

# SPECIAL

# WINDOM GALLIHER

## MONTGOMERY UPDATE

NOVEMBER 6, 2015

## Gov. hands over gaming enforcement to locals

### Executive order removes Attorney General from enforcement process

Governor Robert Bentley issued an executive order Thursday that appears to pave the way for electronic gaming to return to Greene and Macon counties. It also provided fuel to the fire that the governor is heading toward Medicaid expansion.

The governor's order rescinded his previous order that placed Attorney General Luther Strange in charge of enforcement of the state's gaming laws. Under Executive Order 13 signed today, Gov. Bentley placed enforcement and policing responsibilities under the local jurisdiction of sheriffs and district attorneys, stating "local law enforcement officers should determine the legality of the Constitutional laws as these laws relate to their own counties."

"Recent (court) rulings have raised concern with the unequal enforcement of Alabama's criminal laws, including gambling laws," Gov. Bentley said in a news release. "By signing Executive Order 13, we are clarifying exactly where the responsibility for enforcing laws lies and that is with the local elected officials."

The debate on the issue stretches back at least seven years when then-Gov. Bob Riley established the Governor's Task Force on Illegal Gambling, bypassing then-Attorney General Troy King.

Upon election, Gov. Bentley's first executive order was to disband the task force and return the enforcement authority back to the attorney general. In his executive order, Gov. Bentley changed course, having "suggested" in January 2015 that Gen. Strange hand off the gaming enforcement to local officials. He made that a formal policy Thursday.



**GOV. ROBERT BENTLEY (L) SAYS THAT 'UNEQUAL ENFORCEMENT' OF GAMING LAWS HELPED LEAD HIM TO HAND OVER ENFORCEMENT DUTIES TO SHERIFFS, DISTRICT ATTORNEYS, BYPASSING ATTORNEY GENERAL LUTHER STRANGE (R)**

In the past decade, there have been concurrent legal and political fights over the casinos in Eutaw (Greene County) and Shorter (Macon County). The Riley Task Force made moves on each of the locations, but Gen. Strange focused efforts on Shorter. Neither casino is currently open.

In a recent court case, Montgomery County Circuit Court Judge William Shashy rebuked an assistant attorney general in open court regarding the legal opinion of the state, saying it was "cherry-picking" with enforcement. Judge Shashy ruled that VictoryLand was operating legally and that the state must return the machines it confiscated to the casino. The 45-day time limit to return the machines expires Monday. Judge Shashy's ruling has been appealed to the Alabama Supreme Court.

Assuredly, VictoryLand owner/operator Milton McGregor will find a much more understanding enforcement climate from the Macon County sheriff and district attorney. In fact, there had been reports

that McGregor has ordered a clean-up and staff-up in hopes of reopening. The stroke of the governor's pen makes it all the more likely.

This will do nothing to tamp down the talk that the governor intends to expand Medicaid as allowed by the Affordable Care Act. Under the federal health care law, *aka* Obamacare, states can expand Medicaid services to those up to 138 percent of the federal poverty line. The federal government will pay roughly a 9 to 1 match on state dollars. Proponents say, in addition to providing more access to health care to the state's working poor, the influx of federal dollars will have a multi-billion dollar economic impact. Opponents say the program is another government entitlement program that the state can't afford on its part and has too many strings attached.

Medicaid expansion aside, the first to speak out in favor of the governor's action was Senate Pro Tem Del Marsh

**(Please see GAMING, Page 2)**

## Gaming

### (From Page 1)

Marsh (R-Anniston), who introduced a constitutional amendment during the regular and first special sessions that would allow the people to vote to reopen the casinos and institute a state lottery.

“Governor Bentley has taken the bull by the horns on this issue and has my full support,” Sen. Marsh said, “My priority, like the Governor, is to make sure we have a job for every Alabamian. I look forward to the next regular session when the Senate and House will work together with the Governor to further this jobs agenda.”

The Alabama Supreme Court has traditionally sided with Gov. Riley and Gen. Strange on gaming issues, but it's not sure how the executive order changes the dynamic.

For his part, Gen. Strange says nothing has changed.

“Gov. Bentley's executive order is in line with my January 7, 2015, memo to Alabama district attorneys and local law enforcement encourage them to investigate and enforce our anti-gambling laws,” Gen. Strange said. “I have been assured by the governor's legal advisor that this executive order has no impact on the state's pending litigation, which I expect will further clarify the law to the

benefit of state and local law enforcement.”

Even so, now that Gov. Bentley has displaced Gen. Strange, the question now stands whether the attorney general can continue to act on the case. Or does the district attorney who serves Macon County – Paul Jones – have the authority to withdraw the appeal and seek an outright dismissal? Jones' legal position has been that VictoryLand has been operating legally.

Either way, it virtually assures us that gaming issues will be front and center in the 2016 regular session, and that talk of Medicaid expansion won't be going away any time soon.

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**Note:** The Windom Galliher Montgomery Update publishes weekly during legislative sessions and otherwise as events warrant.