

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

10 CVD 6496

10 CVD 7256

IN RE:

Appeal of Civil Penalty:

DON LIEBES, GATE CITY BILLIARDS  
COUNTY CLUB,

Appellant,

v.

GUILFORD COUNTY DEPARTMENT OF  
PUBLIC HEALTH,

Appellee.

**STIPULATED RECORD**

**NOW COME** all parties to the above captioned actions, by and through counsel, entering into the following Stipulated Record. The stipulated record is as follows:

1. Gate City Billiards Club's ABC Permit, attached hereto as Exhibit A.
2. Warning Letter Notice of First Violation, attached hereto as Exhibit B.
3. The Second Notice of Violation, attached hereto as Exhibit C.
4. The Third Notice of Violation, attached hereto as Exhibit D.
5. Don Liebes, letter of appeal of Third Violation, attached hereto as Exhibit E.
6. Minutes of the Board of Health hearing held on March 30, 2010, attached hereto as Exhibit F.
7. The Order Upholding Civil Penalty dated April 23, 2010, attached hereto as Exhibit G.
8. The Fourth Notice of Violation, attached hereto as Exhibit H.
9. Don Liebes, letter of appeal of Fourth Violation, attached hereto as Exhibit I.
10. Minutes of the Board of Health hearing held on May 5, 2010, attached hereto as Exhibit J.
11. The Order Upholding Civil Penalty dated June 2, 2010, attached hereto as Exhibit K.

The Parties further stipulate that all documents referenced herein were timely sent and received and that all copies attached hereto are true and accurate copies of the original documents.

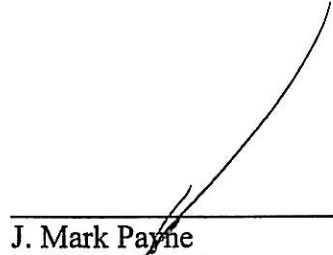
This the 1 day of July, 2010.



Seth R. Cohen  
P.O. Box 990  
Greensboro, N.C. 27402  
Bar# 18134

OF COUNSEL:

Smith, James, Rowlett & Cohen, LLP  
P.O. Box 990  
Greensboro, N.C. 27402  
(336) 274-2992  
[sjrclaw@earthlink.net](mailto:sjrclaw@earthlink.net)



J. Mark Payne  
Guilford County  
301 W. Market Street, 3<sup>rd</sup> Fl. Suite 301  
Greensboro, NC 27401  
Bar# 11046

OF COUNSEL:

Office of the Guilford County Attorney  
PO Box 3427  
Greensboro, NC 27402  
336-641-3852  
336-641-3642(fax)  
[mpayne@co.guilford.nc.us](mailto:mpayne@co.guilford.nc.us)

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION

10 CVD 6496

10 CVD 7256

IN RE:

Appeal of Civil Penalty:

DON LIEBES, GATE CITY BILLIARDS  
COUNTY CLUB,

Appellant,

v.

GUILFORD COUNTY DEPARTMENT OF  
PUBLIC HEALTH,

Appellee.

**STIPULATED RECORD**

**NOW COME** all parties to the above captioned actions, by and through counsel, entering into the following Stipulated Record. The stipulated record is as follows:

1. Gate City Billiards Club's ABC Permit, attached hereto as Exhibit A.
2. Warning Letter Notice of First Violation, attached hereto as Exhibit B.
3. The Second Notice of Violation, attached hereto as Exhibit C.
4. The Third Notice of Violation, attached hereto as Exhibit D.
5. Don Liebes, undated letter of appeal of Third Violation, attached hereto as Exhibit E.
6. Minutes of the Board of Health hearing held on March 30, 2010, attached hereto as Exhibit F.
7. The Order Upholding Civil Penalty dated April 23, 2010, attached hereto as Exhibit G.
8. The Fourth Notice of Violation, attached hereto as Exhibit H.
9. Don Liebes, undated letter of appeal of Fourth Violation marked received 04/14/10, attached hereto as Exhibit I.
10. Minutes of the Board of Health hearing held on May 5, 2010, attached hereto as Exhibit J.

11. The Order Upholding Civil Penalty dated June 2, 2010, attached hereto as Exhibit K.

The Parties further stipulate that all documents referenced herein were timely sent and received and that all copies attached hereto are true and accurate copies of the original documents.

This the \_\_\_\_ day of \_\_\_\_\_, 2010.

---

Seth R. Cohen  
P.O. Box 990  
Greensboro, N.C. 27402  
Bar# 18134

OF COUNSEL:

Smith, James, Rowlett & Cohen, LLP  
P.O. Box 990  
Greensboro, N.C. 27402  
(336) 274-2992  
[sjrclaw@earthlink.net](mailto:sjrclaw@earthlink.net)

---

J. Mark Payne  
Guilford County  
301 W. Market Street, 3<sup>rd</sup> Fl. Suite 301  
Greensboro, NC 27401  
Bar# 11046

OF COUNSEL:

Office of the Guilford County Attorney  
PO Box 3427  
Greensboro, NC 27402  
336-641-3852  
336-641-3642(fax)  
[mpayne@co.guilford.nc.us](mailto:mpayne@co.guilford.nc.us)

