

Cannabis Business Blog

DOJ Signals That Legalized Marijuana in Indian Country Will Get the Same Treatment as Other States

Foster Garvey on 12.12.14 | Posted in Federal

In a [memo](#) made public yesterday, the United States Department of Justice revealed that US Attorneys around the country have been instructed to treat any Indian Nation choosing to legalize marijuana consistent with the priorities DOJ previously outlined for all states in the [August 2013 Cole Memorandum](#). By treating Indian Country the same as states, the DOJ is recognizing the inherent right of tribes to make their own decision whether to participate in the marijuana industry. The Cole Memorandum indicated that DOJ would focus its resources on the following eight law enforcement priorities:

Preventing the distribution of marijuana to minors;

Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;

Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;

Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

Preventing violence and the use of firearms in the cultivation and distribution of marijuana;

Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;

Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and

Preventing marijuana possession or use on federal property.

For Tribes Considering Whether to Enter the Marijuana Industry

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The decision to enter into the marijuana industry should not be taken lightly. There are a number of policy issues to be evaluated, such as the impact on the tribal court system, Indian Child Welfare programs and employment. Compliance with other federal grants for housing, foster care funding and 638 contracts also needs to be considered. Robust regulatory systems must be implemented and enforced. Tribes should also consider entering into MOU's with the Department of Justice and the U.S. Attorney Office.

As in any other emerging area of law and industry, these first steps are the most important and should be carefully evaluated before taking action.

This post was originally published on Garvey Schubert Barer's Smoke Signals Indian Law Blog by Lael Echo Hawk.

Warning Regarding Federal Law: The possession, distribution, and manufacturing of marijuana is illegal under federal law, regardless of state law which may, in some jurisdictions, decriminalize such activity under certain circumstances. Penalties for violating federal drug laws are very serious. For example, a conviction on a charge of conspiracy to sell drugs carries a mandatory minimum prison term of five years for a first offense and, depending on the quantity of marijuana involved, the fine for such a conviction could be as high as \$10 million. In addition, the federal government may seize, and seek the civil forfeiture of, the real or personal property used to facilitate the sale of marijuana as well as the money or other proceeds from the sale. Although the U.S. Department of Justice (DOJ) recently rescinded its guidance regarding prioritization of criminal prosecutions of individuals and entities operating in compliance with effective state regulatory systems, DOJ left in place long standing guidance to federal prosecutors regarding how to exercise this discretion. Individuals and companies are cautioned to consult with experienced attorneys regarding their exposure to potential criminal prosecution before establishing business operations in reliance upon the passage of state laws which may decriminalize such activity. Federal authority to prosecute violations of federal law as crimes or through seizures and forfeiture actions is not diminished by state law. Indeed, due to the federal government's jurisdiction over interstate commerce, when businesses provide services to marijuana producers, processors or distributors located in multiple states, they potentially face a higher level of scrutiny from federal authorities than do their customers with local operations.