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GAMBLING AND THE LAW—POLICY

John Drzazga

This is the concluding article of a series prepared by Sgt. John Drzazga dealing with various types of gambling and their legal aspects. Sgt. Drzazga is a member of the New York Police Department and for a period of two years (1939-41) served on special anti-gambling squad assignments. The author also holds a degree in law from Blackstone College.—EDITOR.

Policy or the numbers game is a game of chance.¹ This form of gambling is extremely popular among the poor. Its main appeal is that there is a possibility, although very remote, of a large prize in return for the small amount wagered. This game is said to have originated in England about 200 years ago with the numbers based on lottery drawings. The present day numbers game is based on the U.S. Treasury Balance, clearing house statements, stock market sales, pari-mutuel totals, individual race payoffs, baseball scores, cattle receipts, customs receipts, and on combinations which may be ascertained through newspaper reports.

The game was contrived and promoted originally by the operators of lotteries in order to reach the poor who could not afford to buy a share or ticket in the lottery. When lotteries were outlawed in New York State, the winning numbers in the game of policy were based on the numbers drawn in New Jersey lotteries until 1840, in which year the State of New Jersey had abolished lotteries. The winning numbers thereafter were based on lottery numbers drawn in Kentucky and other states. The winning numbers of these lotteries had been forwarded to states which had prohibited such games of chance. The odds on a number combination of three numbers were often as high as 1000 to 1, whereas the present day odds are fixed at 600 to 1, in most policy games of three numbers.

The present day numbers or policy games are financed by the operator known as the "banker." Where the play on a certain number is unusually heavy, the wagers are laid off in the same manner that they are laid off by bookmakers. Where such bets are laid off to some person or syndicate, an additional amount is charged as a premium for such service. In the numbers or policy game, any combination of numbers from 000 to 999 can be played, or the bet may call for any possible combination of the three numbers, and most collectors will accept any amount wagered from one cent up. In large cities, there is also a manager for a certain area, and he is known as the "controller." The "pick-up man" is the one who receives the money wagered and the slips from the collectors. The persons accepting policy bets are known as "col-

1. *Gill v. State*, 30 Ohio Cir.Ct. 278.

lectors." The collectors work on a commission basis, and usually receive from 5% to 10% of the money collected as a commission for their service. In addition they receive a cut of 10% of any sum won by any player. The "drop" or "bank" is the place where the slips are left by the pick-up man or the controller.

Where pari-mutuel prices at a race track are used, the total pay off figures for the three, five, and seven races may be used, or any combination of prices in any three designated races. The last dollar numeral before the decimal is used. The plays are checked and tallied at the drop or bank, and as soon as the results are received for the total for three races, or for any race where individual races are used, the checkers throw out every slip not having the first correct number; the same occurs at the end of five races, or a second designated race; and after the seventh race or a designated third individual race is over, only a few slips remain, if any, that have the winning combination calling for a pay off.

Where the winning combination is based on the U.S. Daily Treasury Balance, the last three numbers, excluding the cents, are used. Commercial News Service operated by Western Union supplies the daily Treasury balance, etc., to subscribers. Newspapers subscribe to this service and publish such items. This is of great assistance to policy players who desire a check on their plays. In case of a delayed release of the Treasury Balance, the balance released on the day of release is used.

A "Club Special" which is a five day play based on the Treasury balance is usually sold for fifty cents. These tickets are also made up to sell at different prices. This ticket is printed with a three number combination which is good for five days of the designated week, and covers the Treasury balance from Monday to Friday. On this ticket, there are printed the days and spaces for the winning numbers on those days. The numbers are filled in each day by the player. This ticket is sold folded with the edges sewed or stapled together so that the number cannot be seen until the ticket is opened. If a holiday falls on a Monday, Tuesday's Treasury number is reversed and becomes the number for Monday. If a holiday falls on any other week day, the number of the previous day is reversed, and that becomes the number for the day. The player has 31 chances to win on the same number. If the number on the ticket appears on any day, the player receives ten dollars for a straight number, five dollars if his number appears in reverse, and one dollar if his last two numbers appear. Five dollars is paid for the number reading down in spaces filled on the ticket for three days, from

Monday to Wednesday, also for three days, from Wednesday to Friday. Seven dollars is paid for any Criss Cross combination of the ticket number, when it is shown in spaces from Monday to Wednesday, Wednesday to Friday, Friday to Wednesday, and Wednesday to Monday. Three dollars is paid for the combination appearing when the numbers are read upward, from Friday to Wednesday, and Wednesday to Monday.

