

County of Lassen, California
OFFICE OF COUNTY COUNSEL

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October 2, 2017

Lassen County Board of Supervisors
221 S. Roop St.
Susanville, CA 96130

RE: *Commercial Cannabis Activities in Lassen County*

Dear Sirs,

The State of California has seen a remarkable change in the law as it relates to cannabis in the last 2 years. The evolution of the law, and regulations, has not settled. I will address that later in this correspondence.

In 1996, proposition 215 was adopted by the voters of the State of California. Prop 215 created a framework where those who possessed a recommendation from a physician could cultivate, use, and possess marijuana for medical reasons and were insulated from traditional criminal sanctions for same. The principal criticism of prop 215 was that it was poorly written and even harder to enforce, perhaps by design.

In approximately 2002, the California Legislature, thinking they were helping the situation, adopted SB 420. This legislation, entitled the Medical Marijuana Program Act, sought to clarify the scope and application of prop 215 by providing limits how much marijuana might be cultivated and possessed (prop 215 had no such limits). It also was intended to create a program for prompt identification of medical marijuana patients by law enforcement in order to avoid unnecessary arrests and prosecutions. Interestingly, no one told the state legislature, prior to adopting this bill, that they may not circumscribe by legislation a right afforded the people by initiative. The California Supreme court did just that in People v. Kelly. What was viewed as the most important aspect of SB 420, the limits on what could be grown and possessed, was struck down by the court as an impermissible act by the legislature. No follow up legislation or initiative ever rectified this. The law remained that whatever a patient "reasonably" needed for their particular medical needs could be legitimized.

In the Fall of 2015, a watershed moment occurred in the California Legislature. After nearly 11 years of no significant action on the marijuana issue, SB 643, AB 266, and AB 243 were adopted. These three bills dramatically changed the scope of permissible marijuana activity in California. These bills, collectively, discarded the ban on any commercial production, distribution, or sale of marijuana (for medical purposes only). They created a framework wherein medical marijuana could now be cultivated, processed, distributed, and retailed by non-patients or caregivers, **for a profit**. The State

set about the process of creating a new bureaucracy to deal with the attendant regulation of this new legislature approved industry which contemplated the issuance of licenses for same. This new state agency was initially identified as the Bureau of Medical Marijuana Regulation (BMMR).

Prior to BMMR being able to get its licensing off the ground, the voters of California also adopted Proposition 64 at the November 8, 2016 election. Prop 64, otherwise known as AUMA (the Adult Use of Marijuana Act), legalized the cultivation, production, distribution and sale of marijuana for recreational purposes. There were some differences between AUMA, what the people passed by initiative and what the legislature had adopted by bill one year before on the medical side.

Without going into what the differences were, it was plain that AUMA was more permissive, that the Governor's office favored a uniform approach to marijuana statewide, and that, just like in the Kelly decision some years before, the legislature could not change what the people had passed by initiative. Hence, the legislature, with a little help from the Office of the Governor, adopted what is now known as the "trailer bill". SB 94 was adopted in July of this year. That bill, attempts to meld the state's medical-only regulations passed by the legislature with the adult-use rules approved by the voters under prop 64. Significantly, the rulemaking process that BMMR had been engaged in when the trailer bill was signed came became moot. Likewise, the prohibitions of vertical integration of licensees was removed. MAUCRSA, the Medical and Adult Use Cannabis Regulation and Safety Act (SB 94) created a single state agency responsible for administration of this program. The Department of Cannabis Control is now charged with creation of a uniform licensing and regulation system for the commercial aspects of medical and recreational marijuana.

As you can tell from some of the literature I have included, the draft regulations which BMMR was in the process of receiving public comment upon have now been withdrawn. There are no draft regulations currently. The State has announced that it will be on time for its January 1, 2018 license issuance date and that in order to do so it will implement emergency regulations based in part on the efforts of BMMR at rulemaking.

Those draft regulations are not expected to be released until the end of November. The draft regulations which BMMR released and subsequently withdrew are attached hereto to give you a taste of what is to come. What the State finally adopts as its regulations is still unknown.

As I am sure you know, under the new state laws regarding commercial cannabis activities, in order for someone to acquire a license from the State of California to engage in any of these businesses, they must first acquire permission, or some sort of license or permit, from the local jurisdiction within which they intend to operate. This affords local jurisdictions some control over what kinds of business may operate in their respective jurisdictions.

In Lassen County, we adopted 2017-004, which implemented a ban on all commercial

cannabis activities. The idea announced at the time was that this ban was viewed as temporary while the issue of commercial cannabis was looked at more intensely by the ad-hoc committee the Chair formed.

The ad-hoc committee has met and after considerable discussion, has decided that the issue of what commercial cannabis activity should be allowed in Lassen County, and in what form, should be brought back to the Board as a whole for discussion and decision.

There are several pieces of literature attached hereto. They are as follows:

1. CANORML publication regarding summary of MCRSA and updates thereto.
2. Harris Bricken publication on MAUCRSA and licensing.
3. Margolin Lawrence publication on MAUCRSA and licensing.
4. BIOTRACKTHC publication on cannabis licensing and track and trace.
5. Bureau of Cannabis Control update on regulations.
6. BMMR draft medical cultivation regulations.
7. Article from Redding Press Democrat.

I look forward to a lively discussion regarding what direction the Board would like to go on the issue of commercial cannabis activities in Lassen County.

Respectfully,

A handwritten signature in blue ink, appearing to read 'R. Burns', with a stylized flourish extending from the end.

Robert M. Burns