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May 8, 2018

The Honorable Ray O'Connell  
Mayor, City of Allentown

The Honorable Roger MacLean  
President  
Allentown City Council

Allentown City Hall  
435 W. Hamilton Street  
Allentown PA 18101

Dear Mayor O'Connell and Council President MacLean:

It has been brought to my attention that Allentown City Council is considering an ordinance with regard to possession and/or use of a small amount of Marijuana, and treating such as merely a summary offense. I am writing to caution you and City Council from doing so, as such an ordinance would be unconstitutional and unenforceable.

Pursuant to The Controlled Substance, Drug, Device, and Cosmetic Act ("The Act"), Title 35 P.S. 780-101, *et seq.*, the possession of a small amount of marijuana – i.e. thirty (30) grams of marijuana or eight (8) grams of hashish, is prohibited. 35 P.S. § 780-113(a)(31). Any person who violates this section of The Act "is guilty of a misdemeanor and upon conviction thereof shall be sentenced to imprisonment not exceeding thirty days, or to pay a fine not exceeding five hundred dollars (\$500), or both." 35 P.S. § 780-113(g)(emphasis added). Moreover, "[a]ny penalty imposed for violation of this act shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law." 35 P.S. § 780-113(h).

Case law, along with language in The Act itself, instructs:

The Controlled Substance, Drug, Device, and Cosmetic Act is designed to protect citizens of the Commonwealth from the effects of certain harmful drugs, prohibits the unauthorized manufacture, possession, sale, and distribution of controlled substances, such as heroin and Marijuana, along with numerous other enumerated activities involving drugs and narcotics. The Drug Act is penal in

nature and is directed specifically toward regulating the manufacture, sale, and possession of controlled substances. The Act, ... is to be applied and construed so as to effectuate its general purpose of making the law in the area of drug offenses uniform among those states enacting similar legislation.

5B Summ. Pa. Jur. 2d Criminal Law § 29:1 (2d ed.) (footnotes omitted).

Any local ordinance attempting to alter the penalties set forth in The Act would clearly violate The Act's intent and would be in conflict with the language of the Act.

Where there is a conflict between a municipal ordinance and a state statute, the preemption doctrine applies. This doctrine holds that, "a municipal ordinance cannot be sustained to the extent that it is contradictory to, or inconsistent with, a state statute." *Hoffman Mining Co., Inc. v. Zoning Hearing Board of Adams Township*, 612 Pa. 598, 610, 32 A.3d 587, 594 (2011) (citations omitted). Moreover, "under the doctrine of conflict preemption, a local ordinance will be invalidated if it stands 'as an obstacle to the execution of the full purposes and objectives' of a statutory enactment of the General Assembly". *Hoffman*, 612 Pa. at 611, 32 A.3d at 594 (quoting *Fross v. County of Allegheny*, 610 Pa. 421, 437-444, 28 A.3d 1193, 1203-1207 (2011)).

Although municipalities have been granted limited police power over matters of local concern and interest, the scope of this power does not extend to subjects inherently in need of uniform treatment or to matters of general public interest which necessarily require an exclusive state policy – such as those embodied in The Act. *See, e.g., Duff v. Northampton Twp.*, 110 Pa. Cmwlth. 277, 287, 532 A.2d 500, 505 (1987), *aff'd*, 520 Pa. 79, 550 A.2d 1319 (1988). **Local municipalities are preempted from exercising power in an area where the state has sufficiently acted.**

As set forth in section 780-141, one purpose of The Act is to create comprehensive and uniform regulations, which include penalties for violations therein. 35 P.S. 780-141. Absent such uniformity, confusion would result. To permit a local municipality to enact its own regulations with regard to a controlled substance, such as marijuana, would create an impermissible inconsistency as to the direct and collateral penalties to be imposed and would be in conflict with the legislative intent as well as the statutory language set forth in The Act in this regard. *See, e.g., Duff, supra.*

Accordingly, my position is that any local ordinance attempting to alter the penalties for the possession or use of a small amount of marijuana **would be unconstitutional**. Thus, should the Council adopt such an Ordinance, **I will, consistent with my oath of Office and as Chief Law Enforcement Officer of Lehigh County, direct the Allentown Police Department to follow The Act** and any violations of the Act shall be charged according the grading set forth in The Act.

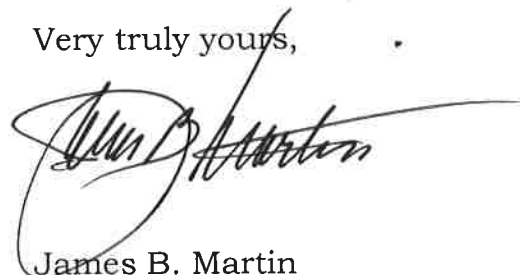
Apart from the legal issue which is well-settled, I refer you to the website for Smart Approaches to Marijuana (SAM) which is a non-profit organization founded by Patrick J. Kennedy, former Democrat member of the United States House of Representatives from Rhode Island.

The web address is: <https://learnaboutsam.org/sam-resources/one-pagers-fact-sheets-and-talking-points/>. I was referred to this site by Gary Tennis, a drug and alcohol policy expert who currently serves as President and CEO of the National Alliance for Model State Drug Laws ("NAMSDL"). Previously Mr. Tennis served in the Cabinets of both Governor Corbett and Governor Wolf as Secretary of the Pennsylvania Department of Drug and Alcohol Programs. He held that post from 2012 to 2017.

In referring me to this site, Mr. Tennis said in part, "...The very best presentation of information demonstrating the problems with downgrading marijuana is Smart Approaches to Marijuana...there you will find solidly-researched facts (no hyperbole whatsoever) showing the tremendous harm caused by this movement."

I am enclosing several print-outs from the website which I strongly encourage you to review.

Very truly yours,

A handwritten signature in black ink, appearing to read "James B. Martin", with a large, stylized loop at the end.

James B. Martin

JBM:hfg

Enc.

xc: Chief Tony Alsleben