair located at a distance greater than seventy-five miles from Suffolk county; provided, however, that in no case shall more than two such licenses be issued for meetings to be held or conducted at the same time of day.

"(f) no licenses shall be issued to permit dog racing meetings to be held or conducted at more than four racetracks within the commonwealth, excluding dog racing meetings held in connection with a state or county fair at a racetrack owned and operated by said fair, nor at a dog track having a racing strip of less than three-sixteenths of a mile for outdoor tracks and one-fifth of a mile for indoor tracks, nor at any location where racing has not been conducted for at least five years prior to the effective date of this act and where the surrounding property is substantially of a residential character, as determined by or defined by a zoning ordinance or by-law, if any, controlling such location; provided, however, that one such license may be issued only for racing in Hampden County; and provided further, that any such licenses issued in Bristol county shall require that racing shall be held or conducted at a single location which has winterized spectator areas and which has a heated racing surface, if the applicants for such licenses agree that any such races be held or conducted at a single location.

"(g) no license shall be issued to any person who is in any way in default, under the provisions of this act, in the performance of any obligation or in the payment of any debt to the racing commission; provided, however, that no license shall be issued to any person who has, within ten years of the time of filing the

application for such license been convicted of violating the provision of section five of chapter one hundred and twenty-eight A of the General Laws.

"(h) in granting authorized dates hereunder the state racing commission shall take into consideration, in addition to any other appropriate and pertinent factors, the following: the maximization of state revenues, the suitability of racing facilities for operation at the time of the year for which dates are assigned; the circumstance that large groups of spectators require safe and convenient facilities; the interest of members of the public in racing competition honestly managed and of good quality; the necessity of having and maintaining proper physical facilities for racing meetings and the necessity of according fair treatment to the economic interests and investments of those who in good faith have provided and maintain such facilities." [Amended by St.1979, c. 338, §§ 1, 2; St.1981, c. 558, § 4; St.1985, c. 580, §§ 2 to 5; St.1986, c. 277, §§ 5 to 7; St.1988, c. 317, § 2; St.1990, c. 428, § 3.]

St.1978, c. 494, an emergency act, was approved July 19, 1978.

St.1979, c. 338, an emergency act, was approved June 27, 1979.

St.1981, c. 558, was approved Nov. 18, 1981. Emergency declaration by the Governor was filed Nov. 19, 1981.

St.1985, c. 580, an emergency act, was approved Dec. 16, 1985.

St.1986, c. 277, was approved July 16, 1986.

St.1988, c. 317, an emergency act, was approved Dec. 5, 1988.

St.1990, c. 428, an emergency act, was approved Dec. 28, 1990.

For provisions of St.1978, c. 494, §§ 11 and 12A, as amended, requiring licensees to make daily payments, based on wagers, to certain trust funds, see the Historical and Statutory Notes following § 5 of this chapter.

CROSS REFERENCES

Invalidity or partial invalidity of this section, see c. 128A, § 16 .

Location and regulation of race grounds or trotting parks, see c. 271, § 33.

Massachusetts Horse Racing Authority, applicability of this section, see c. 128A, § 30.

Observance of a common day of rest and legal holidays, see c. 136, §§ 2, 14.

State racing commission, see c. 6, § 48.

AMERICAN LAW REPORTS

Judicial review of administrative ruling affecting conduct or outcome of publicly regulated horse, dog, or motor vehicle race. 36 ALR4th 1169.

State regulation of sporting events as state action within meaning of 42 USCA § 1983. 45 ALR Fed 902.

LIBRARY REFERENCES

1991 Main Volume

Theaters and Shows k3.10.
WESTLAW Topic No. 376.
C.J.S. Theaters and Shows § 22.

NOTES OF DECISIONS

1. Construction with other laws

The 1946 amendment to §§ 2 and 3 of this chapter authorizing night harness racing did not require any further local approval under § 13A of this chapter providing at least for one approval by town within which race track is located. Bay State Harness Horse Racing and Breeding Ass'n v. State Racing Commission (1960) 166 N.E.2d 711, 340 Mass. 776.

Approval by selectmen of location for harness horse racing meetings before enactment of § 13A of this chapter, requiring ratification of such approval by registered voters of town at next annual meeting, was subject to such section although "next annual election" had taken place before enactment of statute, and

hence state racing commission was without authority to pass upon an application for harness horse racing without ratification of approval of location by majority of voters of town as required by § 13A. Selectmen of Topsfield v. State Racing Com'n (1949) 86 N.E.2d 65, 324 Mass. 309.

1.4. Discretion

Statutes governing horse and dog racing meetings confer on State Racing Commission broad discretion in granting licenses, and requires and permits Commission to deal with wide variety of matters in highly competitive racing industry. Taunton Dog Track, Inc. v. State Racing Com'n (1997) 674 N.E.2d 226, 424 Mass. 54.

2. Factors considered

In considering whether to issue horse racing license to corporate applicant, State Racing Commission may reasonably consider reputations, gambling history, and police records of corporation's officers, directors, and stockholders. Barrington Fair Ass'n, Inc. v. State Racing Com'n (1989) 539 N.E.2d 554, 27 Mass.App.Ct. 1159.

In considering applications by competitors for harness racing licenses, probable economic injury to one of applicants from deprivation of disputed ten days of racing was relevant to decision only insofar as it affected ability of applicant to maintain proper facilities for race meetings and to present good quality racing in the future. Bay State Harness Horse Racing & Breeding Ass'n v. State Racing Commission (1962) 184 N.E.2d 38, 344 Mass. 688.

Licensees for harness racing must be financially responsible, must be able to meet obligation to Commonwealth, have suitable and safe facilities for service of patrons, and be persons likely to conduct racing in accordance with approved practices and in a manner consistent with public safety, health, morals, and welfare. Bay State Harness Horse Racing & Breeding Ass'n, Inc. v. State Racing Commission (1961) 175 N.E.2d 244, 342 Mass. 694.

State racing commission has duty to make adequate subsidiary findings of fact to support its decision and to demonstrate that granting or denying of racing license has been passed upon after consideration of relevant aspects of public interest. Bay State Harness Horse Racing & Breeding Ass'n, Inc. v. State Racing Commission (1961) 175 N.E.2d 244, 342 Mass. 694.

3. Site approval--In general

Under provisions of this chapter regulating horse racing, town selectmen, after having once approved location of race track, did not have power to thereafter revoke their approval and thereby

deprive state racing commission of its jurisdiction on application for license to conduct races at approved site. North Shore Corp. v. Selectmen of Topsfield (1948) 77 N.E.2d 774, 322 Mass. 413.

The board of agriculture may not delegate its approval of powers over proposed sites for race meetings under this section, but may lawfully provide that preliminary on-site inspections be conducted by department employees. Op.Atty.Gen. Aug. 11, 1966, p. 60.

Power of board of agriculture under this section to approve proposed sites for race meeting is discretionary, and therefore may not be delegated to the department employees. Op.Atty.Gen. Aug. 11, 1966, p. 60.

4. ---- Fairs, site approval

"Assistance" from the agricultural purposes fund was intended by the legislature to mean financial assistance in the ordinary meaning of that term, and the mere inspection by the department of agriculture did not constitute receipt of such aid within the meaning of clause (2) [in the second proviso of the first sentence of the first paragraph]. Op.Atty.Gen. March 29, 1966, p. 298.

Sites of racing meetings require approval by both Board and Commissioner of Agriculture; however, commissioner alone has further duty of determining whether a fair is properly qualified according to general standards under this section relating to the public interest. Op.Atty.Gen. July 20, 1964, p. 52.

5. ---- Proximity to other tracks, site approval

Assignment by the State Racing Commission of the more lucrative evening dates to plaintiff's competitor and a greater number of matinee days to plaintiff was fully supported by detailed findings and reasons made and given by the Commission to effect that the allocated dates were necessary to ensure the competitor's financial liability and to promote the interests of the racing public and the Commonwealth. Taunton Greyhound Ass'n, Inc. v. State Racing Commission (1980) 407 N.E.2d 371, 10 Mass.App.Ct. 297.

Finding of racing commission that racing meeting of 57 days permitted one of harness racing license applicants to offer good quality racing, maintain its plant, and increase its operating earnings was supported by substantial evidence and was determinative of issue of economic injury to applicant, as injury bore on public interest, from deprivation of an additional ten days of racing. Bay State Harness Horse Racing & Breeding Ass'n v. State Racing Commission (1962) 184 N.E.2d 38, 344 Mass. 688.

State racing commission cannot grant licenses for running horse racing meetings at tracks located within fifty miles of each other if one of those tracks is a licensed mile track. Op.Atty.Gen. Jan. 23, 1958, p. 46.

This section permits the issuance of licenses for dog racing meetings at two tracks in the same county if they are not for meetings to be conducted simultaneously and if no other provision of this section is violated thereby. Op.Atty.Gen. Jan. 30, 1939, p. 29.

6. Times for race meetings

State racing commission may not lawfully issue a license for harness racing which is to be conducted at times other than those specified in clause (b) [of the third paragraph]. Op.Atty.Gen. Oct. 19, 1965, p. 153.

7. Bonds

Bond filed by racing association with its application for 1969 race dates could be returned, where the application had been withdrawn and the license had not been issued. Op.Atty.Gen. March 2, 1970, p. 96.

8. Certificate of approval

Certain communication signed by Commissioner of Agriculture did not constitute certificate of approval of fair by Commissioner of Nantucket Agricultural Society required by this section in connection with application by society for issuance of license for harness race meeting. Op.Atty.Gen. April 20, 1961, p. 121.

9. Validity of licenses

Evidence that hearing on granting of an application for the conduct of racing under the **pari-mutuel** system of **wagering** was disorderly on account of overcrowding or otherwise did not invalidate the grant of the license where there was no evidence that the racing commission acted otherwise than in a fair and impartial manner. Landers v. Eastern Racing Ass'n (1951) 97 N.E.2d 385, 327 Mass. 32.

License to Franklin Fair Association, Inc., to conduct race meeting, became nullity when charter of association was revoked. Op.Atty.Gen. March 11, 1963, p. 121.

A vote of the commission and a notification of such vote to the applicant does not constitute a license to conduct a racing meeting; the licensee must receive a certificate of license to fulfill the requirements of the law. Op.Atty.Gen. Jan. 30, 1939, p. 29.

10. Notice

That shortly before time of hearing on application to conduct racing under the **pari-mutuel** system of **wagering,** place thereof in Boston was changed to a room on the mezzanine between first and second floors of same building without posting any notice to that effect did not invalidate the grant of the license, where it did not appear that any person interested could not by reasonable inquiry have found the room, where the hearing was ultimately held, and many persons did find the room to such an extent that it was overcrowded and many could not get in. Landers v. Eastern Racing Ass'n (1951) 97 N.E.2d 385, 327 Mass. 32.

A certain racing association which does not come within the definition of "party" and is not a specifically named person whose legal rights, duties or privileges are being determined is not entitled to notice of applications for certificate of approval and the right to participate in proceedings under this section where no provision is made for participation by any person other than the applicant even though the racing association is a potential competitor of the applicant. Op.Atty.Gen. Oct. 30, 1968, p. 62.

Reasonable notice for granting of substitute dates to licensees who had been deprived of regularly assigned dates by reason of circumstances beyond their control, would be satisfied by advertising of public hearing to be published on one day, or notices posted on one day, and hearing held the next. Op.Atty.Gen. Nov. 5, 1964, p. 120.

The notice of a public hearing required by this section, before issuing a license for a dog racing meeting, is sufficient if the published notice merely says that the hearing is held in accordance with the provisions of the statute. Op.Atty.Gen. March 5, 1942, p. 81.

11. Hearings

Exception to requirement that State Racing Commission hold a public hearing on all applications for horse or dog racing, and exception which applies when applicant is seeking to conduct racing in connection with a state or county fair, operates to relieve Commission and state and county fairs of burden of conducting and participating in a public hearing where fair applicant requests its annual allotment of racing days and required percentage of voters in community did not request a public hearing, but does not operate either expressly or impliedly to deprive applicant of right to be heard and to receive findings and reasons concerning number and distinctions of dates it has requested and been awarded. Taunton Greyhound Ass'n, Inc. v. State Racing Commission (1980) 407 N.E.2d 371, 10 Mass.App.Ct. 297.

Where two or more persons seek mutually exclusive privileges or licenses, each applicant has interest entitling it to hearing and review by some method which effectively compares applicants in light of applicable aspects of public interest. Bay State Harness Horse Racing & Breeding Ass'n, Inc. v. State Racing Commission (1961) 175 N.E.2d 244, 342 Mass. 694.

Evidence did not warrant a finding that the state racing commission lacked jurisdiction to issue a license to conduct horse racing under the **pari-mutuel** or certificate system of **wagering,** because of noncompliance with provisions of § 2 of this chapter respecting form of the application and because of place of a hearing and manner in which it was conducted violated this section. Landers v. Eastern Racing Ass'n (1951) 97 N.E.2d 385, 327 Mass. 32.

12. Findings of commission

State Racing Commission has duty to make adequate subsidiary findings of fact to support its decision and to demonstrate that granting or denying of racing license has been passed upon after consideration of relevant aspects of public interest. Bay State Harness Horse Racing & Breeding Ass'n, Inc. v. State Racing Commission (1961) 175 N.E.2d 244, 342 Mass. 694.

13. Review

Ownership of land abutting race track and within same town did not make owner a "person aggrieved" entitled under c. 30A, § 14, to review of decisions of State Racing Commission granting licenses to conduct races on specified dates. Shaker Community, Inc. v. State Racing Commission (1963) 190 N.E.2d 897, 346 Mass. 213.

Applicant for harness racing license, which had conducted business in state since 1947 under this section, was "aggrieved" by State Racing Commission's decision granting to another licensee a number of days which prevented commission from granting full number of days requested by applicant, entitling applicant to judicial review. Bay State Harness Horse Racing & Breeding Ass'n, Inc. v. State Racing Commission (1961) 175 N.E.2d 244, 342 Mass. 694.

Petition of applicant for harness racing license seeking review of action of State Racing Commission in granting of license to applicant for ten days less than required and in granting a license to another applicant making total number of days granted to both applicants equal to the number of days permitted in any one year for harness racing, was not multifarious. Bay State Harness Horse Racing & Breeding Ass'n, Inc. v. State Racing Commission (1961) 175 N.E.2d 244, 342 Mass. 694.

Where petition was filed by racing association for review of

action of state racing commission in granting license to another racing association for 23 nights of harness racing in 1959 which action, if valid, precluded petitioning racing association from obtaining more than 67 nights of harness racing in view of statutory maximum of 90 nights for all applicants, and Supreme Judicial Court could grant no relief in 1960 concerning the 1959 harness races which had already been run case became moot. Bay State Harness Horse Racing and Breeding Ass'n v. State Racing Commission (1960) 166 N.E.2d 711, 340 Mass. 776.

On objections to the granting of a racing license under the **pari-mutuel** system of **wagering,** it is assumed that the racing commission in granting the license acted in good faith and considered the objections when it came to pass upon the application. Landers v. Eastern Racing Ass'n (1951) 97 N.E.2d 385, 327 Mass. 32.

A license to conduct horse racing under the pari-mutuel or certificate system of wagering from the state racing commission may be attacked collaterally only on the ground that the commission had no jurisdiction to grant it. Landers v. Eastern Racing Ass'n (1951) 97 N.E.2d 385, 327 Mass. 32.

Proceedings before the state racing commission with reference to license for horse racing under the **pari-mutuel** system of **wagering** are quasi judicial in nature and the courts have no power to substitute their judgment for that of the commission in the exercise of its discretion in granting of a license. Landers v. Eastern Racing Ass'n (1951) 97 N.E.2d 385, 327 Mass. 32.

14. Amendment or modification

Statute providing that no other public hearing needs to be held on other applications from approved applicant for racing license relating to same premises, following State Racing Commission's action on license for given year, empowers Commission, for good cause shown, to deal with requests to amend or modify terms of approved racing license after licensee's racing season begins, including application by licensee to change specific racing dates. Taunton Dog Track, Inc. v. State Racing Com'n (1997) 674 N.E.2d 226, 424 Mass. 54.

State Racing Commission had authority to amend horse racing track's license to allow it to begin early its dark season, or period between racing seasons, given Commission's power to grant licenses. Taunton Dog Track, Inc. v. State Racing Com'n (1997) 674 N.E.2d 226, 424 Mass. 54.

M.G.L.A. 128A § 3

MA ST 128A § 3

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MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE III. LAWS RELATING TO STATE OFFICERS
CHAPTER 29. STATE FINANCE

Current through 1998 2nd Annual Sess.

§ 1. Definitions

As used in this chapter, the following words shall, unless the context requires otherwise, have the following meanings. All words and terms defined by section thirty-nine A of chapter seven and appearing in this chapter, except for the phrase "state agency", shall have the meaning defined therein unless the context shall indicate another meaning or intent:--

"Account" or "Line-item", a separate unit of appropriation identified by an eight-digit number.

"Appropriation", the authorization by the general court with the approval of the governor, or by overriding his objection thereto, of the expenditure of state revenues from a specified fund for a specified purpose up to a specified maximum amount for a specified period of time.

<Definition of Balanced budget effective July 1, 1999>

"Balanced budget", a condition of state finance in which the consolidated net surplus at the end of the fiscal year is greater than or equal to one-half of one per cent of state tax revenues of such fiscal year.

"Bond fund", a fund of the commonwealth into which bond revenues are deposited.

"Bond revenues", the proceeds of bonds issued by the commonwealth and the interest earned thereon.

"Budget director", the administrative head of the fiscal affairs division within the executive office for administration and finance.

"Budgetary funds", state funds which are subject to appropriation as provided in section six.

"Budgeted revenues and other financial resources pertaining to the budgeted funds", inflows from tax and nontax sources that are

directed by law to be accounted and reported to a fund which is subject to annual appropriation.

"Commissioner", the commissioner of administration as provided for in section four of chapter seven.

<Definition of Consolidated net surplus in the operating funds applicable to fiscal years beginning on or after July 1, 2000>

"Consolidated net surplus in the operating funds", the sum of the undesignated fund balances in the General Fund and the Local Aid Fund, at the close of the fiscal year, after authorized transfers from any one of said funds to other funds of the commonwealth.

"Direct appropriation", a first-time appropriation of state revenues, from sources other than bond revenues, retained revenues, and federal grants.

"Direct debt limit", the sum of the principal amounts of all direct debt issued by the commonwealth for the purposes of financing state projects and purposes with the exception of debt issued on a short-term basis in anticipation of receipts from taxes and other sources.

"Federal grant", any financial assistance available to a state agency from the United States government, either directly or through an intermediary, whether a project, formula, or block grant, a subvention, a subsidy, an augmentation, or a state plan. For the purposes of this chapter "federal grant" shall not mean such financial assistance provided pursuant to Titles XVIII or XIX of the Social Security Act or other reimbursements received for state entitlement expenditures and credited to the General Fund nor does it mean federal financial assistance from the United States government for direct payments to individuals, or for other purposes as provided for in section thirty-four of chapter ninety, section two of chapter one hundred and thirty-one, section ten of chapter one hundred and thirty-two A, section two E of chapter twenty-nine, chapter ninety-two, and section forty-eight of chapter one hundred and fifty- one A.

"Fund", an accounting entity established by general or special law to record all the financial resources or revenues together with all related expenditures or liabilities that are segregated for a particular purpose.

"Prior appropriation continued" or "PAC", a phrase used to reappropriate unexpended and unencumbered monies from one fiscal year for the subsequent fiscal year.

"Retained revenue", the income of state agency or other public instrumentality from its operations which by law it is allowed to expend for a particular purpose up to a specified limit without

further appropriation which would otherwise be subject to direct appropriation.

"Revenue retention account", an account which allows a state agency or other public instrumentality to use retained revenue during the fiscal year in which such revenue is received to maintain all or a portion of its operations.

"Revolving account", a revenue retention account in which the retained revenues unspent or unencumbered at the end of a fiscal year are carried over into the next fiscal year for expenditure.

"Secretary", the officer in charge of each executive office established by chapters six A and seven; provided, however, that secretary shall mean the board for the board of regents of higher education and the board of education; and provided, further that secretary shall mean the court for the supreme judicial court.

"State agency", a state agency, board, bureau, department, division, section, or commission of the commonwealth.

