



STATE OF ARIZONA

JANICE K. BREWER
GOVERNOR

EXECUTIVE OFFICE

January 13, 2012

Ann Birmingham Scheel
United States Department of Justice
Acting United States Attorney, District of Arizona
Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, AZ 85004-4408

Dear Ms. Scheel:

On May 2, 2011, your predecessor, Dennis Burke, sent a letter to Will Humble, Director of the Arizona Department of Health Services (ADHS), regarding the State of Arizona's implementation and continuing regulation of the Arizona Medical Marijuana Act (AMMA). As you know, the AMMA was an initiative passed by the voters in November, 2010. Mr. Burke stated in his oddly timed and voluntary letter directed to the State of Arizona that he was writing "so there is no confusion regarding the Department of Justice's view" of the "regulatory scheme" known as AMMA. Unfortunately, the letter provided no guidance to the State in the days immediately before the State was to begin accepting and processing medical marijuana dispensary applications. Instead, Mr. Burke's letter threatened to vigorously prosecute any individual or organization that participated in distribution activity involving marijuana "even if such activities are permitted under state law." He also wrote of the vigorous enforcement of federal law against any individual and organization "that knowingly facilitate the actions of traffickers." He further provided that those individuals and organizations "also should know that compliance with AMMA will not protect them from federal prosecution, asset forfeiture and other civil penalties. This compliance with Arizona laws and regulations does not provide a safe harbor, nor immunity from federal prosecution." In closing, Mr. Burke wrote: "I hope that this letter assists the Department of Health Services and potential registrants in making informed choices regarding the possession, cultivation, manufacturing and distribution of marijuana." (emphasis added)

Mr. Burke's letter raised significant questions and concerns about (i) the legality of both the AMMA and the related Arizona Administrative Code provisions that were promulgated on May 14, 2011, (A.A.C. Title 9, Chapter 17, Articles 1-3), and (ii) state employees being subject to federal criminal prosecution and civil penalties. While the liberty and property interests of State employees may not be important to some, I had a moral and legal obligation to seek clarity for them. Indeed, the United States Attorney for the Eastern District of Washington specifically advised Washington State employees that they could be subject to prosecution for regulating medical marijuana dispensaries.

Mr. Burke did not need to send a letter to the State of Arizona or his letter easily could have addressed the question of whether the licensing and regulation of dispensaries pursuant to the AMMA is facilitating activities in violation of federal law. Instead, he issued a sweeping letter to the State of Arizona threatening prosecution and asserting there was no safe harbor for complying with Arizona law. Why would your office direct a letter to the State of Arizona if State employees were not in potential violation of federal law? Mr. Burke's letter left me very concerned that State employees would be subjected to federal prosecution for simply doing their jobs.

The reason the State did not proceed with accepting and processing medical marijuana dispensary applications in May, 2011 was Mr. Burke's gratuitous letter directed to the State of Arizona and the coordinated campaign of the Department of Justice to send threatening letters to other states with medical marijuana laws. Therefore, it was imperative to attempt to get clarity regarding the criminal implications of proceeding with dispensary licensing. In turn, I instructed Arizona Attorney General Horne to devise a legal strategy to obtain clarity for the sake of State employees involved in the regulation of the AMMA, in particular the licensing of dispensaries.

Now that the United States District Court in Arizona has made a procedural ruling refusing to hear the merits of the State's Declaratory Judgment action seeking a ruling on whether the actions of the State are in violation of federal law, I write to advise you that the State of Arizona will proceed with accepting and processing medical marijuana dispensary licenses once the legal challenge to ADHS's AMMA rules are resolved. Accordingly, I ask that you ameliorate any doubt and provide the State of Arizona with clear guidance as to the Department of Justice's enforcement position regarding State employees licensing and regulating medical marijuana dispensaries. If there are certain actions State employees should avoid or specific licensing and regulatory activities that concern the Department of Justice, I ask that you communicate those concerns to me immediately.

On behalf of State employees implementing the AMMA, I ask that you properly advise them as to the potential criminal and civil ramifications of their actions in simply carrying out their duties. The Department of Justice and the administration which you serve will have a lot of explaining to do to the citizens of our country, and State of Arizona employees in particular, if the State's reasonable and straightforward requests for clarity are again ignored, and the Department of Justice then ambushes State employees with prosecution or civil penalties for implementing the AMMA and licensing medical marijuana dispensaries. I am hopeful that you, unlike your predecessor, will do the right thing and provide the clarity requested.

Sincerely,



Janice K. Brewer
Governor