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To: Nevada Tax Commission
From: Nevada Press Association
Re: Proposed Regulation R 092-17 (marijuana)

I am writing to request the Commission delete Section 242 of the proposed regulation R 092-17, which is to be considered on Jan. 16.

Section 242 would make confidential “the name or any other identifying information of any person who facilitates or delivers services pursuant to this chapter or chapter 453D of NRS.”

The Nevada Press Association and its member newspapers have a long history of advocacy for open government, including the state’s public records law, NRS 239. We believe there are good reasons for the Tax Commission to eliminate such broad, unnecessary confidentiality provisions as contemplated in the regulation. For example:

SUMMARY OF REASONS

- NRS 453D does not include language calling for confidentiality of people involved in delivery of services. It would be beyond the scope of the statute to keep secret information that is otherwise a matter of public record.

The statute does call for protecting individual privacy of customers, NRS 453D.200 (5). Had the Legislature intended any additional privacy, it would have said so there.

- The consequences of the proposed confidentiality, especially with its sweeping language, could negatively impact other public records requests.

- To my knowledge, no one has requested confidentiality in regards to marijuana businesses — in legislative hearings, regulatory hearings or anywhere else. In fact, most of the state has operated openly with regard to the industry and its ownership, applications and permitting.

BACKGROUND

The language for Section 242 comes from a similar confidentiality provision in NAC 453A, the regulations on medical marijuana, which in turn has its roots in NRS 453A, the medical marijuana statute. However, the reasons for withholding certain information have been obscured as the issue has progressed toward legalization of recreational marijuana.

The original intent in the medical-marijuana statute was to protect the identities of registered cardholders and treating physicians, a reasonable extension of the protections generally provided in statute for medically sensitive information.

Unfortunately, the language in NAC 453A unnecessarily expanded the protections intended for patients and doctors to cover *all* information about anybody involved in the medical-marijuana business — “any person who facilities or delivers services pursuant to this chapter.” That goes far beyond the doctor-patient confidentiality that had been envisioned by the statute.

As a result — although several government agencies came to a different conclusion — the city of Sparks rejected a request by the Reno Gazette-Journal for public records identifying the owners of marijuana establishments on building permits. A district judge ruled they were public records, but the Nevada Supreme Court upheld Sparks’s interpretation. So, although nowhere in statute or in regulation are building permits (or, potentially, all sorts of otherwise public records) even mentioned, they have been swept into the confidentiality that was supposed to protect patients and doctors who prescribed medical marijuana.

POTENTIAL CONFLICTS

Because the regulations in NAC 453D would be applied in other circumstances, I can see the potential for other governmental functions to be carried out in secrecy. For example, the regulations establish a license revocation, hearing and appeal process for marijuana establishments under the NRS 233B.121, the Administrative Procedures Act.

Does the Commission expect the processes in NRS 233B would be carried out in closed chambers, out of sight of the public? Or would the people involved in the business be identified only as Mr. X or Mr. Z? No. Nevada’s system of justice does not operate in secrecy.

SOLUTION

The Tax Commission has a well-established protocol, reinforced in Nevada statute, for protecting people from identity theft and protecting companies from the exposure of proprietary or sensitive information, if those are the concerns that led to the proposed language in Section 232. That protocol can be exercised here, without creating precedence by establishing a new category of Nevada businesses and government oversight shielded from the public’s view.

Our democratic principles of open government establish many valid reasons for making sure the process of government licensing, review and enforcement are accountable to the public — not the least of which are to prevent cronyism, corruption or incompetence.

The best way to have confidence in our governmental institutions is to be able to watch them at work.

Elimination of Section 242 would still leave the previous section, 241, intact to cover any concerns that information “related to security” could remain undisclosed.

I urge the Nevada Tax Commission to amend the proposed regulation to ensure the openness and accountability of the state’s responsibilities as representative of its citizens.

Sincerely,

Barry Smith
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