"State Authority", shall include the following: Bay State Skills Corporation, Boston Metropolitan District, Centers of Excellence Corporation, Community Economic Development Assistance Corporation, Community Development Finance Corporation, Government Land Bank, Massachusetts Bay Transportation Authority, Massachusetts Business Development Corporation, Massachusetts Convention Center Authority, Massachusetts Corporations for Educational Telecommunications, Massachusetts Educational Loan Authority, Massachusetts Health and Educational Facilities Authority, Massachusetts Horse Racing Authority, Massachusetts Housing Finance Agency, Massachusetts Industrial Finance Agency, Massachusetts Industrial Service Program, Massachusetts Port Authority, Massachusetts Product Development Corporation, Massachusetts Technology Development Corporation, Massachusetts Technology Park Corporation, Massachusetts Turnpike Authority, Massachusetts Water Resources Authority, Pension Reserves Investment Management Board, State College Building Authority, Southeastern Massachusetts University Building Authority, Thrift Institutions Fund for Economic Development, University of Lowell Building Authority, University of Massachusetts Building Authority, and the Water Pollution Abatement Trust.

"State revenue", all income from state taxes, state agency fees, fines, assessments, charges, and other departmental revenues, retained revenues, federal grants, federal reimbursements, **lottery** receipts, court judgments and the earnings on such income.

<Definition of State tax revenues effective July 1, 1999>

"State tax revenues", the revenues of the commonwealth from every tax, surtax, receipt, penalty and other monetary exaction

and interest in connection therewith including, but not limited to, taxes and surtaxes on personal income, excises and taxes on retail sales and use, meals, motor vehicle fuels, businesses and corporations, commercial banks, insurance companies, savings banks, public utilities, alcoholic beverages, tobacco, inheritances, estates, deeds, room occupancy and **pari-mutuel wagering,** but excluding revenues collected by the state from local option taxes, so-called, for further direct distribution to cities and towns.

"Tax expenditures", state tax revenue foregone as a direct result of the provisions of any general or special law which allows exemptions, exclusions, deductions from, or credits against, the taxes imposed on income, corporations, and sales.

"Trust fund", a fund into which are deposited monies held by the commonwealth or state agencies in a trustee capacity and which must be expended in accordance with the terms of the trust.

CREDIT(S)

1992 Main Volume

Amended by St.1939, c. 502, § 1; St.1941, c. 509, § 2; St.1945, c. 242, § 2; St.1962, c. 757, § 39; St.1969, c. 704, § 27; St.1974, c. 835, § 29; St.1980, c. 579, § 40; St.1986, c. 488, § 4; St.1989, c. 653, §§ 28, 29; St.1989, c. 655, § 17; St.1990, c. 121, § 12.

1999 Electronic Pocket Part Update

Amended by St.1992, c. 133, § 333; St.1994, c. 231, Sec. 4; St.1997, c. 10, § 3; St.1998, c. 161, § 222; St.1998, c. 194, §§ 72, 73.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999 Electronic Pocket Part Update

1992 Legislation

St.1992, c. 133, § 333, approved July 20, 1992, and by § 599 made effective as of July 1, 1992, in the definition of Consolidated net surplus in the operating funds, substituted "Local Aid Fund" for "Categorical Grants Fund".

1994 Legislation

St.1994, c. 231, Section 4, by § 8A, added by St.1995, c. 39, § 33 and amended by St.1996, c. 205, § 39, and amended by St.1998, c. 194, § 263, made applicable to fiscal years beginning on or

after July 1, 2000, in the definition of Consolidated net surplus, inserted "and" following "General fund" and deleted "the Highway Fund" preceding "at the close of the fiscal year".

St.1998, c. 194, §263, an emergency act, was approved July 30, 1998, and was made effective June 30, 1998, by § 436.

Section 9 of St.1994, c. 231, provides:

"The preceding sections of this act are severable and in the event that any section is to be deemed invalid such invalidity shall not be given any effect with respect to the remaining sections."

St.1994, c. 231, was approved by the people at the state election held Nov. 8, 1994, pursuant to the provisions of Article XLVIII of the Amendments to the Constitution, The Initiative, Part V, Section 1, as amended.

St.1995, c. 39, § 33, was approved June 21, 1995, and by § 62 made effective upon passage.

St.1996, c. 205, § 39, an emergency act, was approved July 30, 1996.

1997 Legislation

St.1997, c. 10, § 3, an emergency act, approved May 12, 1997, inserted the definition of Budgeted revenues and other financial resources pertaining to the budgeted funds.

1998 Legislation

St.1998, c. 161, § 222, an emergency act, approved July 2, 1998, the corrections bill, rewrote the definition of Budget director.

St.1998, c. 194, § 72, an emergency act, approved July 30, 1998, and by § 453 made effective July 1, 1999, added the definition of Balanced budget.

St.1998, c. 194, § 73, an emergency act, approved July 30, 1998, and by § 453 made effective July 1, 1999, added the definition of State tax revenues.

1992 Main Volume

St.1923, c. 362, § 19.

St.1974, c. 835, § 29, approved Aug. 13, 1974, and by § 185 made effective July 1, 1975, deleted "and of civil service and the several boards serving in the division of registration" following "life insurance" and inserted "the several boards serving in the division of registration,".

St.1980, c. 579, § 40, approved July 16, 1980, and by § 66 made effective July 1, 1981, added the second sentence.

St.1986, c. 488, § 4, approved Oct. 25, 1986, rewrote the section, which prior thereto read:

"The word 'departments' as used in this chapter, shall, unless the context otherwise requires, mean all the departments of the commonwealth, except the department of banking and insurance, but including the division of banks and loan agencies, of insurance, of savings bank life insurance, and also including the several boards serving in the division of registration, the metropolitan district commission, and each of the executive offices created by chapters six A and seven. All words and terms defined by section thirty-nine A of chapter seven of the General Laws and appearing in this chapter shall have the meaning defined therein unless the context shall indicate another meaning or intent."

St.1989, c. 653, § 28, approved Jan. 4, 1990, and by § 246 made effective upon passage, inserted the definition of State authority.

Section 29 of St.1989, c. 653, inserted the definition of Direct debt limit.

St.1989, c. 655, § 17 deleted the definition of Bonds, which read:

" 'Bonds', a written promise to pay a specified amount of money on a specified date or dates in the future, together with a periodic interest at a specified rate."

St.1989, c. 655, was approved Jan. 6, 1990. Emergency declaration by the Governor was filed March 12, 1990.

St.1990, c. 121, § 12, by § 113 made effective July 1, 1991, in the definition of Consolidated net surplus in the operating funds, substituted "Categorical Grants" for "Local Aid".

St.1990, c. 121, was approved July 18, 1990. Emergency declaration by the Governor was filed on the same date.

Section 101A of St.1990, c. 121, as added by St.1990, c. 150, § 368, provides:

"The provisions of this act shall be deemed severable, and if any part of this act shall be adjudged unconstitutional or invalid, such judgment shall not affect the validity of other parts thereof."

St.1990, c. 150, § 368, was approved Aug. 1, 1990, and by § 383 made effective as of July 1, 1990.

LIBRARY REFERENCES

1992 Main Volume

States k45.
WESTLAW Topic No. 360.
C.J.S. States §§ 79, 80, 82, 136.

M.G.L.A. 29 § 1

MA ST 29 § 1

END OF DOCUMENT

MA ST 10 s 25
M.G.L.A. 10 § 25

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE II. EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
CHAPTER 10. DEPARTMENT OF THE STATE TREASURER
STATE **LOTTERY**

Current through 1998 2nd Annual Sess.

§ 25. Apportionment of **lottery** revenues

The apportionment of the total revenues accruing from the sale of **lottery** tickets or shares and from all other sources shall be as follows:--(a) the payment of prizes to the holders of winning tickets or shares which in any case shall be no less than forty-five per cent of the total revenues accruing from the sale of **lottery** tickets; (b) the payment of costs incurred in the operation and administration of the **lottery**, including the expenses of the commission and the costs resulting from any contract or contracts entered into for promotional, advertising or operational services or for the purchase or lease of **lottery** equipment and materials which in no case shall exceed fifteen per cent of the total revenues accruing from the sale of **lottery** tickets, subject to appropriation; and (c) the balance to be used for the purposes set forth in clause (c) of section thirty-five.

CREDIT(S)

1996 Main Volume

Added by St.1971, c. 813, § 2. Amended by St.1991, c. 461, §§ 2, 3; St.1993, c. 71, § 1; St.1994, c. 60, § 33.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1996 Main Volume

St.1991, c. 461, § 2, approved Dec. 30, 1991, and by § 4 made effective Jan. 1, 1993, added the second paragraph.

Section 3 of St.1991, c. 461, which by § 4, as amended by St.1994, c. 60, § 188, was to take effect July 1, 1994, but never took effect due to St.1994, c. 60, § 33, rewrote the second paragraph to read:

"Revenues from the lotteries for the arts shall be distributed in accordance with the provisions of section fifty-seven."

St.1994, c. 60, § 188, was approved July 10, 1994, and by § 315 made effective as of July 1, 1994.

St.1993, c. 71, § 1, an emergency act, approved June 18, 1993, in the second paragraph, rewrote the first sentence, which prior thereto read, "Revenue from the **lotteries** for the arts shall be distributed in accordance with the provisions of section fifty-seven, except that the comptroller shall calculate the daily average of **lotteries** for the arts net receipts for the month of April each year and transfer an amount equal to one day of said average to the Children's Trust Fund established in section fifty; provided, however, that in no case shall the amount transferred to said trust fund exceed one million dollars in any fiscal year."

Sections 67 and 99 of St.1993, c. 71, provide:

"Section 67. This act shall apply to all cities, towns, and regional school districts, notwithstanding section twenty-seven C of chapter twenty-nine of the General Laws and without regard to any acceptance or appropriation by a city, town, or regional school district or to any appropriation by the general court."

"Section 99. All programs and actions undertaken under the provisions of this act shall be conducted in a manner reflecting and encouraging a policy of nondiscrimination and equal opportunity for members of minority groups and women. All officials and employees of any school department or district shall take affirmative steps to ensure equality of opportunity in the internal affairs of such departments and districts, as well as in their relations with the public, including those persons and organizations doing business with said departments and districts. Each school district department and district shall adopt measures to ensure equal opportunity in the areas of hiring, promotion, demotion, transfer, recruitment, layoff or

termination, rates of compensation, and in-service training programs. The department of education shall conduct an ongoing review of affirmative action steps taken by various school departments and districts to determine whether such departments and districts are complying with the intent of this section. Whenever such noncompliance is determined by the board of education, the commissioner shall hold a public hearing on the matter and report his resulting recommendations to the school committee of the department or district and to the Massachusetts commission against discrimination."

St.1994, c. 60, § 33, approved July 10, 1994, and by § 315 made effective as of July 1, 1994, deleted the second paragraph, which read:

"Revenue from the lotteries for the arts shall be distributed in accordance with the provisions of section fifty-seven; provided, however, that the comptroller shall transfer in April of each year six hundred thousand dollars therefrom to the children's trust fund established in section fifty. The commission shall report by June thirtieth of each fiscal year to the governor, the attorney general, the child abuse prevention board established in section two hundred and two of chapter six, and the house and senate committees on ways and means the total revenues from the lotteries for the arts which have been transferred to said trust fund. Revenues transferred to said trust fund under the provisions of this section are to be administered in accordance with the provisions of section fifty. The state auditor shall notify the house and senate committees on ways and means yearly of the amount of revenue transferred to said trust fund; provided, however, that said auditor shall give a yearly accounting to the house and senate committees on ways and means of the source and amount of all state appropriations to the childrens trust fund pursuant to section fifty."

Related Laws:

St.1994, c. 126, § 69, approved Sept. 1, 1994, and by § 76 made effective upon passage, provides:

"Notwithstanding any general or special law to the contrary, the Massachusetts state **lottery** commission is hereby restricted to developing **lottery games,** including instant **games,** exclusively for the purpose of attaining **lottery** revenues for the Local Aid Fund and the Massachusetts cultural council. Nothing in this section shall be construed to alter or amend the provisions of section two C 1/2 of chapter twenty-nine of the General Laws or the distribution of state financial assistance to cities and towns thereunder."

LAW REVIEW AND JOURNAL COMMENTARIES

Gambling. Herbert P. Gleason, William H. Kerr and Thomas H.

Martin, 18 Ann.Surv.Mass.L. 386 (1971).

LIBRARY REFERENCES

1996 Main Volume

States k128.
WESTLAW Topic No. 360.
C.J.S. States § 227.

NOTES OF DECISIONS

In general 1
Expenses of commission 2

1. In general

Constitutional and statutory provisions pertinent to State Treasury are not applicable to payments of $2 and $10 prizes in Instant **Game lottery,** since such payments are made by vendors from their own funds and do not involve monies either paid to **Lottery** Commission or in control of the State Treasurer. Op.Atty.Gen., April 26, 1973, p. 114.

2. Expenses of commission

Fifteen percent limitation upon expenses of State **Lottery** Commission imposed by statute, had no application to distribution of fiscal 1981 arts **lottery** funds to local and regional arts councils. Op.Atty.Gen., March 15, 1982, p. 143.

M.G.L.A. 10 § 25

MA ST 10 § 25

END OF DOCUMENT

MA ST 271 s 30
M.G.L.A. 271 § 30

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE I. CRIMES AND PUNISHMENTS
CHAPTER 271. CRIMES AGAINST PUBLIC POLICY

Current through 1998 2nd Annual Sess.

§ 30. Trading stamps or similar devices; sale or delivery

Whoever, in connection with the sale of any article or any merchandise whatsoever, sells, gives or delivers any trading

stamps, checks, coupons or similar devices to be exchanged for, or to be redeemed by the giving of, any indefinite or undescribed article, the nature and value of which are not stated, or to be exchanged for, or to be redeemed by the giving of, any article not distinctly bargained for at the time when such trading stamps or other devices as aforesaid were sold, given or delivered, shall be punished by a fine of not less than ten nor more than fifty dollars.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

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St.1903, c. 386.

AMERICAN LAW REPORTS

Giving of trading stamps, premiums, or the like, as violation of fair trade law. 22 ALR2d 1212.

Giving of trading stamps, premiums, or the like, as violation of statute prohibiting sales below cost. 70 ALR2d 1080.

Promotion schemes of retail stores as criminal offense under **anti-gambling** laws. 29 ALR3d 888.

Real-estate brokers: statute or **regulation** forbidding use of prizes, gifts, or premiums as inducement to secure customers. 62 ALR4th 1044.

LIBRARY REFERENCES

1990 Main Volume

Gaming k7, 68(4).
Lotteries k26.

C.J.S. **Gaming** §§ 1, 5.
C.J.S. Trading Stamps and Coupons §§ 3, 4.
Texts and Treatises

38 Am Jur 2d, **Gambling** §§ 65, 73.

M.G.L.A. 271 § 30

MA ST 271 § 30

END OF DOCUMENT

MA ST 128C s 6
M.G.L.A. 128C § 6

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XIX. AGRICULTURE AND CONSERVATION
CHAPTER 128C. SIMULCAST **WAGERING** OF HORSE AND DOG RACING

Current through 1998 2nd Annual Sess.

§ 6. Simulcast **wagering** at guest track for greyhound races from host track; payments to winning patrons, commission and greyhound promotional trust fund

Each racing meeting licensee within the commonwealth acting as a guest track and simulcasting a live greyhound race from a host track within the commonwealth shall return to the winning patrons **wagering** on such simulcast race all sums so deposited as an award or dividend, according to the acknowledged and recognized rules and methods under which such **pari-mutuel** or certificate system has been operated, less the breaks, as defined in section five of chapter one hundred and twenty-eight A, and less an amount not to exceed nineteen percent of the total amount so deposited; provided, however, that a sum equal to two and one-half percent of the total amount **wagered** shall be paid daily to the commission on behalf of the commonwealth; a sum equal to one-quarter of one percent of the total amount **wagered** shall be paid to the Greyhound Promotional Trust Fund under the direction and supervision of the state racing commissioners; a sum equal to one-quarter of one percent of the total amount **wagered** shall be paid to the Greyhound Capital Improvements Trust Fund under the direction and supervision of the state racing commissioners; a sum equal to two and one-half percent shall be paid as purses to the dog owners at the host track in accordance with the rules and established customs of conducting greyhound racing meetings; a sum equal to four and one-quarter percent shall be paid to the racing meeting licensee at the host track; a sum equal to nine and one-quarter percent shall be retained by the racing meeting licensee at the guest track; provided, however, that not less than three and one-half percent shall be paid to the dog owners for purses, said percentages to be paid from the nineteen percent withheld as provided in this section.

Each racing meeting licensee within the commonwealth acting as a guest track and simulcasting a live greyhound race from a host track from outside the commonwealth shall return to the winning patrons all sums so deposited less such breaks and less either an amount not to exceed nineteen percent of the total amount so deposited or an amount which would be paid under the laws of the jurisdiction exercising regulatory authority over such host track; provided, however, that a sum equal to two and one-half percent of the total amount **wagered** shall be paid daily to the commission on behalf of the commonwealth; a sum equal to

one-quarter of one percent of the total amount **wagered** shall be paid to the Greyhound Promotional Trust Fund under the direction and supervision of the state racing commissioners; a sum equal to one-quarter of one percent of the total amount **wagered** shall be paid to the Greyhound Capital Improvement Trust Fund under the direction and supervision of the state racing commissioners; and the remaining percentages shall be retained by the racing meeting licensee as his commission; provided, however, that not less than three and one-half percent shall be paid to the dog owners for purses, and the remaining portion shall be applied to the expenses as the racing meeting licensee is required to pay pursuant to contracts negotiated with the host track. All such contracts shall be subject to the approval of the recognized greyhound owners association of the most recent live racing performance at the guest track.

In no case shall a person or association licensed to conduct a dog racing meeting serve as a guest or host track for the purpose of simulcasting a race unless the licensee has received the prior approval of the greyhound owners association at the licensees facility and such approval is on file with the commission.

CREDIT(S)

1999 Electronic Pocket Part Update

Added by St.1992, c. 101, § 5.

<General Materials (GM) - References, Annotations, or Tables>

EXPIRATION

<This section expires December 31, 1999. See Historical and Statutory Notes following § 1 of this chapter.>

LIBRARY REFERENCES

1991 Main Volume

Texts and Treatises

38 Am Jur 2d, **Gambling** §§ 17-19, 44-47.

M.G.L.A. 128C § 6

MA ST 128C § 6

END OF DOCUMENT

MA ST 10 s 57
M.G.L.A. 10 § 57

MASSACHUSETTS GENERAL LAWS ANNOTATED

PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE II. EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
CHAPTER 10. DEPARTMENT OF THE STATE TREASURER
CULTURAL COUNCIL

Current through 1998 2nd Annual Sess.

§ 57. State Arts **Lottery** Fund

There shall be established and set up on the books of the commonwealth a separate fund, to be known as the State Arts **Lottery** Fund. Said fund shall consist of all revenues received from the sale of arts **lottery** tickets or shares and all other monies credited or transferred thereto from any other fund or source pursuant to law. As of July first and January first of each year, the comptroller shall determine the net balance in the State Arts **Lottery** Fund derived from arts **lottery** revenues for the preceding six months after deductions are made for (1) the amounts paid or incurred for prizes to holders of the winning **lottery** tickets or shares during such six month period, (2) the expenses of the state **lottery** commission in administering and operating the **lottery** for the arts for such six month period, subject to appropriation, as certified by the commissioner of administration, which amount the treasurer shall, as of such July first or January first, transfer to the General Fund, (3) the expenses of administration of the council for such six month period, including expenses of members, subject to appropriation, as certified by the commissioner of administration, and which amount the treasurer shall, as of such July first or January first transfer to the General Fund. Such net balance of any arts **lottery** revenues for such preceding six month period not already deducted in clauses (1), (2) or (3), if any, shall be allocated and expended as follows: (a) one million five hundred thousand dollars shall be retained in the State Arts **Lottery** Fund and shall be available for distribution by the council as hereinafter provided in this section and sections fifty-six and fifty-eight; (b) the amount determined by the comptroller as of July first and January first not already allocated in clause (a) shall be transferred to the Local Aid Fund. The amounts remaining including (i) the amount determined under clause (a) above, (ii) any amounts credited or transferred to the State Arts **Lottery** Fund and not yet distributed derived from sources other than the sale of arts **lottery** tickets and (iii) any amount in the State Arts **Lottery** Fund derived from revenues of the arts **lottery** conducted earlier than such preceding six month period, shall be distributed to the several cities and towns as provided under the provisions of section fifty-six and the guidelines, rules, rulings or **regulations** issued by the council. The council may determine the time and the amount for the distribution of such funds as the council may deem necessary or desirable to carry out

the purposes of sections fifty-six to fifty-eight, inclusive; provided, however, that each eligible city or town shall be eligible to receive an annual minimum of one thousand dollars, and provided further, that a portion as determined by the council of the amount allocated under clause (a) above shall be utilized by the council for a program to assist Massachusetts school children to attend commercial or nonprofit cultural programs or events.

