

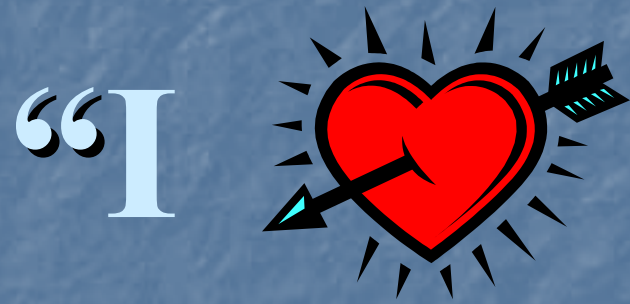
Smoke-Free Policies: Some Legal Perils and Pitfalls

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Tobacco Control Legal Consortium
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“I

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If You Don't Think So Now . . .

Wait 'Til You Meet Their Lawyers!



Why is legal support
critical?

- ❑ Policy change is fraught with legal issues.
- ❑ Tobacco companies and their allies exploit any legal loophole or vulnerability.

- ❑ Simple legal errors can lead to costly litigation and policy setbacks.
- ❑ Preventive legal assistance helps avoid pitfalls and manage the legal risks.

Some States Have Made Legal Support An Integral Part of Their Tobacco Control Programs

- Arkansas
- California
- Maryland
- Massachusetts
- Michigan
- Minnesota
- New Jersey

Legal Technical Assistance Supports Policy Change By:

- Building capacity
- Untangling issues
- Clarifying choices
- Providing strategic guidance

Legal Technical Assistance Programs Do NOT:

- ❑ Provide legal advice or legal representation.
- ❑ Represent advocates or governments in court.

What Do Legal Programs Do?

- ❑ Analyze opponents' legal arguments and objections.
- ❑ Provide research on key legal issues.
- ❑ Train advocates and others on recurring legal concerns.

Avoid Litigation By Anticipating and Avoiding Legal Problems



Support Litigation By:



- Locating legal resources, precedents and experts
- Conducting behind-the-scenes research and writing
- Preparing friend-of-the-court legal briefs

TCLC
Tobacco Control
Legal Consortium



The Tobacco Control Legal Consortium

A new national network serving the tobacco control community by expanding legal expertise for policy change.

Mission:

To strengthen public policies by working to make legal expertise an integral part of every comprehensive tobacco control program.

Structure: A Coordinated Effort of Existing Legal Centers



Capacity

- Staff of three, coordinating work by the network.
- Limited budget: roughly comparable to a one-state legal program.
- Not a substitute for local resources.
- “Lawyers of last resort.”



Priorities: Capacity Building

- ❑ Encouraging states to provide or support legal programs to support policy change.
- ❑ Helping advocates and officials find options for creating new legal programs.



Priorities: Education

- ❑ Educational materials.
- ❑ Presentations and training.
- ❑ Research and publication on critical legal issues.



Priorities: Direct Legal Support

- ❑ Providing stopgap legal assistance.
- ❑ Supporting local counsel with research, strategy, sample materials and pleadings.
- ❑ Filing “friend of the court” legal briefs in appropriate cases.





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Developing A Smoke-Free Policy:
How to Get Yourself In Trouble in
10 Easy Steps

1) Be Your Own Lawyer

2) Don't Do Your Homework

3) Draft First, Build Support Later

4) Draft Now, Think Later

5) Draft by Xerox

6) Draft in Isolation

7) Beware the City Attorney

8) One Size Fits All

9) Don't Sweat the Process

10) Party Like It's 1999!

More Fun With Lawyers: Defending Your Policy In Court



Common Legal Issues:

Preemption

- www.protectlocalcontrol.org
- Preemption: Taking the Local Out of Tobacco Control, www.smokelessstates.org

Other Common Legal Issues:

- ❑ Authority to Regulate
- ❑ “Takings”
- ❑ Procedural Challenges
- ❑ Other Constitutional Issues

Recent Wins and Losses

WINS

- West Virginia
- Arkansas
(Fayetteville)
- New York
- Kentucky
(Lexington)
- Ohio (Toledo)

LOSSES

- Iowa (Ames)
- New Hampshire
(Colebrook)
- Washington
(Tacoma)





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