

# Joint House and Senate Judiciary Hearing

September 14, 2016

Supplemental written comment

Submitted by: Bruce Schulte – former member and past chair, Marijuana Control Board

Esteemed members of the House and Senate Judiciary Committees;

Thank you for the opportunity to share my thoughts on implementation of Ballot Measure 2. As I stated in my earlier comments, I believe the roll-out has gone reasonably well considering the aggressive schedule and broad scope of the project.

There have been minor snags along the way and one potential deal-breaker - the holding of all applications pending authorization to conduct national criminal background checks. Had that policy been allowed to stand, the effect would have been significant. In fact, not a single application would have been “Deemed Complete” until well into October or later and given the timing of local review and processing, it’s unlikely that anyone would have received a license to operate until December 2016 or January 2017 at the earliest. Fortunately, the Marijuana Control Board (MCB) intervened and over-ruled that policy that had been imposed by the Director, Cynthia Franklin.

I would take this opportunity to reiterate my recommendation that the MCB should review all policies of the Alcohol and Marijuana Control Office (AMCO) and, where possible, formalize those in the regulations. That would allow the public the opportunity to study and comment on such policies and offer insights on how to make them better. I believe such a step to be crucial to the success of implementation and to the ongoing credibility of the AMCO office.

I did want to follow-up on testimony offered by the AMCO Director, Cynthia Franklin, as I do not believe it was entirely accurate.

The Director stated in her testimony that following the issuance of “Cease and Desist” letters that were sent to several individuals in June of 2015 no further action was taken against those individuals or their businesses. In the case of marijuana clubs, that was not at all true.

At the first meeting of the MCB in July 2016, the board was advised by council that we did not have legal authority over marijuana clubs. The board voted to forward a request to the legislature asking that the law be expanded to include that authority. This was a recurring

theme over the next several months and the boards' position was reaffirmed several times – that the MCB had no authority to regulate, authorize, or ban marijuana clubs.

In December 2016 the Director, in her dual-role representing both the Alcohol and Marijuana Boards threatened to withhold a liquor permit from a licensee in Anchorage unless they agreed to evict a marijuana club that was housed in the same building (which the licensee owned). The justification was that the club was illegal and therefore a liquor license could not be issued on the same premises. The determination of “Illegal” was, to the best of my knowledge based solely on the Directors own interpretation of law and not supported by any other legal opinion or, specifically, by statute. I learned of these events a few weeks later when members of the media began asking questions about it. I was troubled on several levels:

- 1) That the Director appeared to be enforcing her own interpretation of law in a manner contrary to the positions taken by the board
- 2) That, to the casual observer, her actions looked very much like coercion and could reflect negatively on all involved (including the two boards in whose name she was acting)
- 3) Finally, in the absence of a definitive court ruling or statute this action appeared to deny the marijuana club even the appearance of due process

I requested a private meeting with the Director to discuss the matter before an upcoming MCB meeting and when I expressed my concerns at her apparent abuse of authority, the Director became increasingly obstinate and eventually cut the discussion off and stormed out of the room. No summary of this action against the marijuana club was ever provided to the MCB or (to my knowledge) to the Alcohol Board.

In March of 2016, the Anchorage Assembly Marijuana Committee (chaired by Ernie Hall) was presented with a draft ordinance, developed by staff, which would have created an exception to a local smoking ban specifically to allow for marijuana clubs. The draft was very well received and staff was asked to develop it further. Several days later a private meeting was held by the Director (Cynthia Franklin) and attended by Ernie Hall, the Municipal Attorney and others. I am told that during that meeting the Director acknowledged that the guidance she was giving was contrary to positions taken by the Marijuana Control Board. The next day it was announced that the Anchorage Assembly Marijuana Committee was being dissolved and that all marijuana-related ordinances were being placed on indefinite hold. When I asked the Director to summarize what was discussed at that meeting she declined and suggested that I ask Ernie Hall instead. No mention or explanation of this meeting was ever provided to the MCB in the Directors reports.

There have been other occasions since then when the Director has threatened to deny liquor permits to licensees when the anchorage marijuana club (Pot Luck Events) was involved or affiliated with the event.

It has been suggested that Marijuana Clubs could perpetuate the marijuana black-market and that they should be banned in order that regulated businesses can compete. I concede that some elements of that argument seem appealing however, I do not believe that the end justifies the means. We remain a state and nation of Laws and where there is a legitimate disagreement about the scope or applicability of a law I believe that it should rightly fall to our elected representatives or the courts to decide – not a regulatory board and certainly not a single individual acting on behalf of such a regulatory body.

So why would I even bother to bring this up? I had not intended to but when I heard the director assure the committee that “No further action had been taken” I felt obligated to point out that was not at all accurate. I do believe that the Director has abused her authority on several occasions, has made significant, unilateral policy decisions without board input, and has not been open with the two boards that she answers to about those actions. That is a problem and serves as the basis for my recommendation that the two boards be separated with different directors and staff when that becomes economically practical. It also speaks to a need for greater transparency and accountability of any Director to the board(s) they represent.

My second reason for bringing this up is the ongoing discussion about onsite consumption (cafes) and marijuana clubs. I am not an advocate for or opponent of clubs. I do believe that some sort of venue should be available, around the state, where adults can go to consume cannabis. There has been significant public support for this and I believe we have reached a point on this issue where only the Legislature can resolve the question. This is why I would hope that the Legislature might do the following:

- 1) Revisit the definition of “Public Consumption” to create an opportunity for some sort of consumption venue
- 2) Expand the law to explicitly allow the MCB to create new license types including for onsite consumption venues

In closing, I have included a bullet-list of items that I feel could enhance the implementation of Ballot Measure 2. Some involve action on the part of the MCB, AMCO, and / or the Legislature. I look forward to assisting, where I can, in refinement of the process and related statutes and policies.

Thank you for your time and the opportunity to share my thoughts on these matters.

Regards,

***Bruce Schulte - Anchorage***

# Legislative / MCB / AMCO Wish-List

September 14, 2016

## AMCO Staff

- Document licensing process – State level
- Work with Local Governments to develop corresponding process guidelines
- Limit legal guidance on the AMCO website to specific statutes – avoiding interpretations of law that have not been settled by the courts or the legislature

## MCB

- Move staff policies to board regulations so that applicants may understand and have confidence in the licensing expectations. Let the board review, discuss and, if necessary, modify licensing procedures.
- Refine / Develop regulations to remove unnecessary impediments to industry success
- Require that the director disclose any actions taken on behalf of the board that can reasonably be expected to affect any business in the state.

## Legislature

- Recalibrate criminal statutes
- De-schedule marijuana
- Settle the question of clubs one way or another
- Address the question of onsite consumption
- Adjust the law to exclude licensed businesses from the prohibition on “Public Consumption”
- Expand 17.38 to allow the MCB to create new license types
- Change tax from \$50 / ounce to some percentage of the wholesale price
- Authorize funds to allow AMCO to hire some more staff
- Create a separate MCB apart from Alcohol with a different director and separate staff