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March 13, 2013

Via Electronic Mail

Mary K. Galvin, Town Clerk
Town of Wakefield
W.J. Lee Town Hall
One Lafayette Street
Wakefield, MA 01880

RE: Wakefield Fall Annual Town Meeting of November 15, 2012 - Case # 6601
Warrant Article # 11 (Zoning)

Dear Ms. Galvin:

Article 11 – Our review of Article 11 presents the question whether a town meeting vote to completely ban medical marijuana treatment centers from town conflicts with state law. We find that such a ban would frustrate the purpose of Chapter 369 of the Acts of 2012, "An Act for the Humanitarian Medical Use of Marijuana" (enacted as Question 3 on the November 2012 state ballot), to allow qualifying patients, who have been diagnosed with a debilitating medical condition, reasonable access to medical marijuana treatment centers. The Act's legislative purpose could not be served if a municipality could prohibit treatment centers within its borders, for if one municipality could do so, presumably all could do so. Because we find that such a total ban conflicts with the Act, we must disapprove Article 11 on that basis. *See* Bloom v. Worcester, 363 Mass. 136, 154 (1973) (by-law that conflicts with state statute is invalid).

Although we conclude that a municipality may not completely ban such centers within its borders, we also conclude that municipalities are not prohibited from adopting zoning by-laws to regulate medical marijuana treatment centers, so long as such zoning by-laws do not conflict with the Act (or regulations adopted to implement the Act), and are not "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare." Sturges v. Chilmark, 380 Mass. 246, 256 (1980) (quoting Euclid v. Ambler Realty Co.,

272 U.S. 365, 395 (1926)).[1]

We emphasize that our disapproval of Article 11 in no way implies any position on the policy views that led to the passage of the Wakefield by-law amendment. The Attorney General's limited standard of review requires her to approve or disapprove by-laws based solely on their consistency with state and federal law, not on any policy views she may have on the subject matter or wisdom of the by-law. Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986).

We have reviewed court decisions from other states invalidating municipalities' total ban on medical marijuana treatment centers. Such decisions, while instructive, are not binding here, because other states allow varying degrees of home rule power, and other states' medical marijuana statutes differ from the Act. Moreover, in the one state where multiple appellate courts have considered the issue (California), the courts have issued conflicting decisions.[2]

This decision briefly describes the by-law amendments and the Act; discusses the Attorney General's limited standard of review of town by-laws under G.L. c. 40, § 32; and then explains why, governed as we are by that standard, we must disapprove the by-law amendments adopted under Article 11 because they conflict with the Act.

I. Description of Article 11.

The amendments adopted under Article 11 add "Medical Marijuana Treatment Center" to the Use Table in the Town's zoning by-law, and establish it as a prohibited use in all zoning districts in Town. The amendments define "Medical Marijuana Treatment Center" as follows:

> "Medical Marijuana Treatment Center – An establishment that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana or products containing marijuana and/or related supplies for ostensibly medical purposes.

II. Summary of Medical Marijuana Act.

Chapter 369 of the Acts of 2012, "An Act for the Humanitarian Medical Use of Marijuana" ("the Act") was adopted by the voters under Question 3 on the state ballot as a result

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[1] We also recognize that a municipality has the authority to adopt a zoning by-law imposing a temporary moratorium on medical marijuana treatment centers while it studies how best to respond to this new legal use. Today we issued a decision approving one such moratorium adopted by Burlington. *See* Decision on Case # 6619.

[2] *See e.g.*, City of Riverside v. Inland Empire Patient's Health and Wellness Center, Inc., 133 Cal. Rptr. 3d 363 (2012) (rev. granted Jan. 18, 2012 S198638) (city's ban on medical marijuana dispensaries not preempted by state law); City of Lake Forest v. Evergreen Holistic Collective, 138 Cal. Rptr. 3d 332 (2012) (rev. granted May 16, 2012, S201454) (citywide ban on dispensaries conflicts with state law); County of Los Angeles v. Alternative Medicinal Cannabis Collective, 143 Cal. Rptr. 3d 716 (2011) (county's ban on dispensaries preempted by state law). This conflict may soon be resolved by the California Supreme Court in City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., S198638 (argued Feb. 5, 2013).

of an initiative petition process.[3] The Act states in Section 1 that its purpose is:

> [T]hat there should be no punishment under state law for qualifying patients, physicians and health care professionals, personal caregivers for patients, or medical marijuana treatment center agents for the medical use of marijuana[.]

