



Senators' Letter to Holder Shows Doubts about DOJ Gambling Stance

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On July 14, 2011, Sen. Minority Whip Jon Kyl (R-Ariz.) and Senate Majority Leader Harry Reid (D-Nev.) sent a letter to U.S. Attorney General Eric Holder asking the Department of Justice to clarify its position regarding enforcement of online gambling laws.

The tone of the letter suggests that Sen. Reid, who has been a supporter of efforts to legalize online poker, and Sen. Kyl, an opponent of legalization who helped pass the Unlawful Internet Gambling Enforcement Act (UIGEA) in 2006, have doubts about the consistency and logic of the federal government's view on legalized online poker. The UIGEA is the law that led to the indictments of several online poker sites earlier this year.

The letter notes, "These indictments came after many years in which the entities [that were indicted] operated Internet poker websites to Americans in an open and notorious way with apparently no repercussions from law enforcement." The letter went on to say, "This lack of activity by law enforcement led to a significant and growing perception that operating Internet poker and other Internet gambling did not violate U.S. laws, or at least that the Department of Justice thought that the case was uncertain enough that it choose not to pursue enforcement actions."

Sen. Kyl's website includes a policy statement suggesting that he would give thought to efforts to legalize online poker, which he views as a game of skill. "Until I have the chance to review them, I cannot make a judgment about their merits; but I will consider them carefully as long as they leave in place the broader proscriptions against online betting," Sen. Kyl posted on his website.

The letter goes on to raise concerns that the spread of efforts underway in over a dozen states to legalize intrastate Internet gambling could possibly be illegal. The states cite the silence of the DOJ in the face of these efforts as acquiescence. Several officials from various state lotteries have claimed to have the consent of DOJ by writing letters discussing their plans that stated if no objection was received they would continue with their plans to implement Internet gambling. These states never received any objections.

One of these letters sent to DOJ was from New Jersey State Senator Raymond J. Lesniak, a sponsor of New Jersey's proposed sports betting and Internet gambling legislation, contending that New Jersey has every right to enact intrastate Internet gambling under federal law. Earlier this year, Sen. Lesniak sponsored a bill that would have authorized New Jersey casinos to operate intrastate online gambling, which was



ultimately vetoed by Governor Chris Christie because of concerns over the mechanics of the bill. Sen. Lesniak has stated that he would have new Internet gaming legislation that took into account the Governor's concerns ready to introduce in the fall.

In his letter, Sen. Lesniak pointed out that the text of UIGEA allows for intra-state Internet gambling: "The term 'unlawful Internet gambling' does not include placing, receiving, or otherwise transmitting a bet or wager where . . . the bet or wager is initiated and received or otherwise made exclusively within a single state." 31 U.S.C. 5362 (B)(i). Sen. Lesniak also stated that the other federal law often cited as applying to online gaming, the Interstate Wire Act of 1961 (Wire Act), was designed to prevent illegal gaming activity across state lines. Thus, purely intrastate gaming would be permissible under the Wire Act.

We wrote earlier this year that D.C. Attorney General Irvin Nathan testified that efforts in the District to establish online intrastate gambling were in compliance with all federal laws.

The Reid/Kyl letter clearly shows that online poker is on the minds of legislators on Capitol Hill. It is not clear if this letter would have any effect on legislation currently pending in Congress to legalize online gambling, but it seems to suggest that one of online poker's biggest past opponents is now more open to legalization than before. Regardless, this letter may force the DOJ to reevaluate and justify its position regarding Internet gambling, which we would see as a healthy development.

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