

## **Amendment 64 Implementation Task Force Tax/Funding and Civil Law Working Group**

Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 1st Floor  
Denver, Colorado 80203

### Meeting Minutes

Wednesday, January 30, 2013  
11:00 a.m. – 1:00 p.m.

#### **TOPIC: Civil Law Issues & Final Resolution of Previously Discussed Issues**

- I. Call To Order:**
  - a. Co-Chairs David Blake and Senator Cheri Jahn called the meeting to order at 11:03a.m.
- II. Introductions:**
  - a. Attendance:
    - i. Sub-Committee Members Present: Co-Chair David Blake, Co-Chair Cheri Jahn, Bill Callison, Don Childears, Michael Elliott, Holli Hartman, John Vecchiarelli, Dan Krug, Adrienne Russman, Kimberlie Ryan, Tamra Ward, Mike Cerbo, Alexis Senger, Dorinda Floyd, Mary Jo McGuire
  - b. Vote to Adopt minutes from January 16<sup>th</sup> and 23<sup>rd</sup>, passed unanimously
- III. Revisit WG Meeting Schedule**
  - a. There was a revision of the schedule to go over funding next week, possibly if there is time left over on February 6<sup>th</sup> and at the February 8<sup>th</sup> meeting
- IV. Reconsideration of Banking Recommendation #3**
  - a. Two words added “if feasible,”
  - b. Motion to adopt as revised, passed unanimously
- V. Brief discussion and Vote on Employment Recommendation #1**
  - a. Each person could only vote once, each dissenting view required support by two or more people
  - b. Majority Recommendation
    - i. Added the word “maintain” to the majority recommendation
    - ii. Motion to adopt as revised: passed with support from nine members
  - c. Dissent #1
    - i. Motion to adopt: passed by two votes
  - d. Dissent #2
    - i. Add that Section 8 says provisions of Amendment 64 are self-executing and add that employment policies were addressed in Amendment 64 to the rationale
    - ii. Motion to adopt as revised: passed by three votes
- VI. Discussion and Vote on Tax Issues**
  - a. Presentation by Clare Premuk, Colorado Legislative Council
    - i. Clare was a member of the team that drafted the Bluebook and read the fiscal note. Additionally, Clare also was involved with the meetings that took place with the proponents and others regarding the drafting of Amendment 64. The drafters used medical marijuana as their guide when drafting this amendment. They envisioned one division for the regulation

of marijuana. Currently the division is authorized 5.7 million and 55 FTE, however right now they are staffed at 15 FTE. They had go from 37 FTE to 15 FTE because they are cash-funded and there is no more money coming in. The Amendment 64 was authorized to add an additional 1.3 million and 4.5 FTE to the existing division. Clare believes that it's a fair assumption that there will be the same cash funding problem with recreational marijuana as there is with medical marijuana. The licensing fees are not capped in the Amendment 64. The medical marijuana industry has some capped at \$18,000, so the recreational licensing could be potentially as high as it needs to be to fund the enforcement. Sales tax does not go into enforcement, instead it goes directly to the general fund. Clare points out that the title of Amendment 64 was written so that it would not be TABOR compliant. Their intent was to require the people to vote on an excise tax.

1. Michael pointed out that currently there are about 525 medical marijuana facilities and about ½ are in Denver. He thinks the market might be saturated and that it would be best to wait for the regulatory working groups to come up with their recommendations before this working group moves forward.
2. Bill agreed that TABOR is necessary, although reached his conclusion apart from the intent of the drafters and the language of the bluebook.

b. Mike:

- i. TABOR says that any new tax must receive a vote of the people and there is a very specific process that must be followed. It is evident from the face of Amendment 64 that TABOR hasn't been complied with. Amendment 64 did create the authority for the General Assembly to act on behalf of the people. The proponents did not provide for a TABOR carve-out. Mike also explained that the bluebook is used as legislative history by the court and courts will assume that voters are just as knowledgeable as legislatures when it comes to ballot initiatives.
- ii. There are 4 options for enacting an excise tax:
  1. The legislature can pass a statute, which would give them the option to amend or repeal the statute in the future. This would require over 50% of each house to pass
  2. The legislature can pass a constitutional amendment which would require 2/3 of each house to pass
  3. The voters could initiate a statute
  4. The voters could initiate a constitutional amendment
- iii. If the legislature fails to enact a statute or referendum, the people are still free to act. Voters are not constricted by an earlier vote of the people and could potentially enact an excise tax that is higher than 15% if they choose, but it would require a constitutional amendment and not a statute. The legislative procedure in the recommendation provided for by David is allowed. Additionally, the legislature could also potentially enact a constitutional amendment that was over the 15% tax and if the people voted in favor it would preempt the Amendment 64 "up to 15%." An increase in sales tax would require a TABOR vote, but could potentially be included in the same legislation as the excise tax without violating the single subject rule. Fees however do not require a TABOR vote. If the legislature does enact an excise tax without the vote and the people and a

lawsuit is brought and lost by the state, the state would owe the taxes collected plus 10% interest.

**VII. Discussion on Tax Recommendations**

- a. Michael made a motion to table the vote until next week. He voiced concerns that the working group would not be looking at all the taxes and funding as a whole. The medicinal marijuana industry is already the most heavily taxed at almost 55%. He also would like to see what the regulatory working group recommends before moving to a vote.
- b. David would like to set the excise tax at 15%
- c. There was some concern about setting the exact excise tax without more information/data.
- d. There was mention that Washington State imposes a 25% sales and a 25% excise tax at all the different levels of marijuana production and sales.
- e. The motion was passed to table this discussion until next week.

**VIII. Closing:**

- a. Michael is drafting an alternative to Tax Recommendation #2.
- b. Any amendments to the current draft tax recommendation #2 should be sent to David by the next meeting
- c. There will be an additional meeting held Friday, February 8<sup>th</sup> from 1-5pm
- d. Next week's subjects will be property, contracts, funding, and finishing up taxes

**IX. Public Comment**

- a. A man asked that Tamra and Don recuse themselves because they sent a letter to the federal government asking them to intervene before Amendment 64 was voted on. Also, doesn't believe there is a federal law preventing Don from telling Colorado banks that they can accept money from the marijuana industry. Also believes you shouldn't ask bankers for help and that the letter from the working group be sent to Don.