

Legal Update

from the Tobacco Control Legal Consortium



June 2004

Dear Tobacco Control Professional:

Welcome to the first issue of the Tobacco Control Legal Consortium's online newsletter! The Consortium is a new national network of legal programs supporting tobacco control policy change by giving advocates better access to legal expertise. We invite you to visit our website at www.tclconline.org.

What is the Tobacco Control Legal Consortium?

Founded in April 2003, the Consortium grew out of collaboration among legal resource centers serving five states in order to provide information and assistance on legal issues in tobacco control throughout the United States. The Consortium draws on the expertise of the legal centers and other legal specialists and experienced advocacy organizations, such as Americans for Nonsmokers' Rights (ANR) and the Campaign for Tobacco Free Kids. We provide legal help with legislative drafting; legal research analysis and strategy; training and presentations; preparation of friend-of-the-court legal briefs; and litigation support, to the extent our resources permit.

Common Legal Challenges to Smoke-free Restrictions



Today, many new smoke-free ordinances are met with legal challenges before they even take effect. Our new publication, a legal synopsis entitled "Legal Authority to Regulate Smoking and Common Legal Threats and Challenges," was written by experienced tobacco control attorney, Cheryl Sbarra. It summarizes state and local governmental authority for regulating smoking, explains the legal doctrine of preemption, discusses constitutional objections to smoke-free ordinances that are often asserted but lack merit, and emphasizes the need for care in drafting smoke-free ordinances. To view a pdf version of the synopsis, click on the image above.

We hope this synopsis will help you, as a tobacco control professional, anticipate common legal challenges, give you insight into tactics opponents may use to try to defeat smoke-free ordinances, and take the steps needed to address and circumvent these challenges. It's the first of several publications we will send you over the coming months on legal issues of pressing concern to the tobacco control community, as well as other public health and legal professionals.

In This Issue:

- What Is the Tobacco Control Legal Consortium?
- Common Legal Challenges to Smoke-free Restrictions
- Key Decision in Heart of Tobacco Country
- Federal Tobacco Suit Moves Toward Trial

Next Issue:

- Infiltration of Secondhand Smoke into Condominiums, Apartments and Other Multi-Unit Dwellings

Affiliated Legal Resource Centers:

- **Arkansas**
Arkansas Tobacco Legal Resource Center
- **California**
Technical Assistance Legal Center (TALC)
- **Maryland**
Legal Resource Center for Tobacco Regulation, Litigation & Advocacy (LRC)
- **Massachusetts**
Tobacco Control Resource Center (TCRC)
- **Michigan**
Smoke-Free Environments Law Project (SFELP)
- **Minnesota**
Tobacco Law Center
- **New Jersey**
Tobacco Control Policy and Legal Resource Center

Legal Update continues on the next page

Key Decision in Heart of Tobacco Country.....

In a landmark 6-1 opinion released April 22, 2004, the Kentucky Supreme Court upheld Lexington's historic ordinance prohibiting smoking in restaurants, bars and other public places. Justice Donald C. Wintersheimer of Covington found that the city has the right to enforce the ordinance, which applies to most enclosed public spaces, including bars, restaurants, bowling alleys, laundries and nightclubs. The Tobacco Control Legal Consortium prepared a friend-of-the-court legal brief supporting the ordinance on behalf of the American Medical Association, the Kentucky Medical Association, Americans for Nonsmokers' Rights and the Campaign for Tobacco Free Kids. For a copy of this historic decision, [click here](#).

Federal Judge's Ruling Delivers Major Blow to Tobacco.....

In a huge setback to tobacco companies, a federal judge last week refused to limit the U.S. government's claim to \$280 billion of alleged ill-gotten gains in the government's case against the tobacco industry. The case, set for trial in Washington beginning September 13, may involve the largest single claim to monetary relief in history. U.S. District Judge Gladys Kessler said that the Racketeer Influenced and Corrupt Organizations, or RICO, Act allows equitable remedies, including disgorgement of past industry profits, as a way to "prevent and restrain" future violations. Kessler said that under federal law, the government has the right to seek these fines if it can prove the major cigarette makers knowingly deceived the public for decades about the dangers of smoking and the addictive qualities of nicotine and if it can demonstrate that paying the money would prevent future wrongdoing. As a result of this ruling, stocks in tobacco companies around the world plummeted. [Click here](#) to view the opinion from *U.S. v. Philip Morris USA, Inc.*, 99 Civ. 2496 U.S. District Court, District of Columbia.

Contact Us:.....

Phone:

651-290-7506

Email:

tobaccolaw@wmitchell.edu

Web:

www.tclconline.org

Address:

875 Summit Avenue

St. Paul, MN 55105



The Legal Update newsletter is a service of the Tobacco Control Legal Consortium. If for any reason you would not like to receive future editions of this newsletter, please e-mail us at tobaccolaw@wmitchell.edu. Simply type UNSUBSCRIBE in the subject line.

Funded by:



Note: While we make every effort to ensure the information in this newsletter is accurate and complete, the Tobacco Control Legal Consortium is unable to guarantee this information. Material is provided for informational purposes and is not intended as legal advice. We encourage readers with questions to consult an attorney familiar with the laws of their jurisdictions.