

Police chief predicts recreational marijuana laws are destined for Florida's future



Chiefland Police Chief Scott Anderson warns City Commission members that he believes recreational marijuana will be approved for use in Florida by state legislators in the near future. The chief's comments

By Jeff M. Hardison © Aug. 14, 2019 at 9:39 a.m.

CHIEFLAND – Police Chief Scott Anderson on Monday night (Aug. 12) told the four Chiefland City Commission members present for the twice-monthly regular commission meeting that the next thing they should expect is recreational marijuana being approved in Florida.

Chief Anderson received a 4-0 vote of approval to buy another \$8,500 K-9 to replace Blitz, the Chiefland Police Department K-9 who is being retired due to his skill at sniffing out marijuana proving to be essentially useless now. Blitz had been on the police force for years, finding suspected drugs with his nose.

The chief had to return a different recently-approved and recently-purchased \$8,500 K-9 that was trained to detect marijuana and other drugs, because it would be giving “alerts” that could not stand the test of the judicial process for reasons to conduct a search of a vehicle.

The returned K-9 is being “swapped” for a dog that is trained to find drugs other than marijuana, which then will show the CPD having two K-9s qualified for the newest version of drug-detecting law enforcement – that excludes sniffing for marijuana.

Both of the recent K-9 purchases by the CPD were of dogs bought from Southern Coast K9 Inc., a well-established reputable training and sales facility on the East Coast of Florida, in New Smyrna Beach. The two dogs with a total price-tag of \$17,000 are being bought with money from the Law Enforcement Trust Fund, which exists from money seized from criminal activities – such as Internet café operations that were raided and closed in Chiefland by the CPD.

Chiefland City Commissioner Donald Lawrence was absent for his second consecutive regular meeting, on a night which included extra meetings where the City Commission also sat as a Planning Board and then met in a workshop for the city’s annual budget.

City Commissioner Lawrence has sold his Chiefland home, and when he returns from an out-of-state visit for a family celebration, he will be living in his recreational vehicle at the Strawberry Fields For RV’ers Resort. He intends to buy another house within the city limits, City Manager Mary Ellzey said in an interview Wednesday (Aug. 14).

City Manager Ellzey is the clerk of the city, too, and in that capacity she is the supervisor of elections for city elections in Chiefland.

By living at the RV resort that is in the city limits, City Commissioner Lawrence can still be a member of the Chiefland City Commission. Only people who are qualified voters in city elections can serve on that commission, and to vote in Chiefland, an individual must reside within the city limits, according to city charter and state law.

As for the recreational use of marijuana being on the horizon, recent state legislation approving hemp farming and sales may be perceived as greasing the skids for those laws to be enacted.

When the Florida Department of Agriculture and Consumer Services succeeded in having the Florida Legislature allow hemp to be grown and sold in Florida, it created a problem for law enforcement agencies and prosecutors to successfully arrest people for using marijuana recreationally.

This issue results due to the inability to distinguish levels of the psychoactive element in this plant – tetrahydrocannabinol (THC), which is one of at least 113 cannabinoids identified in cannabis. THC is the principal psychoactive constituent of cannabis.

Eighth Judicial Circuit State Attorney William Cervone sent a letter July 31 to all law enforcement agencies in this circuit – which includes Alachua, Baker, Bradford, Gilchrist, Levy, and Union counties – regarding officers charging suspects and his office prosecuting marijuana possession cases.

The letter explains to law enforcement officers why State Attorney Cervone and some number of the total 20 state attorneys in Florida’s 67 counties within the 20 circuits are conceding that the mere odor of marijuana is not enough probable cause to justify a search or arrest.

Chief Anderson told the Chiefland City Commission a recent request by him for a search warrant based on the odor of marijuana coming from a motel room was denied. In that instance, one suspect spontaneously admitted having other drugs, however, as

he stated that he smoked drugs – but he did not sell them, according to information in the arresting officer’s narrative.

“Because hemp and cannabis are indistinguishable by sight or smell,” Cervone noted in his July 31 letter, “that alone is no longer significant probable cause to go forward.”

The current field tests to determine if THC exists in a sample of suspected marijuana, Cervone noted, are not adequate to differentiate and detect if the three-tenths of 1 percent of THC threshold has been exceeded to prove the leafy green substance is potent enough to prosecute the possessor.

While Chief Anderson was somewhat throwing his hands up in surrender to busting misdemeanor marijuana possessors, Cervone clearly wrote methods for law enforcement officers to arrest some number of suspects who are inclined to be successfully prosecuted by the Eighth Judicial Circuit State Attorney’s Office.

A K-9’s “alert” to the smell of marijuana is not sufficient, Cervone noted.

Therefore, he added, an officer must reach “an odor-plus standard.” The arresting officer must be able to articulate additional facts beyond the detection of the odor, Cervone noted. For instance, if the subject is involved in other criminal activity, admits that he or she is using a form of marijuana that is potent, admits to other criminal acts, shows signs of nervousness or deception, makes furtive movements or provides other indicators of to suggest his or her guilt, then the officer can combine those elements with the detection of the odor of marijuana to have probable cause to move forward with action to enforce the laws of Florida.

However, even if the officer meets the “odor-plus standard,” and then if he or she wishes to move forward with a criminal charge against a person, then State Attorney Cervone wrote that prefers the officer do so by a sworn complaint rather than by an arrest.

“I would also suggest that the arrest option be limited to significant quantities of suspected cannabis or known drug traffickers,” Cervone said in his July 31 letter to all law enforcement officers in this circuit.

The state attorney reminds officers that the state must prove beyond and to the exclusion of reasonable doubt that any substance submitted as evidence is proved to be the illegal form of cannabis with a high enough THC level to meet that standard.

He added another fact to show why his office is taking this new stance, because it is based on a foundation in ethics.

“Our ethical burden,” Cervone wrote, “requires a good faith belief that we can produce admissible evidence sufficient to sustain a conviction, and that is not something that we can do at this moment.”

Cervone wrote that the Florida Department of Law Enforcement is currently unable to test to find the levels of THC from evidence collected. Cervone said no private lab has stepped forward to fill that gap, which must be completed to show evidence that meets the requirements of the law for a successful prosecution.

Meanwhile, Cervone noted, recreational use of marijuana in Florida is still illegal. The only change with hemp being grown and marketed by farmers and salespeople in Florida for uses other than recreation, he said, is the level of ease in regard to the ability to prosecute.

As for cases related to the seizures of other illegal drugs, illegal weapons and evidence of all other crime, Cervone reminds all law enforcement officers that his office shall continue prosecuting people suspected of violating laws.

He ended his letter by letting readers at law enforcement agencies in this circuit know Texas and other states face similar issues as a result of hemp being grown legally. As this issue continues to develop, Cervone promised to circulate additional information.