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Legal Aspects of Drug Abuse

C. William O'Neill*

IN DISCUSSING THE EXISTING DRUG LAWS in this country, it is useful to break them down into two categories: First, the Federal and state laws directed at marijuana and narcotics and, second, the Federal and state laws governing hallucinogenic drugs, such as LSD.

Laws regulating and prohibiting the use of and traffic in the various drugs arose in response to public concern over their abuse.¹ Federal regulation began with the Harrison Narcotic Drug Act of 1914, which was aimed at opium and other "hard" narcotics.² In 1937 Congress enacted the Marijuana Tax Act, modeling it largely after the Harrison Act, and treating marijuana in a manner similar to narcotics.³ The Ohio General Assembly, adopting the Uniform Narcotics Drug Act, defined "narcotic drugs" to include marijuana, thus dealing with both in the same manner.⁴

Legislation designed to control the traffic in hallucinogenic drugs began in 1965 when Congress enacted the Drug Abuse Control Amendments to the Food, Drug, and Cosmetic Act.⁵ Ohio followed suit in 1967.⁶

Marijuana Laws—Federal

The Marijuana Tax Act establishes a licensing system, an occupational tax on those dealing with marijuana, and a transfer tax on sales or other dispositions of the substance.⁷ The basic features of federal control are designed to make marijuana dealings visible to public scrutiny and to render difficult the acquisition of marijuana.

In addition to the imposition of a tax on transfers of marijuana, it is unlawful to transfer to a person who has not purchased order blanks from the Internal Revenue Service.⁸ These order blanks are to contain the names and addresses of the transferor and the transferee, and will have affixed revenue stamps when the transfer tax is paid.⁹ To possess untaxed marijuana is a criminal offense and a presumption of guilt arises

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¹ 26 U.S.C. § 4741 (This is the current statute).

² *Id.* § 4701.

³ *Id.* § 4741-4775.

⁴ Ohio Rev. Code § 3719.01.

⁵ 21 U.S.C. § 360(a) (1964).

⁶ Ohio Rev. Code § 3719.41.

⁷ 26 U.S.C. §§ 4741-4751.

⁸ *Id.* § 4741(a).

⁹ *Id.* § 4742(a).

upon proof of possession and failure to produce the order form showing payment of the tax.¹⁰

An occupational tax is imposed on all persons importing, manufacturing, growing, selling, prescribing or giving away marijuana.¹¹ Any person so dealing in marijuana must register and, upon request of the government, render sworn information returns setting forth the quantity harvested or, if the registrant received marijuana from another, the persons from whom he received it, the date, and quantity.¹² All registration information and information on order blanks is open to inspection by state officials. Thus, the taxpayer, by registering under the occupational tax and securing order blanks under the transfer tax provisions, subjects himself to prosecution as a violator of state laws forbidding sale, manufacture, possession or use. If he fails to register or secure order blanks, he has committed a federal crime.

In addition to these registration and taxing regulations, there are prohibitions on transporting marijuana across state lines and importing it into this country.¹³ A statutory presumption that all marijuana was imported places a possessor in the position of having to prove his source was in this country or face considerably more severe penalties. Another presumption which aids the government in proving its case is that if marijuana is found growing on land under the control of a defendant, he must produce sufficient evidence to overcome the presumption that he is a producer.

Penalties for violations of the marijuana and narcotics law are similar. The law provides for fines up to \$20,000.¹⁴ A first offense of possession requires the imposition of at least the minimum sentence of two years, with a possible maximum of ten years imprisonment.¹⁵ For a second offense, the offender will be imprisoned not less than five nor more than twenty years.¹⁶ A third or subsequent offense is punishable by a mandatory minimum sentence of ten years, with a possible maximum of forty years.¹⁷

Penalties for other offenses, such as unlawful sale or importation, are more severe. The mandatory minimum sentences are five years for the first and ten years for the second and subsequent offenses. In addition to the maximum fine of \$20,000, maximum imprisonment is twenty

¹⁰ *Id.* § 4773(a).

¹¹ *Id.* § 4751(b).

¹² *Id.* § 4753(a).

¹³ *Id.* § 4755(b).

¹⁴ *Id.* § 7237(h).

¹⁵ *Ibid.*

¹⁶ *Supra* n. 14.

