

Incoming U.S. Attorney General Indicates He Will Not "Go After" Marijuana Companies in Senate Confirmation Hearings

January 21, 2019

During the first day of his confirmation hearing in front of the Senate Judiciary Committee, U.S. Attorney General nominee William P. Barr touched upon his position on cannabis, offering, to the relief of cannabis companies, a markedly different approach than his predecessor, former U.S. Attorney General Jeffrey Sessions.

On the topic of enforcing federal cannabis prohibition in states that have legalized cannabis for recreational or medical use, Barr stated: "My approach to this would be not to upset settled expectations...that have arisen as a result of the Cole Memorandum.... There has been reliance on it [that memo]. I don't think it's appropriate to upset that situation. I'm not going to go after companies that have relied on the Cole Memorandum."

The Cole Memorandum was an Obama-era memo authored by then Deputy Attorney General James Cole in August, 2013, indicating that the U.S. Department of Justice would not prioritize the prosecution of cannabis-related violations of U.S. federal law in jurisdictions that had enacted laws legalizing cannabis in some form and that had also implemented strong and effective regulatory and enforcement systems. On January 4, 2018, then U.S. Attorney General Jeffrey Sessions issued a memorandum to U.S. district attorneys which rescinded the Cole Memorandum, allowing U.S. federal prosecutors to exercise their discretion in determining whether to prosecute cannabis related violations of U.S. federal law.

While Barr reaffirmed his position on the Cole Memorandum when answering a follow-up question from the Senate Judiciary Committee, stating: "to the extent that people are complying with state laws with distribution and production and so forth [of cannabis], I don't intend to go after those", it should be noted that Barr didn't go as far as to offer his support for legalization. Instead, Barr emphasized the need for Congress to clarify federal cannabis law so that it no longer conflicts with state law. "The current situation is untenable and must be addressed" Barr stated, adding that the current system offered "a backdoor nullification of federal law".

Barr went on to say: "we should either have a federal law that prohibits marijuana, everywhere, which I would support, myself." However, he added: "if we want states to have their own laws, then let's get there. And let's get there the right way."

While Cassels does not advise on U.S. regulatory affairs, the incoming Attorney General's marks a positive development for all publicly-traded cannabis companies. This shift in U.S. regulatory matters will likely

Cassels

require an update to your company's public disclosure documents. Whether your cannabis business operates in the U.S. or not, our Cannabis Group can assist you with Canadian regulatory concerns and public disclosure considerations. For more information, please contact a member of our firm's cross-disciplinary **Cannabis Group**.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.