

STATE OF NORTH CAROLINA  
COUNTY OF PITT

FILED

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
FILE NO.: 10 CVD 1231

10 MAY 13 AM 11:12

PITT COUNTY C.S.C.

**BENJAMIN EDWARDS and  
LYNN OWENS, OWNERS  
OF "LIVE"; GEORGE BEAMAN,  
OWNER OF "CLUB 519", "5<sup>TH</sup>  
STREET DISTILLERY" AND  
"MAC BILLIARDS"**

Petitioners,

v.

**PITT COUNTY HEALTH  
DIRECTOR.**

Respondent.

**RESPONDENT'S MOTION TO DISMISS**

N.C.Gen.Stat. §1A-1, Rule 12(b)(6)

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COMES NOW Respondent Dr. John H. Morrow, the Pitt County Health Director, by and through his undersigned counsel and pursuant to the North Carolina Rules of Civil Procedure, Rule 12(b)(6), hereby moving the Court for dismissal of Petitioners' Petition for Judicial Review by alleging as follows:

1. Petitioners have failed to state a claim upon which relief may be granted in that, even if all the factual allegations of their Petition were true, each and every one of Petitioners' claims would fail as a matter of law.

2. Petitioners have failed to allege facts sufficient to show that the Pitt County Health Department, in its quasi-judicial capacity reviewing the administrative decisions of the Pitt County Health Director, has rendered a decision in error of the law or in violation of any North Carolina or United States constitutional provisions.

3. Petitioners have failed to allege facts sufficient to show that they are in a class or

group of persons protected by the constitutional principles upon which they rely.

4, Petitioners have failed to allege facts sufficient to demonstrate that they have any standing to request the review sought in their Petition for Judicial Review, and Petitioners have made no allegations which, as a matter of law or equity, would authorize the Court to order the injunctive relief sought in their Petition.

WHEREFORE, the Pitt County Health Director respectfully urges the Court to dismiss the Petitioners' Petition for Judicial Review in its entirety.

Respectfully submitted, this the 13<sup>th</sup> day of May, 2010.

PITT COUNTY LEGAL DEPARTMENT

BY: *Lisa Woodard Overton*  
Lisa Woodard Overton  
Attorney for the Pitt Health Department  
1717 West Fifth Street  
Greenville, NC 27834  
(252) 902-3116

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing MOTION TO DISMISS in the above titled action upon all other parties via facsimile, via electronic mail, and by depositing a copy hereof via first class postage prepaid, in the United States mail, properly addressed to:

Jonathan V. Bridgers  
Owens, Nelson, Owens & Dupree, P.L.L.C.  
Post Office Box 36  
Greenville, NC 27835

This the 13<sup>th</sup> day of May, 2010.

PITT COUNTY LEGAL DEPARTMENT

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