NORTH CAROLINA  
ALCOHOLIC BEVERAGE CONTROL  
COMMISSION

00166888AJ-.999  
Mixed Beverages Private Club  
CITY: Greensboro  
LLC Member Managed  
EXPIRES: 4/30/2011

**00166888MB**

THIS CERTIFIES THAT Gate City Billiards Club LLC  
Gate City Billiards Club  
6004-A Landmark Center Blvd.  
Greensboro, NC 27407

IS AUTHORIZED BY THIS PERMIT TO  
SELL MIXED BEVERAGES AT RETAIL

on the above named premises as set forth in Chapter 18B of the General Statutes and the related rules promulgated by the Alcoholic Beverage Control Commission. This permit is subject to revocation, suspension or annulment. THIS PERMIT IS NOT TRANSFERABLE.

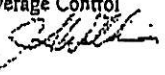
Chairman 

EXHIBIT  
A



1203 Maple Street  
Greensboro, NC 27405

**Warning Letter  
Notice of First Violation  
NC Smoke-free Restaurants and Bar Law**

January 28, 2010

Mr, Don Liebes  
Gate City Billiards Club  
6004-A Landmark Center Blvd.  
Greensboro, NC 27407

Dear Mr. Liebes:

Re: First notice of violation of the Act to Prohibit Smoking in Certain Public Places and Places of Employment

Dear Mr. Liebes:

On January 2, 2010, a new law went into effect prohibiting smoking in restaurants and bars in North Carolina entitled an ACT TO PROHIBIT SMOKING IN CERTAIN PUBLIC PLACES AND CERTAIN PLACES OF EMPLOYMENT (S.L 2009-27) referred to as the NC Smoke-free Restaurants and Bars Law. The Guilford County Department of Public Health has received numerous complaints the weeks of 1/4/10, 1/11/10 and 1/18/10 of alleged violations of this law at Gate City Billiards Club, 6004-A Landmark Center Blvd., Greensboro, NC 27407. Your establishment is required to comply with the new law.

Under the new law, smoking is prohibited in enclosed areas of bars and restaurants. Smoking is also not allowed in enclosed areas of many lodging establishments that operate a permitted restaurant. A person in charge of a restaurant, bar or lodging establishment that is subject to the new law must: 1) post the required no smoking signs, 2) remove indoor ashtrays and other smoking receptacles, and 3) direct any person who is smoking to extinguish the lighted tobacco product.

The following describes the alleged violation(s): Smoking by both staff and customers in your establishment, ashtrays present in the establishment, and the required no smoking signs were not posted. These allegations, if true, would constitute violations of the new smoke-free air law.

Our records indicate that you received an educational visit from our staff on 1/5/10 to follow up and explain the law and complaint process. As a follow-up to the complaint, a representative of the Local Health Department conducted an on-site inspection on 1/11/10. This inspection documented that approved signs were not posted, and both indoor ashtrays and smoking was observed in enclosed areas of the establishment. This violates the law.

The specific violation(s) are as follows:

☒ ***Smoking in enclosed areas of the restaurant, bar or lodging facility in which smoking is prohibited***

☒ ***Failure to direct individuals to stop smoking. A person who manages, operates, or controls a restaurant, bar or lodging facility in which smoking is prohibited is required to inform any individual by written or oral notice that smoking in a place where smoking is prohibited is violating the NC Smoke-free Restaurants and Bars Law and direct a person who is smoking to extinguish the lighted tobacco product***

☒ ***No smoking signs not posted. A person who manages, operates, or controls a restaurant, bar or lodging facility in which smoking is prohibited is required to post "no smoking" signs at each public entrance at a height and location easily seen; be at least 24 square inches in size (example 4x6 inches; be legible font type and display the Division's toll-free information and complaint telephone number 1-800-662-7030, G.S. 130A-497 and [www.smokefree.nc.gov](http://www.smokefree.nc.gov).***

☒ ***Failure to remove all indoor ashtrays. A person who manages, operates, or controls a restaurant, bar or lodging facility in which smoking is prohibited shall remove all indoor ashtrays and other smoking receptacles from the enclosed areas of the establishment.***

This letter is the first notice of violation of the Act to Prohibit Smoking in Certain Public Places and Places of Employment in accordance with G.S. 130A-22(h1). Violation(s) of the law by the business has the following penalties:

- First violation: the person in violation receives written notice of the person's first violation and notification of action to be taken in the event of subsequent violations.
- Second violation: the person in violation receives a written notice of the person's second violation and notification of administrative penalties to be imposed for third and subsequent violations.
- Third and subsequent violations: the person in violation receives an administrative penalty of not more than two hundred dollars (\$200.00). Each

**day on which a violation of this law or rules occurs may be considered a separate and distinct violation.**

Enclosed is basic information about provisions of the laws and a Business Guide . You can find more detailed information on the law at [www.smokefree.nc.gov](http://www.smokefree.nc.gov).

We are available to assist you in bringing your establishment into compliance with the law. If you have any questions concerning the law or would like to receive additional information, please call Mary Gillett, Tobacco Prevention Coordinator, 336-641-6000.

Sincerely,

A handwritten signature in cursive script, appearing to read "Merle Green", with a long horizontal flourish extending to the right.

