

Local Control and Opt Out

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Before the Joint Committee on Implementing Measure 91

Monday, February 16, 2015

Disclaimer

I will unavoidably be expressing my own legal opinions with regard to the intricacies of Measure 91 provisions related to local control. Nobody is entitled to rely upon those opinions other than my own client, the Association of Oregon Counties.

24 Point Plan

- It's all in my written testimony
- Only going to talk about one item tonight

February 16, 2015

Written Testimony of Rob Bovett
before the
Joint Committee on Implementing Measure 91

Co-Chairs Burdick and Lininger, and Members of the Committee,

First, thank you for the opportunity to testify before the Committee with regard to local control and opt out relating to Measure 91. I'll only spend a few minutes of your time this evening going through the relevant provisions of Measure 91, how I interpret them in light of Oregon legal standards, and my suggested path forward. I have put together a PowerPoint presentation for that purpose. However, as you all know, I have suggestions and opinions with regard to many of the other issues before the Committee. So the purpose of this written testimony is to put all of those in writing, even though I'll only be discussing one this evening.

Second, here is my necessary disclaimer: Much of what I lay out in this written testimony should not be construed as AOC's official position on any of these matters (there simply hasn't been enough time to vet all of these issues through AOC channels). My goal is to lay out my thoughts regarding the implementation of Measure 91. To that end, I've carved this written testimony into two parts, the first dealing with issues that I believe this Committee can and should address, and the second dealing with issues that I believe OLCC has existing authority to act upon, but for which it might be a good idea for this Committee to clarify in omnibus legislation.

Third, attached to this written testimony is my own one-page summary of Measure 91 (Attachment 1). I provide that because it's how I think about the Measure from a 50,000 foot vantage point, and it might be important for the Committee to understand what I'm seeing. I have also spoken with colleagues from both Washington and Colorado, getting their insight into what has gone right in their states, as well as what they would do differently. I also recently returned from a marijuana conference in Colorado, during which I took extra time to visit some retail dispensaries in the Denver area, where I got the opportunity to speak with dispensary operators about their perspective on what's worked, and what needs to be tuned up.

A. Implementing Measure 91 in light of the existing OMMA

Measure 91 did not amend the Oregon Medical Marijuana Act (OMMA). However, Measure 91 will not operate in a vacuum. Lessons learned in both Washington and Colorado have made it clear that the two programs need to operate in harmony to prevent either program from defeating the purposes of the other. So making amendments to both Measure 91 and the OMMA to accomplish that goal is critical. That does not mean we can't fully protect the traditional components of the OMMA for patients. With that in mind, here are 24 legislative concepts, in no particular order.

What's in Measure 91?

Relating to local control and op out
(other than taxes, which Scott will address)



Section 58

SECTION 58. Marijuana laws supersede and repeal inconsistent charters and ordinances. Sections 3 to 70 of this Act, designed to operate uniformly throughout the state, shall be paramount and superior to and shall fully replace and supersede any and all municipal charter enactments or local ordinances inconsistent with it. Such charters and ordinances hereby are repealed.

Comments on Section 58

- **Structure is odd**
- **Replace, supersede, and repeal inconsistent local charter and ordinance provisions**
- **Appears to be based on ORS 471.045**
- **Does it meet Oregon preemption standard and, if so, what is preempted?**

Preemption in Oregon

- **Dillon's Rule State versus Home Rule State**
 - **Dillon's Rule**
 - **"Show me where I can"**
 - **Home Rule**
 - **"Show me where I can't"**
- **Assuming Section 58 is preemptive, it only preempts charter and ordinance provisions inconsistent with Sections 3 to 70 of M91**

Section 59

SECTION 59. Authority of cities and counties over establishments that serve marijuana. (1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur. (2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.

Comments on Section 59

- **It's permissive (“may”)**
- **Appears to be based on ORS 471.164**
- **Contains no preemptive language**
- **Even says its supplemental**

What's in Measure 91

SECTION 60. Petition and election for local option. (1) The governing body of a city or a county, when a petition is filed as provided in this section, shall order an election on the question whether the operation of licensed premises shall be prohibited in the city or county.

* * *

(b) Must be signed by not less than 10 percent of the electors registered in the city or county.

* * *

(6) An election under this section shall be held at the time of the next statewide general election.

* * *

Comments on Section 60

- Dictates what happens when a local option petition is filed
- Appears to be based on ORS 471.506
- Contains no exclusive language
 - In other words, nothing in the section indicates it is the only method to opt out
- Contains no preemptive language

Section 61

SECTION 61. Sales not affected by local option laws.
Section 60 of this Act shall not prevent any person residing in the county or city from having, for personal use, marijuana items purchased from marijuana retailers duly licensed under this Act.

Comments on Section 61

- **Clarifies that a local opt out by initiative does not affect the right to possess retail marijuana bought elsewhere in Oregon**
- **Appears to be based on ORS 471.510**

Section 62

SECTION 62. Effective date of local option. In each county or city that returns a majority vote for or against prohibition, the law shall take effect on January 1 following the day of election.

Comments on Section 62

- Prescribes effective date of opt out election result – for or against
- Appears to be based on ORS 471.515

Section 83

SECTION 83. The section captions used in this Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this Act.

Comments on Section 83

- **Section captions can't be used for legislative intent**

This all should be clarified

- **Three great reasons for providing clean local control and opt out:**
 - **The positive Colorado experience**
 - **Avoidance of litigation**
 - **Avoidance of the “nuclear option”**

The scale of risk

Safe



Risky

**Decriminalization
or exemptions
under state law**

**Requiring
person/entity to
tolerate/accept**



**Association of
Oregon Counties**

Questions?