The Act allows qualifying patients – those "diagnosed by a licensed physician as having a debilitating medical condition" (Section 2 (K)) – to obtain a registration card from the Department of Public Health (DPH) authorizing the person to possess "no more marijuana than is necessary for the patient's personal medical use, not exceeding the amount necessary for a sixty-day supply [as defined by DPH]." Sections 4, 12. The DPH registration card is issued only after the person submits a written certification from his or her physician "stating that in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient." Sections 2 (N), 12.

The Act authorizes DPH to issue registrations for up to thirty-five medical marijuana treatment centers (as defined in the Act) in the first year after the Act's effective date, "*provided that at least one treatment center shall be located in each county*, and not more than five shall be located in any one county." Section 9 (C) (emphasis added). DPH is authorized to increase or modify the number of registered treatment centers in a future year if DPH determines "that the number of treatment centers is *insufficient to meet patient needs*." Section 9 (C) (emphasis added).

The Act allows for hardship cultivation registrations for qualifying patients "whose access to a medical (*sic*) treatment center[4] is limited by verified financial hardship, a physical incapacity to *access reasonable transportation*, or the *lack of a treatment center within a reasonable distance of the patient's residence*." Section 11 (emphasis added). Such hardship registration allows the patient (or the patient's caregiver, as defined in the Act) to cultivate a limited number of plants (sufficient for a 60-day supply) in an enclosed locked facility. Section 11.

The Act is silent regarding the power of municipalities to adopt zoning (or other) regulations pertaining to medical marijuana treatment centers. However, the Act does restrict the municipal police power[5] in many respects, including, for example, that "Any person meeting the

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[3] The initiative petition process is governed by Mass Const. amend. art. 48 and has been described as a "people's process." Buckley v. Sec. of the Commonwealth, 371 Mass. 195, 199 (1976). It provides a method for the people of Massachusetts to directly enact statutes "which they deem[] necessary and desirable without the danger of their will being thwarted by legislative action." Citizens for a Competitive Mass. v. Secretary of the Commonwealth, 413 Mass. 25, 30 (1992) (citation and internal quotation omitted).

[4] In several places the Act refers to "medical treatment center," a term not defined in the Act. We construe these references to mean "medical marijuana treatment center," a term defined in Section 2 (H).

[5] Section 6 of the Home Rule Amendment grants municipalities "broad powers to adopt by-laws for the protection of the public health, morals, safety, and general welfare, of a type often referred to as the 'police' power." Marshall House, Inc. v. Rent Review and Grievance Bd., 357 Mass. 709, 716 (1970). The zoning power was one of the "independent municipal powers" granted to cities and towns by the Home Rule Amendment, enabling them to enact zoning ordinances or bylaws as an exercise of their "independent police powers" to control "land usages in an

requirements under this law shall not be penalized under Massachusetts law in any manner, or denied any right or privilege, for such actions." (Section 4). (*See generally* Sections 4, 5, 6 (A), 6 (B) and 9 (D)).

Finally, Sections 8 and 13 direct DPH, within 120 days of the effective date of the Act (or May 1, 2013), to issue regulations defining the quantity of marijuana that could reasonably be presumed to be a sixty-day supply for qualifying patients, and regulations to implement Sections 9 through 12 of the Act (governing registration of treatment centers, their agents, hardship cultivation, and qualifying patients and caregivers).[6]

III. Attorney General's Standard of Review and General Zoning Principles.

Pursuant to G.L. c. 40, § 32, the Attorney General has a "limited power of disapproval," and "[i]t is fundamental that every presumption is to be made in favor of the validity of municipal by-laws." Amherst, 398 Mass. at 795-96. The Attorney General does not review the policy arguments for or against the enactment. Id. at 798-99 ("Neither we nor the Attorney General may comment on the wisdom of the town's by-law.") Rather, in order to disapprove a by-law (or any portion thereof), the Attorney General must cite an inconsistency between the by-law and the state Constitution or laws. Id. at 796.[7] "As a general proposition the cases dealing with the repugnancy or inconsistency of local regulations with State statutes have given considerable latitude to municipalities, requiring a sharp conflict between the local and State provisions before the local regulation has been held invalid." Bloom, 363 Mass. at 154 (emphasis added). "The legislative intent to preclude local action must be clear." Id. at 155. Massachusetts has the "strongest type of home rule and municipal action is presumed to be valid." Connors v. City of Boston, 430 Mass. 31, 35 (1999) (internal quotations and citations omitted).