CREDIT(S)

1996 Main Volume

Added by St.1989, c. 653, § 15. Amended by St.1990, c. 121, § 4; St.1992, c. 133, §§ 200 to 202.

1999 Electronic Pocket Part Update

Amended by St.1996, c. 450, § 27.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999 Electronic Pocket Part Update

1996 Legislation

St.1996, c. 450, § 27, an emergency act, approved Dec. 27, 1996, in the fourth sentence, in cl. (b), deleted "established by section two D of chapter twenty- nine" following "Local Aid Fund".

1996 Main Volume

St.1990, c. 121, § 4, by § 113 made effective July 1, 1991, in the fourth sentence, substituted "COMPACT Fund established by section two M of chapter twenty-nine" for "Local Aid Fund".

St.1990, c. 121, was approved July 18, 1990. Emergency declaration by the Governor was filed on the same date.

St.1992, c. 133, § 200, approved July 20, 1992, and by § 599 made effective as of July 1, 1992, in the fifth sentence, in cl. (iii), inserted "month".

Section 201 of St.1992, c. 133, in the fourth sentence, in cl. (b), substituted "Local Aid Fund established by section two D of chapter twenty- nine" for "COMPACT Fund established by section two M of chapter twenty-nine".

Section 202 of St.1992, c. 133, in the sixth sentence, substituted "for the distribution" for "of the distribution",

deleted "of which amount a minimum of five hundred dollars shall be allocated to a program to assist Massachusetts school children as hereinafter provided;" following "one thousand dollars,", and substituted "a portion as determined by the council" for "five hundred thousand" and "nonprofit cultural programs or events" for "non-profit cultural events including, but not limited to theatre, ballet, opera, symphony, and other performing arts"; and deleted the seventh sentence, which read, "Participating institutions must make a continuing commitment to the council to provide tickets for the students at a maximum cost per ticket to be determined by the council."

Prior Laws:
G.L. c. 10, § 35B, as added by St.1981, c. 351, § 294.
St.1983, c. 289, § 70.
St.1984, c. 188, § 20.

CROSS REFERENCES

Apportionment of revenues from multi-jurisdictional **lottery game**, see c. 10, § 24A.

NOTES OF DECISIONS

In general 1

1. In general

Fifteen percent limitation upon expenses of State **Lottery** Commission imposed by c. 10, § 25, had no application to distribution of fiscal 1981 arts **lottery** funds to local and regional arts councils. Op.Atty.Gen., March 15, 1982, p. 143.

Legislative appropriations could properly be used to make payments for expenses and prizes for State Arts **Lottery** through State **Lottery** Fund, but unexpended balances from appropriations could not be transferred to State Arts **Lottery** Fund for distribution to local arts councils and for payment of administrative expenses of Arts **Lottery** Council, and, in absence of specific statutory authority to contrary, were to revert instead ultimately to General Fund. Op.Atty.Gen., April 8, 1981, p. 147.

Revenues from sale of state arts **lottery** tickets were to be deposited first into State **Lottery** Fund, from which payment of prizes and costs of operating arts **lottery** were to be made, and thereafter, remaining balances were to be transferred into State Arts **Lottery** Fund. Op.Atty.Gen., April 8, 1981, p. 147.

M.G.L.A. 10 § 57

MA ST 10 § 57

END OF DOCUMENT

MA ST 276 s 3
M.G.L.A. 276 § 3

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE II. PROCEEDINGS IN CRIMINAL CASES
CHAPTER 276. SEARCH WARRANTS, REWARDS, FUGITIVES FROM JUSTICE, ARREST,
EXAMINATION, COMMITMENT AND BAIL. PROBATION OFFICERS AND BOARD OF PROBATION
SEARCH WARRANTS

Current through 1998 2nd Annual Sess.

§ 3. Seizure, custody and disposition of articles; exceptions

If an officer in the execution of a search warrant finds property or articles therein described, he shall seize and safely keep them, under the direction of the court or justice, so long as necessary to permit them to be produced or used as evidence in any trial. As soon as may be, thereafter, all property seized under clause First of section one shall be restored to the owners thereof; and all other property seized in execution of a search warrant shall be disposed of as the court or justice orders and may be forfeited and either sold or destroyed, as the public interest requires, in the discretion of the court or justice, except:

(a) Diseased animals or carcasses thereof, or any tainted, diseased, corrupt, decayed or unwholesome meat, fish, vegetables, produce, fruit or provisions of any kind, or the meat of any calf killed when less than two weeks old, or any product thereof kept or concealed with intent to kill, sell or offer the same for sale for food, shall be destroyed or disposed of in accordance with section one hundred and forty-six of chapter ninety-four by the board of health or by an officer designated by the court or justice; and diseased animals found to have been kept or concealed in a particular building, place or enclosure shall be destroyed or disposed of by the division of animal health and department of food and agriculture without compensation to the owners thereof.

(b) Rifles, shotguns, pistols, knives or other dangerous weapons which have been found to have been kept, concealed or used unlawfully or for an unlawful purpose shall be forfeited to the commonwealth and delivered forthwith to the colonel of the state police for destruction or preservation in the discretion of the colonel of the state police.

(c) Money seized under clause Third of section one shall be forfeited and paid over to the state treasurer.

(d) Any property, including money seized under section one, the forfeiture and disposition of which is specified in any general or special law shall be disposed of in accordance therewith.

CREDIT(S)

1994 Main Volume

Amended by St.1934, c. 340, § 15; St.1957, c. 660, § 3; St.1964, c. 557, § 4; St.1965, c. 325; St.1967, c. 347, § 12; St.1971, c. 1071, § 7; St.1975, c. 706, § 302; St.1977, c. 556, § 4.

1999 Electronic Pocket Part Update

Amended by St.1996, c. 151, § 497.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999 Electronic Pocket Part Update

1996 Legislation

St.1996, c. 151, § 497, approved June 30, 1996, and by § 690 made effective July 1, 1996, in cl. (b), substituted "colonel of the state police" for "commissioner of public safety" in two places.

1994 Main Volume

R.S.1836, c. 142, § 5.
G.S.1860, c. 170, § 5.
P.S.1882, c. 212, § 5.
St.1890, c. 452.
St.1894, c. 410, § 1.
St.1894, c. 491, § 14.
St.1899, c. 408, § 16.
R.L.1902, c. 217, § 3.
St.1902, c. 116, §§ 1, 2.
St.1912, c. 608, §§ 1, 2.
St.1919, c. 179, §§ 2, 3. St.1919, c. 350, §§ 39, 40.

St.1934, c. 340, § 15, approved June 27, 1934, in the second sentence, substituted "division of livestock disease control of the department of agriculture" for "division of animal industry of the department of conservation" and inserted ", except money seized under clause eleven of said section one,".

St.1957, c. 660, § 3, approved Aug. 9, 1957, and by § 7 made effective Jan. 1, 1958, in the second sentence, inserted "narcotic drugs, as defined in section one hundred and ninety-seven of chapter ninety-four, seized under clause nine or"

Section 6 of St.1957, c. 660, provides:

"If any provision of this act or the application of any such provision to any person or in any circumstances shall be invalid, the validity of the remainder of this act, and the applicability of any such provision to other persons, and in other circumstances, shall not be affected thereby."

St.1964, c. 557, § 4, rewrote the section, which prior thereto read:

"If an officer in the execution of a search warrant finds property or articles therein described, he shall seize and safely keep them, under the direction of the court or justice, so long as necessary to permit them to be produced or used as evidence on any trial. As soon as may be afterward, all property seized under clauses one and two of section one shall be restored to the owner thereof; property seized under clause three of said section shall be disposed of as the court or justice orders; property or other articles seized under clause six of said section shall, if upon a hearing the court or justice finds that they were so kept or concealed, be destroyed or disposed of in accordance with section one hundred and forty-six of chapter ninety-four by the board of health or by an officer designated by the court or justice, otherwise, they shall be returned to the owner; diseased animals seized under clause seven of said section one shall, if upon a hearing the court or justice finds that they were kept or concealed in a particular building, place or enclosure, be destroyed or disposed of by the division of livestock disease control of the department of agriculture, without compensation to the owners thereof, otherwise, they shall be returned to their owners; property seized under clause thirteen of said section one, if found to have been kept for an unlawful purpose, shall be forfeited and disposed of as the court or justice orders; and all other articles seized by virtue of such warrants, except narcotic drugs, as defined in section one hundred and ninety-seven of chapter ninety- four, seized under clause nine or money seized under clause eleven of said section one, shall be adjudged forfeited and be destroyed or sold as hereinafter provided."

St.1964, c. 557, was approved June 16, 1964. Emergency declaration by the Governor was filed June 23, 1964.

St.1965, c. 325, approved April 15, 1965, in the introductory paragraph, substituted "clause First" for "clause one", in cl. (b), substituted "clause Third" for "clause three", and in cl. (d), substituted "clause Third of section one" for "clause

three".

St.1967, c. 347, § 12, approved June 12, 1967, in cl. (a), substituted "division of animal health" for "division of livestock disease control".

St.1971, c. 1071, § 7, approved Nov. 11, 1971, and by § 9, as amended by St.1972, c. 2, made effective July 1, 1972, deleted a former cl. (b), which read:

"(b) Narcotics seized under clause Third of section one shall be disposed of pursuant to the provisions of section two hundred and fourteen of chapter ninety-four";

and redesignated former cls. (c), (d) and (e) as cls. (b), (c) and (d).

St.1972, c. 2, an emergency act, was approved January 27, 1972.

St.1975, c. 706, § 302, an emergency act, approved Nov. 25, 1975, and by § 312 made effective as of July 1, 1975, in cl. (a), inserted "food and".

St.1977, c. 556, § 4, approved Sept. 26, 1977, in cl. (d), inserted ", including money seized under section one,".

CROSS REFERENCES

Disposition of property seized from common gaming houses, etc., see c. 271, § 23.

Livestock disease control, isolation and destruction of animals, see c. 129, § 11.

Penalty for delay of service of warrant, see c. 268, § 22.

Unreasonable searches and seizures, constitutional safeguards, see Const. Pt. 1, Art. 14.

AMERICAN LAW REPORTS

Forfeiture of money used in connection with **gambling** or **lottery**, or seized by officers in connection with an arrest or search on premises where such activities took place. 19 ALR2d 1228.

Propriety in state prosecution of severance of partially valid search warrant and limitation of suppression to items seized under invalid portions of warrant. 32 ALR4th 378.

Forfeiture of money to state or local authorities based on its association with or proximity to other contraband. 38 ALR4th 496.

Seizure of property as evidence in criminal prosecution or

investigation as compensable taking. 44 ALR4th 366.

Propriety of state or local government health officer's warrantless search-- post-Camara cases. 53 ALR4th 1168.

Seizure and forfeiture of firearms or ammunition under 18 USCA § 924(d). 57 ALR Fed 234.

Admissibility of evidence obtained by unconstitutional search in proceedings under Occupational Safety and Health Act (29 USCA §§ 651 et seq.). 67 ALR Fed 724.

LAW REVIEW AND JOURNAL COMMENTARIES

Effect of Mapp v. Ohio. Walter H. McLaughlin, Jr., 10 Ann.Surv.Mass.L. 240 (1963).

Fruits of involuntary confession. Walter H. McLaughlin, Jr., 10 Ann.Surv.Mass.L. 243 (1963).

Inaccurate search warrant affidavits as a ground for suppressing evidence. Steven M. Kipperman (1971) 84 Harv.L.Rev. 825.

Mere evidence rule; warrants. (1967) 81 Harv.L.Rev. 112.

Personal search incident to custodial arrests for traffic violations: Supreme Court, 1973 term. (1974) 88 Harv.L.Rev. 181.

Search and seizure, consent by wife. (1966) 79 Harv.L.Rev. 1513.

Search warrants. Reuben Goodman, 13 Ann.Surv.Mass.L. 159 (1966).

LIBRARY REFERENCES

1999 Electronic Pocket Part Update

Forms.

Motion for return of property, see Kantrowitz and Witkin, 42 Massachusetts
Practice § 10.8 (2d ed.).

1994 Main Volume

Comments.

Search and seizure, see M.P.S. vol. 30, Smith, § 151 et seq.
Texts and Treatises

36 Am Jur 2d, Forfeitures and Penalties §§ 15 et seq.

68 Am Jur 2d, Searches and Seizures §§ 116-119.
8 Am Jur Pl & Pr Forms (Rev), Criminal Procedure, Form 171 (motion for continuance).

UNITED STATES CODE ANNOTATED

Searches and seizures, see U.S.C.A. Const. Amend. 4.

NOTES OF DECISIONS

1. In general

Where trial court, with defendant's apparent approval, credited money seized pursuant to search of apartment to codefendant's fine, defendant had no interest in such money, and could make no claim to it. Com. v. Davis (1978) 384 N.E.2d 181, 376 Mass. 777.

Material may be taken during search when it bespeaks likelihood of some criminal conduct of which officers may have had no prior awareness, including contraband, fruits of crime, or things otherwise unlawfully possessed and weapons or instrumentalities of crime. Com. v. Bond (1978) 375 N.E.2d 1214, 375 Mass. 201.

Where detective who had been investigating defendant knew that defendant "operated" in area of apartment which was entered pursuant to search warrant and that defendant usually "went after" goods like those present in apartment, detective stated that he "related" articles observed in apartment to "break" that he knew had occurred elsewhere in area, and there were large

number of valuable goods in apartment, seizure of goods was proper even though they were not listed in search warrant. Com. v. DeMasi (1972) 283 N.E.2d 845, 362 Mass. 53.

Once police are lawfully on premises pursuant to valid search warrant, they have right to seize articles not named in warrant if they know or have probable cause to believe that articles are stolen. Com. v. DeMasi (1972) 283 N.E.2d 845, 362 Mass. 53.

Green shirt seized by police officer from defendant's motel room pursuant to warrant authorizing a search for, inter alia, a "green bandanna" was not unlawful, notwithstanding claim that a bandanna was not a shirt, where, basically, warrant authorized search for and seizure of any green cloth capable of being worn as or used in manner or fashion of a bandanna, whether it actually was a bandanna or whether it was a handkerchief, scarf, torn shirt to cloth from any other source. Com. v. Postoian (1972) 281 N.E.2d 588, 361 Mass. 869.

There was no prohibition against seizure of articles of defendant's clothing to be used for evidentiary purposes, in murder prosecution, where there was nexus between such articles and the crime. Com. v. Murray (1971) 269 N.E.2d 641, 359 Mass. 541.

Mere fact that premises were searched by authority of warrants does not compel conclusion that there could be no lawful seizure of articles not described in warrants. Com. v. Wojcik (1971) 266 N.E.2d 645, 358 Mass. 623.

2. Description of articles

Even if words "green bandanna" in warrant for search of defendant's motel room did not include a green cloth from a torn shirt, seizure of torn shirt from defendant's motel room was not unlawful, where, at time police officer entered motel room to execute warrant, he possessed information given him by several eyewitnesses to crimes to effect that one of perpetrators wore a green cloth mask over lower portion of his face, and, while lawfully searching room for a green bandanna, officer discovered a torn green shirt made of cloth which, as to color, weight, texture and finish, matched description he had of green cloth worn over face of one of robbers. Com. v. Postoian (1972) 281 N.E.2d 588, 361 Mass. 869.

3. Affidavit

Affidavit setting forth that defendant was considered major source of narcotics in area, that defendant had admitted use and possession of narcotics to police officers that he was often seen with known addicts, and that information supplied by reliable informant led to arrest of two men with 24 bags of heroin in their possession who were identified by informant as "pushers"

for defendant was sufficient for issuance of search warrant, and evidence seized as result of warrant was admissible. Com. v. Ellis (1970) 254 N.E.2d 408, 356 Mass. 574.

4. Possessory interest in premises

Officer's affidavit that he had observed defendant entering certain dwelling and third floor apartment occupied by defendant's girl friend several times within month and had observed automobile wanted in connection with theft parked in driveway of dwelling provided ample justification for magistrate to conclude that there was probable cause to believe that stolen goods would be found in apartment and justified issuance of search warrant despite defendant's lack of possessory interest in premises. Com. v. DeMasi (1972) 283 N.E.2d 845, 362 Mass. 53.

5. Service or notice of warrant

Contention of defendant in murder prosecution that one of the persons upon whom two warrants were served was in constructive possession of his clothes and might be said to be a bailee, so that search warrant was illegal in absence of proper service or notice, could not be sustained where there was no forcible entry and no objections to the searches by either of persons who surrendered the clothing, proper warrants were in possession of searching officers and officers so announced at time they were permitted to enter and search, and officers had one of those persons read the warrant before articles of clothing named in the warrant were taken from searched premises. Com. v. Stirling (1966) 218 N.E.2d 81, 351 Mass. 68.

6. Search incident to arrest

Examination of defendant's clothing at police station at time of arrest was a search incidental to his arrest and clothing was admissible in prosecution for first-degree murder where probable cause existed for his detention. Com. v. Appleby (1970) 265 N.E.2d 485, 358 Mass. 407.

Inasmuch as search and arrest warrant was valid, search incidental to arrest under it was lawful and property taken during incidental search was admissible. Com. v. Pope (1968) 241 N.E.2d 848, 354 Mass. 625.

Where defendant was searched as incident of his invalid arrest and during such search evidence was obtained which led to subsequent search of apartment where suitcase which was opened by key taken from defendant and which contained proceeds of robbery was found, admission of evidence obtained as result of search of defendant and of apartment was prejudicial error as to such defendant. Com. v. Dirring (1968) 238 N.E.2d 508, 354 Mass. 523.

7. Items in plain sight

Officer, who was lawfully searching automobile for evidence of ownership or right of use had right to seize property which he found and which he had reasonable cause to believe was stolen. Com. v. Haefeli (1972) 279 N.E.2d 915, 361 Mass. 271.

Where intrusion which brings police within plain view of object they have reasonable cause to believe was stolen is lawful, their seizure of such object is also lawful, regardless of whether lawful intrusion was supported by warrant or under recognized exception to warrant requirement. Com. v. Haefeli (1972) 279 N.E.2d 915, 361 Mass. 271.

Officer who knew of thefts of checks, who had just arrested occupants of automobile in that connection, and who saw manila envelope with checks protruding on floor of automobile, had probable cause to search automobile. Com. v. Haefeli (1972) 279 N.E.2d 915, 361 Mass. 271.

Claims as to illegal search and seizure of evidence did not require reversal of convictions for attempted larceny of liquor where cases of liquor were in plain sight including liquor in rented truck which could be observed through open doors. Com. v. Chaisson (1971) 266 N.E.2d 311, 358 Mass. 587.

7.8. Public interest exception

"Public interest" precluded return to defendant, who was convicted of mutilation, rape and murder, of dildos, items of alleged child pornography, and sexually explicit publications, as return would justifiably spark outrage, disgust, and incredulity on the part of the general public, thereby undermining its confidence in the criminal justice system. Beldotti v. Com. (1996) 669 N.E.2d 222, 41 Mass.App.Ct. 185, review denied 672 N.E.2d 538, 423 Mass. 1109, certiorari denied 117 S.Ct. 1443, 137 L.Ed.2d 549.

In some cases, it is within "public interest" to punish offender for criminal act by refusing to return property to the offender. Beldotti v. Com. (1996) 669 N.E.2d 222, 41 Mass.App.Ct. 185, review denied 672 N.E.2d 538, 423 Mass. 1109, certiorari denied 117 S.Ct. 1443, 137 L.Ed.2d 549.

8. Forfeiture of items seized

Notice by which proceedings for forfeiture of articles seized at **gaming** place are commenced must inform the claimant with reasonable particularity of the property intended to be forfeited. Com. v. Alleged **Gaming** Apparatus and Implements and Money (1957) 139 N.E.2d 715, 335 Mass. 223.

Electric typewriter used to record results of horse races, but not to determine whether a better should win or lose, was not

subject to forfeiture as **"gaming** apparatus or implements used or kept in unlawful **gaming",** irrespective of whether **gaming** was carried on where typewriter was seized. Commonwealth v. Certain **Gaming** Implements (1944) 57 N.E.2d 542, 317 Mass. 160.

An electric typewriter if classed as "furniture, fixtures and personal property," when used only to record results of races, which was seized under search warrant of premises allegedly used for taking **bets** on horses, at time when no **gambling** actually was carried on, was not subject to forfeiture. Commonwealth v. Certain **Gaming** Implements (1944) 57 N.E.2d 542, 317 Mass. 160.

