

Lessons Learned from Oregon Association of Counties

1. Engage

It is a huge temptation, especially for local law enforcement and county public health, to run away. Don't do it. Engage, engage, engage. Otherwise, the MJ industry will fill the void with its own version of what's good for public health, public safety, prevention, and local control. Engage directly with the legislature, and get into the middle of all of it. Make yourself a vital and central player. In the end, your legislators will thank you for it, even if they find you a nuisance at the beginning.

2. Urge Your Legislature to Set up a Special MJ Committee

Your ballot measure needs a lot of amendments, if not a complete rewrite. It was written by lawyers who only cared about the ballot title to ensure its passage. Now it has to be fixed to make it actually work. This is a BIG job. If it is parceled out to a litany of standing legislative committees, you won't be able to get the comprehensive rewrites that you desperately need.

3. Protect and Enhance Local Options

If you don't, nobody will. This is an entirely unique regulatory environment. The state will be issuing licenses to businesses to commit federal crimes. There is no precedent for that. It's not like the end of federal alcohol prohibition in 1933 - federal prohibition of MJ continues. The whole MJ industry house of cards is predicated on Obama Administration prosecutorial discretion memos (the "Cole Memos") that basically tell federal prosecutors not to shut down state medical and recreational MJ systems if they comply with 8 federal concerns. That house of cards could fall, or be adjusted, at any moment, by the Trump Administration, or a federal court in a challenge by a local government with standing. Thus, it is vital to maintain all local control options so that the apple cart does not get upset by giving anyone legal standing to take the whole thing down. Thus far, no state has stepped on local control to the point they force locals to accept MJ businesses they don't want. There is a good reason for that: It would all be preempted by federal law, and that's what a federal court would say IMHO. It's your job to protect County X's right to have 1,000 MJ businesses, and County Y's right to have none. The MJ industry doesn't get this, and never will. Only you can protect local control for the greater good.

4. Ensure Locals Get MJ Taxes

Most of the impacts of MJ legalization are felt locally, by law enforcement, public health, addiction treatment, prevention, land use, etc. The MJ industry wants low taxes, but they don't generally fight MJ taxation. They also won't fight very hard about where tax revenues go. If left to your legislature, the state will try to take as much as they can for the state general fund. Only your strong engagement can prevent that from occurring.

5. Shifting the Focus of MJ Enforcement at a Local Level

With legalization, the focus needs to shift from individual enforcement to enforcement that helps reduce the black market. For many states, that means taking on rogue growers operating outside of the regulated seed-to-sale tracked market, who are often acting under cover of a medical MJ program that has huge regulatory holes that need to be filled.

6. Urge Congress to Fix Federal Law

Even if Congress and/or DEA/FDA continues to refuse to de-schedule or down-schedule MJ under the federal CSA, Congress needs to immediately fix federal banking laws so we can get the cash out of the system for public safety and black market accountability reasons, and amend the internal revenue code (Section 280E) so normal business deductions can be taken. There is a new Congressional MJ caucus that your Congressional delegation needs to join to help get those things done.

B. Here is a quick update on where we are at in the current Oregon legislative session on the big MJ issues:

1. Integration

It is a simple notion to move the licensing of medical MJ businesses from OHA to OLCC. But the devil is in the details. I've been crafting a variety of things to satisfy stakeholders. I've also tossed some carrots at the medical growers in Southern Oregon to get them on-board. But it's still a big lift. The latest problem occurred the other day when Sean Spicer said Trump is okay with medical MJ, but expect enhanced enforcement against recreational MJ. That threw a big monkey wrench into the works. I'm not sure what the fallout will be, but I'm still working hard on merger.

2. Taxation

As of last Friday, I think we have a path for both bills I've been working on:

* State Tax: HB 2203, which I wrote for Rep Wilson before the November election and the state budget hole, will be used as the vehicle to rewrite the distribution formula for state MJ taxes. I won't be allowed to reallocate any further money to counties or cities, but they are allowing me to rewrite the subdistribution formulas to make them work better, direct the money to the areas of highest impact, and remove the restrictions on local spending.

* Local Tax: HB 2204, which deals with supplemental local option MJ taxes, raising them from 3 to 8 percent, now has a path to passage. I got LOC to agree to amend the bill to ensure that 2 of the 8 percent city tax goes to the county in which the retail shop is located (counties will keep the entirety of the 8 percent for retail shops in unincorporated areas). This will restore the total composite tax rate to 25 percent (17 percent state tax, plus 8 percent local tax), which is what it was during last year's "early start" phase in which medical dispensaries were allowed to sell recreational marijuana.

3. Complete Rewrite of the MJ Offense Code

My bills to completely rewrite the code, a huge multi-year project involving a litany of stakeholders, are now near an end. I'm working out the final bugs on Monday morning at 8:00 AM in LC. I anticipate SB 302 and SB 303 moving soon.

4. Social Consumption

The county public health folks are now actively engaged in fighting to prevent the opening up of the Oregon Indoor Clean Air Act to allow cannabis cafes and temporary social consumption events. The key bills are SB 307 (would allow) and SB 308 (task force to study). Stacy is now our lead on this, thankfully. It is uncertain where this is heading at the moment. But at present I don't see a path for either to pass.

5. Anti-Discrimination in Employment

We had a hearing on SB 301 in Senate Judiciary the other day. The bill would make it an unlawful employment practice to discriminate against someone who uses MJ off-hours. As far as I'm concerned, it's clearly preempted by federal law under clear Oregon Supreme Court precedent. I agreed to fall on the sword the other day, and get grilled by the Chair. We had an interesting back-and-forth regarding the Supremacy Clause and the 10th Amendment. I think the bill is dead, unless rewritten to make it incredibly narrow. Even then, I don't know that it survives in court, which is what I told the Committee.