



# OLR RESEARCH REPORT

January 18, 2012

2012-R-0036

## **DEPARTMENT OF JUSTICE RULING ON INTERNET LOTTERY TICKET SALES**

By: Veronica Rose, Chief Analyst

You asked for a summary of the U.S. Justice Department's ruling on whether use of the Internet and out-of-state processors to sell lottery tickets violates the federal Wire Act.

### **SUMMARY**

In a 13-page [opinion](#), dated September 20, 2011, the U.S. Justice Department (DOJ) concluded that the federal Wire Act's anti-gambling provisions do not bar states from selling lottery tickets over the Internet because the act's prohibitions apply only to Internet transmissions that relate to "sporting events or contests." The DOJ thus reversed its long-standing interpretation of the act that all forms of Internet gambling are illegal, contending that this new interpretation is more in line with congressional intent expressed in hearings and floor debates.

The new opinion came in response to requests by New York and Illinois for a ruling on whether the Wire Act barred them from selling lottery tickets over the Internet to adults within their own borders. Both states argued that (1) the act does not apply to such transactions because it applies only to sports betting and (2) even if it applies to lotteries, it does not cover transactions that originate and end in the same state. They contend that a contrary interpretation of the act would

directly conflict with the federal Unlawful Gambling Enforcement Act (UIGEA), which appears to exempt out-of-state routing of electronic data associated with lawful in-state lottery transactions from its definition of interstate travel.

The DOJ's Office of Legal Counsel agreed with the states and reversed the agency's position, concluding that the act's prohibitions apply solely to sports-related gambling activities in interstate and foreign commerce. According to the opinion:

. . . interstate transmissions of wire communications that do not relate to a sporting event or contest. . . fall outside of the reach of the Wire Act. Because the proposed New York and Illinois lottery proposals do not involve wagering on sporting events or contests, the Wire act does not, in our view prohibit them. Given this conclusion we have not found it necessary to address the Wire Act's interaction with UIGEA, or to analyze UIGEA in any other respect (Mem. Op. pp. 1 & 2, internal citations and quotations omitted).

The decision dealt specifically with lotteries. But some commentators argue that it opens the door for states to allow other forms of Internet gambling that do not involve sports, including poker.

Some commentators have noted that an act of Congress may be needed to insulate the legal counsel's opinion against (1) future changes in the department's interpretation of the act and (2) conflicting court rulings.

## **BACKGROUND AND FACTS**

In 2009, New York State and Illinois sought the DOJ's Criminal Division's views on the legality of their plans to use the Internet and out-of-state transaction processors to sell lottery tickets to adults in their respective states.

New York was constructing a computerized system that would control lottery tickets sales to in-state customers. Most of the tickets would be printed at retail locations and delivered to customers over the counter, but some would be "virtual tickets electronically delivered over the Internet to computers or mobile phones located inside the State of New York" (Mem. Op. p. 2). All transaction data in the system would be electronically routed from the customer's New York location to data centers in New York and Texas through networks controlled by entities in Maryland and Nevada. Illinois planned to implement a pilot program to

sell lottery tickets over the Internet, restricting sales to “transactions initiated and received or otherwise made exclusively within Illinois.” Illinois characterized its program as “an intrastate lottery, though packets of data may intermediately be routed across state lines over the Internet” (Mem. Op. p. 2). Both states contended that their proposals were legal because (1) the Wire Act does not apply to non-sports-related wagering and (2) under UIGEA, the proposed lotteries would not involve interstate commerce.

DOJ’s Criminal Division disagreed, citing its longstanding interpretation of the Wire Act as banning all types of Internet gambling (with minor exceptions, not at issue here). It rejected the state’s secondary argument that computer transactions originating and ending in the same state are outside the Wire Act’s reach because they do not travel in interstate commerce. In its view, the law’s interstate commerce requirement is satisfied if the wire communication crossed state lines at any point in the transmission process. These two interpretations of the Wire Act, according to DOJ, lead to the conclusion that the act prohibits states from using the Internet for bets or wagers, even when the bets or wagers (1) do not involve sports or (2) originate and terminate in the same state (Mem. Op. p. 2). The agency acknowledged, however, that the latter interpretation of the Wire Act could conflict with UIGEA provisions that permit out-of-state routing of data associated with in-state lottery transactions, in spite of its general prohibition against transactions involving interstate commerce.

In light of this tension, the division asked the DOJ’s Office of Legal Counsel for an opinion on whether the Wire Act or UIGEA prohibits a state-run lottery from (1) using the Internet to sell tickets to in-state adults where the Internet transmission crosses state lines or (2) transmitting lottery data associated with in-state ticket sales to an out-of-state transaction processor.

## **LEGAL COUNSEL’S REVERSAL OF AGENCY POSITION**

The disputed portion of the Wire Act states that:

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 USC § 1084(a)).

After a legal analysis of the act's text, the office concluded that (1) Congress intended to limit the Wire Act's application to wire transmissions involving sporting events or contests, (2) the ordinary meaning of the phrase "sporting event or contest" as used in the Wire Act does not encompass lotteries, and (3) the lotteries proposed by New York and Illinois do not involve sporting events or contests within the meaning of the act.

According to the office, the act's legislative history similarly suggests that Congress' motive in enacting the Wire Act was to combat sports-related gambling activities only.

The Wire Act's legislative history reveals that Congress' overriding goal. . .was to stop the use of wire communications for sports gambling in particular. Congress was principally focused on the off-track betting on horse races, but also expressed concern about other sports-related events or contests, such as baseball, basketball, football, and boxing (Mem. Op. p. 8).

The office said its conclusion found additional support in the fact that, on the same day Congress enacted the Wire Act, it passed another statute in which it distinguished sports betting from lotteries and other forms of gambling (Mem. Op. pp. 10 & 11). In its view, Congress' decision to expressly regulate both lottery-style games and sports-related gambling in that statute, but not in the Wire Act, suggests that Congress did not intend the Wire Act to apply to non-sports gambling (Mem. Op. p. 11).

## **ATTACHMENT**

*Whether Proposals by Illinois and New York to Use the Internet and Out-Of-State Transaction Processors To Sell Lottery Tickets to In-State Adults Violate the Wire Act*; Memorandum Opinion for the Assistant Attorney General, U.S. Department of Justice Criminal Division  
<http://www.justice.gov/olc/2011/state-lotteries-opinion.pdf>

VR:ro