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September 10, 2017

Senator Richard "Tick" Segerblom
701 East Bridger Avenue, # 520
Las Vegas, Nevada 89101-5554

Dear Senator Segerblom:

You have asked this office whether a business may establish and operate a lounge or other facility or special event at which patrons of the business are allowed to use marijuana and, if so, whether counties, cities and towns may require a business license or permit and impose regulations and other restrictions on the manner in which the lounge or other facility or special event is operated. You have also asked whether the failure of the Nevada Legislature to enact Senate Bill No. 236 of the 79th Session, which would have placed certain limitations on the powers of counties and cities to license and regulate such businesses, will affect our analysis of these issues.

The statutory provisions governing the possession, sale and use of marijuana in Nevada are provided in two separate chapters of NRS. Chapter 453A of NRS contains the provisions governing the possession, sale and use of medical marijuana and chapter 453D of NRS contains the provisions governing the possession, sale and use of marijuana by adults. A person who holds a valid registry identification card or letter of approval is exempt from state prosecution for possession, delivery and production of marijuana. NRS 453A.200 and 453A.205. The purchase, possession and use of marijuana and marijuana paraphernalia is also generally decriminalized for persons who are 21 years of age or older. NRS 453D.110, 453D.120 and 453D.130. However, certain limitations are placed on the consumption of marijuana by a person who is otherwise authorized to possess marijuana. Such a person is prohibited from driving, operating or being in actual physical control of a vehicle or vessel under power or sail while under the influence of marijuana. NRS 453A.300 and 453D.100. Such a person is also prohibited from possessing or consuming marijuana at a school or correctional facility. NRS 453A.300 and 453D.100. A person who holds a valid registry identification card or letter of approval is prohibited from possessing or consuming marijuana in "any public place or in any place open to the public or exposed to public view." NRS 453A.300. A person who is 21 years of age or

older is prohibited from consuming marijuana "in a public place, in a retail marijuana store or in a moving vehicle." NRS 453D.400. The provisions of chapter 453D of NRS, which concern the adult use of marijuana, define a "public place" as "an area to which the public is invited or in which the public is permitted regardless of age" and specifically exclude a retail marijuana store. NRS 453D.030. The provisions of chapter 453A of NRS, which concern the medical use of marijuana, do not define "public place," but use the term in a manner which is consistent with the definition in chapter 453D of NRS to create a similar prohibition on the possession and consumption of marijuana. Pursuant to the rules of statutory construction, if the Legislature does not expressly define a term, a court may supply a definition by referring to the definitions of similar terms found in related statutes. *See* Univ. and Cmty. Coll. Sys. v. DR Partners, 117 Nev. 195, 199-201 (2001); Advanced Sports Info., Inc. v. Novotnak, 114 Nev. 336, 341 (1998). Additionally, "when the same word is used in different statutes that are similar with respect to purpose and content, the word will be used in the same sense, unless the statutes' context indicates otherwise." Savage v. Pierson, 123 Nev. 86, 94 (2007).

Notably, neither chapter of NRS limits the possession or consumption of marijuana to only certain enumerated locations; rather, both chapters broadly exempt the possession and consumption of marijuana from state prosecution, then prohibit only certain enumerated manners or locations of possession or consumption. Based upon the rules of statutory construction, criminal statutes are strictly construed against the state, and any ambiguities in criminal statutes must be resolved in favor of the accused. Knight v. State, 116 Nev. 140, 146-47 (2000). As a result, both chapters must be construed to permit any possession or consumption of marijuana not expressly prohibited by statute. Further, when two or more statutes seek to accomplish the same purpose or object, a court will interpret those statutes "harmoniously with one another to avoid an unreasonable or absurd result." Nev. Att'y for Injured Workers v. Nev. Self-Insurers Ass'n, 126 Nev. 74, 84 (2010). Thus, unless one chapter expressly imposes a restriction on the possession or consumption of marijuana that the other does not, chapters 453A and 453D of NRS should be read together to permit the possession or consumption of marijuana in similar circumstances.

