

## Massachusetts Supreme Judicial Court Issues Two Decisions Favorable to Marijuana Businesses

Two recent unanimous decisions from the Massachusetts Supreme Judicial Court confirm the supremacy of the state's marijuana laws over local zoning restrictions. The decisions also indicate a tendency of the Supreme Judicial Court to look to the state policy of legalizing the sale of marijuana when faced with restrictive local ordinances.

Both cases involve the same entity, CommCan, Inc., which is attempting to open a retail marijuana operation in Mansfield, Massachusetts, in face of opposition from neighbors and the town. The first case resulted from a change in the Massachusetts state law. When Massachusetts initially legalized marijuana for medical use in 2012, medical marijuana dispensaries were required to be nonprofit entities. In 2017, the state law changed to permit existing dispensaries and applicants to convert to nonprofit corporations. However, the Mansfield zoning ordinance did not change with the state law and continued to purport to restrict marijuana dispensaries in the town to only those operated by nonprofit corporations.

Upon review, the Supreme Judicial Court upheld the Mansfield Zoning Board's decision to issue a special permit to CommCan, reasoning that the change in state law preempted the zoning bylaw. The Court found that by retaining the requirement that medical marijuana dispensaries be nonprofit, the town bylaw frustrates one of the purposes of the 2017 law change. "In repealing the 2012 Act ... and replacing it with a provision permitting for-profit entities to operate marijuana treatment centers ... the Legislature evinced its clear intent to allow for-profit entities to distribute medical marijuana. This legislative purpose cannot 'be achieved in the face of [the town's] ... bylaw on the same subject.'" Accordingly, the Supreme Judicial Court concluded that the Town could not be forced by an adjacent property owner to revoke the special permit Mansfield's Zoning Board had previously issued to CommCan.

In the second case, the Town of Mansfield itself challenged the applicability of a different section of the 2017 law to CommCan. The law gives municipalities the power to regulate the number and location of retail marijuana establishments within their borders, except that the municipalities could not prevent the conversion of a medical marijuana dispensary "engaged in the cultivation, manufacture or sale" of marijuana to a retail marijuana dispensary. The town argued that the law permitting medical marijuana dispensaries to convert to retail marijuana dispensaries only applies to facilities that are "engaged" in marijuana sales, and that, because CommCan had only drawn up plans for the dispensary and did not yet have any actual sales, CommCan was not "engaged" in selling marijuana, such that the conversion law did not apply.

The Supreme Judicial Court interpreted the phrase "engaged in" to mean to be "involved in activity; occupied; busy" and found that CommCan's activities clearly indicated it was "involved with" its marijuana business. The Court further looked to the legislative intent to make it easier for medical marijuana dispensaries to convert to retail sales. As a result, the Court rejected the Town's argument.

Partridge Snow & Hahn's [Cannabis Advisory Practice Blog](#) provides updates on marijuana law and policy, covering some of the risks and opportunities in the industry, and makes recommendations regarding best practices. **If you are interested in receiving these updates via email, please submit the form below:**

### Date Created

October 5, 2021