

1 HR856  
2 121406-1  
3 By Representative Ball  
4 RFD: Rules  
5 First Read: 08-APR-10

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8 REQUESTING AN OPINION OF THE JUSTICES REGARDING  
9 SB380 OF THE 2010 REGULAR SESSION.  
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11 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF  
12 THE LEGISLATURE OF ALABAMA, That we respectfully request the  
13 Honorable Chief Justice and Associate Justices of the Supreme  
14 Court or a majority of them, to give this body their written  
15 opinions on the following important constitutional questions  
16 which have arisen under Sections 82, 284, and 285 of the  
17 Constitution of Alabama of 1901, concerning the pending bill,  
18 Senate Bill 380, a copy of which is attached to this  
19 resolution and made a part hereof by reference.

20 In general, Senate Bill 380 is a proposed  
21 constitutional amendment (hereinafter "Amendment") that would  
22 expressly legalize certain electronic gambling devices as part  
23 of a "game of chance" the bill refers to as "bingo." The game  
24 described in the bill is substantially different than that  
25 which this Court recently recognized as "the game commonly or  
26 traditionally known as bingo" currently authorized in certain  
27 counties and municipalities by various local constitutional

1 amendments. See Barber v. Cornerstone Community Outreach, \_\_\_\_  
2 So.3d\_\_\_\_, 2009 WL 3805712 (Ala. 2009); see also Surles v. City  
3 of Ashville, \_\_\_\_ So.3d\_\_\_\_, 2010 WL 336689 (Ala. 2010).

4 Specifically, the Amendment would authorize the conduct of  
5 "bingo" using "bingo technologic aids," which "includ[e]  
6 without limitation, machines or devices that, once initiated  
7 by an action of a player, perform all the operations of the  
8 game using digital computers or micro-processors with or  
9 without further player interaction." For purposes of clarity,  
10 we hereinafter refer to the devices that would be authorized  
11 by the Amendment as "electronic bingo machines" and the game  
12 described in Cornerstone and Surles as "traditional bingo."

13 The Amendment would also establish a State Gaming  
14 Commission and mandate that the Commission "shall license  
15 operators to conduct bingo using bingo technologic aid at  
16 various locations in the state in accordance with one or more  
17 general laws supplemental to and subsequent to this amendment  
18 to further its purposes and provide for its implementation."  
19 (Emphasis added)

20 Article IV, Section 82

21 Section 82 of the Constitution of Alabama of 1901,  
22 provides: "A member of the legislature who has a personal or  
23 private interest in any measure or bill proposed or pending  
24 before the legislature, shall disclose the fact to the house  
25 of which he is a member, and shall not vote thereon."

26 This Court has previously provided helpful guidance  
27 to the House of Representatives on the proper interpretation

1 and application of Section 82. In Opinion of the Justices No.  
2 368, 716 So.2d 1149, 1151-52 (Ala. 1998), the court gleaned  
3 language from the Alabama Code of Ethics for Public Officials,  
4 Sections 36-25-1 to 36-25-30, Code of Alabama 1975, in opining  
5 that "[t]he prohibitions of §82 apply ... to the actions of  
6 legislators who have a 'substantial financial interest,'  
7 namely, 'ownership' or 'control' of an 'interest greater than  
8 five percent of the value of any ... business entity ... which  
9 is uniquely affected by proposed or pending legislation.'  
10 Section 36-25-5(f) (Emphasis added)." Justice See, who signed  
11 the main opinion, also wrote separately, joined by Justice  
12 Houston, to express his "understanding that the main opinion  
13 does not state that Ala. Code 1975, §36-25-5(f), which focuses  
14 solely on the percentage of an affected business owned by a  
15 legislator, establishes an exhaustive definition of 'personal  
16 or private interest' for purposes of §82 of the Constitution  
17 of Alabama of 1901." Id. at 1155 (Emphasis added). Justice See  
18 explained:

19 "The clear purpose of §82 is to prevent a legislator  
20 from benefiting his personal or private interest by his vote.  
21 A legislator has a personal or private interest in a bill that  
22 particularly affects a business entity in which the legislator  
23 has a substantial interest. ... I agree with the main opinion  
24 that the Alabama Legislature's enactment of §36-25-5(f)  
25 provides a reasonable construction of one means by which a  
26 legislator may have a personal or private interest-ownership  
27 of a substantial portion of a business. ... It is not my

1 understanding that the main opinion confines the reach of §82  
2 of the Constitution to only one means of having a substantial  
3 personal or private interest."

4 Id. at 1155-56 (Emphasis added).

5 The Court also opined that "the language in  
6 §82-'vote thereon'- applies not 'only to a final vote on the  
7 bill,' but, also, to 'other ancillary legislative activity'  
8 material to the bill's passage."

