

Grappling with issues of marijuana policies



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The tribe is grappling with a number of recent incidents regarding marijuana use on tribal property. Marijuana in any form is illegal under federal law. However, a number of states, including Michigan, have legalized some forms of marijuana use. Michigan has legalized medical marijuana. This poses numerous issues and conflicts. So many that, although federal law has not changed, the Department of Justice issued a memorandum in December 2014 spelling out its guiding position when it comes to prosecution for Indian Country. Essentially, so long as tribal laws comport with state laws, the federal government will not be devoting resources to the prosecution of marijuana on Indian lands.

The office of U.S Housing and Urban Development followed suit in December 2014 with its own memorandum, clarifying compliance requirements for public assisted housing:

USE OF MARIJUANA INCLUDING MEDICAL MARIJUANA

Recently, a number of states have legalized the use of marijuana specifically for medicinal pur-

poses. Some states have legalized the use of marijuana for recreational purposes. Regardless of the purpose of legalization under state law, the use of marijuana in any form, is illegal under the Controlled Substances Act (CSA) and therefore is an illegal controlled substance under Section 577 of the Quality Housing and Work Responsibility Act of 1998 (QHWRA). Based on federal law, new admissions of medical marijuana users are prohibited.

QHWRA requires that owner/agents establish lease standards that prohibit admission based on the illegal use of controlled substances including state legalized marijuana. State laws that legalize medical marijuana directly conflict with QHWRA and thus are subject to federal preemption.

Assistant Secretary of Public and Tribal Housing issued a memorandum in December 2014 that details how owners enforce the requirements found in the Controlled Substance Act and the Quality Housing and Work Responsibility Act of 1998.

Please note the following quotes:

“Owners must deny admission to assisted housing for any household with a member determined to be illegally using a controlled substance (e.g. marijuana). Further, owners may not establish lease provisions or policies that affirmatively permit occupancy by any member of a household who uses marijuana. Owners must establish policies which allow the termination of tenancy of any household with a member who is illegally using marijuana or whose use interferes with the health, safety or right to peaceful enjoyment of the residents.

Section 577 of QHWRA affords owners the discretion to evict or not evict current tenants for their use of marijuana.”

“Unlike the prescribed admission standards which prohibit admission to federally assisted housing for any household with a member who the owner determines is illegally using a controlled substance (e.g. marijuana) or the owner has reasonable cause to believe that the illegal use may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents, the continued occupancy standards ‘allow’ termination by the owner. In other words, QHWRA provides owners with

the discretion to determine, on a case-by-case basis, when it is appropriate to terminate the tenancy of the household.”

The challenge for our tribe is to ensure our housing policies comply with these guidelines. Otherwise, we risk losing the federal monies that make assisted housing possible. But, as noted above, we do have discretion on how we enforce or comply with these policies. After speaking with numerous residents of our tribal reservation housing communities, I think there is a need to reform or fine-tune our house rules.

First and foremost, we must protect the health, safety and

right to the peaceful enjoyment of the premises by all residents of community. At the same time, I’ve heard of law enforcement practices that appear to go far beyond those requirements. Some of our most vulnerable population resides in our tribal housing communities. With medical marijuana being legal in the state of Michigan, I am uncomfortable with an overemphasis of medical marijuana use—especially since the abuse of prescription drugs seems to be the real gateway drugs leading to hard-core street drugs in our tribal communities.

Please call me with questions and concerns any time at (906) 430-5551 or 483-6821.