Article 11, as an amendment to the Town's zoning by-laws, must be accorded deference. W.R. Grace & Co. v. Cambridge City Council, 56 Mass. App. Ct. 559, 566 (2002) ("With respect to the exercise of their powers under the Zoning Act, we accord municipalities deference as to their legislative choices and their exercise of discretion regarding zoning orders."). When reviewing zoning by-laws for consistency with the Constitution or laws of the Commonwealth, the Attorney General's standard of review is equivalent to that of a court. "[T]he proper focus of review of a zoning enactment is whether it violates State law or constitutional provisions, is arbitrary or unreasonable, or is substantially unrelated to the public health, safety or general welfare." Durand v. IDC Bellingham, LLC, 440 Mass. 45, 57 (2003). Because the adoption of a

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orderly, efficient, and safe manner to promote the public welfare," Board of Appeals of Hanover v. Housing Appeals Comm., 363 Mass. 339, 359, as long as their enactments were "not inconsistent with the Constitution or laws enacted by the Legislature." Id. at 358.

[6] No DPH regulations have been issued as of the date of this decision.

[7] The Attorney General also reviews by-laws for consistency with the federal constitution and statutes. This is because towns draw their legislative power from the state's Home Rule Amendment, Mass. Const. amend. art. 2, § 6 (as amended by amend. art. 89), which allows a town to exercise, subject to certain limits, "any power or function which the general court has power to confer upon it," and the Legislature has no power to confer on a town the power to enact by-laws contrary to federal law. Here, we find no conflict between Article 11 and federal law.

zoning by-law by the voters at Town Meeting is both the exercise of the Town's police power and a legislative act, the vote carries a "strong presumption of validity." Id. at 51. "Zoning has always been treated as a local matter and much weight must be accorded to the judgment of the local legislative body, since it is familiar with local conditions." Concord v. Attorney General, 336 Mass. 17, 25 (1957) (*quoting* Burnham v. Board of Appeals of Gloucester, 333 Mass. 114, 117 (1955)). "If the reasonableness of a zoning bylaw is even 'fairly debatable, the judgment of the local legislative body responsible for the enactment must be sustained.'" Durand, 440 Mass. at 51 (quoting Crall v. City of Leominster, 362 Mass. 95, 101 (1972)). Nevertheless, where a zoning by-law conflicts with state law or the constitution, it is invalid. *See* Zuckerman v. Hadley, 442 Mass. 511, 520 (2004) (rate of development by-law of unlimited duration did not serve a permissible public purpose and was thus unconstitutional).

IV. Challenges to the Validity of Article 11.

In general, a municipality "is given broad authority to establish zoning districts regulating the use and improvement of the land within its borders." Andrews v. Amherst, 68 Mass. App. Ct. 365, 367-368 (2007). However, a municipality has no power to adopt a zoning by-law that is "inconsistent with the constitution or laws enacted by the [Legislature]..." Home Rule Amendment, Mass. Const. amend. art. 2, § 6. Courts have found local regulation to be inconsistent with and thus invalid under a state statute when "the purpose of the statute cannot be achieved in the face of the local [regulation]." Tri-Nel Mgt, Inc. v. Board of Health of Barnstable, 433 Mass. 217, 223 (2001) (internal quotations and citations omitted).[8] Local regulation has thus been found invalid where it "would somehow frustrate the purpose of the statute so as to warrant an inference that the Legislature intended to preempt the subject." Boston Gas Co. v. City of Somerville, 420 Mass. 702, 704 (1995) (citing Bloom, 363 Mass. at 155-156). It is here where Article 11 presents a conflict with the Act.

To determine whether Article 11 would frustrate the Act's purposes, we first must determine what those purposes are. Because the Act was adopted by way of the initiative petition process, "the voters of the Commonwealth . . . are the legislators whose intent we must discern," in order to effectuate the voters' "'object' and 'purpose.'" Bates v. Director of the Office of Campaign and Political Finance, 436 Mass. 144, 165 (2002).

The stated purpose of the Act is that "there should be no punishment under state law for qualifying patients, physicians and health care professionals, personal caregivers for patients, or medical marijuana treatment center agents for the medical use of marijuana." Section 1.

