
February 17, 2022

BY EMAIL: nancy.conley@house.mn

Ms. Nancy Conley

Dear Ms. Conley:

My name is Elliot Ginsburg - I am a lawyer and represent businesses in litigation and transactional matters. Several of my clients are in the hemp industry. Currently, the state is in the process of destroying the hemp industry in Minnesota. The state law is currently unclear - at best - as to the legality of CBD in edible products. This has resulted in some hemp retailers shutting down, removing products from stores, or moving their businesses to other states. The uncertainty regarding CBD in edibles has also resulted in lost jobs, lost tax revenue, and serious harm to Minnesota hemp farmers. This trend will continue - which I can say with a high degree of certainty - unless state law changes to clarify that hemp-derived CBD may be used in edibles.

One problem with the uncertainty or the illegality of CBD edibles in Minnesota is that it discriminates against Minnesota businesses in favor of businesses in other states. Anyone can go online and find hundreds of companies (if not more) selling CBD online and those sales are clearly legal in the states where the products originate. Without clarifying that CBD in edibles is legal in Minnesota, Minnesotans will continue to purchase CBD - they will just purchase it from businesses in other states, generating tax revenue, jobs, and economic growth for out-of-state farmers, processors, and retailers.

And this problem also runs the risk of destroying investments (in cash and sweat equity). Retailers, processors, and farmers that have invested hundreds of thousands if not millions of dollars in their industrial hemp businesses (which they did with the belief that CBD edibles were legal and which the state tacitly agreed for the better part of three years). Unless the law is clarified, these investments will be for naught.

Businesses involved in the production and sale of CBD edibles want to comply with the law and want to maintain facilities that comply with state law regarding food licensing and food safety. Yet we are in a position where - and I am not kidding - the Department of Agriculture sent a cease and desist to a business selling CBD edibles, stating that it had to apply for a food license but also that it could not obtain a food license because it has deemed CBD edibles illegal in Minnesota. So the state's remedy for this business was - in fact - not

a remedy at all. The only way to eliminate risk for these businesses is to shut down and/or move to other states that have clearer laws regarding CBD edibles.

The dormant commerce clause is a constitutional doctrine that does not allow a state to discriminate against out of state businesses in favor of in-state businesses. The doctrine exists because constitutionally, this country wants to avoid economic protectionism from state to state. Here, we have a situation where Minnesota law currently is engaging in exactly the reverse - it is discriminating against in state businesses in favor of out-of-state businesses. Taking away jobs and economic growth from Minnesota will do nothing to stop the use of CBD edibles - it will just take money out of Minnesota and deliver it to businesses in other states.

The question that the legislature has to ask itself is why would the state harm Minnesota businesses, including Minnesota farmers, to help businesses in other states? There is no good reason for doing so and until the law is clarified, our state government is attacking our own state's businesses.

Sincerely,

GARNER, GINSBURG & JOHNSEN, P.A.

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