This section, providing that property seized should be forfeited as soon as may be after any trial, is not a statute of limitation, but relates to termination of the forfeiture proceedings. Commonwealth v. Certain **Gaming** Implements and Personal Property (1943) 47 N.E.2d 939, 313 Mass. 409.

9. Destruction of items seized

A court of competent jurisdiction, to which is returned a search warrant under those statutes on which **gaming** apparatus and implements have been seized in a **gaming** house, cannot lawfully cause them to be destroyed without first causing such notice to be given as is reasonable and likely to inform the parties interested, and affording to them an opportunity to be heard; and furniture, fixtures, or personal property seized on the warrant cannot lawfully be forfeited and sold, except on written application, describing the things, and when, where, and wherefore they were seized; and sufficient generally to inform any claimant what it is to which he must answer in order to defend his right, and upon a judicial hearing with reasonable notice to claimants and opportunity for them to have their rights determined by jury trial. Attorney General v. Justices of Municipal Court of City of Boston (1869) 103 Mass. 456.

When a party is convicted on an indictment for having obscene books or prints, the court can order them to be destroyed or impounded, though they may have been seized on a warrant unlawfully issued or executed and the authority to destroy or impound, in those cases, may be incident to the conviction. Com. v. Lottery Tickets (1850) 59 Mass. 369, 5 Cush. 369.

10. Suppression of evidence

Breadth of cross-examination of defendant permitted at suppression hearing was not prejudicial where no part of that testimony was referred to before the jury. Com. v. Martin (1972) 285 N.E.2d 124, 362 Mass. 243.

Where only part of police officer's testimony, in prosecution for armed robbery and kidnapping, pertained to officer's alleged illegal entry into defendant's room, motions to suppress

testimony which, if granted, would have struck all such testimony, portions of which were admissible, were properly denied. Com. v. Bottiglio (1970) 259 N.E.2d 570, 357 Mass. 593.

Duty to separate admissible from inadmissible evidence is on counsel pressing motion to suppress and not on trial judge. Com. v. Bottiglio (1970) 259 N.E.2d 570, 357 Mass. 593.

Generally, attempt to exclude illegally obtained evidence is not timely if made for first time when evidence is offered at trial, but where defendant first learns of illegal search at trial, trial court, in its discretion, may entertain motion to suppress at that time. Com. v. Bottiglio (1970) 259 N.E.2d 570, 357 Mass. 593.

In absence of evidence that search of defendant's apartment and seizure of his clothing were not made pursuant to valid warrant, motion to suppress all evidence was properly denied. Com. v. Nunes (1966) 221 N.E.2d 752, 351 Mass. 401.

11. Trial

Under this section, the words "any trial" did not extend to trials not involving gaming or forfeiture of property seized, and fact that United States desired retention of property for use in prosecution for violation of income tax laws did not justify retention thereof. Commonwealth v. Certain Gaming Implements and Personal Property (1943) 47 N.E.2d 939, 313 Mass. 409.

12. Admissibility of evidence--In general

Where certain officers during a search of the house where defendant lived, on the invitation of his mother, and not under a search warrant, found the broken pieces of a knife in defendant's coat pocket, the fact that the finding and taking of such articles constituted an individual trespass on the part of the officers as against defendant did not render such articles inadmissible against him. Commonwealth v. Tucker (1905) 76 N.E. 127, 189 Mass. 457.

13. ---- Illegal seizure, admissibility of evidence

Where officers were on premises pursuant to search warrant, seizure of items which were not described in search warrant, were not weapons or contraband, and which officers neither knew nor had probable cause to believe had been stolen was improper and such items were not admissible in prosecution on charge of receiving stolen property. Com. v. Wojcik (1971) 266 N.E.2d 645, 358 Mass. 623.

Introduction in evidence of articles illegally or unreasonably seized, as permitted by the local practice, does not violate defendant's rights to due process of law, secured by Const.U.S.

Amend. 14. Com. v. Donnelly (1923) 141 N.E. 500, 246 Mass. 507, certiorari dismissed 45 S.Ct. 463, 267 U.S. 603, 69 L.Ed. 809.

Intoxicating liquor was not inadmissible in evidence because obtained on a search without warrant or color of authority. Com. v. Courtney (1923) 138 N.E. 16, 243 Mass. 363.

It is immaterial whether an officer searching defendant's house and finding intoxicating liquor, had a search warrant or not, or whether or not it was defective, as evidence pertinent to the issue, is admissible, though procured in an irregular or illegal manner. Com. v. Kozlowsky (1923) 138 N.E. 14, 243 Mass. 538.

Physical property, seized through an unreasonable search, is admissible in evidence, when presented by the district attorney, who alone represents the government, whether the illegal search and seizure was made by a police officer without a warrant, or by a private individual acting on his own responsibility. Com. v. Wilkins (1923) 138 N.E. 11, 243 Mass. 356.

The unlawful seizure of a gaming implement from the person of defendant does not render it inadmissible in evidence. Com. v. Yee Moy (1896) 44 N.E. 1120, 166 Mass. 376.

Proof that samples of liquor were illegally taken from defendant's premises did not render incompetent evidence that they contained more than 1 per cent. of alcohol. Com. v. Brelsford (1894) 36 N.E. 677, 161 Mass. 61.

Criminatory articles and letters, pertinent to the issue in a criminal case, are admissible in evidence, though they were procured from defendant in an irregular or even an illegal manner. Com. v. Tibbetts (1893) 32 N.E. 910, 157 Mass. 519.

14. ---- Tests and experiments, admissibility of evidence

This section authorizes introduction of evidence obtained as result of tests and experiments upon lawfully seized items. Com. v. Campbell (1967) 226 N.E.2d 211, 352 Mass. 387.

15. ---- Self-incrimination, admissibility of evidence

The admission in evidence of articles seized on a search warrant against the defendant, and taken from his possession, is not unconstitutional as compelling the defendant to furnish evidence against himself. Com. v. Williams (1856) 72 Mass. 14, 6 Gray 14; Com. v. Dana (1841) 43 Mass. 329, 2 Metc. 329.

16. ---- Harmless error, admissibility of evidence

Even if admission of evidence of blood on shirt which was seized from defendant's sister's house constituted error, such error was harmless where primary and convincing evidence of blood on

defendant's clothes and person came from lawful examination of his body, of trousers and shoes lawfully seized elsewhere and of clothing actually worn by defendant at police station. Com. v. Appleby (1970) 265 N.E.2d 485, 358 Mass. 407.

17. Review

Even where defendant's counsel objected to admission of defendant's clothing on ground that clothing was obtained on basis of only a search warrant and not search and seizure warrant, new and expanded arguments and question of validity of search warrant could not be urged in reviewing court for first time. Com. v. Nunes (1966) 221 N.E.2d 752, 351 Mass. 401.

M.G.L.A. 276 § 3

MA ST 276 § 3

END OF DOCUMENT

MA ST 276 s 7
M.G.L.A. 276 § 7

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE II. PROCEEDINGS IN CRIMINAL CASES
CHAPTER 276. SEARCH WARRANTS, REWARDS, FUGITIVES FROM JUSTICE, ARREST,
EXAMINATION, COMMITMENT AND BAIL. PROBATION OFFICERS AND BOARD OF PROBATION
SEARCH WARRANTS

Current through 1998 2nd Annual Sess.

§ 7. Sale or destruction of property seized; disposition of proceeds

If upon trial the property is adjudged forfeited, it shall forthwith be disposed of as provided by law. So much thereof as is ordered to be sold by the court or justice shall be sold by the sheriff and the proceeds paid to the county. All moneys seized shall be paid over forthwith to the state treasurer. The court or justice may order any article not found to have been unlawfully used, kept or concealed or intended for unlawful use, or any article unlawfully used without the knowledge of its owner, lessor or mortgagee to be delivered to the party legally entitled to its possession.

CREDIT(S)

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Amended by St.1934, c. 235, § 2; St.1957, c. 660, § 4; St.1964, c. 557, § 6.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

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St.1862, c. 168, § 5.
St.1869, c. 364, § 3.
P.S.1882, c. 212, § 9.
St.1885, c. 66, § 1.
St.1894, c. 410, § 1.
St.1899, c. 359, § 8.
R.L.1902, c. 217, § 7.
St.1908, c. 370.
St.1919, c. 179, § 3.

St.1934, c. 235, § 2, approved May 23, 1934, in the first sentence, inserted "all money seized shall be paid to the state treasurer,".

St.1957, c. 660, § 4, approved Aug. 9, 1957, and by § 7 made effective Jan. 1, 1958, in the first sentence, inserted ", other than narcotic drugs as defined in section one hundred and ninety-seven of chapter ninety-four,".

St.1964, c. 557, § 6, rewrote the section, which prior thereto read:

"If, upon the trial, the property is adjudged forfeited, the type, forms, press, woodcuts, raw material and mechanical apparatus described in clause eight of section one, the dies, plates, brands, moulds, engravings, printing presses, types or other tools, machines or materials described in clause five of said section, the raw materials, tools, machinery, implements, instruments and personal property, other than narcotic drugs as defined in section one hundred and ninety-seven of chapter ninety-four, described in clause nine of said section, and all furniture, fixtures and personal property described in clause eleven of said section, or so much thereof as the court or justice may order, shall be sold by the sheriff and the proceeds paid to the county, all moneys seized shall be paid to the state treasurer, and the remainder of the property shall be destroyed as the court or justice may order. The court or justice may order any article not found to have been unlawfully used or intended for unlawful use, or any article unlawfully used without the knowledge of its owner, lessor or mortgagee, to be delivered to the party legally entitled to its possession."

St.1964, c. 557, was approved June 16, 1964. Emergency

declaration by the Governor was filed June 23, 1964.

CROSS REFERENCES

Seizure and forfeiture of gambling devices, see c. 271, § 5A.

LAW REVIEW AND JOURNAL COMMENTARIES

Search warrants. Reuben Goodman, 13 Ann.Surv.Mass.L. 159 (1966).

LIBRARY REFERENCES

1994 Main Volume

Comments.

Search and seizure, see M.P.S. vol. 30, Smith, § 151 et seq.

Texts and Treatises

36 Am Jur 2d, Forfeitures and Penalties § 24.

NOTES OF DECISIONS

1. In general

P.S.1882, c. 212, § 9, as amended by St.1885, c. 66, § 1, providing for the forfeiture of property seized in a **gaming** house during the progress of an unlawful **game**, required that such property, in the absence of a finding in proceedings thereunder that it was unlawfully used or intended to be unlawfully used, shall be delivered to the owner. Com. v. Certain Furniture (1892) 29 N.E. 468, 155 Mass. 165.

2. Jurisdiction and powers of court

The municipal court of the city of Boston had jurisdiction to forfeit and order to be sold the furniture, fixtures, or personal property seized in a **gaming-**house on a search warrant issued from and returned to that court, under the G.S.1860, c. 170, §§ 1 to 5, and St.1869, c. 364, at a time when persons were there found playing an unlawful **game**. Com. v. **Gaming** Implements (1876) 119 Mass. 332.

The municipal court of the city of Boston had jurisdiction to enforce the destruction of **gaming** apparatus and implements seized in a **gaming-**house on a search warrant issued from and returned to that court, under the G.S.1860, c. 170, §§ 1 to 5, and St.1869,

c. 364; and also the forfeiture and sale of furniture, fixtures or personal property seized, on the warrant, in such a house at a time when persons were there found playing at an unlawful game. Attorney General v. Justices of the Municipal Court of City of Boston (1869) 103 Mass. 456.

3. Property subject to forfeiture

Electric typewriter used to record results of horse races, but not to determine whether a bettor should win or lose, was not subject to forfeiture as **"gaming** apparatus or implements used or kept in unlawful **gaming",** irrespective of whether **gaming** was carried on where typewriter was seized. Commonwealth v. Certain **Gaming** Implements (1944) 57 N.E.2d 542, 317 Mass. 160.

An electric typewriter if classed as "furniture, fixtures and personal property," when used only to record results of races, which was seized under search warrant of premises allegedly used for taking **bets** on horses, at time when no **gambling** actually was carried on, was not subject to forfeiture. Commonwealth v. Certain **Gaming** Implements (1944) 57 N.E.2d 542, 317 Mass. 160.

In proceeding to forfeit **gaming** implements, money seized as well as other property was properly forfeited. Commonwealth v. Certain **Gaming** Implements and Personal Property (1943) 47 N.E.2d 939, 313 Mass. 409.

Property unlawfully used in a **gaming-**house is subject to forfeiture without proof of guilty knowledge on the part of the owner. Com. v. Certain Furniture (1892) 29 N.E. 468, 155 Mass. 165.

4. Notice

Notice by which proceedings for forfeiture of articles seized at **gaming** place are commenced must inform the claimant with reasonable particularity of the property intended to be forfeited. Com. v. Alleged **Gaming** Apparatus and Implements and Money (1957) 139 N.E.2d 715, 335 Mass. 223.

M.G.L.A. 276 § 7

MA ST 276 § 7

END OF DOCUMENT

MA ST 276 s 2
M.G.L.A. 276 § 2

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE II. PROCEEDINGS IN CRIMINAL CASES
CHAPTER 276. SEARCH WARRANTS, REWARDS, FUGITIVES FROM JUSTICE,

ARREST,
EXAMINATION, COMMITMENT AND BAIL. PROBATION OFFICERS AND BOARD OF PROBATION
SEARCH WARRANTS

Current through 1998 2nd Annual Sess.

§ 2. Requisites of warrant

Search warrants shall designate and describe the building, house, place, vessel or vehicle to be searched and shall particularly describe the property or articles to be searched for. They shall be substantially in the form prescribed in section two A of this chapter and shall be directed to the sheriff or his deputy or to a constable or police officer, commanding him to search in the daytime, or if the warrant so directs, in the nighttime, the building, house, place, vessel or vehicle where the property or articles for which he is required to search are believed to be concealed, and to bring such property or articles when found, and the persons in whose possession they are found, before a court having jurisdiction.

CREDIT(S)

1994 Main Volume

Amended by St.1959, c. 313, § 19; St.1963, c. 96, § 2; St.1964, c. 557, § 2.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1994 Main Volume

R.S.1836, c. 142, §§ 3, 4.
G.S.1860, c. 170, §§ 3, 4.
P.S.1882, c. 212, §§ 3, 4.
St.1899, c. 166.
R.L.1902, c. 217, § 2.
St.1919, c. 179, § 3.

St.1959, c. 313, § 19, approved May 18, 1959, deleted "or trial justice" following "court".

St.1963, c. 96, § 2, approved March 4, 1963, substituted "house, place, or motor vehicle," for "house or place".

St.1964, c. 557, § 2, rewrote the section, which prior thereto read:

"Search warrants shall designate and describe the place to be searched and the articles to be searched for, and shall be directed to the sheriff or his deputy or to a constable or police officer, commanding him to search, in the day time, or if the warrant so directs, in the night time, the house, place, or motor vehicle where the property or articles for which he is required to search are believed to be concealed, and to bring such property or articles when found, and the persons in whose possession they are found, before a court having jurisdiction."

St.1964, c. 557, was approved June 16, 1964. Emergency declaration by the Governor was filed June 23, 1964.

AMERICAN LAW REPORTS

Sufficiency of description in search warrant of automobile or other conveyance to be searched. 47 ALR2d 1444.

Sufficiency of description in warrant of person to be searched. 49 ALR2d 1209.

Propriety or lawfulness of seizure, not incident to arrest, of papers, documents, letters, books, and records not described in search warrant. 79 ALR2d 1005.

Search warrant: sufficiency of description of apartment or room to be searched in multiple-occupancy structure. 11 ALR3d 1330.

Propriety of execution of search warrant at nighttime. 26 ALR3d 951.

Propriety of state or local government health officer's warrantless search-- post-Camara cases. 53 ALR4th 1168.

Seizure of books, documents, or other papers under search warrant not describing such items. 54 ALR4th 391.

Sufficiency of description of business records under Fourth Amendment requirement of particularity in federal warrant authorizing search and seizure. 53 ALR Fed 679.

Admissibility of evidence obtained during nighttime search by federal officers where warrant does not contain "appropriate provision" authorizing execution at times other than daytime as required by Rule 41(c) of Federal Rules of Criminal Procedure. 58 ALR Fed 757.

LAW REVIEW AND JOURNAL COMMENTARIES

Effect of Mapp v. Ohio. Walter H. McLaughlin, Jr., 10 Ann.Surv.Mass.L. 240 (1963).

Fruits of involuntary confession. Walter H. McLaughlin Jr., 10

Ann.Surv.Mass.L. 243 (1963).

Illegal search and seizure. Walter H. McLaughlin, Jr., 13 Ann.Surv.Mass.L. 373 (1966).

Inaccurate search warrant affidavits as a ground for suppressing evidence. Steven M. Kipperman (1971) 84 Harv.L.Rev. 825.

Reasonable scope of search warrants for premises: First circuit, 1973, 1974 term. (1975) 9 Suffolk U.L.Rev. 643.

Search warrants. Reuben Goodman, 13 Ann.Surv.Mass.L. 159 (1966).

Search warrants for subversive papers to be used for illegal purposes. (1955) 40 Mass.L.Q. No. 1, p. 23.

LIBRARY REFERENCES

1994 Main Volume

Comments.

Description of premises to be searched, see M.P.S. vol. 30, Smith, § 217.
Description of things to be seized, see M.P.S. vol. 30, Smith, § 222.
Illegally obtained evidence, see M.P.S. vol. 19, Hughes, § 261 et seq.
Issuance of the search warrant, see M.P.S. vol. 30, Smith, § 177 et seq.
Texts and Treatises

68 Am Jur 2d, Searches and Seizures §§ 73-82.
22 Am Jur Pl & Pr Forms (Rev), Searches and Seizures, Form 21.
Trial Handbook for Massachusetts Lawyers § 417.

UNITED STATES SUPREME COURT

Tavern patrons search under warrant covering tavern premises, see Ybarra v. Illinois, U.S.Ill.1979, 100 S.Ct. 338, 444 U.S. 85, 62 L.Ed.2d 238, rehearing denied 100 S.Ct. 741, 444 U.S. 1049, 62 L.Ed.2d 737.

NOTES OF DECISIONS

1. In general

Police officers were not required to establish independent probable cause for search of automobile within curtilage of defendant's residence at time search warrant was being executed, where warrant specifically described automobile as one of places to be searched. Com. v. Signorine (1989) 535 N.E.2d 601, 404 Mass. 400.

Warrant authorizing seizure of hand-carved wooden figureheads in which controlled substances were alleged to be hidden was not defective for failing to specify place where figureheads would be found since police were required to find figureheads in possession of defendant and execute warrant in some place where defendant did not have reasonable expectation of privacy. Com. v. Weeks (1982) 431 N.E.2d 586, 13 Mass.App.Ct. 194, review denied 440 N.E.2d 1175, 386 Mass. 1101.

Judges should keep in mind judicial policy of encouraging use of warrants and shunning hypertechnical reading of warrants and supporting affidavits; a casuistic approach should likewise be avoided in interpreting facts behind affidavits. Com. v. Reynolds (1977) 370 N.E.2d 1375, 374 Mass. 142.

Particularity is demanded of search warrants and they are to be read without poetic license. Com. v. Hall (1975) 323 N.E.2d 319, 366 Mass. 790.

Warrants and affidavits in support of them must be tested in a common sense and realistic fashion. Com. v. Saville (1968) 233 N.E.2d 9, 353 Mass. 458.

Search warrants and the affidavits upon which they are based must be read in a common-sense way rather than technically. Com. v. Wilbur (1967) 231 N.E.2d 919, 353 Mass. 376, certiorari denied

88 S.Ct. 1260, 390 U.S. 1010, 20 L.Ed.2d 161.

2. Nature of proceedings

It is no part of a search warrant proceeding to try the person in whose possession the goods described in the complaint as stolen are found, but an additional complaint should be made charging the person suspected of the larceny. Briggs v. Shepard Mfg. Co. (1914) 105 N.E. 622, 217 Mass. 446.

3. "General" warrant

Hallmark of unconstitutional "general warrant" is discretion vested in executing officer, as when he is instructed to seize "obscene materials," "obscene, indecent, or impure books, pamphlets, etc. * * *," or records showing fraud in violation of a cited statute, with resulting danger that individual judgment of police officer will prevail during course of unguided search, or that warrant will permit a general, exploratory rummaging in a person's belongings. Com. v. Kenneally (1980) 406 N.E.2d 714, 10 Mass.App.Ct. 162, appeal decided 418 N.E.2d 1224, 383 Mass. 269, certiorari denied 102 S.Ct. 170, 454 U.S. 849, 70 L.Ed.2d 138.