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[8] A by-law is also invalid where there is "an express legislative intent to forbid local activity on the same subject." Fafard v. Conservation Commission of Barnstable, 432 Mass. 194, 200 (2000) quoting Boston Gas Co. v. Somerville, 420 Mass. 702, 704 (1995). Where, as here, there is no express legislative intention to preclude local action, we must determine whether "a legislative intent to bar local action should be inferred in all the circumstances." Wendell v. Attorney General, 394 Mass. 518, 524 (1985). "In some circumstances, legislation on a subject is so comprehensive that an inference would be justified that the Legislature intended to preempt the field." Id. Our review of the Act in the context of this by-law reveals no legislative purpose to completely bar municipalities from regulating medical marijuana treatment centers, other than in those specific areas where the municipal police power has expressly been limited. (*See supra* page 4). In this respect, the Act more closely represents the statutes at issue in Golden v. Selectmen of Falmouth, 358 Mass. 519 (1970) and Fafard, 432 Mass. 194, both of which were held to establish "minimum standards" and left room for local communities to adopt additional controls. Id. at 201.

However, a review of the entire Act makes plain another legislative intent: that qualifying patients, who have been diagnosed with a debilitating medical condition, will have reasonable access to medical marijuana treatment centers. With its dictate that in the first year after its effective date, there should be "registrations for up to thirty-five . . . treatment centers," with "at least one treatment center....located in each county, and not more than five…located in any one county" (Section 9 (C)), the Act anticipates that such centers will be distributed throughout the Commonwealth. Notably, DPH is authorized to increase or modify the number of registered treatment centers in future years if DPH determines "that the number of treatment centers is insufficient to meet patient needs." Section 9 (C). Moreover, the Act ensures that qualifying patients "whose access to a medical (*sic*) treatment center is limited by…a physical incapacity to access reasonable transportation, or the lack of a treatment center within a reasonable distance of the patient's residence" may obtain a hardship cultivation registration. Section 11. All together these provisions reflect a legislative intent that qualifying patients have reasonable access to centers and, to that end, that the centers be reasonably dispersed throughout the Commonwealth.

This legislative purpose could not be served if a municipality could prohibit treatment centers within its borders, for if one municipality could do so, we see no principled basis on which every other municipality could not do the same. The question is not whether a ban in Wakefield alone would make it impossible for there to be "at least one treatment center…in each county." The question is whether the legislative purpose of reasonable access to treatment centers could be achieved if every municipality banned them. *Cf.* St. George Greek Orthodox Cathedral of Western Mass., Inc. v. Fire Department of Springfield, 462 Mass. 120, 130 (2012) (invalidating Springfield ordinance where, "[i]f all municipalities in the Commonwealth were allowed to enact similarly restrictive ordinances and bylaws," legislative purpose would be frustrated); Connors, 430 Mass. at 41 (examining whether legislative purpose would be served "if each [governmental unit] could" depart from state law, as City of Boston had attempted). The answer to that question is clearly "no." In a very practical sense, one of the clearly discernible purposes of the Act could not be achieved in the face of municipalities' total ban of medical marijuana treatment centers.

The courts have relied on similar principles to invalidate other local laws that could frustrate statewide legislative purposes. *See* Wheelabrator Land Resources, Inc. v. Town of Saugus, 2005 WL 2338672 (Mass. Land Ct. 2005) ("To allow individual towns and cities to veto the creation and ongoing operation of landfills would sabotage the stated goal of ensuring sufficient waste disposal capacity in the Commonwealth."); *see also* Wendell v. Attorney General, 394 Mass. 518, 529 (1985) ("An additional layer of regulation at the local level, in effect second-guessing the [state-level] sub-committee, would prevent the achievement of the identifiable statutory purpose of having a centralized, Statewide determination of the reasonableness of the use of a specific pesticide in particular circumstances."). *Cf.* Greater Lawrence Sanitary District v. Town of North Andover, 439 Mass. 16, 24 (2003) ("While this statutory scheme clearly limits the town's ability to regulate wastewater facilities and sewage disposal, it does not prevent the town from imposing limited antinuisance conditions…that do not prevent or interfere with [the department's] performance of its legislative mandate and that are not preempted by the department's regulatory authority.").

In reaching this decision we are also guided by decisions of the Supreme Judicial Court considering a municipality's right to exclude or limit certain land uses. In Framingham Clinic

Inc. v. Board of Selectmen of Southborough, 373 Mass. 279, 283 (1977), the court invalidated a Framingham zoning by-law which made abortion clinics a prohibited use in all districts in town because it unduly burdened the constitutionally protected rights of a woman regarding the termination of her pregnancy. The court dismissed an argument that Southborough's ban could be upheld because a woman could go elsewhere for such services:

> Neither could Southborough justify its own rule by saying that a woman might overcome it by going elsewhere in the Commonwealth. May a "fundamental" right be denied in Worcester County because it remains available in Suffolk or Barnstable?...The picture of one community attempting thus to throw off on others would not be a happy one.