¹⁷ *Ibid.*

years for the first and forty years for each additional offense.¹⁸ If a person, 18 years old or older, sells or gives marijuana to someone under 18, imprisonment ranges from ten to forty years.¹⁹ These penalties are particularly severe in light of the fact that no sentence may be suspended and no probation granted to anyone convicted of any offense, except a first offense of possession.²⁰ Until 1966 parole was denied by statute for most violations of the marijuana laws. In that year the prohibitions on parole were removed.²¹

Ohio

Under Ohio law, marijuana is included in the definition of "narcotic drugs"²² and narcotics and marijuana are treated similarly. The Ohio Revised Code provides that no person shall grow, produce or manufacture, or allow such to be done on land controlled by him, any "narcotic drug" without obtaining a license.²³ Certain persons, such as physicians, pharmacists, licensed manufacturers and wholesalers may sell and dispense "narcotic drugs," but only in accordance with the law. Detailed records must be kept by all those handling these drugs. Possession of marijuana by anyone other than prescribed persons authorized to deal with "narcotic drugs" is a felony.²⁴ Maintaining a building or vehicle where marijuana is used or kept is prohibited, as is selling, dispensing, obtaining, or attempting to obtain marijuana.²⁵

The Revised Code declares that information communicated to a practitioner by a person trying to illegally obtain narcotic drugs is not privileged.²⁶ Normally, communications between physician and patient during the course of treatment are privileged in the sense that the physician can not testify as to what was said during the relationship if the defendant objects thereto. Under Ohio law, there is no legal duty requiring a physician to report one who illegally tries to obtain drugs; however, he can be compelled to testify by the prosecutor. Persons in other occupations, such as guidance counselors, who learn of an incident of drug abuse, are under no legal duty to report it to the police but, again, can be compelled to testify as to the information obtained.

There is no distinction between penalties for marijuana and narcotics offenses. Mere possession—as opposed to possession for sale, for

¹⁸ 21 U.S.C. § 174 (1964).

¹⁹ Int. Rev. Code of 1954, § 7237 (b).

²⁰ *Id.* § 7237 (d).

²¹ Act of Nov. 8, 1966, Pub. L. No. 89-793, Title V, § 502, 80 Stat. 1449.

²² Ohio Rev. Code § 3719.01 (L) (1964).

²³ *Id.* § 3719.02 (1964).

²⁴ *Id.* § 3719.99 (1964).

²⁵ *Id.* § 3719.46 (1964).

²⁶ *Id.* § 3719.171 (1964).

example—is a felony and punishable by a fine of up to \$10,000 and imprisonment for not less than two years nor more than fifteen years for the first offense.²⁷ Subsequent offenses result in longer sentences. Possession for sale or conspiring to sell or give away marijuana is punishable by a prison term of not less than ten nor more than twenty years.²⁸ Inducing another or attempting to induce another to use marijuana carries a sentence of from ten to twenty-five years for the first offense, and twenty-five to fifty years for the second offense.²⁹

A sale of marijuana is punishable by a minimum sentence of twenty years and a maximum of forty years.³⁰ Even more severe, is the penalty for unlawfully dispensing or administering marijuana to a minor. Such an offense carries a mandatory minimum prison sentence of thirty years and a maximum of life imprisonment.³¹

Ohio law provides for cooperation with federal agencies and prohibits prosecution under state law of one convicted or acquitted under federal law for the same act.³² Anyone convicted under the Ohio law of a second drug offense can not be granted probation.³³

Laws on LSD and Other Hallucinogens—Federal

In the Drug Abuse Control Amendments of 1965, Congress established a record-keeping, distribution, and control system for any drug having a potential for abuse because of its depressant, stimulant, or hallucinogenic effect on the central nervous system.³⁴ Thus, other hallucinogens may be brought under federal regulation as they become known.

Congress has prohibited the unauthorized manufacturing, unauthorized sale, delivery, or other disposition, and unauthorized possession of these drugs. Penalties are provided for failure to register and failure to keep complete and accurate records.³⁵

Unlike marijuana and narcotics laws, “mere” possession of LSD is not an offense. Possession for personal use is not prohibited and the statute specifically places the burden of proving that possession was not for personal use on the government.³⁶ Also dissimilar from the drug

²⁷ *Id.* §§ 3719.09, 3719.99(C) (1964).

²⁸ *Id.* §§ 3719.20(A), 3719.99(D) (1964).

²⁹ *Id.* §§ 3719.20(C), 3719.99(E) (1964).

³⁰ *Id.* §§ 3719.20(B), 3719.99(F) (1964).

³¹ *Id.* §§ 3719.20(D), 3719.99(G) (1964).

³² *Id.* § 3719.19 (1964).

³³ *Id.* § 3719.99 (1964).

³⁴ 21 U.S.C. § 360(a) (1964).

³⁵ *Id.* §§ 331(g), 333(a) (1964).

³⁶ 21 U.S.C. § 360a(c) (1964).

laws previously discussed is the fact that first offenses under the Drug Abuse Control Amendments are misdemeanors, punishable by a maximum penalty of one year imprisonment or a fine of \$1,000, or both. Second offenses carry a maximum sentence of three years and a fine of \$10,000. A sale or other disposition of LSD by a person 18 years old or over to a person under the age of 21 is a felony, penalized by a maximum prison term of two years and a fine of \$5,000; with second offenders getting up to six years and \$15,000.³⁷

In addition to the penalties under the LSD laws being much less severe than federal and state laws on marijuana, there are no mandatory minimum prison terms under the Drug Abuse Control Amendments, thus allowing more judicial flexibility in sentencing. The usual judicial discretion has been retained in that an offender can be granted probation or a suspended sentence for violation of the federal LSD laws.³⁸

Ohio

Ohio law makes the purchase, use, possession or control of a hallucinogen with the intent to produce hallucinations a punishable offense.³⁹ Possession is *prima facie* evidence of a violation, the penalty for which is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.⁴⁰ Thus, unlike the federal law, possession of LSD for personal use is punishable as a misdemeanor for the first offense. Subsequent offenses are felonies with sentences of not less than one year nor more than ten years.