Merle Green, MPH, MBA, Director  
Guilford County Department of Public Health

Encl.: Brochure and Business Guide





1203 Maple Street  
Greensboro, NC 27405

**Warning Letter  
Notice of Second Violation  
NC Smoke-free Restaurants and Bar Law**

February 17, 2010

Mr. Don Liebes, Owner/ Manager  
Gate City Club  
6004-A Landmark Center Blvd.  
Greensboro, NC 27407

Re: Second notice of violation of the Act to Prohibit Smoking in Certain Public Places and Places of Employment

Dear Mr. Liebes:

On January 2, 2010, a new law went into effect prohibiting smoking in restaurants and bars in North Carolina entitled an ACT TO PROHIBIT SMOKING IN CERTAIN PUBLIC PLACES AND CERTAIN PLACES OF EMPLOYMENT (S.L 2009-27) referred to as the NC Smoke-free Restaurants and Bars Law. The Guilford County Department of Public Health has received a complaint of an alleged violation of the law at Gate City Club, 6004-A Landmark Center Blvd, Greensboro, 27407. Your establishment is required to comply with the new law.

Under the new law, smoking is prohibited in enclosed areas of bars and restaurants. Smoking is also not allowed in enclosed areas of many lodging establishments that operate a permitted restaurant. A person in charge of a restaurant, bar or lodging establishment that is subject to the new law must: 1) post the required no smoking signs, 2) remove indoor ashtrays and other smoking receptacles, and 3) direct any person who is smoking to extinguish the lighted tobacco product.

The following describes the particular alleged violation(s): Our records indicate that you received visits from our staff on 1/5/10 and 1/11/10 in follow up to complaints. We have continued to receive complaints on 1/11, 1/12, 1/16, 1/21, 1/23, 2/6, and 2/7, of violations, including smoking observed in enclosed areas of the facility, persons not being directed to extinguish the lighted tobacco products, the presence of ashtrays or

other smoking recepticals, and approved signs not being conspicuously posted. These allegations, if true, would constitute a second violation of the new smoke-free air law.

As a follow-up to the complaints, a representative of the local health department conducted an on-site inspection on 2/8/10. Upon inspection he noted that approved signs were not conspicuously posted clearly stating that smoking is prohibited, and indoor ashtrays or other smoking receptacles were observed. This violates the law.

The specific violation(s) are as follows:

           ***Smoking in enclosed areas of the restaurant, bar or lodging facility in which smoking is prohibited***

           ***Failure to direct individuals to stop smoking. A person who manages, operates, or controls a restaurant, bar or lodging facility in which smoking is prohibited is required to inform any individual by written or oral notice that smoking in a place where smoking is prohibited is violating the NC Smoke-free Restaurants and Bars Law and direct a person who is smoking to extinguish the lighted tobacco product.***

***X***            ***No smoking signs not posted. A person who manages, operates, or controls a restaurant, bar or lodging facility in which smoking is prohibited is required to post "no smoking" signs at each public entrance at a height and location easily seen; be at least 24 square inches in size (example 4x6 inches; be legible font type and display the Division's toll-free information and complaint telephone number 1-800-662-7030, G.S. 130A-497 and [www.smokefree.nc.gov](http://www.smokefree.nc.gov).***

***X***            ***Failure to remove all indoor ashtrays. A person who manages, operates, or controls a restaurant, bar or lodging facility in which smoking is prohibited shall remove all indoor ashtrays and other smoking receptacles from the enclosed areas of the establishment.***

By letter of 1/28/10 you were notified of the first violation of the law and the consequences of subsequent violations. This letter is the second notice of violation of the Act to Prohibit Smoking in Certain Public Places and Certain Places of Employment in accordance with G.S. 130A-22(h1).

Violation(s) of the law by the business has the following penalties:

- First violation: the person in violation receives written notice of the person's first violation and notification of action to be taken in the event of subsequent violations.
- Second violation: the person in violation receives a written notice of the person's second violation and notification of administrative penalties to be imposed for third and subsequent violations.
- Third and subsequent violations: the person in violation receives an administrative penalty of not more than two hundred dollars (\$200.00). Each

**day on which a violation of this law or rules occurs may be considered a separate and distinct violation.**

Enclosed is basic information about provisions of the laws and a Business Guide. You can find more detailed information on the law at [www.smokefree.nc.gov](http://www.smokefree.nc.gov).

We are available to assist you in bringing your establishment into compliance with the law. If you have any questions concerning the law or would like to receive additional information or a visit, please call Mary Gillett at 336-641-6000.

Sincerely,

A handwritten signature in cursive script, appearing to read "Merle Green".

