

# KANSAS CITY BUSINESS JOURNAL

## Lawyer: Marijuana creates compliance issues for banks

Banks in the Kansas City area will face a unique situation now that Missouri voters legalized medical marijuana.

While growing, processing, shipping and selling marijuana will be legal under Missouri's newest constitutional amendment, banks are subject to federal laws that still consider marijuana to be an illegal business. So banks nationwide have avoided doing business with any of these companies.

The bigger, more perplexing question for banks: How do they deal with customers who are legitimate businesses, but are doing work for the marijuana industry?

It's obvious that banks in other states continue to do business with electric companies, landlords, trucking companies, contractors and other businesses that are doing business with marijuana cultivators and distributors.

Rod Nichols, a partner in the banking and financial services group at Kansas City-based law firm Spencer Fane LLP, said these indirect companies are creating a huge challenge for banks. That's because guidance provided by the Financial Crimes Enforcement Network (FinCEN) clearly states that banks can't engage in business with marijuana-related businesses, but it doesn't provide much guidance on what defines "marijuana related."

The way FinCEN guidance works right now is that as long as a bank doesn't know or suspect that cash being deposited comes from a marijuana-related business, it's all good. But the second it even suspects that a client is doing work for a marijuana company, it's required to file a Suspicious Activity Report (SAR).

It's pretty clear that banks have been filing these reports on customers to protect themselves, and that the federal government hasn't been acting on these reports, but there is no way to really know for sure.

"That could very well be the case," Nichols said. "SARs are highly confidential. Whether or not banks are filing SARs regularly on landlords providing property to cultivators or dispensaries, no one other than federal law enforcement is going to know that. So it's hard to say how financial institutions are dealing with this. Presumably, banks are attempting to comply with FinCEN guidance and obligations under the Bank Secrecy Act."

It's certain that the Justice Department has been looking the other way since the Cole memo was issued in August 2013, which stated that it would not enforce federal marijuana laws in states where it is legalized. But in January, former Attorney General Jeff Sessions



**Rod Nichols is a partner in the banking and financial services group at Kansas City-based law firm Spencer Fane LLP.**

rescinded that memo.

However, the federal government hasn't done anything to step up enforcement in states where marijuana was legalized. So banks continue operating as if the Cole memo is still in force.

Banks caught in the middle are likely to file a "Marijuana Limited SAR," which states they suspect some money came indirectly from a marijuana business that is legal under state law, but they won't terminate the banking relationship.

"At this time, I'm not aware of any bank being prosecuted or any action being taken to revoke their charter," Nichols said.