

**.....Supreme Court Decision
12-2-03**

This court ruling did not grant local board of health authority to adopt clean indoor air regulations, it reaffirmed their authority.

§16-2-11: Local board of health; powers and duties.

(a) Each local board of health created, established and operated pursuant to the provisions of this article shall:
(1) Provide the following basic public health services and programs in accordance with state public health performance-based standards:

....(ii) Environmental health protection including the promoting and maintaining of clean and safe air, water, food and facilities.....

64CSR73: Health Services and Programs.

.....5.1. The board shall provide the following public health services and programs:

5.1.2. Efforts to prevent and control epidemics, and investigation and containment of diseases and injuries through compliance with the requirements of W. Va. Division of Health Administrative Rules, 64 CSR 7, Reportable Diseases, regarding disease surveillance and epidemiological reporting;

5.1.3. Promotion of a safe and healthy environment, and maintenance of clean and safe air, water, food and facilities through a program of routine public health environmental education and control;

5.1.4. Promotion of healthy lifestyles, including the provision of health education to individuals and communities;.....

5.4. The board shall conduct preventive health programs designed to promote healthy behaviors.

§21-3-1 Employers to safeguard life, etc., of employees...

Every employer shall furnish employment which shall be reasonably safe for the employees therein engaged and shall furnish and use safety devices and safeguards, and shall adopt and use methods and processes reasonably adequate to render employment and the place of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety and welfare of such employees:[including] methods of sanitation and hygiene reasonably necessary for the protection of the life, health, safety, or welfare of employees or the public.

Joint Statement from Association of State and Territorial Health Officers (ASTHO), National Association of County & City Health Officials (NAACHO) and National Association of Local Boards of Health (NALBOH)

Policy Statement on Tobacco Use Prevention and Control:

.....8. Eliminate exposure to secondhand tobacco smoke, particularly in place where children would be exposed, in workplaces and indoor public areas, and in all government facilities and vehicles.

- Promote and support policies, legislation or regulations that ensure that indoor air in workplaces and public venues is free from secondhand smoke.
- Provide data and expert testimony to promote the passage of state or local legislation, regulations or policies aimed at banning smoking in places where non-smokers would be exposed to tobacco smoke.
- Emphasize for the need for regulation of public areas where people, particularly children, are required to assemble, then direct efforts at privately owned facilities.

The Supreme Court Decision states that:

- local Boards of Health DO have authority to enact CIA regulations;
- local Boards of Health DO have the authority to use criminal sanctions to enforce CIA regulations;
- CIA regulations are not in violation of constitutional law when they restrict smoking in private property;
- private offices and private conference rooms can be regulated by these provisions;

- businesses which are licensed to sell alcohol can be regulated by these provisions and Judge King's preliminary injunction cannot stand;
- the state legislature has not taken any action to preempt local Board of Health authority to enact CIA regulations;
- exemptions for some businesses were not unreasonable and stand as written
- Local Board of Health regulations cannot contradict state laws or regulations (bingo and certain personal care home residents)

It is clearly stated in §16-2 of the West Virginia State Code and Code of State Rules 64CSR73 that local Boards of Health have the authority, *in fact are required* to provide protection for public health to ensure clean air.

Members of Boards of Health are appointed for their interest and expertise in the health fields. Ideally, Boards of Health should make decisions based on medical and health evidence and be free of political influence that so often is counter to health measures. The National Association of Local Boards of Health, in its joint policy statement with ASTHO and NAACHO, encourages local Boards of Health to promote and support regulations that ensure clean indoor air (CIA).

The medical evidence has been accumulating since the 1950's about the health dangers of secondhand smoke (SHS) and thousands of medical studies throughout the world have documented that SHS causes death and disease in otherwise healthy nonsmokers. It poses a critical risk for children, the elderly and those already compromised by other health conditions such as heart disease and lung disease. Secondhand smoke has been labeled a Class A carcinogen since 1986.

The following national and international groups have collected this medical information, not including hundreds of research projects reported in medical journals:

- US Surgeon General
- National Academy of Sciences
- National Cancer Institute
- National Institutes for Health
- Centers for Disease Control and Prevention
- Environmental Protection Agency
- National Heart, Lung and Blood Institute
- Occupational Health and Safety Administration
- National Institute for Occupational Safety and Health
- International Agency for Research on Cancer

Currently 78% of West Virginia's population is nonsmoking adults and children under 18 who should be protected from SHS. Conversely, 22% of the public are smoking adults. In light of the fact that SHS is harmful and easily controlled by CIA regulations, it is logical to enact regulations to restrict or ban smoking where nonsmokers gather for business, entertainment or educational purposes.

The West Virginia State Legislature supports measures to control tobacco use. Language in sections §4-11-A2, §5-16-8, §16-9A-1, §16-9A-9, §16-9B-1, §16-9C-1, §18-2-7b, and §18-2-9 recognizes the health risks of tobacco use and the financial burden associated with tobacco use, and state government supports programs to discourage tobacco use, particularly tobacco use by youth. In addition to protecting the public from SHS, CIA regulations influence higher rates of cessation and provide the smoke-free example for our youth.