

Backing into Federalism: Medical Marihuana's Commercial Uses

By Michael G. Woodworth and Eric W. Misterovich

Editors Note: This month's Legal Spotlight column is guest-authored by The Hubbard Law Firm.

Federalism is the distribution of governmental power between a central authority and its constituent units. The term "federalism" most commonly arises in discussions addressing relations between sovereign states on the one hand and a centralized national government on the other. But federalism is taking on a new application in Michigan.

The Michigan Medical Marihuana Act (MMMA), widely criticized as confusing, contradictory, and vague, contains no state-wide regulatory measures, offers local governments zero enforcement or zoning guidance, and fails to address the legality of related commercial activities. As a result, constituent units of state government—villages, townships, and cities—are now called upon to balance a state law that provides the sick with an avenue of relief independent of conventional pharmaceuticals while simultaneously increasing the presence of a potentially illicit drug in their communities.

The treatment of marijuana related businesses varies considerably at the local level. Some Michigan communities have passed ordinances prohibiting "all uses inconsistent with federal law," eliminating such businesses by implication. Others rely on the Act's silence to declare businesses illegal, while some welcome entrepreneurial interests and zone specifically for marijuana businesses.

The Emergence of Cannibusiness

Despite conflicting opinions on the legality of marijuana businesses, commercial entities are forming. The terms "compassion clubs," "dispensaries," and "social clubs" are often used to describe varying types of these entities. However, labels alone are irrelevant. The appropriate inquiry is whether the individuals involved are legally authorized to engage in the specific activities at issue.

Nurseries

Cultivation of marijuana is redefining the traditional concept of a nursery. Often permitted by right in zoning ordinances, a nursery may now encompass a collaborative grow operation between marijuana caregivers. Pursuant to the MMMA, marijuana must be grown in an "enclosed locked facility." Such a facility is defined as "a closet, room, or other enclosed area equipped with locks or other security devices" that permits access only by a caregiver or patient. Some entrepreneurs are relying upon this definition to subdivide warehouses into smaller, individual grow rooms.



Michael Woodworth, president of The Hubbard Law Firm and presenter at the League's Medical Marihuana seminar in Lansing, talks to the press.

A central grow facility may help municipalities alleviate concerns relating to multiple marijuana cultivations in residential areas. Of course, these facilities present their own public safety and land use issues. And, the larger they become the more they risk federal government intervention. Despite these concerns, commercial grow operations are being pursued, with or without governmental sanction, even in rural municipalities.

Patient-to-Patient Transfers

Patients may cultivate their own marijuana or designate a caregiver to cultivate on their behalf. A patient's caregiver designation changes two important legal rights. First, the designating patient may no longer cultivate marijuana—he or she has assigned that right. Second, the assigned caregiver receives protections for assisting a patient to whom that caregiver is connected through the state's registration process.

The designation of a caregiver does not remove all of the designating patient's rights. Patients, with or without a caregiver, may acquire, transfer and deliver marijuana. These rights have given rise to businesses featuring patient-to-patient transfers. Patient-to-patient transfers, with individuals on each side of the transaction permitted to acquire, transfer and deliver marijuana, absent any other nexus between them, has sparked heated debates.

Many contend these transactions are illegal because the Act does not expressly permit patient-to-patient sales or because they run afoul of the Act's intent. Others argue this type of transaction is not only permitted, but necessary to

provide patients continued availability of their medicine. They point out that, if a patient can only acquire marijuana from an assigned caregiver, that patient will be forced to forego medicine while waiting for the caregiver's plants to mature.

Edibles

As an alternative to inhaling harmful smoke, many patients choose to ingest marijuana-infused products. Accordingly, businesses are forming to sell food products produced with marijuana oils and butters.

The MMMA places no regulations on ingestible marijuana businesses, leaving local governments to sort out the issues. In response, municipalities may consider requiring such operations to have commercial kitchens, undergo sanitary safety and health inspections, or impose labeling requirements that call for the disclosure of the product's ingredients, the amount of marijuana used, and the level of its potency.


Local Government's Responsibility

Local governments, challenged to maintain public services in the face of record deficits, may be frustrated by the need to also address marijuana policy. But municipalities can't depend upon clarification from Lansing. This is true, in part, because Michigan's Constitution requires a super-majority vote to amend citizen-initiated laws. Without another vote of the people, a 3/4 vote of each house of the Michigan Legislature is required for an amendment to the MMMA.

As a result, the constituent units of Michigan's central government are being asked to fill in the MMMA's gaps. Villages, cities, and townships have responded by creating a patchwork of local regulations, the inconsistency of which may undermine the effectiveness of any individual ordinance.

Communication between municipalities is recommended to resolve medical marijuana issues and foster a regional approach to reduce patchwork regulation, maximize medical marijuana's benefit and limit its adverse effects. Local officials should collaboratively voice their concerns and cooperate to determine the most prudent methods to resolve the identified risks.

The lack of experience regulating marijuana makes forming effective answers difficult, but not impossible. With education, communication, and proper guidance, municipalities can enact practical and effective ordinances.

Like it or not, Michigan must now clarify how to regulate medical marijuana. Our governmental structure allows local solutions to serve as a prototype for statewide answers. Municipal officials, with input from their citizens, will ultimately step up and solve the issues presented on a local level. In this fashion, our federalist system will rely on its smallest constituent unit: local government. 

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