130 E. Aurora Ave.
Des Moines, Iowa 50313-3654
April 5, 2017

Kevin E. VanderSchel
United States Attorney
U.S. Courthouse Annex
110 East Court Avenue, Suite # 286
Des Moines, Iowa 50309-2053

Re: HF 520 (formerly HSB 164 as amended)
SF 470 (formerly SF 282 as amended)

Dear Mr. VanderSchel,

Last week two bills were moved to the Unfinished Business Calendar in the Iowa House and the Iowa Senate, H.J. 817 and S.J.838. HF 520 and SF 470 are companion bills.

These bills would extend the Iowa Medical Cannabidiol Act of 2014, 2014 Acts, Chapter 1125, Iowa Code Chapter 124D. The Iowa Medical Cannabidiol Act requires patients to obtain cannabis products from an "out-of-state" source. Iowa Code § 124D.6(1)(b) (2017). Crossing state lines with cannabis products is expressly forbidden by federal law, and is currently listed as a federal enforcement priority in the U.S. Department of Justice federal enforcement guidelines.

21 U.S.C. §§ 801 et seq., Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1236.

The current federal guidelines can be found at:

https://www.justice.gov/opa/pr/justice-department-announces-update-marijuana-enforcement-policy

The federal guidelines specify eight (8) federal enforcement priorities. The third enforcement priority is:

Preventing the diversion of marijuana from states where it is legal under state law in some form to other states

On Wednesday, March 15, 2017, U.S. Attorney General Jeff Sessions recently said, "The Cole Memorandum set up some policies under President Obama's Department of Justice about how cases should be selected in those states and what would be appropriate for federal prosecution, much of which I think is valid," following a speech in Richmond, Virginia.

http://www.huffingtonpost.com/entry/jeff-sessions-legal-marijuana_us_58c967c0e4b03b1fc5cf5ca8

The Speaker of the Iowa House of Representatives, Linda Upmeyer, recently stated that Iowa and North Dakota could work with Minnesota on a medical cannabis program that would serve all three states.

http://kglonews.com/upmeyer-says-legislators-working-on-medical-marijuana-issue/

Federalism allows states to have their own laws within their own borders, but crossing state lines is clearly under federal jurisdiction. I would like to know if the federal enforcement priorities have changed.

Thank you very much!

Sincerely,

Carl Olsen
130 E. Aurora Ave.
Des Moines, Iowa 50313-3654
515-343-9933
carl-olsen@mchsi.com
http://carl-olsen.com/
http://iowamedicalmarijuana.org/

UPMEYER SAYS LEGISLATORS WORKING ON MEDICAL MARIJUANA ISSUE

MARCH 27, 2017 BOB FISHER

CLEAR LAKE — The Speaker of the Iowa House says Iowa and Minnesota lawmakers are continuing to explore a system that would allow Iowa residents to buy medical marijuana oil from their northern neighbor. Talks stalled last year on the legislation, and now the Iowa law that decriminalized possession of cannabis oil for the treatment of conditions like chronic epilepsy is set to expire this summer. Republican Linda Upmeyer of Clear Lake says the bill was held up last year because people wanted to grow medical marijuana in Iowa, something Upmeyer says may not be feasible at least in the short-term. She says the conversations were about accessing it while the state sets up production. “North Dakota is interested in working with them as well. Neither of us have large enough populations for this to be a real attractive place. Maybe a non-profit will come in and do it, and people just do that and not anticipate making any money it, that’s fine. But if we are putting out a RFP for growers, you have to attract somebody either because they just want to do it or because they can make some money at it.” Upmeyer is confident some sort of bill will get through the legislature this year dealing with medical marijuana. She says her hope is to be able to access either Minnesota or someone else’s medical marijuana immediate as soon as they can set up their registries together instead of having to wait two years to develop all the growing. Upmeyer says the legislature will explore expanding the list of debilitating illnesses that might be able to get a prescription for cannabis oil. She says, “I think we will expand the list. I don’t know, because we’ve been pretty insistent on having some evidence to expand the list, so we are working on it. If we can get people to agree, I would argue we could have done this last year, and moved down this path.” Upmeyer says one obstacle to the plan would be the Trump Administration disagreeing with the idea of allowing medical marijuana sales across state lines. She says they are already anticipating doing this bill with the possibility of breaking two federal laws. “I’m fine if the feds just get out of the way and let us do this. That’s not been communicated in an official way because the AG’s office previously had letters that we could operate under. I think we’ll have letters from this administration, but nonetheless, we’re going to move forward, anticipating that will be the perspective.” Upmeyer made her comments during a legislative forum held in Clear Lake on Friday.

