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D. H. Reuben, Editor

GAMBLING AND THE LAW

Hugh R. Manes

It has been estimated that during 1950, a gullible gambling American public was fleeced of over twenty billions of dollars.1 This enormous sum, a fourth of the total governmental expenditures of that year, had been wagered on slot machines, policy schemes, and horse races, although, significantly enough, only one state in the union has legalized all forms of gambling.2

The feeling seems to be prevalent among many of us that it is futile to legislate against the "inherent disposition" to gamble, but a century of political and social experience of our cities and states attests to the prudence of such laws.3 However, because of public lethargy and indolent law enforcement, the flouting of legislative prohibitions has become too common. Gambling violations, therefore, will continue so long as the forces which should deter them remain inert.

Whatever responsibility public apathy and indifferent enforcement share in tolerating these abuses, there is a third factor to be considered in connection with the problem—the gambling statutes themselves. These laws are frequently outmoded and thus unresponsive to modern gambling operations. In many states for example, the statutory language is woefully inadequate.4

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1. Hearings before a Special Committee to Investigate Organized Crime on S. Res. 202, 2d Interim Rept., 81st Cong., 2d Sess. (1951) p. 18. For example, the S & G syndicate of Miami grossed $26 million, Guarnatee Finance Co. of Los Angeles reported a $7 million gross, and the Carroll-Moody operations in St. Louis took in $16,000 a day. Hearings, at p. 13.

2. Nevada, which does about $41 million worth of the nation's gambling business. 269 Annals 68 (May, 1950). Some states do, however, permit a restricted amount of gambling under state or local supervision: Idaho (slot machines permitted by local option); Maine (Beano, but license must be secured from the local chief of police and is restricted to county fairs, and religious, fraternal, veterans and charitable organizations). Other states permitting Beano generally contain the same restrictions. Maryland (Beano); Massachusetts (Beano); Minnesota (Beano); Montana (slot machines and punch boards).

In addition, at least twenty-two states exempt from their anti-gambling laws wagers at race tracks, either through pari-mutual or certificate schemes; Arizona, Arkansas, California, Delaware, Florida, Kentucky, Illinois, Louisiana, Maine, Maryland, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, South Dakota and West Virginia.

3. But an illuminating discussion of this problem may be found in Peterson, V. W., Gambling: Should it be Legalized? (1951).

4. (a) In New Hampshire, for example, anti-gambling laws were designed primarily to govern lotteries. Prosecuting attorneys, therefore, frequently find it difficult to draft adequate complaints upon which to base a prosecution for bookmaking. (Letter, Attorney General, State of New Hampshire, 18 Dec. 1950.) See State v. Liptzer, 90 N.H. 395, 10 A.2d 232 (1939). Colorado has no anti-slot machine statute, but deals with those devices as lotteries, 159 Gambling Devices v. People, 110 Colo. 82, 130 P.2d 920 (1942). The same situation may be found in North Dakota, Middleman v. Strutz, 71 N.D. 186, 299 N.W. 589
or else the statutes do not cover new kinds of activities which did not heretofore prevail in the community. Particularly at the federal level there is insufficient legislation to cope with the interstate character which gambling has assumed within the last several years. It is therefore hoped that this

Oregon statutes do not specifically prohibit handbook establishments, although courts have consistently held such places as nuisances falling under §23-927, Ore. Comp. L. Ann. (1940); State v. Nease, 46 Ore. 433, 80 P. 897 (1905), Accord, Vermont, Vt. Stat. c. 393 §8545 et seq. (Revised 1947). Rhode Island provisions dealing with the issuance of warrants is extremely cumbersome, and in a larger state might well cause a complete breakdown of enforcement. R.I. Gen. Laws, c. 612 (1948).

(b) Illinois prohibits slot machines, but not their manufacture. Thus, Chicago, was able to avoid conflict with the slot machine capital of the world.

(c) By way of contrast, the Louisiana legislature has devised a revolutionary technique in dealing with the whole subject of gambling. §740-90, Dart's Code of Crim. L. & Proc. (1942), reads simply, "The intentional conducting, or directly assisting in the conducting as a business of any game, lottery, contest, or contrivance, whereby a person risks the loss of anything of value in order to realize a profit" is a felony. There is no attempt to enumerate offenses categorically. An indictment for gambling is brought against the offender in much the same way as an indictment for murder or rape. In other words, the complaint need not set forth the specific crime for which the offender is accused, as bookmaking, or operating a slot machine; only that he violated Section 740-90. Underlying this novel concept is the theory that the offense of gambling should be treated the same way as any other felony. The accused has the benefit of res judicata in so far as he may not be tried on another gambling offense, while the prosecutors, on the other hand, do not run the danger of having their indictments quashed on mere technicalities. The defendant is protected, of course, from ambiguous indictments by requesting a bill of particulars. For a more intensive treatment of the statute, see 6 L. A. L. Rev. 180, 465 (1945); 5 L. A. L. Rev. 42 (1945).

A less efficient alternative to the Louisiana statute is legislation in Mississippi which lays down the requirements for indictments, i.e., as to its comprehensiveness, and then directs the court to sustain any defective indictment wanting in form, so as to give judgment "according to the very right of the case." Miss. Code Ann. §2456 (1942).

(d) Some states have not amended or revised their anti-gambling statutes in over forty or more years. Indiana Stat. Ann. §10-2301 et seq. (Burns, 1933); Mass. Ann. Laws c. 271 (1932). Among other things, this has resulted in utter confusion as to the respective jurisdictions of the chief enforcement agency in the county. In Los Angeles, when city department police wanted to investigate the bookmaking operations of the Guarantee Finance Co. located outside the city limits, they were told by the sheriff to remain on their side of the line. To carry this point one step further, a judge in Madison County, Illinois, refused to permit gambling operations to be disrupted by, and the gambling devices confiscated by, state police officers on the narrow grounds that the jurisdiction of the state police was confined to the state highway.

(e) In many instances, states provide only minor penalties, even where the offender has violated the gambling statute more than once. Where the offense is made only a misdemeanor, the recalcitrant offender is in no danger of being classified as an habitual criminal, though actually, his activities may be just as disruptive of the community morals or standards. To what extent the reclassification of these penalties would discourage gambling violations is impossible to estimate, but certainly the minor penalties now in force do little to dissuade offenders from flouting the laws.

