

Amendment 64 Implementation Task Force Sub-Committee on Tax/Funding and Civil Law

Department of Law
1525 Sherman Street
Denver, Room 610

Meeting Minutes

Wednesday, January 9, 2013
11:00 a.m. – 1:00 p.m.

Agenda

TOPIC: Marijuana Businesses Banking

I. Call To Order:

- a. Co-Chair David Blake called the meeting to order at 11:00 a.m.

II. Introductions:

- a. Attendance:
 - i. Sub-Committee Members Present: Co-Chair David Blake, Bill Callison, Don Childears, Michael Elliott, Holli Hartman, Mary Jo McGuire, John Vecchiarelli, Dan Krug, Adrienne Russman, Kimberlie Ryan, Tamra Ward, , Dorinda Floyd
 - ii. Task Force Member Excused: Co-Chair Cheri Jahn, Alexis Senger
 - iii. Other introductions: Rose Silva, Kelley Huemoeller, Bill Michaels, Fred Joseph, Jenifer Waller, Christian Sederberg, Laura-Jane Weimer
 - iv. Public: 36 people

III. Discussion of sub-committee process, future meetings, and topic prioritization

- a. Process and future meetings
 - i. Meet every week until the “Implementation of Amendment 64 Task Force” is dissolved.
 - ii. The location will change, but the Wednesday, 11 a.m.-1 p.m. timeframe will remain the same.
 - iii. Please let David Blake or Cheri Jahn know beforehand if you can’t make a meeting and you are able to send a proxy.
 - iv. The jurisdiction of this group is essentially limited to what is included in the title: “Tax/Funding and Civil Law.”
- b. Topic Prioritization and Agenda:
 - i. January 16th topic: Employment Law
 - ii. January 23rd topic: Taxes (including what happens if the referendum fails and fees)
 - iii. January 30th topic: Civil Law
 - iv. February 6th topic: Constitutionality
 - v. February 13th topic: Funding
 - vi. February 20th is left open
 - vii. February 27th was suggested in the case there is further business

IV. Presentation by Don Childears, President and CEO of the Colorado Bankers Association

- a. Mr. Childears began by noting that Jenifer Waller, Senior Vice President of CBA and Fred Joseph the Commissioner of Banking and Security were both present at this meeting. Mr. Childears proceeded that the banks must follow federal law, which includes the Controlled Substance Act, the USA Patriot Act, Bank Security Act, and other federal regulations. He also pointed out a memo the Department of Justice released on June 11,

2011 that highlighted the consequences to other parties who “knowingly facilitate such activities”. In response, the banks that may have been conducting business with marijuana entities have ceased to do so and have closed those customer’s accounts. If banks are caught conducting business with marijuana entities, they lose their FDIC insurance under federal law.

Mr. Childears sees two main issues that must be addressed. The first is that marijuana is still illegal under the Controlled Substance Act. The second is that a bank who handles funds associated with illegal activities or even with the suspicion that the funds are associated with illegal activities are required to file Suspicious Activity Reports (SARs) with the federal government. In the case that a bank accepts suspicious funds, that bank will be held liable, as well as the customer. The standard used is “knowingly” and the banks have a duty to know their customer. The standard isn’t hard to reach because much of the cash used by marijuana entities has the scent of marijuana, which triggers the requirement that the bank explore the source and customer further. He noted that by filing a SAR banks are not protected from liability for money laundering, therefore bank will still be liable regardless.

Although one specific federal law isn’t explicit, many regulations come into play with this issue. The only viable solution the CBA believes is possible is a state-owned bank. The bank would have to be solely owned by the state of Colorado. The bank can have no connection with the payment system because banks are required to have FDIC insurance to use the payment system. Therefore, the bank could only deal in cash, gold, and silver, which essentially mean there was a large safety deposit box at the bank and no means to pay third parties.

Mr. Childears also pointed out that lending includes the same problems as the depositing issue. He believes the only real resolution would be for the feds to deal with this issue. He suggested sending a letter to one targeted federal agency. He was unsure whether amending the Controlled Substance Act alone would solve the banking problems and said someone should explore that further.

There were several questions to Michael Elliott during Childears presentation on the current status of marijuana entities’ banking situation. Michael noted that there was a bank in Colorado Springs that took on 100 some accounts in 2011, but stopped in Aug/Sept because of the memo from the Feds indicting they would lose their FDIC insurance. This then caused a snowball effect with other banks.

V. Discussion of Banking Restrictions for Marijuana business entities

- a. Michael Elliott brought up Senate Bill 75 from the last session of the CO General Assembly. He said the bill was meant to push a state’s rights solution, but the federal problem essentially killed the bill before there was debate. He would agree that without a response from the federal government, a solution doesn’t seem possible. He also notes that the marijuana industry wants to be treated the same as any other industry.
- b. Jenifer Waller also pointed out that there would need to be another amendment to the Colorado Constitution because Art. XI, Section 2 prohibits the state from being an owner or shareholder of any corporation or company.
- c. Fred Joseph pointed out that the absolute solution must come from the federal government. He also reiterated that even if Senate Bill 75 has passed, the banks still could not access the payment system.

- d. Tom Valdez offered an alternative proposal which he explained as a gift card system. The system would have to be a two party gift card system or simply a contract between the marijuana entity and consumer. He also pointed out the need to hire a PR firm to push for a response to this issue with the federal government. The gift card system would be backed by silver only, not cash. He agreed that in order to get the money out of the gift card system and to third parties would require changes to federal law.
- e. John Vecchiarelli pointed out that the regulators are able to audit regardless of whether the marijuana banking system is cashed based or not. He agrees that payment systems do make the job easier, but they are still capable of auditing regardless.

VI. Public Comments:

- a. There were 9 individuals who came forward with comments. One concern brought up numerous times was the public safety issue. Not only with business owners dealing solely in cash, but consumers who are required to pay only with cash. By requiring these businesses to operate in cash, the risk of increasing cash related crimes rises.
- b. Shawn Coleman, a former staffer for Representative Jared Polis, explained HR 1983 introduced last congress is likely to be reintroduced. This legislation would reschedule marijuana for the medical use of marijuana in accordance with the laws of the various States. Additionally he pointed out that Polis sent a letter to the Secretary of Treasury on the issue of banking in the marijuana industry in September 2012. They received no response.
- c. One comment was to give auditors the tools to effectively regulate the industry.

VII. Suggestions for modification to or expansion of the recommended language for the full task force.

- a. The sub-committee agreed to take a vote within the first 10 minutes of the next scheduled meeting on the recommendation language.
- b. There was an agreement that the letter should indicate that the Governor would like more than guidance from the federal government.
- c. There was an agreement to keep the March 31, 2013 deadline in the letter.
- d. There was opposition to mentioning the problem related to the CO Constitution.
- e. There was an agreement for a second recommendation for other states to show their support.
- f. There was an agreement to other CO entities co-signing the letter.
- g. There was no final decision on the recipient of the letter.

VIII. Closing

- a. David Blake plans to rework the language of the recommendation and there will be a vote on the recommendation at the next meeting. David reminded everyone that they will have a chance to review the language again. If you have counter proposals, be sure to bring them forward before the next meeting. The next agenda will take up employment law issues.

IX. Concluded at 1:25 p.m.