



Report From the Front: The Grass Is Always Greener

In 2012, 55 percent of Colorado voters approved

a constitutional amendment legalizing recreational marijuana.¹ Effective Jan. 1, 2014, legislation and regulations were in place, and Colorado became the first state to legalize the sale and use of marijuana.² As an attorney licensed in both Illinois and Colorado, I thought it my duty to investigate this legal phenomenon and report to my colleagues at the bar.

Colorado's legalization conflicts with federal law, under which the sale and possession of marijuana is still a crime. The state legislation thus tests the boundaries of federalism in unique ways. The medical use of marijuana under a doctor's prescription is a different animal and is legal in numerous states, including both Illinois and Colorado. State regulation of such medical marijuana varies widely.

Visitors to Venice Beach in California, for example, are greeted with "The Doctor Is In" placards outside flimsy beachside booths, promising (for a fee, of course) a quick diagnosis and a medical marijuana prescription. Illinois doctors: Don't try this!

But in Colorado the private purchase, possession, and use of marijuana is now legal and regulated. Colorado residents may even grow up to six marijuana plants in their home. Licensed dispensaries sell marijuana in plant form for smoking; in pill form; and in edibles, such as candy bars and brownies.

All these products must be produced by licensees within the state of Colorado (due to the federal prohibition). As of this writing, Colorado dispensaries are lobbying Congress to be able to use bank accounts and credit cards—federal laws now criminalize their use in drug dealing.

Individual communities can opt out of the law and ban dispensaries in their towns. Some resort communities have done so, such as Estes Park and Colorado Springs. The public smoking of marijuana is still illegal, as is driving while impaired. Marijuana may not be taken out of Colorado. Signs at Denver International Airport remind travelers of this, and the Transportation Security Administration at the airport is amassing a huge quantity of marijuana abandoned by departing passengers.

Proponents of the Colorado law argued that legalization would

free up law enforcement resources for more important priorities, that taxing marijuana would raise new revenue, and that marijuana is relatively harmless. Only time will tell. Usually such advocacy claims are exaggerated. *The Denver Post* reports that a black market for cheaper, unregulated marijuana still exists. The underlying premise for all this effort, of course, is that a chemically induced euphoria constitutes a form of needed recreation. And this is being tested in Colorado of all places, where the fresh mountain air and breathtaking scenery have for centuries produced a natural "high" for residents and visitors alike. The literature and warnings provided by the dispensaries suggest, as we shall see, that there are real dangers from marijuana use.

For research purposes only, I recently visited two legal marijuana dispensaries in Central City, Colorado, a storied old mining town west of Denver. Central City was a boom-and-bust gold-mining locale for decades: "The Richest Square Mile on Earth." It still boasts a world-class opera company and an 1895 opera house. Its latest boom-and-bust adventure (before legal marijuana) was casino gambling, which prospered in the 1990s but is largely moribund now. Central City's newest crap shoot is reposed in two dispensaries open to the public: Green Grass and Annie's.

Annie's is a secured back room of a souvenir shop in the historical 1890s downtown area. After showing my ID through the locked glass door, I was buzzed into the inner sanctum where there were two glass counters. One counter contained medical marijuana (generally much more potent doses of THC, the active chemical), and the other counter displayed the recreational products. In the recreational counter, there were a variety of items for sale. Leafy, green cannabis in small glass jars came in numerous flavors: Purple Haze, Ice Crush, Strawberry Cough, Motivation, Coal Train, and El Nino. What's a customer to do? Selecting ice cream at Baskin-Robbins is easier! The very nice saleslady explained that there are two basic types of product: sativas and indicas. According to the sales brochure, sativas "tend to produce stimulating feelings," while the indicas "tend to produce sedated feelings." I bought the nonresident maximum of a quarter ounce of a sativa blend for \$18. Colorado residents may buy up to one ounce at a time. The

William R. Coulson is a former assistant U.S. attorney in Chicago and in Denver. He maintains law offices in Glenview, Illinois, and Estes Park, Colorado. He is also the past-president of the FBA Chicago chapter.



saleslady carefully weighed and parceled out the leafy, green substance into a black plastic can branded “Strainwise: Higher Living.”

The tar and smoke from marijuana can't be healthy for one's lungs. So Annie's also sells marijuana in pill form and in candy and brownies. For \$20 I bought a plastic bottle of Edipure Cherry Bombs that contained 10 pills with 10 mg each of THC (and only 11 calories). “Consume with caution” is the rather unhelpful warning on the bottle. For another \$20 I bought a cannabis-infused candy bar labeled as the Incredible Mile High Mint. This bar was marked into 10 squares of 4.5 grams each with 7.5 mg of THC (and 75 calories each). The dose was one square at a time, to be “consumed with caution” and subject to the caveat that “the intoxicating effect of this product may be delayed by two or more hours.” The Mile High Mint packaging also warns that “[t]his product was produced without regulatory oversight for health, safety, or efficacy.” So it's buyer beware in the Old West.

Each of these products carried a Colorado Department of Revenue retail marijuana tax stamp. The saleslady placed my treasures into a zipper-sealed plastic container because marijuana must be transported in a closed container. Annie's claimed it could accept credit cards because it was also a souvenir shop. This did not sound correct to me, so I paid cash.

The promotional literature and the fact sheet handed out with my purchase contain warnings and disclaimers that Colorado lawyers will learn to love. Ad cards for Annie's bear the slogan “Take Your Game Higher,” and, as noted, its descriptions of “caution,” “intoxicating effect,” “sedated feelings,” and “stimulating feelings” betray danger and risk. Both marijuana stores have websites touting their wares: www.strainwise.com and www.greengrassmmj.info.

The fact sheet contradicts itself in several respects. It claims that “smoking cannabis does not increase your risk of lung or other cancers.” But then it advocates inhaling the smoke via a vaporizer or water pipe to reduce the amount of “tars and other carcinogens that you otherwise would inhale” and to absorb “some of the THC and other cannabinoids.” While claiming remarkable therapeutic benefits from marijuana use, the fact sheet also warns that the substance can “increase anxiety,” “increase paranoia,” and induce “feelings of tiredness.” Just what some people need!

One of the strengths of our federalism is that states can dare to be different and can experiment. Let's see how Colorado's effort works. Right now there is sort of an armed truce with the federal government, which has announced that it will not prosecute marijuana transactions in states that legalize and regulate its use. But this could change. Litigation is sure to follow when there are accidents or injuries to users and others. Early numbers show that the tax receipts realized from legal marijuana are well below the projections. So the jury is still out, and it will be interesting to follow developments.

By the way, the marijuana I bought remains unopened, and it remains in Colorado! ☺



Endnotes

¹Colorado Constitution, Article 18, Section 16.

²See www.colorado.gov/marijuanainfodenver/.

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