5. For example, the transmission of racing information.

6. At present important federal legislation dealing with gambling is limited to prohibiting interstate shipment of slot machines into states not legalizing those devices. Pub. L. No. 306, 81st Cong., 2d Sess. (1950) §1194. What is probably worse than the absence of legislation is the federal law requiring every slot machine to bear a tax stamp. Generously speaking, Congress might have had in mind advertising the location of places possessing these devices to county enforcement officials. While Wisconsin has found this law useful in its recent campaign, the Attorney-General of Alabama reports that convictions have been difficult to obtain from juries when they learn that the slot machines bear the federal stamp of approval.
article will offer a suggested basis for a modern uniform anti-gambling statute, and to this end the conclusions reached are embodied in legislative proposals.

It is necessary for us to recognize at least two forces which contribute to the success of the unlawful multi-billion dollar gambling industry. Probably the most important is that some citizens and business concerns, usually regarded as respectable, engage in borderline activities too frequently neglected by legislatures. Consider, for example, the restaurant owner who affords to the gambler the use of his premises for the conduct of various gambling enterprises; or the landlord who leases his premises carelessly (or even with actual knowledge) to a bookmaker or other such individual, whom the landlord does not evict even after acquiring knowledge of the use to which his building or land is being put; or the telephone companies that lease their wires to gambling establishments. Legislation with stringent sanctions aimed at this group would result in a marked decrease in a community’s gambling activities within a relatively short time.

The other factor accounting for our gambling racket difficulties is the matter of law enforcement. Past experience has definitely established the fact that law enforcement agencies have a tendency to refrain from effective action, at least where such enforcement would affect the overlords of the gambling industry.7

Much depends, of course, upon the morality of the population, but beyond this, a good deal can be accomplished to secure better enforcement through effective statutory sanctions against lax public officials and the business concern or citizen who profits derivatively from borderline participation in the gambling racket.

The Weapon of Abatement Statutes

The most common statutory device used against those who let their premises to gambling enterprises is the abatement statute.8 The technique usually adopted is to declare as nuisances properties which are employed for gambling purposes.9 Civil actions to abate these nuisances may be brought by either the local prosecutor or by any citizen of the county.10 Thus, it is feasible for

7. For a remarkable account demonstrating this delightful state, see testimony of Daniel Gilbert, former chief investigator for the State's Attorney of Cook County, Hearings, supra note 1, Part 5, pp. 569-592, at p. 587.

8. Abatement usually consists of removing from the building all fixtures, furniture, and apparatus used in the conduct of the nuisance, and disposing of it by sheriff's sale. Occasionally the officer responsible for carrying out court orders is entitled to a share of the proceeds on execution. N. C. Gen. Stat. §19-5 (1943).

9. Of the following states with abatement statutes, those in italics have mandatory padlock provisions: Alabama, Florida, Illinois, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan (Scienter not required of landlord for prosecution), Mississippi (bond may be posted for good behavior for two years), Montana, New Mexico (nuisance may be closed until bond is posted), North Carolina, North Dakota, Pennsylvania (sheriff may abate nuisance on his own initiative. Fine and imprisonment if violator found guilty.), Tennessee (criminal offense), Texas, Utah, Washington (criminal penalty), Wisconsin, Wyoming.

In some states gambling is not articulated as a nuisance, but the structure of those statutes makes them susceptible to such a construction: Georgia (where a violation of public manners and morals); Idaho (immoral nuisances); Oklahoma (declares gambling places a nuisance, but provides for a specific penalty other than abatement—i.e., fine and imprisonment).

10. It would appear that statutory authority to abate a gambling nuisance is not essential. OPS Att'y Gen. (Ohio) 3158 (1940). As far back as the early common law gambling houses
a civic organization to initiate such proceedings should a prosecutor be reluctant to do so. The most important feature of such statutes is the padlock provision which empowers a court to close the premises of a guilty landlord for one year. Where such a mandate is imposed, the premises may not be occupied or sold for any purpose without the court’s consent.

The difficulty in maintaining abatement suits, especially those under a statute with a mandatory padlock injunction, is the requirement of scienter which must be proved before the landlord can be penalized. A good many courts have been overly concerned with the fate of these property owners and have been somewhat reluctant to exercise this power. Such reluctance may account in part for the failure of prosecuting officials to avail themselves of this device against gambling nuisances. The scienter requirement is too formidable and should probably be abolished or at least modified, so that the burden rests upon the landlord to negative the presumption that he was aware of the manner in which his property was being used.

Furthermore, if a landlord is

were declared to be a nuisance. 4 Bl. Comm. *c. 13; Chase, *926, 927. It was not necessary that all members of the community should be affected by the nuisance, nor was it a defense that some persons approved of the nuisance, 2 WHARTON, CRIMINAL LAW §1678 (12th ed. 1932). To constitute a disorderly house, it was not necessary that there be prostitution. It was sufficient that it was a place where infractions of the law were carried on. (Ibid).

Only recently, the Supreme Court of New Mexico followed the common law by declaring that public officers have an existing common law right to summarily abate common law or statutory nuisances, or nuisances which are by their very nature “palpably indisputably” such, and officers responsible for enforcement are authorized and protected even when abating nuisances without notice or hearing, State v. Johnson, 52 N.M. 209, 195 P.2d 1017 (1948).

11. The paucity of abatement cases (dealing with gambling) would suggest that prosecutors all too frequently show such reluctance. Attorney Generals of several states, in response to inquiries put to them by this publication, confess that the abatement statute is seldom utilized, but not one offers an explanation for this failure. It is true that the mere threat of a suit will frequently induce the landlord to abate the nuisance voluntarily, but it is questionable whether prosecutors have taken even these preliminary steps to any appreciable extent.

12. For states having such provisions, see note 8(a), supra.


14. Michigan adopts this theory in its statute. Mich. Stat. Ann. c. 173, §18-909. Evidence of the general reputation of the building is admissible for the purpose of showing the existence of the nuisance. Proof that the landlord had knowledge of the existence of the nuisance is not required for conviction. This provision also includes a clause which reserves jurisdiction to the court where the nuisance has been voluntarily abated. Even so, the court has sometimes been unwilling to apply the statutory presumption in close cases, State v. Tate, 306 Mich. 667, 11 N.W.2d 282 (1943).

