

October 25, 2018

**Via E-Mail ([Shannon.kief@ct.gov](mailto:Shannon.kief@ct.gov)) and  
U.S. Mail**

Attorney Shannon Kief  
Director of Legal Programs  
State Election's Enforcement Commission  
20 Trinity Street  
Hartford, CT 06106

**Re: Medical Marijuana Industries Permittees as "State Contractors"**

Dear Attorney Kief:

Thank you for taking time last month to discuss the definition of a "State Contractor" under Section 9-612(f)(1)(D) of the Connecticut General Statutes. As we discussed, you and I have formulated differing interpretations of that statute so I have been asked to seek an opinion from your office as to the definition of a "State Contract" and of a "State Contractor".

A "State Contract" is defined in Section 9-612(f)(1)(C) as:

**"an agreement or contract with the State or any State agency or quasi-public agency, let through a procurement process or otherwise having a value of Fifty Thousand Dollars (\$50,000) or more, or a combination or series of such agreements or contracts having a value of One Hundred Thousand Dollars (\$100,000) in a calendar year, for: (i) the rendition of services; (ii) the furnishing of any goods, supplies, equipment or any items of any kind; (iii) the construction, alteration or repair of any public building or public work; (iv) the acquisition, sale or lease of any land or building; (v) a licensing arrangement; or (vi) a grant, loan or loan guarantee."**

The plain language, therefore, requires that two conditions be satisfied: 1) that a contract or agreement be entered into with the State – that is – a bilateral writing; and 2) that it exceeds the monetary thresholds.

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You have suggested that the use of the phrase “a licensing arrangement”, means permittees or licensees of the State which includes those permittees within the Connecticut Medical Marijuana industry should be regarded as “State Contractors”. I respectfully disagree with your interpretation given that the use of the term “a licensing arrangement” is meant to be one of the six listed descriptions for the types of “contracts” or “agreements” that the State has entered into with its contracting party. It is not meant to include permittees operating a trade or business within the State of Connecticut who have no contracts or agreements with, and render no services to, the State.

This conclusion is supported by the plain language of the statutory provision if appropriately read and by the legislative history of this statutory provision (see a sampling of those excerpts attached hereto as Exhibit A). In order for there to be a “contract” or an “agreement” under these provisions, there must be two (2) parties who have negotiated a business arrangement, the terms of that arrangement and have evidenced that arrangement in the form of a bilateral written agreement because that is what a “contract” or “agreement” is. The statute, itself, lists the types of arrangements included within that concept. Subcategory (iv) lists agreements for the sale or disposition of real estate, subcategory (v) lists agreements for the use of real estate or facilities often called “licenses” because licenses tend to be for shorter terms than leases and do not convey interests in real estate, but in accordance with Duhaime’s Law Dictionary “licenses” provide:

**“special permission to do something on, or with, somebody else’s property which were it not for the License could be legally prevented or give rise to legal action in tort or trespass”.** See [www.duhaime.org](http://www.duhaime.org).

Black’s Law Dictionary states that a license is, under the law of contracts, a:

**“permission accorded by a competent authority, conferring the right to do some act which without such authorization would be illegal or would be a trespass or tort”.**

Again, these definitions require the creation of a bilateral understanding or agreement between two parties. You are applying the term “license” to someone who has simply applied for an occupational permit to operate a business requiring authorization by a Connecticut regulatory agency for that person or entity to operate in Connecticut.

I believe your application of this definition is incorrect. A logical extension of your position would result in everyone who needs an occupational permit or license to be considered a state contractor under the first prong of the test. This would include hairdressers, barbers,

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doctors, lawyers, liquor store operators, restaurateurs and numerous other individuals or entities. The legislative history simply does not support application of your interpretation to the first prong of the statutory requirement.

The second element that must be met is the monetary threshold which, according to the attached legislative history, means the value of the contract entered into **with** the State. You have applied an alternative test which you state is determined by the cost of the license or the income derived by the permittee in the industry. Your test finds no support in the legislative discussions or the statutory language. In discussing its own legislation, the legislature evaluated this statute and the concept of value as the amount of money the State would **pay** a contractor for services rendered or products received. That is – how much money would the contractor be paid by the State to provide its products or services to the applicable State agency. The legislature determined that individuals who make a material amount of money from direct payments made by the State have a motivation to protect that relationship and to endear themselves to the very people who control the award of such contracts. This type of influencing is the evil the legislature sought to prevent.