Posted in: Featured, Local News

POLITICS 03/15/2017 04:54 pm ET

Jeff Sessions Suggests A Crackdown Isn't Coming For Legal Weed

But the attorney general is quickly losing credibility when it comes to issues related to drug use.

By Matt Ferner

Attorney General Jeff Sessions hates marijuana, but it appears unlikely that he'll send the federal government to war against states that have legalized it.

That's the takeaway from Sessions' appearance Wednesday before local, state and federal law enforcement officials

in Richmond, Virginia.

After delivering prepared remarks comparing marijuana to heroin and insisting that “using drugs will destroy your life,” Sessions told reporters that much of the Obama-era guidance that paved the way for states to legalize marijuana is “valid.” It’s the clearest indication yet that he may not be readying for a nationwide crackdown as some drug policy reformers have feared.

“The Cole Memorandum set up some policies under President Obama’s Department of Justice about how cases should be selected in those states and what would be appropriate for federal prosecution, much of which I think is valid,” Sessions told reporters.

Sessions said he “may have some different ideas myself in addition to that,” but indicated that the Justice Department doesn’t have the resources to enforce federal prohibition in states across the country.

The attorney general’s comments were first reported by Tom Angell on the blog of MassRoots, a social media company.

Marijuana remains illegal under the federal Controlled Substances Act, despite many states’ efforts to scale back on criminalizing the plant over the past few years. Legal recreational marijuana has been approved in eight states and Washington, D.C., which continues to ban sales, unlike the state programs. A total of 28 states have legalized marijuana for medical purposes.

President Barack Obama’s Justice Department allowed states to forge their own way on marijuana policy by issuing guidance in 2013, known as the Cole memo, outlining how states can avoid running afoul of federal enforcement priorities on marijuana. But this guidance is not law and can be reversed by the Trump administration. Sessions has said the memo has some points of value, but his history of vocal opposition to marijuana, and his more recent vague or ominous statements about the drug, have led to skepticism among marijuana advocates.

John Hudak, a senior fellow at the Brookings Institution who writes extensively on marijuana policy, said that Sessions’ remarks suggest he is “more serious about respect for the Cole memo” than previously believed.

“Sessions understands that while there is a lot to be done in the Department of Justice, there is relatively not a lot of funds to do it, so he has to have priorities,” Hudak said. “And it sounds like he believes that the choices of his predecessors had merit.”

Marijuana is the most commonly used illicit substance in the United States, and the trend of states bucking prohibition in favor of legal regulation of the plant reflects a broad cultural shift toward greater acceptance of marijuana. National support for legalization has risen dramatically in recent years, reaching historic highs in multiple polls. And states like Colorado, the first to establish a regulated adult-use marijuana marketplace, have seen successes that defied some lawmakers’ and law enforcers’ predictions that such policies would result in disaster.

But just because Sessions may be resigned to leaving marijuana policy alone doesn’t mean he supports the drug.

Likening marijuana to heroin, Sessions said he’d prefer not to allow people to “trade one life-wrecking dependency for another that’s only slightly less awful.”

While no drug is harmless, marijuana and heroin could not be more different in their relative dangers. Research has shown that marijuana is substantially safer than other commonly used recreational drugs — including alcohol, which can be deadlier than heroin. In the thousands of years people have been using marijuana, there has never been a recorded death from overdose. Meanwhile, opioid overdoses are responsible for the deaths of tens of thousands of Americans annually.

Sessions also expressed concern about the prospect of people selling marijuana "in every corner store," and claimed that some have suggested "we can solve our heroin crisis by legalizing marijuana." Though recent research has drawn a connection between access to medical marijuana and reductions in the overall use of opioids, neither of those arguments sound familiar to experts.

"Sessions has a total lack of understanding of what the marijuana industry is like, what marijuana reform in the states does and what the science is on this issue," Hudak said.

Sessions "very quickly loses credibility" when he uses this kind of rhetoric, Hudak noted.

