



Municipal Law News

March 2014

MICHIGAN SUPREME COURT STRIKES DOWN LOCAL REGULATION OF MEDICAL MARIJUANA

- Michael D. Homier and John R. Taylor

Since 2008, when voters approved the Michigan Medical Marihuana Act ("Act"), many municipalities have adopted ordinances regulating the use of medical marijuana within their boundaries. Some ordinances restrict the zoning districts where medical marijuana can be dispensed, while other ordinances prohibit any activity that violates federal law – which includes the use and distribution of marijuana.

Last month, the Michigan Supreme Court struck down the City of Wyoming's medical marijuana ordinance. The City ordinance prohibited any property uses "contrary to federal law, state law or local ordinance." A City resident who had obtained a registry identification card under the Act desired to grow, possess, and use marijuana in his home, for which he would be immune from penalty under the Act but which would violate federal law and thus violate the City's ordinance. He sued the City in circuit court, arguing that the ordinance interfered with his rights under the Act.

The circuit court found that the ordinance was enforceable because the federal Controlled Substances Act ("CSA"), which prohibits even medicinal use of marijuana, "preempts" (trumps) the Act. The Michigan Court of Appeals reversed that decision and held that the Act is not preempted by the CSA because it was possible to comply with both laws simultaneously. Even if using medical marijuana was immune from prosecution under Michigan law, the federal government could still regulate and enforce the federal laws against that same medical marijuana use.

The City appealed. On further appeal, the Michigan Supreme Court agreed with the Court of Appeals and concluded that the CSA does not preempt the Act because it is possible to comply with both laws simultaneously. The Supreme Court found that Section 4(a) of the Act provides state-law immunity for certain uses of marijuana but does not affect the federal criminalization of or punishment for these actions. In fact, the CSA contemplated a role for states in the regulation of marijuana.

The Supreme Court further held that a municipality may not enact an ordinance when that ordinance directly conflicts with the state's statutory scheme. In this case, the City's ordinance directly conflicted with the Act by prohibiting the very conduct that the Act expressly authorizes – growing, possessing, and using medical marijuana. Thus, the Court found in favor of the plaintiff.

For Michigan municipalities, this ruling means that ordinances that regulate the use of marijuana in direct conflict with the Act will be held invalid. Municipalities that enacted ordinances similar to the City of Wyoming's after the enactment of the Act should review their ordinance with legal counsel in light of the Supreme Court's ruling. If you have questions about your municipality's zoning ordinances, do not hesitate to contact your Foster Swift municipal law attorney.



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CASE TO WATCH

- Ronald D. Richards

ELECTRICITY EXPANSION PROJECTS CUTTING THROUGH MUNICIPALITIES

A case pending in Michigan Appellate Court involves whether an electric utility may build a new transmission line project through Michigan townships. *Oshtemo Charter Twp v MPSC et al.* This case stems from the Public Service Commission's decision to approve an electric utility's request to build a new transmission line project through a township in Van Buren County and through a township in Kalamazoo County. The proposal involves new transmission lines about seven miles long, on a 220-foot right-of-way, running through the affected townships, and a new transmission substation. The case is pending in the Michigan Court of Appeals. A decision is expected in mid to late 2014. Other municipalities who may see an electricity provider's effort to expand its easements or install new lines or equipment should stay tuned.

WATCH WEBINAR RECORDINGS

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AT THE PODIUM

David M. Lick will present "Public-Private Partnerships Practical Applications" at the "Public-Private Partnerships: Does the Taxpayer Win or Lose?" lecture series April 17. The program is hosted by Osher Lifelong Learning Institute at the University of Michigan. Register here: <http://bit.ly/1g5hLHr>

Anne M. Seuryneck will present "Top 10 Open Meetings Act and Freedom of Information Act Mistakes" at the 2014 Loleta Fyan Rural Libraries Conference Wednesday, April 30 through Friday, May 2. For registration information: <http://1.usa.gov/1du6j3l>

MUNICIPAL ATTORNEYS

GROUP LEADER

Anne M. Seuryneck

616.726.2240

aseuryneck@fosterswift.com

Michael R. Blum | 248.785.4722
Karl W. Butterer | 616.726.2212
Nichole J. Derks | 616.796.2516
James B. Doezenia | 616.726.2205
Laura J. Genovich | 616.726.2238
Brian G. Goodenough | 517.371.8147
Lisa J. Hamameh | 248.539.9906

Richard L. Hillman | 517.371.8129
Michael D. Homier | 616.726.2230
John M. Kamins | 248.785.4727
Thomas R. Meagher | 517.371.8161
Brian J. Renaud | 248.539.9913
Ronald D. Richards | 517.371.8154

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