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THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

CONFIDENTIAL
September 22, 2015

The Honorable Robert A. Zirkin
2 East Miller Senate Building
Annapolis, Maryland 21401-1991

Dear Senator Zirkin:

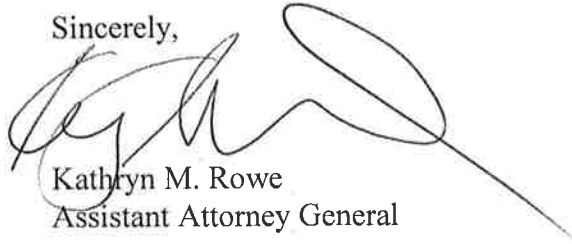
You have asked for advice concerning whether a county or municipal corporation could prohibit a licensed medical cannabis grower from growing marijuana, a licensed dispensary from selling marijuana, a licensed processor from processing marijuana, a registered agent from performing the acts for which they are registered, a caregiver from possessing marijuana or a qualifying patient from possessing or using marijuana. It is my view that they may not.

The doctrine of preemption is predicated on the right of the General Assembly to reserve to itself exclusive dominion over an entire field of legislative concern. *Fogle v. H & G Restaurant, Inc.*, 337 Md. 441, 463-64 (1995); 93 *Opinions of the Attorney General* 149, 150 (2008). State law may prerapt local regulation in one of three ways: expressly, by implication, or by conflict. *Fogle*, 337 Md. at 464. A conflict arises where a local ordinance purports to allow an action that is prohibited by State law, or prohibits an action that is expressly permitted by State law. *Talbot County v. Skipper*, 329 Md. 481, 487 n. 4 (1993).

Where State law does not regulate a specific drug, local jurisdictions are free to do so. Letter to the Honorable James N. Mathias from then Counsel to the General Assembly Dan Friedman dated July 22, 2009 (Ocean City may regulate the possession and sale of salvia divinorum within city limits). The laws on medical marijuana, in contrast, specifically authorize entities registered and licensed under its provisions to perform certain acts related to medical marijuana, from use and possession to manufacture and sale. Health - General Article ("HG"), §§ 13-3304 through 13-3311. Furthermore, the law expressly states that persons who act under the authority of the law "may not be subject to arrest, prosecution, or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the medical use of cannabis." HG § 13-3313(a). Because State law expressly permits these activities, a local jurisdiction may not prohibit them, and any ordinance that attempted to impose penalties for them would be preempted. *See Ter Beek v. City of Wyoming*, 823 N.W.2d 864 (Mich. App. 2012).

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Sincerely,

A handwritten signature in black ink, appearing to read 'K. Rowe', with a long horizontal flourish extending to the right.

Kathryn M. Rowe
Assistant Attorney General

KMR/kmr
zirkin35.wpd