

Court issues TRO in medical marijuana case

By: Scott Lauck

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A Cole County circuit judge issued a temporary restraining order on Jan. 16 in what appears to be one of the first challenges brought under the Missouri constitutional amendment that legalized medical marijuana.

Judge Daniel Green barred state officials from considering an Independence city ordinance that restricted where medical marijuana facilities can be located. The temporary ruling would allow a license application for the plaintiff, the Healing Center of Kansas City, to proceed, at least for now. A hearing was scheduled for Jan. 27.

Lowell Pearson of Husch Blackwell, an attorney for HCKC, said in an email that the case intentionally was filed before the Missouri Department of Health and Senior Services made its licensing decision, as the plaintiff argues the ordinance is unconstitutional.

Last July, the Independence

City Council enacted an ordinance setting minimum distance for medical marijuana-related businesses. Among them is a requirement that dispensaries be at least 500 feet from any residential district or residential dwelling, measured from property line to property line.

HCKC alleges that restriction encompasses 88 percent of the commercially zoned areas where medical marijuana dispensaries could operate, and that at least 10 of the 18 applicants who are seeking licenses to operate in Independence would be disqualified, as the department requires applicants to satisfy the local requirements of the jurisdiction.

Missouri voters overwhelmingly approved a measure in 2018 that legalized and created protections for medical marijuana. Under Article XIV, Section 7 of the Missouri Constitution, local governments cannot prohibit medical marijuana facilities or

“make their operation unduly burdensome in the jurisdiction.”

However, the amendment also allows local governments to enact regulations “governing the time, place and manner of operation of such facilities in the locality.”

In its motion for the TRO, HCKC argued that the city’s ordinance goes further than allowed and would “place substantial obstacles in the path of a patient seeking medical marijuana and in the path of businesses seeking to operate a Medical Marijuana Dispensary Facility.”

Green will have to decide next if the situation merits a preliminary injunction. If the case ultimately is successful, it could wind up in the Missouri Supreme Court, offering the court its first opportunity to examine the effects of the medical marijuana amendment.

The case is HCKC LLC v. Missouri Department of Health and Senior Services, 19AC-CC00519.