

# SOUTHEAST LAW INSTITUTE™

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Dear SLI Supporter:

This letter probably finds many of you getting ready for the new school year. Even if you do not have a child in school, you are a part of the change. There will be more traffic on the way to work and most people will be back in their offices, hard at work, anticipating next year's summer vacation. The political runoffs are over and the candidates are gearing up for the fall effort. Traditionally, Labor Day has been the kick-off date for campaigns' push to the general election in November.

The campaigns raise political issues with which we are all concerned. One of the biggest issues to face Alabamians in a long time was the 1999 lottery issue. While it was defeated by 54% of voters, it is an issue which has apparently not gone away. Governor Don Siegleman has resurrected the issue in the 2002 gubernatorial campaign. We believe it will be a focal point for the candidates with Governor Siegleman supporting a gambling lottery and Bob Riley opposing it.

This raises the issue for many about how we will fund public education in Alabama. Is it as former candidate Tim James said, "[T]here is plenty of money that is not being spent properly" or, is there a shortage? We believe it is improper expenditures, improper legislative influences, and, ultimately, bad laws and policies. These are not political issues, they are legal issues. They are legal because these laws govern the way we live, the quality of our lives, and the security of our futures. The issue of the lottery is just one among many. The importance of such issues is what absorbs so much of our time.

Our February 2002 Educational Update addressed some of the laws which were falling out from political issues. In Part II of the update, "Whose Children Are They?", we briefly mentioned the "Governor's Taskforce On Early Learning" report. In earlier newsletters we reported on litigation that seeks to remove limited tax-exempt status from church-run daycares. This month's educational update discusses the developing problem of government interference with parental and religious rights in the daycare area. While we believe the related litigation has been favorably decided, the possibility of new statutes and regulations, resulting in even more significant litigation looms on the horizon.

Finally, take this opportunity to remind you of our financial needs. Most of our supporters are constant and we appreciate your faithfulness. Many are occasional. We always appreciate referrals for new supporters. If we could do this work without financial support, we would. However, like with your prayers, we need your financial participation. Thank you for remembering us. Until next time, I am,

Yours Very Truly,

A. Eric Johnston

AEJ/sh

PS: Did you see where the man sued McDonald's, Burger King and others because of his obesity? SLI told you it was coming. More on this later.

## **AN EDUCATIONAL UPDATE FROM**

*The Southeast Law Institute™ is a 501(c)(3) organization providing legal counsel on constitutional and public policy issues.*

# THE SOUTHEAST LAW INSTITUTE™, INC.

**To:** SLI Supporters  
**From:** A. Eric Johnston  
**Date:** August 2002  
**Re:** The Regulation of Church Daycare Ministries

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## INTRODUCTION

There are approximately 2,057 legally operated daycare centers in Alabama. Of these, 738 are administered as church ministries. Daycare operations are found in virtually every community in the state, regardless of size. Why are there so many? The obvious answer is that in today's culture and economy, usually both parents must work. Therefore, they must have childcare assistance. This assistance is sometimes provided by extended family members, but more often, it is provided by some type of daycare facility.

### Church Operated Daycare Ministries

A church operated daycare is, in fact, a ministry. Just as parents choose church schools for their children's primary and secondary education, they also choose daycares run by their local churches. The predominant reason for this choice of care and education is to have not only a religious based program, but to have the security they know exists in their own church family. Some churches operate daycares which keep children for non-church members. This is also an outreach and ministry to the community.

Church ministries cover a wide range of opportunities. It all depends on the size and budget of the church. While larger churches have schools for grades K through 12, significant missions programs, soup kitchens, and other ministries in the community, others have smaller programs. However, in most of these churches there is some form of daycare.

### State Regulation?

In an Associated Press article, which ran statewide in many newspapers (*e.g.*, *B'ham News*, 6-11-2) Pam Baker, Commissioner of the State Department of Children's Affairs, Department of Human Resources (DHR) said plans are in place to get rid of exempt status for church-affiliated centers. The *Dothan Eagle* (6-12-2) editorialized:

" . . . [t]he regulation of those services is vital - for the safety and well-being of the children, to say nothing of peace of mind for parents who feel bad enough about farming out the children in the first place . . . . While regulating private for-profit childcare centers, the state has exempted churches, likely assuming, as many parents do, that if anyone is going to provide a safe and

educational atmosphere for children, it will be the church . . . . That sets an unfair double standard . . . ."