In Louisiana, if the premises are owned by a corporation or partnership, and is found to be a nuisance, the executive head of the business association is fully answerable under the provisions of the Act, including its penalties, as though he were the sole owner. La. Code of Crim. L. & Proc. Ann. c. 20, §1032 (Dart, 1943). No cases on points, but see Warmack v. Varnado, 204 La. 1019, 16 So.2d 825 (1943), holding the Act constitutional. A provision of this sort serves well as a caveat to institutions dealing in realty, who are not heedful of the character of its leases.

conscientious about accepting a tenant who will pay his rent, there is no reason why he should be less so about one obnoxious to society.\textsuperscript{16}

\section*{Revocation of Licenses}

In Wisconsin, gambling violations of restaurant and tavern owners have been effectively curbed by the technique of revoking the violator's food and liquor licenses.\textsuperscript{17} In 1945 the legislature of that state revamped its licensing laws, empowering the Commissioner of Taxation to revoke the food and liquor license of any shop proprietor found permitting slot machines to operate on his premises. The year the law went into effect, Wisconsin gamblers had installed 15,000 licensed slot machines throughout the state.\textsuperscript{18} Today, slot machines, punchboards and similar devices are virtually extinct, and other forms of commercial gambling are considered "not nearly so prevalent as in many other states."\textsuperscript{19}

Two factors make a license revocation statute significant. One is that many legitimate and otherwise well meaning business men feel compelled to permit gambling on their premises in order to meet the competition of less scrupulous competitors. Secondly, local law enforcement often breaks down at this juncture, or may even sanction these illicit enterprises. In meeting these conditions, the Wisconsin legislature has demonstrated keen perception of the problem. It has placed the burden of enforcement upon a special state agency, and has simultaneously obviated the necessity of entrepreneurs retaining gambling devices for competitive purposes by threatening severe penalties to all. Unfortunately, few states have followed Wisconsin's lead.

\section*{Prohibiting the Dissemination of Racing Information}

In view of the highly organized character of gambling today, a discussion of proposed legislation must include a reconsideration of some activities presently accepted as legal,\textsuperscript{20} with a view toward reclassifying them as illegal. Particular attention must be given to the procedure and mechanics employed for the dissemination of racing information.

Most remunerative of all gambling enterprises centers around the horse race,\textsuperscript{21} where, in less than half the states,\textsuperscript{22} wagering is permitted by law at the track through pari-mutual or certificate systems. A complicated, highly perfected rete of communications spans the nation, relaying instantly the latest

\textsuperscript{16} In Tenement Hse. Dept. v. McDevitt, 215 N.Y. 160, 109 N.E. 88 (1915), the court, speaking through Mr. Justice Cardozo, held that "the penalty is imposed when the building, or some part of it, has been kept or maintained by the occupant for the purpose of prostitution. If, however, there has been a use for prostitution in that sense, we think it is not a defense that the use was known to the owner. The statute does not make his liability dependent upon his knowledge or even upon his negligence. It makes his liability dependent upon prohibited use. If use is interpreted not as an isolated act, but a practice, or series of acts, the statute, we think, charges the owner with the duty to inform himself of the conditions in the building."


\textsuperscript{18} 269 Annals 66 (May, 1950).

\textsuperscript{19} Letter, Assistant Attorney General, State of Wisconsin, 16 Dec. 1950.


\textsuperscript{21} In 1948 over 16 billion dollars was wagered through pari-mutual and certificate systems alone. But this figure is insignificant when compared to the amount transacted away from the track. See Peterson, V.W. \textit{Should Gambling be Legalized}, 40 Crim. L. & Criminology 259, 268.

\textsuperscript{22} See note 2. supra.
“scratches” and race results to local wire loops and handbook establishments. The big handbook operators depend upon this system not only for the profitable conduct of their business, but also to avoid being cheated by gamblers equipped with information in advance of the operator himself. Although syndicate power, which has recently received so much notoriety, is predicated upon the successful maintenance of this monopoly, there is no federal statute barring this enterprise from interstate commerce, and there are only three states, California, Florida, and Pennsylvania, which have considered the problem sufficiently dangerous to warrant legislative or administrative action. Common to the laws currently in force in these three jurisdictions is the prohibition against the dissemination of racing information. Responsibility for enforcement is left in a Public Utility Commission. Before the private wire can be leased to an applicant, the latter’s petition is investigated by the Commission and its approval required. If the contract appears on its face to violate the anti-gambling laws it will be rejected by the Commission. If unlawful use is made of the wires after the contract has been approved, the service is suspended, and further use of these facilities may be denied to the guilty parties. Pennsylvania’s Act goes one step further. The burden of proof is placed upon the public utility itself to show that it has not violated the statute in furnishing its wires for unlawful purposes. If found guilty, the offending utility is subject to a substantial fine. Unfortunately, relatively little use has been made of these statutes, if one is to judge from the paucity of cases and the continued existence of hand-

23. Inducing such subterfuge was probably the object of the Governor of Florida when he recently ordered that all race results be delayed twenty minutes before being communicated over any wires or telephone.

24. Actually, the Communications Commission issued an order which invited Public Utilities to refrain from extending their facilities to persons using them unlawfully, and afforded them immunity from criminal or tortious liability, Tariff, FCC #219.

25. Fla. Stat. §§365.01 et seq (1949); held, constitutional in McInerney v. Erwin, 46 So.2d 458 (Fla. 1949). The Act was not a violation of the commerce clause because when information released for purpose of wagering, the “bulk” is broken, forfeiting its interstate character, and is then subject to state regulation; Pa. Stat. Ann. Tit. 66, §1702 et seq (Purdon, 1941); see also Plotnick v. Penn Public Utility Commission, 143 Pa. Super. 550, 18 A.2d 542 (1941), a suit to compel telephone company to restore service. The court refused to issue the decree, stating, inter alia, that though the telephone was not a gambling device per se, which might be confiscated, yet the company might deny the use of its facilities if by using them it would be to further violation of the law; Order, Public Utilities Commission of Calif., Decis. #41415, 6 April 1948.

