

***DOJ Opinion Removes Major Obstacle to Legalizing Online Gambling –
State by State Legalization Likely in Future***

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The U.S. Department of Justice (“DOJ”) recently issued an opinion that removes one of the major obstacles to the legalization of online gambling. The opinion held that the provision of the federal Wire Act relating to online gambling is now limited to sports wagering.

For years, the DOJ’s Criminal Division has taken the contrary position that the Wire Act went beyond sports wagering and could be applied to other forms of interstate gambling, including poker. The Criminal Division also interprets the term “interstate” broadly, to include any wire communication that crosses state lines at any point in the process of delivery – even if the wire communication ultimately originates and terminates within the same state.

In the past, this tough stance led to guilty pleas by several defendants involved in online gambling sites. One high profile example is Anurag Dikshit, who made the Forbes’ 2006 billionaires list at age 34. Dikshit built his fortune through the online poker site, PartyGaming. To the dismay of some in the online gambling industry, in 2008, Dikshit pleaded guilty to one count of violating the Wire Act and agreed to pay a \$300 million fine.

The DOJ’s new opinion was in response to proposals from New York and Illinois to sell lottery tickets to in-state residents using the Internet. The DOJ’s Criminal Division requested a legal opinion on the matter from the DOJ’s Office of Legal Counsel. The opinion analyzed the following section in the Wire Act:

Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

18 U.S.C. §1084(a) (emphasis added). The question presented was whether the phrase “on any sporting event or contest” modified both clauses relating to “bets or wagers” or only the first clause that the phrase immediately followed. After examining sentence construction and the relevant legislative history, the DOJ determined the Wire Act’s prohibitions “relate solely to sports-related gambling activities in interstate and foreign commerce.” The DOJ explained that sports-related gambling included off-track betting on horse races, as well as professional and amateur sporting events such as baseball, basketball, football, and boxing.

The remaining federal laws that could apply to online wagering, such as the Illegal Gambling Business Act, the Travel Act, and the Unlawful Internet Gambling Enforcement Act, each

require state law violations as a predicate offense. As a result, the new DOJ opinion means that your state can authorize intrastate online gambling – except for sports betting.

At least two states, Nevada and the District of Columbia, have already done so. There may be considerable incentives for other states to join them as state revenues continue to slow and numerous states face budget short-falls. However, there is still need for caution in this area. Some states, such as Louisiana, already have specific laws prohibiting online gambling.

It is unclear whether the DOJ's new opinion will prompt action from Congress. In the current political climate, it seems rather unlikely. For now, all indications are that this opinion will pave the way to legalized online gambling on a state by state basis.