

CHAPTER 945.

GAMBLING.

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945.01 Definitions relating to gambling. (1) **BET.** A bet is a bargain in which the parties agree that, dependent upon chance even though accompanied by some skill, one stands to win or lose something of value specified in the agreement. But a bet does not include:

(a) Bona fide business transactions which are valid under the law of contracts including without limitation:

1. Contracts for the purchase or sale at a future date of securities or other commodities, and

2. Agreements to compensate for loss caused by the happening of the chance including without limitation contracts of indemnity or guaranty and life or health and accident insurance;

(b) Offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such contest;

(c) A lottery as defined in this section.

(2) **LOTTERY.** (a) A lottery is an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance, even though accompanied by some skill.

(b) "Consideration" in this subsection means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant.

(3) **GAMBLING MACHINE.** A gambling machine is a contrivance which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, even though accompanied by some skill and whether or not the prize is automatically paid by the machine.

(4) **GAMBLING PLACE.** (a) A gambling place is any building or tent, any vehicle (whether self-propelled or not) or any room within any of them, one of whose principal uses is any of the following: making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling machines.

(b) Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be professional gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.

(c) Any gambling place is a public nuisance and may be proceeded against under ch. 280.

History: 1955 c. 696.

See note to sec. 24, art IV, citing State v. Laven, 270 W 524, 71 NW (2d) 524.

Gum ball machine occasionally ejecting trinkets instead of gum is a gambling device within the purview of 348.07 and 348.09 (Stats. 1949). 38 Atty. Gen. 470.

Game or device known as "Crib-A-Dice" is not a gambling device within the meaning of 348.07 (Stats. 1949) unless actually used for gambling. 38 Atty. Gen. 493.

"Gold Flag Day" plan is a lottery. 38 Atty. Gen. 507.

Promotion advertising scheme called "Skrambl" contains the element of chance and is a lottery. 38 Atty. Gen. 509.

The motion picture promotion scheme known as "Name the Star" constitutes a lottery. 38 Atty. Gen. 511.

The following scheme is a lottery. Merchants purchase advertising from theater and receive batches of tickets or tokens to be distributed free to members of public visiting their places of business and asking for them. Thereafter theater presents prize of a television set to person in theater hold-

ing greatest number of such tickets or tokens. 38 Atty. Gen. 644.

Proposed theater television quiz program will probably be a lottery. 38 Atty. Gen. 641.

Scheme whereby clues to the combination of a safe containing a certificate redeemable for cash and merchandise are broadcast on radio program sponsored by merchants who receive advertising thereby, and public is invited to attempt within 2 minutes to open the safe and thereby win the certificate, is a lottery. 38 Atty. Gen. 657.

"Jingle Contest" is not violation where it is to be judged by a university professor and standard of judging is to be originality, aptness, uniqueness, neatness, spelling and meter-rhyme. 39 Atty. Gen. 1.

Business promotion plan in form of election to honorary office with prize to winners is a lottery. 39 Atty. Gen. 14.

"Musical Tune-O," a modified form of Bingo, declared to be a lottery. 39 Atty. Gen. 15.

"Treasure hunt" and "Mr. Money Bags" schemes are lotteries. 39 Atty. Gen. 35.

Scheme whereby automobile license number is drawn from a container and posted in filling station window, enabling the owner of the number to call at the station and claim a prize within a specified time is a lottery. The consideration is the attraction of persons desiring to view the number to determine whether it is their own. 39 Atty. Gen. 185.

Principles stated for determining whether radio giveaway programs are lotteries (before 1951 amendment). Fact that facilities of interstate commerce are used and that congress has legislated against radio lotteries (18 U.S.C. § 1304) does not prevent enforcement of state laws covering same subject, especially in view of 18 U.S.C. § 3231. 39 Atty. Gen. 374.

Scheme by which prizes are to be distributed to winners of slogan contest is a lottery, where no standards are prescribed by which entries are to be judged and where official entry blanks must be obtained from participating merchants and deposited in a theater lobby. 40 Atty. Gen. 211.

Radio program known as "Dan the Dollar Man" or "Dollar Derby," described in the opinion, is a lottery, notwithstanding the amendment by ch. 463, Laws 1951. 40 Atty. Gen. 282.

Ch. 463, Laws 1951, does not legalize lotteries conducted in part via radio or television, but merely provides that listening to and watching radio and television shows, and doing such minor incidental things as answering a telephone or making a telephone call, shall not be regarded as consideration. "Lucky Social Security Numbers" program is still a lottery because win-

ning numbers are posted in sponsor's places of business. 40 Atty. Gen. 284.

Contest conducted by newspaper in which entrants are required to forecast the results of 20 football games, including an estimate of the point differential between the winners and the losers, is a lottery in violation of 348.01, and also violates 348.085 (Stats. 1951). Question of what is a game of chance considered. 40 Atty. Gen. 438.

Scheme whereby players of a game of skill, similar to bowling but played with a disc similar to shuffleboard, are given coupons, bearing various stated point values dependent upon the size of the score made by the player, which coupons are redeemable in merchandise, does not violate 100.15, 176.90, 348.01, 348.07, 348.085, or 348.09 (Stats. 1951), the game being assumed to be one of skill but not a "contest" and the coupons not being given in connection with the sale of any goods, wares or merchandise. 41 Atty. Gen. 111.

A slogan contest conducted by a chamber of commerce, wherein entries are to be mailed to the "contest secretary," no entry blank being required, lacks the element of consideration necessary to make it a lottery, regardless of whether the winner is determined by chance. 42 Atty. Gen. 68.