The Mutuel Bingo ticket selling at sixty cents and being based on pari-mutuel prices at a designated race track is another form of the numbers or policy game. The ticket is sold with the edges sewed or stapled together after folding the ticket, so that the number printed thereon is not visible. This ticket covers a six day period of a designated week, from Monday to Saturday. The ticket has two squares, one for the winning combinations for Monday, Tuesday, and Wednesday; and the other square for the winning number combinations for Thursday, Friday, and Saturday. There are 32 ways of winning on this ticket. The squares for the daily number winning combination are filled in by the player. The winners of any sum of money amounting to five dollars or more are required to pay the collector a commission of 10% of the amount won. This ticket pays prizes just like the U.S. Daily Treasury Balance ticket, for straight and reverse number winning combinations; kriss-kross and reverse kriss-kross winning number combinations; up and down winning number combinations, and also on the last two numbers. If there is no racing on Monday, Tuesday's winning number combination is reversed, and it is used as Monday's winning number combination. If there is no racing on any other day, the previous day's winning number combination is reversed and is used as the number for that day. The Mutuel Bingo ticket pays \$25.00 for kriss-kross reading downward, and ten dollars for kriss-kross reading upward; fifteen dollars for the daily straight winning number combination, and five dollars for the reverse winning number combination; one dollar for the last two numbers; and ten dollars for the winning number combination reading down, and five dollars for the combination reading upward.

Other weekly tickets are somewhat similar except for slight variations. The prices at which they are sold and the prizes also differ. Mutilated tickets as a rule are not redeemable. A sheet showing the results for the week is also distributed to the players at the end of the week. Such foreign games of chance as the Chinese bok a bou and Gee Fah² have also been held to be policy games.

2. *Peo. v. Savino*, 287 N.Y. 684, 39 N.E.2d 298.

In some states, a weekly five number combination ticket had been sold to players at prices ranging from 25¢ to \$1.00. The tickets are printed with a five number combination from 00000 to 99999. A certain race track and race are designated to determine the winning number combination. This is based on the pari-mutuel prices paid on the first three horses in a designated race. As an illustration of how the number is determined, let us assume that the winning number combination was to be determined by the results of the first race at the Aqueduct race track. The results for June 12, 1950, being as follows:

<u>FIRST RACE</u>	<u>WIN OR STRAIGHT</u>	<u>PLACE</u>	<u>SHOW</u>
1. Lady Indian	\$16.60	\$8.60	\$5.50
2. Brooktown		8.70	6.10
3. Foxy Baby			7.90

The winning number combination is arrived at by adding together the numbers of each pay off price, thus:

13	14	10
	15	7
		16

The winning number combination this day would be 34506. The first number of the combination is arrived at by adding together the numbers of the win pay or price, $1 + 6 + 6 + 0 = 13$. The last digit, 3, is used for the first number. The other winning numbers are arrived at in the same manner. The show price of the second horse is disregarded in figuring the winning number combination, unless tickets are used with six numbers. Some operators disregard the show price on the first horse. In some instances the pay off numbers had been arranged in different order

The so called Italian lottery is another type of numbers game. It is based on drawings held each Saturday in ten Italian cities: Naples, Bari, Florence, Milan, Palermo, Rome, Turino, Venice, Cagliani, and Genoa. The collectors are provided with pads having sheets in duplicate, one of the sheets being retained by the collector while the other is delivered to the player. The symbol representing the outfit for whom the collector works appears at the top of each sheet. Among some of the pictures or symbols used by the different outfits are the following: A rose, wolf, eagle, star, XX, Statue of Liberty, horse shoe, clover leaf, handshake, and two hands with index fingers pointed toward each other. At the extreme left of the slip, spaces are provided for the initial letter of the name of the city in which the drawing is to be held, and on which

the player places a wager. In the next space, the collector writes in the numbers played, followed by the amount wagered. The bets may cover any one number selected or all or part of a group of numbers selected. The drawings are held under the supervision of the Italian government.

