

AN EDUCATIONAL UPDATE FROM
THE SOUTHEAST LAW INSTITUTE™, INC.

To: SLI Supporters
Date: June 2015
From: A. Eric Johnston
Re: SB453 and Other Gambling Proposals

Everyone knew before the 2014 regular session of the Alabama Legislature was to begin, that the expense overruns of state government would require attention. The Governor proposed a significant tax hike. The Legislature did not respond well to that, although they realized something had to be done.

There were rumors that the taxation of gambling could be a source of revenue. The problem with that is only the Poarch Indians had gambling and there was no ability to tax them. Before long, the President Pro Tempore of the Senate, Del Marsh, suggested an all encompassing gambling bill, SB453, while Speaker of the House Mike Hubbard suggested only a compact with the Indians. "Gambling" had found its way into the Republican lexicon.

In the Senate, SB453 proposed a constitutional amendment to permit a lottery, unlimited casino gambling at the four non-Indian operated racetracks in the state and at the Poarch Indian casinos in Escambia, Elmore and Montgomery counties. For Indians to operate unlimited gambling in a state, they must enter into a "compact," that is an agreement, with the Governor of a state. To have unlimited casino gambling in Alabama, it would be necessary to amend our Constitution, since it is currently prohibited.

In the House of Representatives, the proposal was to simply have a compact with the Indians allowing Class II gambling, *viz.*, bingo. Of course, the Indians are currently engaged in electronic bingo, which are really slot machines prohibited under state law. The motivation for the Indians to enter into a compact, and thereby agree to pay taxes, was that a federal court case may be decided against them soon which could prohibit all types of gambling. They would be out of business.

Pro-family organizations were incredulous that Republicans would propose something that we had worked so hard and for so many years to defeat. The Southeast Law Institute joined in that opposition, including a memo to legislators that said:

"For over 20 years, there were legislative efforts to expand gambling in Alabama. These efforts were defeated, along with a lottery in 1999. While charity bingo was permitted under a few constitutional amendments, with the use of electronic technology, gamblers developed bingo (slot) machines. Through the efforts of the task force under Governor Bob Riley and continued by Attorney General Luther Strange, the Alabama Supreme Court in its *Cornerstone* (2009) and *Houston County* (2014) decisions ruled paper card bingo is all that is permitted by the amendments. Non-Indian gambling activities ceased in Alabama.

In 2013, Attorney General Strange initiated a federal court action against the PCI Gaming Authority and others to close down illegal Indian gambling. The federal trial court ruled the Poarch Indians are a sovereign nation and not subject to Alabama laws. The Attorney General raised every possible argument, all of which were rejected by the trial court. That order was appealed to the Eleventh Circuit Court of Appeals. A decision has not been made, but it is probable that it could come as soon as the next few weeks. There is a very reasonable expectation the Court of Appeals will reverse the trial court. We agree with that expectation.

However, under both SB453 and suggestions from the House, consideration is being given to entering into a compact with the Indians. A compact could permit either Class II gaming, meaning bingo (although the Indians are actually using slot machines that have been closed down in the non-Indian venues) or Class III gaming (unlimited casino gambling). If the Court of Appeals reverses and returns the case to the trial court, the end result will be to close down Indian gambling operations, just as non-Indian gambling operations have been closed down. Only paper card bingo will be permitted. If a compact is made prior to the decision, the deal is made and the court decision will be irrelevant. It is premature to consider any compact with the Indians, until the court decision is made."

It is likely nothing will happen during the regular session, but Senator Marsh has already said gambling may come up in a special session. After all of this, why would the Legislature snatch defeat from the jaws of victory? Alabama citizens deserve better.