9 Article XVIII, Section 284

10 Section 284 of the Constitution of Alabama of 1901,  
11 provides, in pertinent part:

12 "Amendments may be proposed to this Constitution by  
13 the legislature in the manner following: The proposed  
14 amendments shall be read in the house in which they originate  
15 on three several days, and, if upon the third reading  
16 three-fifths of all the members elected to that house shall  
17 vote in favor thereof, the proposed amendments shall be sent  
18 to the other house, in which they shall likewise be read on  
19 three several days, and if upon the third reading three-fifths  
20 of all the members elected to that house shall vote in favor  
21 of the proposed amendments, the legislature shall order an  
22 election by the qualified electors of the state upon such  
23 proposed amendments ...," (Emphasis added)

24 Senate Bill 380 passed the Senate with 21 votes,  
25 exactly three-fifths of all the members elected to the house  
26 in which the bill originated.

27 Article XVIII, Section 285

1           Section 285 of the Constitution of Alabama of 1901,  
2 provides, in pertinent part: "Upon the ballots used at all  
3 elections provided ... [on constitutional amendments] ... the  
4 substance or subject matter of each proposed amendment shall  
5 be so printed that the nature thereof shall be clearly  
6 indicated." (Emphasis added)

7           As explained above, Senate Bill 380 proposes a  
8 constitutional amendment that would authorize a lottery or  
9 game of chance that is substantially different from the game  
10 this Court described in Cornerstone as "the game commonly or  
11 traditionally known as bingo."

12           However, under Senate Bill 380, the ballot language  
13 for this proposed amendment would read: "Proposing an  
14 amendment to the Constitution of Alabama of 1901, to authorize  
15 the conduct of bingo and operation of bingo games in the  
16 state, to authorize the levy of taxes and license fees on  
17 bingo operations, and to create a State Gaming Commission to  
18 regulate bingo in Alabama." (Emphasis added)

19           In view of Sections 82, 284, and 285 of the  
20 Constitution, important constitutional questions have arisen  
21 concerning legislative action on Senate Bill 380. Accordingly,  
22 pursuant to Section 12-2-10 of the Code of Alabama 1975, and  
23 in deference to this legislative body, so that we may properly  
24 and constitutionally dispatch the duties of our office,  
25 written opinions are respectively requested concerning the  
26 following important constitutional questions:

1           1. Does Section 82 prohibit a legislator who is an  
2 attorney from voting on Senate Bill 380 if the legislator, or  
3 the law firm of which he or she is a partner, stands to gain  
4 financially from the Amendment because of the legislator's (or  
5 the firm's) representation of a client in matters relating to  
6 the client's interest or prospective interest in a current or  
7 future electronic bingo operation or revenue therefrom?

8           2. More specifically, does a legislator violate  
9 Section 82 if he or she votes in favor of SB380 after publicly  
10 disclosing the following in a television interview?

11           "I think there needs to be a simple constitutional  
12 amendment that asks do you want it [electronic bingo] or do  
13 you not want it, just simple. All these complicated bills, all  
14 of these places designated and some not designated, there's a  
15 lot of unfairness in that. ... My firm represents several  
16 charities that would like to do that [electronic bingo]. We  
17 don't represent the facility, we don't represent the owner, we  
18 don't represent the operator, but we represent some charities  
19 - that they would like to operate their own facility."

20           3. If SB380 would not have passed the Senate but for  
21 the vote of a senator who was disqualified from voting under  
22 Section 82, due to the circumstances described in Question 1  
23 or Question 2 above, would consideration of SB380 by the House  
24 of Representatives violate Section 284 of the Constitution of  
25 Alabama of 1901, which requires that a proposed constitutional  
26 amendment first receive the votes of three-fifths of all the

1 members elected to the house in which it originates, before  
2 being sent to the other house?

3 4. Does the ballot language provided for by Senate  
4 Bill 380 violate Section 285 of the Constitution because it  
5 does not "clearly indicate" that the amendment would authorize  
6 a lottery or game of chance by the name of "bingo" that is  
7 substantially different than "the game commonly or  
8 traditionally known as bingo" as identified by this Court?

9 5. Does the ballot language provided for by Senate  
10 Bill 380 violate Section 285 of the Constitution because it  
11 does not "clearly indicate" that the amendment would authorize  
12 certain electronic gambling machines?

13 RESOLVED FURTHER, That the Clerk of the House of  
14 Representatives is directed to send sufficient true copies of  
15 the pending bill, Senate Bill 380, to the Clerk of the Supreme  
16 Court of Alabama, and to transmit this request to the Supreme  
17 Court forthwith upon adoption of this resolution.