

# Status Quo, Bro

## Legal Marijuana in Colorado for 2018 and Beyond



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The annual midnight “ball” drop in New York’s Times Square is one of America’s great holiday traditions. Measuring 12 feet in diameter and weighing nearly 12,000 pounds, the ball itself contains almost 3,000 individual Waterford crystals illuminated by more than 32,000 LED lights. While I personally have zero interest in ever being anywhere near Times Square at midnight on New Year’s Eve, it is certainly an amazing spectacle.

This year, less than 100 hours after that famous ball dropped, United States Attorney General Jeff Sessions delivered his own “Happy New Year” to one of Colorado’s most “growing” industries (sorry, couldn’t resist!) by dropping his own “ball” on legal marijuana. On January 4, Sessions issued a short, one-page memo to his United States Attorneys throughout the country directing them that federal drug law reigns over any varying state law. As most of you know, marijuana has always been a Schedule 1 controlled substance from the federal government’s perspective.

### Cole Memorandum

One of the downsides to “making law” without actually “passing law” through Congress is that it can be undone in the same whimsical fashion in which it was originally done. The former Obama Administration is learning this lesson quickly as it

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watches many of its executive actions easily “undone” by a new president with opposing priorities. One of the areas where the Obama Administration took unilateral executive action (without Congress) was through his Department of Justice and the issuance of the Cole Memorandum.

The “Cole Memo” was issued by former Attorney General Eric Holder’s

office (authored by Deputy AG James Cole) and said, in its most basic sense, that federal law enforcement was essentially going to ignore federal law in states where federal marijuana law conflicted with state marijuana law. In effect, the Cole Memo is what gave rise to the explosion of the marijuana industry in Colorado and a growing number of other states. But, the Cole Memo was not an actual change in law, only a shift in prosecutorial priorities. As easily as the three-page Cole Memo was unilaterally issued, it was unilaterally withdrawn by the current AG with a one-page memo of his own.

### Sessions' Memorandum

Met with much confusion and consternation by the marijuana industry, Attorney General Sessions' January 4 memo to his own U.S. Attorneys essentially withdrew the Cole Memo and reversed course on Department of Justice perspective about federal law enforcement of marijuana. Obviously, the marijuana industry and legalization advocates reacted to the announcement with frustration, fear and, in some cases, rage. The sky was indeed falling.

One might argue that an industry that has invested billions of dollars of capital investment exclusively in reliance



on a three-page Department of Justice memorandum and the unrealistic expectation of political consistency was a little.... short-sighted. Similarly, the legalization advocacy community has never been shy or discreet about celebrating its policy victories within individual states (just visit Denver's Civic Center Park on any April 20th). For better or worse, Attorney General Sessions reminded us that marijuana law is ultimately controlled in Washington, D.C., not Denver, Colorado. Or is it??

### **"Status Quo, Bro!"**

Despite the initial outrage and confusion related to the impact of the Department of Justice change in policy, a closer review of Sessions's memo actually authorized additional prosecutorial discretion to the individual U.S. Attorney for each respective state to determine how to best allocate their individual resources. In essence, enforcement of federal marijuana law

within a state could be determined and prioritized by that state's US Attorney.

The U.S. Attorney for the District of Colorado, Bob Troyer, almost immediately issued a statement explaining that his Colorado office's enforcement priorities would remain the same as they had been before Sessions's memo – enforcement of illegal "black market" activities, but deference to state law regarding "legal" activities. So, for the time being, Colorado should see status quo regarding its medical and recreational marijuana industries. That said, a change in the U.S. Attorney for the District of Colorado could unilaterally bring a change in that enforcement perspective. Other states that have legalized marijuana have, to this point, been provided less clarity by their respective state's U.S. Attorney.

Until something more definitive occurs at the federal level, the Colorado Association of REALTORS® will con-

tinue to monitor and impact marijuana legislation statewide. In 2017, CAR supported House Bill 1220 in its successful journey through the Colorado legislature. HB 1220, which was signed into law by Governor Hickenlooper, puts reasonable limitations on the number of marijuana plants that can be grown legally in a residential setting. As other important legislation develops in this quickly evolving and emerging area, CAR will continue to monitor and inform its members, particularly in areas impacting home ownership and property rights.

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