



## NEVADA PRESS ASSOCIATION

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May 4, 2017

To the Nevada Tax Commission  
Re: Temporary Regulation T002-17

Members of the Nevada Tax Commission,

I am writing today with concerns about Temporary Regulation T002-17 dated May 2, specifically Paragraph 3 in which language has been added regarding the confidentiality of information.

As a representative of Nevada newspapers, I often monitor legislation and regulations that affect the public's access to records.

Paragraph 3, which would require the Department "shall maintain the confidentiality of and shall not disclose the name or any other identifying information of any person who applies for a temporary marijuana establishment license," appears to create an exception to Nevada public records law, NRS 239.

### **Broad provisions**

I understand the Taxation Department operates under a broad exception to NRS 239, contained in NRS 360.255. However, I believe NRS 360.255 is intended to be applied to information "specifically related to a taxpayer," as stated in Paragraph 5(a) of the statute. I do not believe it was intended to be applied to applicants for marijuana establishment licenses, as the temporary regulation proposes.

I am unaware of any prior discussion of creating this additional exception to NRS 239, or of case law, policies or opinions that would support the inclusion of applicants for a marijuana establishment under NRS 360.255. If these exist, then I apologize for my lack of knowledge and would appreciate being directed to any supporting material to help me better understand the relationship between the statutes and the proposed regulation.

If the broad provisions of NRS 360.255 would, indeed, apply to applicants for licenses, then it would appear the confidentiality language in Paragraph 3 of the temporary regulation is unnecessary and redundant. If NRS 360 does not apply, then the language of Paragraph 3 would create an unauthorized exception to NRS 239.

**In either case, I would request the Commission remove the first sentence of Paragraph 3 of Temporary Regulation T002-17, leaving only the second sentence: “A list of the licensed entities will be posted on the Department’s website.”**

### **Practical considerations**

I do not know if anyone would ever make a public-records request of the Department for information on applicants for marijuana establishment licenses, but I do see a parallel situation with the release of information regarding medical marijuana licenses, which has led to a pending case before the Nevada Supreme Court. (City of Sparks vs. Reno Newspapers)

The issue arises when the matter comes to the local level. The regulation requires written notice from local jurisdictions that an applicant is in compliance with local distance requirements and zoning regulations. Would the local jurisdictions, as is being argued in the Sparks case, somehow believe they might be restricted from releasing information about the applicant? Would a local jurisdiction — Carson City, for example, where I reside — be able to hold a public hearing before determining if an applicant was in compliance?

Another concern would be access to applications that may be denied by the Department. It would likely be of great interest to local residents to know if an existing establishment is not in conformance with local regulations.

I am not sure if these questions have been raised regarding the proposed temporary regulation, but they would be practical examples of why I have concerns about the confidentiality provision.

Thank you for your consideration. I would be glad to assist in any way that may be helpful in reconciling these concerns.

Sincerely,

A handwritten signature in cursive script that reads "Barry Smith". The ink is dark and the signature is written in a fluid, connected style.

Barry Smith  
executive director