There are a few other states which have statutes prohibiting the dissemination of racing information but they are much less elaborate in form, and are usually incorporated as a part of the anti-gambling code. They are thus weakened by failure of legislatures to vest supervisory power in an agency equipped to handle the problem.


27. Pa. Stat. Ann. Tit. 66, §1708 (Purdon, 1941). Under a West Virginia statute prohibiting the dissemination of racing information (since repealed) the state Supreme Court held scienter not to be a requirement for prosecution of a telephone company for lending its facilities for unlawful purposes. Lack of knowledge would only serve to mitigate the damages, but since the statute declared it to be an offense against public policy to furnish its service to gambling places, such policy would not permit the treating of lack of diligence as a substantial defense. See State v. Chesapeake Tel. Co., 121 W. Va. 420, 4 S.E.2d 257 (1939); contra: State v. Postal Tel. Co., 53 Mont. 104, 161 P. 953 (1916).
books. The fault, however, is not all in the lack of enforcement. For one thing, and most important, there is no federal statute to supplement state legislation, and this has led to bootlegging of racing information into the state over long distance telephone, by telegraph, and by other means.28 Secondly, there has been little or no cooperation among the several jurisdictions, a fact aggravated by the failure of most states to pass similar statutes. A third impediment toward effective utilization of these laws, but one which has not yet overtly materialized, is the aversion of public utilities toward this type of legislation.29 Should the racing news wire service be destroyed, telephone and telegraph companies stand to lose enormous revenues. At the present time they have generally indicated their willingness to cooperate with the authorities, but it remains to be seen whether this spirit of compliance will continue, or whether it will be subverted to business interests.

Although the statutes directed at public utility control have a salutory effect in the fight against organized horse betting, they fail to effectively foreclose all methods of communication race results. As long as publications of racing information in newspapers, “scratch sheet” publications, and radio broadcasts continue, bookmaking will survive even though reduced to a local operation.30 Statutes drafted with a view to delaying transmission of race horse information until the information is of no practicable use to bookmakers can probably be sustained as an exercise of police power or the interstate commerce power, depending upon whether the legislation be state or federal.31

Law Enforcement

As already indicated, one of the chief problems of our communities lies in their attempts to cope with syndicated gambling while hampered by an indif-

28. In California, bootlegging of racing information from Nevada and Mexico by means of long-distance telephone has rendered enforcement of the State's regulations extremely difficult. For example, lines might be kept open from Reno to Bakersfield (or any other place). Thence, the information is relayed from the terminus (Bakersfield) to any other point in California. A more thorough account of the difficulties encountered by the police authorities and State Crime Commission in meeting this problem is offered in the testimony of Mr. Warren Olney, Hearings, supra note 1, Part 2, at p. 238 et seq.

29. The prosecuting attorney of St. Louis County, Missouri, testified before the Crime Committee that E. J. Rich Co. used over 100 Western Union agents to solicit bets on a twenty-five percent commission basis. Hearings, supra note 1, at p. 13. There was testimony also to the effect that the principal disseminator of racing information, the Continental Press Service, leased 23,000 miles of telegraph circuits and netted an income of over a million dollars annually from this type of lease. Testimony of Wayne Coy, Chairman of Federal Communications Commission, Hearings, supra note 28, at p. 6.

Attention should be directed to one of the major difficulties in dealing with this problem on a national scale. Continental Press is not in itself directly engaged in distributing the information unlawfully, but rather, leases this service to dummy distributors organized on a regional basis. It is this latter group of companies which actually engage in the enterprise of distributing gambling information to handbooks and wire loops. It is possible, by virtue of what appears to be a very close connection between distributors and Continental, to regard the character of the operation as a violation of the anti-trust laws, especially in view of the fact that Continental owns virtually a monopoly in this field.

30. It is apparent from the record that there are various levels of bookmaking. There is first the individual independent bookmaker who operates out of his own pocket on a capital of about $1,000, taking bets ranging from two to ten dollars. When he contacts his client they have usually already made their selections from newspapers or “scratch” sheets. The following day he checks the papers for the results and odds paid, makes his rounds and settles his accounts. He rarely lays off bets with larger operators, and he had little use for the wire service.” Hearings, supra, note 1, at page 14.

31. In Michigan a statute of similar nature (Public Acts 1925, Act II 176) was held to be unconstitutional because it made no distinction between harmful and harmless information. Furthermore, it made the mere possession of betting forms and posted odds at race
different and inadequate law enforcement organization. "Buckpassing" between sheriff and state's attorney is one of the more notable examples of this condition. Court records of large cities and counties abound with cases which are dismissed because of "violations" of the search and seizure laws or equivalent state constitutional prohibitions. There seems to be little or no incentive other than that imposed by conscience to inspire prosecutors to perform their duties with intelligence and vigor. Public indifference is the most important reason for these unsatisfactory conditions and thus it becomes necessary to rely on some form of legislation which will coerce law officers into performing their duties.

Attempts by several states to ensure diligent enforcement of the laws have met with limited success. Ordinarily, provisions which direct a vigorous prosecution of violators are incorporated into anti-gambling legislation. Penalties for non-feasant or mis-feasant conduct in office range from small fines to dismissal from office, and, occasionally, imprisonment. South Dakota's anti-gambling statute requires the Attorney-General of the state to prosecute violations known to him if it appears that the local State's Attorney has failed to take appropriate action himself. The cost of any prosecution which might follow is sustained by the State's Attorney out of his own pocket. Again, in Oklahoma, the sheriff faces dismissal from office, and possible imprisonment, if it can be shown that he failed to make arrests for gambling violations he knows exist. It is noteworthy, however, that little or no use has been made of these provisions. One reason may be inferred from the following remarks of an Attorney General responding to the writer's inquiries: "... their value has no doubt been more of a moral than of a practical application." If gambling practices have ceased in that state, then this statute has indeed been of great moral significance.

tracks in the form of news sheets unlawful, without making it clear that such possession was unlawful only if here was an intent to publish, Parker v. Judges Recorder's Court, 236 Mich. 460 (1926).

