

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

To: Interested Persons
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From: A. Eric Johnston
RE: Enforce of Gambling Criminal Statutes Rather than Legalize

Gambling has never been legal in Alabama. There have been various criminal statutes in force and Article IV §65 of the Alabama Constitution of 1901 is the latest law prohibiting all games of chance. Eighteen Constitutional Amendments were passed beginning in 1980, allowing traditional charitable paper card bingo. Then, in the 1990's, bills to permit "video poker" were introduced and failed. With the advent of computers, the bingo games morphed into slot machines. Attorney General Troy King issued an informal opinion in 2001 that "electronic bingo" is legal. In the ensuing years gamblers expanded "bingo" into widespread slot machines. Weak criminal laws encouraged continual lawlessness.

The excuse in the last few years has and continues to be that unlawful gambling exists statewide and can only be regulated if legalized at select places, permitted by an electronic lottery, and controlled by a gambling commission. The refrain is that there is no enforcement of criminal laws. Now, added to that existing laws delegate regulation to local sheriffs and they are not doing their jobs. These excuses are not only incorrect, but they mislead the people.

Section 65 prohibits all games of chance, but the eighteen CA's permit bingo. These CA's continue to be abused by gamblers because of no enforcement, notwithstanding thirteen Alabama Supreme Court cases enforcing the law, including *Barber v. Cornerstone*, 42 So.3d 65(Ala. 2009) and *Houston Cty. Econ. Dev. Auth. v. State*, 168 So.3d 4(Ala. 2014) stating §65 permits only traditional paper card bingo and all variations of that are unlawful. Most unlawful gambling continues to be electronic slot machines masquerading as bingo.

Confiscation of machines and money from unlawful operations is one type of enforcement. *See* §13A-12-30, 1975 Code of Alabama. That takes manpower which the AG and DA's do not have. Remember Governor Bob Riley's task force using State Troopers closed down gambling operations. Then Governor Robert Bentley by Executive Order 13 instructed the AG to desist and let local DA's enforce, and withdrew State Trooper assistance. The Alabama Supreme Court held this order had no effect on the AG, but he still had no manpower. The machines could not be physically removed and destroyed. AG Steve Marshall used public nuisance injunctive authority to close down gambling operations. However, small operations continued.

Legalizing as many as ten large gambling casinos, an electronic lottery, and establishing a commission will not enforce criminal gambling laws. Local DA's should do that. Contrary to pretextual assertions, the bingo CA's do not give sheriffs discretionary authority to regulate gambling. The CA's give sheriffs, city councils, county commissions, and even local gambling commissions, ability to regulate such things as licensing and fees, hours of operation, division of proceeds, record keeping, and the like. These rules do not prescribe the type of gambling and all gambling must meet the CA standards as required by the Supreme Court cases. Sheriffs may make arrests, but DA's provide the basis for doing so.

Amendments to existing criminal statutes is the answer to gambling in Alabama. Section 13A-12-30 (forfeiture of gambling devices and proceeds) should be amended to provide for law enforcement manpower to physically take control of the gambling devices. Five statutes require simple amendments to remove the penalty of misdemeanors and replace them with a first offense Class D Felony (366 days to 5 years in prison) to a Class B Felony (10 years to life) for second and subsequent offenses. These are:

- §13A-12-22 (promoting gambling)
- §13A-12-23 (conspiracy to promote gambling)
- §13A-12-24 (possession of gambling records in the first degree)
- §13A-12-25 (possession of gambling records in the second degree)
- §13A-12-27 (possession of a gambling device).

Enforcement will work. Long prison sentences, rather than mere fines, will deter gamblers. So in conclusion, why does Alabama need to legislate unlimited gambling at ten venues and permit online gambling and a lottery, when all it needs to do is amend six criminal statutes? Maybe the reason is not a legal one at all. Just an immoral one.