



Bruce Rizzieri, Director



Richard J. Berry, Mayor

September 13, 2017

Duke Rodriguez  
Ultra Health, LLC

RE: Response to Request to Advertise Medical Marijuana Providers on City of Albuquerque Transit Buses and Transit Property Locations

Dear Mr. Rodriguez:

The City of Albuquerque is in receipt of your request to place advertisements on City buses that relate to the sale and distribution of medical cannabis. As you know, this request presents a difficult issue because this substance, and its sale and distribution, are illegal under federal law. I requested that the City Legal Department review this issue and provide me with guidance on how that federal law interacts with state law governing the medical cannabis program.

The City Legal Department has concluded that any advertisement displayed by the Transit Department for any sale or distribution related to medical cannabis, including THC or CBD, is prohibited by federal law, despite the State of New Mexico's medical cannabis laws and regulations which provide limited license for distribution and patient use.

As you know, New Mexico is among the several states which have chosen to legalize and license the distribution and use of medical cannabis under specific parameters. The City of Albuquerque's Transit Department generally allows private advertisements to be purchased involving City Transit vehicles and other Transit locations with the following limitations as set out in the City's advertising policy:

#### CITY ADVERTISING POLICY

##### Limitations Upon Advertisements.

- The subject matter of bus advertising shall be limited to content that proposes a commercial transaction or service. No political, politically related references or religious advertisements will be accepted.
- Non-profit advertising, although not always promoting a commercial transaction or service, will be accepted as long as the advertisement does not conflict with the above criteria.
- The following standards for advertising have been adopted and advertising content will not be displayed that:
  - Is false, misleading, or deceptive,
  - Relates to an illegal or unlawful activity,

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- Advertises alcohol or tobacco products,
- Depicts violence and/or anti-social behavior, or
- Includes language, which is obscene, vulgar, profane and scatological.
- ABQ RIDE reserves the right to grant final approval on any advertisement.

The City has concluded that if it displays or publishes on buses or City property any written advertisement regarding the sale and distribution of medical cannabis, THC or CBD, all of which are Schedule I substances, it is a violation of federal law (and accordingly also a violation of its policy above):

21 U.S.C.A. § 843:

§ 843. Prohibited acts C

...

(c) Advertisement

(1) It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publications, any written advertisement knowing that it has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule I controlled substance. As used in this section the term "advertisement" includes, in addition to its ordinary meaning, such advertisements as those for a catalog of Schedule I controlled substances and any similar written advertisement that has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule I controlled substance. The term "advertisement" does not include material which merely advocates the use of a similar material, which advocates a position or practice, and does not attempt to propose or facilitate an actual transaction in a Schedule I controlled substance.

Thus, even if the medical cannabis program is allowed under state law, advertising of Schedule I substances is still prohibited by federal law. This ban on advertising is an additional prohibition above and beyond federal law prohibiting the distribution and usage of Schedule I substances. For these reasons, the City is not able to allow the advertising on City property or to participate in it.

The City has also presumed that the rules and regulations of the Federal Transit Administration and other federal authorities applicable to governmental entities who are recipients of federally funded public transportation grants do not allow recipients to engage in activities related to these subjects in any advertisements, even if state law permits the distribution or use in some circumstances between state licensed providers and patients. If you would like to request that we do so, the City is amenable to sending a letter to the FTA requesting its position on these matters.

Please contact me with any questions or concerns regarding this decision.

Yours truly,



Bruce Rizzieri

Director

City of Albuquerque Transit Department