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Work Session VIII: Legalized Marijuana

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Legalized Marijuana

Colorado's Bold Experiment with Marijuana

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The National Landscape

- Since 1996, 20 states have legalized marijuana for medical purposes.
- In 2012, Colorado and Washington became the first two states to legalize adult use marijuana.
- Today, more people are arrested for marijuana offenses than are for violent crimes.

Public Support of Marijuana Legalization

- Colorado and Washington likely reflect the future of marijuana legalization in the United States.
- Public opinion has continued to trend in favor a marijuana legalization. Currently, a majority of Americans support legalization by a margin of 7% (52%-45%-Pew Research Center March 2013).
- Other states considering commercial legalization through legislation or initiatives include, Alaska, California, Maine, Maryland, Massachusetts, Michigan, Nevada, Oregon, Pennsylvania, Rhode Island, Vermont, Washington.

Colorado's law passes overwhelmingly

November 6, 2012, voters of Colorado, by nearly 55% passed Amendment 64 which amended the Colorado Constitution by decriminalizing the personal cultivation, possession and use of recreational marijuana by persons 21 years or older.

Key Features of Amendment 64

- Decriminalizes possession of one ounce.
- Colorado legalized the production of marijuana for personal use (6 marijuana plants, only 3 of which may be flowering).
- Permits the retail sale of marijuana in a regulated market, similar to alcohol sales.
- Creates systems for the legal production, cultivation, and sale, subject to licensing, regulation and taxation.

Controlled Substances Act

- Cultivation, distribution, sale and possession of marijuana violates the Controlled Substances Act. Marijuana is a Schedule 1 substance, alongside such drugs as heroin.
- Cultivation and distribution are felonies; possession for personal use is a misdemeanor.
- Cultivating marijuana 100 plants or more carries a mandatory minimum sentence of five years under federal law.
- State laws or local ordinances are not a defense to civil or criminal enforcement of federal laws.

The Federal Cloud

- What will the U.S. Attorney General say or do, and when?
- What will Congress do?
- Ongoing practical difficulties for marijuana businesses trading in a substance that is illegal under federal law: banking, insurance, landlord-tenant, etc.
- Complicity of state and local officials who "aid and abet" violations of federal law.

Marijuana businesses are cash-only businesses

- Under current law, financial institutions providing banking services to legitimate marijuana businesses are subject to criminal prosecution under several covered statutes such as “aiding and abetting” a federal crime and money laundering.
- Since legitimate, licensed marijuana businesses cannot access the banking system, they do not have access to banking services and products, such as depository accounts, checking accounts, access to credit and insurance.

Colorado asks for help

- On November 13, 2012, Governor Hickenlooper and Colorado Attorney General Suthers sent a letter to Attorney General Holder asking for prompt guidance as to what the federal response will be. No response has been given to date.

- The Obama administration has yet to announce a clear policy on the new laws. The federal government maintains the power to enforce federal law; however, it cannot compel states to assist in enforcing the federal law.

- Colorado and Washington are moving ahead with implementation of these unprecedented laws in the face of uncertainty.

Options available to Federal Government

- Sue to invalidate the state laws under the Supremacy Clause and enjoin state authorities from issuing licenses to growers and sellers;
- Enforce federal law;
- Use injunctions, threats of asset forfeiture, or criminal prosecution to shut down state-licensed marijuana businesses;
- Unilaterally establish a set of enforcement priorities to de-emphasize attacks on state businesses;
- Enter into cooperative enforcement agreements with the states that could implicitly allow state-regulated systems to function;
- Pass legislation; or,
- Do nothing

Key ways marijuana licensing and regulation may differ from liquor licensing:

- Emphasis in Amendment 64 on state-level licensing instead of dual state/local licensing.
- Authority for local governments to enforce compliance through licensing sanctions.
- Neighborhood "needs and desires" hearings?
- Multiple ownership of retail stores.
- Quality control.
- Quantity control.

Whither "Medical" Marijuana?

- In November 2000, Coloradans passed Amendment 20 allowing the cultivation, distribution, sale and possession of medical marijuana. Provides medical use of marijuana for persons suffering from debilitating medical conditions.
- 223,000 new patient applications have been received since June 2001.
- Average age of patients is 42. Currently, 39 patients are minors under the age of 18. 67% of patients are male.
- Severe pain accounts for 94% of all reported conditions; muscle spasms account for the second most reported condition at 15%. (The percentages don't add up to 100% because patients often identify multiple conditions).

What is the future of medical marijuana in states that have both?

- Two regulatory regimes coexist in Colorado: medical and recreational.
- Amendment 64 expressly favors conversion of “medical” business licenses to “recreational” licenses.
- While not contemplated by Amendment 64, collocation of medical and retail adult use is moving forward.

Overview of local control provisions in Amendment 64:

- Key target date for adopting local laws: October 1, 2013.
- Authority for cities and counties to opt-out of commercial marijuana licensing entirely.
- Authority to grant commercial marijuana licenses if the state doesn't.
- Authority to adopt regulations "governing the time, place, manner and number of marijuana establishment operations."

Implication of Amendment 64 to Denver Departments and Agencies is profound.

- Safety
- Excise and Licenses
- Finance and Economic Development
- Community Planning and Development
- Environmental Health
- Human Services
- Aviation
- Human Resources and personnel systems

Department of Safety:

- District Attorney's role in interpreting Amendment 64
- Challenges in interpreting what's legal and what's not.
- DUI-D.
- Jail issues.

Department of Finance and OED:

- State excise tax.
- Existing city sales tax.
- Potential for future city special excise tax?
- Potential limitations/loss of licensing fee revenue.
- “Marijuana tourism.”

Department of Community Planning and Development:

- Marijuana plant limitations on residential property.
- Building and fire code issues.
- New “time, place and manner” restrictions on marijuana businesses through zoning?

Department of Environmental Health:

- Colorado Clean Indoor Air Act.
- Enforcement of other air quality regulations.
- Product safety and purity issues (*e.g.* edibles).

Department of Human Services:

- Substance abuse issues.
- Child welfare issues.

Department of Aviation:

- Interstate travel with marijuana.
- Authority to ban marijuana entirely from airport premises.

Human Resources and personnel issues:

- On-the-job possession or consumption.
- Off-the-job possession or consumption.

Impact on marijuana exports from other countries?

- Legalization is not expected to have a significant impact on marijuana exports from other countries. Colorado and Washington account for less than 5% of estimated total U.S. marijuana sales.
- However, marijuana produced in Washington and Colorado can be expected to be distributed across state boundaries at prices competitive with Mexican imports.
- Recent audits have shown that Colorado does a poor job of tracking marijuana from seed to sale and cultivation facilities can produce an unlimited amount of marijuana.
- Impact could be felt if federal, state and local enforcement efforts attempt to prevent diversion and interstate trafficking.