

Chapter 162

Crimes Against the State and Public Justice

162.005

NOTES OF DECISIONS

A sergeant in a city police department was an executive officer within the contemplation of a former similar statute. *State v. Coffey*, (1937) 157 Or 457, 72 P2d 35.

162.015

NOTES OF DECISIONS

Under former similar statute wife of juror who knowingly offers money provided by defendant as bribe to husband was an accomplice of accused. *State v. Carr*, (1895) 28 Or 389, 42 P 215.

Under former similar statute a police officer who accepted money for the protection of an operator of a slot machine was guilty of bribery. *State v. Coffey*, (1937) 157 Or 457, 72 P2d 35.

Under former similar statute one who gave a bribe was not an accomplice of one who accepted it. *Id.*

LAW REVIEW CITATIONS: 17 OLR 118; 23 OLR 69, 81.

162.025

CASE CITATIONS: *State v. Miller*, (1931) 137 Or 218, 2 P2d 8.

LAW REVIEW CITATIONS: 17 OLR 118; 23 OLR 69, 81.

162.065

NOTES OF DECISIONS

1. Under former similar statute

- (1) In general
- (2) Proceeding where oath was taken
- (3) Indictment

1. Under former similar statute

(1) **In general.** To constitute perjury the false testimony had to be material to the inquiry. *State v. Witham*, (1877) 6 Or 366; *State v. Kalyton*, (1896) 29 Or 375, 45 P 756; *In re Mounihan*, (1940) 166 Or 200, 111 P2d 96; *State v. Chapman*, (1969) 253 Or 596, 456 P2d 89.

That defendant as a sworn witness gave testimony contradictory to statements made to police officers and others while not under oath did not of itself constitute perjury. *State v. Buckley*, (1889) 18 Or 228, 22 P 838.

Where the perjury was alleged to have been committed in the evidence given in a cause, it was necessary to produce the record; but evidence of the state of the cause at the time the alleged false testimony was introduced, which would demonstrate its materiality, could be given aliunde. *State v. Kalyton*, (1896) 29 Or 375, 45 P 756.

Oral testimony as to statements made by deponent was admissible where the deposition was not reduced to writing or was not signed, the perjury being in the false statements and not in the writing of them. *State v. Woolridge*, (1904) 45 Or 389, 78 P 333.

Parol evidence was admissible to show the testimony given, although it was taken by a stenographer and the extended notes were not shown to have been lost or destroyed. *Id.*

The state had to show that the accused knew the false statements to be false or that he stated them under such circumstances that knowledge of the falsity would be imputed to him. *State v. Smith*, (1906) 47 Or 485, 83 P 865.

Conspiracy to suborn perjury was not constituted a substantive offense by the statute. *Ex parte Biggs*, (1908) 52 Or 433, 97 P 713.

Materiality of the false statement was necessary for perjury but was not an element of false swearing. *State v. King*, (1940) 165 Or 26, 103 P2d 751.

(2) **Proceeding where oath was taken.** Where the allegations were controverted, there could not be a conviction without proof that the oath alleged to be false was taken in a certain action and court as charged in the indictment. *State v. Kalyton*, (1896) 29 Or 375, 45 P 756.

Perjury could not be committed in a judicial proceeding void for want of jurisdiction. *State v. Walton*, (1909) 53 Or 557, 99 P 431, 101 P 389, 102 P 173.

Reversible error in the proceeding did not preclude commission of the offense. *Id.*

The fact that defendant had not pleaded to an indictment did not render the trial so far void but that false testimony was perjury. *Id.*

(3) **Indictment.** An indictment alleging that oath was taken in circuit court was sufficient without stating by whom accused was sworn. *State v. Spencer*, (1876) 6 Or 152.

An allegation that the clerk was "empowered and authorized by law to take depositions and evidence and to administer oaths to witnesses" sufficiently stated that such person had authority. *State v. Woolridge*, (1904) 45 Or 389, 78 P 333.

A statement in the information that defendant appeared before the clerk of the court to have her deposition taken and was then and there duly sworn sufficiently alleged that an oath was administered. *Id.*

An indictment of subornation of perjury was sufficient as to the manner of being sworn where it appeared that the witness was "in due manner sworn." *State v. Jewett*, (1906) 48 Or 577, 85 P 994.

Where constitution provides for state agency it was not necessary that an indictment for suborning perjury before such agency shall show that it was duly constituted or had authority to consider the paper in which the alleged perjury was committed. *Id.*

FURTHER CITATIONS: *State v. Ah Lee*, (1890) 18 Or 540, 23 P 424; *State v. Luper*, (1907) 49 Or 605, 91 P 444; *State v. Cloran*, (1963) 236 Or 109, 386 P2d 913.

