

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

**To:** SLI Supporters  
**Date:** December 2016  
**From:** A. Eric Johnston  
**Re:** Memorandum to Alabama Advisory Council on Gaming

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**TO:** Alabama Advisory Council on Gaming

**FROM:** A. Eric Johnston

**DATE:** November 22, 2016

Southeast Law Institute is a nonprofit legal organization providing advice and assistance on various issues related to the Alabama Constitution and gambling. Governor Robert Bentley created the Alabama Advisory Council on Gaming (“Council”) for the “stated” purpose of resolving disagreements over electronic bingo and the quilt work of laws and recommending to the Governor and the Legislature how these problems may be remedied.

We understand and fully realize this Council should not and cannot have that responsibility. The reason is that the stated purpose for the Governor does not exist and the recommendations of the Council can only result in cover for expanded gambling in Alabama.

Recent testimony before the Council by a representative of the Poarch Indians and various explanation by one or more members of the Council suggest there are complicated issues that must be resolved. This will only result in the Indians’ operation of full fledged gambling casinos.

There is no confusion or patchwork of laws in Alabama’s law. In recent years, the Alabama Supreme Court has rendered opinions on the gambling issue, beginning with the *Barber v. Cornerstone, Community Outreach, Inc.*, 42 So. 3d 35 (Ala.2009), and ending with the *State of Alabama v. \$223,405.86*, \_\_\_ So. 3d \_\_\_(Ala. 2016) (2016 WL 1273039) case. These cases were precipitated by the non-Indian gambling venues in the state insisting that the various bingo amendments to the Alabama Constitution permitted the electronic bingo found in those venues. However, the Alabama Supreme Court has made it absolutely clear that those machines are not bingo. They are slot machines and unlawful. There is no patchwork of laws surrounding those and the opinions have been consistent throughout the twelve cases. The only reason there were so many cases is because the gamblers would not take no for an answer and they continued to litigate.

Also, there is no confusion in the federal law. The Indian Gaming Regulatory Act (“IGRA”) provides for three classifications of “gaming:” Class I is tribal and home games; Class II is bingo; and Class III are other forms of gambling, including full casino gambling.

The only problem that exists with enforcement of law in Alabama is that the Indians insist they are not subject to Alabama criminal laws, that they are providing only Class II bingo games and should be permitted to operate. Attorney General Luther Strange made an attempt to enforce Alabama gambling laws, which was rebuffed by the federal court on a number of grounds, but essentially saying there was no state claim against the Indians. *State of Alabama v. PCI Gaming Authority*, 801 F. 3d 1278 (11<sup>th</sup> CA. 2015).

However, this did not address whether the Indians were actually violating IGRA. The “Indian Bingo” are slot machines not permitted by federal law. 25 U.S.C. 2703 (7)(B)(ii); 25 C.F.R. Part 547, RIN 3141-AA29. At a minimum, the United States Secretary of the Interior should enforce provisions of Class II bingo against the Indians, but he has not done so. No court, federal or state, has ruled on the legality of the Indian operations.

Alabama Governor Robert Bentley does not have the authority to enter into a compact that would otherwise violate state laws. IGRA is clear that the Indians operating in a state must operate to the level of gambling permitted in the state. Only Class II bingo is permitted, notwithstanding the fact that the Indians are violating that standard presently.

If Governor Bentley enters into a compact which would permit expanded gambling, it must be approved by the Legislature and then by the public for a constitutional amendment. Similarly, if the Alabama Legislature passed an amendment permitting additional gambling, such as a lottery, and it was approved by voters, this would create Class III gaming in the state and the Indians would therefore be right to insist on expanded gambling, which would include full fledged casino gambling.

In conclusion, the Council must not be misled that there are a patchwork of laws and confusion on gambling in Alabama. Anything beyond paper card bingo, as explained in several of the Alabama Supreme Court cases referenced above, is not permitted and is illegal. The Council should not use the apparent authority given to it by the Governor to create a subterfuge that will result in expanded gambling in Alabama. I am happy to appear before the Council to answer your questions or to clarify this very important issue.