

Frequently asked questions: Cannabis referendum

What is the Cannabis commercialization project?

Answer: The project would be highly limited in scope.

It would initially involve a tribally owned enterprise to own and operate cannabis and marijuana production, processing, wholesale and retail sales of these products.

These activities would also be highly regulated through licensing requirements that would track all of the seeds, plants and products to ensure they are sold only at approved outlets for off-reservation use.

The referendum is also authorizing the production, sale, wholesale and retail sale of industrial hemp for future development.

Would this legalize marijuana on the reservation?

The referendum would not approve legalization of cannabinoid-containing products or marijuana for use on the reservation.

It would only legalize these products for the purpose of production, processing, wholesale and retail sale for off-reservation use only.

Why are we not being asked to legalize marijuana for recreational or medical use on the reservation?

That question involves complex health and community concerns that are outside the scope of this effort to bolster economic opportunity on the reservation.

This discussion should continue within the membership but should not be confused with the question on the referendum.

Why is industrial hemp included in the referendum?

Industrial hemp does not contain the constituents in marijuana or cannabinoid products that produce a "high."

It is generally believed to be a useful product for commercial and industrial purposes, for example fiber for ropes or garments.

The Confederated Tribes has no immediate plans to develop industrial hemp regulations or to permit these facilities. However, tribal members have expressed an interest in pursuing this market.

Accordingly, industrial hemp is included to allow tribal members the ability to develop potential business opportunities that the tribe would consider allowing after it promulgates appropriate regulations.

How will tribal members benefit?

The project will produce both commercial revenues and tax revenues that will go to the tribe to fund governmental services and infrastructure as well as fund further economic development opportunities.

In addition, a portion of all tax revenue would be dedicated to public health, safety and welfare which will be directed to combat chronic problems on the reservation such as substance abuse and associated violence.

All of these benefits tribal members through improved public safety, services and job creation opportunities.

In addition, tribal members may also seek to create businesses and employ tribal members associated with business opportunities related to industrial hemp.

Won't this really just provide more opportunity for tribal members to acquire marijuana for personal use and therefore harm tribal members and the community?

Answer: The State of Oregon has already legalized marijuana for personal recreational and medical use.

Bringing production and sale facilities on the reservation for the purpose of tribal revenue generation and job creation will not increase access to pot because access to pot is already pervasive due to the state law and ongoing criminal production. Our public safety officials lack sufficient resources to effectively enforce our laws.

What the project will do is capture resources that would otherwise bypass the tribe that will improve our ability to enforce our laws that prohibit on-reservation use and illegal production.

Why should we approve a tax on tribal businesses?

There are two reasons. The most important reason is that the Confederated Tribes need more revenue to better fund public health and safety programs, including substance abuse treatment and prevention.

The second reason is that the project hinges on being able to sell marijuana for off-reservation use in the state of Oregon, where it is legal under state law.

In order for the tribe's marijuana to be deemed "legal" by the state for off-reservation sale and use, we have to impose regulations that are at least as strict as the state laws, including imposing a tax related to the sale of marijuana and imposing li-

censing fees.

In other words, in order to be able to sell the marijuana and generate business revenues, we must also tax the business making the marijuana sales. Because the tribe is considering allowing only a tribally owned enterprise to engage in the market, this must be made to apply to tribal business.

Will this mean that tribal members will be taxed?

No. The proposed tax would be limited to any business on the reservation engaged in the marijuana or industrial hemp businesses. The tax would not be directly on tribal members.

How do we know the taxes will be reasonable?

The marijuana production and sale market will be very competitive. It is therefore in the tribe's best interest to have competitive pricing of products to increase sales and commercial revenues.

Taxes merely increase the end cost of the marijuana products, so it is in the best interest of the tribe to minimize these taxes and fees to the extent possible.

For example, the state of Oregon imposes a 17-20 percent tax on the retail sale of marijuana. While the Tribe likely has to at least "meet" the state's tax rate in order to be deemed "legal" pot, the tribe will not impose a tax that exceeds this amount.

Why are we being asked to approve a new enterprise?

The tribe is in the early stages of any actual business relationship, so we are still evaluating the best commercial structure for the project.

Obtaining this approval will allow for more choices on the best way for the tribe to structure its business to best protect tribal assets and the membership.

Will this change federal law?

No. The proposed tribal code changes are intended to allow limited production and sale of marijuana in a manner consistent with the "Cole Memorandum." This memo-



Courtesy photo.

Example of commercial cannabis growing operation.

randum is a federal enforcement policy that allows for state and tribal regulation of marijuana if certain standards are met without the interference of federal criminal prosecution.

Marijuana and industrial hemp will still be considered a Schedule I controlled substance under the federal Controlled Substances Act, and the personal possession and use of these substances will still be considered both a tribal and federal crime.

What is the Cole Memorandum?

In 2013, Deputy Attorney General James M. Cole released a memorandum to all U.S. Attorneys, regarding marijuana enforcement. And later, in 2014, the federal government specifically addressed that the Cole Memorandum would apply in Indian Country.

The Cole Memorandum listed eight priorities where federal authorities will focus its legislative investigative and prosecutorial resources:

1. Preventing the distribution of marijuana to minors;
2. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
3. Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
4. Preventing state-authorized marijuana activity from being used as cover or pretext for the trafficking of other illegal drugs or illegal activity;
5. Preventing violence and the use of firearms in the cultivation and distribution of

marijuana;

6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;

7. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and

8. Preventing marijuana possession or use on federal property

It is important to emphasize that the Cole and Wilkinson memoranda are simply enforcement policy memorandums.

These do not change the current status of the law, which currently criminalizes marijuana cultivation, possession, sale and use. It merely provides a statement as to the current policy on enforcement of that federal law.

Why should we approve something that violates federal law? What are the consequences?

Legalization of marijuana and industrial hemp is occurring at the grass roots level.

Twenty-three states and the District of Columbia cur-

rent have laws legalizing marijuana in some form.

Four states—Oregon, Washington, Colorado and Alaska—have legalized marijuana for recreational use.

The federal executive has decided to allow this grass roots effort to move forward without federal prosecution if certain standards are in place.

This has created a new market for a product that can be grown on the reservation for legal sale.

Currently, marijuana is grown illegally around the state of Oregon, including on the reservation. This would provide the opportunity to regulate and tax it to benefit the tribal membership.

Federal criminal and civil remedies would remain unchanged on the books, and if the federal policy changes, enforcement may resume. While there are no guarantees, it seems unlikely that criminal enforcement would be pursued for activities that are implemented while the Cole Memorandum is in place, but it could very well mean losing the tribe's investment in the project.

Accordingly, there is no doubt a risk. This referendum is coming before the membership because, on balance, there appears to be more opportunity than risk for the membership because:

- Significant revenue generation potential to fund tribal needs including improved enforcement of existing laws banning the use and illegal production of marijuana on the reservation.
- Significant job creation potential.
- Potential to "capture" revenues that would go to other markets and bypass the tribe.

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