

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

CARL OLSEN,

Petitioner,

v.

IOWA DEPARTMENT OF
INSPECTIONS APPEALS AND
LICENSING,

Respondent.

Case No. CVCV066477

RULING ON PETITION FOR
JUDICIAL REVIEW**INTRODUCTION**

This case arises from a petition for judicial review of a final agency decision.¹ A hearing on the petition was held on September 13, 2024.² Carl Olsen (“Olsen”) argued on his behalf, and the State was represented by Assistant Attorney General Kevin Protzmann. After reviewing briefs submitted by both parties and listening to oral arguments, this court enters the following ruling.

Olsen petitioned the Iowa Department of Inspections, Appeals, and Licensing (“DIAL”), requesting creation of an application process for religious exceptions to the Iowa Uniform Controlled Substances Act.³ In support of his petition, Olsen analyzed the previous implementation of a religious exception for

¹ D0001, Pet. (12/12/23).

² D0027, Scheduling Order (5/10/24).

³ D0018, Certified Agency R. at 4 (2/14/23).

peyote and proposed its applicability to traditional uses of other non-prescription plants and fungi, such as cannabis and hoasca.⁴ In particular, Olsen focused on cannabis as a religious sacrament to the Ethiopian Zion Coptic Church, where he is a member.⁵

A final agency decision was issued by the appropriate agency under DIAL, the Iowa Board of Pharmacy (“the Board”), on November 7, 2023.⁶ In its denial of Olsen’s petition, the Board explained it “does not have statutory authority to promulgate administrative rules affecting religious exceptions to the Iowa Uniform Controlled Substances Act. Accordingly, the legislature must take specific action to grant the Board rulemaking authority related to religious exceptions to the Iowa Uniform Controlled Substances Act before the Board could adopt any rules to that effect.”⁷

STANDARD OF REVIEW

Judicial review is available to “a person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any final agency action.”⁸ The judicial review of an agency’s decision is governed

⁴ *Id.* at 4-22.

⁵ *Id.* at 6.

⁶ Attach. to D0001, Final Agency Decision (12/12/23).

⁷ *Id.*

⁸ Iowa Code § 17A.19(1).

by Iowa Code Chapter 17A.⁹ The district court acts in an appellate capacity to review the agency's actions.¹⁰ Upon review, "the court may affirm the agency action or remand to the agency for further proceedings."¹¹ "The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action" fits any of the criteria outlined in Iowa Code section 17A.19(10)(a)-(n).¹²

The scope of judicial review is confined to Iowa Code section 17A.7 when it involves rulemaking.¹³ Since the request for rulemaking was denied, judicial review is narrowed to determining whether the denial was "in writing [and] on the merits."¹⁴ The Iowa Supreme Court distinguishes between the failure of an agency to act based upon lack of legal authority versus an agency's exercise of discretion resulting in failure to act.¹⁵ Until a judicial determination is made, "an administrative decision that denies rulemaking based on the lack of legal authority

⁹ *New Midwest Rentals, LLC v. Iowa Dep't of Commerce, Alcoholic Beverages Div.*, 910 N.W.2d 643, 648 (Iowa Ct. App. 2018) (citing *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518 (Iowa 2012)).

¹⁰ *Id.* (citing *JBS Swift & Co. v. Hedberg*, 873 N.W.2d 276, 279 (Iowa Ct. App. 2015)).

¹¹ Iowa Code § 17A.19(10).

¹² *Id.*

¹³ *Litterer v. Judge*, 644 N.W.2d 357, 361 (Iowa 2002) (citing *Greenwood Manor v. Iowa Dep't of Pub. Health*, 641 N.W.2d 823, 830 (Iowa 2002)).

¹⁴ *Id.* (quoting Iowa Code § 17A.7(1)).

¹⁵ *Id.* at 362.

to promulgate the rule is not ‘on the merits.’”¹⁶ Thus, a judicial determination that the agency in fact has no legal authority to act is required to satisfy the “on the merits” requirement.¹⁷ This court’s judicial review addresses whether the Iowa Board of Pharmacy “is legally authorized to promulgate the proposed rule to determine if discretion was exercised in denying the request for rulemaking.”¹⁸

ANALYSIS

I. Whether the Board has Statutory Authority to Promulgate Rules Affecting Religious Exceptions to the Iowa Uniform Controlled Substances Act.

The legislature must delegate powers to an agency for rule adoption to be valid.¹⁹ When power is delegated to an agency, it “shall not expand or enlarge its authority or discretion beyond the powers delegated to or conferred upon the agency.”²⁰ Further, “unless otherwise specifically provided in statute, a grant of rulemaking authority shall be construed narrowly.”²¹

Olsen claims the Board’s rulemaking authority arises under Iowa Code section 124.204(8).²² Specifically, Olsen emphasizes the following provision from the Iowa Controlled Substances Act:

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Iowa Code § 17A.23(3).

