

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - February 01, 2012

EVENT DATE: 02/03/2012 EVENT TIME: 11:00:00 AM DEPT.: C-70

JUDICIAL OFFICER: Randa Trapp

CASE NO.: 37-2011-00090340-CU-WM-CTL

CASE TITLE: WISDOM ORGANICS INC VS. GAIL R GRANEWICH, CITY TREASURER OF THE CITY OF SAN DIEGO

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Writ of Mandate

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion - Other, 01/10/2012

MOTION FOR ISSUANCE OF WRIT OF MANDATE by petitioner Wisdom Organics, Inc. is DENIED. Petitioner's objections # 2-3 are sustained; objections # 1, 4-5 are overruled.

Mandamus will not lie to compel the performance of acts which are void, illegal, contrary to public policy, or which tend to aid in an unlawful purpose. Accordingly, a ministerial officer cannot be coerced into doing that which his plain duty under the law prohibits him from doing. (Plum v. City of Healdsburg (1965) 237 Cal.App.2d 308, 317)

Petitioner cannot compel respondent to accept petitioner's Business Tax Certificate application and fee nor can it compel respondent to issue petitioner a Business Tax Certificate. Petitioner is a California corporation whose membership is comprised solely of qualified medical marijuana patients as defined by Health and Safety Code §§ 11362.5 and 11362.7 and is operated solely by and for its members who are all qualified medical marijuana patients with serious medical conditions as set forth in Health and Safety Code § 11362.5 and 11362.7 et. seq. (Verified Petition of Mandate at § 2)

However, while California provides an exemption from state criminal prosecution for possession or cultivation of marijuana in California's Compassionate Use Act of 1996 (B&P Code § 11362.5), the use and distribution of marijuana remains illegal under federal law. (See, 21 U.S.C. § 801 et.seq. [the Controlled Substances Act]; Gonzales v. Raich (2005) 545 U.S. 1; County of San Diego v. San Diego NORML (2008) 165 Cal.App.4th 798, 811-12) Further, there is evidence presented that the U.S. Attorney is now putting marijuana dispensaries on notice that they are violating federal law and that federal law takes precedence over state law. Consequently, issuing a Business Tax Certificate under these circumstances would tend to aid in an unlawful purpose.