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# BASEBALL LOTTERIES IN GEORGIA: BRAVES ARRIVE IN '66, SO DID A WAVE OF ANTI-GAMBLING BILLS\*

Preston Dunaway

Americans like betting on the rough stuff—heavyweight fights, horses, football, and the list goes on. Baseball is a tough sport too, but Americans hate to see you bet on it, just ask Pete Rose.<sup>1</sup> It is no surprise, then, that in 1966, the same year major league baseball arrived in the Peach State, lawmakers set off on one of the biggest anti-gambling crackdowns in the history of Georgia.<sup>2</sup>

About twenty years before the Braves arrived in Georgia, then-Governor Herman Talmadge signed a law that made betting on sports illegal in 1947.<sup>3</sup> The anti-sports betting bill was the legislature's response to the legal headache created when a sports bookie accepted bets on local baseball games in Atlanta, leaving the Fulton County District Attorney with no other option but to indict him under the law that prohibited lotteries and “other scheme[s] or device[s] for the hazarding of any money.”<sup>4</sup> The state had to prosecute the bookie under the anti-lottery statute because, back then, the Georgia Code lacked an

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1. *Pete Rose Gets Booted From Baseball*, HISTORY, <https://www.history.com/this-day-in-history/pete-rose-gets-booted-from-baseball> [<https://perma.cc/4UHS-TS93>] (Aug. 20, 2019).

2. The Braves moved to Atlanta in 1966 following the expiration of a contract that kept them in Milwaukee through the 1965 baseball season. ‘*What injunction?*’ *Wonders Atlanta*, AUGUSTA CHRON., Jan. 17, 1965, at 3. The 1966 Georgia General Assembly session was dominated by anti-gambling bills. *See, e.g., Gambling Bill Readied*, AUGUSTA CHRON., Jan. 13, 1966, at 2 (“Senate floor leader . . . moved ahead with plans to bring one of the administration’s anti-gambling bills to a vote in the Senate.”); *Numbers Game Bill*, AUGUSTA CHRON., Jan. 13, 1966, at 2; Bob Cohn, *Georgia Senate Deals Blow to Gamblers*, 50-3, AUGUSTA CHRON., Jan. 26, 1966, at 1.

3. *Bill Outlawing Gambling Passed by Legislature*, AUGUSTA CHRON., Mar. 14, 1947, at 10.

4. *Grant v. State*, 44 S.E.2d 513, 514–15 (Ga. Ct. App. 1947) (“[The statute] reads as follows: ‘Any person who, by himself or another, shall keep, maintain, employ, or carry on any lottery or other scheme or device for the hazarding of any money or valuable thing, shall be guilty of a misdemeanor.’ A scheme or device for the hazarding of money as charged in this accusation has three essentials: First, consideration; second, prize; third chance.” (citing *Williams v. State*, 16 S.E.2d 769, 770 (Ga. Ct. App. 1941))). Representative Muggsy Smith, a former football player for Oglethorpe University, sponsored the anti-sports betting bill. *Bill Outlawing Gambling Passed by Legislature*, *supra* note 3. A bookie offers fixed odds payouts if a given event, like hitting a homerun, occurs. *Bookmaker*, BLACK’S LAW DICTIONARY (11th ed. 2019).

explicit ban on sports betting. That particular baseball lottery case was heard by the Georgia Court of Appeals in *Grant v. State*.<sup>5</sup>

In *Grant*, the defendant offered fixed odds to spectators at baseball games held in Atlanta.<sup>6</sup> For example, he would shout “four to one to the outfield” as a batter stepped up to the plate.<sup>7</sup> In turn, a spectator could hand the defendant one dollar, and if the batter hit a fly-ball to the outfield, the defendant would hand the spectator five dollars.<sup>8</sup> If the batter did not hit a fly-ball to the outfield, the defendant would keep the dollar.<sup>9</sup> The Georgia Court of Appeals held that this operation was an illegal game of chance under the lottery statute, reasoning that even though the game of baseball is a game of skill, “wager[ing] upon the outcome of the results . . . is . . . a game of chance.”<sup>10</sup>

Fast forward twenty years. The top priority for then-Governor Carl Sanders at the start of the 1966 regular session was to pass a wave of legislation aimed at cracking down on all types of wagering.<sup>11</sup> One bill was so broad that a senator noted that “any person possessing a paper with numbers on it could be accused.”<sup>12</sup> That bill certainly could have put fear in the eyes of any person that held a receipt for a sports betting slip.<sup>13</sup>

Governor Sanders’ “anti-gambling legislative package” may have been simply an effort to further protect the new, promising industry of professional sports in Georgia from the threat of “organized gambling and anything that tends to corrupt and destroy their communities and this state.”<sup>14</sup> After all, the Braves, Falcons, and Hawks all arrived to Georgia in the late sixties.<sup>15</sup> Although the record does not state

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5. 44 S.E.2d at 515.

6. *Id.*

7. *Id.* at 514.

8. *Id.*

9. *Id.*

10. *Id.* at 515.

11. Cohn, *supra* note 2.

12. *Numbers Game Bill*, *supra* note 2.

13. A bet slip is a receipt that a bettor receives when he places a bet that allows him to cash out if he wins. See *How Does the Sports Bet Slip Work?*, BOVADA, <https://www.bovada.lv/help/sports-faq/sports-bet-slip> [https://perma.cc/G2PW-LSX5].

