

Legal Opinion on the 2019 DOJ Wire Act Opinion, its impact on internet gaming at New Jersey casinos, jobs, and the Treasury, as well as a concern with regard to internet sports betting.

Since the New Jersey Legislature in 2013 authorized internet gaming at Atlantic City casinos and in 2018 authorized sports betting at Atlantic City casinos and Monmouth Racetrack and The Meadowlands Racetrack, after a more than eight year successful legal challenge against the DOJ and professional and amateur sports leagues, there has been a revitalization of Atlantic City casinos and New Jersey racetracks that had been spiraling downward with the closing of five casinos, the loss of 15,000 jobs, and the likely prospect of Monmouth Racetrack and The Meadowlands Racetrack closing within a few years adding additional loss of thousands of jobs, the loss of open space to development of the more than 170,000 acres of horse farms and a loss of revenue to the State Treasury.

As a result of the Legislature passing internet gaming and sports betting legislation, our casino industry has received more than \$1billion of new revenue, two casinos have reopened and thousands of jobs have returned. Our horse racing industry has gotten off life support and is on the road to recovery. The Treasury of the State of New Jersey has gained hundreds of millions of new revenue from internet gaming and sports betting which will continue to grow and support the state's budget.

The recent DOJ Opinion that the 1961 Wire Act applies to internet wagering in addition to any sporting events or contests and that the 2006 UIGEA Act does not modify the scope of the 1961 Wire Act casts an ominous cloud over our internet gaming operations and potentially over our internet sports betting operations.

It was my opinion in 2009 when I filed a lawsuit in U. S. District Court that the federal ban on sports betting (PASPA) was unconstitutional. In 2018 the U.S. Supreme Court held that PASPA was unconstitutional.

It was my opinion in 2011 when I introduced legislation to authorize internet gaming that the 2011 DOJ Opinion that intrastate internet gaming was not prohibited by the Wire Act was correct.

Both opinions, after enactment of enabling legislation, resulted in \$billions of new revenue to our casinos and racetracks and the State Treasury and the addition of thousands of jobs.

Now, it is my opinion that the 2019 DOJ Opinion which reversed its 2011 Opinion and stated that the Wire Act also applies to internet gaming and does not modify the Unlawful Internet Gaming Enforcement Act (UIGEA) is incorrect in that it is contrary to established rules of interpretation of legislation, that is, when language in legislation is not clear, legislative intent is used to make it clear and the legislative intent of the Wire Act was specifically regarding sporting events or contests.

Indeed, the 2019 DOJ Opinion itself states, in referring to the words of the 2011 Opinion, “Congress’s overriding goal in the Act was to stop the use of wire communications for sports gambling in particular” “That may well have been true.”

The DOJ 2019 opinion which ignores the legislative intent of the Wire Act relies on an interpretation of sentence structure and use of punctuation marks, e.g. commas, in a tortured 23 page justification of its threshold argument that the statutory language is clear.

Quite frankly, the following paragraph in the 2019 Opinion is illogical:

“Based upon the plain language of the statute, however, we reach a different result. While the Wire Act is not a model of artful drafting, we conclude that the words of the statute are sufficiently clear and that all but one of its prohibitions sweep beyond sports gambling. We further conclude that the 2006 enactment of UIGEA did not alter the scope of the Wire Act.”

1. How could the 2019 Opinion be “Based upon the plain language of the statute” when DOJ came to the opposite opinion in 2011. By reversing its own opinion, the DOJ admits the language is not plain and requires an analysis of the legislative history of the Wire Act which would demonstrate that the Wire Act targeted only sporting events or contests to assist prosecution of organized crime run operations taking bets on sports events and horse racing.
2. The 2019 Opinion itself also admits the language is not plain by stating, “While the Wire Act is not a model of artful drafting” and “The Wire Act’s interpretive difficulties arise from” and “but the structure of section 1084(a)’s first clause is not straightforward.”

The DOJ 2019 opinion threatens the substantial benefits to New Jersey from internet gaming and must be challenged by the Legislature by filing a Declaratory Judgment Action in the U.S District Court to protect and preserve the significant benefits accruing to the State of New Jersey and our residents from internet gaming.

The Legislature has standing to file a Declaratory Judgment because the DOJ 2019 opinion will nullify its internet gaming legislation. The Complaint would have to be accompanied by affidavits stating the harm experienced as a result of the opinion. The lawsuit would seek to declare the DOJ 2019 interpretation of the Wire Act inconsistent with the Wire Act and therefore invalid.

Recommendation:

1. Senate President Sweeney send a letter to Deputy Attorney General Rod Rosenstein asking that he immediately reverse the 2019 Opinion based on the unclear language of the Wire Act which requires an analysis of its legislative intent which is clear, that the Wire Act only applies to sporting events or contests and expressing its potential

substantial negative impact on Atlantic City's casinos, the livelihood of thousands of workers and revenue to the State Treasury.

2. Request that DGE Director David Rebeck prepare for the filing of a Declaratory Judgment Action in U. S. District Court by gathering data from New Jersey's internet operators regarding any negative impact resulting from the DOJ 2019 Opinion.

I further recommend asking DOJ for an Opinion that New Jersey's internet sports betting operations fall within the safe haven provisions of UIGEA, since its 2019 Opinion threatens intrastate internet sports betting as well.