

CHAPTER 613

OFFENSES AGAINST PUBLIC JUSTICE

613.01 DEFINITIONS

HISTORY. Penal Code s 73, 74, 83, 95, 116; GS 1894 s 6357, 6358, 6367, 6368, 6379, 6401; RL 1905 s 4798; GS 1913 s 8522.

BRIBERY, CORRUPTION

613.02 BRIBERY OF PUBLIC OFFICER OR LEGISLATOR

HISTORY. RS 1851 c 103 s 7, 9; PS 1858 c 92 s 7, 9; 1866 c 97 s 7, 9; GS 1878 c 97 s 7, 9; Penal Code, s 42, 59, 64, 71; GS 1894 s 6326, 6343, 6348, 6355; RL 1905 s 4799; GS 1913 s 8523.

Defendant was indicted for "attempting bribery" of a county attorney. The agent kept the money given him by defendant and neither defendant nor the agent contacted the county attorney. To consummate an attempt to commit a crime something more than the mere solicitation of another to commit it is necessary. The mere act of preparation remote from the time and place of the intended crime, unaccompanied by overt acts performed pursuant to the attempt, are insufficient to constitute an attempt at bribery. *State v Lowrie*, 237 M 240, 54 NW(2d) 265.

A criminal code effective Jan. 1, 1886, abolished all common law offenses so that now no act or omission is criminal except as prescribed by statute. The term "bribery" is descriptive rather than the name of a specific crime. Sections 613.02, 613.03, and 613.04 deal with the crime of giving or offering a "bribe," while sections 613.05, 613.06, and 613.07 deal with asking or receiving a "bribe." In Minnesota the common law crime which embraced both offering and receiving a thing of "bribery" has been divided. The statute of limitations runs from the time that the "bribe" money was paid. OAG June 2, 1949 (133-B-19).

613.04 BRIBERY OF PUBLIC OFFICER OR LEGISLATOR

A statutory immunity relied upon to require a person to answer questions which tend to incriminate him must be as broad as the crime being investigated and must put the person so examined beyond reach of punitive legal procedure before he can be required to answer such question. The immunity is only for a witness required to answer before a court or magistrate and does not inure to one being sworn before the public examiner. *State v Nolan*, 231 M 522, 44 NW(2d) 66.

A statute providing immunity for a witness required to answer self incriminating questions before any court or magistrate in an investigation, proceeding, or trial for violation of a bribery statute, does not grant immunity to a witness sworn before the representative of the state public examiner's office. *State v Gensmer*, 235 M 72, 51 NW(2d) 680.

The place of payment of a bribe determines the county of venue where the prosecution is for payment of a bribe which constitutes part of a series of acts resulting in payment. OAG June 2, 1949 (133-B-19).

613.05 ASKING OR RECEIVING BRIBES

In prosecution for asking for and agreeing to receive a bribe, instruction that if the jury was satisfied beyond a reasonable doubt that defendant asked for the bribe,

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then the jury should indicate it by a verdict of guilty, was not erroneous, where the court covered the matter fully in other portions of the charge. *State v Gensmer*, 235 M 72, 51 NW(2d) 680.

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613.06 RECEIVING BRIBE BY MEMBER OF LEGISLATURE

HISTORY. Penal Code s 60; GS 1894 s 6344; 1905 c 32 s 1; RL 1905 s 4800; GS 1913 s 8527.

613.16 OFFENDER A COMPETENT WITNESS

Where inference was strong that defendants were real objects of investigation being conducted by public examiner and that they objected for that reason to being required to testify, but they yielded to insistence of public examiner and gave testimony which was asserted to have been false, the constitutional privilege and statutory immunity, if any, was for past offenses, not for such offenses as might be committed while testifying under the immunity, and, hence defendants could not successfully plead immunity from prosecution for testifying falsely before the public examiner. *State v Nolan*, 231 M 522, 44 NW(2d) 66.

Where, in an investigation by the public examiner in connection with attempted bribery of the county attorney to permit defendant to conduct illegal gambling operations without interference, the person charged with attempted bribery was not exempt from prosecution because the public examiner secured a waiver of immunity from him and took his statement, since such investigation was not within the power or authority of the public examiner. *State v Lowrie*, 235 M 82, 49 NW(2d) 631.

613.19 MISCONDUCT OF PUBLIC OFFICERS

HISTORY. Amended, 1949 c 580 s 1.

Sections 613.19 and 613.78 designate the penalty the state may inflict for a wrongful offense against the state. Section 346.16 was enacted for the benefit of the person aggrieved in the event of the institution of a civil action and is not a penalty as such. OAG June 2, 1952 (228-D).