In its present form the statute does not prohibit publication of information which is beneficial to breeders and owners or useful to spectators. But gambling odds and pertinent information useful only for gambling purposes is prohibited. Michigan Stat. Annals §28.537 (1951); see Fogerty v. Southern Bell Telephone and Telegraph, 34 F. Supp. 251 (1941); Hamilton v. Western Union, 34 F. Supp. 928 (1940).

32. See note 4d, supra.
33. Too frequently these violations are "arranged" in order to give grounds for having the indictment quashed.
35. Primarily because of the reluctance of state and local executives to utilize the "duty" statutes. Apparently the courage required to resist political pressures is no stronger in the mayors, governors, and prosecutors than in the people whom they are elected to serve. The dearth of cases arising under these statutes, assuming this is not attributable to a lack of appeal worthy facts, seems to bear out this contention. But see Mays v. Robertson, 172 Ark. 279, 288 S.W. 382 (1926); State v. Wymore, 345 Mo. 169, 132 S.W.2d 979 (1939); cf. Klein-schmidt v. Bell, 353 Mo. 516, 183 S.W.2d 87 (1944) (knowledge of gambling, when operating notoriously, may be imputed to the prosecuting attorney).
North Carolina purports to offer still another alternative.\textsuperscript{39} Sheriffs must arrest all known violators of the gambling code on penalty of forfeiture of office and imprisonment for neglect of duty. Each week a report is tendered to the executive head of the municipality by the chief of police giving all information he has related to gambling. If the police chief has reported gambling activity in his jurisdiction, responsibility devolves equally upon the mayor to eliminate it and failure of the mayor to take appropriate action, where the police have been lax, is a misdemeanor subjecting him to a fine of $500. Any citizen within the jurisdiction may bring suit to collect the fine, and if successful, he receives one-half of the judgment.

This statute is interesting in at least two aspects: its inducement of a public conscience by giving a profit incentive, and its attempt to place ultimate responsibility for the existence of gambling upon all the inhabitants of the community. It appears that these laws have never been employed, though certainly the opportunities for their use has been plentiful.

There are several reasons for the failure to employ statutes which coerce an enforcement official to properly discharge his duties. Aside from political considerations, there is no clear cut authority devolving upon any one agency or officer to administer the disciplinary measures provided by the statutes. Furthermore, by invoking little known procedural devices and jurisdictional technicalities in these cases, the courts have demonstrated an unexplainable loathness to enforce the statutes.\textsuperscript{40}

It is not expected that the passage of the legislation proposed in this paper will instantly accomplish a renaissance of civic-mindedness. Instead these statutes would allow an appropriate agency to supervise the enforcement of gambling by prosecuting the culpable official and those who benefit from his misfeasance.\textsuperscript{41} A form of the previously discussed North Carolina statute, spreading the responsibility for suppressing gambling to cover a number of public officials, can be enacted to supplement such an agency by actions brought by private citizens.

\textbf{Personal Immunity and Indemnity Laws}

Almost all states\textsuperscript{42} have some form of a personal immunity statute. These laws are an effective device for securing information from petty

\textsuperscript{39} N.C. Gen. Stat. §14-293 (1943).

\textsuperscript{40} People ex rel Forse v. Allman \textit{et al}, 329 Ill. App. 296 (1946); Curtan \textit{et al} v. Civil Service Commission, 329 Ill. App. 307 (1946). In both these cases the court denied the Commission had jurisdiction, and in doing so, expanded the scope of review in a writ of certiorari case.

\textsuperscript{41} In many cities, counties and states, agencies denominated as Crime Commissions serve to focus public attention upon crime, mostly gambling and attendant evils. In cities such as Chicago, Miami, and Gary, they have had an important influence, even though they are without effective weapons. Some states, such as California, have officially adopted such a Commission, however, their effectiveness is weakened in so far as it has no subpoena powers, and may act only in an advisory capacity.

hoodlums who testify against the more important racketeers and gamblers, or, who in some instances, unveil the existence of certain illegal activities in which they have participated.

Although legislation requiring the winning gambler to indemnify the third party victim, or even the losing party himself, have little or no practical value in restricting gambling violations, business organizations have sometimes found them useful in recovering large sums of money embezzled by their employees for gambling purposes.

Conclusion

Modern legislation should recognize the deterrents toward effective elimination of gambling activities. Efficiency and integrity should be instilled in law enforcement officers so far as is practicable by statutory devices. The "respectable" layman who aids violators of the gambling laws should be discouraged from such practices by legislative enactment. Wire services and similar facilities should be denied those seeking to use them for unlawful activities. And finally, the federal government should enter this field to combat the interstate operations of the gambling industry.

Following is a suggested piece of legislation for state action and also a proposed federal law. No attempt has been made in either one to embrace all possible approaches, such as, for example, tax reform to effectively reach all illegitimate income. The proposals have been drafted primarily to meet the main problems discussed in this paper.

Proposed Uniform State Antigambling Statute

Section 1

(a) Gambling is the intentional conducting, or directly assisting in the conducting, as a business, of any game, contest, lottery or contrivance whereby a person risks the loss of anything of value in order to realize a profit.

(b) Whoever commits the crime of gambling shall be guilty of a felony and shall be fined not more than $1,000, or imprisoned not more than six months, or both, and for the second offense, shall be fined not more than $5,000, and shall be imprisoned not less than one year nor more than three years, and for each subsequent offense, shall be imprisoned not less than three years, nor more than ten years.

(c) Whoever shall play for money or other valuable thing, at any game, contest, horse race, or contrivance not authorized by law, with cards, dice, checks, or at billiards, or with any other article or instrument or thing whatsoever, which may be used for purpose of playing or betting upon or


43. This type of statute is found in the following states: Illinois, Indiana, Maine, Maryland, Massachusetts, Minnesota, Montana, New Jersey, New York, Wisconsin, Vermont. Presumably, a loser could recover his losses from a race track even in jurisdictions where betting in those places is lawful.

winning or losing money, or any other thing or article of value, or shall bet on any game others may be playing, or shall be found betting at a handbook establishment, shall be fined not exceeding $100, and not less than $25, and for every subsequent offense, in addition to a fine, may be imprisoned in the county jail for not more than 30, nor less than 10 days.

