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July 3, 1988

Mr. Steven J. Routh, Esq.
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Columbia Square
555 Thirteenth Street, North West
Washington, D.C. 20004-1109

RE: Olsen v. DEA, No. 86-1442
U.S. Court of Appeals, DC Circuit

Dear Mr. Routh:

Yesterday, I received copies of five pieces of legislative history regarding the peyote exemption from Charlotte Mapes, DEA Office of Chief Counsel, as follows:

DRUG ABUSE CONTROL AMENDMENTS OF 1965

* * *

SECTION 3. CONTROL OF DEPRESSANT AND STIMULANT DRUGS

* * *

Peyote when used in connection with the ceremonies of a bona fide religious organization, and the so-called hard narcotics and marihuana, could not be designated by the Secretary as depressant or stimulant drugs.

H.R. Rep. No. 130, 89th Cong., 1st Sess., at 13 (1965).

DRUG ABUSE CONTROL AMENDMENTS OF 1965

* * *

The committee determined that it would not be desirable to specify drugs other than barbiturates and amphetamines as subject to the controls of the bill, but determined that the other classes of drugs are to be brought under control of the bill on a case-by-case basis by the Secretary of Health, Education, and Welfare under the standards prescribed in the legislation. In accordance with this determination, the committee omitted specific reference to peyote as a substance subject to the provisions of the legislation. It is expected that peyote will be subject to the same consideration as all other drugs in determining whether or not it should be included under the provisions of the legislation.

S. Rep. No. 337, 89th Cong., 1st Sess., at 3 (1965).

TO ESTABLISH CONTROLS FOR DEPRESSANT AND STIMULANT DRUGS

* * *

The last amendment of substance made by the Senate deletes the provision of the House bill which provided that the term "depressant or stimulant drug" does not include peyote used in connection with ceremonies of a bona fide religious organization.

Some concern has been expressed to many by the religious groups affected, and by certain civil liberties organizations concerning the possible impact of this amendment on religious practices protected by the first amendment to the Constitution.

Two court decisions have been rendered in this area in recent years. One, a decision by Judge Yale McFate in the case of Arizona v. Attakai, No. 4098, in the superior court of Maricopa County, Phoenix, Ariz., July 26, 1960; and a California decision, People against Woody, decided August 24, 1964, in the Supreme Court of California. Both these cases held that prosecutions for the use of peyote in connection with religious ceremonies was a violation of the first amendment to the Constitution.

In view of all this, I requested the views of the Food and Drug Administration and have been assured that the bill, even with the peyote exemption appearing in the House-passed bill, cannot forbid bona fide religious use of peyote.

Mr. Speaker, I ask unanimous consent to include the letter from the Food and Drug Administration at this point in my remarks.

The SPEAKER. Is there objection to the request of the gentleman from Arkansas?

There was no objection.

The letter referred to is as follows:

Department of Health, Education, and
Welfare, Food and Drug
Administration
Washington, D.C., July 3, 1965

Hon. Oren Harris,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

Dear Mr. Chairman: In response to your request we are stating the position the Food and Drug Administration expects to take if H.R. 2 becomes law as it passed the Senate, with respect to the use of peyote in religious ceremonies.

We have been advised by a representative of the North American Church that this church is a bona fide religious organization and that peyote has bona fide use in the sacrament of the church. The representative has agreed to document both of these statements.

If the church is a bona fide religious organization that makes sacramental use of peyote, then it would be our view that H.R. 2, even without the peyote exemption which appeared in the House-passed version, could not forbid bona fide religious use of peyote. We believe that the constitutional guarantee of religious freedom fully safeguards the rights of the organization and its communicants.

Sincerely yours,

George P. Larrick,
Commissioner of Food and Drugs.

111 Cong. Rec. 15977-15978 (July 8, 1965).

AMENDMENTS TO THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

* * *

There is an exception in the case of peyote, the use of which is authorized in connection with religious ceremonies of the Native American Church.

S. Rep. No. 1609, 90th Cong., 2d Sess., at 2 (1968).

DRUG ABUSE CONTROL AMENDMENTS - 1970

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MR. SATTERFIELD. I have one other question. I recall when we were discussing dangerous drugs a few years ago, the question came up about the Native American Church involving Indians in the west who use and have for centuries used peyote in connection with religious services. It is my understanding that they enjoy an exemption under the current law.

My question is whether in any of the bills we have before us, if passed, would in any way affect this present exemption?

MR. INGERSOLL. Mr. Sonnenreich has just conducted a hearing on that subject and if you will permit him, I would like to respond to that.

MR. SATTERFIELD. Yes.

MR. SONNENREICH. In the first instance, Mr. Satterfield, the Native American Church did ask us by letter as to whether or not

the regulation, exempting them by regulation, would be continued and we assured them that it would because of the history of that church. We presently are involved in another hearing regarding another church that is a non-Indian church that is seeking the exemption and the order is going to be published, I believe, either today or tomorrow denying them the same exemption as the Native American Church.

We consider the Native American Church to be sui generis. The history and tradition of the church is such that there is no question but that they regard peyote as a diety as it were, and we will continue the exemption.

MR. SATTERFIELD. You do not see anything in the Senate bill that would make is impossible?

MR. SONNENREICH. No. Under the existing law originally the Congress was going to write in a specific exemption but it was then decided that it would be handled by regulation and we intend to do it the same way under this law.

MR. SATTEFIELD. Thank you. I have no other questions.

House Hearings 91-45 on H.R. 11701 and H.R. 13743 Before the Subcommittee on Public Health and Welfare of the Committee on Interstate and Foreign Commerce, 91st Cong., 2d Sess. 117-118 (1970).

You will notice that all of the material from 1965 contemplates that any bona fide religious use of peyote is exempted, not just peyote's use by the Native American Church. The later material reflects that the Native American Church is the only church that has shown bona fide use of peyote as a sacrament. The elements of proof that were required are as follows: (1) use of peyote in connection with the ceremonies of a bona fide religious organization, (2) a history and tradition of such use, and (3) a belief that peyote is a diety. The central factor in all of the legislative history is a requirement that drug legislation not violate the first amendment to the Constitution of the United States. The order denying the peyote exemption to another church, referred to in the Drug Abuse Control Amendments of 1970, is published in 35 Fed. Reg. 14789 (Sept. 23, 1970), and distinguishes that church's use of peyote as not being essential to the practice of the Church of the Awakening. But see, Kennedy v. Bureau of Narcotics and Dangerous Drugs, 459 F.2d 415 (9th Cir. 1972).

The case of Town v. State, 377 So.2d 648 (Fla. 1979), was a city zoning case, and any bona fide religious organization would have failed to overthrow zoning ordinances on first amendment grounds. See, Grosz v. Miami Beach (I don't have the cites. The U.S. District Court ruled the ordinance unconstitutional, but the Eleventh Circuit Court of Appeals reversed the ruling.) The Town

court held that: (1) the Ethiopian Zion Coptic Church represents a religion within the first amendment to the Constitution of the United States; (2) the "use of cannabis is an essential portion of the religious practice"; ... (8) members of the church believe that cannabis is the mystical body and blood of "Jes-us"; ... and, [T]he Ethiopian Zion Coptic Church is not a new church or religion but the record reflects it is centuries old and has regularly used cannabis as its sacrament. Town, 377 So.2d at 649.

Sincerely yours,

Carl Eric Olsen
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