

Kentucky Local Board of Health Sued Over Smokefree Regulation

by Kerry Cork

Although almost half the U.S. population is covered by local and state laws prohibiting smoking in workplaces, legal challenges to smokefree laws continue to be common. It's not very common, though, for a local health board to face not one, but two lawsuits before and after it passes a smokefree regulation. What makes this story from Kentucky more peculiar is that the first legal challenge against the Bullitt County Board of Health was brought by the county's own fiscal court and all eight of the county's municipalities. Still, while the plaintiffs may be unusual, the legal issues in both this and the subsequent federal lawsuit against the regulation are pretty standard fare in smokefree litigation, including challenges to the local board of health's regulatory authority to pass a smokefree policy.

Bullitt County is a small jurisdiction located in Kentucky's Bluegrass region, just south of Louisville. In mid-February, the Bullitt County Board of Health, concerned about the adverse health impact of secondhand smoke on its residents and employees, held a first reading of a countywide smokefree measure requiring all public places and places of employment to be smokefree. On March 18, a few days before the board voted on the regulation, the county's fiscal court and municipalities filed a motion in Bullitt County Circuit Court seeking a permanent injunction of the regulation. Undeterred, the local board of health adopted the regulation

on March 22. A hearing on the lawsuit was scheduled for August. Then, early this April, a group of businesses filed a federal lawsuit in U.S. District Court in Louisville, also claiming that the board exceeded its statutory and regulatory authority in passing the smokefree regulation. The federal complaint contains a host of claims, including violations of the state separation of powers, substantive due process, and state and federal procedural due process. Barring adverse outcomes in these cases, Bullitt County's smokefree regulation is scheduled to take effect in September.

The ongoing litigation in Bullitt County is a reminder that no state or local governing entity, including local boards of health, is immune from legal challenges to public health policies, including tobacco control measures. These lawsuits are often based

on familiar legal claims, like preemption; issues regarding the regulatory powers and authority of local governing bodies to pass legislation; or constitutional issues like due process. Although the outcome of the Kentucky lawsuits is uncertain, many similar legal challenges in the past have been unsuccessful in preventing smokefree measures from taking effect. Regardless, the Bullitt County Board of Health's commitment to public health is clear and merits recognition.

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The NALBOH website at www.nalboh.org features several factsheets that offer guidelines for boards of health on ways they can advance and support smokefree policies—whether boards have direct regulatory authority, local authority through other governing bodies, or are preempted from enacting regulations. The Tobacco Control Legal Consortium also has a new publication available on the authority of boards of health to regulate tobacco, which includes summaries of several related lawsuits and rulings. This publication, titled *Local Board of Health Authority for Tobacco Control*, can be found on the TCLC website at www.publichealthlaw.org, in the "Publications and Resources" section under "Guides."

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keep the issue at the forefront with all media outlets including social networking sites. We canvassed neighborhoods, held a community forum with 125 attendees, and distributed a popular smokefree dining and nightlife guide. A turning point in the effort involved a survey of young professionals that indicated the number one issue they would like to see addressed in their community was a 100% smokefree law.

Comprehensive Smokefree Ordinance in 2011

The result of the coalition's efforts was that the Vanderburgh County Commissioners agreed to once again take testimony on a

proposed amendment to make the ordinance comprehensive. Smokefree Communities arranged testimony from 24 key experts on the subject including young professionals, workers exposed to secondhand smoke, hospital CEOs, doctors, youth, community organizations, and business and bar owners. On February 22, 2011, the county commissioners once again voted to pass a comprehensive smokefree air ordinance. The implementation date is July 1, 2011.

Next Steps

Now that we have passed the 1-year anniversary date in bringing back the

city ordinance, we expect to revamp our efforts with the city and the passage of a comprehensive ordinance to be in our near future. We have learned fundamental lessons along this journey that will help us in moving forward to protect all workers from secondhand smoke.

For more information, contact Martha Caine at itpcsmokefree@hotmail.com or www.smokefreecommunities.com.

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