ATTY. GEN. OPINIONS: Applicability of perjury law to affidavit made in this state but used in Washington court, 1926-28, p 442; misstatement made to insurance company as perjury, 1930-32, p 96; constitutionality of teacher's loyalty oath, 1964-66, p 62.

LAW REVIEW CITATIONS: 13 OLR 346, 357; 14 OLR 520.

162.075

NOTES OF DECISIONS

Under former similar statute the only difference between perjury and false swearing was that in the former the false statement had to be material to the matter concerning which the oath was taken. *State v. King*, (1940) 165 Or 26, 103 P2d 751.

Under former similar statute false swearing could be established by circumstantial evidence. *Id.*

FURTHER CITATIONS: *State v. Davis*, (1952) 192 Or 575, 235 P2d 761; *State v. Cain*, (1962) 230 Or 286, 369 P2d 769.

ATTY. GEN. OPINIONS: Constitutionality of teacher's loyalty oath, 1964-66, p 62; swearing to false statement on application for public assistance, 1964-66, p 130.

LAW REVIEW CITATIONS: 14 OLR 520.

162.115

NOTES OF DECISIONS

1. Under former similar statute

"Corroborating circumstances" was evidence aliunde which tended to prove accused's guilt independent of his declarations. *State v. Buckley*, (1889) 18 Or 228, 22 P 838.

Conviction of perjury could not be sustained where evidence consisted only of accused's testimony under oath and his contradictory declarations not under oath. *Id.*

False swearing was not governed by the requirement as to perjury and could be established by circumstantial evidence. *Re Application of Crum*, (1922) 103 Or 296, 204 P 948; *State v. King*, (1940) 165 Or 26, 103 P2d 751.

Evidence was sufficient to show perjury. *State v. Reynolds*, (1940) 164 Or 446, 100 P2d 593.

162.135

NOTES OF DECISIONS

Under former similar statute escape from a county farm is escape from jail. *State v. Gilmore*, (1964) 236 Or 349, 388 P2d 451.

FURTHER CITATIONS: *State v. Hutcheson*, (1968) 251 Or 589, 447 P2d 92; *Kneefe v. Sullivan*, (1970) 2 Or App 152, 465 P2d 741, Sup Ct review denied.

162.145 to 162.165

NOTES OF DECISIONS

Under former similar statute individual was not placed in double jeopardy when punished by the prison disciplinary board and then by a court for an escape or attempted escape from official detention. *State v. Bowling*, (1969) 1 Or App 103, 459 P2d 454.

Under former similar statute escapee, who was on work release, could be tried in the county where he was physically or constructively in custody. *Kneefe v. Sullivan*, (1970) 2 Or App 152, 465 P2d 741, Sup Ct review denied.

FURTHER CITATIONS: *State v. Gilmore*, (1964) 236 Or 349, 388 P2d 451; *State v. Glenn*, (1966) 245 Or 70, 420 P2d 60; *State v. Hutcheson*, (1968) 251 Or 589, 447 P2d 92.

ATTY. GEN. OPINIONS: Effect on escape conviction sentence of invalid original conviction sentence, 1960-1962, p 72.

162.175

CASE CITATIONS: *Kelley v. Meyers*, (1928) 124 Or 322, 263 P 903, 56 ALR 661; *State v. Taylor*, (1960) 224 Or 106, 355 P2d 603.

162.185

LAW REVIEW CITATIONS: 37 OLR 84.

162.235

ATTY. GEN. OPINIONS: Parading in disguise of Ku Klux Klan, 1920-22, p 564.

162.305

NOTES OF DECISIONS

Under former similar statute a form prepared by an attorney intended for entry in the journal of the court was not a public record within the meaning of the statute. *Ex parte Tongue*, (1896) 29 Or 48, 43 P 717.

ATTY. GEN. OPINIONS: Failure of justice of peace to pay over fines, 1928-30, p 179; destruction of useless records and reports of State Police, 1954-56, p 119; authority of home rule county to establish policy for retention and destruction of county records, (1971) Vol 35, p 530.

162.325

NOTES OF DECISIONS

Under former similar statute an accessory after the fact was not an aider and abettor. *State v. Rosser*, (1939) 162 Or 293, 86 P2d 441, 87 P2d 783, 91 P2d 295.

Under former similar statute the charge of being an accessory was not a lesser included offense under an indictment charging the principal crime. *State v. Stephenson*, (1970) 2 Or App 38, 465 P2d 720.

FURTHER CITATIONS: *State v. Hinkle*, (1898) 33 Or 93, 54 P 155; *State v. Doster*, (1967) 247 Or 336, 427 P2d 413.

162.335

NOTES OF DECISIONS

Under former similar statute the offense was complete when the consideration was received or promise made with the understanding that the crime was to be concealed; subsequent breach of agreement by causing prosecution was no defense. *State v. Ash*, (1898) 33 Or 86, 54 P 184.

