



State of North Carolina

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February 20, 2013

Colleen Bridger, MPH, PhD
Orange County Health Director
P.O. Box 8181
Hillsborough, NC 27278

RE: Advisory Letter; Territorial Jurisdiction of Local Board of Health Smoking Rules

Dear Dr. Bridger:

On behalf of the Orange County Health Department, you have asked for an opinion concerning the authority of a county Board of Health rule to prohibit smoking in county and town buildings, vehicles and grounds and in public places in that county and the towns within that county.

Pursuant to NCGS§130A-39(a), local boards of health have the responsibility to protect and promote the public's health and to adopt rules necessary for that purpose. NCGS§130A-39(c) provides that a board of health's rules are valid throughout the county including municipalities served by the board. NCGS§130A-498(a) provides in part that a local government may adopt and enforce board of health rules restricting or prohibiting smoking that are more restrictive than State law and that apply in local government buildings, on local government grounds, in local vehicles, or in public places. That same subsection includes a provision that states "A rule or policy adopted on and after July 1, 2009 pursuant to this subsection by a local board of health or an entity exercising the powers of a local board of health must be **approved** by an ordinance adopted by the Board of County Commissioners of the county to which the rule applies." This provision says "approved" by an ordinance, not adopted as an ordinance - indicating a procedural rather than substantive matter.

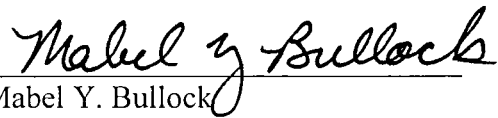
Subsection NCGS§130A-498(e) provides that “A county ordinance **adopted** under this section is subject to the provisions of G.S. 153A-122.” NCGS§ 153A-122 provides the ability for the governing board of a city to consent to be governed by a **county ordinance adopted pursuant to this Article**. “This Article” is Article 6 of NCGS §153A, “DELEGATION AND EXERCISE OF THE GENERAL POLICE POWER.” A county board of health rule to prohibit smoking in county and town buildings, vehicles and grounds and in public places in that county and the towns within that county, is a board of health rule adopted pursuant to Chapter 130A, not a **county ordinance adopted pursuant to “this Article.”**

In our opinion, it is within the power of a county Board of Health to adopt a rule to prohibit smoking in county and town buildings, vehicles and grounds and in public places in that county and the towns within that county.

Sincerely,



Robert Hargett
Senior Deputy Attorney General



Mabel Y. Bullock
Special Deputy Attorney General

This is an Advisory Letter, it has not been reviewed or approved pursuant to the policy for issuing an Attorney General Opinion.