



U.S. States Taking Their Chances with Expanded Gambling

The persistent push to sell almost everything online could soon include lottery tickets. Cash-strapped states betting on new online poker and lottery revenues won a major victory with a recent Department of Justice announcement that it is reversing its interpretation of the federal 1961 Wire Act, clearing the way for a potential boom in online gambling.

From California to New York, lotteries that already account for \$56 billion in annual sales are considering expanding to the Internet after the U.S. Justice Department ruled that it is legal to sell tickets on the Web to local residents. Online tickets may bring much-needed revenue to states facing a collective \$31.9 billion budget gap in the next fiscal year, according to a report by the National Conference of State Legislatures. With global online gambling now worth an estimated \$30 billion, and with online poker worth a potential \$6 billion annually in the U.S., some are heralding the decision as a means for states to leverage new revenue from legalized online gambling. MTAM forecasts that most states could be offering online gambling within a decade.

Until now, the Justice Department had held that the Wire Act makes even intrastate online gambling illegal. Its new interpretation, written by Justice Department attorneys, concluded that the law instead specifically outlaws such wagering on sports, not nonsports gambling within states or even across state borders. "The ordinary meaning of the phrase 'sporting event or contest' does not encompass lotteries," wrote Assistant Attorney General Virginia Seitz. "Accordingly, we conclude that the proposed lotteries are not within the prohibitions of the Wire Act."

The legal opinion, issued by the Department's Office of Legal Counsel in September but made public last Friday, came in response to requests by New York and Illinois to clarify whether the Wire Act, which prohibits wagering over telecommunications systems that cross state or national borders, prevented those states from using the Internet to sell lottery tickets to adults within their own borders. Although the opinion dealt specifically with lottery tickets, it opened the door for states to allow Internet poker and other forms of online betting that do not involve sports.

In a reply letter that was also issued last Friday, the Justice Department said that while the new policy "differs from the Department's previous interpretation of the Wire Act, it reflects the Department's position in Congressional testimony at the time the Wire Act was passed in 1961." The new policy merely reverses the Justice Department's longstanding position that all forms of online gambling are illegal in the United States. It does not necessarily pave the way for national rules governing online gambling. But experts in gambling law said that the new policy does imply that states can band together to allow gambling across state borders.



The exception would be online sports betting, which is explicitly prohibited under federal law.

Online gambling has been a focus in the Justice Department for years, but it burst into public view last April, when federal prosecutors charged the operators of three of the most popular online poker sites with fraud and money laundering. The three sites, Full Tilt Poker, PokerStars, and Absolute Poker, are based in Antigua and the Isle of Man, where online gambling is legal. That had made it difficult for American authorities to crack down on the operations, which had millions of U.S. customers. But the Justice Department charged that the companies had used U.S. banks to process their transactions, violating the 2006 law that governed payment processing. Those payment restrictions do not apply to transactions within a single state, however. With the ruling that the Wire Act applies only to sports betting, the way is clear for in-state online poker and other games.

Overall, states got an average 2.4 percent of revenue from lotteries and other forms of gambling in 2009, according to a report last year from the Albany, New York-based Nelson A. Rockefeller Institute of Government. While efforts to expand casinos or legalize other forms of gaming get the most attention, lotteries are still the primary source of government gambling revenue for states, the report notes. Across the country, state lotteries are rebranding, adding games, recruiting new retailers, and will be moving online to attract new players.

After total lottery income nationwide fell for the first time in more than a decade in 2009, states redoubled their efforts to attract more players to support educational and environmental programs, and help fill the gap from slumping tax revenue. Even as unemployment remained high and the economy dragged, players in many states responded. Of the 43 states with lotteries, 26 saw revenue grow in traditional games in the past fiscal year, with total sales up 3 percent to \$56 billion, according to Rockville, Maryland-based lottery research firm La Fleur's. Ticket sales in at least 17 of those states set records, and several states are on track to hit all-time highs this year.

From 8% to 12% of adults play the lottery in Illinois at least once a week, but 80% of adults said they were in favor of the lottery. The lottery could gain 200,000 to 400,000 players if online ticket sales were allowed, generating more than \$100 million a year in additional revenue for Illinois. The state enacted a law two years ago mandating that the lottery undertake a three- to four-year pilot program testing online sales of tickets to existing state lottery games. As part of the law, the Illinois Legislature required state officials to seek a legal opinion from the Justice Department.