613.251 COERCION OR BRIBERY, SPORTING EVENTS

HISTORY. 1947 c 57 s 1; 1951 c 617 s 1.

Bribery of participant in game of sport. 33 MLR 40.

Suspension of sentence. 33 MLR 40.

RESCUES, ESCAPES

613.29 ESCAPED PRISONERS

A person convicted of a felony and committed to the youth conservation commission who escapes from the "reception center" is guilty of an additional felony and the costs. Whether or not prosecution should be had is for the proper enforcement officers to determine. In case of prosecution venue is in the county where the offense of escape was committed. OAG Feb. 21, 1949 (145-B-1).

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613.35 JUMPING BAIL A GROSS MISDEMEANOR

If the parties to the insurance contract contemplated that the country might be engaged in an undeclared war their intentions should have been made clear and as a policy provision was ambiguous it would be given a construction more favorable to the insured. Hostilities in Korea are not a "war" within the term "war" in a life insurance policy providing for payment of double indemnity. *Harding v Pennsylvania Mutual Life*, 90 At(2d) 589; *Beley v Pennsylvania Mutual Life*, 90 At(2d) 597.

AFFECTING PUBLIC RECORDS

613.36 INJURY TO PUBLIC RECORDS

No authority exists under which a municipality may destroy verified claims, canceled checks, old license applications, building, water and sewer permits, paid-up bonds, and interest coupons. These are official records which within the meaning of the statute must be preserved; not being expired insurance policies, old receipts and old water bills of no apparent use may be destroyed. The same rule applies to old letters and correspondence of ancient date which are of no interest or value. OAG Aug. 24, 1949 (851-F).

PERJURY

613.39 PERJURY

Right in a perjury case to a deposition on an allegation of statutory grounds. 34 MLR 562.

Evidence that defendants induced potato grower to innocently file false claim and certificate with County Agricultural Conservation Association, and Commodity Credit Corporation for reimbursement for deterioration of potatoes mortgaged to Commodity Credit Corporation, which potatoes had been stored in warehouse of one of defendants, and that defendants thereafter secured the potatoes and sold them for human consumption and government received nothing from its loan to potato grower, supported conviction of violating statute making it an offense to present false claims against United States. *Boushea v United States*, 173 F(2d) 131.

OFFICIAL ACTS AND OMISSIONS

613.53 ARREST WITHOUT AUTHORITY

Admissibility in state courts of evidence obtained by unreasonable searches and seizures. 35 MLR 457.

Searches and seizures; the exclusionary rule. 35 MLR 458.

Searches and seizures; the admissibility rule. 35 MLR 464.

Unreasonable search and seizure. 37 MLR 168.

The action by police officers who without a warrant looked into a room in a house where defendant roomed and observed the commission of a misdemeanor by the defendant in promoting a lottery did not constitute an unlawful search; and the officers were justified in demanding entrance, arresting the defendants and seizing the property being used in the commission of the offense charged. *McDonald v United States*, 166 F(2d) 957.

613.59 MISCONDUCT BY ATTORNEYS

If the act is wholly the disobedience by one party to a suit of a special order made in behalf of the other, and the order disobeyed may still be obeyed, and the purpose of the punishment is to aid in the enforcement of obedience, the proceeding

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notwithstanding its form is a proceeding in civil contempt; but where the forbidden act has been wholly performed and cannot be recalled, then the act is contempt of court rather than a disregard of the rights of the adverse party. The punishment in contempt can have no remedial aspect. The proceeding becomes, in its nature, criminal. Review of proceedings in civil contempt must be by appeal; while review of a conviction for criminal contempt must be by certiorari. *Swift v United Packing-house Workers*, 228 M 571, 37 NW(2d) 831.

LYNCHING, BARRATRY, SYNDICALISM, OTHER CRIMES

613.65 COMPOUNDING CRIMES

HISTORY. RS 1851 c 103 s 20; 1852 Amend Par 24 s 115; PS 1858 c 92 s 20; GS 1866 c 97 s 20; GS 1878 c 97 s 20; Penal Code s 112, 113; GS 1894 s 6397, 6398; RL 1905 s 4849; GS 1913 s 8577.

613.68 CRIMINAL SYNDICALISM

Free speech and the clear and present danger test; Smith Act; Communism. 36 MLR 96.

613.69 CRIMINAL CONTEMPTS

Abuse of process; elements of the cause of action; distinguished from malicious prosecution; void warrant no bar to abuse of process. 32 MLR 805.

613.70 CONSPIRACY; HOW PUNISHED

Principal and agent as joint tortfeasors; liability of an agent for collusion of third party sellers. 37 MLR 401.

