

ILLEGAL LOTTERY

The defendant is charged with (setting up) (promoting) (aiding) an illegal lottery. Section 7 of chapter 271 of our General Laws provides as follows:

“[W]hoever

(sets up) (promotes) a lottery for (money) (other property of value),

or by way of lottery disposes of any property of value, . . .

with intent to make the disposal thereof dependent upon or

connected with chance by (lot) . . . (numbers) (game)

. . . (other gambling device),

whereby such chance or device is made an additional

inducement to the disposal or sale of said property,

or [whoever] aids . . . (by printing) ([by] writing) (in any way

concerned) in the (setting up) (managing) (drawing) of

such lottery, or in such disposal or offer or attempt to

dispose of property by such chance or device,”

commits a crime.

In order to prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

First: That the defendant (set up or promoted) (aided in setting up or promoting) the opportunity to win a prize,

or (disposed of) (aided in disposing of) a prize won by chance;

Second: That the defendant intended that winning the prize was predominantly dependent upon chance; and

Third: That payment of a price was necessary to win a prize.

A “prize” is “a thing of value.”

Something is a lottery if it involves the payment of a price for the possibility of winning a prize, dependent predominantly upon luck or chance rather than skill. The payment of a “price” refers to something of value given up by a participant for the opportunity to take a chance at winning a prize. There is a “price” when those who chose to pay are paying in part for the chance of a prize. (An indirect benefit to the person running the game – for example, having someone cross the threshold of one’s business – is not a “price” for purposes of this statute.)

A person can “aid” a lottery in many different ways — for example, by printing or writing lottery chances, or by selling or offering them for sale, or

by managing or conducting a lottery drawing.

Commonwealth v. Webb, 450 Mass. 1014, 877 N.E.2d 552 (2007) (since requiring participants to pay a “price” is an essential element of offense, game does not violate statute if there is an option to play for free); *Commonwealth v. Frate*, 405 Mass. 52, 537 N.E.2d 1235 (1989) (§ 7 applicable to a slot-machine-like device that generates numbers electronically without a drum or reel); *Commonwealth v. Lake*, 317 Mass. 264, 267, 57 N.E.2d 923, 924 (1944); *Commonwealth v. Wall*, 295 Mass. 70, 3 N.E.2d 28 (1936) (a lottery would include one where tickets were free but a purchase was necessary assure one could collect the prize).