Summary of SC99205, *State of Missouri ex rel. Department of Health and Senior Services v. Renee T. Slusher, Commissioner, Administrative Hearing Commission*

Appeal from the Cole County circuit court, Judge Jon E. Beetem
Argued and submitted December 14, 2021; opinion issued February 8, 2022

Attorneys: The department was represented by James R. Layton of Tueth Keeney Cooper Mohan & Jackstadt PC in St. Louis, (314) 880-3600. Kings Garden was represented by Joshua L. Hill of Newman, Comley & Ruth PC in Jefferson City, (573) 634-2266. Harvest of Missouri LLC, which filed a brief as a friend of the Court, was represented by Anthony W. Bonuchi of Bonuchi Law LLC in Kansas City, (816) 944-3232.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The state appeals from the circuit court judgment quashing its preliminary writ, which had prohibited the administrative hearing commission from compelling the state to disclose information regarding applicants for marijuana cultivation licenses. In a unanimous decision written by Judge George W. Draper III, the Supreme Court of Missouri affirms the judgment. The plain language of the state constitution allows confidential information obtained from applicants and licensees to be used for purposes of an appeal of the department's decision denying an applicant's license.

Facts: In 2018, Missouri voters enacted article XIV of the state constitution, legalizing use of medical marijuana. Kings Garden Midwest LLC applied for two medical marijuana licenses. When the department of health and senior services rejected the its applications, Kings Garden appealed to the administrative hearing commission, alleging its applications were subjected to an arbitrary and capricious scoring process. During discovery, Kings Garden requested the department provide unredacted copies of successful cultivation license applications. The department refused, claiming disclosing such confidential information would violate the constitution. Kings Garden moved to compel discovery, seeking disclosure only of answers from successful applications on questions for which Kings Garden did not receive the full 10-point score. The commission sustained the motion to compel, ordering the department to produce most of the requested documents but allowing redaction of identifying information. The department filed a writ petition in the circuit court to prohibit enforcement of the commission's order. The circuit court entered a preliminary writ but later quashed it. The department appeals.

AFFIRMED.

Court en banc holds: The plain language of article XIV, section 1.3(5) of the Missouri Constitution allows confidential information to be used for purposes of an appeal of the department's decision to deny an applicant's license. Because an aggrieved license applicant has the right to appeal the department's denial to the commission under article XIV, an appeal is an authorized purpose for which confidential information obtained from applicants or licensees can be used. Article XIV, section 1.3(1)(h) expressly requires the department to score and rank applicants against one another. Not allowing discovery of the information from successful applicants for purposes of appeal, therefore, would result in unsuccessful applicants being denied access to information that was an integral part of the department's decision to deny the application in the first instance.