By applying your analysis, any permittee or license holder who either pays a fee to Connecticut at or in excess of the amount of the thresholds in this statute, or where the permittee has a business valuable enough to exceed these thresholds, would be prohibited from making campaign contributions. Again, by applying this concept consistently, this would prohibit most all permittees or licensees operating in Connecticut from making contributions to candidates because most generate more income and profit than \$50,000 in any single year and the value of those businesses are far in excess of the thresholds. None of these concepts are supported by the plain intent of the legislation which is to prevent individuals or businesses that **receive** remuneration directly from State agencies, departments or quasi-governmental agencies in excess of the minimum thresholds, from making contribution aimed at politically influencing those who are elected and who oversee the entering into of contracts with the State.

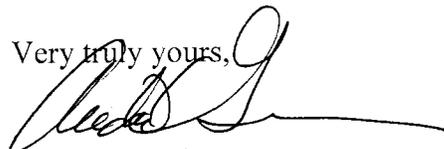
The permittees within the medical marijuana industry in Connecticut have simply applied for their permits through a competitive process. They pay their annual permit fees and operate their businesses, independent of any contractual arrangement with the State. They are subject to stringent regulations applicable to their industry just as any other regulated industry operates here in Connecticut.

**PULLMAN  
& COMLEY**<sub>LLC</sub>  
ATTORNEYS

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For these reasons, we respectfully believe that no permittee in this industry is a “State Contractor” because none is a party to a “State Contract”, nor does any meet the minimum thresholds of value received from the State. We respectfully request that your agency issue its opinion affirming our position so that members of this industry are free to make the desired contributions.

Very truly yours,



Andrew C. Glassman

ACG:jr  
Attachment

## ***EXHIBIT A***

### **HOUSE EXCERPTS**

H.R. Proc. Oct. 25<sup>th</sup> Special Sess. 2005, pp. 82-85, (The House was called to order at 7:49 p.m. on November 30, 2005). [Remarks of Rep. Hetherington and Rep. Caruso].

**REP. HETHERINGTON:** (125<sup>th</sup>) [pg.82]

I see. Thank you, Mr. Speaker. This is very, very helpful. If I may pass to the question of a contractor, may a contractor, through you, Mr. Speaker, may a contractor contribute to a leadership PAC?

**SPEAKER AMANN:**

Representative Caruso.

**REP. CARUSO:** (126<sup>th</sup>)

Through you, Mr. Speaker. No. A State contractor would not be able to, under this law be able to contribute to a leadership PAC or a State party political PAC or a town committee PAC or a caucus PAC. Through you, Mr. Speaker.

**REP. HETHERINGTON:** (125<sup>th</sup>) [pg.83]

Thank you. Through you, Mr. Speaker. Does that mean a contractor for all purposes, that is, a contractor who has any contract at all with the State or any agency thereof? Through you, Mr. Speaker.

**SPEAKER AMANN:**

Representative Caruso.

**REP. CARUSO:** (126<sup>th</sup>)

Through you, Mr. Speaker. It would be individuals that have contracts of \$50,000 or more and it would be divided among whether the contract does business with agencies that are administered by the Executive Branch or Legislative. Through you, Mr. Speaker.

**REP. HETHERINGTON:** (125<sup>th</sup>)

Thank you. Through you, Mr. Speaker. Well, what would be the difference between a contract with an agency under the Legislative or Executive Branch? Through you, Mr. Speaker.

**SPEAKER AMANN:**

Representative Caruso.

**REP. CARUSO:** (126<sup>th</sup>) [pg.84]

Through you, Mr. Speaker. It should be pointed out that a pre-qualified contractor would not be able to contribute at all. So if an individual has, is seeking work from the State, a contract from the State, they would be put on a pre-qualifier list.

And if they are on that list, then they would be prohibited from contracting. In regard to the Executive or agencies under the Executive jurisdiction and the Legislative, the way it works in the Bill is that the Legislature is not involved in every contract within the State.