When read together, the relevant provisions of chapters 453A and 453D of NRS prohibit the possession or consumption of marijuana at a place where the public is invited or in which the public is permitted regardless of age or a place exposed to public view. NRS 453A.300, 453D.030 and 453D.400. This language would not prohibit the possession or use of marijuana at a place to which the public is not invited or permitted, including a person's home or a lounge or other facility with restricted access, such as a private lounge or other facility, which is closed to the public and only allows entry to persons who are 21 years of age or older, so long as the possession or consumption of marijuana at such a location is not exposed to public view. Similarly, possession or consumption of marijuana would not be prohibited at an event which imposes restrictions for entry on the basis of age so long as the possession or consumption of marijuana is not

exposed to public view during the event. However, while a retail marijuana store would fall into this category of businesses which impose restrictions for entry on the basis of age, consumption of marijuana within a retail marijuana store is specifically prohibited by NRS 453D.400.

In addition to the more recently approved statutes specifically relating to marijuana, there is an additional statute which merits discussion. NRS 453.316 prohibits a person from opening or maintaining "any place for the purpose of unlawfully selling, giving away or using any controlled substance." Additionally, to sell marijuana a person is required to hold a medical marijuana establishment registration certificate or a license for a marijuana establishment. A person who sells marijuana without such a certificate or license remains subject to state prosecution for the sale of or trafficking in marijuana pursuant to chapter 453 of NRS. *See* NRS 453A.200, 453D.100 and 453D.120. Because it is presumed that the Legislature intended for its legislative enactments to be read as part of a larger statutory scheme, a court will strive to interpret statutes relating to the same subject in such a manner as to render the statutes compatible with each other whenever possible. State v. Rosenthal, 93 Nev. 36, 45 (1977). Here, the provisions of chapters 453A and 453D of NRS allow a person holding the appropriate registration certificate or license to lawfully sell marijuana under the laws of this State, despite the fact that such a sale remains prohibited by federal law. Similarly, the provisions of chapters 453A and 453D of NRS allow a person holding a registry identification card or letter of approval or who is 21 years of age or older, respectively, to lawfully possess and consume marijuana under the laws of this State, despite the fact that such possession or consumption remains prohibited by federal law. A court will strive to interpret these provisions in harmony with NRS 453.316. Id. If the word "unlawfully" in NRS 453.316 were interpreted in a way that includes a violation of federal law, such an interpretation would essentially render chapters 453A and 453D of NRS void by continuing to criminalize activities that the Legislature by statute or the people by initiative explicitly made legally permissible. Whenever possible, a court "will avoid rendering any part of a statute inconsequential." Savage v. Pierson, 123 Nev. 86, 94 (2007). As a result, "no part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can properly be avoided." Metz v. Metz, 120 Nev. 786, 787 (2004). Since considering whether a sale or use violates federal law for the purpose of determining whether the sale or use is "unlawful" for the purposes of NRS 453.316 would have the effect of rendering entire chapters of NRS nugatory and that consequence can be avoided by considering only whether a sale or use violates the laws of this State, chapters 453A and 453D of NRS must be read in harmony with NRS 453.316 to render a sale or use which is lawful under the laws of this State to be similarly lawful for the purpose of not creating a violation of NRS 453.316.

Similarly, a business that operates a lounge or other facility or special event in which the business allows the consumption of marijuana would not violate NRS 453.316 because the person operating the business or special event would not be maintaining the

place "for the purpose of *unlawfully*…using any controlled substance" (emphasis added). However, as marijuana may only be sold to a consumer by a medical marijuana dispensary or a retail marijuana store, and consumption of marijuana in a medical marijuana dispensary or retail marijuana store is prohibited by NRS 453A.352 and 453D.400, a business where the consumption of marijuana is allowed could not hold a registration certificate as a medical marijuana dispensary or license as a retail marijuana store and thus could not also lawfully sell marijuana.

Therefore, because we have established that the laws of this State generally authorize the possession and consumption of marijuana by certain persons and prohibit the possession and consumption of marijuana only in certain enumerated circumstances or locations, it is the opinion of this office that a business may establish and operate a lounge or other facility or special event at which patrons of the business are allowed to use marijuana.

You have also asked whether counties, cities and towns may require a business license or permit and impose requirements and restrictions on the operation of a lounge or other facility or special event at which patrons of the business are allowed to use marijuana. The Legislature has chosen to expressly grant counties, incorporated cities and unincorporated towns the power to impose a license tax upon and regulate, subject to limitations for certain kinds of businesses, all manner of lawful businesses which are conducted within the jurisdiction of the county, city or town. NRS 244.335, 268.095 and 269.170. In Nevada, local governments derive their powers from state law and, as applicable, their charters. *See* Ronnow v. City of Las Vegas, 57 Nev. 332, 341-43 (1937); Sadler v. Board of County Comm'rs, 15 Nev. 39, 42 (1880). Since the Legislature has chosen to expressly grant counties, cities and towns the power to generally license and tax businesses within the jurisdiction of the county, city or town, these local governments clearly have the power.

