

Judge upholds local pot business ban in Wash. state

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Komonews.com | Aug 29, 2014

TACOMA, Wash. (AP) - A state judge said Friday that a small city can continue to ban state-licensed marijuana businesses, in a case with big implications for Washington's experiment in legal pot.

Pierce County Superior Court Judge Ronald Culpepper issued the ruling after extensive arguments over whether Initiative 502, the voter-approved state law that legalizes adults' recreational use of marijuana, left any room for such local bans.

The case concerned a ban in the Tacoma suburb of Fife. Would-be pot proprietor Tedd Wetherbee sued, saying he was entitled to do business but the city wasn't letting him. Culpepper disagreed.

"Fife's ordinance is not pre-empted by I-502 or other state law," he said in an oral ruling.

Wetherbee said he'd appeal.

Washington's experiment is built around the notion that it can bring marijuana out of the black market and into a regulated system that protects public health and safety better than prohibition did.

But advocates say local bans threaten the state's ability to do that: **28 cities and two counties have banned pot shops, and scores more have issued long-running moratoriums preventing the stores from opening while officials review zoning and other issues.**

Fife's lawyers argued that nothing in the state law overruled cities' zoning authority, while Wetherbee's attorneys insisted that if local governments can ban licensed growers, processor and sellers, it would undermine voters' desire to displace illegal pot sales.

Culpepper said Wetherbee did not prove that banning pot shops in such a small city - 5 square miles and fewer than 10,000 people - would thwart the will of the voters; there are shops open in

Tacoma, next door.

The analysis might be different for bans in Pierce County or other more populous or larger parts of the state, Culpepper suggested.

The case posed a serious threat to Washington's entire system for regulating marijuana. Fife had asked the judge, if he struck down the city's ban, to consider whether the state law should be invalidated as incompatible with marijuana's prohibition under federal law.

Culpepper said offhandedly that he did not believe I-502 conflicts with federal law, but he did not reach that question in his ruling.

Nevertheless, Culpepper's ruling doesn't end challenge to Fife's ban. The judge said Wetherbee could pursue procedural arguments that the city didn't adopt it properly.

The lawsuit attracted a lot of attention, with the state, the American Civil Liberties Union of Washington, and other counties and towns weighing in.

Washington Attorney General Bob Ferguson took the position that I-502 did not negate local zoning authority to ban the shops, but he insisted that the state's law is not pre-empted by the federal Controlled Substances Act. He called Fife's arguments "a significant threat to the implementation of Initiative 502."

Ferguson said after the ruling that I-502's drafters could have addressed the issue with a single sentence requiring local governments to allow the businesses.

Alison Holcomb, the ACLU of Washington lawyer who wrote the law, said she hopes the Legislature will amend the law this winter to preclude local bans.

Rep. Chris Hurst, the Enumclaw Democrat who heads the House committee that oversees the pot industry, said lawmakers might do just that, unless the state Supreme Court overrules Culpepper by January.

"If you carve out large chunks of the state and say they are able to pre-empt state law, you'll have pockets where the criminal element flourishes," Hurst said.

Colorado, the only other state with legal pot for adults, expressly allows cities to ban pot businesses, and dozens have done so.