

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

To: SLI Supporters
Date: September 2016
From: A. Eric Johnston
Re: Lottery Legislation in the 2016 First Special Session of the Alabama Legislature

Rumors had been swirling all summer that Governor Robert Bentley was going to call a special session of the Alabama Legislature for the purpose of passing lottery legislation to fund Medicaid. Finally, the Governor's call was made for the session to begin on August 15, 2016. Every weekday through August 26, 2016, there was a concerted effort by both the Governor and legislative leadership to pass the bill. It did not pass. Though there are three days left in the session, we do not think the bill has any life left in it.

The primary bill was SB3 sponsored by Republican Senator Jim McClendon. Senator McClendon had the complete and absolute support of Governor Bentley and President Pro Tem of the Senate, Senator Del Marsh. The bill began in the Senate and was initially passed with a 21 to 12 vote, with 21 being the minimum number of votes necessary to pass the bill. It then went to the House where, several days later, on the first vote the bill failed by two votes, but upon a reconsideration vote, it passed by one vote. There were changes in the bill and it was necessary for it to go back to the Senate.

The operative language of SB3 was only that it "authorized the establishment of the Alabama Lottery" and "the Alabama Lottery shall include only the sale of lottery tickets." Testimony of supporters of the bill contended that this meant only buying a lottery ticket in a convenience store type of transaction. That was not at all the case. This bill was a deception and potential fraud of Alabama voters.

The definition of the word "lottery" under Alabama law is simply "any game of chance." The Alabama Supreme Court has stated this clearly time and again and as late as March 2016 in the *State v. K. C. Economic Development, LLC* case, saying: "*It is this so-called 'anti-lottery provision' that stands as a 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.*" (Emphasis added.) Therefore, SB3 would have established an "Alabama game of chance" to be played by purchasing Alabama "game of chance" tickets. Enabling legislation, pursuant to another section of the bill, would have had gamblers lining up to introduce bills to establish casinos in the State of Alabama.

The Senate never acknowledged this. However, there was finally an amendment put on the bill in the House that would have restricted the bill's operation to what we would commonly expect a lottery to be and not any game of chance. When the bill returned to the Senate for consideration, the coalition there had fallen apart and almost immediately the bill was defeated by a vote of 23 to 7. Taking away the casino language killed the bill. It was therefore affirmed that what SLI had testified to was correct, that the real goal of SB3 was to permit casino gambling in the State of Alabama.

To larger and lesser degrees, state leadership pushed this bill. There were many reports of Governor Bentley's pressure and maneuvering to obtain votes by bestowing favor or disfavor on members and Senate leadership violating its own rules, resulting in Republican Senators Dick Brewbaker and Paul Busseman resigning from the Republican caucus. Representative Rich Wingo testified at the House mike that "leadership pushed this through – leadership betrayed us." These men, as well as the other men and women who opposed this bill are to be commended for their strong stands for doing the right thing.

This bill was not about helping Medicaid. Though there was some discussion and attempts to allocate some of the potential revenues from the gambling for Medicaid, Senators and Representatives squabbled over who would get the lion's share of the take. They disregarded the harm the bill would be to the community and the deceit of the bill on voters.

The mantra of legislators was "let the people vote." If this bill had made it on the ballot, the voters would have had no idea what they were voting on. Only the gamblers would have known that. The Alabama Legislature has demonstrated it is in the pockets of the gamblers and it does not matter whether the Republicans or Democrats are in control. It is regrettable that a significant number of legislators voted for gambling out of ignorance or for some intentional reason. We expect them to return with similar legislative bills, perhaps in another special session. In the meantime, citizens should let their elected officials know where they stand on gambling in Alabama. We believe that if the Legislature is honest with the voters, the voters will not vote on what the Legislature intends.