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News & Insights

Oklahoma Judge Enters Stay of Enforcement Regarding Residency and 1,000 Foot Spacing Requirements

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Hall Estill News

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Good news for Oklahoma Cannabis Owners:
Oklahoma Judge Enters Stay of Enforcement Regarding Residency and 1,000 Foot Spacing Requirements

On July 6, 2020, the Oklahoma County District Court in Case No. 2020-1206 issued a Stipulation to Stay Enforcement ("Stay of Enforcement") of the two-year residency requirements for all renewal applicants who originally applied for licensure prior to August 29, 2019. Specifically, the Stay of Enforcement provides that the Oklahoma Medical Marijuana Authority ("OMMA") will not consider the two-year residency requirement when evaluating all business license renewal applications if such licensee applied for licensure prior to August 29, 2019. Hall Estill attorneys have been advised that OMMA will not enforce the new residency requirements on all applicants, not just the Plaintiffs in Case No. 2020-1206. Without the Stay of Enforcement, currently operating marijuana businesses risked having their licenses revoked by OMMA upon renewal due to the applicant's failure to meet the new residency requirements – requirements that were not in effect when the applicants originally applied for (and were granted) their marijuana business license.

Brief History of the Changing Residency Requirements. When Oklahoma first began issuing marijuana business licenses in 2018, Oklahoma law did not require any minimum length of time to establish Oklahoma residency status for licensing purposes. The only residency requirement in effect at that time required all applicants applying for an Oklahoma medical marijuana license to show that seventy-five percent (75%) of all owners are Oklahoma residents.

On March 14, 2019, the Oklahoma legislature enacted HB 2612, which provided that in order to qualify as a "resident" of Oklahoma for purposes of a medical marijuana business application, the applicant must "provide proof of residency for at least two (2) years immediately preceding the date of application or five (5) years of continuous Oklahoma residency during the preceding twenty-five (25) years immediately preceding the date of application." The new legislation became effective on August 29, 2019. Importantly, HB 2612 failed to address the fact that many applicants moved to Oklahoma to open a marijuana business

and that these same business owners would not be able to renew their license (renewals are required on an annual basis) because they could not establish two years of residency in Oklahoma. In an attempt to fix this issue, the legislature passed new legislation with a grandfather provision that exempted all applicants who applied for licensure prior to March 14, 2019, from the new residency requirements. But the grandfather provision failed to address applicants who applied for licensure between March 14, 2019, and August 29, 2019, leaving this group of applicants in limbo.

By enforcing the new residency rules on renewal applications, OMMA would be giving the new law retroactive effect. Retroactive laws are laws that retroactively change the legal consequences of actions that were committed before the enactment of the law. Retroactive laws are often unconstitutional. The Stay of Enforcement does not address the constitutionality of HB 2612, but it does resolve the residency problem, for now.

The 1,000 foot requirement. In addition to the residency requirement, the Oklahoma County Court also announced that OMMA will not consider the new 1,000 foot proximity rules in reviewing applications, renewals, or transfers, if such applicant originally applied for licensure before August 29, 2019. As part of the 2019 legislation changes, Oklahoma law expanded the definition of a school to include a private or public preschool. The 2019 legislation also included additional location restraints for dispensaries, prohibiting dispensaries from being located within 1,000 feet of any public or private school entrance. OMMA subsequently adopted regulations further defining an "entrance" to include "an opening, such as a door, passage, or gate that allows access to any public or private schools, including buildings, facilities, or other indoor and outdoor properties utilized for classes or school activities."

These new rules so substantially changed the definition of "public and private school" and "entrance" that numerous existing marijuana businesses found themselves in violation of the rules. In addition, the inclusion of preschools in the definition of "public and private school" placed numerous other dispensaries within 1,000 feet of entities that were not considered a school under the former legislation. These changes resulted in numerous entities becoming non-compliant and thus subject to non-renewal of their existing licenses. As part of the Stay of Enforcement, the Oklahoma County Court ruled that OMMA will not consider the new 1,000 foot proximity rule in reviewing existing applications upon renewal provided the applicant applied for licensure before August 29, 2019.

If you have questions, please contact your Hall Estill Attorney.

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