Merle Green, MPH, MBA, Director  
Guilford County Department of Public Health

Encl.: Brochure and Business Guide



1203 Maple Street  
Greensboro, NC 27405

**Administrative Penalty Letter  
Notice of Third Violation  
NC Smoke-free Restaurants and Bar Law**

March 3, 2010

Mr. Don Liebes, Owner/Manager  
Gate City Billiards Club  
6004-A Landmark Center Blvd.  
Greensboro, NC 27407

Re: Third notice of violation of the Act to Prohibit Smoking in Certain Public Places and Places of Employment

Dear Mr. Liebes:

On January 2, 2010, a new law went into effect prohibiting smoking in restaurants and bars in North Carolina entitled an ACT TO PROHIBIT SMOKING IN CERTAIN PUBLIC PLACES AND CERTAIN PLACES OF EMPLOYMENT (S.L 2009-27) referred to as the NC Smoke-free Restaurants and Bars Law. The Guilford County Department of Public Health has received a complaint of an alleged violation of the law at Gate City Billiards Club, 6004-A Landmark Center Blvd., Greensboro, NC 27407. Your establishment is required to comply with the new law.

Under the new law, smoking is prohibited in enclosed areas of bars and restaurants. Smoking is also not allowed in enclosed areas of many lodging establishments that operate a permitted restaurant. A person in charge of a restaurant, bar or lodging establishment that is subject to the new law must: 1) post the required no-smoking signs, 2) remove indoor ashtrays and other smoking receptacles, and 3) direct any person who is smoking to extinguish the lighted tobacco product.

The following describes the particular alleged violation(s): Our records indicate that you were visited by members of our Department on 1/5/10, 1/11/10, and 2/8/10 as a follow up to complaints. You have been provided educational information, and were sent a notice of first violation on 1/28/10, and of second violation on 2/17/10. We have continued to receive complaints about your establishment since that time (2/18/10, 2/20/10, and 2/25/10), including that approved signs were not conspicuously posted clearly stating that smoking is prohibited, indoor ashtrays and /or other smoking receptacles were observed, and smoking was observed in enclosed areas of a facility in which smoking is prohibited and/or the person who was smoking was not directed to extinguish the lighted tobacco

product. These allegations, if true, would constitute a third violation of the new smoke-free air law.

As a follow-up to the above complaints, a representative of the Guilford County Department of Public Health conducted an on-site inspection on 2/23/10 and noted that approved signs were not conspicuously posted clearly stating that smoking is prohibited, indoor ashtrays and /or other smoking receptacles were observed, and smoking was observed in enclosed areas of a facility in which smoking is prohibited and/or the person who was smoking was not directed to extinguish the lighted tobacco product. This violates the law.

The specific violation(s) are as follows:

☒ *Smoking in enclosed areas of the restaurant, bar or lodging facility in which smoking is prohibited*

☒ *Failure to direct individuals to stop smoking. A person who manages, operates, or controls a restaurant, bar or lodging facility in which smoking is prohibited is required to inform any individual by written or oral notice that smoking in a place where smoking is prohibited is violating the NC Smoke-free Air and direct a person who is smoking to extinguish the lighted tobacco product*

☒ *No smoking signs not posted. A person who manages, operates, or controls a restaurant, bar or lodging facility in which smoking is prohibited is required to post "no smoking" signs at each public entrance at a height and location easily seen; be at least 24 square inches in size (example 4x6 inches; be legible font type and display the Division's toll-free information and complaint telephone number 1-800-662-7030, G.S. 130A-497 and [www.smokefree.nc.gov](http://www.smokefree.nc.gov).*

☒ *Failure to remove all indoor ashtrays. A person who manages, operates, or controls a restaurant, bar or lodging facility in which smoking is prohibited shall remove all indoor ashtrays and other smoking receptacles from the enclosed areas of the establishment.*

By letter of 1/28/10 you were notified of the first violation of the law and by letter 2/17/10 you were notified of the second violations of the law and the consequences of subsequent violations.

This letter is the third notice of violation of the Act to Prohibit Smoking in Certain Public Places and Certain Places of Employment in accordance with G.S. 130A-22 (h1). In accordance with 130A-22 (h1), I am imposing an administrative penalty of \$200 on you, Don Liebes, as the person who manages, operates, or controls Gate City Billiards Club. *Please make the check out to "Guilford County" and mail within 30 days to:*

*Attn: Business Office-Smoking Violations  
Guilford County Department of Public Health  
1203 Maple Street*

*Greensboro, NC 27405*

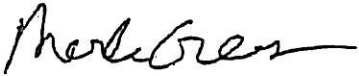
You have the right to appeal this decision to the local Board of Health. ~~To pursue a formal appeal, you must give written notice of an appeal to the local Health Director~~ **WITHIN 30 DAYS OF THE DATE OF THIS LETTER.** The notice of appeal must be filed in accordance with G.S. 130A-24(b). Attached is a copy of G.S. 130A-24 governing the appeal procedures.

**Subsequent violations of the law are considered separate and distinct violations of the law and the person in violation is subject to an administrative penalty of not more than two hundred dollars (\$200.00). Each day on which a violation of this law or rules occurs may be considered a separate and distinct violation.**

Enclosed are basic information about provisions of the law and a Business Guide. You can find more detailed information on the law at [www.smokefree.nc.gov](http://www.smokefree.nc.gov).

We are available to assist you in bringing your establishment into compliance with the law. If you have any questions concerning the law or would like to receive additional information or a visit, please call Mary Gillett at 336-641-6000.

