

HIGH COURT VOIDS 2 GAMBLER CURBS

Says Excise Tax and Yearly Stamp Endanger Right to Avoid Self-Incrimination

By FRED P. GRAHAM

Special to The New York Times

WASHINGTON, Jan. 29—The Supreme Court declared unconstitutional today key provisions of the Federal law that required gamblers to buy a \$50 gambling stamp each year and to pay a 10 per cent excise tax on their gross wagers.

In a related decision the Court struck down a section of the National Firearms Act that made it a crime to possess an unregistered sawed-off shotgun, machine gun, or other weapon subject to Federal regulation.

The Court ruled in both cases that the laws violated the Fifth Amendment's privilege against self-incrimination because they required persons to file information with the Government that amounted to confessions of guilt.

Both decisions were by votes of 7 to 1, with Chief Justice Earl Warren dissenting.

He objected that the gambling decision put gamblers in a privileged class by making it impossible for the Government to collect taxes similar to those that legitimate businessmen must pay.

Chief Justice Warren also said that the theory in to-

Continued on Page 25, Column 3 day's decisions would open the door "to a new wave of attacks on a number of Federal registration statutes whenever the registration requirement touches upon allegedly illegal activities."

Justice Department lawyers concurred today with his prediction that similar constitutional attacks would be made immediately against Federal laws requiring persons to register if they deal in narcotics, marijuana, or liquor distillery equipment. Many Federal narcotics and moonshine convictions are based upon the possession of unregistered narcotics or stills, the lawyers said.

The \$50 gambling stamp provision required each gambler to register with the Government, stating that he was a gambler and giving his name, address

and the names of all employees. The stamp had to be displayed in a prominent place.

Local Officials Notified

The excise tax provision required the gambler to file annual returns, stating that he was then a gambler. The Internal Revenue Service would not accept the money unless it was accompanied by a completed form.

The law required the revenue service to tell local officials the names of those who had registered. The service also made the excise tax information available to local law enforcement officers.

The Supreme Court upheld these laws in decisions handed down in 1953 and 1955, but in 1965 it ruled that members of the Communist party could not be forced to register with the Government if they objected on Fifth Amendment grounds. A flood of appeals followed from convicted gamblers, who said they ought to be accorded the same protection as Communists.

In today's decision, Justice John M. Harlan agreed.

He noted that all states but Nevada have broad antiwagering laws, and that even Nevada and the Federal Government have antigambling laws that could be invoked against those who bought the stamps and paid the excise tax.

He concluded that gamblers could not be required to buy the stamps and fill out the excise tax forms, since these acts could lead to convictions against the gamblers.

The Justice Department had asked the Supreme Court not to declare the law unconstitutional if it found that it violated the Fifth amendment. Instead, the department argued, the Court should rule that none of the information obtained by the Government in collecting the tax could be used in court against a gambler. This would eliminate the self-incrimination problem and leave the taxes intact, the Government contended.

Justice Harlan refused to do this. He said that Congress could pass a law granting these immunities to gamblers if it wished to make the gambling taxes enforceable.

The gambling taxes were enacted in 1951 in response to the late Senator Estes Kefauver's investigation of organized crime, and as part of a number of excise measures established to help pay for the Korean war.



The New York Times
Chief Justice Earl Warren

But the gambling taxes have failed, both as revenue measures and as a device to expose gamblers.

Congress was told that they would produce about \$400-million a year in revenue, but they brought in only \$115-million in the 15 years that the law survived.

In 1952, when the law first went into effect and gamblers did not know how effectively it could be enforced, 19,855 stamps were sold. The total declined steadily, and last year only 5,917 persons bought stamps.

In 1953, the Government collected \$10.4-million in gambling taxes. By the fiscal year 1967 this had declined to \$6.6-million.

The Internal Revenue Serv-

ice complained repeatedly to Congress that it did not have enough men or sufficient appropriations to enforce the gambling taxes.

In recent years it was also apparent that the disclosure features of the law did not bolster local enforcement in many areas. Often, gamblers registered every year and were never prosecuted by local officials.

In Indianapolis, 677 gambling stamps were sold in the fiscal year 1967, while only three were sold in all of Colorado and Wisconsin.

Justice Department officials estimate that about 100 gambling tax convictions are pending in the Courts of Appeal and the Supreme Court. Presumably, all will be reversed.

The test cases in gambling decided today involved James Marchetti of Bridgeport, Conn., and Anthony M. Grosso of Pittsburgh. Marchetti had been sentenced to a year in jail and a \$10,000 fine and Grosso to a nine-year sentence and a \$191,000 fine. Both convictions were reversed.

In the firearms case the Court threw out the conviction of Miles Edward Haynes of Dallas, who had been given a four-year sentence for possessing an unregistered sawed-off shotgun.

The firearms law was passed in 1934 after an attempt in 1933 to assassinate President Franklin D. Roosevelt. It imposes annual occupation taxes on the manufacturers, importers and retailers of certain especially lethal firearms, and taxes the transfer of certain weapons.

The law makes it a felony for a person to obtain such a weapon (either from another person or by sawing off the barrel himself) without informing the Government of his action. Haynes was convicted under a separate section making it a crime to possess a weapon not properly registered.

Justice Harlan ruled that, once Haynes had obtained the gun without going through the proper formalities, he would have incriminated himself by attempting to register it.

Jacob D. Zeldes of Bridgeport argued for Marchetti. Charles Alan Wright, a professor of law at the University of Texas in Austin, argued for Grosso and Haynes. Francis X. Beytagh Jr. and Harris Weinstein of the Solicitor General's office argued for the United States.

After today's session, the court recessed for five weeks.