

1948

## CRIMINAL LAW - STATUTORY INTERPRETATION - POSSESSION OF GAMBLING DEVICES AS MISDEMEANOR

Richard B. Gushée  
*University of Michigan Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Criminal Law Commons](#), and the [Gaming Law Commons](#)

---

### Recommended Citation

Richard B. Gushée, *CRIMINAL LAW - STATUTORY INTERPRETATION - POSSESSION OF GAMBLING DEVICES AS MISDEMEANOR*, 47 MICH. L. REV. 280 (2022).

Available at: <https://repository.law.umich.edu/mlr/vol47/iss2/17>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

CRIMINAL LAW — STATUTORY INTERPRETATION — POSSESSION OF GAMBLING DEVICES AS MISDEMEANOR—In raiding a warehouse, a sheriff found forty-six dust-covered slot machines with payoff slots covered and containing no payoff mechanisms. There was no evidence that the machines had ever been used. Appellant had rented the warehouse for the purpose of storing the machines. His testimony showed that he owned the machines and was a dealer engaged in buying and selling them. He was indicted under a statute reading: "Any person who, by himself or with another, shall keep, maintain, employ, or carry on any lottery or other scheme or device for the hazarding of any money or valuable thing shall be guilty of a misdemeanor."<sup>1</sup> On appeal from a conviction for keeping and maintaining a slot machine, *held*, affirmed. Merely possessing such a machine is unlawful under the statute, whether for storage or for any purpose whatsoever. *Davis v. State*, (Ga. App. 1948) 49 S.E. (2d) 173.

Courts are not in agreement on the proposition that possession or keeping of gambling devices, where there is no showing of actual or intended use for gambling, is an offense.<sup>2</sup> The conflict of authority can be based in part upon differences in the specific language of the various applicable statutes,<sup>3</sup> but it is surprising to find that statutes not differing materially in phraseology have been

<sup>1</sup> Ga. Code Ann. (Park, 1936) § 26-6502. For definitions of the word "keep," as related to gaming see 23 WORDS & PHRASES 501, 509; 38 C.J.S., Gaming, pp. 55, 57, 155.

<sup>2</sup> See 38 C.J.S., Gaming, pp. 161, 164, and collection of cases in 162 A.L.R. 1188 (1946), where it is also stated that mere possession of gambling devices was not an offense at common law.

<sup>3</sup> *Hurvich v. State*, 230 Ala. 578, 162 S. 362 (1935), held mere possession to be unlawful under a statute declaring it to be unlawful "... for any person . . . to possess, keep, own, set up, operate, or conduct . . . any gambling device. . . ." Accord: *State v. Jaskie*, 245 Wis. 398, 14 N.W. (2d) 148 (1944), where the statute forbade any person to permit a gambling device "... to be set up, kept, managed, or used, or any gambling or betting therewith. . . ." The court found that use of the disjunctive, "or," rendered

given such markedly divergent interpretations.<sup>4</sup> Though some courts base their decisions on a consideration of the authority of the legislature to make possession of gambling devices an offense,<sup>5</sup> in general the reason for dissimilar interpretations of relatively similar statutory language may be found in the consideration by various courts of the nature of the evil sought to be remedied by the statute. Many courts feel that the legislative purpose is to penalize active gaming only;<sup>6</sup> while other courts feel that the legislature intends to reach the very possession of the means of gambling in order to prevent any possible use.<sup>7</sup> This latter view, however, is not reconcilable in many instances with statutory language which does not specifically forbid possession or ownership as such. Under similar statutory language, a result opposite to that of the principal case was reached by another court through careful application of the ordinary canons of construction, such as *eiusdem generis*, construing the word in its relation to other language of the statute as well as according to its common meanings.<sup>8</sup> If a word such as "keep" has two possible meanings it would seem that some such principle of statutory construction must be applied in order to determine its meaning within a given context. The court in the principal case merely assumed that the statutory word, "keep," meant possess, citing as authority a case which gave no proper consideration to the matter of construction.<sup>9</sup> It is submitted that courts should be wary of summarily interpreting such language to create a new crime unless the legislature has specifically expressed itself on the matter.

*Richard B. Gushée*

use of the device unnecessary to commission of the offense. See also *People v. Gravenhorst*, (N.Y. City Ct. of Spec. Sess. 1942) 32 N.Y.S. (2d) 760; *State v. Appley*, 207 S.C. 284, 35 S.E. (2d) 835 (1945); 162 A.L.R. 1188 (1946), involving similar statutes. But see *Chapman v. Aggeler*, 47 Cal. App. (2d) 848, 119 P. (2d) 204 (1941), holding use to be necessary under a statute declaring it unlawful to have in possession ". . . any . . . contrivance upon the result of action of which money . . . is staked . . . and which is operated . . .," because of the use of the word "is." Accord: *Atlas Finance Corporation v. Kenny*, 68 Cal. App. (2d) 504, 157 P. (2d) 401 (1945); *Grand Trunk Western Railroad Co. v. Lansing*, 291 Mich. 589, 289 N.W. 265 (1939), holding possession alone not to be unlawful where the statute read: "Any person who shall . . . keep or maintain . . . any game of chance . . . used for gaming . . . shall be guilty of a misdemeanor." See also *State v. Jones*, 218 N.C. 734, 12 S.E. (2d) 292 (1940), holding use of the device necessary under a statute reading: "It shall be unlawful . . . to operate or keep in . . . possession . . . for the purpose of being operated. . ."

<sup>4</sup> *Sable v. State*, 48 Ga. App. 174, 172 S.E. 236 (1933), holding possession unlawful under the same statute involved in the principal case. But see *Haycraft v. Commonwealth*, 243 Ky. 568, 49 S.W. (2d) 314 (1932), holding that possession is not unlawful under statute using the following language: ". . . whoever . . . shall set up, carry on, keep, manage, operate or conduct . . . contrivance used in betting . . . shall be fined. . ."

<sup>5</sup> *Bobel v. State*, 173 Ill. 19, 50 N.E. 322 (1898). The reasoning in this case was questioned in *Chapman v. Aggeler*, 47 Cal. App. (2d) 848, 119 P. (2d) 204 (1941).

<sup>6</sup> *Rawls v. State*, 70 Miss. 739, 12 S. 584 (1893).

<sup>7</sup> *Bobel v. State*, 173 Ill. 19, 50 N.E. 322 (1898).

<sup>8</sup> *Haycraft v. Commonwealth*, 243 Ky. 568, 49 S.W. (2d) 314 (1932), *supra*, note 4, in which the *eiusdem generis* doctrine was applied to the statute to reach the result that "keep" in juxtaposition to the other words meant more than mere possession.

<sup>9</sup> *Elder v. Camp*, 193 Ga. 320, 18 S.E. (2d) 622 (1942).