Iowa Department of Public Health Inquiry No. 6.

8/10/2008

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

Re: Prospective Iowa Department of Public Health enforcement actions.

Director Newton,

The Iowa Department of Public Health adopted and filed rules to implement the Smokefree Air Act of 2008, House File 2212, on June 27, 2008. A part of the rules include addressing complaints plus compliance inspections and related follow-up. Since 153.8(1)a. of the rules provides that the department may designate one or more public agencies to assist with enforcement of House File 2212, the below would also apply to any contracting agency.

Background: The following background information is important because it defines the economic, political and cultural environments in which enforcement of the Iowa Smokefree Air Act will necessarily occur. Those environments materially influence the content of enforcement rules for the Smokefree Air Act and the nature of enforcement activities to be undertaken.

The Iowa Alcoholic Beverages Division is responsible for tobacco sales inspections and enforcement. Like the department, the division is part of the Iowa Tobacco Use Prevention and Control Commission.

The Iowa Tobacco Use Prevention and Control Commission was created by Section 2. of House File 2565 in 2000. Section 2. requires the Iowa Department of Public Health to "establish, as a separate and distinct division within the department, a division of tobacco use prevention and control." According to its Fiscal Year 2008 Program Update, the division's budget is $13,402,210, funded as follows:

Centers for Disease Control and Prevention:	$1,111,681
1998 Tobacco Settlement:	$5,928,465
Iowa General Fund:	$ 500,310
Tobacco Tax:	$5,861,754

Considering the above revenue sources, federal and state taxpayer's money is applied to finance the commission and its related entities. This information is relevant in light of the recent Iowa cigarette tax increase and initiatives by Iowa to "securitize" its remaining tobacco settlement payments. Securitization would result in issuing Iowa bonds, with principal and interest payments funded by diversion of tobacco settlement payments from the tobacco division, which could impose a significant reduction in the division's funding. That projected shortfall appears to have been addressed with a $5,786,754 increase in the division's budget, as stated in the FY 2008 Program Update, which occurs coincident with Iowa's recent cigarette tax increase. It appears that some commission members who advocated the recent cigarette tax increase were "singing for their supper," to assure that the division's budget is funded, should Iowa's remaining tobacco settlement revenues be securitized.

Members of the Iowa Tobacco Use Prevention and Control Commission are materially involved in promoting cigarette tax increases nationwide. For example, the American Medical Association's 2002 booklet, "Strategic Thinking on State Tobacco Tax Increases," funded by the Robert Wood Johnson Founda-

tion, includes in its credits the statement, “We would like to thank the following SmokeLess States staff who contributed: Cathy Callaway . . .” Ms. Callaway is a voting member of the Iowa tobacco Use Prevention and Control Commission. At the time, SmokeLess States was a $99 million program of the Robert Wood Johnson Foundation. Dr. Thomas Houston, a co-author of a policy paper that concluded there is no safe level of exposure to Environmental Tobacco Smoke (ETS), is also acknowledged on the credits page of that booklet as a co-director of that foundation program. The booklet also includes the American Cancer Society, American Lung Association, and Campaign for Tobacco-Free Kids among those who developed that work.

Section 1. of HF 2565 sets forth the intent of legislation that created the commission, which includes reduction of tobacco use by youth and pregnant women as well as promoting compliance by minors and retailers with tobacco sales laws. Section 1. of House File 2565 includes the following:

> “3. It is also the intent of the general assembly that the comprehensive tobacco use prevention and control initiative will foster a social and legal climate in which tobacco use becomes undesirable and unacceptable.”

The above legislative intent is strikingly similar to strategies for 1991 to 1998 federal American Stop Smoking Intervention Study (Project ASSIST). As set forth on page 22 of the April 1993 participating state booklet “Planning for a Tobacco Free Washington,” the purposes of Project ASSIST were to reduce public tolerance for and to change public acceptance of tobacco use. Those purposes were to be carried out by “Targeting” persons who use tobacco products for increased cost of tobacco products through higher taxes and to increase the number of smoke free environments through smoking bans. According to the transcript for an October 1991 press conference that announced the program, the American Cancer Society was the nationwide manager for Project ASSIST. The declared purposes of Project ASSIST were to impose discriminatory taxation on and to ostracize through bans “Target” citizens who lawfully consume legal tobacco products. Similarly, House File 2212 defines persons who smoke in public places to be a public nuisance. The person engages in the violation of smoking, not a cigarette. Such definitions add the negative label of “public nuisance” to persons who smoke. Such policies and strategies intentionally foster a hostile cultural environment for “Target” citizens and consumers.

Considering the above language from House File 2565 and House File 2212, it is clear that members of the Tobacco Use Prevention and Control Commission necessarily hold views that *lawful* consumption of *legal* tobacco products is “undesirable and unacceptable,” and that persons who do so are a “public nuisance,” if members are to advance the stated purposes of that legislation. Such intolerant views necessarily extend to small business owners who accommodate patrons that smoke. When such views are held by a group they can become a powerful motivating force. When career advancement and personal income are attached to those motivating forces it is apparent that objective, evenhanded rules or enforcement is impossible. Such is not a proper basis for objective enforcement of any policy. I consider such views to be overtly discriminatory.

