

Editor: Lael Echo-Hawk of Hobbs, Straus, Dean & Walker, LLP

# Smoke Signals

INDIAN LAW BLOG

## Federal Raids on Tribal Hemp Operation Raise Questions About True Effect of DOJ Tribal Marijuana Memo

By Lael Echo-Hawk on October 26, 2015

POSTED IN LEGALIZATION OF MARIJUANA, TRIBAL SOVEREIGNTY, TRIBAL-STATE RELATIONS



On October 23, **2015 federal DEA agents raided a Menominee hemp grow destroying approximately 30,000 plants.** While the Tribe is claiming that the plants were all industrial hemp containing less than 3% THC, the DEA alleges that the plants were in fact marijuana. The Tribe has promised to **bring the matter to federal court.**

The recent federal and state law enforcement activity on federal land calls into question the true efficacy of the “**Wilkinson Memo**” that was widely advertised by industry, some legal advocates, and some tribes as “legalizing” cannabis on tribal land. These recent raids illustrate that if anything, the Wilkinson

Memo simply opened a can of worms.

As I have been saying since the release of the DOJ Policy Guidance aka Wilkinson Memo, there are very real legal hurdles that need to be overcome before a tribe should invest resources in developing an operation or allow industry access to tribal lands. It appears that the Menominee Tribe was in contact with the state and federal authorities regarding the grow which begs the question – what must a tribe do in order to participate in this emerging

industry?

Menominee's location in a state without any legalized marijuana is problematic. And if the plants are in fact marijuana plants and not hemp, then the tribe and/or its partner took a very risky gamble. If the plants are truly hemp, then it is clear that the feds are not going to allow tribes to participate in an agricultural project for a crop that, according to a **Congressional Research Service report**, has the potential to earn the second highest revenue per acre (after tobacco).

I've been preaching the merits of hemp cultivation as a major economic opportunity for tribes. But it is not an opportunity to "get cute" and mix marijuana plants into the grow. Stay clean and I believe that investment could be very lucrative provided you are doing so within the framework provided by the 2014 Farm Bill.

At this point, it is clear that unless a tribe is located in a state with some form of legalized marijuana, engaging in this industry (even hemp) is very risky. And for tribes even in states with legalized medicinal or recreational marijuana, careful evaluation and coordination of the state regulations is a necessity. Yes, I know, we are sovereign governments but we can be both sovereign and smart... particularly when the risks are so high.

Take care,

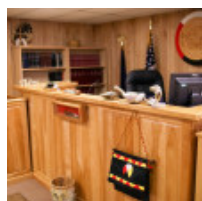
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