Whether or not a conspiracy exists as alleged, each conspirator is liable for his own acts. *Melin v Baker*, 223 M 319, 27 NW(2d) 647.

Where evidence clearly established that the assault charged did not result from negligence of joint adventurers in pursuit of a joint adventure, the court properly refused to charge the jury on liability of all joint adventures for the negligence of any of them. To constitute a "conspiracy" the minds of alleged conspirators must meet upon a plan or purpose of action to achieve the contemplated result. *Bukowski v Juranek*, 227 M 313, 35 NW(2d) 427.

Damage is an essential element of a cause of action for fraud and deceit and is not merely a consequence flowing from it. Fraud without damage, while it will sustain a cause of action for rescission, will not support one at law for damages. The fact that several persons may have conspired together to deceive the plaintiff does not alter this rule. In action for fraud by a divorced husband against his former wife and others alleging conspiracy to defraud him of his property by inducing him through trick and artifice to enter into an out-of-court property settlement in divorce proceedings brought by his estranged wife, that trial court properly directed verdict for defendants at conclusion of plaintiff's case where, although fraud was shown, evidence did not disclose whether value of property plaintiff was induced to part with exceeded value of property he received from his former wife under fraudulently induced settlement of their property rights. *Dupont v Haggard*, 235 M 31, 49 NW(2d) 186.

613.75 COMMON BARRATRY

HISTORY. Penal Code s 116-119; GS 1894 s 6401-6404; RL 1905 s 4852; GS 1913 s 8580.

613.78 PUNISHMENT FOR PROHIBITED ACTS

Sections 613.19 and 613.78 designate the penalty the state may inflict for the wrongful offense against the state. Section 346.16 is enacted for the benefit of the

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person aggrieved in event of the institution of a civil action and is not a penalty as such. OAG June 2, 1952 (228-D).

A person who employs a minor under 18 years to work in connection with a beer parlor is subject to prosecution for violation of section 181.49. OAG Dec. 11, 1951 (270-A-4).

CHAPTER 614

OFFENSES AGAINST PUBLIC POLICY

LOTTERIES

614.01 LOTTERY, NUISANCE, DRAWING, HOW PUNISHED

HISTORY. RS 1851 c 104 s 1; PS 1858 c 98 s 1; GS 1866 c 99 s 1; GS 1878 c 99 s 1; Penal Code s 282-284; GS 1894 s 6576-6578; RL 1905 s 4959; GS 1913 s 8727.

Statutes prohibiting lotteries are intended to punish persons who actually operate or contrive the lottery rather than those who furnish the materials used in the game. *Hart Publications v Kaplan*, 228 M 512, 37 NW(2d) 814.

Since the plan in the instant case does not provide for payment of consideration of any kind by any participant, and the purchase of theater tickets carries with it no participation rights, such right being gained only by free registration in the lobby open to ticket purchasers and non-ticket purchasers alike, the plan did not constitute a lottery even though it resulted in an increase in paid theater patronage. *Albert Lea Amusement Corporation v Hanson*, 231 M 401, 43 NW(2d) 249.

Where the taxpayer made wagers on card games, a football game and horse races, and the wagering gains exceeded wagering losses, the wagering losses were deductible from the wagering gains in computing taxable income although taxpayer offered no proof that the wagers were transactions entered into for profit. *Humphrey v Commissioner*, 162 F(2d) 853.

An ordinance providing for the issuance of intoxicating liquor licenses by casting lots would be illegal. OAG Feb. 20, 1948 (218-G-1).

A contest with a home as a prize to be awarded to the purchaser of an admission ticket who, in the judges' opinion, filled in the blank fourth line of a jingle printed on the admission ticket is not a lottery. OAG July 31, 1947 (510-B).

A device designated "Turf," the successful operation of which is entirely dependent upon the operator's skill, is not a gambling device per se. OAG June 13, 1951 (510-B).

Giving a chance for a prize to one obtaining a high score in playing shuffle board is a lottery. OAG March 25, 1953 (510-B).

Any scheme in which the right to compete for a prize is ascertained by lot or chance is a lottery. OAG Feb. 9, 1950 (510-B-5).

A number of merchants in a community buy from a promoter a quantity of what is called "auction money." This money is distributed by the merchants to customers in the proportion to what they buy. Once every week for eight weeks, on a night certain, a bicycle is auctioned off to the person in a theater who will bid the most auction money for the bicycle. Admission to the theater is by ticket purchased at the box office. The bicycle is provided by the promoter. The scheme is not a lottery, but it is an unlawful gift enterprise. OAG March 9, 1950 (510-B-5).

There is no lottery where the element of chance is eliminated. Where as a trade stimulant theater tickets are given for the collection and delivery to a firm of a