

Opinion No. 2012-132

October 30, 2012

The Honorable Jeremy Hutchinson
State Senator
3 Chenal Wood Drive, #331
Little Rock, Arkansas 72223

The Honorable Johnny Key
State Senator
Post Office Box 350
Mountain Home, Arkansas 72654

Dear Senators Hutchinson and Key:

This is in response to your joint request for my opinion concerning Issue 5, the Arkansas Medical Marijuana Act, one of three initiated measures to be voted on at the upcoming 2012 General Election. You have posed the following questions:

1. If passed by voters, will Issue 5 allow self-serve marijuana vending machines?
2. If passed by voters, will Issue 5 allow owners of medical marijuana dispensaries to place self-serve medical marijuana vending machines at locations other than at the physical address of the medical marijuana dispensary?
3. If passed by voters, will Issue 5 prohibit the General Assembly from taxing the purchase of marijuana, through either sales tax or by levying a special tax?

RESPONSE

I must respectfully decline to address any potential impact of the proposed Arkansas Medical Marijuana Act, which is scheduled to appear on the November 6, 2012 general election ballot as Issue 5. This office has traditionally maintained a policy not to issue opinions concerning the effect of proposed acts or

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amendments prior to those laws being put to a vote of the people.¹ As stated by my immediate predecessor with regard to a proposal referred by legislative resolution pursuant to Ark. Const. art. 19, § 22, “[the measure] has not at this date been adopted by the people and the interpretation of such proposed measures is not appropriate in the format of an official Attorney General opinion.”²

Consistent with longstanding practice, therefore, your questions regarding Issue 5 cannot be answered at this time in the framework of an official opinion. I, of course, provide opinions to members of the General Assembly concerning proposed bills.³ However, the measure in question is to be voted on by the people rather than the General Assembly. Further, a court will not entertain a declaratory judgment action to interpret proposed measures prior to enactment.⁴ The absence of any forum for challenging my advisory opinion, coupled with the potential impact of such an opinion on the electorate, compels me to decline to opine on these questions.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/EAW:cyh

¹ *E.g.* Op. Att’y Gen. Nos. 2005-127; 97-123 and 94-193 (discussing proposals initiated through the Amendment 7 “Initiative and Referendum” process).

² Op. Att’y Gen. 2004-210 at n.4.

³ A.C.A. § 25-16-706 (Repl. 2002).

⁴ See A.C.A. § 16-111-104 (Repl. 2006).