City of San Diego opposes county on pot suit

by Jeff McDonald

SAN DIEGO - In the legal tug of war between the county and state over medical marijuana, the city of San Diego has sided with Sacramento - and voters.

Lawyers from the City Attorney's Office have filed an amicus brief in the lawsuit between San Diego County and the state Department of Justice.

County supervisors hope a panel of appellate judges will relieve them of their obligation under state law to issue identification cards to qualified patients.

The case asks the 4th District Court of Appeal to reverse a ruling last year from Superior Court Judge William R. Nevitt Jr., who said the county must follow state law and issue the ID cards.

"The city has a compelling interest in ensuring its citizens have the benefit of the medical marijuana program," states the amicus brief, which was filed last week.

Identification programs assist police and offer comfort and security to those who are entitled to use medical marijuana, the nine-page brief says.

To date, 35 of the state's 58 counties have agreed to issue the identification cards to medical marijuana patients. The idea is to provide a way for police and other law enforcement officers to distinguish legitimate patients from recreational drug users.

San Diego County sued the state rather than issue the cards. Supervisors said they could not endorse a program that violates federal law, even though Nevitt said the state law requires no such thing.

San Bernardino County is a co-plaintiff in the case. Merced County had joined the suit, but supervisors there opted out and agreed to issue the ID cards.

Marijuana is illegal to use and possess under federal laws, even though California and 10 other states have adopted legislation permitting medicinal use of the drug.

Patients and their advocates have said for years that marijuana relieves chronic symptoms of cancer, AIDS and other diseases.

California voters adopted a legal allowance for the medicinal use of marijuana in 1996, with 56 percent in favor. In San Diego County, the initiative received 52 percent support.

But implementation of the law has been slow because of the federal ban. The initiative did not specify how much cannabis a person could grow or possess, or outline how the drug would be acquired or transported.

Follow-up legislation passed in 2003 said qualified patients can possess up to 8 ounces of dried marijuana and cultivate up to 12 plants.

Amicus briefs have no official bearing, other than to alert judges of third-party interest in a case.

Attorneys defending the state medical marijuana laws welcomed support from San Diego, one of the largest cities in the nation to pass guidelines spelling out how much marijuana a patient can cultivate.

"San Diego's brief very strongly makes some points that I don't think any of the other parties can adequately make, which is how very important it is to have these ID cards and the burden it's placing on police to not be able to easily distinguish medical marijuana patients from recreational users," said Joe Elford of Americans for Safe Access, an advocacy group co-defending the case against the state.

"Legally speaking, I can't say (the amicus brief) will help a tremendous amount. However, it does demonstrate to the court that it's not the entire county of San Diego that's opposed to the medical marijuana law."

A spokesman for San Diego Mayor Jerry Sanders, who was the city's police chief from 1993 to 1999, said Sanders supports medical marijuana for legitimate patients and has told San Diego police to respect the state law.

But Aaron Klein, a medical marijuana patient from the North Park area, said at least half of the officers he and other patients encounter do not tolerate marijuana possession or use.

"The majority of police officers are not educated about Proposition 215," Klein said. "They tell people medical marijuana doesn't work, that it's a farce."

More than 20,000 patients in San Diego County have no regular access to medical marijuana since last year, when law enforcement officials cracked down on shops that sold the drug over the counter, Klein said.

"A significant number of those people will be dead before somebody does something," Klein said.

Oral arguments in the legal fight between state and county attorneys will not likely be heard by appellate judges until summer. A ruling is expected later next year.

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