Section 2

(a) Any building, tent, outhouse, tenement or other place or location upon the premises of which gambling is conducted or carried on shall be deemed a nuisance.

(b) A civil action to abate said nuisance may be brought without bond by the State’s Attorney of, or any resident of, the county in which the nuisance is alleged to exist, but nothing in this subsection shall be construed as prohibiting a similar or other action at law or equity against such nuisance which might be brought by the State Crime Commission, as provided in Section 4 of this Act.

(c) Where the court finds such a nuisance to exist, it will order the sheriff to immediately abate the same in accordance with subsection (d) of this Section. The court shall further ascertain the costs of abatement proceedings and the sale of any property involved therein, said costs to be taxed to the court costs of the defendant, and to operate as a lien upon any real property which the defendant may own. It is further provided that where any nuisance is found to exist the court shall permanently enjoin the same and further, shall order said premises to be closed for the period of one year, whereupon said premises shall not be used for any purposes whatsoever, nor any rents collected therefrom. But, any time after the closing of said premises, the court may entertain any motion or petition by the owner thereof, which seeks to relieve the premises of the injunction and padlock, and, at the court’s discretion, such petition or motion may be granted, provided that the petitioner has not previously been found guilty of violating this section, and, provided further, that the petitioner posts a $500 bond as security against a repetition of such nuisance on such premises.

(d) Whenever the court has ordered the abatement of any gambling nuisance it shall grant the sheriff a warrant to proceed to abate the nuisance, unless the court shall have granted the defendant his motion to stay proceedings pending appeal. All fixtures, furniture, equipment, and other property used in the conduct of the nuisance shall be removed from the place deemed to be a nuisance and shall be sold at public auction. The proceeds from such sale shall be then turned over to the local school district to be used in the maintenance of the public schools.

(e) In any civil proceeding to abate a nuisance, it shall not be a defense that the owner of the premises did not know of the use to which his property was being put.*

(f) Lack of notice shall not be a defense in any civil suit to abate a nuisance and to padlock same. All abatement proceedings shall be deemed to be in rem actions. Where a non-resident landlord is involved in proceedings under this Section, the nuisance shall be attached, and publication in

at least four major newspapers of the state shall announce the contemplated action.

(g) No proceeding in this section shall be held to be a bar to prosecution against the operator of the nuisance, or the landlord of the premises, upon which the nuisance is being or was conducted, for violations of other provisions of this statute or any other law, criminal or otherwise.

(h) Abatement proceedings against gambling nuisances shall be in accordance with the statutory provisions for enjoining and abating a nuisance, provided that where other statutes are in conflict herewith, this Section shall prevail.

Section 3

Either the liquor or food license, or both such licenses, of the proprietor of any store, restaurant, or tavern shall be revoked whenever said proprietor has been found conducting, or permitting to be conducted, gambling on his premises. Whenever said license shall be revoked, the proprietor shall not obtain another license for food or liquor for a period of one year, and for any subsequent offense, shall be prohibited for no less than five years from receiving a liquor or food license. A record shall be kept by the appropriate agency dispensing such licenses of all licensees whose license has been revoked for violation of this provision, and such a record shall be referred to whenever it receives an application for such a license, or for renewal of same.

Section 4

(a) A State Crime Commission (hereinafter called the Commission) is hereby created to supervise the enforcement of the Anti-Gambling statute. There shall be appointed by the Governor three members, not more than two of which shall be a member of the same political party. One member shall be appointed chairman, and shall serve five years. The other members shall serve for three years, but for the first term only, one of the latter shall serve for one year. At least one member of the Commission shall have had experience in some law enforcement or investigatory capacity. The salary of the chairman shall be $15,000 per annum, and the salary of the other members shall be $12,500 per annum.

(b) The Commission is empowered to appoint a chief investigator and said individual shall receive a salary of $10,000 per annum; and an assistant chief investigator, who shall receive a salary of $8,500 per annum; and such other agents as it deems necessary to carry out the mandate of this Act, provided, that any agent so selected shall have had police experience of not less than two years. Each additional agent shall receive for his services not less than $5,000, nor more than $8,000.

(c) Each agent appointed by the Commission shall be included within the Civil Service, if not already within its coverage, provided, however, that the power of removal shall rest exclusively with the Commission, and, provided further, that where an agent is dismissed, discharged or separated from service for reasons other than having committed a criminal offense, said agent shall be reinstated in his former employment if that employment is covered by the Civil Service.

(d) The Commission is authorized and empowered to investigate enforcement of this statute. It may conduct investigations on its own initiative, or at the behest of any public officer, or private citizen, within the State, as to the existence of any violations of this statute, and upon finding any such viola-
tions, the Commission shall advise either or both the local State's Attorney and the chief executive of the village, town, or city in which the alleged violations are said to occur, of its findings. Should the above named officials fail to take appropriate action on the recommendations of the Commission without good cause, the Commission may report to the Attorney General of the State to this effect, and it shall be the duty of the Attorney General to take the proper legal action against those officials. Should the Attorney General fail to take appropriate proceedings as required by this provision, the Commission shall compel such action by bringing a writ of mandamus in any circuit or superior court of this State.

(e) Nothing in this Act shall be deemed to have vested in the Commission powers superseding those of any duly elected public official, provided, however, that the Commission may be considered a private citizen for the purpose of bringing a suit abating any gambling nuisance pursuant to Section 2, of this Act, regardless of jurisdiction.

(f) All police officers, sheriffs, and county prosecuting attorneys are charged with the duty of enforcing the provisions of this Act, with all the vigor at their command. A report shall be tendered by the chief of police of each village, town, or city, and by the sheriff of every county, to the chief executive of his respective jurisdiction not less than once each month. The report shall contain information as to the existence of any gambling or gambling nuisance within his jurisdiction, the measures which he has taken to abate the same, and the status of all buildings, tenements, or structures which have been abated as a gambling nuisance, including the uses to which they are now being put.

(g) A report shall be tendered by the county prosecutor to the Attorney General, as to the disposition of any defendant arrested on charges of violating any of the provisions of this statute, which indictments have been dismissed or quashed by a court of law or equity, or which the prosecutor has failed to prosecute, must be explained in the report. The report shall further contain whatever other information the county prosecutor shall deem of interest to the Attorney General concerning the extent of gambling within his jurisdiction.

