

New Jersey Marijuana Businesses Could Face Increased Potential for Interstate Trafficking Prosecution in Light of the DOJ's New Policy - *NJ Cannabis Blog*

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Last week, U.S. Attorney General Jeff Sessions rescinded a 2013 federal policy concerning enforcement of Marijuana laws. That 2013 policy — the so-called Cole Memo — instructed U.S. Attorneys to prosecute marijuana offenses based on discretion and available resources and to focus its enforcement efforts on priorities that are particularly important to the federal government, such as keeping marijuana out of the hands of minors, drug cartels and inter-state trafficking. However, the Cole Memo told federal prosecutors to allow states (particularly those that had legalized marijuana) to enforce their own marijuana laws. Jeff Sessions' move essentially reversed the Cole Memo and opened the door for the DOJ to prosecute marijuana offenses in states where marijuana is legal.

As a result of the Sessions' announcement, federal prosecutors have gained increased discretion to prosecute at the state level.

The legalization of marijuana in New Jersey does not appear to be impacted by Sessions' new policy, and the State is continuing its course of legalizing marijuana, as promised by Governor Phil Murphy. But the new federal policy could have some practical implications in the anticipated legalized cannabis market in New Jersey. New Jersey's dense population and proximity to New York and Pennsylvania, and other large markets — where marijuana is not yet legal — makes the State an attractive destination for potentially millions of customers, and in turn, an attractive target for the DOJ in investigating and prosecuting inter-state marijuana transportation.

Even under the old Cole Memo, the potential for large numbers of day-trippers to enter New Jersey from New York City or Philadelphia to obtain and return home with marijuana, might have raised concerns with federal prosecutors because of the significant inter-state impact. With the new and expansive authority of the federal prosecutors, there exists an increased potential for targeting specific facilities that become a popular destination for out of state visitors seeking to transport marijuana back to their home states.

Consideration should be given by both prospective business owners and the legislature, on how to minimize the risk of becoming a target in an interstate trafficking prosecution. Requiring businesses to limit sales to New Jersey residents is likely not the answer, but given New Jersey's central location between major metropolitan hubs this is an issue the State should be thinking about while it considers passing legislation legalizing marijuana.

Pashman Stein Walder Hayden is carefully monitoring developments in New Jersey and federally with respect to marijuana legislation and will be available to help its clients navigate the sure-to-be complex regulatory framework of this potential business frontier.

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