The New York Lottery, which also wants to offer online ticket sales, made a similar request. According to New York's December 2009 letter to the Justice Department, a new computer system will allow adult residents to buy tickets online and then pick them up at a retail location. Other tickets will be "virtual," delivered over the Internet to computers or mobile phones, the letter said. The system, completed last year, will build on a subscription program for Lotto and Mega Millions introduced in 2005.



In Tennessee, some lawmakers are calling for the lottery to accept credit and debit cards for purchases that now require cash. A bill in New Jersey would allow tickets to be sold on the Internet or via smartphones. The Nevada State Gaming Control Board, which has been studying online gambling, last week approved regulations to allow Internet poker. The District of Columbia and other jurisdictions are looking at launching Internet poker within their boundaries. And several states including Ohio are looking at following the lead of Illinois, which in March became the first lottery in the nation to turn over management, marketing, and sales to a private company to seek higher returns. At least 28 states have considered lottery or gaming-related bills since 2010 to close budget gaps, according to data from the Washington-based National Conference of State Legislatures.

Some states are also looking to expand traditional gambling. Massachusetts Governor Deval Patrick signed legislation November 22nd authorizing as many as three resort casinos in his state, while officials in Georgia and Florida are weighing similar proposals. New York Governor Andrew Cuomo is pressing lawmakers to approve a constitutional amendment making Las Vegas-style casinos legal in the Empire State. It will be at least two years before New York voters can approve a gambling amendment.

Facing growing unemployment, record home foreclosures, declining tax revenue, and an annual budget deficit that reached \$3 billion, Arizona has revamped its traditional state lottery. It held focus groups, introduced new games, printed fancier tickets, recruited new retailers, increased jackpots, plunged into social media, and upped its advertising budget by almost 50 percent. The gamble paid off: ticket sales rose 14 percent from fiscal 2009 to 2010 -- the largest increase in the country, according to La Fleur's. In the 12 months that ended June 30, sales were up almost 6 percent more to a record \$584 million.

California is poised to have its best year of lottery sales ever after a 2010 law signed by then-Governor Arnold Schwarzenegger allowed bigger prize payouts, spurring interest in the games and supporting higher-priced tickets. Sales increased 13 percent in the year that ended June 30 -- the second-highest growth rate in the country behind Arkansas, where the lottery was in its first full year of operation. At the California Lottery, the popularity of a new \$10 "Scratchers" ticket introduced last month is expected to push sales this year above \$4 billion.

The Florida Lottery, which is rebranding to counter slow growth, is also looking at potentially record-setting sales above \$4.17 billion in fiscal 2012 after the lottery went where no state lottery had gone before: Wal-Mart Stores Inc. Tickets went on sale in about 30 smaller Wal-Mart grocery markets in Florida last month -- a pilot program being watched by lottery officials nationwide. Florida officials hope the retailer will eventually allow sales in its supercenters. The company will evaluate the Florida pilot program to decide if it will expand lottery sales in that state or others.

While sales in several states are still lagging, for some lotteries it is as if the recession never happened. In Nebraska, with one of the smallest lottery operations in the country, sales were up for the eighth consecutive year. Maryland posted its 14th straight year of record-breaking



MILLER TABAK ASSET MANAGEMENT

sales in its traditional lottery, which supports education, public health, public safety and environmental programs and is the fourth-largest source of state revenue.

Kate Sweeny, an assistant professor of psychology at the University of California, Riverside, who studies how people respond to difficult life events, said after a few years in a down economy, some people feel no control over their financial futures -- so they might turn their hope to the lottery. The Minnesota State Lottery's move last year to follow New York, Virginia and other states by offering online subscriptions recently came under fire from some lawmakers. David Hann, the assistant senate majority leader who previously sponsored legislation to get rid of Minnesota's lottery, called the move and other efforts by states to encourage gambling during tough economic times "reprehensible." An effort by the Oregon Lottery to market to a younger generation with a "hipper" website was put on hold by Governor John Kitzhaber in October after critics charged that the site's games and graphics could attract underage players. Gambling critics see the latest moves as another major crack in America's moral foundation, opening the way for states to become further dependent upon tax revenues gained from a form of recreation that hits hardest those who can least afford it. In that light, the new U.S. stance may prompt Congress to enact laws aimed at helping to curb addiction and to prevent children from becoming involved in online gambling, even while allowing "casual" gamblers more options and opportunities to play. So far, Congress has folded on a handful of proposed Internet gambling measures.

However, MTAM notes that the Internet offers the ability to limit how much money someone spends on the lottery. Right now, no one can stop a player from going down to a brick-and-mortar retailer and spending \$1,000 on Mega Millions. But online registration and credit card tracking would allow the state lotteries to intervene if somebody did that over the Internet.