



Office of the City Attorney

Michael P. May, City Attorney

Patricia A. Lauten, Deputy City Attorney

ASSISTANT CITY ATTORNEYS

Roger A. Allen
Steven C. Brist
Lana J. Mades
Lara M. Mainella
Amber R. McReynolds
Marci A. Paulsen
Adriana M. Peguero

Kevin B. Ramakrishna
Kate M. Smith
Jaime L. Staffaroni
John W. Strange
Doran E. Viste
Brittany A. Wilson
Jennifer A. Zilavy

Room 401, City-County Building
210 Martin Luther King, Jr. Blvd.
Madison, Wisconsin 53703-3345
(Phone) 608-266-4511
(Fax) 608-267-8715
attorney@cityofmadison.com

LITIGATION ASSISTANT
Patricia V. Gehler

April 12, 2019

Mr. Jesse R. Schworck
835 Norman Drive
Stoughton, WI 53589

Mr. Dylan Paul Bangert
835 Norman Drive
Stoughton, WI 53589

Re: **CEASE AND DESIST DRUG NUISANCE** at 555 W. Mifflin Street, Madison, Wisconsin

Dear Mr. Schworck and Mr. Bangert:

You currently operate Lion of Judah, House of Rastafari at 555 W. Mifflin Street, Madison, Wisconsin. You claim that you have established a church and are operating this "church" out of 555 W. Mifflin Street. You believe that because you have established this "church" you are entitled to sell cannabis and marijuana related products. You advertise that "Free Cannabis" will be available at your grand opening on April 27, 2019. You have a sign at your establishment advertising "THC edibles." Madison Police visited your establishment on March 26, 2019 and confiscated several jars of marijuana in various forms and drug paraphernalia, including a scale. There is no question that you are possessing, selling and offering to sell marijuana, THC products, and drug paraphernalia.

This letter is to put you on official notice that selling marijuana, cannabis, and THC edibles is not legal either in the City of Madison or in the State of Wisconsin. Even if you are a legitimate "church", possessing and selling a Schedule I Controlled Substance (See Wisconsin Statute §961.14), which these items are, is not legal under Wisconsin State Statute §§ 961.41, 961.42(1), and 961.57(b). You must immediately cease and desist from continuing to possess and sell, or offering to sell, these items. This cease and desist order includes your website that is offering Schedule I Controlled Substances for sale.

Case law on the subject of "churches" using marijuana as a sacrament in a religious practice has uniformly held that an individual's religious beliefs do not excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. See *Employment Div.*,

Dept. of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990). That Court also stated that subsequent decisions have consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a "valid and neutral law of general applicability on the ground that the law proscribes conduct that his or her religion prescribes." *Id. quoting United States v. Lee*, 455 U.S. 252, 263 (1982).

Wis. Stat. § 961, is a neutral law that regulates the possession, delivery and distribution of scheduled controlled substances and in no way attempts to regulate religious beliefs or religious practices. In *Dept. of Human Resources of Oregon v. Smith*, the respondent urged the Court to hold that when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions, but the conduct itself must be free from governmental regulation. The Court responded to that argument by saying, "[w]e have never held that, and decline to do so now." *Id. at 882.*

In *Olsen v. Drug Enforcement Admin.*, 878 F.2d 1458 (U.S. App. D.C. 1989), another marijuana religious-use exemption case, the court stated that it was familiar with the doctrine that the free exercise clause "embraces two concepts,--freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society." *Quoting Cantwell v. Connecticut*, 310 U.S. 296, 303-04 (1940). The *Olsen* court went on to state that the Court has rejected challenges under the Free Exercise Clause to governmental regulation of certain overt acts prompted by religious beliefs or principles, for "even when the action is in accord with one's religious convictions, it is not totally free from legislative restrictions." *Id. at 1461, quoting Braunfeld v. Brown*, 366 U.S. 599, 603 (1961).

The statutory exemption for peyote-use by the Native American Church is a very narrow exemption that applies only to the Native American Church. The Native American Church's use of peyote is isolated to specific ceremonial occasions. It is a precisely circumscribed ritual and the peyote itself is an object of worship. For members of the Native American Church, use of peyote outside the ritual is sacrilegious. *See Olsen at 1463-1464.* Additionally, there are overwhelming differences between peyote and marijuana which explains why an accommodation can be made for a religious organization that uses peyote in circumscribed ceremonies. *Id.*

You may have believed that you could form a church and sell marijuana and related products because of the Native American Church exemption. However, you are now on official notice that you cannot do so and that you are in violation of several provisions of Wisconsin State Statute §961 by doing so and by continuing to do so.

If you have any questions or need further clarification, please contact me.

Sincerely,



Jennifer Zilavy

Assistant City Attorney

Copy: Charanjeet Kaur

Assistant Chief Paige Valenta

Captain Jason Freedman

Lieutenant Alex Berkovitz

Lieutenant Dan Nale