



THE STATE  
*of* **ALASKA**  
GOVERNOR BILL WALKER

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March 12, 2015

The Honorable Anna MacKinnon  
Senate Finance Co-Chair  
State Capitol, Rm. 516  
Juneau, Alaska 99801

Re: Opting the Unorganized Borough Out of Ballot Measure #2

Dear Senator MacKinnon:

During the March 9, 2015 hearing on SB 30, Senator Hoffman asked if the legislature, acting as the assembly for the unorganized borough, could opt the entire unorganized borough out of allowing the operation of marijuana establishments. Local governments or established villages in the unorganized borough could then allow marijuana establishments on a community by community basis by enactment of ordinances or voter initiatives. There is no clear answer to this question.

Ballot Measure #2, An Act to Tax and Regulate Production, Sale, and Use of Marijuana (the initiative) allows local governments to prohibit the operation of marijuana establishments in their communities by way of ordinance or voter initiative. This provision is commonly called the "opt out" provision.

Additionally, Article 10, Section 6 of the Alaska Constitution reads:

The legislature shall provide for performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an organized borough which the assembly may exercise in any organized borough.

The Alaska Legislature, being in the role of the assembly of the unorganized borough, is subject to the same requirements under the initiative as the assembly of any organized borough. Therefore, it is possible for the legislature to opt out the unorganized borough. This would be

consistent with the legislature's constitutional duties and would be defensible if subject to a legal challenge.

If challenged, a court would look to see if the action taken by the legislature "vitiates the aims of the initiative."<sup>1</sup> This analysis would require a court to look at whether the initiative, which makes marijuana establishments presumptively legal, is irreconcilable with the "unorganized borough opt out" amendment, which makes marijuana establishments presumptively illegal. It is not clear how a court would rule on this issue, but one of the things it might consider is how the population in the unorganized borough voted on the initiative. Conceivably, if a majority of the voters in the unorganized borough voted in favor of the initiative, they also voted in favor of allowing marijuana establishments to operate in their communities unless they take affirmative actions to prohibit them. Therefore, a court may find that the legislature was acting contrary to the will of the voters within the unorganized borough and attempting to effect a repeal.

While it is unclear whether an amendment prohibiting marijuana establishments in the unorganized borough would be upheld, it is defensible as an exercise of the legislature's duties under Article 10, Section 6 of the Alaska Constitution. If the legislature chooses to take this action. A clear legislative record and detailed legislative findings will be helpful if this action is challenged.

Please let me know if I can be of any further assistance.

Sincerely,

CRAIG W. RICHARDS  
ATTORNEY GENERAL

By:



Kaci Schroeder  
Assistant Attorney General

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<sup>1</sup> *State v. Trust the People*, 113 P.3d 613, 621 (2005).