



# CITY OF ALBUQUERQUE

## City Council

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September 26, 2017

Federal Transit Administration  
East Building  
ATTN: Office of Chief Counsel, Dana Nifosi, Esq.  
1200 New Jersey Avenue, SE  
Washington, DC 20590

James D. Tierney, Esq.  
Acting United States Attorney  
District of New Mexico  
P.O. Box 607  
Albuquerque, New Mexico 87103

RE: Advertising of Medical Cannabis on Albuquerque Transit Buses and Property

Dear Ms. Nifosi and Mr. Tierney,

I am a member of the City Council, the Governing Body of Albuquerque, New Mexico. I also serve as Chair of the City's Finance and Government Operations Committee overseeing our city's budget and operations in departments, including our Transit Department. I write to request from your office guidance regarding whether or not buses operated by the Albuquerque Transit Department ("the Department"), also known as "ABQRide," may accept advertisements from companies that are licensed by the State of New Mexico to grow, possess, distribute, and sell medical cannabis pursuant to our state's "Lynn and Erin Compassionate Use Act," NMSA 1978 § 26-2B-1, *et seq.* ("the Act").

ABQRide sells advertising on its buses to a wide-range of businesses, both local and national. Recently, one of the non-profit entities licensed pursuant to the Act sought to advertise its products and services on ABQRide's buses. The director of the Department wrote to the company on September 13, 2017 stating that the Department would not allow the company to advertise on ABQRide's buses and cited 21 U.S.C.A. § 843(c)(1) as justification for the denial. A copy of the director's letter is attached hereto. Mr. Rizzieri further stated that should the FTA – and I presume the Office of the United States Attorney for the District of New Mexico – state that medical cannabis advertisements on ABQRide buses are permissible, he would allow the advertisements to be placed on ABQRide's buses.

As I read 21 U.S.C.A. § 843(c)(1), I do not see that advertising medical cannabis (that is offered for sale pursuant to a state law) is prohibited. Please note that this section of law prohibits advertising

that seeks to *illegally* distribute a controlled substance. I believe that distributing medical cannabis pursuant to a state law does not constitute *illegally* distributing a controlled substance.

The basis for my conclusion is the continued renewal of the *Rohrbacher-Farr Amendment* each year in the federal government's appropriations bills. See, Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 542, 129 Stat. 2242, 2332-33 (2015). This amendment prevents the United States Justice Department from taking actions against persons and companies participating in medical cannabis programs licensed by the states:

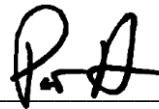
None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wisconsin, to prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation of medical marijuana.

Courts have held that this language prevents actions (including prosecutions) against medical cannabis participants. See, *U.S. v. McIntosh*, 833 F. 3d 1163 (9<sup>th</sup> Cir. 2016).

I believe that the patients who rely on medical cannabis to treat their debilitating medical conditions will benefit from the goods and services of licensed producers being advertised. Competition in the marketplace is to be encouraged, and advertising is part of encouraging a thriving market will emerge in New Mexico.

I look forward to your reply and am happy to assist you in any way.

Sincerely,



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Pat Davis

Albuquerque City Councilor

Chair, Finance & Government Operations Committee