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The Fight Over DOJ's New Wire Act Opinion Continues, Law360

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In January 2019, the U.S. Department of Justice Office of Legal Counsel released its 2018 opinion on the Wire Act, concluding that it prohibits all state-authorized and regulated online gambling. In doing so, it surprisingly replaced its 2011 opinion, which found the Wire Act only applies to sports betting. This drastic shift has left the future of the gambling industry, specifically online casinos, the lottery and sports betting stranded in limbo as the issue is battled in court.

Some Quick Background: What Is the Wire Act?

The Federal Wire Act, 18 U.S.C. § 1084(a), is a criminal statute that was enacted in 1961. It impacts those engaged in the business of betting or wagering, who knowingly use a wire communication facility for the transmission, in interstate or foreign commerce, of bets and wagers or information assisting in the placing of bets and wagers.

DOJ Opinions

In 2011, the DOJ issued an opinion determining that the Wire Act applies only to sports betting, and therefore, it did not extend to other forms of gambling. Specifically, the 2011 opinion determined that the Wire Act did not apply to the sales of lottery tickets over the internet by states.

In January 2019, however, the DOJ released a new opinion, inexplicably reversing its prior opinion, deeming the Wire Act to be applicable to any form of gambling that crosses state lines, including online gambling and online lottery sales.

How Does the New Opinion Impact Gambling?

Activities spanning from intrastate online casinos and poker to interstate online poker between Nevada, New Jersey and Delaware, to all online lottery sales, may now experience interference as a result of the new DOJ opinion.

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