14. Cohn, *supra* note 2 (quoting Georgia Governor Carl Sanders).

15. ‘*What injunction?*’ *Wonders Atlanta*, *supra* note 2; ATLANTA FALCONS, 2017 ATLANTA FALCONS TEAM HISTORY 7 (2017), <http://media.atlantafalcons.com/assets/History.pdf>; Gainer Bryan, *Cousins*

explicitly that Governor Sanders' anti-gambling legislative package was aimed at protecting professional sports, he likely had some skin in the game to protect the new, promising industry given he became part-owner of the Atlanta Hawks when they arrived in Georgia in 1968.<sup>16</sup>

With the arrival of the three professional sports teams in Atlanta, a sea of anti-gambling legislation followed. Times have certainly changed since then—now the clubs want Georgia to regulate fixed-odds sports betting under the Georgia Lottery Corporation.<sup>17</sup>

For those that support the legalization and regulation of fixed-odds sports betting, the question looms: must the Georgia Constitution be amended? Currently, the Georgia Constitution prohibits games of chance: (1) pari-mutuel betting; (2) lotteries (except those allowed by the legislature); and (3) casino gambling.<sup>18</sup> In the previous blog, *Did Bobby Jones & Augusta National Block the Pari-Mutuel Betting Bill of 1935?*, we established that fixed-odds sports betting is a game of chance but is not pari-mutuel betting.<sup>19</sup> Thus, the legal question is whether fixed-odds sports betting constitutes a lottery or casino gambling. If fixed-odds sports betting is considered a lottery, sports betting advocates need only pass a statute to legalize it.<sup>20</sup> However, if it is considered casino gambling, a constitutional amendment is required.<sup>21</sup>

To answer this question, we need to understand the original meaning of “lottery” and “casino gambling.” In other words, did common folk understand sports betting to be a lottery or a form of casino gambling when the terms first appeared in the Georgia Constitution?

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*Favors Public Build Atlanta Coliseum*, MARIETTA DAILY J., May 20, 1969, at 1.

16. Bryan, *supra* note 15 (“[F]ormer Governor Carl Sanders own[s] the Atlanta Hawks basketball team, and that, of course, is his primary reason for interest in a sports arena.”).

17. Maya T. Prabhu, *Atlanta Pro Teams to Georgia Lawmakers: Allow Sports Bets*, ATLANTA J.-CONST. (Nov. 11, 2019), <https://www.ajc.com/news/state—regional-govt—politics/exclusive-atlanta-pro-teams-georgia-lawmakers-allow-sports-bets/ZHCPXhhLejtfuvcyPSEp5H/> [https://perma.cc/JKZ7-JF2H].

18. GA. CONST. art. I, § II, para. VIII(a).

19. Preston Dunaway, *Did Bobby Jones & Augusta National Block the Pari-Mutuel Gambling Bill of 1935?*, GA. ST. U. L. REV.: BLOG (Apr. 9, 2021), <https://gsulawreview.org/post/924-did-bobby-jones-augusta-national-block-the-pari-mutuel-gambling-bill-of-1935> [https://perma.cc/RNU6-LN2Y].

20. GA. CONST. art I, § II, para. VIII(c).

21. GA. CONST. art I, § II, para. VIII(a).

Let's start with the original meaning of lottery because the Georgia Constitution has banned "all lotteries[] and the sale of lottery tickets" since 1877.<sup>22</sup> The term casino gambling, on the other hand, did not appear in the Georgia Constitution until 1992.<sup>23</sup>

Long before the Braves left Milwaukee for Atlanta, the public showed it strongly opposed betting on baseball, and some communities took a united stance against "baseball lotteries" in the thirties.<sup>24</sup> Even by 1972, the public sometimes called betting on baseball a baseball lottery.<sup>25</sup>

Often, a baseball lottery referred to an operation that pooled bettors' money together and paid out the winner from the pool, resembling a pari-mutuel betting scheme.<sup>26</sup> Other times, a baseball lottery referred to fixed-odds wagering, like the example in *Grant*.<sup>27</sup> Thus, sports betting advocates have some ground to stand on to argue that fixed-odds sports betting could be considered a lottery. However, that argument may fall apart when a Georgia court notes the fact that, although the defendant in *Grant* was prosecuted under an anti-lottery statute, he was *not* prosecuted for operating a lottery; rather, he was prosecuted for operating a scheme similar to a lottery.<sup>28</sup>

The next, and final, article in this series, *Cigarette Dispensing Pinball Machines and the Georgia Lottery*, will provide more clarity on the meaning of casino gambling and provide a path forward for regulating sports betting in Georgia.

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22. GA. CONST. of 1877, art. I, § II, para. IV.

23. GA. CONST. art. I, § II, para. VIII(a) (amended 1992).

24. *E.g., Macon to Stamp Out Gaming Vice*, AUGUSTA CHRON., July 4, 1934, at 1 ("Action against baseball lotteries, the bond sales 'racket' and other forms of gambling was demanded in a petition presented to city council recently by a large group of Macon citizens.").

25. *Fulton Mixup Frees Cross*, MARIETTA DAILY J., Mar. 16, 1972, at 2 ("[Defendant] and a companion were arrested in Smyrna for operating a baseball lottery.").

26. *See Eight Arrested on Prohibition, Lottery Charges*, AUGUSTA CHRON., May 20, 1934, at 8 ("On the [bet] slips were two major league baseball teams and the holder of the slip whose two teams made the greatest total runs won.").

27. *Columbus Cracks Down on Baseball Lotteries*, AUGUSTA CHRON., May 10, 1949, at 7 ("City police followed through on a warning to crack down on baseball lotteries here today, arresting three in raids on downtown establishments. Arrested for the sale of baseball [parlay] tickets were [defendants].").

28. *Grant v. State*, 44 S.E.2d 513, 515 (Ga. Ct. App. 1947).