²¹ *Id.*

²² D0029, Br. at 19 (6/20/24).

8. Peyote. Nothing in this chapter shall apply to peyote when used in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to the church shall register, maintain appropriate records of receipts and disbursements of peyote, and otherwise comply with all applicable requirements of this chapter and rules adopted pursuant thereto.²³

This provision outlines that although peyote is a Schedule I controlled substance, it is excluded from regulation when used in certain religious ceremonies.²⁴ Olsen argues that Iowa Code section 124.204(8) grants the Board authority to create similar rules for cannabis when used in bona fide religious ceremonies of the Ethiopian Zion Coptic Church.²⁵ Olsen asserts that cannabis is a sacrament for the Ethiopian Zion Coptic Church in Iowa.²⁶

While Iowa Code section 124.204(8) codifies the religious exception for peyote, the statute does not authorize the Board through rulemaking to the Board promulgate exceptions to the Iowa Controlled Substances Act.²⁷ Instead, the statute provides an extensive list of what drugs and other substances are classified as Schedule I.²⁸ There is no specific grant of authority by the legislature in Iowa Code section 124.204 permitting the Board to create exceptions to the regulation of

²³ Iowa Code § 124.204(8).

²⁴ *Id.*

²⁵ D0029, Br. at 14.

²⁶ *Id.* at 14 & 28.

²⁷ Iowa Code § 124.204(8).

²⁸ *See* Iowa Code § 124.204.

Schedule I drugs, such as cannabis.²⁹ Based on the absence of an express or implied legislative grant of authority, the Board was correct in denying Olsen's request to promulgate rules affecting religious exceptions to the Iowa Controlled Substances Act.

Alternatively, Olsen relies upon the recently enacted Iowa Religious Freedom Restoration Act (RFRA) to support his position that every Act includes constitutional protection of religious freedom.³⁰ Under RFRA, "a person whose exercise of religion has been substantially burdened in violation of this chapter may assert such violation as a claim or defense in a judicial or administrative proceeding and obtain appropriate relief, including damages, injunctive relief, or other appropriate redress."³¹ Here, Olsen asserts under RFRA the exercise of his religion has been substantially burdened and requested the Board propose legislation allowing for a cannabis exception to the Controlled Substances Act.³² As in Iowa Code section 124.204(8), RFRA also does not provide the Board with express or implied authority to promulgate rules related to the Controlled Substances Act religious exceptions.³³

²⁹ *Id.*

³⁰ D0020, Notice (3/1/24).

³¹ Iowa Code § 675.4(2).

³² D0029, Br. at 14-17.

³³ Iowa Code § 675.4.

Accordingly, the Board does not have statutory authority under Iowa Code section 124.204. In addition, RFRA does not authorize the Board to promulgate rules related to religious exceptions of the Iowa Controlled Substances Act. Based upon this judicial determination, the Board's denial of rulemaking was in writing and on the merits.

II. Whether the Board is Required to Propose Legislation.

Even if the Board had authority to make religious exceptions, the Board is not required to propose legislation.³⁴ Olsen asserts that “the department has the authority to make rules. The department also has the authority to propose legislation if the department believes it needs additional authority.”³⁵ However, Iowa Code section 2.16(2) states,

[d]epartments and agencies of state government shall, at least forty-five days prior to the convening of each session of the general assembly, submit copies to the legislative services agency of proposed legislative bills and joint resolutions which such departments *desire* to be considered by the general assembly.³⁶

Agencies are permitted to propose legislative bills and joint resolutions, but they are not required to do so.³⁷ This court cannot order the agency to propose specific legislation when it is within their discretion to make that determination.³⁸ In this

³⁴ Iowa Code § 2.16(2).

³⁵ D0029, Br. at 25.

³⁶ Iowa Code § 2.16(2) (emphasis added).

³⁷ *Id.*

³⁸ *Id.*

case, since the Board correctly asserted that it did not have delegated power by the legislature to create religious exceptions to the Controlled Substances Act, it acted within in its discretionary authority.

IT IS THEREFORE ORDERED that the petitioner's petition for judicial review is **DENIED**.

IT IS FURTHER ORDERED that the court costs are taxed to the petitioner.



State of Iowa Courts

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Case Title
CARL OLSEN VS IA DEPT OF INSPECTIONS APPEALS AND
LICENSING
Type: ORDER FOR JUDGMENT

So Ordered

A handwritten signature in black ink, appearing to read "L. P. McLellan".

Lawrence P. McLellan, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2024-12-04 15:25:18