
Citizens Organized for Harm Reduction

Reducing the harms associated with drugs and drug policy.

P.O. Box 80726 Minneapolis, MN 55408 Phone: (612) 872-0040

C.O.H.R.

August 17, 2004

Paul Ostrow
President
Minneapolis City Council
City Hall
350 South 5th Street, Rm. 307
Minneapolis, MN 55415

Dear President Ostrow:

On August 11, 2004, the Minneapolis Charter Commission transmitted to you a petition to amend the Minneapolis City Charter submitted by Citizens Organized for Harm Reduction (COHR). The proposed amendment reads as follows:

Be it established by the people of Minneapolis that the Minneapolis City Charter be amended by adding the following as subsection (j) to Chapter 14, Section 3:

To require that the City Council shall authorize, license, and regulate a reasonable number of medicinal marijuana distribution centers in the City of Minneapolis as is necessary to provide services to patients who have been recommended medicinal marijuana by a medical or osteopathic doctor licensed to practice in the State of Minnesota to the extent permitted by state and federal law.

Along with its mandatory transmission, pursuant to Minn. Stat. 410.12, subd. 3, the Commission also adopted a letter recommending City Council vote to set aside the proposed amendment and prevent its placement on the November ballot. The Charter Commission presents several arguments it would like Council to consider in making its determination. Some of these recommendations were based on the opinion of the city attorney that solely identified when City Council may prevent an amendment from going forward. The city attorney did not present an opinion on the constitutionality of the proposal. COHR generally agrees with the city attorney's interpretation of the law, but disagrees with both the practical and the legal positions put forth by the Charter Commission. The following discussion is an outline of the relevant

statutory and legal obligations and a detailed description of the legal impact of the Amendment. According to the relevant state and federal law there appears to be no basis upon which City Council has the legal authority to set aside this Amendment. COHR strongly believes that not only does this amendment conform to state law, but to deny the voice of 12,000 citizens will be a serious condemnation of the electoral process.

I. *Process Requirements for Charter Amendment Ballot Approval*

Minnesota Statute § 410.12, subd. 3 requires that the Charter Commission transmit any petition to amend the Minneapolis City Charter to City Council, which then gives the City Clerk ten days to certify the names on the petition to confirm whether the requisite number of signatures has been collected. City Council may then refer any matter to a committee for consideration at the next scheduled meeting. Minneapolis City Council Rule 3. The Committee, in this case the Intergovernmental Relations Committee (IGR), will draft a report indicating what action should be taken by the City Council. Minneapolis City Council Rule 3(G). City Council may then adopt or reject the report made by the IGR. Minneapolis City Council Rule 3(F).

II. *City Council May Only Set Aside Proposed Amendments that Violate the Minnesota Constitution or Laws of the State and the Proposed Amendment at Issue is in Harmony with the Minnesota Constitution*

“It is well established in Minnesota that when a proposed charter amendment is manifestly unconstitutional, the city council may refuse to place the proposal on the ballot.” Minneapolis Term Limits Coalition v. Keefe, 535 N.W.2d 306, 308 (Minn. 1995). This basic rule was laid down nearly a century ago in State ex rel. Andrews v. Beach, 191 N.W. 1012, where the Minnesota Supreme Court stated an amendment need not be presented if it would be “unconstitutional or void. . . . Thereto [the amendment] must be in harmony with the Constitution and laws of this state.” Id. at 1013. This allowance makes sense because if a court

would be compelled to set aside the provision, then any continued work to ready an election would require unnecessary waste of taxpayer dollars. See Hous. & Redevelopment Auth. of Minneapolis v. City of Minneapolis, 198 N.W.2d 531, 536 (Minn. 1972) (citing Winget v. Holm, 244 N.W. 331 (Minn. 1932)).

The proposed amendment adheres to the Minnesota Constitution for three reasons:

(1) the amendment is expressly conditioned upon state and federal allowance of such a program; (2) the Minnesota Legislature may constitutionally delegate the licensing of distribution centers to city authorities or if not prevented from doing so, cities may constitutionally act upon the same issues as would the legislature; and (3) Minnesota's public policy, as declared by general laws, is not controverted because the Legislature has expressly recognized the strong goal of providing safe and controlled access to patients. Because this amendment is constitutional and will not waste taxpayer dollars, City Council should only act to approve the language for the ballot.

