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Violation of Zoning Ordinance Limiting Medical Marijuana Cultivation Did Not Justify Seizure of Dispensary's Medical

The Six
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(2020).

Under established caselaw, local governments may by zoning ordinance prohibit medical marijuana dispensaries within their jurisdiction. In this case, the County prohibited cultivation of more than 99 medical marijuana plants anywhere within the county limits. Citing violation of this ordinance, local law enforcement seized approximately 2,000 medical marijuana plants from a dispensary. The court held that the County was required to return the seized plants, reasoning that a local ordinance restricting cultivation of medical marijuana plants does not change the legal status of medical marijuana under state criminal law (nor could it, as any attempt to do so would be preempted). Possession of medical marijuana by personnel qualified under state law is not a crime. Thus, marijuana possessed for medical purposes in compliance with state standards is not contraband and therefore not subject to seizure. The court noted that although the concept that marijuana is not contraband (e.g., not illegal under state law in certain circumstances) is relatively new, local governments are bound by state law and cannot withhold property legally possessed under state law.

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