LEGAL DISCUSSION

Violations involving the numbers or policy game are prosecuted in most states under the various lottery statutes. New York State has a statute³ dealing specifically with the number or policy games, and provides as follows:

"A person who keeps, occupies or uses, or permits to be kept, occupied or used, a place, building, room, table, establishment or apparatus for policy playing or for the sale of what are commonly called 'lottery policies,' or who delivers or receives money or other valuable consideration in playing policy, or in aiding in the playing thereof, or for what is commonly called a 'lottery policy,' or for any writing or document in the nature of a bet, wager or insurance upon the drawing or selection, or the drawn or selected numbers of any public or private lottery; or who shall have in his possession knowingly, any writing, paper or document, representing or being a record of any chance, share or interest in numbers sold, drawn or selected, or to be drawn or selected, or in what is commonly called 'policy,' or in the nature of a bet, wager or insurance, upon the drawing or selection, or the drawn or selected numbers of any public or private lottery; or any paper, print, writing, number, device, policy slip, or article of any kind such as is commonly used in carrying on, promoting or playing the game commonly called 'policy,' or who is the owner, agent, superintendent, janitor or caretaker of any place, building or room where policy playing or the sale of what are commonly called 'lottery policies' is carried on with his knowledge or after notification that the premises are so used, permits such use to be continued, or who aids, assists, or abets in any manner, in any of the offenses, acts or matters herein named, is a common gambler and guilty of a misdemeanor."

In New York state the possession of any writing or slip in the game of numbers or policy by any person other than a public officer is presumptive evidence of possession thereof knowingly.⁴ This would not apply to a public officer who is not required by the nature of his duties to handle such material, and so a notary public would not be a public officer within the exception.⁵

The player of policy slips, as well as the operator, are liable to criminal prosecution under the New York statute.⁶ Any person who possesses policy slips is a common gambler, and so a mere player who had possession of two slips of numbers was held to be guilty under the statute.⁷ The word "possession" means possession in fact, physical possession,

3. New York Penal Law, Sec. 974.

4. New York Penal Law, Sec. 975.

5. *Peo. v. Adams*, 176 N.Y. 351, 68 N.E. 636 aff'd 192 U.S. 585, 24 S. Ct. 372 (1903).

6. *Peo. v. Crawford*, 25 NYS2d 259 (1941).

7. *Supra*.

actual custody or control of personalty capable of being physically held, something more than "marks on the wall."⁸ The possession of collection sheets, showing amount of money collected by policy collectors, would not constitute the crime of possessing policy slips.⁹

Slips folded with edges sewed together so that printed words "Pru Treasury Balance," with date underneath and arrow pointing to numbers, which cannot be seen until thread is ripped and slip opened, have been held to be policy slips within the meaning of the statute.¹⁰ Where a merchant gave jewelry purchasers slips for prizes, to be awarded if the numbers corresponded with the figures of the Stock Exchange Report, he was adjudged guilty of possession of policy slips.¹¹

The law imposes a duty upon the owner of premises used for policy playing, to take action against the tenant so using the premises with a view to causing said tenant to vacate the premises. He is required to take such action if he has knowledge that the premises are so used, or after acquiring knowledge that the premises have been so used and may continue to be so used. Any person having information of any place that policy playing is carried on, may serve personally on the owner or the agent of the premises so used, a written notice, requiring the owner or his agent to make application for the removal of the person so using the premises. If the owner or his agent does not make application within five days thereafter, or having made it does not prosecute it diligently, the person giving the notice may make such an application, stating in his petition, the facts so entitling him to make it. Such an application has the same effect, as if the applicant was the landlord or lessor of the premises. The omission of the owner or his agent to make such application, or having made it, neglect in good faith diligently to prosecute it, is presumptive evidence of violation of the statute by the person on whom such notice was served.¹² Where the landlord is notified of a tenant's conviction of the crime of possessing policy slips, landlord must bring summary proceeding to dispossess tenant or else become the subject of a criminal prosecution himself.¹³ But there is no presumption in law that a licensee permitted gambling in licensed premises under his control, if an employee is arrested and convicted of the crime of possessing policy slips.¹⁴

8. *Peo. v. Wolosky*, 296 N.Y. 236, 72 N.E.2d 172 (1947).

9. *Peo. v. Hendricks*, 232 A.D. 186, 249 NYS 676 (1931)

10. *Peo. v. Kravitz*, 287 N.Y. 475, 41 N.E.2d 61 (1942).

11. *Peo. v. Bloom*, 227 NYS 225, 222 App. Div. 451.

12. New York Penal Law, Sec. 976.

13. *Shaff's Est. v. Stein*, 171 Misc. 376, 14 NYS2d 117 (1939).

14. *Abrams v. Bruckman*, 263 A.D. 593, 33 NYS2d 921 (1942).