New Jersey Senate

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February 13, 2019

Deputy Attorney General Rod Rosenstein
Robert F. Kennedy Department of Justice Building
950 Pennsylvania Avenue and Constitution Avenue, NW
Washington, D.C.20530

Re: Office of Legal Counsel (OLC) 2019 Wire Act Opinion

Dear Deputy Attorney General Rosenstein:

On behalf of the New Jersey State Senate, I request that you rescind the OLC 2019 Wire Act Opinion.

On February 26, 2013, legislation authorizing Internet wagering at Atlantic City casinos was signed into law. This legislation has generated more than 1 billion dollars for our then struggling casino industry and hundreds of millions of revenue, directly and indirectly, for our Treasury, brought back thousands of jobs, and saved thousands more.

The goal of our Internet waging law, as stated by its Senate sponsor Raymond Lesniak, was to revitalize Atlantic City's struggling casino industry which had lost 15,000 jobs and to make New Jersey a national and international hub for Internet gaming. As stated in its Legislative Statement, "all equipment used by a licensee to conduct Internet wagering, including but not limited to computers, servers, monitoring rooms, and hubs, must be located...within the territorial limits of Atlantic City."

The OLC 2019 Wire Act Opinion flies in the face of the 2011 OLC Opinion which was relied upon by the Legislature and Governor and nullifies the intent of our legislation to make New Jersey a national and international hub for Internet gaming.

The OLC 2019 Wire Act Opinion also calls into question our Internet gaming Compacts with Nevada and Delaware and casts a dark cloud over our ability to establish additional Compacts to increase revenue to our casinos and Treasury.

While an OLC Opinion does not carry the force of law, the OLC 2019 Wire Act Opinion has already caused harm to the State of New Jersey. The Pennsylvania Gaming Control Board in a

January 18, 2019 letter to "All Casino General Managers and Counsel," stated "we no longer believe it is consistent with law...to locate the interactive gaming devices and associated equipment in any jurisdiction other than Pennsylvania", nullifying our legislative intent to be a national and international Internet gaming hub.

My request to withdraw the OLC 2019 Wire Act Opinion is based on the plain reading of the Wire Act which clearly requires that the object of gambling be a sporting event or contest, as held in In re Mastercard Int'l Inc., 132 F. Supp 2d 468 (E.D. La 2001); In re Mastercard Int'l Internet Gambling Litig., 313 F.3d 257 (5th Cir. 2002).

The December 23, 2011 letter from Assistant Attorney General Robert Weich to Senate Majority Leader Harry Reid and Senate Minority Whip Jon Kyl is very persuasive. Responding to the bipartisan request from the respective leaders in the Senate who sought to clamp down on "all forms of Internet gambling," including lottery sales over the Internet, and to "strengthen the penalties," the Department of Justice did not succumb to political pressure. It rendered its 2011 Opinion "after a thorough review" that the Wire Act "only applies to sporting events or contests." The letter also stated "it reflects the Department's position in congressional testimony at the time the Wire Act was passed in 1961."

The 2019 opinion, which took 26 pages of tortured analysis of sentence structure and comma placements to determine that the clear language of the Wire Act applied to all forms of gambling, was contrary to the much better reasoned opinion of the 5th Circuit and the "thorough review" of the Department of Justice in 2011.

Assuming, arguendo, that the statutory wording was not clear, the established rules of interpretation of legislation require an examination of the legislative intent of the Wire Act. When examining the legislative history, the legislative intent is very clear that the Wire Act was specifically designed to enable prosecution of organized crime run betting operations on sporting events or contests.

Indeed, the 2019 Opinion itself states, in referencing 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."

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."

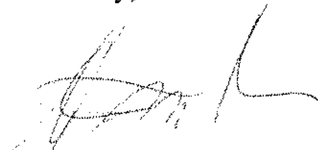
1. How could the 2019 Opinion be "[b]ased upon the plain language of the statute" when DOJ came to the opposite opinion in 2011? By reversing its own opinion, the OLC admits the language is not plain and would require an analysis of the legislative history of the Wire Act which would demonstrate that the Wire Act targeted only sporting events or contests to assist prosecution of organized crime run betting operations on sports events and horse racing.
2. The 2019 Opinion itself also admits the language is not plain by stating, "[w]hile the Wire Act is not a model of artful drafting" and "[t]he Wire Act's interpretive difficulties arise from" and "but the structure of section 1084(a)'s first clause is not straightforward."

My opinion, that the Wire Act clearly requires that the object of gambling be a sporting event or contest, is bolstered by a strong assertion in the two In re Mastercard decisions mentioned above. Both cases hold that the Wire Act language clearly was intended to only apply to sports events or contests and, if legislative history were to be examined, it would confirm that plain language. "[A] plain reading of the statutory language clearly requires that the object of the gambling be a sporting event or contest. Both the rule and the exception to the rule expressly qualify the nature of the gambling activity as that related to a "sporting event or contest."

In re Mastercard Int'l Inc., supra, 132 F. Supp. 2d at 480. The District Court also cited 5th Circuit opinions and a New York Western District opinion holding the Wire Act's prohibitions relate to sporting events or contests. Id. Also, as you no doubt are aware, there have been multiple unsuccessful attempts by Congress to amend the Wire Act to include any game subject to chance, including lotteries. This is another example that proves that the OLC 2019 Wire Act Opinion is out of step with the plain reading of the Wire Act.

Accordingly, in the event the OLC 2019 Wire Act Opinion is not rescinded, I have authorized former Senator Raymond Lesniak to file suit in the U. S. District Court on behalf of the New Jersey Senate for a Declaratory Judgement that the 2019 OLC Opinion is arbitrary and capricious and that the statutory prohibitions of the Wire Act are uniformly limited to gambling on sporting events or contests.

Sincerely,



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