

Is There a Loophole in Selling Recreational Cannabis in MS?

Could Mississippi's Choctaw Tribe Follow North Carolina's Cherokee in Selling Recreational Cannabis?

In July, the Eastern Band of Cherokee Indians (EBCI) in North Carolina made headlines by starting to sell recreational marijuana on a limited basis, despite the fact that state legislators have not yet legalized the drug for medical or recreational use. This bold move has sparked interest and questions about whether other tribes might follow suit, particularly the Mississippi Band of Choctaw Indians (MBCI), in a state where recreational marijuana remains illegal.

A Sovereign Path to Cannabis Sales

The core of the issue lies in the sovereignty of Native American tribes. As sovereign entities, tribes have the authority to regulate their own affairs, including the cultivation and sale of cannabis, independent of state laws. The recent decision by the EBCI to enter the recreational cannabis market has set a precedent that prompts consideration of whether the Mississippi Band of Choctaw Indians could take a similar path.

Legal Perspectives: Can MBCI Enter the Market?

Attorneys specializing in cannabis law have weighed in on the potential for MBCI to enter the recreational cannabis market. According to Rod Kight, a North Carolina cannabis lawyer and advocate, the Mississippi Band of Choctaw Indians could indeed establish a cannabis grow and distribution facility. "As a sovereign body, they can choose to legalize within their borders, despite federal or state law," Kight explained. "There are many ramifications and issues that this raises, but generally speaking, they can do it. In fact, it will be much like a state legalizing and setting up a grow and distribution program."

In essence, Kight suggests that MBCI has the legal groundwork to follow a path similar to that of the EBCI, provided they navigate the complexities of federal and state regulations. This would involve growing, selling, and testing cannabis exclusively on tribal lands, as Mississippi state law prohibits recreational cannabis outside of tribal jurisdiction.

Comparative Analysis: EBCI's Success and Its Implications

The Eastern Band of Cherokee Indians' decision to sell recreational marijuana reflects their strategic use of tribal sovereignty to create a new revenue stream. The introduction of recreational cannabis on Cherokee territory is viewed as akin to the economic boom experienced from gaming operations. Since opening their first casino, Silver Star, in 1994, the Mississippi Band of Choctaw Indians has been a prominent player in the gaming industry, demonstrating their ability to leverage sovereignty for economic gain.

For the EBCI, the revenue from cannabis sales represents a significant opportunity. Similarly, the MBCI could see similar benefits if they chose to pursue a recreational cannabis market, given their established economic infrastructure and operational experience.

Current Stance and Potential Challenges for MBCI

Despite the legal possibilities, the Mississippi Band of Choctaw Indians has not indicated a move toward legalizing recreational cannabis on their lands. Misty Brescia, the director of public information for MBCI, stated, “Yes, I think so. I think we could. The federal government changed the rules so that Tribes could grow, sell, etc. marijuana. However, our code (laws) still says marijuana is illegal on Mississippi Choctaw Tribal Lands. Until that is changed, which is a Tribal Council decision, this isn’t even a possibility for us.”

Brescia’s comments highlight that while the legal framework exists for MBCI to enter the cannabis market, any such move would require a change in their tribal code, which is a decision for the Tribal Council. The process for amending tribal laws could be swift but is contingent on council approval.

Expert Opinions: Feasibility and Considerations

Slates Veazey, an attorney with Bradley Arant in Jackson, notes that while MBCI could technically produce and sell cannabis, significant challenges remain. “Yes, I believe they (could produce and sell), but that does not come without concerns and challenges,” Veazey said. “If the Choctaw tribe would change their code or constitution to allow for recreational cannabis, all of those activities would have to remain on tribal land.”

Veazey’s perspective underscores the logistical and legal hurdles that MBCI would face. Any recreational cannabis product would need to stay on tribal lands due to Mississippi’s prohibition on off-reservation cannabis transport. This constraint means that while MBCI could potentially capitalize on the market, the scope of their operations would be limited to their own facilities.

The Future of Cannabis in Mississippi

The possibility of the Mississippi Band of Choctaw Indians following in the footsteps of the Eastern Band of Cherokee Indians raises intriguing questions about the role of tribal sovereignty in the evolving cannabis landscape. While the legal framework exists for MBCI to enter the market, significant decisions and legislative changes are required to make this a reality.

For now, the focus remains on whether MBCI will choose to amend their tribal laws to embrace recreational cannabis. The outcome of this decision could not only impact the tribe’s economic future but also set a precedent for how other tribes might navigate the intersection of sovereignty and cannabis regulation in states where the drug remains illegal.

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