Warrant for search of insurance agency proprietor-defendant's home was specific, in that executing officers knew they were to seize all of insurance agency's records, a broad, but nevertheless sufficiently particular description, and thus such warrant was not an unconstitutional "general warrant." Com. v. Kenneally (1980) 406 N.E.2d 714, 10 Mass.App.Ct. 162, appeal decided 418 N.E.2d 1224, 383 Mass. 269, certiorari denied 102 S.Ct. 170, 454 U.S. 849, 70 L.Ed.2d 138.

Warrant, which authorized seizure of a film titled "Anybody But My Husband" and all records relating to production, manufacture, distribution or purchase of film, including all books, records, general ledgers, cash disbursement books, cash receipt books, cancelled checks, bank statements, deposit slips, payroll records, tax returns, correspondence files, account receivable ledgers, bills of lading and all records showing ownership of person or persons or managerial personnel, was not so vague as to constitute an impermissible "general warrant." Com. v. Mascolo (1978) 375 N.E.2d 17, 6 Mass.App.Ct. 266, certiorari denied 99 S.Ct. 265, 439 U.S. 899, 58 L.Ed.2d 247.

4. Scope of warrant

Although knowledge of executing officers can be relevant consideration in resolving noncrucial ambiguities in search warrant, police may not expand warrant beyond facts known to them. Com. v. Treadwell (1988) 522 N.E.2d 943, 402 Mass. 355.

Fact that portions of search warrant were badly jumbled and that collection of detailed facts contained in attached pages did not

cure that problem did not invalidate warrant; with some difficulty it was possible to determine what premises were to be searched and what items were sought, insertions on warrant form were legible, and target and scope of warrant were apparent from the affidavit, which satisfied requirement that there be a writing for the defendant to challenge. Com. v. Truax (1986) 490 N.E.2d 425, 397 Mass. 174.

In determining whether affidavit in support of search warrant, which directed seizure from insurance agency proprietor-defendant's home of all records and papers of insurance agency, was insufficient to establish probable cause for its issuance, that is, whether scope of search was impermissibly broadened beyond foundation of probable cause, Appeals Court bore in mind requirement of certain case that there must be cause to believe that "mere evidence" which was to be seized pursuant to warrant would aid in particular apprehension or conviction. Com. v. Kenneally (1980) 406 N.E.2d 714, 10 Mass.App.Ct. 162, appeal decided 418 N.E.2d 1224, 383 Mass. 269, certiorari denied 102 S.Ct. 170, 454 U.S. 849, 70 L.Ed.2d 138.

Person may complain of a search warrant, and thus of the seizure of material obtained by the search, on the ground that the warrant was issued without probable cause or was indefinite, obscure, or overly broad in its description of things to be taken or the place to be searched; warrant defective in any such respect would lead to a search or seizure unreasonable in the sense of entailing an undue invasion of personal privacy by government agents. Com. v. Hughes (1980) 404 N.E.2d 1239, 380 Mass. 583, certiorari denied 101 S.Ct. 269, 449 U.S. 900, 66 L.Ed.2d 129.

Search warrant which authorized search of all personal property, furniture and fixtures found at specified premises was not too broad. Com. v. Coco (1968) 235 N.E.2d 555, 354 Mass. 78.

5. Annexed complaint

A search warrant may refer to an annexed complaint for the description of the place to be searched and the property to be seized. Dwinnels v. Boynton (1862) 85 Mass. 310, 3 Allen 310; Com. v. Dana (1841) 43 Mass. 329, 2 Metc. 329.

Although search warrant itself only referred to place to be searched as rooms mentioned in complaint, where complaint described place to be searched as rooms in first story and basement of building at specific address in named city, description in complaint could be relied on to support validity of warrant, and warrant and complaint together adequately described premises. Com. v. Pope (1968) 241 N.E.2d 848, 354 Mass. 625.

A sheriff may justify an entry under a search warrant, which

refers to an annexed complaint, on which it is founded, for a description of the place to be searched and the property to be searched for. Dwinnels v. Boynton (1862) 85 Mass. 310, 3 Allen 310.

6. Application

Presence of assistant attorney general, giving clear official sponsorship to application for search warrant signed by telephone company's "security representative," who was also affiant and supplied basic facts, gave clear official sponsorship to application, thus satisfying essence of claimed requirement that applicant be an officer, not a private individual. Com. v. Bond (1978) 375 N.E.2d 1214, 375 Mass. 201.

Having officers rather than private individuals make formal applications to magistrates for search warrants is not only customary practice but desirable one. Com. v. Bond (1978) 375 N.E.2d 1214, 375 Mass. 201.

If police are to be encouraged to use warrant procedure it seems good policy to allow a certain leeway or leniency in the after-the-fact review of sufficiency of applications for warrants. Com. v. Corradino (1975) 332 N.E.2d 907, 368 Mass. 411, post-conviction relief denied.

Every effort should be made to draft application for search warrant in accordance with constitutional and statutory requirements but rigors of average criminal investigation are not to be intensified by pecksniffian attention to noncrucial detail on review. Com. v. Von Utter (1969) 246 N.E.2d 806, 355 Mass. 597.

Application for search warrant in narcotics case was inadequate where there was complete failure to describe (1) source of officer's information, (2) any facts indicating reliability of that source and (3) nature of information upon which officer was acting. Com. v. Mitchell (1966) 215 N.E.2d 324, 350 Mass. 459.

7. Reliability of informant

To sustain affidavit in support of search warrant, it is not necessary for affiant to allege that informant was believed to be reliable. Com. v. Scanlan (1980) 400 N.E.2d 1265, 9 Mass.App.Ct. 173.

Two-pronged test for evaluating affidavits used as basis for search warrants requires that affidavit set forth some of underlying circumstances from which affiant concluded that informant was reliable and some of underlying circumstances from which informant concluded that defendant was engaged in criminal activity. Com. v. Scanlan (1980) 400 N.E.2d 1265, 9 Mass.App.Ct. 173.

Although probable cause to issue a search warrant may be established by hearsay statements of an informant, affidavit must inform magistrate of some of the underlying circumstances from which affiant concluded that informant was credible or information reliable and from which informant concluded that property subject to warrant is where it is claimed to be. Com. v. Scanlan (1980) 400 N.E.2d 1265, 9 Mass.App.Ct. 173.

Affidavit of police officer stating that informant told affiant that defendant "has obtained heroin from New York and has asked the informer on this date [the date of the affidavit and search] to help him package the narcotic and has also offered to sell her some of the heroin," which gave informer's detailed description of defendant and a detailed list of articles which informer stated were taken during breaks at two specified places and which alleged that informer had given affiant information in the past which resulted in conviction of several persons for receiving stolen property and possession of narcotic drugs established probable cause for issuance of warrant to search apartment, despite claim that affidavit contained no information derived independently which corroborated informer's statement. Com. v. Montanague (1977) 369 N.E.2d 466, 5 Mass.App.Ct. 889.

Affidavit indicating that reliable informant, friend of informant and third party went to defendant's premises, that friend and third party went inside while informant remained outside and that when friend and third party emerged third party told informant that "he sells good Cocaine and clean Grass" and the friend exhibited white powder which he had just purchased was sufficient to establish probable cause for issuance of search warrant. Com. v. Hall (1975) 323 N.E.2d 319, 366 Mass. 790.

8. Affidavit

Warrant authorizing search of defendant's van for rifle was issued with probable cause, even though supporting affidavit was based upon information received from an unknown and unidentified informant from whom the police had never previously received information, where police officers' personal observation corroborated the witness's information in every detailed respect, save one, which could not be corroborated until after execution of the warrant; affiant was not required to set out whether the rifle was loaded, whether it had ever been used, and whether the in-custody defendant possessed a registration or other evidence of right to possess the rifle. Com. v. Lee (1980) 409 N.E.2d 1311, 10 Mass.App.Ct. 518.

Affidavit which stated that a note, apparently left by the rapist, was found by the victim in her mail box on the morning of the rape, and which set forth a description of the assailant, and which stated that three young girls living in the neighborhood had informed the police that a person matching the description of

the assailant lived in a particular place was sufficient to support an issuance of a search warrant for that place. Com. v. Martin (1978) 381 N.E.2d 1114, 6 Mass.App.Ct. 624.

Fact that affidavit submitted to issuing judge as part of application for search warrant of defendant's residence related that more than one month prior to receipt of first tip and one month and a half prior to application for warrant fellow police officers of affiant had observed defendant engaged in transaction which gave some indication that heroin might be found at his residence at that earlier time did not overcome insufficiency of informant's tips, since such related event was too remote in time to corroborate tips and to establish that there was probable cause for presence of heroin in defendant's residence at time of search. Com. v. Zayas (1978) 380 N.E.2d 1329, 6 Mass.App.Ct. 931.

Use of affidavit by telephone "security representative" in support of application for search warrant to supply basic information establishing probable cause was both proper and commendable where he had direct knowledge of facts since, where feasible, it is better practice to produce more direct evidence for magistrate to act upon. Com. v. Bond (1978) 375 N.E.2d 1214, 375 Mass. 201.

In absence of contention that affidavit for search warrant contained false statements, validity of warrant turned on sufficiency of statements appearing on face of affidavit to support a finding of probable cause to believe that heroin and paraphernalia for the distribution thereof would be found in defendant's apartment. Com. v. Flaherty (1978) 375 N.E.2d 353, 6 Mass.App.Ct. 876.

Affidavit in support of issuance of a search warrant is to be viewed in a common sense and realistic fashion. Com. v. Mascolo (1978) 375 N.E.2d 17, 6 Mass.App.Ct. 266, certiorari denied 99 S.Ct. 265, 439 U.S. 899, 58 L.Ed.2d 247.

Statement which had been absent from search warrant affidavit and thus was not before clerk who issued warrant could not be considered as supporting warrant. Com. v. Reynolds (1977) 370 N.E.2d 1375, 374 Mass. 142.

A conveyancer's precision of language is not to be expected in an affidavit in support of the search warrant or on the face of the warrant. Com. v. Gill (1974) 318 N.E.2d 628, 2 Mass.App.Ct. 653.

Sufficiency of affidavit for search warrant is to be decided on the basis of consideration of all its allegations as a whole, and not by first dissecting it and then subjecting each resulting fragment to a hypertechnical test of its sufficiency standing alone. Com. v. Victor (1973) 304 N.E.2d 444, 1 Mass.App.Ct. 600.

Where, besides search warrant application and affidavit, there was reference to "attached reports," reports were part of affidavit, and affidavit, including report by officer himself dated day before application, was sufficient to justify issuance of search warrant. Com. v. Daly (1971) 266 N.E.2d 870, 358 Mass. 818.

Affiant seeking search warrant must produce more than mere statement of belief; he must set forth underlying circumstances which produce such belief. Com. v. Von Utter (1969) 246 N.E.2d 806, 355 Mass. 597.

9. Persons to be searched

Inclusion in warrant permitting search of defendant's residence of language "also the bodies of any parties other than the owners located at the above premises at time of service of warrant" in paragraph of warrant calling for a description of property sought did not invalidate the warrant, where no persons other than defendant were searched, even though no probable cause had been established for search of such persons. Com. v. Truax (1986) 490 N.E.2d 425, 397 Mass. 174.

Although premises search warrants containing "any person present" clauses are not favored, use of such warrant in **gambling** investigation was not improper when neither defendant nor anyone else was present at time of the search. Com. v. Muollo (1978) 375 N.E.2d 728, 6 Mass.App.Ct. 876.

10. Description of premises

To be valid, warrant must particularly describe place to be searched and persons or things to be seized. Com. v. Gonzalez (1995) 657 N.E.2d 1278, 39 Mass.App.Ct. 472, review denied 661 N.E.2d 100, 422 Mass. 1101.

By limiting authorization to search to specific areas and things for which there is probable cause to search, particularity requirement for search warrant ensures that search will be carefully tailored to its justifications, and will not take on character of wide-ranging exploratory searches prohibited by Constitution. Com. v. Gonzalez (1995) 657 N.E.2d 1278, 39 Mass.App.Ct. 472, review denied 661 N.E.2d 100, 422 Mass. 1101.

Description of premises to be searched as "264 Tyler Street, First Floor," was sufficient to enable executing officer to locate and identify premises with reasonable effort, though address of first-floor apartment was 126 Eastern Avenue, where both addresses were for one building, and defendant's first-floor apartment bearing address of 126 Eastern Avenue appeared from outside to be first floor of 264 Tyler Street, and where same officer signed affidavit in support of search warrant and

executed warrant; because affiant was same person who executed warrant, there was no reasonable probability that another premises might be mistakenly searched. Com. v. Gonzalez (1995) 657 N.E.2d 1278, 39 Mass.App.Ct. 472, review denied 661 N.E.2d 100, 422 Mass. 1101.

Search warrant did not adequately describe premises to be searched; warrant effectively left police with discretion to choose between two apartments, even though probable cause existed to search only one apartment. Com. v. Treadwell (1988) 522 N.E.2d 943, 402 Mass. 355.

Although the warrant under which police officers searched defendant's residence was a form authorizing the search of a motor vehicle, the description inserted in the form described the real estate to be searched with sufficient detail as to satisfy the requirements of the Fourth Amendment and the Massachusetts Declaration of Rights that a particular description of the place to be searched appear in the warrant, the terms pertaining to motor vehicle being superfluous and creating little danger of confusion. Com. v. Burt (1985) 473 N.E.2d 683, 393 Mass. 703.

Search warrant which described defendant's home as a three-story single-family building was not defective for failure to specify subunit within the named building where the police officers who applied for and executed the warrant did not know, or have reason to know, before the search that the building was not a one-family dwelling. Com. v. Burt (1985) 473 N.E.2d 683, 393 Mass. 703.

Though search warrant incorrectly described location of apartment to be searched as being on left-hand side of building as one faces the building, when apartment was, in fact, on right-hand side, evidence seized from apartment was not rendered inadmissible by any asserted failure to describe with particularity place to be searched, given that search warrant was executed only after defendant, who was known to officer, led officer to apartment and opened door with his keys. Com. v. Petrone (1983) 455 N.E.2d 1227, 17 Mass.App.Ct. 914, review denied 459 N.E.2d 824, 390 Mass. 1106.

Description of place to be search is to be read without poetic license. Com. v. Rugaber (1976) 343 N.E.2d 865, 369 Mass. 765.

Where application for search warrant referred to certain rooms in one-family, two-story dwelling located as specified street address, only means of approach to the building, which contained two separate duplex apartments, consisted of a walk and steps leading to a single door, on the left side of the door was a mailbox bearing the street number stated in the warrant, and the officers executing the warrant searched only the apartment on the left-hand side of the building, the warrant, when read in light of application and considered in conjunction with the physical facts, described with sufficient particularity the premises which

were to be and which were searched. Com. v. Gill (1974) 318 N.E.2d 628, 2 Mass.App.Ct. 653.

Where search warrant referred to affidavit and officer who filed affidavit was one of officers executing warrant, affidavit and warrant could be read together, and where, by reading them together, premises to be searched were described with sufficient particularity, warrant would be upheld. Com. v. Todisco (1973) 294 N.E.2d 860, 363 Mass. 445.

Search warrant which described place to be searched as an apartment having a certain number at designated address, as being occupied by one defendant, and as having "1st 2nd floors and the basement" described place of search with sufficient accuracy, even though apartment did not include second floor. Com. v. Lillis (1965) 209 N.E.2d 186, 349 Mass. 422.

The house or place to be searched was sufficiently described in a search warrant as the "office of D.," and stating the number thereof, and the street in which it was situate, although A. occupied the office with D. Com. v. Dana (1841) 43 Mass. 329, 2 Metc. 329.

If the house be described as the house of a company, such description will not authorize the searching of the house of an individual member of the company; and if the goods be described in general terms, as goods, wares, and merchandise, without any specification of their character, quality, number, or weight, or any other circumstance tending to distinguish them, it is not such a particular description as the Constitution requires. Sandford v. Nichols (1816) 13 Mass. 286, 7 Am.Dec. 151.

11. Extent of search

Affidavit which established probable cause to search apartment also established probable cause to search any cellar area close to the apartment to which apartment occupants had access that might be used by any occupant of the apartment to store cocaine observed by informant, at least to extent that any such search involved no significant invasion of any part of the cellar in which tenants of other apartments had a reasonable expectation of privacy or of exclusive occupancy, where probable cause established by the affidavit related to apartment without regard to a particular room. Com. v. Pacheco (1986) 488 N.E.2d 42, 21 Mass.App.Ct. 565, review denied 490 N.E.2d 803, 397 Mass. 1102.

Designation in search warrant of the entire apartment located on the second floor above a business establishment encompassed the third-floor attic and, consequently, the search of the attic and the ensuing seizure of drugs in plain view were proper where the evidence reasonably indicated that the third-floor attic was part and parcel of the second-floor apartment in that a single entrance was via the second-floor apartment and, aside from fact

that it was directly above and adjacent to that apartment it had no separate address, there were no other apartments sharing the attic. Com. v. Scala (1980) 404 N.E.2d 83, 380 Mass. 500.

Where small quantity of marijuana and handgun were found in search pursuant to warrant of second-floor apartment occupied by defendant who owned three-floor apartment building, keys to front door of building and to unoccupied apartment on third floor were found in second-floor apartment and informant told officers that "main stash" was in unoccupied third-floor apartment, officers had probable cause for search of third-floor apartment; however, warrantless search of the third-floor apartment was improper as exigent circumstances did not exist. Com. v. Hall (1975) 323 N.E.2d 319, 366 Mass. 790.

12. Description of articles

To be valid, warrant must particularly describe place to be searched and persons or things to be seized. Com. v. Gonzalez (1995) 657 N.E.2d 1278, 39 Mass.App.Ct. 472, review denied 661 N.E.2d 100, 422 Mass. 1101.

By limiting authorization to search to specific areas and things for which there is probable cause to search, particularity requirement for search warrant ensures that search will be carefully tailored to its justifications, and will not take on character of wide-ranging exploratory searches prohibited by Constitution. Com. v. Gonzalez (1995) 657 N.E.2d 1278, 39 Mass.App.Ct. 472, review denied 661 N.E.2d 100, 422 Mass. 1101.

Commonwealth had burden of coming forward with proof that descriptive documents were present to guide search where warrant authorized seizure of items specifically detailed in supporting affidavit, but affidavit was not affixed to warrant, in order to avoid treatment of case as one involving authorization to search for "stolen handguns, jewelry and coins," without any further description. Com. v. Rutkowski (1990) 550 N.E.2d 362, 406 Mass. 673.

Warrant authorizing seizure of "stolen handguns, jewelry and coins," without any further description, failed to meet minimum standard of particularity. Com. v. Rutkowski (1990) 550 N.E.2d 362, 406 Mass. 673.

Warrant authorizing search for "blood--clothing--or any other instrument used in crime" satisfied particularity requirement; police officers did not know what instrument had caused the victim's severe head wounds, and police officers limited scope of their search to weapons used to inflict victim's injuries and blood resulting from the injuries. Com. v. Freiberg (1989) 540 N.E.2d 1289, 405 Mass. 282, certiorari denied 110 S.Ct. 338, 493 U.S. 940, 107 L.Ed.2d 327.

Requirement of inadvertent discovery is particularly ill-suited when applied to items listed in invalid portion of severed search warrant, as it is at odds with more basic requirement that search warrants describe things to be seized with particularity. Com. v. Lett (1984) 470 N.E.2d 110, 393 Mass. 141.

Jacket and shirt which appeared bloodstained to officer when he seized them were sufficiently described by warrant specifying "Blood Stained Clothing including Light Brown or Tan Leather or Leatherette Sport Coat" to justify their seizure. Com. v. Cefalo (1980) 409 N.E.2d 719, 381 Mass. 319.

Absent showing that list of allegedly stolen items sought under search warrant accompanied the warrant so that the warrant and the list could be read as single document, search conducted pursuant to the warrant, which was facially invalid for failure to include description of property or article sought was invalid. Com. v. Taylor (1980) 409 N.E.2d 212, 10 Mass.App.Ct. 452, appeal decided 418 N.E.2d 1226, 383 Mass. 272.

Green shirt seized by police officer from defendant's motel room pursuant to warrant authorizing a search for, inter alia, a "green bandanna" was not unlawful, notwithstanding claim that a bandanna was not a shirt, where, basically, warrant authorized search for and seizure of any green cloth capable of being worn as or used in manner or fashion of a bandanna, whether it actually was a bandanna or whether it was a handkerchief, scarf, torn shirt or cloth from any other source. Com. v. Postoian (1972) 281 N.E.2d 588, 361 Mass. 869.