Therefore, it is the opinion of this office that counties, cities and towns may require a business that wishes to operate a lounge or other facility or special event at which patrons of the business are allowed to use marijuana to secure a license or permit before commencing operation. It is further the opinion of this office that the county, city or town may impose restrictions and otherwise regulate such businesses so long as the regulations or other restrictions do not violate state law.

You have also asked whether the failure of the Nevada Legislature to enact Senate Bill No. 236 of the 79th Session will affect our analysis of whether counties, cities or towns may require a business license or permit and impose requirements and restrictions on the operation of a lounge or other facility or special event at which patrons of the business are allowed to use marijuana.

Senate Bill No. 236 of the 79th Session would have placed various specific limitations on the power of counties and cities to license and regulate businesses and

special events in which the possession and consumption of marijuana is allowed by establishing certain minimum requirements for such a business or special event. In the absence of Senate Bill No. 236, as explained earlier in this opinion, the provisions of NRS 244.335, 268.095 and 269.170 grant counties, cities and towns the power to license such businesses or special events on whatever terms they determine to be appropriate and to impose a tax on such businesses or special events in an amount determined by the county, city or town. Notably, the power of a county, city or town to license and regulate businesses is limited to "lawful" businesses, so the county, city or town must at a minimum require such a business to comply with the provisions of state law as described in the previous section.

When interpreting constitutional provisions and amendments, the Nevada Supreme Court applies the same rules of construction that are used to interpret statutes. Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 538 (2001). Under those rules of construction, the Nevada Supreme Court generally gives limited weight to subsequent legislative proposals when determining the meaning of existing language, especially when the subsequent legislative proposals are defeated. See Great Basin Water Network v. Taylor, 126 Nev.Adv.Op. 20, 234 P.3d 912, 918 n.8 (2010) (following Pension Benefit Guar. Corp. v. LTV Corp., 496 U.S. 633, 650 (1990)). As further explained by the U.S. Supreme Court:

> But subsequent legislative history is a "hazardous basis for inferring the intent of an earlier" Congress. United States v. Price, 361 U.S. 304, 313 (1960). It is a particularly dangerous ground on which to rest an interpretation of a prior statute when it concerns, as it does here, a proposal that does not become law. See, e.g., United States v. Wise, 370 U.S. 405, 411 (1962). Congressional inaction lacks "persuasive significance" because "several equally tenable inferences" may be drawn from such inaction, "including the inference that the existing legislation already incorporated the offered change." Id.

Pension Benefit Guar. Corp., 496 U.S. at 650. Thus, "[t]he interpretation placed upon an existing statute by a subsequent group of Congressmen who are promoting legislation and who are unsuccessful has no persuasive significance here." Wise, 370 U.S. at 411.

Additionally, pursuant to the rules of statutory construction, repeal by implication is "heavily disfavored," and a court will not consider a prior statute to be repealed by implication by a later statute unless there is no other reasonable construction of the two statutes. Washington v. State, 117 Nev. 735, 739 (2001). Here, the Legislature did not choose to enact a later statute to repeal the existing power of counties, cities and towns to license and regulate businesses, including, without limitation, businesses where the possession or consumption of marijuana is allowed. Because repeal by implication in a statute later enacted by the Legislature is heavily disfavored, it would create an

unreasonable and absurd result to allow the choice of the Legislature not to enact a later statute to itself repeal a provision of existing law by implication, and courts will strive to avoid any interpretation which leads to unreasonable or absurd results. Nev. Tax Comm'n v. Bernhard, 100 Nev. 348, 351 (1984). The more reasonable interpretation of the choice of the Legislature not to enact Senate Bill No. 236 of the 79th Session would be that the Legislature intended to allow the provisions of NRS 244.335, 268.095 and 269.170, which already grant counties, cities and towns to determine the circumstances under which they will license and tax businesses within their jurisdiction, to stand without the imposition of further restraints on particular kinds of businesses.

In conclusion, it is the opinion of this office that under current law: (1) a business may establish and operate a lounge or other facility or special event at which patrons of the business are allowed to use marijuana in compliance with state law; and (2) a county, city or town may adopt and enforce an ordinance which requires such a business to purchase a business license or permit and comply with any applicable regulations or other restrictions imposed by the county, city or town.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Sincerely,

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