

Medical marijuana vote called invalid

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Police won't change enforcement practices

News Staff Reporter

A day after its approval by three-fourths of Ann Arbor voters, the medical marijuana initiative is getting the cold shoulder.

Ann Arbor Police Chief Dan Oates said in a written statement he has directed his officers to continue enforcement of all marijuana sale and possession offenses as they did before the vote.

Oates' decision came after City Attorney Stephen Postema said Wednesday that Ann Arbor's new medical marijuana initiative is invalid.

Although the initiative was legally and appropriately placed on the ballot after a petition drive, Postema said 27-year-old case law dictates that city officials can refer complaints for prosecution under state law even though it would be contrary to the city's new charter language.

In a 1977 decision involving a case in Ypsilanti, the state appeals court ruled that city officials weren't prohibited from referring marijuana cases for prosecution under state law, despite a city ordinance that said they couldn't refer such cases to the Washtenaw County prosecutor.

Based on that case, Postema said, his office and police can't be bound by charter amendment prohibitions that conflict with state and federal law. Those laws, he said, will continue to govern marijuana arrests in Ann Arbor.

Medical marijuana proponents said Wednesday that the city's position means the matter is likely to wind up in court.

Scio Township Trustee Chuck Ream, who led the petition drive, acknowledged that Michigan has case law regarding such charter amendments.

"But the citizens of Ann Arbor have spoken just as clearly," he said. "And people who would like to be employed by the city should either listen to the voice of the people when they vote or they should seek employment ... in another community. If the people of Ann Arbor didn't speak clearly yesterday, then I don't know what it takes."

Ream criticized Postema for countering voters' wishes, and said that a lengthy court case over the matter was likely to cost taxpayers a lot of money.

Voters approved the initiative by a 74 percent margin Tuesday, or 39,806 to 13,763. Proposal C sought to protect medical marijuana users from arrest and prosecution by local officials, whom proponents say make 99 percent of such arrests. The measure amends the city charter to decriminalize marijuana when recommended by a health care provider.

Ann Arbor Mayor John Hieftje said the City Council is not taking a position on the validity of the initiative yet, and that it is a matter of law that needs clarification.

"Well, I voted for it," he said Wednesday. "And I don't think there's many of us who would deny something to someone who's in pain.

"But there are a lot of complications with it, and it's going to take us a while to sort it out," he said, adding that the City Council would meet to discuss where it stands legally. "It's premature to say we have it all figured out."

City Council members voted 7-4 in July to place the matter on the ballot. Wendy Woods, D-5th Ward; Mike Reid, R-2nd Ward; Leigh Greden, D-3rd Ward; and Marcia Higgins, D-4th Ward, voted against placing it on the ballot. But it was largely a procedural vote, required as a final step to put it before voters after signatures were collected and the language was approved by the city clerk.

Officials with the state Attorney General's office could not be reached for comment Wednesday. In September, the office sent a letter to Ann Arbor officials warning them the new amendment would be in conflict with state law.

Marijuana remains illegal under state and federal law, regardless of whether it is used, possessed or sold within the city limits.

State and federal law enforcement officers would not be prevented from arresting, charging and prosecuting someone who claims to use pot for medicinal purposes, regardless of the city's interpretation of the law.

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