Sincerely,



Merle Green, MPH, MBA, Director  
Guilford County Department of Public Health

Encl.: Brochure, Business Guide, and Copy of G.S. 130A-24



To: Merle Green (Director, Guilford County Dept of Public Health)  
From: Don Liebes, Gate City Billiards Country Club, LLC  
Subject: Appeal of Administrative Penalty

Director Green,

I am sending this letter in accordance with Chapter 130A, Article 1, Part 1 of the NC Smoke-free law. I am appealing the administrative Penalty of \$200 levied upon me based on the following reason.

The law permits smoking in a Private Club as stated in 130A-496 (b)(3). I believe Gate City Billiards Country Club, LLC is a Private Club as defined in 130A-492 (8a) because we are a Country Club. It is my opinion that the intent of this legislation was to define all Country Clubs as Private Clubs. Country Clubs were noted at the beginning of the definition of Private Clubs and again at the end. If it was the intention of the Authors of this bill to treat Country Clubs the same as any other Organization, it would not have been necessary to mention Country Clubs in the definition.

Thank you for your consideration.

Sincerely,

Don Liebes  
Gate City Billiards Country Club, LLC  
6004-A Landmark Center Blvd  
Greensboro, NC 27407

EXHIBIT  
E



**Minutes  
Guilford County Board of Health Special Meeting**

**March 30<sup>th</sup>, 2010**

The Guilford County Board of Health met on Tuesday, March 30<sup>th</sup>, 2010 in room 122 and 123 at 1203 Maple Street, Greensboro, North Carolina.

**Members Present:** Dr. Percy Jones, Dr. Michael Norins, Dr. Jean Douglas, Mrs. Mary Lou Blakeney, Dr. Kimberly Shelton, Mr. Justin Conrad, and Dr. Sharon Long-Stokes

**Members Absent:** Dr. Craig Wood, Dr. Mark Nasisse, Mr. Michael Quinn, and Commissioner Melvin "Skip" Alston

**Staff:** Merle Green, Ken Carter, Steve Ramsey, Tobin Shepherd, Tamara Clarke, Della Attaway, Rebecca Rice, Michelle Gill-Moffat, Lynne Beck, Mary Gillett, Dr. Ward Robinson, Randy Duncan, Ben Morrell, and James Priddy

**Guests:** Don Leibes, Owner, Gate City Billiards Country Club  
Dr. Richard Rosen, Chair, Smokefree Guilford

**Call to Order:**

Dr. Percy Jones, Chair called the meeting to order at 7:00 pm and welcomed all Board members and staff. He thanked them for attending.

**Approval of the Agenda:**

Dr. Jones stated that approval of the agenda was not needed due to the conducting of a public hearing. The recommendation was approved by the Board.

**Public Comments:**

No public comments

**Public Hearing:**

The purpose of the hearing was for the Board of Health to hear an appeal by Mr. Don Leibes, Owner, of Gate City Billiards Country Club on administrative penalties imposed by the Health Director for a violation under G.S. 130A-496 et seq. the "Smokefree Restaurants and Bars Law."

**Board Discussion:**

The appellant stated that in the articles of this law, he understood that a business had to meet certain criteria to be a private club. He stated that his readings showed that a private club establishment was defined very much as the ABC law was defined with an additional restriction that it had to be non-profit or federally tax exempt. He stated that his club is neither non-profit, nor is it tax exempt. He also stated that after the end of the definition of a private club ---the wording of the legislation states "for the purposes of this article private clubs include country clubs." He then stated that it was his belief that the legislators' intent was to automatically make a country club a private club not having to meet all those other criteria.

After deliberation, six Board members voted to uphold the administrative penalties imposed by the Health Director under G.S. 130A-496 with one Board member abstained.

**Adjournment:**

The meeting was adjourned at 7:47 pm.

Respectfully submitted,



Merle Green Guilford County Health Director

**EXHIBIT  
F**



-----  
In Re:  
Appeal of Civil Penalty:

Don Leibes, Gate City Billiards Country Club,  
Appellant  
-----

ORDER UPHOLDING CIVIL PENALTY

The Board of Health for the County of Guilford, having held a public hearing on March 20, 2010, to consider Case No. 10- 01, submitted by Appellant, Don Leibes, owner of Gate City Billiards Country Club appealing the issuance of a Civil Penalty issued by the Guilford County Health Director for a violation of N. C. Gen. Stat. 130A-496 *et seq.* in the amount of \$200.00, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and CONCLUSIONS:

FINDINGS OF FACT:

1. Appellant, Don Leibes is the owner of Gate City Billiards Country Club, a commercial establishment which is a bar or restaurant within the meaning of N. C. Gen. Stat. 130A-496 *et seq.* (hereinafter sometimes referred to as "the Act") and has been operating as such throughout the relevant period set out herein. The establishment offers alcohol beverages to its patrons, as well as a number of billiard tables which serves as the primary attraction for its clientele according to owner's business plan.
2. Prior to the effective date of the Act, the establishment had offered a smoking section to its patrons. Appellant offered testimony to the effect that smoking patrons are a significant portion of his clientele and the loss of his customer base would have a significant financial impact on his business.
3. Appellant adduced evidence to the effect that he was aware of the requirements of N. C. Gen. Stat. 130A-496 and had been so informed by Health Department enforcement officials as well as through his own research. He further stated he had received two Notice of Violation letters and two copies of the Administrative Penalty letter which is the subject of this appeal.

