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John Murray
Sustainable Innovations Development Company, LLC
6755 Weaver Road, Suite J
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LEGAL OPINION REGARDING DELTA-8 THC

Dear Mr. Murray:

Per your request, I have reviewed the relevant statutes and regulations, on both the Federal and State level, with respect to delta-8 THC. Under the current law, there are no prohibitions against delta-8 THC derived from hemp. It is anticipated that State of Illinois will be passing legislation related to the sale of delta-8 THC during the 2021 legislative session.

The 2018 Farm Bill authorized the production of hemp and removed hemp from the DEA's schedule of Controlled Substances. The Farm Bill defined "hemp" as:

the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. (7 USC §1639o).

This Federal definition was very specific to focus only on "delta-9" THC, with no reference to "delta-8" THC. The Farm Bill specifically removed "hemp" from the definition of "marijuana" so that it would no longer be considered a scheduled substance under the Controlled Substances Act ("CSA"). (21 USC § 802(16)). The Farm Bill also created an exception on the CSA to specifically allow any THC found in hemp. (21 USC §812(c) section (c)(17)).

The Federal definition of "hemp" specifically includes "all **derivatives [and] extracts.**" Delta-8 THC is a derivative product which is extracted from the hemp plant. So long as the underlying plants meet the definition of "hemp" (which can be proven through a Certificate of Analysis ("COA") which will show the specific cannabinoid levels for every crop), the extracted products, such as delta-8 THC, are specifically excluded from the CSA. The Farm Bill ended the Federal statutory prohibition against hemp and its derivatives.

Illinois passed the Industrial Hemp Act (505 ILCS 89/1 *et. seq.*), which allowed farmers and processors to plant hemp in Illinois. It should be noted that there are no State regulations related to the wholesaling or retails of hemp products. (See 505 ILCS 89/20). Under the Industrial Hemp Act, Illinois defined “industrial hemp” as”

the plant *Cannabis sativa* L. and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3% on a dry weight basis that has been cultivated under a license issued under the Act or is otherwise lawfully present in this State, and includes any intermediate or finished product made or derived from industrial hemp. (505 ILCS 98/5) (See also the Il. Dept. of Agriculture (“IDOA”) regulations at 8 IAC 1200.10).

“THC” means delta-9 tetrahydrocannabinol. (505 ILCS 89/5).

As with the Federal statutes, the Illinois statutes are very specific about focusing only on delta-9 THC. By highlighting “delta-9” as opposed to looking at Total THC, the legislation is very clearly making a distinction with delta-8 THC. The Illinois legislature reiterated this definition of hemp just last year in the Illinois Cannabis Regulation and Tax Act, which defined “Cannabis” as any *Cannabis sativa* L. that is not “industrial hemp.” (720 ILCS 550/3(3)(a)). The IDOA has made it clear that they are only concerned with delta-9 THC. (See 8 IAC 1200.50). Additionally, the Illinois definition also specifically includes “any intermediate or finished product made or **derived from industrial hemp.**” Under Illinois law, it is very clear that hemp includes any finished product made from hemp, which would include delta-8 THC.

The IDOA website has acknowledged that upcoming rule changes from the USDA, which are expected on or before September 30, 2021¹, will “ultimately impact” the IDOA’s hemp regulations.² According to the IDOA website, these changes will affect current testing requirements. Based on the clear statutory language, any regulations from any Federal agency, including the USDA, FDA or DEA, would not have any impact on delta-8 THC. Under both Illinois and Federal law, Delta-8 THC is treated like any other cannabinoid derived from hemp, such as CBD, CBG, etc.

I will be sure to keep you informed of any changes to Federal or State law with respect to delta-8 THC.

Very truly yours,

BRASSFIELD, KRUEGER & RAMLOW, LTD.



Erik E. Carlson
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¹ This is the expiration date under the most recent extension of the 2014 Farm Bill, which established the hemp pilot program that Illinois took part in.

² <https://www2.illinois.gov/sites/agr/Plants/Pages/Industrial-Hemp.aspx>