1. The language is conditioned on state and federal law

The proposed amendment is express in its wording that the city is only empowered to act upon the requirements of the provision if state and federal law allow such action. While there is no apparent authority dictating the force of these clauses, there are several basic canons of construction that should be applied.

Minnesota courts are required to construe words or phrases "according to their common and approved usage." Minn. Stat. § 645.08(1). This would mean that the words "to the extent permitted by state and federal law" should be construed as they would plainly be understood. A lay reader would conclude that only if state and federal law permit the city to provide a medicinal marijuana distribution program would the city be required to act.

Also, Minnesota law presumes that when interpreting a statute, if a reading can be made that does not place into question the state or federal constitutions, the statute should be so read. Minn. Stat. § 645.16. This provision applies to legislative enactments, but a common scheme should be found in its wording. Courts and governing officials do not want to create constitutional conflict when such conflict may be avoided. This prevents unnecessary decisions on constitutional questions which have broad implications on state law and are often difficult to alter.

It is not COHR's intention to contravene the state or federal constitution. Rather, we expressly desire to have the city's practices comport with all applicable laws so as not to jeopardize city functions. Further, the plain text of proposed amendment seems to squarely avoid constitutional conflict as it is conditioned on those documents. Thus, there is an express lack of conflict in the amendment.

2. The Minnesota Legislature may Constitutionally Delegate Licensing Requirements to the City

The Charter Commission has correctly identified that "the power conferred upon cities to frame and adopt home rule Charters is limited by the provision that 'such Charter shall always be in harmony with and subject to the constitution and laws of this state.'" A.C.E. Equipment Co. v. Erickson, 152 N.W.2d 739 (Minn. 1967) (citing Minn. Const. Art. 4 § 36 *since repealed*). Minnesota law also provides that "in matters of municipal concern, home rule cities have all the legislative power possessed by the legislature of the state, save such power is expressly or implicitly withheld." See Keefe, 535 N.W.2d at 309, quoting State ex rel. Town of Lowell v. City of Crookston, 91 N.W.2d 81, 83 (Minn. 1958). This means that matters that fall within the general legislative mandate are both matters of state and municipal concern and are legitimately governable by either body.

In Keefe, the Minnesota Supreme Court affirmed the rejection of a proposed charter amendment because it requested the state legislature to do something that was not within its power. There, the proposed amendment would have required the legislature to recognize term limits for local elected officials. 535 N.W.2d at 307. The court ruled that because the Minnesota Constitution provided for the eligibility requirements for office seekers, the state legislature was without power to act, thereby preventing the same power from being taken by a city.

Here, the legislature is empowered to license and regulate medicinal marijuana. There is no provision in the Minnesota constitution that directly prohibits such action. More significantly, in 1991, the legislature passed the Therapeutic Research Act. Minn. Stat. § 152.21. That law not only exempts certain pharmacies, patients, and research facilities from criminal liability, it expressly intends to provide broad access to patients who qualify. Minn. Stat. § 152.21, subd. 1. This is a clear and constitutionally permissible use of legislative authority. Thus, Keefe is clearly distinguishable and Minneapolis is entitled to govern in this area by way of city charter.

Moreover, Minneapolis has the authority to regulate liquor licenses and the distribution of alcohol. See generally Minneapolis Code of Ordinances Ch. 360 (2004). The Minnesota Supreme Court has recognized that the prohibition on unconstitutional charter amendments does not “forbid the adoption of charter provisions as to any subject appropriate to the orderly conduct of municipal affairs, *although they may differ from those of existing general laws.*” State ex rel. Town of Lowell v. City of Crookston, 91 N.W.2d 81, 83 (Minn. 1958). Here, Minneapolis has equal authority with the state to direct licensing practices for medicinal marijuana if such practice would comply with state governance. Since the proposed amendment only requires that compliance, it is in direct harmony with state law and is not precluded by the Constitution.