

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

To: SLI Supporters
Date: May 2016
From: A. Eric Johnston
Re: Renewed Gambling Efforts

We are seeing a resurgence in efforts to legalize gambling in Alabama. These include legislative efforts to expand gambling, legal efforts to reopen “bingo” (slot machine) facilities and new forms of gambling, i.e., fantasy sports and a compact with the Indians to permit them to have casino gambling. For 25 years, state authorities and family groups have opposed the expansion of gambling in Alabama. Alabama has enjoyed a wholesome family atmosphere due to Section 65 of the 1901 Alabama Constitution, which forbids all games of chance, except by constitutional amendment. Simple bingo amendments have resulted in protracted litigation over electronic slot machines masquerading as the game of bingo.

On March 31, 2016, the Alabama Supreme Court issued its latest opinion, the case of *State of Alabama v. \$223,405.86, et al.* The trial judge found local law enforcement did not do their jobs enforcing gambling laws and ruled this violated the Equal Protection Amendment. The Supreme Court disagreed with the ruling, but agreed with the factual finding that local law enforcement did not do their jobs. It made clear these cases must come to an end and that the state must continue its effort to eradicate unlawful gambling.

Efforts by Governor Riley’s task force and then taken up by Attorney General Luther Strange resulted in the very fine court opinions which have returned bingo to its “paper” format. However, recent actions by Governor Robert Bentley have made those victories uncertain. Governor Bentley’s Executive Order Number 13, November 5, 2015, directed Attorney General Strange to stop gambling prosecutions and leave it up to local law enforcement. As a result of this, VictoryLand Race Track owner Milton McGregor held a press conference on April 4, 2016, where it is reported that he would disregard the Alabama Supreme Court’s rulings and reopen VictoryLand. Local law enforcement, Macon County Sheriff Andre Brunson, is reported to have said that the Supreme Court’s ruling “is not worth the paper it is written on” This raised the question then of who is in charge of law enforcement. Obviously, Macon County law enforcement authorities do not intend to enforce the law.

The Supreme Court opinion made it clear that the Governor is not responsible for law enforcement in the state, but the Attorney General is. We contacted the Governor about our concerns and he simply referred us to Executive Order Number 13 and that he would respect any passage of legislation permitting a “lottery” by the Alabama Legislature. In other words, Governor Bentley is supporting gambling. We are assured by Attorney General Strange that he is committed to seeing gambling laws enforced.

There have not only been renewed efforts to re-open Alabama gambling venues, but Republican legislators introduced various bills to legalize gambling. Two of those, HB13 and SB19 would simply permit the people to vote on whether to have a “lottery,” with the Legislature to have carte blanche by a general law (statute) in determining what gambling will be permitted. We testified before legislative committees on the fallacy and deceit of these bills. We explained that a “lottery” is any game of chance, not a simple ticketed number from a convenience store. The Supreme Court said referring to Section 65: “*It is this so-called ‘anti-lottery provision’ that stands as the constitutional bar not just to what is known in contemporary parlance as a ‘lottery,’ but to slot machines and all other forms of gambling in Alabama.*” In addition, HB56 and SB114 are bills that would authorize daily fantasy sports. The evidence is overwhelming this is also a game of chance under Alabama law. Attorney General Strange announced he would prosecute Draft Kings and Fan Duel, if they did not leave the state.

We regret the Governor’s failure to provide leadership opposing gambling issues and his decision now to support the lottery. We also hear rumors of quiet efforts by the Governor to enter into a “compact” with the Poarch Indians. This would permit the Indians to have unlimited gambling in their existing casinos. We also regret Republican legislators, who purport to represent what is good in politics, are leading the way in opening new forms of gambling in Alabama. It is now up to the Attorney General to enforce the existing laws and for the good legislators to oppose and defeat efforts to legalize new forms of gambling in Alabama.

Unless we all work together, without delay, we will abandon Alabama to its new leaders, the gambling interests. As surely as these events occur, the control and authority of the state will fall to them. No legislative action would ever be taken without their approval. We cannot permit that to happen. The lessons of Phenix City must not be taught again.