

I. INTRODUCTION

- A. What a Long Strange Trip It's Been: Regulation of Marijuana in Nevada
- B. What a Long Strange Trip It Still Is

I. INTRODUCTION

- ▶ C. Bio
- ▶ D. Objectives
 - ▶ 1. Ten topic areas including this Intro
 - ▶ 2. Examine the evolution of marijuana regulations from Constitutional amendments to statutory implementation to local ordinances

II. RED FLAGS!!!

- ▶ A. Supremacy Clause / Still Illegal Under Federal Law

- ▶ 1. Controlled Substances Act (CSA)
- ▶ 2. Potentially Severe Penalties: Fines and/or Imprisonment

- B. Gonzalez v. Raich, 545 U.S. 1 (2005)

1. Congress can criminalize medical marijuana even if only intrastate
2. 5 Justice majority (6 agreed with outcome including late Justice Scalia)
3. 3 dissenters (O'Connor, Rhenquist, Thomas)

II. RED FLAGS!!!

- ▶ C. Cole Memo (Deputy U.S. Attorney James Cole 2013)
- ▶ D. Identified Points of Federal Priority re Marijuana Enforcement
 - ▶ <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>
 - Preventing the distribution of marijuana to minors;
 - Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
 - Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
 - Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

 - Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
 - Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
 - Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
 - Preventing marijuana possession or use on federal property.

II. RED FLAGS!!!

- ▶ E. Cole Memo viewed as policy of deference to state law outside bullet points
- ▶ F. Attorney General Sessions rescinds Cole Memo (Jan. 4, 2018)
 - ▶ 1. Leaves to discretion of appointed AGs in each state
 - ▶ 2. New AG in NV: Dayle Elieson
 - ▶ a. Appointed interim Jan 2018
 - ▶ b. Extended by Dist Ct Apr 2018 until permanent appt
 - ▶ c. Unclear what federal position is or will be in NV

II. RED FLAGS!!!

- ▶ G. DOJ appointee stalemate by Colo. Senator Gardner
- ▶ H. Sen. Gardner backs off stalemate based on assurance by President Trump
 - ▶ * appears to signal return to deference to states
 - ▶ * still unclear

II. RED FLAGS!!!

▶ I. The Ethics of It All

- ▶ A. RPC 1.2(d): “A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.”

II. RED FLAGS!!!

▶ I. The Ethics of It All

- ▶ B. Rule 1.2 Comment: “A lawyer may counsel a client regarding the validity, scope, and meaning of Nevada Constitution Article 4, Section 38, and NRS Chapter 453A, and may assist a client in conduct that the lawyer reasonably believes is permitted by these constitutional provisions and statutes, including regulations, orders, and other state or local provisions implementing them. In these circumstances, the lawyer shall also advise the client regarding related federal law and policy.”

II. Red Flags!!!

- ▶ I. The Ethics of It All

- ▶ C. Legislative Disclaimers

- ▶ WCC 25.700(6): “The use, cultivation, distribution, production, possession and transportation of marijuana remains illegal under federal law, and marijuana remains classified as a ‘controlled substance’ by both Nevada and federal law. Nothing in this ME Code is intended to authorize, promote, condone or aid the production, distribution, or possession in violation of any applicable law. The issuance of a marijuana establishment license does not imply that operating a marijuana establishment is legal under other applicable laws; nor does it authorize or sanction the violation of any applicable law.”

III. BACKGROUND

- ▶ A. Legal Framework

- ▶ 1. 1998 and 2000 voters approve amendment to NV Constitution

- ▶ Article 4, Section 38 (medical marijuana)

- ▶ 2. Required State to pass legislation effecting

- ▶ 3. 13 years later (2013), Chapter 453A is enacted (medical marijuana)

- ▶ 4. 16 years later (2016), Chapter 453D is enacted via petition (recreational marijuana)

- ▶

III. BACKGROUND

▶ B. Local Ordinances

- ▶ 1. Example: Washoe Co ordinance re MMEs in 2015,
- ▶ 2. Recreational in Apr 2018 (combines both)
- ▶ 3. <https://www.washoecounty.us/clerks/cco/ordinances/1616.pdf>



III. BACKGROUND

▶ C. 2 Tier System

- ▶ 1. State Certification (Dept of Taxation)
- ▶ 2. Local Zoning Authority in Tact (cities and counties)
 - ▶ a. Licensing, zoning, land use, signage (453A.350(b)) of locals apply
 - ▶ b. Local mj “control measures” pertaining to “zoning and land use” for MEs (453D.100(2)(d)) apply

III. BACKGROUND

▶ C. 2 Tier System

▶ 3. Approaches Differ

▶ a. Non-discretionary (e.g., Washoe County)

▶ * business license only

* Staff level decision (statutory requirements re zones, distances, etc.) / no hearing except relocations (NRS 453A.350(2))

▶ b. Discretionary (e.g., Reno)

▶ * City Council Decision: “absolute discretion” (5.21.013(b))

▶ * Typical discretionary style review (intensity of use, parking, lighting, access, etc.)