EXHIBIT  
G

4. The Civil penalty letter informed the Appellant of the imposition of a \$200 fine for failure to comply with the provisions of N. C. Gen. Stat. 130A-496 *et seq.* by failing to take the required measures to prevent smoking in the establishment.
5. Appellant adduced evidence to the effect that the action cited in the penalty letter had occurred and he had allowed smoking in his establishment. Mr. Liebes stated his opinion that the statute allows for an exemption for "country clubs" and further opined that he felt that "country club" was undefined in the statute and his establishment was, in fact, a "country club" as used in the Act.
6. Appellant stated that he changed the name of the corporation to include the term 'country club.' Therefore, Appellant felt the civil penalty was not applicable to his establishment and should be over-turned.

#### CONCLUSIONS

1. The evidence presented in this matter is uncontroverted that the establishment is being operated in a manner that would constitute a violation of N. C. Gen. Stat. 130A-496 *et seq.* for any establishment subject to the Act and not exempted from the Act's requirement as a "private club" or "country club."
2. The establishment does not constitute a "private club" or "country club" within the meaning of the Act. No other evidence was adduced to show the establishment fell within any other exemption or exclusion and sufficient evidence was adduced to show that the establishment was a restaurant or bar within the meaning of the Act and therefore, subject to the requirements set out therein.

THEREFORE, based upon the above Findings of Fact and Conclusions, the civil penalty issued by the Guilford County Health Director in this matter was valid and supported in law and fact and should be UPHELD.

Ordered this the 23 day of April, 2010.

  
\_\_\_\_\_  
CHAIRMAN, GUILFORD COUNTY  
BOARD OF HEALTH



1203 Maple Street  
Greensboro, NC 27405

**Administrative Penalty Letter  
Notice of Fourth Violation  
NC Smoke-free Restaurants and Bar Law**

March 3, 2010

Mr. Don Liebes, Owner/Manager  
Gate City Billiards Club  
6004-A Landmark Center Blvd.  
Greensboro, NC 27407

Re: Fourth notice of violation of the Act to Prohibit Smoking in Certain Public Places and Places of Employment

Dear Mr. Liebes:

On January 2, 2010, a new law went into effect prohibiting smoking in restaurants and bars in North Carolina entitled an ACT TO PROHIBIT SMOKING IN CERTAIN PUBLIC PLACES AND CERTAIN PLACES OF EMPLOYMENT (S.L. 2009-27) referred to as the NC Smoke-free Restaurants and Bars Law. The Guilford County Department of Public Health has received a complaint of an alleged violation of the law at Gate City Billiards Club, 6004-A Landmark Center Blvd., Greensboro, NC 27407. Your establishment is required to comply with the new law.

Under the new law, smoking is prohibited in enclosed areas of bars and restaurants. Smoking is also not allowed in enclosed areas of many lodging establishments that operate a permitted restaurant. A person in charge of a restaurant, bar or lodging establishment that is subject to the new law must: 1) post the required no-smoking signs, 2) remove indoor ashtrays and other smoking receptacles, and 3) direct any person who is smoking to extinguish the lighted tobacco product.

The following describes the particular alleged violation(s): You have been provided educational information, and were sent a notice of first violation on 1/28/10, of second violation on 2/17/10, and of third violation on 3/3/10. We have continued to receive complaints about your establishment since that time, including that approved signs were not conspicuously posted clearly stating that smoking is prohibited, indoor ashtrays and/or other smoking receptacles were observed, and smoking was observed in enclosed areas of a facility in which smoking is prohibited and/or the person who was smoking was not directed to extinguish the lighted tobacco product. These allegations, if true, would constitute a fourth violation of the new smoke-free air law.

As a follow-up to the above complaints, a representative of the Guilford County Department of Public Health conducted an on-site inspection on 3/10/10 and noted the violations listed below:

The specific violation(s) are as follows:

**X** Smoking in enclosed areas of the restaurant, bar or lodging facility in which smoking is prohibited

**X** Failure to direct individuals to stop smoking. A person who manages, operates, or controls a restaurant, bar or lodging facility in which smoking is prohibited is required to inform any individual by written or oral notice that smoking in a place where smoking is prohibited is violating the NC Smoke-free Air and direct a person who is smoking to extinguish the lighted tobacco product

**X** No smoking signs not posted. A person who manages, operates, or controls a restaurant, bar or lodging facility in which smoking is prohibited is required to post "no smoking" signs at each public entrance at a height and location easily seen; be at least 24 square inches in size (example 4x6 inches; be legible font type and display the Division's toll-free information and complaint telephone number 1-800-662-7030, G.S. 130A-497 and [www.smokefree.nc.gov](http://www.smokefree.nc.gov).

**X** Failure to remove all indoor ashtrays. A person who manages, operates, or controls a restaurant, bar or lodging facility in which smoking is prohibited shall remove all indoor ashtrays and other smoking receptacles from the enclosed areas of the establishment.

By letter of 1/28/10 you were notified of the first violation of the law and by letter 2/17/10 you were notified of the second violations of the law and the consequences of subsequent violations. By registered letter on 3/3/10 you were notified of your third violation of the law and the required \$200 fine.

