

**NOTES FOR PRESENTATION AT
COUNTY ATTORNEYS WINTER CONFERENCE
FEBRUARY 5, 2021 – ROB DAVIS, ROBESON COUNTY ATTORNEY**

TOPIC: ABATEMENT OF PUBLIC HEALTH NUISANCES

1. Introduction: Rob Davis, Robeson County Attorney

2. TOPIC: ABATEMENT OF PUBLIC HEALTH NUISANCES
 - a. There are all types of nuisances.....Lots of THEM!!!!
 - Brother-in-law
 - Neighbor
 - Teenage son or daughter
 - Family visitors that stay too long
 - Violent gangs
 - Noise
 - Smoke
 - Dust
 - Odors
 - Fumes
 - Junk accumulation
 - Weeds
 - Problem animals (dangerous dogs/barking dogs/scavenging dogs)
 - Premises:
 - Stash house
 - Drug house
 - Vermin/insect infested house
 - Unsafe structures
 - Swimming pool without a fence
 - Faulty dike/dam
 - Etc.

 - b. So..... What is a nuisance? Generally defined as “something that annoys.....a

wearing on the nerves by persistent unpleasantness, potentially evoking anger and

interfering with comfort and peace of mind. It may involve an unreasonable or unlawful

use of property that results in material annoyance, inconvenience, discomfort, or injury to

another person or to the public.” Another definition: anything detrimental to the health, safety, or welfare of the citizenry. And another definition: use of property or course of conduct that interferes with the legal rights of others, by causing damages, annoyance, or inconvenience.

3. Two types of nuisances:
 - a. Private nuisance: The unlawful and unreasonable interference with the enjoyment of the property of another. Example: a particular injury to a particular individual landowner. Generally, it requires the “injured” party to personally seek relief and/or personally file a lawsuit to get relief.
 - b. Public nuisance: One that affects a large group of members of the public. Actions for relief in the instance of a public nuisance, in North Carolina, are generally brought by the Secretary of the Dept of Health and Human Services and/or the local county Health Director.
4. The focus of this presentation is, of course, on Public Health Nuisances and the Abatement of Public Health Nuisances
5. Abatement defined: Removal or control of the problem (the annoyance).
6. A “word search” of the North Carolina General Statutes: Nuisance show up 82 times
Abatement showed up 89 times
7. Some areas of NC law where nuisance abatement is appropriate:
 - a. The new Chapter 160D....code enforcement, unsafe buildings, etc.
 - b. Gang Nuisance Abatement GS 14-50 - criminal law abatement remedy
 - c. Chapter 19 is entitled Offenses Against Public Morals. It provides for nuisance

abatement of buildings used for prostitution, gambling, drugs, lewd or obscene matter and alcohol violations. Abatement actions in NC under Chapter 19 of the General Statutes can be brought by the Attorney General, the DA, the county, a municipality or even a private citizen. The Alcohol Law Enforcement Division of NC Department of Public Safety has a special team to address and to assist in bringing this type of Nuisance Abatement action. These actions are civil actions but are enforceable by the contempt powers of the court.

Robeson County: ALE assisted Robeson County in bringing four (4) Nuisance Abatement actions so far. Lawsuits were filed in each of them, so there are costs in filing and serving that must be addressed. So far, no court trials have been needed!

First property – consent order where a “casino” was operated by non-owner tenants; several robberies, shootings, and a death occurred.

Second property – TRO and Injunction issued. Drug house ordered demolished. Consent Judgment entered requiring demolition and other conditions.

Third property – former drug house. Rental property. Owner entered consent judgment; strict conditions apply to present and future use of property

Fourth property – active drug house. Primary parties (children of the owner) now in prison. Consent order entered; strict conditions of use and occupants

d. And finally: Our topic for consideration..... Abatement of Public Health Nuisances:

- i. Chapter 130A of the General Statutes addresses public health issues; and in particular, public health nuisances.
- ii. GS 153 A-121 – county authority to make ordinances
- iii. GS 130A gives the local Health Department the authority to investigate

health hazards and to enforce laws and regulations that protect health and safety of the public.