(h) A copy of each of the reports specified in the preceding paragraphs of this subsection shall be sent to the State Crime Commission.

(i) It shall be the duty of the chief executive and chief of police of each village, town, or city, and of the county prosecutor, to obtain enforcement of this Act. A breach of such duty is deemed to be a misdemeanor, and if the Commission shall find such an official has failed to act reasonably in removing gambling or gambling nuisances from his jurisdictions, or if it should appear to the Commission that a reasonable man in that office would have known of it, and have had it abated, then the Commission shall institute proceedings against such official or officials, and if the latter shall be found guilty of non-feasance or malfeasance in office, he, or they, shall be fined $1,000, and shall be dismissed from office.

In any case involving the prosecution of the above named officials for malfeasance or non-feasance in office, the court shall apply the "reasonable man" test as set forth in the preceding paragraph of this subsection.

Section 5

(a) It shall be unlawful for any public utility to furnish to any person any private wire, or any other of its facilities over which may be transmitted
communications of any description, where such is to be used, or intended to be used, in the dissemination of information in the furtherance of gambling or gambling purposes, or for any person to use any private wire in the dissemination of information in the furtherance of gambling purposes.

(b) It shall be unlawful for any public utility to furnish any person any private wire except by written contract signed by representatives of the public utility, the person or persons applying for such service, and by the person in possession or control of the place or location designed in the contract for the installation or connection of said wire, which contract shall include a detailed, written statement of the purposes for which the wire service is to be used, provided, that this provision shall not apply to public emergencies for a period not to exceed forty-eight hours.

(c) It shall be unlawful for any public utility to furnish any service without first furnishing to the Public Utilities Commission (for the purposes of this section, to be called henceforth, the Commission), to the Attorney General, and to the State Crime Commission a duplicate original of the written contract. Upon receipt of the copy, the Attorney General shall forward same to the State's Attorney of the jurisdiction in which the facilities specified in the contract are to be located, and it shall be the duty of the Attorney General and the respective State's Attorneys to assist the Commission in making investigations of the party applying for the service to ascertain whether or not the applicant intends to use the wires, or sublease them, for any unlawful purpose.

(d) The Commission may notify the public utility that such contract shall not be permitted to take effect, but if there is no such notice within ten days, of the time when application first presented to Commission for approval, the public utility may proceed to install the service, and the public utility shall not be liable for any violation of this Act because of mere installation or connecting of such service where it complies with subsections (c) and (d) of this Section, provided, however, that such contract shall be severed at any time by the Commission on the advice of the Attorney General, or State's Attorney, or upon its own initiative, if, upon examination of the contract, or upon investigation of the use to which said services are being put, there is deemed to be a violation of this Section of the Act. Notice of the disapproval of the contract shall be immediately forwarded to the contracting parties.

(e) Any time that communication facilities are removed from any building, house, tenement, or other place or location, because of a violation of this Act, they may not be restored to that location or place for two years.

(f) Any party aggrieved by an order of the Commission under this section shall be entitled to a fair hearing before the Commission. But such hearing shall not prevent or deter removal of any wire services, provided, however, that the aggrieved party may, upon proper showing before a court of equity, obtain an injunction against such action pending the decision of the Commission.

(g) Any party aggrieved by a final determination of the Commission shall have the right of review before the Circuit Court.

(h) In any proceeding before the Commission, or on any appeal, or in any proceeding in a court of law or equity, the burden of proof shall be upon the public utility, and upon the person contracting for use of the wire service to show that it has not been used for, or intended to be used for, or, in the furtherance of, gambling purposes.
(i) Any person, or members of any organization, excepting an incorporated association, found to be in violation of this Section shall be guilty of a felony, and shall be imprisoned not more than seven, nor less than two, years, or may be fined not more than $10,000, or both, and for any subsequent offense, shall be imprisoned not less than five, nor more than ten, years.

(j) Any incorporated association, including any public utility, found to be in violation of this Act shall be guilty of a felony, and shall be fined $10,000, and for each subsequent offense, shall be fined $25,000. Each day of violation shall constitute a separate offense.

It is further provided that where said corporation, whether it be resident or non-resident of the State, is found guilty of violating this Act, the Secretary of State is authorized to revoke the license of said corporation, and said corporation shall be forever barred from doing business in this State without the approval of the legislature, and in any event, for not less than five years. No corporation doing business in interstate commerce shall be exempt from the provisions of this Act.

(k) No public utility may be sued for any acts which is the result of an order of the Commission or of any law enforcement official of this State, or when acting on its own initiative in compliance with the mandate of this Act.

(l) This Section shall be deemed an exercise of the police power for the protection of the health, safety, and peace of the public, and shall be construed liberally to accomplish this purpose.

Section 6

(a) It shall be unlawful for any newspaper, periodical, or other printed matter, or any radio, or television, or other like device, to print, or publish, or broadcast the betting odds of any race, contest, or event.

(b) It shall be unlawful for any newspaper, periodical, magazine, or other printed matter, or any radio, or television, or other like device, to print, publish, or broadcast the results of any race, contest, or event in which the principal issue is the speed, strength, or endurance of dogs, horses, or any other animal, for a period of at least two hours after completion of said race, contest, or event.

(c) Any person or association or corporation which violates the provisions of this Section shall be subject to the same penalties as provided in Section 5(j) of this Act.

Section 7

Anyone who has lost more than five dollars in any gambling game, device, or scheme, may bring an action at law against the winner or winners, and shall recover three times the amount of his losses. Should he refuse, or neglect to bring said action within three months of the time in which his cause of action arose, the action may be brought on his behalf by any members of his immediate family, or where the money lost was that of an employer, friend or relative other than a member of his immediate family, then the action may be brought by that party.

Section 8

(a) No one may refuse to testify before any legislative body of the State, or any grand jury on any matter pertinent to the investigation where ordered to do so by the respective body.
(b) But any person who so testifies shall not thereafter be prosecuted, or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documents or otherwise pursuant thereto, and no testimony so given or evidence so produced shall be received against him upon any criminal action, investigation, or proceeding, provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying, and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation, or proceeding concerning such perjury.

