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FILE NO. S-390

CRIMINAL LAW:
Drugs

Honorable A. Randolph Comba
State's Attorney
Bureau County
Room 200, Courthouse
Princeton, Illinois 61356

Dear Mr. Comba:

I have your recent letter in which you state:

"A question which frequently arises in my county is when does possessing a marihuana plant have aspects of criminality in violation of the Criminal Code. More particularly the situation frequently arises where police will stop subjects who are picking wild marihuana, or who have in their possession freshly picked marihuana, and they are charged with the crime of Possession of Marihuana."

It is my opinion that the new Cannabis Control Act, Public Act 77-758, as approved August 16, 1971

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(S.H.A. ch. 56 1/2, sec. 701 et seq.), provides a clear answer to your question. Section 3(a) of that Act provides, inter alia, "'Cannabis' includes marihuana, hashish, and other substances which are identified as including any parts of the plant Cannabis Sativa, whether growing or not;" [emphasis added].

Section 4 of that Act provides, inter alia, "It is unlawful for any person knowingly to possess cannabis." Subsequent portions of Section 4 provide various penalties for possession of cannabis, depending upon the amount possessed.

Section 5 of that Act also makes it unlawful to possess cannabis with the intent to deliver or manufacture (as those terms are defined by Section 3 of the Act), and provides penalties therefor.

It is my opinion, therefore, that the Cannabis Control Act makes possession of marihuana unlawful, regardless of whether it has been processed in any way, or is possessed in a growing or freshly picked condition.

Very truly yours,

A T T O R N E Y G E N E R A L