Those that we would be directly involved in, for example, legislative management services, the contracts that we may

approve, for example, for the kitchen services or food services or services of that nature.

And the other would deal with agencies that contract business with private concerns, whether that be DEP or DOT or one of the other agencies, and that would be under the jurisdiction of the Executive Branch of government. Through you, Mr. Speaker.

**SPEAKER AMANN:**

Representative Hetherington.

**REP. HETHERINGTON:** (125<sup>th</sup>) [pg.85]

Thank you. And through you, Mr. Speaker. And all of those contractors would be banned from contributing to a leadership PAC?

**SPEAKER AMANN:**

Representative Caruso.

**REP. CARUSO:** (126<sup>th</sup>)

Through you, Mr. Speaker. If, again, the contract is for \$50,000 or more, if those contractors on the pre-qualification list, yes, then they would be banned from contributing to the PACs that I mentioned. Through you.

H.R. Proc. Oct. 25<sup>th</sup> Special Sess. 2005, pp. 279-281, (The House was called to order at 7:49 p.m. on November 30, 2005). [Remarks of Rep. Caruso].

**SPEAKER AMANN:** [pg.279]

Will you remark further on the Amendment before us?  
Representative Caruso.

**REP. CARUSO:** (126<sup>th</sup>)

Yes. Thank you, Mr. Speaker. Mr. Speaker, I rise in opposition to Amendment. However, I'd like to state for the record that I have immense support and respect for Representative Doyle.

He disagrees with my belief on campaign finance reform and public financing, and that's okay. However, this Amendment is a modest attempt at addressing some of the serious problems in the State.

It does not eliminate one of the glaring problems that we've had, which are the adbooks, that the [pg.280] Governor has recognized as a problem, Members of this Chamber, Members of the Senate have talked about as well.

By dropping public financing from the Bill, we will cripple the ability of candidates to wage effective campaigns. That is the point of the public financing.

And as I mentioned, in my discussions with individuals who are working currently for the Governor, as laudable as it may be that she has not accepted lobbyist money, contractor money, they

are finding it extremely difficult to raise money when they're not accepting those funds.

It is difficult to run effective campaigns and get the message out to the voters. Also in this Amendment is an accounting and reporting of volunteers who help out on campaigns.

How many of us really want to have an accounting of people that work on campaigns, volunteers? You know the nightmare that would be to try and keep account of everyone?

[pg.281] And I also have to disagree with the assumption that there is no connection between contributions by contractors and lobbyists and corruption in our State.

Many of the individuals that were involved in the cabin that was being renovated for Governor Rowland were contributors to his campaigns. If you recall, there was over \$6 million that he raised one year or one election cycle, didn't even use the \$6 million, never came close to it.

But if you go back to those campaign reports, it's a who's who among State contractors that were doing business with the State of Connecticut, that had influence, that had influence in the Governor's Office and in every hall in government, in some way we're connecting with government.

## SENATE EXCERPTS

S. Proc. Oct. 25<sup>th</sup> Special Sess. 2005, pp. 53-58, (The Senate was called to order at 12:21 p.m. on November 30, 2005). [Remarks of Sen. Cappiello and Sen. DeFronzo].

**SEN. CAPPIELLO:** [pg.53]

Senator DeFronzo, can I ask you what the overriding purpose of, we had these discussions for months, for years, frankly, on these issues.

What is the overriding purpose or multiple purposes for passing this legislation? If you can, just a couple of bullet points. What are the most important reasons why you want to get this through?

...

**SEN. DEFRONZO:** [pg.54]

Thank you, Mr. President. Senator, I think the, what distinguishes this piece of legislation from other reform efforts in the past is that this approach is campaign finance reform in a comprehensive fashion.

So we, at the same time, take out sources of financing which have been considered to be corrosive or having special interests, lobbying money, contractor money, adbook money, those types of reforms were implemented at the same time.

The public financing mechanism is put in place. We hope a new administrative structure will go along with this to make it

more transparent, the whole system more transparent to the public, which are closing loopholes in a number of ways.

We're eliminating the influence of money overall, and shifting back to a greater reliance on grassroots, we believe it will end up in a greater reliance on grassroots politics than we've have in the last maybe ten or fifteen years. Through you, Mr. President.

