

The Ter Beek Decision: An Ordinance Banning Medical Marihuana Goes Up in Smoke

February 11, 2014

Rhonda R. Stowers
(810) 342-7003
rstowers@plunkettcooney.com

Since the enactment of the Michigan Medical Marihuana Act (MMMA) in 2008, municipalities have struggled to determine the scope of its impact on local ordinances regulating the controlled substance.

In February 2014, the Michigan Supreme Court provided some additional guidance as to the validity of those ordinances in a unanimous opinion in the case of *Ter Beek v. City of Wyoming*. The answer is likely not what municipalities wanted to hear.

John Ter Beek was a resident of the City of Wyoming and a registered medical marihuana user. He wanted to grow medical marihuana on his property, but city zoning ordinances prohibited property uses “contrary to federal law,” which were punishable as civil infractions.

Although he was never charged with an ordinance violation, Ter Beek filed a lawsuit seeking to prevent its enforcement, arguing that the MMMA preempted the local ordinance. The city argued that the ordinance followed federal law, which preempted the MMMA. The trial court sided with the city, but the Michigan Court of Appeals reversed that decision.

In affirming the appellate decision, the Supreme Court found that the MMMA did not require violations of federal law or interfere with its purposes and, as a result, was not preempted. The city’s ordinance, on the other hand, provided for penalties that were precluded by the MMMA, resulting in a direct conflict. Therefore, despite the “broad grant of authority” under the Michigan Zoning Enabling Act, the ordinance was preempted by the MMMA and unenforceable.

Although municipalities are now clearly precluded from penalizing individuals for engaging in MMMA compliant uses, the Supreme Court stopped short of barring all local regulation of the cultivation and distribution of marihuana. In a footnote, the Supreme Court indicated that it did not reach the question “whether and to what extent the MMMA might occupy the field of medical marijuana regulation.”

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And so, six years after its enactment, municipalities continue to grapple with the question of just how far their ordinances can go under the MMMA.