Id. at 287.[9]

In Zuckerman v. Hadley, 442 Mass. 511, 512 (2004), the court held on due process grounds that "absent exceptional circumstances . . . restrictions of unlimited duration on a municipality's rate of development are in derogation of the general welfare and thus are unconstitutional." The court viewed the Town's rate-of-growth by-law as pushing off onto other municipalities its burden of accommodating new residents, because its by-law limited the number of building permits that could be issued each year for single-family homes. Id. at 519-20. "Despite the perceived benefits that enforced isolation may bring to a Town facing a new wave of permanent home seekers, it does not serve the general welfare of the Commonwealth to permit one particular Town to deflect that wave onto its neighbors." Id. at 519. Although Zuckerman involved a challenge to a residential rate-of-growth by-law, an analogous principle would appear to apply to a by-law banning a non-residential land use, as does Wakefield's by-law, at least where the applicable Act reflects a legislative intent that the use be distributed throughout the Commonwealth.

V. Arguments In Support of Article 11.

During the course of our review of Article 11 we have heard from various individuals and organizations urging us to approve the amendments on various grounds. We briefly address those major arguments which we have not previously addressed above, and explain why we are not persuaded that they furnish a basis to approve the amendments.

We recognize that on occasion the court has upheld a municipal ban on activity even in the face of state regulation on the subject. Amherst, 398 Mass. 793; Marshfield Family Skateland, Inc. v. Marshfield, 389 Mass. 436 (1983); John Donnelly & Sons, Inc. v. Outdoor Advertising Board, 369 Mass. 206 (1975). We agree "that in some areas of activity legal business activities regulated by State law may be prohibited by local by-laws." Marshfield, 389 Mass. at 442 (*citing* John Donnelly & Sons, 369 Mass. at 214). However, where a local by-law prevents a legislative purpose from being achieved, the by-law may be deemed to be preempted.

[9] We recognize that, unlike the constitutional principles at stake in Framingham Clinic, the Act does not grant a constitutional right to obtain medical marijuana. *See* Browne v. County of Tehama, 2013 WL 441604, *7 (Cal.App. 3 Dist.) (California's Compassionate Use Act "only provides a limited defense to certain crimes, not a constitutional right to obtain marijuana."). However, the Framingham Clinic court's concern about "throwing off" a controversial use to another town is instructive.

Id. at 441. In each of these three cited cases the court evaluated, and rejected, the argument that the local by-law at issue frustrated the purpose of the statute in question. *See* Amherst, 398 Mass. at 797-798; Marshfield, 389 Mass. at 441; John Donnelly & Sons, 369 Mass. at 212. These cases reinforce the notion that although municipalities have power to prohibit otherwise legal activities, they may not do so where the result would frustrate a legislative purpose or would otherwise conflict with state law.

One supporter of Article 11 contends that local by-laws may always supersede state laws enacted through initiative petitions. Because the Act resulted from an initiative petition, the argument goes, the Act does not have the same weight as other statutes "enacted by the general court" as referenced by the Home Rule Amendment (HRA), Mass. Const. amend. art. 2 (as amended by amend. art. 89). The HRA establishes that "[a]ny city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is *not inconsistent with* the constitution or *laws enacted by the general court*[.]" Id. § 6. (emphasis added) We have reviewed whether the phrase "laws enacted by the general court" in the HRA was intended to somehow leave municipalities free to legislate in a manner that conflicts with laws enacted by initiative petition, such as the Act, and we are persuaded that it was not. "[E]xcept as to matters expressly excluded, the scope of the power of the people to enact laws directly is as extensive as that of the General Court." Opinion of the Justices, 375 Mass. 795, 817 (1978). Certain subjects are expressly excluded from the initiative process. Massachusetts Teachers Assoc. v. Secretary of the Commonwealth, 384 Mass. 209, 217 (1981). But those exclusions are not applicable here, and we find no cases to support the argument that statutes enacted by way of initiative petition are given less weight in the context of analyzing the HRA's limitations on municipality's home rule power. If laws enacted by the statewide initiative process could be superseded at will by local ordinances and by-laws, the "power of the people to enact laws directly," far from being "as extensive as that of the General Court," would be greatly diminished.[10]

Finally, we have considered the argument that Wakefield's ban on medical marijuana treatment facilities must be upheld because doing otherwise would force the Town to accommodate an activity which is illegal under federal law, in violation of the Supremacy Clause. Under the federal constitution's Supremacy Clause, Article VI, cl. 2, federal law may supersede, or "preempt," the effect of state law (including municipal law). This may occur in any of three ways. "State action may be foreclosed by express language in a congressional enactment . . . by implication from the depth and breadth of a congressional scheme that occupies the legislative field, . . . or by implication because of a conflict with a congressional enactment[.]" Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 540-541 (2001) (citations omitted).