Likely, Pam Baker does not have the authority to make the comments she has made. Perhaps, she is relying on Governor Siegleman's Taskforce on Early Learning Commission report, *Our Children, Our Future, Our Plan*, which advocates licensure of church daycare. Presumably, Governor Siegleman intends to pursue the three hundred million dollar a year project which would remove the limited exemption church daycares now have and provide such things as state registration of your child at birth.

This hype causes guilt feelings in parents. It is meant to mislead and create an issue where there is not one. As a matter of law, even church-run daycares are licensed by the state. Section 38-7-3, *1975 Code of Alabama*, is a part of the "Childcare Act of 1971". This law provides a limited exemption for programs, which are an integral part of a local church ministry or a religious non-profit elementary school.

The exempt churches must publish and provide to the state significant information about fire and health inspection records, immunization verifications, medical history forms for all staff and children, staff qualifications, pupil-staff ratio, discipline policies, curriculum used in the learning program, religious teachings to be given to the child, and the type of lunch program. Further, parents must sign an affidavit, which is filed with DHR, indicating they have received this information.

Anyone must agree this provides a significant amount of protection and regulatory oversight. In addition to this, the recently enacted Criminal Background Check Law, §38-13-1, *1975 Code of Alabama*, requires criminal background checks on employees in all daycare centers. Taken together, all of this provides a significant amount of information and, therefore, security to parents that their children are in safe hands. These laws are sufficient and do not place an improper burden on religion which would be prohibited by the requirements of the free exercise of religion clause in the First Amendment to the U.S. Constitution and the Alabama Religious Freedom Amendment, Amendment 622, 1901 Constitution of Alabama.

### **So What is the Objective?**

The objective is to place under state control all religious activities related to daycare. Those who believe this regulation should exist also advocate regulation of church schools. Ultimately, such social mechanics and zealous bureaucrats would also advocate regulation of churches. Part of the motive may be money and the other part may be regulation. Whatever the motive, the objective is control.

SLI has made several reports on the *Kids Care Inc., et al, v. DHR, etcetera et al* lawsuit. One of the claims in the lawsuit was that the exemption for church daycares was unconstitutional. The circuit court held that it was not. Although the case is on appeal to the Supreme Court of Alabama, we do not expect the exempt issue to be raised again, although we are vigilant. Non-church daycares are jealous of the limited exemption church daycares enjoy. Perhaps, for them it is money. However, this also works as a catalyst to further efforts to regulate church daycares.

### **Conclusion**

Before the limited exempt status of church daycares can be changed, there will need to be changes in the statutory and administrative laws of the State of Alabama. We are watching any efforts. We will be prepared to file a lawsuit based on religious freedom and other grounds if such laws are passed unconstitutionally burdening religion and parental choice.

The Commissioner of DHR is Bill Fuller. Commissioner Fuller is a decent and honorable man. We do not believe he will advocate improper expansion of regulation of church daycares. However, DHR is an exceedingly large and complex department of government. Its power and control is subject to many levels of officials and the change of political whims and fortune. SLI receives a number of calls each month about DHR interference in the lives of families. There exists an aura and fear of DHR. DHR has a legitimate purpose and does much good, although there is some abuse. SLI plans to provide you with some insight on this in a future educational update.

Robin Mears, Executive Director of the Alabama Christian Education Association, works tirelessly monitoring these activities and advising church-run daycares around the state. Eunie Smith, President of Eagle Forum of Alabama, is constant in her vigilance of these activities. There are others who are concerned and involved. Together, we work to keep laws and regulations in the proper legal perspective. For most, it is a thankless and unrecognized good work. But, the reward is religious freedom and the freedom of parents to choose the method of education and care, which best suits their beliefs and needs.