Even if words "green bandanna" in warrant for search of defendant's motel room did not include a green cloth from a torn shirt, seizure of torn shirt from defendant's motel room was not unlawful, where, at time police officer entered motel room to execute warrant, he possessed information given him by several eyewitnesses to crimes to effect that one of perpetrators wore a green cloth mask over lower portion of his face, and, while lawfully searching room for a green bandanna, officer discovered a torn green shirt made of cloth which, as to color, weight, texture and finish, matched description he had of green cloth worn over face of one of robbers. Com. v. Postoian (1972) 281 N.E.2d 588, 361 Mass. 869.

Search warrants for apartment of defendant charged with murder were not improper, even though they did not describe with particularity items of clothing to be seized, where police did not engage in general search, but rather sought clothing listed in the warrants and seized articles of clothing substantially similar to those listed. Com. v. Murray (1971) 269 N.E.2d 641, 359 Mass. 541.

Search warrant was not too general on its face, because it authorized police to search for "any **lottery,** policy or pool

tickets, ships, checks, manifold books or sheets, memoranda of any **bet**, or other implements, apparatus or materials of any form of **gaming** * * *," nor was application for warrant invalid for such reason. Com. v. Daly (1971) 266 N.E.2d 870, 358 Mass. 818.

The more detailed description of revolvers and money bags in search warrant was harmless and did not further narrow scope of permissible search, and particular description was within more general one contained in affidavit. Com. v. Cuddy (1967) 231 N.E.2d 368, 353 Mass. 305.

Cloth bank bags to hold currency were not so common an item in private houses as to require more specific description and search warrant applications stating that such items and pistol, revolver and ammunition were believed to be on premises to be searched were sufficiently definite. Com. v. Owens (1966) 216 N.E.2d 411, 350 Mass. 633.

Required standards for warrant for search of obscene materials would be met if each item was so adequately described by issuing magistrate (as, for example, by title, specific description in terms of close resemblance to specific sample, or by intelligible statement of subject matter and inherent characteristics of documents) that, in circumstances, there would be no danger of seizure of material not obscene. Com. v. Jacobs (1963) 191 N.E.2d 873, 346 Mass. 300.

13. Articles seized

Search warrant, as given by clerk to executing officer, was defective on its face where clerk did not give the officer six-page list of allegedly stolen items when he gave the officer the warrant and the warrant only stated that it authorized seizure of "all the particularly described items of antique jewelry described on attached six (6) pages" repeating verbatim entire description in affidavit. Com. v. Taylor (1980) 409 N.E.2d 212, 10 Mass.App.Ct. 452, appeal decided 418 N.E.2d 1226, 383 Mass. 272.

Probable cause established by affidavit for search warrant brought into question insurance agency's entire operation and indicated probable existence of scheme to defraud broad range of its clients, and while more particularization of records sought was desirable "whenever possible," particularization was not possible in this case, and thus search warrant, which directed seizure from insurance agency proprietor-defendant's home of all records and papers of insurance agency, did not exceed foundation of probable cause established by affidavit. Com. v. Kenneally (1980) 406 N.E.2d 714, 10 Mass.App.Ct. 162, appeal decided 418 N.E.2d 1224, 383 Mass. 269, certiorari denied 102 S.Ct. 170, 454 U.S. 849, 70 L.Ed.2d 138.

Where there was evidence that upon entering the attic, one of

the officers inadvertently came upon an open bag containing numerous bottles of drugs, the officer could reasonably believe the drugs to be illegally obtained and, accordingly, had the right to seize them as contraband, not withstanding finding that drugs could not be lawfully seized in execution of a search warrant describing other property. Com. v. Scala (1980) 404 N.E.2d 83, 380 Mass. 500.

Seizure of firearm from defendant's person was not the fruit of an unlawful search of defendant's apartment where police had probable cause to arrest defendant on information independent of that gained during search of apartment. Com. v. Norris (1978) 383 N.E.2d 534, 6 Mass.App.Ct. 761.

Officers were not required to stop with "blue box," which was validly seized pursuant to warrant directing search for blue boxes and any other equipment or material whereby requisite tone enabling a caller to reach long-distance commercial number and evade billing for it could be generated, and would indeed have been less than fully obedient to command of warrant if they had done so and, moreover, in process of continuing search for designated materials, could seize articles "in plain view." Com. v. Bond (1978) 375 N.E.2d 1214, 375 Mass. 201.

Where officers authorized by search warrant to seize **gambling** paraphernalia in apartment heard telephones ringing in very low tone and found telephones without number discs or earpieces, officers were warranted in checking telephone terminal box prior to seizure and, on being satisfied that telephones were implements of **gaming,** were warranted in seizing them. Com. v. Todisco (1973) 294 N.E.2d 860, 363 Mass. 445.

14. Omissions or other irregularities

Misplacement of objects of search warrant in warrant's preamble did not invalidate warrant; warrant should be read in commonsense, not hypertechnical manner, and it was possible without any great difficulty to determine what premises were to be searched and what items were sought. Com. v. Freiberg (1989) 540 N.E.2d 1289, 405 Mass. 282, certiorari denied 110 S.Ct. 338, 493 U.S. 940, 107 L.Ed.2d 327.

Even if automobile registration number referred to in affidavit for search warrant was not obtained from defendant as alleged, where defendant did not argue that this information was incorrect or obtained illegally, disputed sentence in affidavit could be characterized as, at worst, an inconsequential inaccuracy and, thus, suppression of evidence obtained as a result of warrant issued on basis of affidavit containing defendant's alleged statement would not be required. Com. v. Brown (1982) 434 N.E.2d 973, 386 Mass. 17.

Anonymity of informant was not fatal to validity of search

warrant as informant's tip to police officer who obtained warrant as to defendant's name, unpublished telephone number and sports **betting** pursuits was corroborated by the officer's observations of defendant's house and by his telephone conversations with defendant about placing a **bet** on a hockey **game** that night. Com. v. Carl (1980) 410 N.E.2d 736, 10 Mass.App.Ct. 906.

Administrative warrant for inspection of pharmacy, which did not contain statement of purpose of inspection nor did it contain description of items to be inspected and seized nor did it even mention seizure in general terms, was insufficient to support seizure of items from pharmacy found during inspection. Com. v. Accaputo (1980) 404 N.E.2d 1204, 380 Mass. 435.

Warrant for search of premises for drugs was not insufficient, despite erroneous references to color and type of building material used in premises to be searched, where address given in warrant was correct and knowledge of officers on scene eliminated any danger that there might be mistaken search of next-door premises. Com. v. Rugaber (1976) 343 N.E.2d 865, 369 Mass. 765.

Since application and search warrant were part of same form and appeared on same side of same piece of paper, requirements of § 2A of this chapter that warrant refer to affidavit and name the person who filed it, that it state that applicant had probable cause to believe that property was being used in illegal activities, and that place to be searched and property to be seized be specifically identified, were satisfied where such elements were included in application for the warrant. Com. v. Mele (1970) 263 N.E.2d 432, 358 Mass. 225.

Search warrants issued for search of defendant's antique shop for allegedly stolen property were not invalid because of inadvertent omission of teste of justice of issuing court. Com. v. Wilbur (1967) 231 N.E.2d 919, 353 Mass. 376, certiorari denied 88 S.Ct. 1260, 390 U.S. 1010, 20 L.Ed.2d 161.

15. Clerical errors

Inadvertent failure of judge to sign search warrant is no more than "clerical error" that does not nullify warrant, where judge intended to issue warrant and judge signed officer's affidavit. Com. v. Pellegrini (1989) 539 N.E.2d 514, 405 Mass. 86, certiorari denied 110 S.Ct. 497, 493 U.S. 975, 107 L.Ed.2d 501.

Striking from printed warrant form the words "there is probable cause," rather than language located adjacently on form that should have been deleted was no more than a clerical error, and did not affect validity of the warrant; it could be inferred that clerk-magistrate had found probable cause from his signing and issuing of the warrant, two actions which he could not properly have taken in the absence of a finding of probable cause. Com. v. Truax (1986) 490 N.E.2d 425, 397 Mass. 174.

16. Nighttime issuance or search

Showing of cause is required for issuance of warrant to search in nighttime. Com. v. Grimshaw (1992) 595 N.E.2d 302, 413 Mass. 73.

"Nighttime," for purposes of search warrant authorizing nighttime search, begins at 10:00 p.m. and ends at 6:00 a.m. Com. v. Grimshaw (1992) 595 N.E.2d 302, 413 Mass. 73.

Forcible nighttime search of residence pursuant to warrant authorizing unannounced nighttime search was reasonable even though parties agreed that affidavit supporting warrant provided no basis for no-knock provision; residence had been site of narcotics sales and negotiations for future sales, sales involved fairly large quantities of narcotics, and police testified that they knocked several times and announced their presence and purpose before finally breaking in front door with aid of sledge hammer, although they failed to even look for doorbell. Com. v. Yazbeck (1992) 583 N.E.2d 901, 31 Mass.App.Ct. 769, review denied 587 N.E.2d 790, 411 Mass. 1106.

Although search warrant may be executed in nighttime only if warrant so directs, issuing magistrate need not identify specific reason to authorize such search; however, resulting search must still satisfy requirement of reasonableness. Com. v. Yazbeck (1992) 583 N.E.2d 901, 31 Mass.App.Ct. 769, review denied 587 N.E.2d 790, 411 Mass. 1106.

Issuance of day or night warrant to search house believed to belong to seasoned narcotic traffickers was justified by need to operate under cover of darkness, when defendants' guard might be lowered. Com. v. DiStefano (1986) 495 N.E.2d 328, 22 Mass.App.Ct. 535, review denied 498 N.E.2d 124, 398 Mass. 1104.

17. Knowledge of officers

Evidence of drugs seized from hand-carved wooden figureheads would not be suppressed because testimony of officer who signed affidavit in support of warrant which stated that he believed defendant had been keeping or selling cocaine suggested that he did not have any knowledge of that fact at suppression hearing since officer was not required to have actual knowledge to state that he had probable cause to believe fact to be true as asserted in warrant. Com. v. Weeks (1982) 431 N.E.2d 586, 13 Mass.App.Ct. 194, review denied 440 N.E.2d 1175, 386 Mass. 1101.

Where police officers received tip from reliable informant that defendant would be returning from Boston at specified time with a load of heroin, but officers were not told of underlying facts or circumstances on which informant based such tip, officers observed defendant alight from car driven by a known drug user,

but there was nothing suspicious about defendant's appearance as he walked in the direction of his apartment, and there was nothing to suggest that defendant was carrying a "load" of anything, police officers were without probable cause to arrest defendant in absence of a warrant. Com. v. Flaherty (1978) 375 N.E.2d 353, 6 Mass.App.Ct. 876.

Valid search warrant for seizure of clothes at cleaning establishment was not precluded because officers applying for warrant did not know name of owner of clothes. Com. v. Perez (1970) 258 N.E.2d 1, 357 Mass. 290.

Search warrant was not invalid as resting upon affidavit containing deliberate misrepresentation merely because officers, who knew that bloody clothing had been taken from cleaners by officers before warrant for such taking had been issued, stated in application for second warrant, to search apartment that prior search warrant had been obtained to confiscate blood-stained clothing from cleaners, where police had believed that warrant was necessary to justify continued retention of clothes taken from cleaners without warrant. Com. v. Perez (1970) 258 N.E.2d 1, 357 Mass. 290.

17.5. Civilian assistance

Statute governing requisites of search warrants and constitutional provision governing searches and seizures do not prohibit police from utilizing civilians in appropriate circumstances where such assistance is necessary or will materially assist police in executing warrant. Com. v. Sbordone (1997) 678 N.E.2d 1184, 424 Mass. 802.

The better practice when civilian assistance is utilized in execution of search warrant is to have warrant indicate that permission has been obtained for a named civilian to be present at search to assist police. Com. v. Sbordone (1997) 678 N.E.2d 1184, 424 Mass. 802.

There was a reasonable basis to conclude that assistance by civilian investigator for insurance fraud bureau during search of chiropractor's office would be materially helpful to state troopers, given complexity of fraud investigation against chiropractor, specialized nature of sought-after documents, and lack of information regarding clinic's filing practices. Com. v. Sbordone (1997) 678 N.E.2d 1184, 424 Mass. 802.

Police officers should have limited role of civilian investigator for insurance fraud bureau in search of chiropractor's office to remaining present to assist officers with any technical questions which may have arisen as officers executed warrant, particularly where officers had ascertained alphabetical filing system and had cooperation of clinic employees. Com. v. Sbordone (1997) 678 N.E.2d 1184, 424 Mass.

802.

Although adequate police supervision of civilian assistance ensures that search warrant is properly executed and its scope is not exceeded, required level of supervision varies depending on circumstances. Com. v. Sbordone (1997) 678 N.E.2d 1184, 424 Mass. 802.

Unlawful discovery of evidence through civilian assistance was inevitable, and thus, the evidence was admissible; warrants were supported by probable cause, records seized were within scope of warrants, the Commonwealth would have discovered evidence even without civilian's involvement, exclusion would not serve a deterrent purpose considering paucity of previous case law to guide officers as to proper limitations of utilizing civilian assistance in execution of warrants, and civilian's participation was only a minimal incremental intrusion on chiropractor's privacy. Com. v. Sbordone (1997) 678 N.E.2d 1184, 424 Mass. 802.

18. Service or notice

Contention of defendant in murder prosecution that one of the persons upon whom two warrants were served was in constructive possession of his clothes and might be said to be a bailee, so that search warrant was illegal in absence of proper service or notice, could not be sustained where there was no forcible entry and no objections to the searches by either of persons who surrendered the clothing, proper warrants were in possession of searching officers and officers so announced at time they were permitted to enter and search, and officers had one of those persons read the warrant before articles of clothing named in the warrant were taken from searched premises. Com. v. Stirling (1966) 218 N.E.2d 81, 351 Mass. 68.

19. Liability of officers

When an officer seizes goods on a search warrant, which correspond with and come within the description of those for which he is commanded, by the warrant, to search, he is not liable to an action, though the goods so seized by him may not be the same which were lost by the complainant. Stone v. Dana (1842) 46 Mass. 98, 5 Metc. 98.

20. Suppression of evidence

Evidence seized in violation of law will generally be suppressed only if violation is substantial or rises to level of constitutional violation. Com. v. Grimshaw (1992) 595 N.E.2d 302, 413 Mass. 73.

Even if search of residence at 8:50 p.m. were unauthorized nighttime search, suppression of seized heroin was not required since no prejudice resulted where police acted lawfully in

obtaining warrant, engaged in no misconduct in executing warrant except as to time, and could have obtained nighttime warrant if one were requested. Com. v. Grimshaw (1992) 595 N.E.2d 302, 413 Mass. 73.

Substantial violations of c. 276, § 2 and Const. Pt. 1, Art. 14 governing search warrants mandated suppression of evidence that had been seized pursuant to general search warrant prepared by state trooper; there was no detailed involvement of judge in crafting of warrant, nor any explicit assurance from judge or any other magistrate that warrant was in proper form, police did not have any description of items for which they were searching, and detailed list of items to be seized was not attached to warrant, even though warrant stated that it authorized seizure items specifically detailed in attached supporting affidavit. Com. v. Rutkowski (1990) 550 N.E.2d 362, 406 Mass. 673.

Where search of apartment was undertaken pursuant to a warrant because officers had previously ascertained that a large quantity of drugs was likely to be found there and not simply because defendant had told officers at time of his arrest that he lived there, evidence seized was not subject to motion to suppress on theory that search was a product of defendant's illegal arrest. Com. v. Franklin (1970) 265 N.E.2d 366, 358 Mass. 416.

Where no affidavit had been filed adequate to justify issuance of warrant in narcotics case, search under warrant was illegal, and evidence seized should have been suppressed on motion of defendant. Com. v. Mitchell (1966) 215 N.E.2d 324, 350 Mass. 459.

21. Burden of proof

When defendant was challenging search warrant, valid on its face, on ground that applicant was not a proper applicant, burden was on defendant to demonstrate illegality. Com. v. Bond (1978) 375 N.E.2d 1214, 375 Mass. 201.

Burden of persuasion should be on defendant to justify suppression based on misstatements in affidavit underlying search warrant. Com. v. Reynolds (1977) 370 N.E.2d 1375, 374 Mass. 142.

Burden of establishing illegality of search rests with moving party. Com. v. Connolly (1970) 255 N.E.2d 191, 356 Mass. 617, certiorari denied 91 S.Ct. 87, 400 U.S. 843, 27 L.Ed.2d 79, certiorari denied 91 S.Ct. 93, 400 U.S. 843, 27 L.Ed.2d 79.

22. Admissibility of evidence

Where officers were on premises pursuant to search warrant, seizure of items which were not described in search warrant, were not weapons or contraband, and which officers neither knew nor had probable cause to believe had been stolen was improper and

such items were not admissible in prosecution on charge of receiving stolen property. Com. v. Wojcik (1971) 266 N.E.2d 645, 358 Mass. 623.

Inasmuch as search and arrest warrant was valid, search incidental to arrest under it was lawful and property taken during incidental search was admissible. Com. v. Pope (1968) 241 N.E.2d 848, 354 Mass. 625.

23. Review

In reviewing sufficiency of affidavits for search warrant, court must limit its inquiry to the face of affidavit and must examine affidavit with a common sense, nontechnical, ungrudging, and positive attitude. Com. v. Norris (1978) 383 N.E.2d 534, 6 Mass.App.Ct. 761.

Record did not establish that search which revealed drug capsules and plant fragments in possession of defendant, who was subsequently convicted of possessing marijuana and amphetamines, was not made pursuant to valid warrant based on information in supporting affidavit. Com. v. Vetrano (1971) 269 N.E.2d 709, 359 Mass. 756.

It was not necessary inference from record of proceedings on motions to suppress evidence that building described in search warrants was a multiple family dwelling, and neither judge hearing proceedings nor reviewing court was obliged to draw that inference for purposes of defendants' contention that search warrants did not particularly describe place to be searched. Com. v. Owens (1966) 216 N.E.2d 411, 350 Mass. 633.

M.G.L.A. 276 § 2

MA ST 276 § 2

END OF DOCUMENT

MA ST 128A s 14B
M.G.L.A. 128A § 14B

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XIX. AGRICULTURE AND CONSERVATION
CHAPTER 128A. HORSE AND DOG RACING MEETINGS
GENERAL PROVISIONS

Current through 1998 2nd Annual Sess.

§ 14B. Additional question on ballots in Berkshire county

Except as hereinafter provided, the state secretary shall, in addition to subdivisions A and B of the subdivided question provided for in section fourteen, cause to be placed on the official ballot to be used in the cities and towns of Berkshire county at the biennial state election in the year nineteen hundred and fifty-four, and every fourth year thereafter, the following subdivided question:--

C. Shall the **pari-mutuel** system of **betting** on licensed horse races at county fairs be permitted in this county?	YES. NO.

If a majority of the votes cast in Berkshire county in answer to subdivision C are in the affirmative, said county shall be taken to have authorized the licensing of horse races at county fairs therein at which the **pari-mutuel** system of **betting** shall be permitted.

The state secretary shall not cause the foregoing question to be placed on the ballot at any biennial state election if the voters in said county in response to said question have voted in the affirmative four consecutive times or in the negative four consecutive times, unless there has been filed with said secretary not later than the sixtieth day before the election at which the question is to be submitted, petitions, the forms of which may be obtained from said secretary, signed by registered voters of said county the total of which are equal in number to at least ten per cent of the total number of registered voters in said county. Such petitions shall be subject to the provisions of chapter fifty-three relative to initiative petitions.

CREDIT(S)

1991 Main Volume

Added by St.1953, c. 389. Amended by St.1964, c. 559, § 2.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1991 Main Volume

St.1953, c. 389, was approved May 18, 1953.

St.1964, c. 559, § 2, approved June 17, 1964, in the first paragraph, in the first sentence, inserted the exception clause; and added the third paragraph.

M.G.L.A. 128A § 14B

MA ST 128A § 14B

END OF DOCUMENT

MA ST 128A s 14C
M.G.L.A. 128A § 14C

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XIX. AGRICULTURE AND CONSERVATION
CHAPTER 128A. HORSE AND DOG RACING MEETINGS
GENERAL PROVISIONS

Current through 1998 2nd Annual Sess.

§ 14C. Additional question on ballots in Hampshire county

Except as hereinafter provided, the state secretary shall, in addition to subdivisions A and B of the subdivided question provided for in section fourteen, cause to be placed on the official ballot to be used in the cities and towns of Hampshire county at the biennial state election in the year nineteen hundred and fifty-eight and every fourth year thereafter, the following subdivided question:--

---
C. Shall the **pari-mutuel** system of **betting** on licensed : YES. : :

---
horse races at county fairs be permitted in this county? : NO. : :

If a majority of the votes cast in Hampshire county in answer to subdivision C are in the affirmative, said county shall be taken to have authorized the licensing of horse races at county fairs therein at which the **pari-mutuel** system of **betting** shall be permitted.