This letter is the fourth notice of violation of the Act to Prohibit Smoking in Certain Public Places and Certain Places of Employment in accordance with G.S. 130A-22 (h1). In accordance with 130A-22 (h1), I am imposing a second administrative penalty of \$200 on you, Don Liebes, as the person who manages, operates, or controls Gate City Billiards Club. ***Please make the check out to "Guilford County" and mail within 30 days to:***

***Attn: Business Office-Smoking Violations  
Guilford County Department of Public Health  
1203 Maple Street  
Greensboro, NC 27405***

You have the right to appeal this decision to the local Board of Health. To pursue a formal appeal, you must give written notice of an appeal to the local Health Director **WITHIN 30 DAYS OF THE DATE OF THIS LETTER.** The notice of appeal must

be filed in accordance with G.S.130A-24(b). Attached is a copy of G.S. 130A-24 governing the appeal procedures.

**Subsequent violations of the law are considered separate and distinct violations of the law and the person in violation is subject to an administrative penalty of not more than two hundred dollars (\$200.00). Each day on which a violation of this law or rules occurs may be considered a separate and distinct violation.**

Enclosed are basic information about provisions of the law and a Business Guide. You can find more detailed information on the law at [www.smokefree.nc.gov](http://www.smokefree.nc.gov).

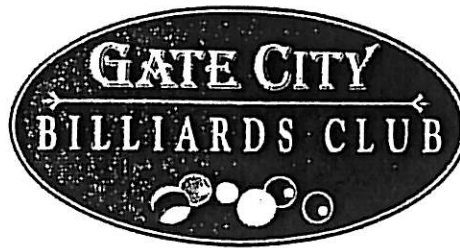
We are available to assist you in bringing your establishment into compliance with the law. If you have any questions concerning the law or would like to receive additional information or a visit, please call Mary Gillett at 336-641-6000.

Sincerely,



Merle Green, MPH, MBA, Director  
Guilford County Department of Public Health

Encl.: Brochure, Business Guide, and Copy of G.S. 130A-24



To: Merle Green (Director, Guilford County Dept of Public Health)  
From: Don Liebes, Gate City Billiards Country Club, LLC  
Subject: Appeal of Administrative Penalty

Director Green,

I am sending this letter in accordance with Chapter 130A, Article 1, Part 1 of the NC Smoke-free law. I am appealing the administrative Penalty of \$200 levied upon me on March 17<sup>th</sup> 2010, based on the following reason.

The law is not constitutional based on the "Equal Protection Clause" of the 14<sup>th</sup> Amendment to the Constitution.

Thank you for your consideration.

Sincerely,

Don Liebes  
Gate City Billiards Country Club, LLC  
6004-A Landmark Center Blvd  
Greensboro, NC 27407

*Received 9/14/10  
m. guilford*

EXHIBIT  
I

## Minutes

### Guilford County Board of Health Special Meeting

May 5<sup>th</sup>, 2010

The Guilford County Board of Health met on Wednesday, May 5<sup>th</sup>, 2010 in room 122 at 1203 Maple Street, Greensboro, North Carolina.

**Members Present:** Dr. Percy Jones, Dr. Michael Norins, Dr. Jean Douglas, Dr. Mark Nasisse, Dr. Sharon Long-Stokes, Dr. Craig Wood, and Mr. Michael Quinn

**Members Absent:** Commissioner Melvin "Skip" Alston, Mrs. Mary Lou Blakeney, Mr. Justin Conrad, and Dr. Kimberly Shelton

**Staff:** Merle Green, Dr. Ward Robinson, Mary Gillett, Tobin Shepherd, and Tamara Clarke

**Guests:** Don Leibes, Owner, Gate City Billiards, County Attorney Mark Payne, David Benitz, Jenny Benitz, Julie Benitz, Walter Jones, and Brittany Jones

**Call to Order:**

Dr. Percy Jones, Chair called the meeting to order at 6:30 pm and welcomed all Board members and staff. He thanked them for attending.

**Public Comments:**

No public comments

**Public Hearing:**

The purpose of the hearing was for the Board of Health to hear a second appeal by Mr. Don Leibes, Owner, of Gate City Billiards on administrative penalties imposed by the Health Director for a violation under G.S. 130A-496 et seq. the "Smokefree Restaurants and Bars Law."

**Board Discussion:**

After hearing the presentation of oral statements from both parties, the Board voted unanimously to remain silent on the issue of constitutionality and to uphold the decision to impose administrative penalties by the Health Director under G.S. 130A-496.

**Adjournment:**

The motion was made by Dr. Norins to adjourn the meeting; second by Dr. Douglas. The motion was approved. The meeting was adjourned at 7:11pm.