Radio give-away program called "Number Pleeze," described in the opinion, is not a lottery because the element of consideration is absent, but listeners may not be required to register at a sponsor's store to be eligible to participate. 43 Atty. Gen. 266.

Television game of "Banko," described in the opinion, is a lottery. 43 Atty. Gen. 324.

945.02 Gambling. Whoever does any of the following may be fined not more than \$500 or imprisoned not more than 6 months or both:

- (1) Makes a bet; or
- (2) Enters or remains in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling machine; or
- (3) Conducts a lottery, or with intent to conduct a lottery, possesses facilities to do so.

History: 1955 c. 696.

945.03 Commercial gambling. Whoever intentionally does any of the following may be fined not more than \$5,000 or imprisoned not more than one year or both:

- (1) Participates in the earnings of or operates a gambling place; or
- (2) Receives, records, or forwards bets or offers to bet or, with intent to receive, record, or forward bets or offers to bet, possesses facilities to do so; or
- (3) For gain, becomes a custodian of anything of value bet or offered to be bet; or
- (4) Conducts a lottery where both the consideration and the prize are money, or with intent to conduct such a lottery, possesses facilities to do so; or
- (5) Sets up for use for the purpose of gambling or collects the proceeds of any gambling machine.

History: 1955 c. 696.

The Lac du Flambeau Band of Chippewa Indians of the Lac du Flambeau Reservation had no tribal ordinance regulating gambling devices on the reservation and there was no United States statute on the subject, so the Assimilative Crimes Act applied and rendered the Wisconsin statute penalizing the operation of gambling devices applicable. *United States v. Sosseur*, 37 F Supp. 225. Affirmed. 181 F (2d) 873.

Radio program entitled "Let's Quiz the Mrs." in which information necessary to win is broadcast and is also printed on the package in which the sponsor's product is sold, has the element of consideration necessary to constitute it a lottery, prize and chance being present. 44 Atty. Gen. 268.

945.04 Permitting premises to be used for commercial gambling. Whoever intentionally does any of the following may be fined not more than \$200 or imprisoned not more than 6 months or both:

- (1) Permits any real estate owned or occupied by him or under his control to be used as a gambling place; or
- (2) Permits a gambling machine to be set up for use for the purpose of gambling in a place under his control.

History: 1955 c. 696.

945.05 Dealing in gambling devices. (1) Whoever manufactures, transfers commercially or possesses with intent to transfer commercially either of the following may be fined not more than \$5,000 or imprisoned not more than one year or both:

- (a) Anything which he knows evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet; or

(b) Any device which he knows is designed exclusively for gambling purposes or anything which he knows is designed exclusively as a subassembly or essential part of such device. This includes without limitation gambling machines, numbers jars, punch boards and roulette wheels.

(2) Proof of possession of any device designed exclusively for gambling purposes, which is not in a gambling place and is not set up for use, is prima facie evidence of possession with intent to transfer.

History: 1955 c. 696.

Schedules used for ascertaining and declaring the winning number in lotteries commonly known as baseball pools, which schedules were in the possession of the defendant at the time of his arrest, were a "gambling device" within the meaning of a city ordinance prohibiting the possession or use of a gambling device, defined as any device of any kind or nature in, by, or through which money is or may be staked or hazarded "or on the result of the action of such device" money is or may be staked, bet, hazarded, won or lost. *Milwaukee v. Stanki*, 262 W 607, 55 NW (2d) 916. See notes to 945.01, citing 38 Atty. Gen. 470, 493.

945.07 Gambling by participants in contest. (1) Any participant in, or any owner, employer, coach or trainer of a participant in, any contest of skill, speed, strength or endurance of man, machine or beast at which admission is charged, who makes a bet upon any opponent in such contest may be fined not more than \$1,000 or imprisoned not more than one year in county jail or both.

(2) In this section, "participant" includes any person who is selected or who expects to take part in any such contest.

History: 1955 c. 696.

945.08 Bribery of participant in contest. (1) Any person who, with intent to influence any participant to refrain from exerting his full skill, speed, strength or endurance, transfers or promises any property or any personal advantage to or on behalf of any participant in a contest of skill, speed, strength or endurance may be fined not more than \$5,000 or imprisoned not more than 5 years or both.

(2) Any participant in any such contest who agrees or offers to refrain from exerting his full skill, speed, strength or endurance in return for any property or any personal advantage transferred or promised to himself or another may be fined not more than \$1,000 or imprisoned not more than one year in county jail or both.

(3) In this section "participant" includes any person who is selected to or who expects to take part in any such contest.

History: 1955 c. 696.

945.10 Prizes forfeited. Anything of value received by any person as a prize in any lottery conducted in violation of this chapter shall be forfeited to the state and may be recovered in any proper action brought by the attorney general or any district attorney in the name and on behalf of the state.

History: 1955 c. 696.

945.12 Endless sales chains. Whoever sets up, promotes or aids in the promotion of a plan by which motor vehicles are sold to a person for a consideration and upon the further consideration that the purchaser agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser being given the right to secure money, credits, goods or something of value, depending upon the number of persons joining in the plan, shall be held to have set up and promoted a lottery and shall be punished as provided in s. 945.02. The further prosecution of any such plan may be enjoined.

History: 1957 c. 231.

Cross Reference: As to endless chain sales, see also 218.01 (3) (a) 20.