

ARTICLES

Attorney General Rescinds Guidance on Prosecution of Marijuana Activities—What it May Mean for You

JANUARY 08, 2018

By [Susan S. Ford](#) and [Matthew S. Parkin, LL.M.](#)

In a Memorandum to all attorneys in the Department of Justice dated Thursday, January 4th, Attorney General Jeff Sessions rescinded all prior guidance related to the enforcement of the Controlled Substances Act with respect to marijuana-related activities. This guidance included what is often referred to as the “Cole Memorandum,” a memorandum from Deputy Attorney General James M. Cole for all United States Attorneys on the subject of Guidance Regarding Marijuana Enforcement dated August 29, 2013.

Doing Business with those involved in the Cannabis Industry

While the Cole Memorandum did not have the same effect as a law or regulation, it was generally relied upon by those in the cannabis industry, and those who did business with those in the cannabis industry, for comfort that their activities would not result in Federal prosecution and/or civil and criminal forfeiture of their property. Many leases and other contracts between participants in the cannabis industry and third parties are structured such that they can be terminated upon rescission of the Cole Memorandum.

The memorandum from Attorney General Sessions may trigger defaults or termination rights under such agreements. If you are either



participating in the cannabis industry or have contractual relations with the industry, now is a good time to review your agreements to fully understand how this change may impact you.

Banking

The Attorney General's memorandum also rescinded guidance regarding acceptance of deposits from cannabis businesses previously issued by Deputy Attorney General Cole. A local credit union that provides services to this industry has informed its members that for now nothing will change, but that they will be monitoring the situation and will provide further guidance as needed.

Important Note Regarding Medical Cannabis Businesses

If you are involved with, or do business with a medical cannabis businesses, keep in mind that the Rohrabacher-Blumenauer Amendment is still in place until at least January 19th. This Amendment to the continuing budget resolution prohibits the Justice Department from spending funds on the prosecution of medical cannabis businesses authorized under State law. In an e-mail sent out shortly after the Attorney General's memorandum was made public, Earl Blumenauer stated: "We are working to expand the protections of my amendment and extend it to the full range of marijuana activities." In the wake of the rescission of the Cole Memorandum, potential expansion of the coverage of the Rohrabacher-Blumenauer Amendment is particularly important in the State of Washington, where medical and recreational cannabis have a unified licensing scheme.

Going Forward

We expect further developments on this issue in light of the upcoming expiration of the budget deal, and the interest of various states, including Oregon, Washington and California, in preserving an industry that generates millions of dollars in tax revenues and billions of dollars in business. We will continue to keep you informed.

Related Attorneys

Susan S. Ford

Managing Partner

503.243.1657

sford@sussmanshank.com

Matthew S. Parkin, LL.M.

Special Counsel

503.243.1685

mparkin@sussmanshank.com