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August 24, 2018

ATTORNEY GENERAL OPINION NO. 2018- 10

Janice Boland, EMS Director
Osborne County EMS
117 N. First Street
Osborn, Kansas 67473

Re: Crimes and Punishments—Crimes Involving Controlled Substances—
Unlawful Possession of Controlled Substances; Cannabidiol

Public Health—Controlled Substances—Uniform Controlled Substances
Act— Substances Included in Schedule I; Cannabidiol

Synopsis: Effective May 24, 2018, it is not unlawful under Kansas state law to possess or sell products or substances containing any amount of cannabidiol. Further, Epidiolex is a Schedule IV drug and is excluded from the definition of “marijuana” under subsection (2) of K.S.A. 2018 Supp. 65-4101(aa) and 21-5701(j). Cited herein: K.S.A. 2017 Supp. 21-5701; 65-4101; 65-4111; K.S.A. 2018 Supp. 21-5701; and 65-4101.

* * *

Dear Ms. Boland:

As EMS Director for Osborne County, you request our opinion on whether CBD oil is legal under Kansas state law. While there is no standardized definition for “CBD oil,” we construe the term to mean oil containing cannabidiol. For the reasons described below, we believe it is no longer unlawful to possess or sell products or substances containing any amount of cannabidiol.

You also ask whether cannabidiol is detectable by drug testing and are concerned about how cannabidiol use may affect performance of personnel. Attorney general opinions will

address only questions of law.¹ This question is not a question of law; therefore, we decline to provide an opinion on this question.

In Attorney General Opinion No. 2018-5, issued on January 24, 2018, we opined that Kansas law prohibited the possession or sale of products or substances containing any amount of cannabidiol. Essentially, under the statutory language in effect at that time, we concluded that cannabidiol fell squarely within the definition of marijuana under both the Kansas Uniform Controlled Substances Act (KUCSA) in K.S.A. 2017 Supp. 65-4101(aa)² and the Kansas Criminal Code in K.S.A. 2017 Supp. 21-5701(j).³

Subsequently, in the 2018 legislative session, the Kansas Legislature amended the definition of marijuana in both the KUCSA⁴ and the Kansas Criminal Code⁵, as shown in the italicized language below:

“Marijuana” means all parts of all varieties of the plant *Cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. *“Marijuana” does not include:* (1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination; or (2) any substance listed in schedules II through V of the uniform controlled substances act; or (3) *cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol).*⁶

Since May 24, 2018, Kansas law excludes cannabidiol from the definitions of marijuana in both the KUCSA and the Kansas Criminal Code. Thus, it is no longer unlawful under Kansas law to possess or sell products or substances containing any amount of

¹ See Attorney General’s Statement of Policy Relating to the Furnishing of Written Opinions, ¶¶ 1, 8.

² At the time Attorney General Opinion 2018-5 was written, “marijuana” was defined in the KUCSA, K.S.A. 2017 Supp. 65-4101(aa), as: “[A]ll parts of all varieties of the plant *Cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. It does not include: (1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant which is incapable of germination; or (2) any substance listed in schedules II through V of the uniform controlled substances act.”

³ At the time Attorney General Opinion 2018-5 was written, the definition of marijuana under the Kansas Criminal Code, K.S.A. 2017 Supp. 21-5701(j), was identical to the definition in the KUCSA, K.S.A. 2017 Supp. 65-4101(aa).

⁴ L. 2018, Ch. 101, §5, amending K.S.A. 2017 Supp. 65-4101(aa).

⁵ L. 2018, Ch. 101, §4, amending K.S.A. 2017 Supp. 21-5701(j).

⁶ Emphasis added. 2018 SB 282 (L. 2018, Ch. 101, §§ 4 and 5) became effective upon its publication in the *Kansas Register* on May 24, 2018.

cannabidiol. To the extent that Attorney General Opinion No. 2018-5 conflicts with this analysis, it is withdrawn.

Additionally, in the 2017 Legislative Session, the Kansas Legislature enacted K.S.A. 2017 Supp. 65-4111(f)(3) to make cannabidiol a Schedule IV drug “when comprising the sole active ingredient of a drug product approved by the United States food and drug administration.”⁷ On June 25, 2018, the Food and Drug Administration approved Epidiolex, a proprietary oral solution of pure plant-derived cannabidiol.⁸ Thus, Epidiolex is a Schedule IV drug and is excluded from the definition of “marijuana” under the KUCSA in subsection (2) of K.S.A. 2018 Supp. 65-4101(aa)(2) and the Kansas Criminal Code in K.S.A. 2018 Supp. 21-5701(j).

It is important to note that the changes in law regarding cannabidiol have not changed the law regarding other controlled substances. For instance, it remains unlawful to possess or sell products or substances containing a Schedule I controlled substance, such as any amount of tetrahydrocannabinol.

Sincerely,

/s/Derek Schmidt

Derek Schmidt
Kansas Attorney General

/s/Athena E. Andaya

Athena E. Andaya
Deputy Attorney General

DS:AA:sb

⁷ K.S.A. 2018 Supp. 65-4111(f)(3).

⁸ Food and Drug Administration (June 25, 2018). *FDA approves first drug comprised of an active ingredient derived from marijuana to treat rare, severe forms of epilepsy* [News Release]. Retrieved from <https://www.fda.gov/newsevents/newsroom/pressannouncements/ucm611046.htm>.