

Lessons from the Field: Experience with the NC Smoking Law to Date

April 21, 2010



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- ▶ 1/2/10
- ▶ S.L. 2009–27: Act to Prohibit Smoking in Certain Public Places and Certain Places of Employment went into effect
 - "§ 130A–496. Smoking prohibited in restaurants and bars.
 - (b1) A local ordinance or other rules, laws, or policies **adopted** under this section may not restrict or prohibit smoking in the following places:
 - (8) A motion picture, television, theater, or **other live production set**. This exemption applies only to the actor or performer portraying the use of tobacco products during the production.

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- ▶ G.S. 130A-22 (h1): Subsequent violations. – Impose on the person in violation an administrative penalty of not more than two hundred dollars (\$200.00) for the third and subsequent violations.
- ▶ 2/3/10
- ▶ NHCBH set administrative penalty at \$200.

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- ▶ 1/5/10
- ▶ **Alleged Violation:** Smoking by both the manager and patrons in an enclosed area. Ashtrays were present at the bar, and no smoking signs were not posted.
- ▶ 1/7/10
- ▶ **Educational Letter** sent by certified mail
- ▶ 1/12/10
- ▶ Certified mail returned refused

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▶ WECT Channel 6 News Story

<http://www.wect.com/global/Category.asp?C=151146&clipId=&topVideoCatNo=137668&topVideoCatNoB=155641&topVideoCatNoC=137669&topVideoCatNoD=145922&topVideoCatNoE=138849&clipId=4435560&flvUri=&partnerclipid=&topVideoCatNo=0&autoStart=true&activePane=info&LaunchPageAdTag=homepage&clipFormat=flv>



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- ▶ **1/10/10**
- ▶ Letter from Juggling Gypsy received on January 14, 2010. Meeting requested
- ▶ **1/11/10**
- ▶ **News 14 Carolina news story**
<http://news14.com/charlotte-news-104-content/620424/hookah-bar-staying-open--despite-smoking-ban>
- ▶ **1/21/10**
- ▶ Meeting held to discuss the January 7 letter. Juggling Gypsy discussed using exempted (pre-packaged) foods only (Permit?) and pursuing nonprofit status as a private club.



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- ▶ 1/27 - 2/2/10
- ▶ Encore news article
- ▶ Smoking Allowed: *Come be part of 'The Smoking Show' at the Gypsy*
- ▶ 2/3/10
- ▶ **The Daily Tar Heel** news article: *Hookah Bliss fights N.C. smoking ban*
- ▶ 2/4/10
- ▶ On-site inspection: No smoking signs were not posted
- ▶ 2/5/10
- ▶ **Notice of First Violation** sent by certified mail.

The Daily Tar Heel



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- ▶ 2/4/10
- ▶ On-site inspection rescheduled because of the presence of a dog in the restaurant
- ▶ 2/5/10
- ▶ On-site inspection: Smoking in enclosed areas; failure to direct individuals to stop smoking; no smoking signs posted; Indoor ashtrays found
- ▶ 2/8/10
- ▶ **Notice of Second Violation** sent by certified mail.

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- ▶ 2/5/10
- ▶ Alleged violation reported
- ▶ 2/15/10
- ▶ On-site inspection: Smoking in enclosed areas of restaurant; Failure to direct individuals to stop smoking; remove ashtrays
- ▶ 2/19/10
- ▶ **Notice of Third Violation – Administrative Penalty** of \$200 sent by certified mail.

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- ▶ 2/25/10
- ▶ Alleged violation reported
- ▶ 2/26/10
- ▶ On-site inspection: Smoking in enclosed areas of restaurant; Failure to direct individuals to stop smoking; remove ashtrays
- ▶ 3/1/10
- ▶ **Notice of Fourth Violation – Administrative Penalty** of \$200 (\$400 total) sent by certified mail.

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- ▶ 2/26/10
- ▶ Alleged violation reported
- ▶ 3/6/10
- ▶ On-site inspection: Smoking in enclosed areas of restaurant; Failure to direct individuals to stop smoking; remove ashtrays
- ▶ 3/10/10
- ▶ **Notice of Fifth Violation- Administrative Penalty** of \$200 (\$600 total) sent by certified mail.

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- ▶ **3/9/10 – Star News Online Blog: Ohio judges tosses bar’s smoking**
- ▶ “The Department of Health is going to have to do something that they have never done before: They’re going to have to investigate the site before they fine,” the judge wrote
- ▶ “Interestingly enough Smoke Nazis complain they are afraid to ask patrons to not smoke but expect a 5ft. 98 lb. woman to do it. Then again those people are the ones that prefer to serve on their knees before dying on their feet. Tragically those employed in those agencies are realistically nothing more than social welfare recipients that would not otherwise be employed.”



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- ▶ 3/15/10
- ▶ **Undercover work by NHC Sheriff's Office**
- ▶ 3/26/10
- ▶ Juggling Gypsy scheduled Legal Defense Pot Luck Fund-raiser

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- ▶ 3/22/10
- ▶ **1st Signed Appeal** received
- ▶ 3/25/10
- ▶ Board Chair notified
- ▶ Hearing Notice sent to the Juggling Gypsy
- ▶ Carolina Journal Article: Hookah Bliss Owner Defies Smoking Ban Despite Daily Fines
- ▶ 4/1/10
- ▶ **2nd Signed Appeal** received
- ▶ Board Chair notified
- ▶ 4/2/10
- ▶ Appellant notified of Motion to join the two appeals for hearing

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- ▶ NHC County Attorney's Office
 - Appeal Procedures for Local Boards of Health: A. Fleming Bell, II - April 22, 2009
 - "§ 130A-24 (c). Appeals procedure: The local board of health shall hold a hearing **within 15 days** of the receipt of the notice of appeal.
 - Board of Health Administrative Penalty Appeals **Hearing Procedures** established
 - **Conflict of Interest**
 - **Separate representation** for Board of Health
 - Court reporter

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- ▶ 4/7/10
- ▶ **Hearing on the Appeal by Sebastian Gomez, Owner, Juggling Gypsy Hookah Bar and Restaurant**
- ▶ NHCBH **upheld** Administrative Penalty
 - Basis for decision: EHS Onsite Inspection and the Deputy Sheriff's Testimony
- ▶ 4/8/10
- ▶ **Draft Consent Agreement** sent to the Juggling Gypsy

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▶ Consent Agreement

- ▶ The Administrative Penalty, upheld by the New Hanover County Board of Health, **shall be paid in full**, without any reservation, and **with a full waiver** of any rights to judicial review.
- ▶ Owner and all managers and employees of the establishment will fully and **completely comply** with all provisions of Session Law 2009-27
- ▶ The Administrative penalties imposed are **contingently withdrawn** by the New Hanover County Health Director, and Owner withdraws any appeals associated with said penalty letters. Provided, however, New Hanover County **may reinstate** said Administrative Penalty Letters and associated penalties should the establishment fail to comply with any provision of Session Law 2009-27.

Questions