III. BACKGROUND

- ▶ C. 2 Tier System

- ▶ 4. Location Requirements

- ▶ a. 1,000 feet from school (in existence at time of licensure)
 - ▶ * what about school that comes along afterward? Cole Memo concerns?
 - ▶ b. 300 feet from community facility
 - ▶ c. Only Industrial or Commercial zones

IV. REVENUE

A. Driving Factor Behind Enactment

B. State Level

1. MME

a. App. Fees: 5k application, 30k dispensary w/5k renewal, 3k cultivation w/1k renewal, 3k edibles w/1k renewal, 5k lab w/3k renewal. 453A.344.

b. Plus Taxes

2. ME

a. App. Fees: 5k application, 20k retail store w/6k renewal, 30k cultivation w/10k renewal, 10k product mfg w/3300 renewal, 15k distributor w/5k renewal, 15k testing facility w/5k renewal. 453D.230

b. Plus Taxes (15% on wholesale, 10% on retail)

IV. REVENUE

▶ C. Local Level

- ▶ 1. 3% max on local regulatory/licensing tax (AB 422 (2017) sec. 65.6 (counties) and 65.7 (cities); and SB 487 (2017) sec. 15 (counties) and 18 (cities))
- ▶ 2. Example: Washoe County has imposed 3% on both MMEs and MEs; other jurisdictions have imposed lower level on MMEs than MEs

IV. REVENUE

▶ D. Revenue Sharing

- ▶ 1. State Law provides for money to be shared with local jxs to cover costs of administering the program
- ▶ 2. State has decided by statute that \$5,000,000 is the amount that will be shared with the locals
- ▶ 3. General provisions for excess funds to go to the school distributive fund (e.g., NRS 453D.510)

IV. REVENUE

► D. Revenue Sharing

| LOCALITY | DISBURSEMENT AMOUNT |
|-----------------|---------------------|
| Carson City | \$ 72,376.12 |
| Fallon | \$ 11,788.96 |
| Clark County | |
| Enterprise | \$ 252,714.95 |
| Laughlin | \$ 12,627.11 |
| Paradise | \$ 252,897.84 |
| Spring Valley | \$ 282,292.80 |
| Sunrise | \$ 274,443.89 |
| Whitney | \$ 58,029.70 |
| Winchester | \$ 43,166.88 |
| Henderson | \$ 392,585.42 |
| Las Vegas | \$ 826,438.72 |
| Mesquite | \$ 27,204.69 |
| North Las Vegas | \$ 317,687.01 |
| West Wendover | \$ 5,484.54 |
| Lyon County | |
| Fernley | \$ 25,196.78 |
| Nye County | |
| Amargosa | \$ 1,754.63 |
| Beatty | \$ 1,254.62 |
| Pahrump | \$ 50,945.80 |
| Storey County | |
| Virginia City | \$ 1,109.31 |
| Washoe County | \$ 144,108.61 |
| Reno | \$ 319,348.95 |
| Sparks | \$ 126,542.67 |

V. PUBLIC CONSUMPTION

- ▶ A. Medical prohibited 453A.300(1)(d)(1)(I)/453.336
- ▶ “public place or in any place open to the public or exposed to public view” (453A.300(1)(d)(1)(I))
- ▶ B. Recreational prohibited 453D.400(2)
 - ▶ * Public Place Definition in chapter 453D: “... an area to which the public is invited or in which the public is permitted regardless of age.” Retail mj store excluded.