FURTHER CITATIONS: *State v. McLennan*, (1917) 82 Or 621, 634, 162 P 838.

162.345

CASE CITATIONS: *State v. McLennan*, (1917) 82 Or 621, 634, 162 P 838.

162.405

NOTES OF DECISIONS

1. Under former similar statute

The statute made the chief of police of a city a prosecuting officer and, if he had reasonable cause to believe that any person was violating the gambling Act, also imposed on him the duty of enforcing its provisions without any direction to that effect from the mayor or from the executive board. *State v. Williams*, (1904) 45 Or 314, 77 P 965, 67 LRA 166.

Mandamus would not issue to compel the mayor to order the chief of police to prosecute the gamblers. *Id.*

Statute of limitations applicable to violations of gambling laws did not provide a period in which district attorney could decline to perform his duties before he would be found guilty of nonfeasance. *State v. Langley*, (1958) 214 Or 445, 315 P2d 560, 323 P2d 301, cert. denied, 358 US 826, 79 S Ct 45, 3 L Ed 2d 66.

FURTHER CITATIONS: *In re Langley*, (1962) 230 Or 319, 370 P2d 228; *State v. Johnson*, (1971) 92 Or App Adv Sh 1679, 487 P2d 115, Sup Ct review denied.

ATTY. GEN. OPINIONS: Validity of municipalities licensing card rooms, 1930-32, p 420; authority of municipality to license slot machines, punch boards or pinball machines, 1944-46, p 486.

162.415

NOTES OF DECISIONS

1. Under former similar statute

An indictment for charging or receiving an unauthorized fee or compensation had to show for what service or duty the charge was made or the money taken. *State v. Packard*, (1871) 4 Or 157; *State v. Perham*, (1871) 4 Or 188.

A promise to pay an officer for doing that which the law did not allow him to do or to pay more than was allowed by law was void. *Jackson v. Siglin*, (1882) 10 Or 93.

Venue was properly laid in the county where a bribe was solicited and the services were to be performed, although the bribe money was actually received in another county. *State v. Johnson*, (1971) 92 Or App Adv Sh 1679, 487 P2d 115, Sup Ct review denied.

FURTHER CITATIONS: *State v. Ross*, (1910) 55 Or 540, 104 P 596, 106 P 1022, 42 LRA(NS) 601, dismissed for want of jurisdiction, (1912) 227 US 150, 33 S Ct 220, 57 L Ed 458; *Southern Ore. Co. v. Gage*, (1921) 100 Or 424, 197 P 276.

ATTY. GEN. OPINIONS: Necessity of conviction before dismissal from office, 1934-36, p 154; authority of district attorney to charge fee for collecting unpaid or dishonored

checks, 1934-36, p 580; witness fees for public officers and employes, 1962-64, p 97.

Charging unlawfully for services. Publication of county notices by paper where county officers are editors or stockholders, 1920-22, p 258; arrangement by which sheriff is paid by county for procuring meals for prisoners, 1924-26, p 634; deputies of State Board of Health acting as special police, 1926-28, p 413; authority of district attorney to charge fee for collecting unpaid or dishonored checks, 1934-36, p 580; employing Dean of School of Architecture to prepare plans for state buildings, 1936-38, p 702; impersonation of state police officer, 1942-44, p 148; ability of director of fire protection district to perform services for the district for compensation, 1948-50, p 346; review of law on validity of contracts of public officers with their principals, 1952-54, p 114; applicability to state employe who gives nothing in exchange for the gratuity, 1954-56, p 58; contract of county hospital with freight line, 1960-62, p 393; conflict of interest of school board member who is manager of depository bank, 1960-62, p 415; owner of interest earned by deposit in condemnation proceedings, (1970) Vol 35, p 286.

State and local treasurers. Deposit of money by Fish Commission, 1924-26, p 136; designation and appointment each year of depositories of state funds, 1924-26, p 413; deposit of military funds in hands of Adjutant General, 1932-34, p 19; deposit by Corporation Commissioner of funds from liquidated building and loan associations, 1932-34, p 200, 1934-36, p 521; control of funds granted state by federal government, 1934-36, p 790; deposit of fund from estate of deceased inmate of state institutions, 1940-42, p 550; deposit by county clerk of funds from liquidated surety company, 1942-44, p 71; deposits made in court proceedings in lieu of bond or bail, 1942-44, p 322; authority of State Treasurer to enter into agreement with depository of state funds, 1958-60, p 212.

162.465

NOTES OF DECISIONS

The sole purpose and effect of a former similar statute was to make lobbying criminal in certain cases. *Sweeney v. McLeod*, (1887) 15 Or 330, 15 P 275.