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Attorney: Pot raid was illegal

By Christopher Behnan
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The March 2 raid of a Handy Township medical marijuana dispensary was illegal unless it can be proven marijuana was being dispersed to nonregistered users, according to the attorney for the business.

That issue won't be settled until if and when the office of Livingston County Prosecutor David Morse decides to file charges against dispensary proprietor Christi Marshall.

Howell attorney Denise Pollicella, who is representing the Marshall Alternatives dispensary at 165 Fowlerville Road, said the medical marijuana act approved by voters in 2008 is clear: Licensed caregivers and licensed users are not subject to state arrest or prosecution if they follow the law's guidelines.

"Except that they are," Pollicella said, citing recent arrests and courts rulings against licensed users and caregivers. "The courts have absolutely ignored the plain language of the law. It was a referendum. It was not a legislative act," she added.

The law states caregivers can grow up to 12 plants per patient for a maximum of five patients, and have a maximum of 2.5 ounces of marijuana on hand for each patient.

Pollicella said a portion of the law that states marijuana and related paraphernalia used in line with law "shall not be seized for forfeited" suggests the March 2 raid was illegal - if no evidence of wrongdoing is provided.

When asked how the law applies to the March 2 raid, Morse declined to expand on his comments.

"As I told you during our telephone conversation, my professional code of ethics prohibits me from discussing the facts of a pending case or an incident that is under investigation," he said.

Meanwhile, the Handy Township Board of Trustees this week approved a six-month moratorium on building-permit applications related to the medical marijuana law. During that time, township officials will determine how to apply the medical marijuana law into township zoning rules.

Pollicella said she expects Marshall Alternatives to be grandfathered in under the moratorium.

Township Supervisor Hank Vaupel said the only issue the township government has had with Marshall Alternatives was an initial failure to obtain a land-use permit. That issue has since been addressed, Vaupel said.

On March 2 at around 5 p.m., officers of LАWNET raided Marshall Alternatives based on suspicion Marshall was dispensing marijuana outside the 2008 Michigan Medical Marijuana Act.

An undisclosed amount of marijuana and as much as \$15,000 worth of property was seized, including a handgun, computers, hydroponics equipment, patient records, printers and personal items, Pollicella said.

A warrant signed March 2 by District Court Judge L. Suzanne Geddis only listed "probable cause" as the purpose of the raid.

An affidavit with further detail hasn't yet been made available, Pollicella said. Until that information is released, it won't be known if the raid was legal, she added.

Pollicella said her client follows the letter of the law. She further said that Marshall had previously worked at an Ann Arbor dispensary but left there to start her own after determining it ran too loosely.

Pollicella said Marshall requires patients to sign a document that states their registration is valid and current.

"I don't know what other use of marijuana that would have been there," Pollicella said.

Morse said he expects to decide whether to file charges next week, though the raid occurred more than a month ago.

Pollicella said her bigger concern is how the state law approved in 2008 was written, specifically that it doesn't take the Michigan Public Health Code into account.

The code lists marijuana as a Schedule 1 controlled substance, a classification that also includes heroin.

Pollicella said medical marijuana users won't be truly safe from arrest or prosecution until marijuana is deemed legal for certain uses as a Schedule 2 controlled substance in state law.

The term "dispensary" doesn't appear in the law, which means it's unclear whether operations like Marshall's are legal, she added. She said the term has been "abused" to imply unlawful activity, and that Marshall's operation technically is "a caregiver coordinative service."

Morse has said dispensaries are illegal in the medical marijuana act.

While the debate on the law continues, Greg Johnson, owner of Happy Harvesters Hydroponics next door to Marshall Alternatives, remains flummoxed about the events of March 2.

LAWNET officials said officers entered the store clearly identified as police, and only took Johnson to the ground when he reached for his 9 mm handgun.

LAWNET Detective Lt. Philip Menna, who wasn't on scene that day, has said Johnson was only being questioned, legally, about the actual raid occurring next door.

Johnson said an officer kept him facedown on the ground for about 20 minutes after disarming him.

"I didn't do anything. I'm just a simple business owner, you know what I mean?" Johnson said.

Johnson said "a solid 20" officers in ski masks were present the day of the raid, and that as many as five officers entered his 1,000-square-foot store. He said several police vehicles, including a black pickup truck and a maroon van were on site.

"Everywhere you looked there were vehicles," he said.

Johnson said his memories of the day's events remain cloudy because everything happened so fast.

He said one officer came in his front door armed with a pistol of some kind, but that he was uncertain if the weapon was in the officer's hand. He did say guns were never pointed at him, however.

He said additional officers pried his the back door of his store open with crow bars, among other prying apparatus, and forcefully entered his business.

Johnson said at least one police dog was sent through his store seeking drugs.

He said his 70-year-old grandmother, who does store accounting, panicked and fled for the rear exit, only to be stopped by officers.

Pollicella said a LAWNET officer told her his team was unaware the two building units were separate businesses and entered both businesses simultaneously. The hydroponics store's address isn't listed on the warrant.

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