The state secretary shall not cause the foregoing question to be placed on the ballot at any biennial state election if the voters

in said county in response to said question have voted in the affirmative four consecutive times or in the negative four consecutive times, unless there has been filed with said secretary not later than the sixtieth day before the election at which the question is to be submitted, petitions, the forms of which may be obtained from said secretary, signed by registered voters of said county the total of which are equal in number to at least ten per cent of the total number of registered voters in said county. Such petitions shall be subject to the provisions of chapter fifty-three relative to initiative petitions.

CREDIT(S)

1991 Main Volume

Added by St.1955, c. 406. Amended by St.1964, c. 559, § 3.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1991 Main Volume

St.1955, c. 406, was approved June 3, 1955.

St.1964, c. 559, § 3, approved June 17, 1964, in the first paragraph, in the first sentence, inserted the exception clause; and added the third paragraph.

M.G.L.A. 128A § 14C

MA ST 128A § 14C

END OF DOCUMENT

MA ST 266 s 75
M.G.L.A. 266 § 75

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART IV. CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES
TITLE I. CRIMES AND PUNISHMENTS
CHAPTER 266. CRIMES AGAINST PROPERTY

Current through 1998 2nd Annual Sess.

§ 75. Obtaining property by trick

Whoever, by a game, device, sleight of hand, pretended fortune telling or by any trick or other means by the use of cards or other implements or instruments, fraudulently obtains from another person property of any description shall be punished as

in the case of larceny of property of like value.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1990 Main Volume

St.1855, c. 135, § 1.
G.S.1860, c. 161, § 57.
P.S.1882, c. 203, § 65.
R.L.1902, c. 208, § 63.

CROSS REFERENCES

Larceny, general provisions and penalty, see c. 266, § 30.

AMERICAN LAW REPORTS

Regulation of astrology, clairvoyancy, fortunetelling, and the like. 91 ALR3d 766.

LIBRARY REFERENCES

1990 Main Volume

False Pretenses k16.
Larceny k14(1) to (4).
WESTLAW Topic Nos. 170, 234.
C.J.S. False Pretenses § 32.
C.J.S. Larceny §§ 7, 20, 23, 36, 44, 48, 50.
Texts and Treatises

5 Mass Jur, Criminal Law §§ 24:40, 25:1.
50 Am Jur 2d, Larceny §§ 27-29.
1 Proof of Cases in Massachusetts §§ 877-879.

NOTES OF DECISIONS

Burden of proof 3
Indictment 2
Nature and elements of offense 1

1. Nature and elements of offense

Where defendant induced another to produce money to **bet** on a **game** of dice, but before the dice were shaken he snatched the money from the table and escaped with it, it constituted larceny, and not the offense, created by P.S.1882, c. 203, § 65, of fraudulently obtaining property by a **game** or device. Com. v. Jenks (1885) 138 Mass. 484.

2. Indictment

Where an indictment charged that defendant did fraudulently obtain from a certain person, "by means of a **game**, device, sleight of hand, and trick, by the use of cards and other implements, and instruments, a more particular description of which said **game**, device, sleight of hand, trick, implements, instruments, and cards is to said jurors unknown, certain moneys," etc., such indictment was sufficient, under G.S.1860, c. 161, § 57, the words of which imported that a person to be guilty had to play, practice, or use some **game**, device, sleight of hand, pretentions to fortune telling, trick, or other means, by the use of cards or other implements or instruments, with the intent to defraud, and thereby fraudulently induced some other person to part with his property. Com. v. Ashton (1878) 125 Mass. 384.

An indictment, charging that defendant fraudulently obtained property by means of a **game**, device, trick, and "other implements, instruments, and means," enlarged G.S.1860, c. 161, § 57, which punished fraudulently obtaining property by tricks, device, cards, "or other implements or instruments," and a conviction thereon could not be sustained under the statute. Com. v. Parker (1875) 117 Mass. 112.

3. Burden of proof

Where an indictment charged that defendant fraudulently obtained money "by means of a **game**, device, sleight of hand, and trick, by the use of cards and other implements and instruments, a more particular description of which said **game**, device, sleight of hand, trick, implements, instruments, and cards is to said jurors unknown," etc., it was not necessary for the state to prove that cards were used by defendant; but it was sufficient to prove that he fraudulently obtained money by a **game**, by the use of some implement or instrument not known to the grand jury. Com. v. Ashton (1878) 125 Mass. 384.

M.G.L.A. 266 § 75

MA ST 266 § 75

END OF DOCUMENT

MA ST 128A s 7
M.G.L.A. 128A § 7

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XIX. AGRICULTURE AND CONSERVATION
CHAPTER 128A. HORSE AND DOG RACING MEETINGS
GENERAL PROVISIONS

Current through 1998 2nd Annual Sess.

§ 7. Stewards to conduct racing meetings; representatives; access; authority; reports; violations

The commission shall appoint two stewards to each track licensed to conduct racing meetings, who shall not be subject to chapter thirty-one or section nine A of chapter thirty. The commission shall assign, by **regulation**, duties to be performed by him. The compensation of the commission-appointed steward shall be fixed by the commission.

The commission may also appoint one or more other representatives to attend each racing meeting held or conducted under a license issued under this chapter, and the appointment of said representatives shall not be subject to chapter thirty-one or section nine A of chapter thirty. The compensation and duties of each such representative shall be fixed by the commission.

Each such representative appointed by the commission to attend a racing meeting shall have full and free access to the space or enclosure where the **pari-mutuel** or certificate system of **wagering** is conducted or supervised for the purpose only of ascertaining whether or not the provisions of this chapter are being properly observed. He shall also, for the same purpose only, have full and free access to the books, records and papers pertaining to such **pari- mutuel** or certificate system of **wagering.** All employees of the commission assigned to the tracks for security purposes and all police officers assigned to the commission shall be under the control and authority of one of the representatives of the commission at each track. Said representative shall have full and free access to any other areas used in connection with the conduct of racing. He shall investigate, ascertain and report to the commission in writing under oath as to whether or not he has discovered any violation at such meeting of any of the provisions of this chapter, and, if so, the nature and character of such violations. Such report shall be made within ten days after the termination of the duties of such representative at any racing meeting.

If any such report shows any violation of this chapter, the commission shall transmit a copy of such report to the attorney general for such action as he shall deem proper.

CREDIT(S)

1991 Main Volume

Added by St.1934, c. 374, § 3. Amended by St.1978, c. 494, § 6.

1999 Electronic Pocket Part Update

Amended by St.1992, c. 101, § 3; St.1996, c. 450, § 173.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999 Electronic Pocket Part Update

1992 Legislation

St.1992, c. 101, § 3, an emergency act, approved July 6, 1992, in the first paragraph, in the first sentence, substituted "two steward" for "one steward".

1996 Legislation

St.1996, c. 450, § 173, an emergency act, approved Dec. 27, 1996, in the first paragraph, in the first sentence, substituted "two stewards" for "two steward".

1991 Main Volume

St.1978, c. 494, § 6, an emergency act, approved July 19, 1978, inserted the first paragraph; in the second paragraph, in the first sentence, inserted "also" and added "or section nine A of chapter thirty", and, in the second sentence, inserted "and duties"; and, in the third paragraph, inserted the third and fourth sentences.

CROSS REFERENCES

Invalidity or partial invalidity of this section, see c. 128A, § 16 .

M.G.L.A. 128A § 7

MA ST 128A § 7

MA ST 167B s 3
M.G.L.A. 167B § 3

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XXII. CORPORATIONS
CHAPTER 167B. ELECTRONIC BRANCHES AND ELECTRONIC FUND TRANSFERS

Current through 1998 2nd Annual Sess.

§ 3. Purchase, establishment, installation, etc. of electronic branches; amount of investment; location; safeguards; shared use of branches or equipment

After a vote of its board of trustees or directors, a financial institution or organization, except as otherwise provided in this section, may purchase, establish, install, operate, lease or use individually or with any other financial institution or organization or share with any other financial institution or organization any number of manned or unmanned electronic branches at which a customer may make deposits, withdrawals, transfers of funds, obtain advances against preauthorized lines of credit, cash checks or pay obligations, and any number of point-of-sale terminals; provided, however, that withdrawals from such electronic branches, other than those located at an office of such financial institution or organization, shall be made only from a demand deposit account, negotiable withdrawal order account, or statement account or against a preauthorized line of credit; and provided, further that such financial institution or organization, shall have applied for and obtained the approval of the commissioner for such electronic branch except that a financial institution at whose office such electronic branch is located need not have applied for or obtained such approval. The commissioner shall approve such application if, in his opinion, such action will promote a sound banking system which provides for the needs of the people and business, encourages competition, discourages monopolies and does not ignore legislative policies.

The commissioner shall determine the amount which a financial institution may invest in the purchase, establishment, installation, operation, lease, use or sharing of electronic branches; provided, however, that this shall not apply to an electronic branch located at an office of a financial institution. In making such determination, the commissioner shall consider the amount already invested by such financial institution for the transaction of its business and the current financial condition of such financial institution.

There shall be no geographical limitation on the location of electronic branches which a financial institution or organization may purchase, establish, install, operate, lease or use individually or with any other financial institution or organization or share with any other financial institution or organization; provided, however, that the site location for such electronic branches, other than an electronic branch located at an office of a financial institution or in another state, shall be subject to approval by, and **regulation** of, the commissioner. An electronic branch may be located in a mobile unit under such conditions and limitations as the commissioner, by **regulation**, shall establish. No electronic branch shall be located upon premises where there occurs legalized **gambling**, other than a state **lottery.**

A financial institution or organization shall adopt and maintain safeguards to insure the safety of a customer using the electronic branch, to insure the safety of the funds, items and

other information at the electronic branch and to assist in the identification of criminals. The commissioner shall promulgate rules and **regulations** establishing minimum standards for such safeguards. Such safeguards shall be in place and operational at the time such electronic branch begins to transact business; provided, however, that such safeguards shall not apply to an electronic branch located at an office of a financial institution.

No such electronic branch located at other than the office of a financial institution shall be manned or operated at any time by an employee of any financial institution, holding company of a financial institution or affiliate thereof, or any organization except on a temporary basis for the purpose of instructing operators or customers, servicing the electronic branch or for the purpose of using such electronic branch on said employee's own behalf.

If the commissioner finds that a financial institution which is in full compliance with this chapter is placed at a competitive disadvantage because such financial institution has not been permitted access to one or more electronic branches or any equipment, regardless of location, which is interconnected with one or more electronic branches and which is necessary to transmit, route and process electronic impulses in order to enable the electronic branch to perform any function for which it is designed on reasonable and nondiscriminatory terms, the commissioner may issue **regulations** mandating the shared use of any such electronic branches or equipment, except for electronic branches which are located at any office of a financial institution. Such **regulations** shall set forth the conditions under which a financial institution may obtain mandatory sharing, the procedures for doing so, the reasonable and non-discriminatory terms, which shall include a reasonable return on capital expenditures incurred in connection with its development, installation and operation, the conditions of such mandatory sharing including provisions on fair and reasonable advertising and any other provisions which the commissioner deems necessary or appropriate.

A financial institution may only purchase, establish, install, operate, lease, use and share such electronic branches with another financial institution or organization which complies with all applicable provisions of this chapter; provided, however, that a financial institution shall receive certification of all such compliance from the commissioner prior to any relationship with another financial institution or organization.

No financial institution, other than a bank, or organization, other than an organization which is a subsidiary of a bank holding company with its main office in the commonwealth, or bank holding company or subsidiary of a bank holding company organized under the laws of or having its main office in any state other

than the commonwealth, and no foreign bank shall purchase, establish, install, operate, lease or use individually or with any financial institution or organization or share with any financial institution or organization any such electronic branch in the commonwealth unless the financial institution, organization, bank holding company or subsidiary of a bank holding company or foreign bank purchasing, establishing, installing, operating, leasing or using individually or with any other financial institution or organization or sharing with any financial institution or organization any such electronic branch in the commonwealth for any purposes authorized by this section has its main office in one of the states of the United States, and the laws of such state expressly authorize, under conditions no more restrictive than those imposed by this chapter as determined by the commissioner, financial institutions or organizations organized under the laws of the commonwealth to purchase, establish, install, operate, lease, use or share electronic branches in such other state; provided, however, that any such financial institution, organization or bank holding company or subsidiary of a bank holding company shall have applied for and obtained approval of the commissioner prior to engaging in any activity pursuant to this section. For the purposes of this paragraph, the term "bank holding company" shall have the meaning set forth in the Bank Holding Company Act of 1956, 12 USC 1841 et seq.

CREDIT(S)

1994 Main Volume

Added by St.1981, c. 530, § 2. Amended by St.1982, c. 626, §§ 7, 8; St.1986, c. 62; St.1990, c. 102, § 17.

1999 Electronic Pocket Part Update

Amended by St.1994, c. 246, §§ 1 to 3; St.1996, c. 238, § 21.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999 Electronic Pocket Part Update

1994 Legislation

St.1994, c. 246, § 1, in the third paragraph, rewrote the second sentence, which prior thereto read, "No electronic branch shall be located in a mobile unit or upon premises where there occurs legalized **gambling**, other than a state **lottery",** and added the third sentence.

Section 2 of St.1994, c. 246, deleted the fifth paragraph, which read:

"Such electronic branches shall not be used to apply for or to open a new account with or to apply for or to obtain a loan, other than against a preauthorized line of credit, or authorization of a new line of credit from any financial institution, nor shall any such electronic branch, other than an electronic branch located at an office of a financial institution or organization, be used to solicit any additional services offered by a financial institution or organization."

Section 3 of St.1994, c. 246, in the ninth paragraph, in the first sentence, in cl. (c), inserted "to make transfers between accounts, whether deposits or credits,".

St.1994, c. 246, was approved Dec. 27, 1994. Emergency declaration by the Governor was filed on Dec. 28, 1994.

1996 Legislation

St.1996, c. 238, § 21, an emergency act, approved Aug. 2, 1996, rewrote the eighth paragraph, which prior thereto read:

"No financial institution, organization, other than an organization which is a subsidiary of a bank holding company organized under the laws of the commonwealth, or bank holding company organized under the laws of or having its main office in any state other than the commonwealth and no subsidiary of a bank holding company, which bank holding company is organized under the laws of, or has its main office in, any other state, shall purchase, establish, install, operate, lease or use individually or with any financial institution or organization or share with any financial institution or organization any such electronic branch in the commonwealth unless: (a) the electronic branch was established before December thirty-first, nineteen hundred and eighty-one and performs no transactions other than dispensing cash or traveler's checks, or both, and is limited to use solely by the customers of the financial institution which established such electronic branch; or (b) the electronic branch is established by a financial institution, other than a state or national bank, a state or federal savings and loan association, a state or federal mutual savings bank, a co-operative bank, a state or federal credit union or bank holding company, which has filed with the commissioner the information required by clauses (a) to (n), inclusive, of the first paragraph of section four and such electronic branch performs no transactions other than dispensing traveler's checks and is limited to use solely by the customers of such financial institution which establishes such electronic branch; or (c) the financial institution, organization or bank holding company or subsidiary of a bank holding company is to share and use an electronic branch, which is established by a financial institution or organization organized under the laws of or having its main office in the commonwealth and is used by a financial institution or

organization organized under the laws of or having its main office in the commonwealth, to permit its customers only to make cash withdrawals, to make transfers between accounts, whether deposits or credits, obtain advances against pre-authorized lines of credit and cash checks; or (d) the financial institution, organization or bank holding company or subsidiary of a bank holding company purchasing, establishing, installing, operating, leasing or using individually or with any other financial institution or organization or sharing with any financial institution or organization any such electronic branch in the commonwealth, for the purposes authorized by this section, has its main office in one of the states of the United States, and the laws of such state expressly authorize, under conditions no more restrictive than those imposed by this chapter as determined by the commissioner, financial institutions or organizations having their main office in the commonwealth to purchase, establish, install, operate, lease, use or share electronic branches in such other state; provided, however, that such a financial institution, organization or bank holding company or subsidiary of a bank holding company is not directly or indirectly controlled within the meaning set forth in the Bank Holding Company, Act of 1956 (12 USC 1841 et seq.) by another corporation which has its principal place of business in a state other than the commonwealth or one of the states referred to herein; and provided, further, that any such financial institution, organization or bank holding company or subsidiary of a bank holding company shall have applied for and obtained approval of the commissioner prior to engaging in any activity pursuant to this clause. For the purposes of this paragraph, the term 'bank holding company' shall have the meaning set forth in said Bank Holding Company Act."

1994 Main Volume

St.1981, c. 530, § 3A, an emergency act, approved Nov. 10, 1981, and by § 4 made effective Dec. 31, 1981, provides:

"Any bank or credit union, as defined in section one of chapter one hundred and sixty-seven of the General Laws, which on the effective date of this act shall have in operation or shall be sharing the use of any electronic branch or branches, as defined in section one of chapter one hundred and sixty-seven B as established by section two of this act, shall be deemed to have filed an application pursuant to sections three and four of said chapter one hundred and sixty-seven B, and the commissioner shall be deemed to have approved such application on the effective date of this act to purchase, establish, install, operate, lease, use or share such electronic branch or branches for all types of transactions permissible under the provisions of the said section three; provided that such electronic branch or branches shall be required to comply with the other provisions of this act."

St.1982, c. 626, § 7, an emergency act, approved Dec. 30, 1982,

and by § 27 made effective July 1, 1983, in the third paragraph, in the first sentence, substituted "electronic branches which a financial institution or organization may purchase, establish, install, operate, lease or use individually or with any other financial institution or organization or share with any other financial institution or organization" for "such electronic branches" and, in the proviso, inserted "or in another state" and substituted "commissioner" for "commissioners" and made the former second proviso into the second sentence, by substituting "commissioner. No electronic branches" for "commissioners; and provided, further, that no electronic branch".

Section 8 of St.1982, c. 626, rewrote the ninth paragraph, which prior thereto read:

"No financial institution or bank holding company organized under the laws of or having its main office in any other state and no subsidiary of a bank holding company which bank holding company is organized under the laws of or has its main office in any other state shall purchase, establish, install, operate, lease or use individually or with any financial institution or organization or share with any financial institution or organization any such electronic branch in the commonwealth, provided, however, that this paragraph shall not apply to any electronic branch which is established before the effective date of this chapter, which performs no transactions other than dispensing cash or travelers checks or both, and which is limited to use solely by the customers of the financial institution which established such electronic branch. For purposes of this paragraph, the term 'bank holding company' has the meaning set forth in the Bank Holding Company Act of 1956 USC 1841 et seq."

Section 26 of St.1982, c. 626, by § 27 made effective upon passage, provides:

"If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of this act and the application of such provision to any person or circumstance other than that as to which it is held invalid shall not be affected thereby."

St.1986, c. 62, approved June 3, 1986, in the fifth paragraph, inserted "other than an electronic branch located at an office of a financial institution or organization."

St.1990, c. 102, § 17, an emergency act, approved July 6, 1990, and by § 45 made effective sixty days after the act's effective date, in the last paragraph, in the first sentence, in cl. (d), substituted "the United States" for "Connecticut, Maine, New Hampshire, Rhode Island or Vermont".

Section 46 of St.1990, c. 102, provides:

"The provisions of this act are severable, and if any of its provisions or an application thereof shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions of other applications thereof."

Prior Laws:
G.L. c. 167, § 65, as added by St.1973, c. 1147.
St.1974, c. 222.
St.1977, c. 32.

MA ST 29 s 2C 1/2
M.G.L.A. 29 § 2C 1/2

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE III. LAWS RELATING TO STATE OFFICERS
CHAPTER 29. STATE FINANCE

Current through 1998 2nd Annual Sess.

