

Judge tosses Denver marijuana credit union's suit for federal approval

Forcing federal reserve to bank on pot credit union would give approval to criminal activity, federal judge says.

By David Migoya

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A judge on Tuesday dismissed a lawsuit seeking federal approval for the first credit union for marijuana in Colorado, saying that allowing it "would facilitate criminal activity."

U.S. District Judge R. Brooke Jackson said in a nine-page opinion that he was compelled to reject The Fourth Corner Credit Union's suit because marijuana remains illegal under federal law.

The U.S. Department of Justice has issued guidelines on how banks can work with legal marijuana businesses, making it clear that prosecutors would not pursue investigations unless certain conditions were not met. But Jackson said he could not take that tack.

"These guidance documents simply suggest that prosecutors and bank regulators might 'look the other way' if financial institutions don't mind violating the law," Jackson wrote. "A federal court cannot look the other way."

Colorado chartered Denver-based Fourth Corner as a credit union in November, allowing it to acquire a bank routing number and to apply directly to the Federal Reserve Bank of Kansas City, the regional bank for the board of governors of the Federal Reserve System, for a master account. The account allows banks to transact business. The Federal Reserve turned down the application.

The federal justice guidelines were issued in February 2014 through the Financial Criminal Enforcement Network.

Fourth Corner's arguments that the guidelines were tacit approval of pot-industry banking "is something of a sleight of hand," Jackson noted.

The government remains committed to enforcement of federal drug laws, Jackson said. And prosecutors "apply certain priorities in making enforcement actions, but it does not change the law."

Credit union attorney Mark Mason, who helped in the founding of Fourth Corner, was not immediately available for comment on Jackson's ruling. The Federal Reserve would not comment.

The industry met the ruling with the same resolve it has had since legal recreational marijuana sales began two years ago.

"The marijuana industry will continue advocating for responsible banking solutions in order to promote accountability, transparency and public safety," said Michael Elliott, executive director of the Marijuana Industry Group.

A separate Fourth Corner lawsuit is pending in federal court in Denver against the National Credit Union Administration, which turned down the credit union's application for share deposit insurance, a requirement for a master account. NCUA said it turned down Fourth Corner on grounds including concerns over its ability to mitigate the risk of banking only marijuana businesses.

As the Federal Reserve did, NCUA has asked the court to dismiss the lawsuit.

Jackson noted how bankruptcy courts cannot offer the same protection against creditors for a marijuana business as for another type of business. In a local case involving a medical pot dispensary, "the debtors cannot obtain bankruptcy relief because their marijuana business activities are federal crimes," Jackson quoted a 10th Circuit Bankruptcy Appellate Court opinion.

Tuesday's decision is the latest setback in the effort of credit unions to become the first legal banking system for the marijuana industry.

Many, although not all, marijuana businesses have difficulty acquiring and holding bank accounts because the product is illegal under federal law, which also governs the nation's banking system.

As such, banks that do handle pot money, even though legal under state law, risk prosecution for money laundering. Also, federal banking regulators have said banks that do business with the pot industry could be held liable for their transgressions even if bankers are unaware of a business' conduct or associations outside of Colorado.

Fourth Corner is the closest anyone has come to solving a problem most say can be corrected only in Congress. Even Jackson agreed.

"I regard the situation as untenable and hope that it will soon be addressed and resolved by Congress," the judge wrote.