



November 5, 2019

Thomas H. Oehmke
BROVINS & OEHMKE, P.C.
11997 E. Camp Haven Road
Northport, Michigan 49670-9455

*Via Electronic Mail &
1st Class U.S. Mail*

Re: Village of Northport Ballot Initiative Petitions
Our File No. 6295.00

Dear Mr. Oehmke:

If you are not already aware, please be advised that this office serves as legal counsel to the Village of Northport. I have been provided copies of your recently submitted letter (Oct. 23, 2019) and the petitions attached thereto seeking the Village's adoption of an "Ordinance to Completely Prohibit Marijuana Establishments in [the] Village."

The Village has undertaken a review of the materials submitted, including, but not limited to, my review of your petition forms and the substance of your proposed ordinance. The purpose of this letter is to inform you of the outcome of that review.

First, as you know, Section 6 of the Michigan Regulation and Taxation of Marijuana Act (MCL §333.27956; MRTMA; Initiated Law 1 of 2018) does provide that qualified electors within a municipality are empowered to petition their unit of government to prohibit marijuana establishments, as those establishments are defined in the MRTMA. As provided in Section 6, in order to properly initiate such a process, the petition(s) must: (1) comply with Section 488 of the Michigan Election Law (MCL §168.488; Public Act 116 of 1954); and (2) must contain a number of signatures of qualified electors within the municipality "greater than 5% of the votes cast for governor" in the most recent gubernatorial election.

Under Section 488(2) of the Michigan Election Law, any petition of this type must comply with the requirements of "Section 482(1), (4), (5), and (6)," as well as subparagraphs (7) and (8) of Section 482 and Section 544c(1) (all of which are directly referenced by and incorporated within Section 482(6)) in order to "place a question on the ballot before the electorate of a political subdivision" such as the Village of Northport. Unfortunately, it appears that the petitions submitted in this matter fail to comply with all of the requirements of Chapter XXII of the Michigan Election Law. These failures include, but are not necessarily limited to, a lack of information required by Section 482(7) and (8).

As a result, "any signature obtained by that petition circulator on that petition is invalid and will not be counted."¹ You may wish to correct the petition forms to ensure full compliance with the requirements of the Michigan Election Law, and then recirculate and potentially resubmit

¹ MCL §168.482(8).

such petition(s) for the Village's consideration. Please let me know if you have any questions on this issue and I'd be happy to answer them for you.

Secondly, it appears that the substance of the proposed ordinance included on your petitions would violate specific provisions of Michigan law. If you refer to Section 6 of the MRTMA, you will see that after authorizing the petition process that you quote in your letter, subparagraph (5) states that "[a] municipality may not adopt an ordinance that restricts the transportation of marihuana through the municipality or prohibits a marihuana grower, a marihuana processor, and a marihuana retailer from operating within a single facility or from operating at a location shared with a marihuana facility operating pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801."² Moreover, Section 4(2) of the MRTMA similarly states that "[t]his act does not limit any privileges, rights, immunities, or defenses of a person as provided in the Michigan medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430, the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, or any other law of this state allowing for or regulating marihuana for medical use."³

Therefore, while a ballot initiative petition may lawfully seek enactment of an ordinance to ban so-called "*recreational*" marijuana establishments under Section 6 of the MRTMA as quoted above, these other provisions of the MRTMA (as well as common law rulings in Michigan courts since the adoption of 2008 IL 1) restrict the authority of municipalities, even through a ballot initiative, from adopting an ordinance that restricts "*medical*" marijuana operations. Therefore, were the Village to adopt the proposed language on your petitions and/or the proposed "Ordinance No. 126" included within your submitted materials, such an ordinance would be held to violate Michigan law due to the conflict with the medical marijuana operation protections set forth in the MRTMA and elsewhere.

If you have any questions regarding this letter, please feel free to contact me by email at ross@envlaw.com or at our Traverse City office phone: (231) 946-0044. Thank you.

Sincerely,



Ross A. Hammersley

cc: Village President S. Wetherbee (*via email*)
Village Clerk J. Scott (*via email*)
Village Community Liaison C. Edmondson (*via email*)

² MCL §333.27956(5).

³ MCL §333.27954(2).