- iv. GS 130A-19 authorizes the Secretary of the Department of Health and Human Services....and the local County Health Director to issue orders of abatement directing owner/operators of property to act to abate what the Secretary or Director have determined to be public health nuisances.
- v. If the property owner fails to “abate” the public nuisance after having been ordered to do so, GS 130A-19 authorizes the Secretary or the County Health Director to sue the property owner/operators in civil superior court in order to abate the nuisance. The law allows for issuance of a Temporary Restraining Order, Preliminary Injunction and Permanent Injunction upon a proper showing of failing to comply with the initial order. Once an abatement order is entered by the court, it becomes enforceable through the contempt powers of the court.

8. How and/or why did our office get involved in abating public health nuisances?

- a. COVID-19 “struck” nationwide/worldwide.
- b. Governor Cooper’s Executive orders limiting the number of attendees at indoor and mass gatherings, including outside gatherings in an effort to stop/slow the spread of the virus.
- c. COVID-19 cases increased dramatically in Robeson County.
- d. Bill Smith, the local Health Department Director, contacted our office

regarding well known information that one or more race tracks in rural Robeson County had conducted races with 100s, if not 1000s, present. Of course, our office represents the Robeson County Health Department.

- e. Our office received numerous calls regarding the race tracks urging action by the County.
- f. The Ace Speedway case filed in June in Alamance County (20 CVS 1001) by Health and Human Services Secretary Mandy Cohen proved helpful to us. She alleged violations of the Governor's orders by continuing business as usual at the race track. Lots of media coverage. Even claims of 1st Amendment rights and protest were made, thus arguing unsuccessfully an exemption from the Governor's order. After notification by the Health Director and delivery of an order to stop the races, and continued refusal to comply with the Governor's Executive orders, a TRO was issued. Thereafter, a well-publicized hearing held and an Injunction was obtained that effectively closed down the public health nuisance.
- g. Robeson County had the same issue that occurred in Alamance County....flagrant violations of the Governor's Order on mass gatherings. Robeson County had two (2) race tracks, actually "drag strips", attracting more than 1000 people at times. Our Health Department Director sent notices to both businesses that they were in violation and had to stop. They didn't stop....or at least they continued to advertise races in the future. So as to not reinvent the wheel, we used the Ace Speedway complaint as our template...and filed suit against both race tracks. Served the

property owners and operators. Determining who to serve was problematic.....to put mildly.

Tract #1 – The owner/operator of the smaller of the two tracks appeared *pro se* and together we entered into a Consent Judgment that addressed the issue.

Tract #2 – The owner of this race tract also appeared in court *pro se* and asked for a continuance to hire an attorney. His motion was allowed. The terms and conditions of the TRO were continued for thirty (30) days until the next session of court.

Eventually, a Consent Judgment was entered in this case also.

Robeson County didn't close the tracks down.....as that was not our intent. The terms of the consent allowed them to operate on a scaled-down version; further, they had to submit plans for each event and get the plans approved by the Health Director.

SUMMARY

1. We'll be damn glad when this virus goes away!!!!!!
2. Thanks to the Attorney General's office for drafting the Ace Speedway complaint.
3. Nuisance abatement is a time-consuming process; however, we felt it was necessary for our office to get involved once we were asked. We're a small office. We did what we could to help.
4. This was not our call, but that of the Health Director.....that is...our involvement.
5. We felt it extremely important, of course, that our Board of Commissioners were in favor of our involvement...for obvious reasons that need not be stated.

6. Our office left the day to day (event to event) enforcement of the Court Orders up to the Health Director as that certainly is not our function as attorneys.
7. Was it worth the effort? We think so.....and we hope and pray that it was!
8. Call or contact if you have questions: Rob Davis
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