



Banking and the Marijuana Industry

While Colorado may have given the green light to the marijuana industry, the sale and use of marijuana is still illegal at the federal level. In late June 2011, the Department of Justice issued a memo reiterating the consequences of those individuals caught cultivating, selling or distributing marijuana. The memo also went on to include other parties who “knowingly facilitate such activities” as targets of prosecution. The exact language as stated in the DOJ letter reads:

“Persons who are in the business of cultivating, selling or distributing marijuana, and **those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law.** Consistent with resource constraints and the discretion you may exercise in your district, such persons are subject to federal enforcement action, **including potential prosecution.** State laws or local ordinances are not a defense to civil or criminal enforcement of federal law with respect to such conduct, including enforcement of the CSA. **Those who engage in transactions involving the proceeds of such activity may also be in violation of federal laundering statutes and other federal financial laws.**”

Money Laundering Laws: *The process of taking the proceeds of criminal activity and making them appear legal.* Money laundering laws are federal and therefore not impacted by Colorado’s decision to legalize marijuana. Any banking transaction (a checking account, wires...) involving funds from the marijuana industry is the very definition of money laundering. All banks, even state-chartered banks, are required to comply with federal money laundering laws.

Financial institutions in Colorado are not permitted by our federal regulators to “bank” marijuana dispensaries. Even state-chartered banks have a federal regulator and are bound to comply with federal law. This has led some in the marijuana industry to propose the idea of a state-owned bank (or credit union) devoted exclusively to the industry or a financial institution chartered by the marijuana industry. This concept brings up a whole new set of issues, including:

- **Colorado Constitution:** The Colorado Constitution does not permit the state, any county, or city, town... to aid, become an owner or a shareholder of any corporation or company. (See reverse for language from the constitution.)
- **Capital:** The minimum it takes to start a small bank is \$20 million – money that the state of Colorado does not have.
- **Startup costs:** The costs of starting up a state-owned bank would be considerable and would likely involve a very sizeable bond issue and/or the possibility of disrupting the operations of existing banks.
- **FDIC:** Operation without FDIC insurance is playing loose and reckless. For a bank to be chartered without FDIC insurance, it requires numerous changes in law. If this institution should fail, any funds in the institution would be lost – there are no protections for those customers.
- **Federal Seizure:** Any funds on deposit would continue to be subject to federal seizure just as they are now; the distinct difference would be the ease of seizure by aggregating the funds of numerous dispensaries.
- **Payment System:** Without proper (FDIC or NCUA) insurance, a financial institution does not have access to the payment system. Without access to the payment system, an institution cannot issue checks, credit/debit cards, wire funds, or have electronic transactions.
- **Regulation:** Who would set the rules and regulations? If the state does, it will end up with a case of the fox watching its wholly owned hen house. That is dangerous turf.

Colo. Const. Art. XI, Section 2

Section 2. No aid to corporations - no joint ownership by state, county, city, town, or school district.

Neither the state, nor any county, city, town, township, or school district shall make any donation or grant to, or in aid of, or become a subscriber to, or shareholder in any corporation or company or a joint owner with any person, company, or corporation, public or private, in or out of the state, except as to such ownership as may accrue to the state by escheat, or by forfeiture, by operation or provision of law; and except as to such ownership as may accrue to the state, or to any county, city, town, township, or school district, or to either or any of them, jointly with any person, company, or corporation, by forfeiture or sale of real estate for nonpayment of taxes, or by donation or devise for public use, or by purchase by or on behalf of any or either of them, jointly with any or either of them, under execution in cases of fines, penalties, or forfeiture of recognizance, breach of condition of official bond, or of bond to secure public moneys, or the performance of any contract in which they or any of them may be jointly or severally interested. Nothing in this section shall be construed to prohibit any city or town from becoming a subscriber or shareholder in any corporation or company, public or private, or a joint owner with any person, company, or corporation, public or private, in order to effect the development of energy resources after discovery, or production, transportation, or transmission of energy in whole or in part for the benefit of the inhabitants of such city or town.