We recognize that marijuana remains a Schedule I drug and that the federal government is empowered to enforce the Controlled Substances Act (CSA) against those possessing or cultivating medical marijuana. Gonzales v. Raich, 545 U.S. 1 (2005). However, no court has held that the Massachusetts Act is preempted by the federal CSA, and it is beyond the Attorney

[10] The result would be that significant state initiative laws limiting local action, such as Proposition 2½ (St. 1980, c. 580), could be reduced to a near-nullity. See generally Massachusetts Teachers Association, 384 Mass. 209 (rejecting various challenges to enactment of Proposition 2½ through initiative process).

General's limited standard of review of town by-laws to determine that issue.[11] Further, other state courts have held that claimed federal preemption of a state's medical marijuana law is not a valid basis for upholding a municipal zoning ordinance banning medical marijuana dispensaries that are authorized by that state law. Qualified Patients Ass'n v. City of Anaheim, 187 Cal. App. 4th 734, 763, 115 Cal. Rptr. 3d 89, 110 (Cal. App. 4 Dist. 2010); City of Palm Springs v. The Holistic Collective, 2012 WL 1959571, *5-6 (Cal. App. 4 Dist. 2012). See also Ter Beek v. City of Wyoming, 823 N.W.2d 864 (Mich. App. 2012) (city ordinance banning land uses that are contrary to federal law, including CSA, and thus preventing qualified patient from growing marijuana in home as permitted under Michigan Medical Marijuana Act (MMMA), was inconsistent with purposes of MMMA and thus invalid; rejecting city's defense that relevant section of MMMA was preempted by federal CSA). In reviewing Wakefield's ban, we are limited to a determination whether the ban conflicts with state or federal law, not whether the state law that led to that local ban is in turn preempted by federal law. Because we find that Wakefield's proposed by-law conflicts with state law, we must disapprove it.

V. Conclusion.

While we disapprove the amendments adopted under Article 11, we reiterate that this decision is limited to a town's vote to adopt a total ban on medical marijuana treatment clinics. We recognize that the Act presents legal issues new to Massachusetts communities, and many communities may wish to adopt zoning by-laws and other regulations to preserve "public health, safety, morals, or general welfare" in response to this new legal use. Zuckerman, 442 Mass. at 516. However, where a by-law frustrates a statutory purpose, such as Wakefield's total ban on medical marijuana treatment clinics, the Attorney General's standard of review compels us to disapprove it.

[11] Cf. National Revenue Corp. v. Violet, 807 F.2d 285, 289 (1st Cir. 1986) (state attorney general should not agree to judgment that statute is unconstitutional, but may inform court if of the opinion that statute is flawed, leaving final determination to court); Cote-Whitacre v. Department of Public Health, 446 Mass. 350, 374 (2006) (Spina, J., concurring) ("The duty of a public official is simply to enforce duly enacted and presumptively constitutional statutes"); Tsongas v. Sec'y of the Comm., 362 Mass. 708, 713 (1972) (officials "had no authority to depart from the statutes on the ground that the statutes were unconstitutional"); Assessors of Haverhill v. New Eng. Tel. & Tel. Co., 332 Mass. 357, 362 (1955) ("In general an administrative officer cannot refuse to proceed in accordance with statutes because he believes them to be unconstitutional," citing Smith v. State of Indiana, 191 U.S. 138, 148 (1903)).

Note: **Pursuant to G.L. c. 40, § 32, neither general nor zoning by-laws take effect unless the Town has first satisfied the posting/publishing requirements of that statute. Once this statutory duty is fulfilled, (1) general by-laws and amendments take effect on the date these posting and publishing requirements are satisfied unless a later effective date is prescribed in the by-law, and (2) zoning by-laws and amendments are deemed to have taken effect from the date they were approved by the Town Meeting, unless a later effective date is prescribed in the by-law.**

Very truly yours,

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