"It's much easier to ignore the words of a man who's clearly not only ignorant but very comfortable in his own ignorance — a serious challenge for an attorney general, who's the chief law enforcement officer in the United States," he said.

Do you have information you want to share with the Huffington Post? Here's how.

Matt Ferner

National Reporter, The Huffington Post

FEDERALISM

If the state can establish medical use of a federally controlled substance, then how can a federal administrative agency interpret “accepted medical use in treatment in the United States” to exclude the accepted use of that substance in a state?

Congress never defined the term “medical use.”

See ***Alliance for Cannabis Therapeutics v. DEA***, 930 F.2d 936, 939 (D.C. Cir. 1991) ("neither the statute nor its legislative history precisely defines the term 'currently accepted medical use'; therefore, we are obliged to defer to the Administrator's interpretation of that phrase if reasonable.")

The Supreme Court says the Attorney General cannot make a rule that makes illegitimate a medical practice authorized by state law.

See ***Gonzales v. Oregon***, 546 U.S. 243, 258 (2006) ("The Attorney General has rulemaking power to fulfill his duties under the CSA. The specific respects in which he is authorized to make rules, however, instruct us that he is not authorized to make a rule declaring illegitimate a medical standard for care and treatment of patients that is specifically authorized under state law.")

A U.S. Court of Appeals has held that intrastate medical use of a controlled substance is accepted medical use under the federal drug law that Congress enacted.

See, ***Grinspoon v. DEA***, 828 F.2d 881, 886 (1st Cir. 1987) ("Congress did not intend 'accepted medical use in treatment in the United States' to require a finding of recognized medical use in every state or, as the Administrator contends, approval for interstate marketing of the substance.")

It seems like the state would be negligent if it did not include language in a state law accepting the medical use of marijuana that the federal

classification of marijuana is either invalid on its face, or does not apply to state medical use of marijuana.

After all, the DEA is not initiating the acceptance of the medical use of marijuana. The state is. I think the burden is on the state to make the argument first.

I do agree that a state law cannot pre-empt a federal law.

See ***Gonzales v. Raich***, 545 U.S. 1 (2005). But the federal classification of marijuana is a federal administrative regulation, not a federal statute. ***Id***. at 28 n. 37 (federal classification of marijuana relies on the "accuracy of the findings that require marijuana to be listed in Schedule 1.")

I would like to have this defense codified in a state law if I was arrested for participating in a state medical marijuana program.

Some states are brutal about it, like Arizona, for example. This is from the application for the Arizona Medical Marijuana Program:

> You must agree to this statement to register:
>
> The sale, manufacture, distribution, use, possession, etc., of marijuana is illegal under federal law. A registry identification card or registration certificate issued by the Arizona Department of Health Services pursuant to Arizona Revised Statutes Title 36, Chapter 28.1 and Arizona Administrative Code Title 9, Chapter 17 does not protect me from legal action by federal authorities, including possible criminal prosecution for violations of federal law.

Unless we challenge this in the actual text of a state law, we'll end up like Colorado, where the Colorado Supreme Court said in ***Coats v. Dish Network***, 350 P.3d 849, 850 (Colo. 2015):

> "Therefore, an activity such as medical marijuana use that is unlawful under federal law is not a 'lawful' activity under section 24-34-402.5"

States are ceding state authority to a federal administrative agency on the basis of an interpretation of the phrase "accepted medical use in treatment in the United States" which is contrary to the way the federal courts have interpreted that phrase. Both the state and the federal courts have more constitutional authority than a federal administrative agency to interpret the language Congress used in the federal statute. The agency applies an outdated test it developed in 1994 to determine "medical use" and simply ignores the word "accepted" and the phrase "in the United States." See,

https://www.dea.gov/resource-center/2016%20NDTA%20Summary.pdf#page=120
at footnote bb

The recent petitions that have been filed, such as the one filed by the states of Washington and Rhode Island in 2011, have accepted this outdated federal interpretation from 1994 as a valid interpretation today, even though there were no states in the United States that had accepted the medical use of marijuana in 1994 and now we have 44 states in the United States that have accepted either the whole plant or extracts from the cannabis plant.

Carl Olsen
130 E Aurora Ave
Des Moines, IA 50313-3654
515-343-9933
carl-olsen@mchsi.com