

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

**To: SLI Supporters**  
**Date: March 2017**  
**From: A. Eric Johnston**  
**Re: Report to the Governor's Advisory Council on Gaming**

---

On January 26, 2017, I appeared before the Governor's Advisory Council on Gaming and presented an objective detailed ten page legal memorandum on the law of gambling in Alabama. Attached to it were reports from an expert witness who played the electronic gambling machines at Victoryland and Wind Creek in Wetumpka.<sup>1</sup> The Governor appointed the Council for the purpose of advising the state on the "quiltwork" of local constitutional bingo amendments that have created "a very confusing issue that's not being resolved." There is no confusion in the law and the only confusion is in the public domain as a result of the efforts of gamblers. The Governor was ill advised to create this Council and it could work as cover to recommend gambling expansion in the state.

In a one hour and 15 minute presentation and time of questions and answers, I explained to the Council that all games of chance in Alabama are prohibited by the Alabama Constitution. Several bingo amendments allow limited bingo. Alabama has laws criminalizing gambling. Against this backdrop of prohibition and regulation, Alabama gamblers have attempted to expand gambling through what they call electronic bingo, but which is nothing more than unlawful slot machine gambling.

There is no confusing quiltwork of Alabama law for gambling. In 20 cases addressed in 13 published decisions, the Supreme Court of Alabama has clearly and consistently defined the bingo permitted by the amendments to be nothing more than old fashioned, traditional bingo, with players listening to numbers called out by a person one-by-one and marking cards by hand and then being the first in the room to call out "bingo" verbally. These cases have addressed on several occasions the efforts in Macon, Greene, Lowndes and Houston Counties, where the litigation has centered as a result of the gamblers continued reopening of their gambling establishments after they have been shut down by law enforcement.

The first case, *Barber v. Cornerstone* (2009) addressed gambling in Lowndes County. It established a six part test to define bingo as a traditional bingo referenced above. That test was confirmed in *Ex parte v. State* (2013, Macon County), in *State v. Greenetrack, Inc.* (2014, Greene County), and in *Houston Economic Auth. v. State* (2014, Houston County). As late as December 2016, the authority of the court was confirmed in *State v. 825 Electronic Gambling Devices* (Greene County). The Alabama Supreme Court has never expressed doubt or exception in their rulings.

So why then is the confusion? It is because of the profits made by casino operators who benefit by deliberately keeping the issue confused and the failure of law enforcement to respond adequately to continuous casino reopenings. The gamblers deliberately confuse the press and public, thereby lessening opposition to their reopening in direct defiance of the law. This is caused when state and local law enforcement fail to uphold their sworn duty.

Testimony further explained that federal law regulates gambling on Indian reservations. It is not a given that the reservations are allowed to conduct electronic slot machine gaming as defined by federal law. The federal Indian Gaming Regulatory Act ("IGRA") permits what is known as Class II gaming that includes bingo. However, the statute specifically states that Class II gaming does not include "electronic or electromechanical facsimiles of any game of chance or slot machines of any kind." The problem is that the Secretary of the Interior has not properly enforced federal law.

Testimony examined the possibility of a lottery. A lottery means any game of chance under Alabama law. A lottery is also Class III gaming under IGRA. This means that if the Alabama Legislature were to pass even a paper ticket lottery law, that would open the door for the Indians to have complete casino gambling.

In light of Alabama's law, since it is clear and consistent, are the machines being operated by non-Indian and Indian gamblers alike legal? We hired an expert to physically examine the machines in both establishments. In early January 2017, Dr. Kevin Harrigan visited Victoryland (non-Indian) and Wind Creek in Wetumpka (Indian), played the machines and did an analysis of their operation. Specifically, Dr. Harrigan examined the machines in light of the Alabama law as explained by the Alabama Supreme Court. He found in both establishments that none of the machines met the requirements of any of the six characteristics required for legal traditional bingo permitted in Alabama.

Gamblers have appeared before the Council offering testimony that their operations are legal. Testimony has been offered for the benefits of gambling. The Council has heard testimony opposing gambling for moral and economic reasons. In the end, the Council will be making a report to the Governor, which presumably will then give the Legislature direction on whether and how to expand gambling in Alabama. My testimony to the Council was not that they must determine whether gambling is legal. Their report must simply find that gambling is not legal and that the only thing it should find is whether legalizing gambling is good or bad policy for Alabama.

---

<sup>1</sup> For a complete electronic copy of the report with exhibits please call (205) 408-8893 or email [sec@ericjohnston.com](mailto:sec@ericjohnston.com).