

From: David Cahill <cahilld@comcast.net>
To: moksha@umich.edu
Subject: Postema E-Mails
Date-Sent: Friday, November 05, 2004 10:48 AM -0500

Chuck, I thought you should see the two e-mails that Stephen Postema sent to Mayor and Council Wednesday (11/3).

Here is the first one:

From: Postema, Stephen
Sent: Wednesday, November 03, 2004 11:34 AM
To: Carlberg, Jean; Easthope, Christopher; Fraser, Roger; Greden, Leigh; Groome, Kim; Hieftje, John; Higgins, Marcia; Johnson, Robert; Lowenstein, Joan; Reid, Mike; Teall, Margie; Woods, Wendy
Subject: Proposed statement

Mayor and Council members:

Because Dan and I have received press questions, I prefer to not discuss the matter but simply issue the following statements today.

Please let me know any concerns.

Statement of Stephen K. Postema, Ann Arbor City Attorney

"Yesterday, the people of Ann Arbor passed Proposal C, a Charter Amendment concerning Medical Marijuana.

Those urging the passage of this amendment cite the need to be compassionate toward those who are ill.

Certainly, all those in a civilized society can agree with the need to be compassionate.

However, it is also important now for the people of Ann Arbor to understand the relevant laws governing this issue.

First, it was not improper for this issue to be on the ballot. State law mandates that a ballot proposal with sufficient signatures must be placed on the ballot,

whether or not the ballot language is legal or illegal. The City was required to put this matter on the ballot as a matter of state law.

Second, in the Joslin case, a 1977 case analyzing an Ypsilanti ordinance concerning marijuana, the Michigan Court of Appeals struck down a provision that would have limited the police and Ypsilanti City Attorney from referring complaints for prosecution under state law.

Therefore, under the Joslin case, the Ann Arbor Police Department and the City Attorney are not and cannot be bound by those same prohibitions in the charter amendment.

Third, state and federal law generally govern drug matters. State or federal law does not recognize at this time any sort of medical marijuana defense as outlined in the Charter Amendment.

Therefore, the Charter Amendment will not provide any defense for those prosecuted for possession or use of marijuana.

Fourth, the United States Supreme Court is going to decide a case this year concerning the ability of the state of California to enact a state law allowing a medical marijuana defense to a prosecution. Perhaps this case will shed some light on this issue. However, that case would likely only deal with the ability of the state to enact such a law, and not a municipality.

Therefore, to the extent that state and federal law govern the issue of medical marijuana, that law will apply. If it is ever determined that such a charter amendment is valid, then the applicability of this amendment can be reviewed.

Finally, those persons disappointed with the state of the law can also look to the same Joslin case for support in bringing their cause to the state legislature. That Court of Appeals, despite its ruling, recommended that the state legislature look again at the issue of marijuana usage. Perhaps the state will finally do so with a focus on the medical use of marijuana.

In the meantime, on this issue, the City is bound by the Joslin case and relevant state and federal law."

Stephen K. Postema
Ann Arbor City Attorney

Statement of Ann Arbor Police Chief, Daniel Oates:

"I am sympathetic about the compassionate intent of Proposal C. However, given my understanding of the present state of the law, I have directed that the AAPD's enforcement for possession or sale of marijuana will remain unchanged. If there is more guidance from the courts in the future, then we will adjust accordingly."

Here is the second one:

From: Postema, Stephen
Sent: Thursday, November 04, 2004 1:36 PM
To: Carlberg, Jean; Easthope, Christopher; Fraser, Roger; Greden, Leigh; Groome, Kim; Hieftje, John; Higgins, Marcia; Johnson, Robert; Lowenstein, Joan; Reid, Mike; Teall, Margie; Woods, Wendy
Subject: Privileged and Confidential

Dear Mayor and Council members:

I have some follow up information on the medical marijuana that may be useful if you are asked further information about this issue.

I asked around in the office and evidently there has never even been a prosecution for someone using marijuana for medical purposes over the last 15 years or so. That is a prosecution by the City.

(There has been one by the County that I am really aware of, and it was a publicized case.)

Basically, a prosecution is unlikely to ever come up in the City as most people who use it in this manner do so privately.

The Ann Arbor police and this office aren't going out of the way to find these people to prosecute.

The ironic thing is that the charter amendment wouldn't really help anyone solely because no one who would use this defense is even being caught or prosecuted.

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The prosecution of an ill person who uses marijuana is truly a non-issue in my view.

Stephen Postema
City Attorney