It is also unlawful to manufacture, sell, offer for sale, or give away a hallucinogen,⁴¹ or for a person to knowingly permit the same to be done on land owned, occupied, or controlled by him, without first obtaining a license.⁴² A violation is a felony punishable by a fine of not more than \$10,000 and imprisonment for not less than two nor more than fifteen years for the first offense, with more severe penalties for subsequent offenses.⁴³

Other offenses are punished in the same manner as the marijuana laws. Unlawful possession for sale is ten to twenty years, inducing or attempting to induce another to use a hallucinogen is ten to twenty-five years,⁴⁴ and unlawfully dispensing such a drug to a minor is thirty years

³⁷ *Id.* § 333 (1964).

³⁸ *Id.* § 333(b) (B) (1964).

³⁹ Ohio Rev. Code § 3719.41 (1964).

⁴⁰ *Id.* § 3719.99(N) (1964).

⁴¹ *Id.* § 3719.44(D) (1964).

⁴² *Id.* § 3719.47 (1964).

⁴³ *Id.* § 3719.99(C) (1964).

⁴⁴ *Id.*, §§ 3719.44(B), 3719.99(D) (1964).

to life imprisonment.⁴⁵ The record-keeping and licensing requirements are the same as those which apply to marijuana and narcotics.

For convictions of the more extreme offenses of dispensing to a minor or attempting to induce a minor to use a hallucinogen there can be no probation.⁴⁶

As in the case of the marijuana laws, the LSD statutes require state cooperation with federal agencies⁴⁷ and prohibit state prosecution if a person has been acquitted or convicted under federal law for the same act.⁴⁸

Treatment of Youthful Violators—Federal

Donald Miller, of the United States Bureau of Narcotics and Dangerous Drugs, has stated that in dealing with a youth against whom evidence was obtained as to possession of marijuana for his own use that “* * * there are certain latitudes, such as charging the person as a ‘juvenile delinquent’ or handling him under the Federal Youth Corrections Act rather than sentencing him under the regular penalty provisions.”⁴⁹ The Federal Youth Corrections Act applies to persons convicted of a crime who are under the age of twenty-two years and basically is designed to provide correctional treatment looking toward rehabilitation, rather than punishment.⁵⁰ Mr. Miller further states that he can “* * * recall no case where a student was prosecuted in Federal court based on mere evidence of possession of marijuana for his own use.”⁵¹

Ohio

If a crime is committed by a child under the age of eighteen years, that child will ordinarily be treated as a juvenile delinquent, not as a criminal. Since most drug offenses under Ohio law are felonies, it must be noted that if a child under eighteen commits an act, which would be a felony if committed by an adult, the juvenile judge may bind the child over to the Court of Common Pleas for trial as an adult or try him as a juvenile delinquent. In Franklin County, where problems of drug abuse among youths is probably the greatest due to Ohio State University's presence, the County Prosecuting Attorney's office reports that juvenile

⁴⁵ *Id.* §§ 3719.44(E), 3719.99(G) (1964).

⁴⁶ *Id.* § 3719.99 (1964).

⁴⁷ *Id.* § 3719.48(D) (1964).

⁴⁸ *Id.* § 3719.49 (1964).

⁴⁹ Statement made in presentation at the Illinois State Medical Society National Symposium on Psychedelic Drugs and Marijuana, Chicago, Illinois, April 11, 1968.

⁵⁰ 18 U.S.C. § 5005 et seq.

⁵¹ Donald Miller, *op. cit. supra* n. 49.

judges have not been binding over juvenile drug offenders for trial as adults.

Both the United States Congress and the Ohio General Assembly are now considering legislative proposals which, if enacted, will materially change the penalties set forth in this report.

Young people eighteen years or over are handled as adult criminals. However, the Franklin County Prosecutor's office reports that because of the severity of the penalties, "mere triers" of marijuana have been prosecuted for disorderly conduct, which is only a misdemeanor. Recently, a tougher policy has been declared because the use of drugs has been getting worse around the campus. It is felt that by making examples of some by prosecuting them for the felonies which they commit will serve to inform others of the severity of penalties they could face. It is doubtful that very many people realize they could receive a life sentence for giving (a sale is not necessary) marijuana to a person under eighteen. It is hoped that a better educational program to inform our youth of the possible penalties they could face for trying marijuana or LSD and the psychological and physiological effects of taking such drugs might deter significant numbers from becoming drug abusers.