V. PUBLIC CONSUMPTION

- ▶ C. “Pot Lounges”
 - ▶ 1. Public Place?
 - ▶ 2. Unresolved
 - ▶ a. LCB Opinion to Sen Segerblom (9-10-17)
- ▶ (1) Applies public place definition in 453D to both, with addition of public view prong of the 453A restriction, and concludes that they are allowable if not in public view, and if entrance is restricted based on age---i.e., 21 and older

V. PUBLIC CONSUMPTION

- ▶ C. Pot Lounges
 - ▶ 2. Unresolved
 - ▶ a. LCB Opinion
- ▶ (2) Question: does the “regardless of age” clause qualify both areas where public is invited AND areas where public is permitted, or only areas where public is permitted?
- ▶ Could be read:
 - ▶ Area to which public is invited, or
 - ▶ Area in which public is permitted regardless of age
- ▶ Could be read:
 - ▶ Area to which public is invited regardless of age, or
 - ▶ Area in which public is permitted regardless of age

V. PUBLIC CONSUMPTION

▶ C. Pot Lounges

▶ 2. Unresolved

▶ a. LCB Opinion

- ▶ (3) Concludes NRS 453.316 restriction on operation of place for unlawful drug use means only unlawful under state law
- ▶ (4) Concludes failure of statute to pass that SB 236 (2017). That law would have specifically empowered counties and cities to pass ordinances allowing places or events where mj is consumed if a permit were obtained. Would require age restriction of over 21, no public view, and not within distance restrictions for school or community center.

VI. GIFTING (RECREATIONAL ONLY)

- ▶ A. NRS 453D.110(3) exempts giving or otherwise delivering allowed quantities of marijuana “without remuneration to a person provided that the transaction is not advertised or promoted to the public ...”

VI. GIFTING

- ▶ B. Loophole?
- ▶ 1. Business sells bottles of juice, souvenirs or other items for greatly exaggerated prices and then “gifts” marijuana to the purchaser for “no charge”
- ▶ 2. Effort to escape licensing requirements
- ▶ 3. Local Govts have enacted provisions to address this

VI. GIFTING

- ▶ B. Loophole?
 - ▶ * County Ordinance Example
 - ▶ WCC 25.704: without remuneration “means that no value is exchanged between or for the benefit of the person or entity giving away or otherwise delivering the marijuana and the person or entity receiving the marijuana in connection with or in any way related to the marijuana. This includes but is not limited to ‘disguised’ or ‘delayed’ exchanges in which marijuana is purportedly given away or otherwise delivered in connection with or in any way related to the exchange of value of any kind for other goods or services.”

VII. ODOR

A. Regulatory Difficulties

B. Solutions?

1. City of Reno: olfactometer

2. Broader than only marijuana: noxious odors in general (nuisance concept)

VIII. BANKING

- ▶ A. Marijuana businesses generally not able to use federally insured banks
- ▶ B. All cash basis
- ▶ C. Money in vaults?
- ▶ D. Legislative fixes in the future?

IX. CO-OPS

- ▶ A. Possession of Plants
 - ▶ 1. Number of plants limited
 - ▶ 2. But what if a group of people grew plants together with each person “possessing” only the number of plants limited to one individual, with all the plants grown in the same spot: de facto pot farm?
- ▶ B. Legislature to the rescue
 - ▶ 1. NRS 453D.110 limits possession to 6 plants per person, and limits the number of plants at a residence or the grounds of that residence to 12 (meaning only 2 people could grow them together)
 - ▶ 2. NRS 453A.200(3)(b)(2) includes a similar limitation of 12 plants possessed “collectively” with another

X. LOOKING AHEAD

- ▶ A. Revenue Source or Regulatory Headache?
 - ▶ 1. Verdict still out, at least at the local level
 - ▶ 2. First quarterly tax payment to Washoe County on 3% gross revenues (receipts) is due July 1; covers April, May, and June 2018

X. LOOKING AHEAD

- ▶ B. Local Snapshot (Washoe County)
 - ▶ 1. 4 retail stores
 - ▶ a. Tryke (Sun Valley)
 - ▶ b. Kanna (Sun Valley)
 - ▶ c. Nuleaf (Incline Village)
 - ▶ d. Rise (Spanish Springs)
 - ▶ 2. 3 cultivation facilities
 - ▶ 3. 2 distributors (only needed for sale to retailers)
 - ▶ a. Carson City
 - ▶ b. Las Vegas

X. LOOKING AHEAD

- ▶ C. New Facilities
 - ▶ 1. Last Year: Phase 1 for retail (existing MMEs only)
 - ▶ 2. This Year: Phase 2 for retail (existing MMEs only)
 - ▶ 3. Possible re-opening to new facilities in November 2018?