Respectfully submitted,



Merle Green  
Guilford County Health Director

1  
**EXHIBIT**  
T



-----  
In Re:  
Appeal of Civil Penalty issued on March 11, 2010:

Don Liebes, Gate City Billiards Country Club, LLC.  
Appellant  
-----

ORDER UPHOLDING CIVIL PENALTY

The Board of Health for the County of Guilford, having held a public hearing on May 5, 2010, to consider Case No. 10-02, submitted by Appellant, Don Liebes, owner of Gate City Billiards Country Club appealing the issuance of a Civil Penalty issued by the Guilford County Health Director for a violation of N. C. Gen. Stat. 130A-496 *et seq.* In the amount of \$200.00, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and CONCLUSIONS:

FINDINGS OF FACT:

The Parties agreed to the following STIPULATED FACTS:

1. Appellant, Don Liebes, is the owner of Gate City Billiards Country Club, a commercial establishment which is a bar or restaurant within the meaning of N. C. Gen. Stat. 130A-496 *et seq.* (hereinafter sometimes referred to as "the Act") and has been operating as such throughout the relevant period set out herein. The establishment offers alcohol beverages to its patrons, as well as a number of billiard tables which serves as the primary attraction for its clientele according to owner's business plan.
2. Prior to the effective date of the Act, the establishment had offered a smoking section to its patrons. Smoking patrons are a significant portion of his clientele and Appellant asserts that the loss of his customer base would have a significant financial impact on his business.
3. All parties received in a timely manner the letter Statement of Appeal, the Institutional Inspection documents, two Administrative Penalty letters, two Notices of Violation letters being the penalties subject to a prior appeal (Case # 10-1) and the March 11 Notice of Violation which is the subject of this appeal. It

EXHIBIT  
K



is noted that the notice of violation document was misdated as March 3 and all parties stipulate that the document should be corrected to reflect the actual date of March 11. The documents which constitute the penalties were timely received and there is no dispute by either party as to the facts that are laid out in these documents.

4. Appellant makes no admission as to culpability or liability and stipulates that his argument of appeal is not based on the facts of the violation, but rather on the Equal Protection Clause of the 14th Amendment and the constitutionality of N.C. Gen. Stat. 130A-496 *et. seq.*
5. The Civil penalty letter revised to accurately reflect the date of March 11, 2010 informed the Appellant of the imposition of a \$200 fine for failure to comply with the provisions of N. C. Gen. Stat. 130A-496 *et seq.* by failing to take the required measures to prevent smoking in the establishment.
6. The facts presented in the appeal of the First Civil Penalty and action cited in the March 11, 2010 Civil Penalty letter had occurred and he had allowed smoking in his establishment. Mr. Liebes asserts that his establishment should be considered a country club and therefore is excluded from the law; he further contends that the Act is unconstitutional as a violation of the Equal Protection Clause of the 14th Amendment and, as such, cannot be enforced against him.
7. On March 20, 2010 the Board of Health issued an Order Upholding the First Civil Penalty on the grounds that the evidence presented in the March 20, 2010 hearing was uncontroverted that the establishment is being operated in a manner that would constitute a violation of N.C. Gen. Stat. 130A-496 *et. seq.* for any establishment subject to the Act and not exempted from the Act's requirement as a "private club" or "country club."
8. Furthermore, the March 20, 2010 Board of Health Order Upholding the First Civil Penalty, found that the establishment does not constitute a "private club" or "country club" within the meaning of the Act. And that no other evidence was adduced to show the establishment fell within any other exemption or exclusion and sufficient evidence was adduced to show that the establishment was a restaurant or bar within the meaning of the Act and therefore, subject to the requirements set out therein.

The Board of Health further finds the following FINDINGS OF FACT:

9. Appellant argued before the Board at this hearing that the Initial Civil Penalty and the March 11th Civil Penalty should not be enforced on the grounds that the N.C. Gen. Stat. 130A-496 *et. seq.* is unconstitutional and violates the 14<sup>th</sup> Amendment.
10. Appellant further adduced that the intent of the Act is to protect the health of individuals in public places and places of employment from the risks related to second hand smoke. Appellant argues that the Act is unconstitutional in that it

only is being applied to for profit organizations and not non-profit organizations and therefore is not protecting all of the citizens or all of the people in its jurisdiction equally.

11. No other Evidence was presented by Appellant.

### CONCLUSIONS

1. The facts stipulated to in this matter are uncontroverted that the establishment is being operated in a manner that would constitute a violation of N. C. Gen. Stat. 130A-496 *et seq.* for any establishment subject to the Act and not exempted from the Act's requirement as a "private club" or "country club."
2. The establishment does not constitute a "private club" or "country club" within the meaning of the Act. No other evidence was adduced to show the establishment fell within any other exemption or exclusion and sufficient evidence was adduced to show that the establishment was a restaurant or bar within the meaning of the Act and therefore, subject to the requirements set out therein.
3. The Guilford Board of Health is Constitutionally bound to follow the mandates imposed upon it by North Carolina general Statute, including the mandates set out in the Act and shall do so absent a manifestly illegal or patently unconstitutional mandate and so the Board of Health makes no further determination on the claim of the unconstitutionality of N.C. Gen. Stat 130A-496 *et. seq.*

THEREFORE, based upon the above Findings of Fact and Conclusions, the civil penalty issued by the Guilford County Health Director in this matter was valid and supported by law and fact and should be UPHELD.

Ordered this the 2<sup>nd</sup> day of June 2010.

  
\_\_\_\_\_  
CHAIRMAN, GUILFORD COUNTY  
BOARD OF HEALTH