



THE UNITED STATES VIRGIN ISLANDS
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

IVER A. STRIDIRON, ESQUIRE
ATTORNEY GENERAL

November 15, 2002

The Honorable Eileen Petersen
Casino Control Commission
5 Orange Grove
Christiansted, St. Croix
USVI 00820

RECEIVED
NOV 18 2002
V.I. CASINO CONTROL COMMISSION

Re: Determination as to the legality of the Virgin Islands Internet Gaming and Gambling Act

A.G. File No. SOL - 03-0030

Dear Judge Petersen:

This letter of advice is submitted in response to your request for an opinion to determine whether the Virgin Islands Internet Gaming and Gambling Act is consistent with Federal and Territorial laws. Although it is the position of this Office that our short answer would be "yes", we would qualify that answer with our discussion contained herein.

QUESTION

Can internet gambling, as authorized under the Virgin Islands Internet Gaming and Gambling Act, be conducted in the Virgin Islands in compliance with all applicable laws?

ANSWER

See discussion.

DISCUSSION

According to §604 of the Virgin Islands Internet Gaming and Gambling Act, internet gaming shall not commence until the Casino Control Commission has determined that internet gaming systems are secure and reliable and provide reasonable assurance that players will be communicating only from jurisdictions where it is lawful to make such communications. Additionally, §614 of the Gaming Act prohibits registration

by a resident of a jurisdiction where internet gaming is prohibited and requires a licensee to determine whether a player is a resident of a jurisdiction where internet gaming or gambling is prohibited because a person from such a jurisdiction shall not be permitted to register. The clear language of the Act puts both the Casino Control Commission and any Licensee on notice that they are required to ensure that internet gaming players will be communicating only from jurisdictions where it is lawful to make such communications. Failure to do so could result in non-compliance with federal laws.

The U.S. Department of Justice has taken the position that federal law prohibits gambling over the internet, including casino-style gambling. According to a recent letter from the Criminal Division of the Department of Justice, they base their opinion on primarily three sections of the U.S. Code; 18 USC §1804, the Wire Act of 1961, 18 USC §1952, the Travel Act of 1961, and 18 USC §1955.

The relevant provisions of the Wire Act, 18 USC §1804 (a), provide 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.

The Justice Department interprets the Wire Act to include using a wire communication facility for *any* type of betting or wagering. However, the clear language of the statute limits the illegal gambling to betting on a sporting event or contest. It follows that since the language is specific as to prohibiting a particular type of gambling, '*sporting events or contests*', the Wire Act's silence as to casino-type internet gambling is a tacit authorization for such gambling. In accord with this Office's interpretation, a recent District Court decision, now on appeal, held that the Wire Act does *not* prohibit internet gambling on a game of chance. (See In re MasterCard Int'l. et al., 132 F. Supp. 2d 468, 472 (E.D. La. 2001)). Enclosed please find a copy of the District Court's decision.

In United States v. Cohen, 260 F.3d 68 (2nd Cir. 2001), the Court held that internet sporting event gambling occurring between a privately owned business in Antigua and an individual in New York was unlawful under the Wire Act because gambling was illegal in New York. The Court stated that even if gambling were lawful in Antigua, it made no difference because it was a prohibited act in New York. Although the defendant attempted to argue that the actual betting was done in Antigua, the Court noted that if a bet was placed in New York and accepted in Antigua, the transmission of the bet fell within the Wire Act.

In regard to the Travel Act of 1961, 18 USC §1952 (a)(3), the Act prohibits using the mail "or any facility" in interstate or foreign commerce, with the intent to participate in an unlawful activity. The statute defines "unlawful activity" as any business enterprise involving gambling...in violation of the laws of the State (or Territory) in which they are committed or of the United States. What is key here is that the Virgin Islands Gaming Act authorizes internet gambling so that the originating act of soliciting gamblers on the internet is lawful so it would not violate the Travel Act. What needs to be stressed, however, is that if the solicited gambler on the receiving end of our internet transmission is in a jurisdiction where internet gambling is an unlawful activity, *then a violation of the Travel Act would have occurred upon that person placing their bet*. Similar to the Second Circuit's holding in United States v. Cohen, the U.S. Justice Department's position on this is that internet gambling activity occurs both in the jurisdiction where the bettor is located and the state where the gambling business is located.

The same analysis would apply to 18 USC §1955, which defines "illegal gambling business" as a gambling business that is a violation of the law of a State (or Territory) in which it is conducted. Therefore, although the Virgin Islands law would permit the conduct of internet gambling within the Territory, once the internet gambling reached an individual outside of our territorial borders, the determination would need to be made as to whether gambling was a violation of the law of the State in which the bettor is placing his bet.

