

Iowa Department of Public Health Inquiry No. 1.

2/10/2008

Thomas Newton, Director
Iowa Department of Public Health
Lucas State Office Building
Des Moines, Iowa 50319-0075

Re: Effects of emergency declaration; how comments that are part of the formal rulemaking record can be made.

Director Newton,

As you are aware, on June 27, 2008 the Iowa Department of Public Health filed and adopted rules to implement the Smokefree Air Act of 2008, House File 2212, pursuant to an emergency declaration under Iowa Code. That declaration apparently allowed the health department set the effective date of the rules in less time than ordinarily required. I do not find an emergency declaration by the Iowa legislature in the Enrolled House File 2212.

It is troubling to me that in its emergency declaration the health department also stated: "In accordance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable . . ."

Background: As I understand the rules, another consequence of the emergency rule adoption is that it prevents the opportunity for twenty-five or more interested persons or an association that represents them to make oral presentation to the department, as provided in Iowa Code section 17A.4(1)(b.). That code section requires that the department as a state agency ". . . shall consider fully all written and oral submissions respecting the proposed rule." I understand that oral presentations are part of the formal rulemaking record that the health department has a statutory duty to "fully consider." In contrast, I understand that comments or questions presented through the department's Web form or as part of public comments are informal, not part of the rulemaking record, and may be considered or not as the department chooses.

I believe the Iowa Department of Public Health's enforcement rules for the Smokefree Air Act will have broad impact across many business sectors. It is also apparent to me that the adverse economic and other impacts will be principally focused on members of the hospitality trade and associated support businesses. Considering that broad impact, it is deeply troubling to me that the health department chose to exclude the opportunity for formal presentation by interested persons and/or organizations that represent them and to declare the enforcement rules to be effective on a very short timeline.

Questions: Based on the foregoing background and my layperson's understanding I have three questions:

1. What was the "emergency" that caused the department's Smokefree Air Act's enforcement rules to adopted through an emergency declaration?
2. Does the health department consider comments submitted through the Web form as provided at www.iowasmokefreeair.gov , or public comments made at forthcoming public meetings presently scheduled for August 20, 2008, to be formal or informal?
3. Does the health department consider itself to have a formal, statutory duty to "consider fully" all comments, data or other submissions presented through the Web form?

4. Under the current rule adoption scheme how may data, views, or written arguments be submitted by interested parties or their trade representatives as part of the formal rulemaking record for the Iowa Department of Public Health's Smokefree Air Act enforcement rules?

Finally, please note that this inquiry has been sent by both U.S. Mail and through the health department's Web form. I request a response by both E-Mail and letter from the health department.

Respectfully,

Tom Coats
Director
Iowans for Equal Rights