Section 9

(a) The provisions of this Act, or any subdivisions, shall be deemed to be severable, and wherever a Section, or subsection, or paragraph of a Section is ruled unconstitutional, such a ruling shall not invalidate the effect of any other provision, or Section, or paragraph of this Act.

PROPOSED FEDERAL ANTI-GAMBLING STATUTE

Whereas the Congress has found that the channels of commerce between the states have been employed to disseminate information used for gambling and gambling purposes, and, whereas the Congress has found that the dissemination of such information is detrimental to the free flow of commerce, be it enacted by the Congress of the United States this law, to be entitled An Act to Prohibit the Dissemination of Gambling Information.

Section 1

(a) It shall be unlawful for any public utility to furnish to any person any private wire, or any other of its facilities over which may be transmitted communications of any description where such is used, or intended to be used, in the dissemination of information for the furtherance of gambling or gambling purposes, or for any person to use any private wire in the dissemination of information in the furtherance of gambling purposes, to any place in a state, Territory, Possession, or the District of Columbia, from any place outside of such State, Territory, Possession, or District of Columbia.

(b) It shall be unlawful for the results of any race, contest, or other event in which the principal issue is the speed, strength, or endurance of horses, dogs, or any other animal, to be disseminated over any wire, or by any other means of communication to any place in a State, Territory, Possession, or the District of Columbia, from any place outside of such State, Territory, Possession, or District of Columbia, for at least two hours after said race, contest, or event shall be concluded.

(c) Any individual, partnership, or unincorporated or incorporated association found guilty of violating this Act shall be deemed to have committed a felony, and shall be fined not more than $5,000, or imprisoned not less than two, nor more than five, years, or both, and for each subsequent offense, he shall be imprisoned not less than five, nor more than ten, years.

(d) Any public utility who leases, sells, or contracts its wires to, or makes its facilities available to, or allows its wires or facilities to be used in any manner by, any individual, partnership, unincorporated or incorporated association for the purposes of using them in the unlawful manner described
in subsection (a) and (b), shall, if found guilty, be deemed to have committed a felony, and shall be fined not more than $10,000, and for each subsequent offense, its license to do business outside the state in which incorporated shall be revoked for one year.

(e) Whenever it shall appear to the Federal Crime Commission, either upon complaint, or upon investigation, or by other means, that the provisions of this Act have been, or are about to be, violated by any corporation or public utility, in commerce, the Commission shall order a hearing in accordance with the Administrative Procedure Act. If after such hearing the Commission shall find a utility or other corporation violating the provisions of this section, it shall issue a cease and desist order to effect an end to the violation.

(f) The enforcement of an order of the Commission shall be in the manner as provided in the Federal Trade Commission Act for enforcement of the orders of the Federal Trade Commission.

(g) It is further provided that the Commission shall turn over all information which it has acquired as a result of its hearings and investigations to the Attorney General of the United States, said officer to utilize said information in prosecutions under this Section.

Section 2

(a) There is hereby created a Federal Crime Commission (herein known as the Commission). It shall consist of five members, at least three of whom shall be experienced in law enforcement or criminal investigation, and not more than three of whom may be members of the same political party. The chairman of the Commission shall receive a salary of $15,000 per annum, and the other members shall receive a salary of $12,500 per annum.

Each member shall serve for seven years, except that each member shall serve respectively, as appointed, one year, two years, three years, etc. until his first term shall expire.

The members of the Commission shall be appointed by the President, with the consent of the Senate, and shall not be subject to the provisions of the Civil Service Act.

(b) The Commission is empowered to appoint a chief investigator who shall receive a salary of $10,000 per annum; and an assistant chief investigator, who shall receive a salary of $8,500 per annum; and the Commission shall prescribe the duties of these and other agents pursuant to the mandate of this Act.

The Commission shall select agents to carry on required investigations and to perform the other duties as the Commission shall prescribe. Such agents shall receive not less than $5,000 per annum, nor more than $8,000 per annum.

Any agent or investigator appointed under this section shall be classified within the Civil Service provided, however, that the Commission shall be empowered to dismiss any employee or agent when it has reason to believe that he is guilty of negligence, neglect of duty, or has committed, or is about to commit any felony or misdemeanor, Civil Service Classification notwithstanding.

(c) It shall be the duty of the Commission to investigate enforcement of the anti-gambling provisions of this Code, and any violations thereof. It may conduct investigations on its own initiative, or at the behest of any public
official of the Federal Government, or any public official or private citizen in any State, Territory, Possession, or the District of Columbia, where it has reason to believe that unlawful use is being made of any communications system, or, of the mails, in contravening the laws of any State, Territory, or the District of Columbia, or of the Federal laws.

The Commission shall cooperate in any way with the State Crime Commissions and/or other enforcement agencies of any State, Territory, or Possession, in securing the enforcement of State and Federal laws.

(d) Wherever the Commission shall find that a Federal District Attorney or other federal officer charged with enforcing the laws is or has failed to properly execute the duties of his office, it shall report such fact to the Attorney General, whereupon the Attorney General shall bring criminal action against such official or officer.

The Commission shall further report to the Attorney General any violations of this Act, and said Attorney General shall bring any criminal proceedings as shall be necessary.

(e) The Commission shall submit a report once each year to the Attorney General, and a copy of such report to the Congress, stating what, if any, violations of this Act have occurred within the knowledge of the Commission, and what measures the Commission has taken in respect to said violations. The Commission shall further report on the extent of crime affecting the flow of commerce between the States, and suggests whatever recommendations it shall feel necessary by way of correcting this anti-gambling legislation. A copy of such a report shall be made available to the Governor of every State and Territory.

Section 3

(a) No one may refuse to testify before, or present records to, any Federal Grand Jury or legislative body on any matter pertinent to the investigation when ordered to do so by the respective body. But any person who so testifies shall not thereafter be prosecuted, or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documents, or otherwise pursuant thereto, and no testimony so given or evidence so produced shall be received against him upon any criminal action, investigation, or proceeding, provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying, and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation, or proceeding concerning such perjury.