**THE CHAIR:**

Thank you, Senator. Senator Cappiello.

**SEN. CAPPIELLO:** [pg.55]

Thank you, Mr. President. I'm going to touch on a little bit the grassroots issue. I have some questions on that, but getting back to this issue.

Whenever this issue is raised in the media by Legislators in this building, by activists who are here, what's always spoke of are the scandals and the corruption that have taken place in the last ten years.

Is that not correct? Through you, Mr. President. Would you agree with that, Senator DeFronzo?

**THE CHAIR:**

Senator DeFronzo, for purposes of agreement.

**SEN. DEFRONZO:**

Through you, Mr. President, there have been other reform measures presented over the years, but I think obviously, the

impetus of the scandals over the last couple of years and the clear nexus between contractor contributions, selling of influence, conviction of a Governor, obviously is compelling with respect to this piece of legislation. Through you, Mr. President.

**THE CHAIR:**

Senator Cappiello.

**SEN. CAPPIELLO:** [pg.56]

Thank you, Mr. President. And I would agree with that, Senator DeFronzo. But now, can you tell me, I'm looking at four major scandals that have taken place in the last handful of years, five, six, seven years.

I look at Paul Sylvester, the State Treasurer, Governor John Rowland, Mayor Joe Ganim and even one of our own colleagues who sat next to me, Senator Ernie Newton, and I'm trying to find where there were abuses or illegalities from lobbyists in any of those scandals, if there are any lobbyist scandals that we can point to in the last number of years? Through you, Mr. President.

**THE CHAIR:**

Senator DeFronzo.

**SEN. DEFRONZO:**

Thank you, Mr. President. You know, that's a question that came up often in the working group, and I don't think anybody

could point definitively to a specific scandal involving a specific lobbyist.

I will tell you what was said and referred to quite openly and freely was the fact that the perception, the public perception is such that [pg.57] lobbyists wheeled a huge amount of influence up here and that is something that needed to be regulated.

But I would concur, I think what the point of your question is, that there is no clear connection between a lobbyist and one of these corruptions, nor is there, for example, between political action committees and a specific act of corruption. Through you, Mr. President.

**THE CHAIR:**

Senator Capiello.

**SEN. CAPPIELLO:**

Thank you, Mr. President. And thank you, Senator DeFronzo. So let's look at the contracting piece of it. From what I gather, from what I recall from those four scandals, Governor John Rowland had taken gifts. He had someone build him a porch. He had been given a hot tub.

And there was a direct correlation between what he was given, which some of us believe and the law believe, what he was given, and what he might have done in terms of favors using

taxpayer dollars to provide benefits to these contractors.  
[pg.58] Would that be correct? Through you, Mr. President.

**THE CHAIR:**

Senator DeFronzo.

**SEN. DEFRONZO:**

Through you, Mr. President, yes, it's a long package of material highlighting those involved, but that is correct, yes.

**SEN. CAPPIELLO:**

And through you, Mr. President, with Treasurer Sylvester, from my understanding from what I recall, it was also about basically accepting cash and funneling cash to his friends to perform favors via taxpayer dollars. Is that true? Through you, Mr. President.

S. Proc. Oct. 25<sup>th</sup> Special Sess. 2005, pp. 61-62, (The Senate was called to order at 12:21 p.m. on November 30, 2005). [Remarks of Sen. DeFronzo].

**THE CHAIR:** [pg.61]

Senator DeFronzo.

**SEN. DEFRONZO:**

Through you, Mr. President, yes, I believe those fees and awarding exorbitant fees and that type of thing. Through you, Mr. President.

**SEN. DEFRONZO:**

Thank you, Mr. President. The, I think that the distinction is that the contributions that are made during the course of a campaign.

And in the case of Governor Rowland, for example, there are hundreds of thousands of dollars contributed from large contractors and vendors for the State of Connecticut, that that opens the door to the potential of influence and corruption, which I think in the case of Governor Rowland in several cases was actually [pg.62] borne out through the testimony of the Impeachment Committee and subsequent legal action.

And those are, I think those are the compelling reasons on which we act. I don't think we need to have a long litany of campaign finance violations up and down the line. We have several.