The Casino Control Commission should also be made aware that the U.S. Congress has taken recent steps to curtail internet gambling. The "Unlawful Internet Gambling Funding Prohibition Act", H.R.556, is aimed at prohibiting the acceptance of any bank instrument for "unlawful internet gambling". The Act defines "unlawful internet gambling" as "...to place, receive, or otherwise transmit a bet or wager by any means which involves the use...of the internet where such bet or wager is unlawful under any applicable Federal or State law in the State in which the bet or wager is initiated, received, or otherwise made". As long as the party making the internet bet was in a jurisdiction that allowed internet gambling, the prohibitions of H.R.566 would, presumably, not apply. Thus it would appear that as long as the person making a bet with a licensee under the Virgin Islands Internet Gaming and Gambling Act resides in a jurisdiction that allows internet gambling, the prohibitions of H.R.566 would not apply. The Act was passed by the House and was referred to the Senate Judiciary Committee on October 2, 2002.

Another pending piece of legislation, H.R.3215, intends to completely amend the Wire Act to prohibit internet gambling on games of chance. The Act would allow internet gambling conducted wholly within our borders as long as a secure and effective customer verification system were in place limiting legitimate players to those located within our territorial borders. Concerning internet gambling involving foreign jurisdictions, the House Committee on the Judiciary report notes that the bill's reach is not intended to:

"...extend to United States entities which may hold an equity stake in, or manage, a communication facility which creates or transmits

information assisting in the placing of bets or wagers, which processes bets or wagers, or which transmits communications entitling a recipient to receive money as a result of bets or wagers, as long as at the time the transmission occurs, the individual or entity placing the bets or wagers is physically located in a foreign jurisdiction where such betting or wagering is permitted under local law, the facility processing those bets or wagers is physically located in a foreign jurisdiction where such activity is permitted under local law, and the United States entity is in compliance with the laws of the State in which it is located.”

The Act would also appear to *grandfather* in the Virgin Islands Gaming Act. The report states the intent of the Committee is that the legislation shall not be interpreted as legalizing any further gambling activity using communications facilities that were not legal before June 6, 2002. Governor Turnbull signed the Virgin Islands Internet Gaming and Gambling Act into law on August 2, 2001.

Nevada has also passed internet gambling legislation and is in the development stages of its implementation. Nevada Assistant Attorney General Jeffrey Rodefer, counsel to the Nevada Gaming Commission and the Nevada Gaming Control Board conducted a more thorough overview and analysis of existing federal law and its impact on internet gambling similar to what the Commission has asked this Office to complete. Enclosed please find a copy of Attorney Rodefer's analysis. Mr. Rodefer's conclusion was that it is unclear whether existing federal law allows internet gambling. However, Nevada is pushing on and is currently holding public hearings concerning the legality of internet gaming, technical safeguards relating to the security and reliability of interactive gaming systems as well as reasonable assurances that players will be of lawful age and communicating only from jurisdictions where such communications are lawful.

CONCLUSION

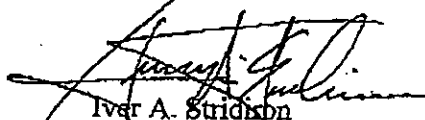
The Virgin Islands Internet Gaming and Gambling Act would be considered consistent with Federal and Territorial law as long as internet gambling is limited to games of chance, players are of lawful age and no bets are received or taken from an individual located in a jurisdiction that prohibits gambling.

However, it bears repeating that the United States Department of Justice believes that federal law prohibits gambling over the internet, including casino-style gambling. Although one court has taken the position that the Wire Act does not reach this type of internet gambling, caution should be exercised as we await guidance from the 5th Circuit Court of Appeals and Congress. In the meantime, the Casino Control Commission may wish to take affirmative steps to ensure that internet gaming systems are secure, reliable and capable of providing reasonable assurance that players are of lawful age and will be communicating only from jurisdictions where it is lawful to communicate. If the Casino Control Commission made those determinations, internet gambling would be on track to commence in the Virgin Islands. We do, however, again urge caution because internet

gambling presents fertile ground for fraud as well as the potential for abuse by those with gambling problems.

If you have any questions or require further assistance, please contact Deputy Solicitor General Paul Paquin at 714-9610 or Assistant Attorney General Matthew Phelan at 774-5666.

Sincerely,



Ivar A. Strickson
Attorney General

Enclosures

P:\Solicitor_Gen\DATA\MPhelan\Internet Gambling Opinion.doc