§ 2C 1/2 . Local Aid Fund

There shall be established and set up on the books of the commonwealth a separate fund, subject to appropriation, known as the Local Aid Fund. There shall be credited to such fund the following revenues:

(a) Forty percent of the net sums received under the provisions of chapter sixty-two as taxes on income, interest thereon or penalties, including payments made on account thereof under the provisions of chapter sixty-two B;

(b) Forty percent of the net sums received under the provisions of sections thirty to fifty-one, inclusive, of chapter sixty-three, as excises, interest thereon or penalties, including payments made on account thereof under chapter sixty-three B;

(c) Forty percent of the net sums received under the provisions of chapters sixty-four H and sixty-four I as excises upon the sale at retail of tangible personal property or of services, and upon the storage, use or other consumption of tangible personal property or services, including interest thereon or penalties;

(d) The balance of the State **Lottery** Fund after the payment of prizes and deductions for the expenses of administering and operating the **lottery,** as determined by the comptroller in accordance with the provisions of clause (c) of section thirty-five of chapter ten and clause (c) of section thirty-nine

of chapter ten; and,

(e) The balance of the Arts **Lottery** Fund, after the payment of prizes and deductions for the expenses of administering and operating the arts **lottery**, as determined by the comptroller in accordance with the provisions of section fifty-seven of chapter ten.

Revenue credited to the Local Aid Fund shall be used solely for payment to cities, towns and districts of such amounts as may be appropriated for state assistance, reimbursements and distributions under general and special law; for non-appropriated reimbursements to cities, towns and districts as provided for under general or special law, including payments of state assistance to cities and towns in accordance with the provisions of clause (c) of section thirty-five of chapter ten, but not including amounts distributed from the Highway Fund in accordance with the provisions of section thirty-one of chapter eighty-one; and for the payment of amounts appropriated for the commonwealth's cost of net county court costs in accordance with the provisions of chapter twenty-nine A. Any additional distribution from this fund shall be used solely for the reduction of property taxes.

CREDIT(S)

1999 Electronic Pocket Part Update

Added by St.1992, c. 133, § 334.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999 Electronic Pocket Part Update

1992 Legislation

St.1992, c. 133, § 334, was approved July 20, 1992, and by § 599 made effective as of July 1, 1992.

Related Laws:

St.1994, c. 126, § 69, approved Sept. 1, 1994, and by § 76 made effective upon passage, provides:

"Notwithstanding any general or special law to the contrary, the Massachusetts state **lottery** commission is hereby restricted to developing **lottery games**, including instant **games**, exclusively for the purpose of attaining **lottery** revenues for the Local Aid Fund and the Massachusetts cultural council. Nothing in this section shall be construed to alter or amend the provisions of section two C 1/2 of chapter twenty-nine of the General Laws or

the distribution of state financial assistance to cities and towns thereunder."

CROSS REFERENCES

Local Aid Fund, distribution, see c. 58, § 18C.

M.G.L.A. 29 § 2C 1/2

MA ST 29 § 2C 1/2

END OF DOCUMENT

MA ST 128A s 5A
M.G.L.A. 128A § 5A

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XIX. AGRICULTURE AND CONSERVATION
CHAPTER 128A. HORSE AND DOG RACING MEETINGS
GENERAL PROVISIONS

Current through 1998 2nd Annual Sess.

§ 5A. Recovery of winnings upon **wagers;** actions; unclaimed winnings; disposition; notice of limitation

No action to recover winnings upon a **wager** made under this chapter after the effective date of this section shall be commenced after December thirty-first of the year following the year in which such **wager** was made, and no such winnings shall be paid by a licensee after said date except pursuant to a judgment in an action so commenced or in settlement of such action. Within ninety days after said December thirty-first, money held by a licensee for the payment of any such **wager** for the recovery of which no action has been commenced within the time herein limited shall be paid over to and become a part of the receipts of the commission, and shall thereafter be paid into the state treasury. Any such money for the recovery of which an action has been duly commenced shall be so paid to the commission within ninety days after December thirty-first of the year in which such action shall have terminated adversely to the plaintiff therein. A notice of the limitation prescribed by this section, in such form as the commission shall prescribe, shall be posted by each licensee in a conspicuous place at each window or booth where **pari- mutuel** tickets are sold.

CREDIT(S)

1991 Main Volume

Added by St.1946, c. 445, § 1.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1991 Main Volume

St.1946, c. 445, § 1, an emergency act, was approved June 6, 1946, and by § 2 made effective July 1, 1946.

CROSS REFERENCES

Abandoned property provisions, provisions of this section not affected, see c. 200A, § 14.

NOTES OF DECISIONS

Simulcast races 1

1. Simulcast races

Statute governing the disposition of unclaimed winnings from money **wagers** placed at horse and dog racetracks applies to simulcast as well as live races. Wonderland Greyhound Park, Inc. v. State Racing Com'n (1998) 696 N.E.2d 964, 45 Mass.App.Ct. 226, review denied 702 N.E.2d 812, 428 Mass. 1105.

M.G.L.A. 128A § 5A

MA ST 128A § 5A

END OF DOCUMENT

MA ST 10 s 39
M.G.L.A. 10 § 39

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE II. EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
CHAPTER 10. DEPARTMENT OF THE STATE TREASURER
BEANO

Current through 1998 2nd Annual Sess.

§ 39. Beano; gross receipt tax; returns; disposition and crediting of receipts

Any organization operating or conducting a **game** under section thirty-eight shall file a return with the commission, on a form

prepared by it, within ten days after such **game** is held or within such further time as the commission may allow, and shall pay therewith a tax of five per cent of the gross receipts derived from such **game**. All such returns shall be public records.

All sums received by said commission from the tax imposed by this section as taxes, interest thereon, fees, penalties, forfeitures, costs of suits or fines, less all amounts refunded thereon, together with any interest or costs paid on account of such refunds, shall be paid into the treasury of the commonwealth and shall be credited as follows:--

(a) Two fifths of all such sums received shall be credited to the State Lottery Fund established under the provisions of section thirty-five and, subject to appropriation, the state lottery commission may expend such sums for the expenses incurred in the administration of sections thirty-seven and thirty-eight.

(b) Three-fifths of all such sums received shall be credited to the General Fund.

(c) Any unappropriated balance remaining in the State Lottery Fund from the sums credited under subsection (a), as determined by the comptroller as of June first and December first of each year, shall be credited to the Local Aid Fund.

CREDIT(S)

1996 Main Volume

Added by St.1973, c. 729, § 1. Amended by St.1973, c. 1165, §§ 2, 3; St.1974, c. 492, § 3; St.1976, c. 330; St.1976, c. 415, § 1; St.1977, c. 219, § 1; St.1990, c. 121, § 3; St.1992, c. 133, § 193.

1999 Electronic Pocket Part Update

Amended by St.1996, c. 450, § 24.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1999 Electronic Pocket Part Update

1996 Legislation

St.1996, c. 450, § 24, an emergency act, approved Dec. 27, 1996, in the second paragraph, in subsec. (c), deleted "established under the provisions of section two D of chapter twenty-nine" following "Local Aid Fund".

1996 Main Volume

St.1973, c. 1165, § 2, an emergency act, approved Dec. 7, 1973, and by § 5, made effective Jan. 1, 1974, in the first paragraph, in the first sentence, substituted "five per cent" for "ten per cent".

Section 3 of St.1973, c. 1165, in the second paragraph, deleted the third sentence, which read, "All sums received by said commissioner from the tax imposed by this section as taxes, interest thereon, fees, penalties, forfeitures, costs of suits or fines, less all amounts refunded thereon, together with any interests or costs paid on account of such refunds, shall be paid into the treasury of the commonwealth.", and added the third paragraph.

St.1974, c. 492, § 3, an emergency act, approved July 8, 1974, and by § 24 made effective June 1, 1975, in the third paragraph, in cl. (c), substituted "June first and December first of each year" for "June thirtieth" and substituted "to be distributed" for "and shall be distributed to the several cities and towns".

St.1976, c. 330, approved Aug. 31, 1976, in the first paragraph, in the second sentence, substituted "five hundred dollars" for "twenty-five dollars".

St.1976, c. 415, § 1, rewrote the first and second paragraphs, which prior thereto read:

"Any organization operating or conducting a **game** under section thirty-eight shall file a return with the commissioner of corporations and taxation, on a form prepared by him and approved by the state tax commission, within ten days after such **game** is held or within such further time as said commissioner of corporations and taxation may allow, and shall pay therewith a tax of five per cent of the gross receipts derived from such **game**. Such return shall include the names and addresses of all persons receiving prizes over five hundred dollars in such **game**, and the amount of each such prize. All such returns and the amounts of all such payments shall be public records."

"The provisions of chapter sixty-two relative to the assessment, collection, payment, abatement, verification and administration of taxes, including penalties, shall, so far as pertinent, apply to the tax imposed by this section. Every officer, employee or member of an organization which fails to pay any sums required by this section to be paid shall be personally and individually liable therefor to the commonwealth."

St.1976, c. 415, § 1, was approved Oct. 15, 1976, and by § 116 made effective Jan. 1, 1977. Emergency declaration by the Governor was filed Oct. 15, 1976.

St.1977, c. 219, § 1, an emergency act, approved May 23, 1977, and by § 7 made effective Jan. 1, 1978, rewrote the first

paragraph, which prior thereto read:

"Any organization operating or conducting a **game** under section thirty-eight shall file a return with the commissioner of corporations and taxation in accordance with section eighteen of chapter sixty-two C and shall pay therewith a tax of five per cent of the gross receipts derived from such **game**. Such returns and the amounts of all such payments shall be public records."

; deleted the second paragraph, which read:

"All provisions of chapter sixty-two C relative to the administration of taxes shall, so far as pertinent and consistent, be applicable to taxes imposed by this section. Every officer, employee or member of an organization which fails to pay any sum required by this section to be paid shall be personally and individually liable therefor to the commonwealth."

; and, in the second paragraph, in the introductory paragraph, substituted "commission" for "commissioner".

St.1990, c. 121, § 3, by § 113 made effective July 1, 1991, in the second paragraph, in cl. (b), substituted "COMPACT Fund established by section two M of chapter twenty-nine" for "General Fund", and in cl. (c), substituted "COMPACT Fund" for "Local Aid Fund" and "section two M of chapter twenty-nine" for "section two D of chapter twenty-nine to be distributed in accordance with the provisions of section eighteen C of chapter fifty-eight".

St.1990, c. 121, was approved July 18, 1990. Emergency declaration by the Governor was filed on the same date.

St.1992, c. 133, § 193, approved July 20, 1992, and by § 599 made effective as of July 1, 1992, in the second paragraph, in cl. (b), substituted "General Fund" for "COMPACT Fund established by section two M of chapter twenty-nine", and in cl. (c), substituted "subsection" for "clause", "Local Aid Fund" for "COMPACT Fund", and "section two D" for "section two M".

Prior Laws:
G.L. c. 147, § 53, as added by St.1971, c. 486, § 3.
St.1972, c. 102.

CROSS REFERENCES

Administrative provisions relating to state taxation, see c. 62C, § 1 et seq.

Licensing of beano required, see c. 271, § 22B.

LIBRARY REFERENCES

1996 Main Volume

M.G.L.A. 10 § 39

MA ST 10 § 39

END OF DOCUMENT

MA ST 10 s 27
M.G.L.A. 10 § 27

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE II. EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
CHAPTER 10. DEPARTMENT OF THE STATE TREASURER
STATE LOTTERY

Current through 1998 2nd Annual Sess.

§ 27. Sale of tickets; agents; licensing; restrictions

No person, other than a fraternal, veterans', or charitable organization, shall be licensed as an agent to sell **lottery** tickets or shares if such person engages in business exclusively as a **lottery** sales agent. Before issuing such license the director shall consider the financial responsibility and security of each applicant for licenses, his business or activity, the accessibility of his place of business or activity to the public, the sufficiency of existing licenses to serve the public convenience, and the volume of expected sales. Said director may refuse to issue a license to any person who has been convicted of a felony by a court of competent jurisdiction in the commonwealth or of any other state or of the United States and who, in the opinion of said director, is not of good moral character to act as a licensed agent to sell **lottery** tickets. No person lawfully dealing in or promoting **lottery** tickets pursuant to this law or commission **regulations** shall be subject to prosecution for setting up and promoting a **lottery** or for any other crime incidental thereto, or for selling or having in his possession **lottery** tickets, shares or materials of said **lottery.** Any three persons objecting to the issuance of such a license, or any person applying for and being denied such a license may request and be granted a public hearing by the commission under the provisions of chapter thirty A. No such license shall be issued to which the local municipal licensing board has objected in writing except after a hearing under said chapter thirty A and unless four members of the commission approve the issue of such license, notwithstanding the objection of the local licensing board. No employer shall set up a payroll deduction plan for the purchase of lottery tickets by his employees.

No federal employee and no state, county or municipal employee, or member of the immediate family, as defined in section one of chapter two hundred sixty- eight A, shall sell or be issued a license to sell lottery tickets. No person shall use a position in public service or a position of private employment in any manner so as to encourage the sale of tickets. Nothing in this section or any other section of this chapter shall be construed so as to prohibit the commission from designating certain of its agents and employees to sell **lottery** tickets directly to the public; provided, however, that none of said employees shall receive any remuneration or commission for such sale; and, provided further, that no **lottery** ticket shall be sold to persons committed to any state or county correctional facility, or any state hospital.

Every licensee shall keep conspicuously posted on his premises a notice containing the name and numbers of the council on compulsive gambling and a statement of its availability to offer assistance.

CREDIT(S)

1996 Main Volume

Added by St.1971, c. 813, § 2. Amended by St.1972, c. 280; St.1972, c. 474; St.1973, c. 302; St.1973, c. 1002, § 2; St.1989, c. 619; St.1990, c. 150, § 223.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1996 Main Volume

St.1972, c. 280, approved May 18, 1972, in the first paragraph, in the first sentence, inserted ", other than a fraternal, veterans', or charitable organization,".

St.1972, c. 474, approved June 20, 1972, in the first paragraph, in the third sentence, inserted "while acting in that capacity,".

St.1973, c. 302, approved May 21, 1973, in the second paragraph, added the third sentence.

St.1973, c. 1002, § 2, an emergency act, approved Nov. 8, 1973, in the first paragraph, in the third sentence, substituted "No person lawfully dealing in or promoting **lottery** tickets pursuant to this law or commission **regulations** shall" for "A person licensed as a state **lottery** sales agent shall not, while acting in that capacity," and "tickets, shares or materials of said **lottery"** for "tickets or shares in said **lottery".**

St.1989, c. 619, an emergency act, approved Dec. 22, 1989, in the first paragraph, inserted the third sentence.

St.1990, c. 150, § 223, approved Aug. 1, 1990, and by § 383 made effective as of July 1, 1990, added the third paragraph.

AMERICAN LAW REPORTS

State **lotteries:** actions by ticketholders against state or contractor for state. 40 ALR4th 662.

MASSACHUSETTS GENERAL LAWS ANNOTATED
CONSTITUTION OR FORM OF GOVERNMENT FOR THE COMMONWEALTH OF MASSACHUSETTS
[ANNOTATED]
PART THE FIRST A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE
COMMONWEALTH OF MASSACHUSETTS

Current through amendments apv. 1/1/99

Art. X. Right of protection and duty of contribution; taking of property; consent to laws; taking of property for highways and streets

ART. X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

The legislature may by special acts for the purpose of laying out, widening or relocating highways or streets, authorize the taking in fee by the commonwealth, or by a county, city or town, of more land and property than are needed for the actual construction of such highway or street: provided, however, that the land and property authorized to be taken are specified in the act and are no more in extent than would be sufficient for suitable building lots on both sides of such highway or street, and after so much of the land or property has been appropriated for such highway or street as is needed therefor, may authorize

the sale of the remainder for value with or without suitable restrictions.

M.G.L.A. c. 140, § 177A governing licensing of automatic amusement devices is not unconstitutionally vague; since statute is **concerned** with impact of particular video **game** or video **game** arcade in particular community and freedoms under U.S.C.A. Const.Amend. 1 are not involved, statute did not have to specify with great particularity relevant considerations in evaluating license application, but, rather, statute does and may confer upon licensing authorities quasi-judicial authority to determine facts and to pass upon application in each instance under serious sense of responsibility imposed upon them by their official positions and delicate character of duty entrusted to them. Caswell v. Licensing Com'n for Brockton (1983) 444 N.E.2d 922, 387 Mass. 864.

MA ST 6 s 133
M.G.L.A. 6 § 133

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE II. EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
CHAPTER 6. THE GOVERNOR, LIEUTENANT GOVERNOR AND COUNCIL, CERTAIN OFFICERS
UNDER THE GOVERNOR AND COUNCIL, AND STATE LIBRARY
MASSACHUSETTS COMMISSION FOR THE BLIND

Current through 1998 2nd Annual Sess.

§ 133. Definitions applicable to sections 133A to 133F

The following words and phrases, wherever used in sections one hundred and thirty-three A to one hundred and thirty-three F, inclusive, shall unless a different meaning clearly appears from the context have the following meanings:

(1) "Blind persons", a person who, after examination by a physician or by an optometrist, whichever such person shall select, has been determined to have

(a) not more than 20/200 central visual acuity in the better eye with correcting lenses, or

(b) an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty per cent.

(2) "Commission", the Massachusetts Commission for the Blind.

(3) "Commissioner", the commissioner of the Massachusetts Commission for the Blind.

(4) "Jurisdiction", the control of the maintenance, operation and protection of public buildings and property of the commonwealth.

(5) "Public buildings or property", any building, land, or other real property owned by any department or agency of the commonwealth, or any counties thereof, with the exception of any building, land, or other real property under the jurisdiction of any state college, state university, or state institution of higher learning.

(6) "Vending facility", snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of **chances** for any **lottery** authorized by law, and conducted by any agency of the commonwealth.

(7) "Vendor", a blind person licensed by the commission for the blind to operate a vending facility under the terms of the Randolph-Shepard Act.

(8) "Randolph-Shepard Act", the Randolph-Shepard Vending Stand Act (Pub. L. 74-732) as amended by Pub. L. 83-565 and Pub. L. 93-516, 20 U.S.C. Ch. 6A, Sec. 107.

(9) "Randolph-Shepard Vending Facilities Program", the program for the operation of vending facilities by blind persons established by the Randolph- Shepard Act.

(10) "State licensing agency", the state agency designated by the Commissioner of the Rehabilitation Services Administration under the **regulations** implementing the Randolph-Shepard Act to issue licenses to blind persons for the operation of vending facilities on federal and other property.

CREDIT(S)

1996 Main Volume

Added by St.1982, c. 568.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

1996 Main Volume

St.1982, c. 568, was approved Dec. 23, 1982.

Prior Laws:
G.L. c. 69, § 24A, as added by St.1953, c. 457, § 1.
St.1956, c. 477.
St.1962, c. 336.

Former section:

Former § 133, repealed by St.1982, c. 568, which related to the authority of blind persons to operate vending stands in public buildings, was derived from St.1966, c. 535, § 2.

END OF DOCUMENT

MA ST 22C s 38
M.G.L.A. 22C § 38

MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE II. EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
CHAPTER 22C. THE DEPARTMENT OF STATE POLICE

The criminal information section of the department shall be charged with the following duties and functions:

(a) Said section shall collect, by investigation of its own and by receipt from other law enforcement agencies, information **concerning** organized crime, organized illegal **gambling**, and other illegal activities generally described as rackets, including information as to the identity and doings of persons who engage in, promote, operate or participate in such activities and of persons arrested for the illegal use, sale or possession of harmful drugs or narcotics.

(b) Said section shall maintain files of all such information which it collects and receives, and shall serve as a clearinghouse of intelligence for all law enforcement agencies within the commonwealth **concerning** such activities and such persons, and may provide to and receive for similar agencies outside the commonwealth any such information. Any police department of the commonwealth, or any of its political subdivisions, may, by request, in the form and manner prescribed by said section, receive such information as is in the files of said section **concerning** such activities and such persons in which said police department has an official interest. Such clearinghouse functions of said section shall constitute a cooperative relationship between said section and said police

departments; and if in the discretion of the head of said section, responding to such request for information might interfere with an investigation being carried on by some other department or by said section, he may, with the approval of the colonel, deny the request. Systems operated by the criminal history systems board, pursuant to sections one hundred and sixty-seven to one hundred and seventy-eight, inclusive, of chapter six, may be used for such record keeping purposes provided that such record shall remain subject to the **regulations** of said board.

(c) Said section shall from time to time advise the local police departments of new schemes or rackets which may come to its attention, of new devices, techniques, methods of operation, and other matters of interest relating to such activities and such persons, so that the police of the commonwealth and its political subdivision shall be better informed and thus better able to enforce the laws with respect to such activities and such persons.

(d) The clerk of any court in which a person is convicted of a crime involving **gaming** of any kind, drug and narcotic violations, the sale or possession of pornographic literature or the improper solicitation or use of funds for charitable purposes, shall forthwith report such conviction to said section. The probation officer of said court shall furnish to the clerk a description of any person so convicted, which shall be on a form prescribed by the colonel.

CREDIT(S)

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Added by St.1991, c. 412, § 22.

<General Materials (GM) - References, Annotations, or Tables>