Cathy Callaway, American Cancer Society government relations, attended the March 28, 2008 meeting of the Tobacco Use Prevention and Control Commission as a voting member. Section 3.3.a. of House File 2565 specifies that the commission shall include three members who are active with nonprofit health organizations that emphasize tobacco use prevention. Given its previous nationwide management of Project ASSIST, the American Cancer Society would qualify as stated in that section. Dan Ramsey of the American Lung Association also attended that meeting as an invited guest.

In addition, Ms. Callaway has been highly active with tobacco control advocacy in Iowa and on an interstate basis. For example, on August 15, 2007 Ms. Callaway “provided an overview of the smoke-free trend in the nation” to the Indiana Health Finance Commission. Ms. Callaway provided similar informa-

tion to the American Medical Student Association in 2008. Ms. Callaway has also advocated that taxpayers finance purchases of Nicotine Replacement Therapy products. On August 23, 2006 she provided comments concerning ARC 5284 to Iowa legislators, concerning "open access to the Medicaid smoking cessation class."

I bear no personal animosity towards Ms. Callaway, nor do I intend to disparage her in any manner. I make the above observations concerning her because I believe that both her various positions and her advocacy activities as cited in public documents illustrate the interlinking interests that apparently dominate activities of the Iowa Tobacco Use Prevention and Control Commission. Such interests necessarily influence both the content of rules for and enforcement activities related to the prohibition of smoking in public places.

Both the American Cancer Society and the American Lung Association are sustaining tobacco control and other program grant recipients of the Robert Wood Johnson Foundation. The foundation ranks among the largest institutional shareholders of NicoDerm CQ Nicotine Replacement Therapy patch manufacturer, Johnson & Johnson. As of March 31, 2008 Yahoo Finance reported that the foundation owned about 1.2 percent of the outstanding shares of Johnson & Johnson valued at approximately $2.3 billion. Smoking bans materially support increases sales of Nicotine Replacement Therapy and other smoking cessation products.

The March 28, 2008 commission minutes include an overview of Quit Line services by Jeremy Whitaker of the tobacco division staff, including Quit Line distribution of free Nicotine Replacement Therapy products. According to the 2008 Program Update, $1.8 million, including an allocation for "Nicotine Patches and Gum," is committed to the Quitline, which is 13.4 percent of the division's $13.4 million budget. The January 25, 2008 commission minutes include discussion by Dennis Jansen concerning a recommendation by the Medicaid Drug Utilization Review Commission that Pfizer's smoking cessation drug "Chantix not be included in the drug panel for Medicaid Recipients." Moreover, the 2008 Program Update included $706,300 for "Secondhand Smoke," of which $596,000 was dedicated to a media education campaign.

Some programs associated with the health department are also Robert Wood Johnson Foundation grant recipients. For example, according to the August 2000 edition of the department's "Focus" publication the Caring Foundation received a $300,000 grant that was funded in large part by the foundation. More recently, the Iowa Department of Public Health received a grant to finance vaccination efforts. Several additional examples of Iowa health department grants from the foundation or programs supported by the foundation can be cited.

Smoking bans are the exclusive enforcement policy that coerces consumers to purchase and use smoking cessation products, such as those manufactured by Johnson & Johnson. A focus on indoor air quality standards and ventilation fails to do so because individuals could smoke in many public places, at discretion of the business owner. While that regulatory approach is clearly the most suitable to support the mercantile interests of Johnson & Johnson and the shareholder interests of the Robert Wood Johnson Foundation it fails from a public health standpoint. Notably, a March 2005 study published by the Journal of the American Cancer Society concluded that Environmental Tobacco Smoke may not be the primary pathological agent in lung cancers among nonsmokers and that other as yet unidentified carcinogen(s) are. About the time that study was published in The Journal the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) published a policy paper concerning exposure to tobacco smoke used in part to justify a significant reduction in ventilation rates for facilities that are "Smoke Free." In light of that information I conclude that the Iowa Department of Health's fixation on tobacco smoke and its consequential smoking ban enforcement rules eliminate one indoor air constituent that may not be the primary pathological agent for lung cancer among nonsmokers, while creating increased concentrations of other as yet unidentified carcinogen(s) that increase lung cancer risks among nonsmokers.

Those increased risks of lung cancer unrelated to tobacco smoke are a high price for Iowa citizens to pay to assure the continued flow of grants to tobacco control advocates, to advance the mercantile success of Johnson & Johnson, and to protect the multi-billion-dollar shareholder interests of the Robert Wood Johnson Foundation.

Questions: Considering that both the health department and alcoholic beverages are members of the tobacco prevention commission and are directly involved in tobacco related enforcement activities, I ask the following questions in context of the preceding background:

1. Considering the above-described cultural, political, and economic environments as described above, by what standard can any person who smokes or any small business owner in conclude that the Iowa smoking ban rules are fair or that the department's enforcement will be evenhanded?

2. How did the environments as described above influence the department's decision to exclude separately ventilated smoking rooms from permissible compliance alternatives in its enforcement rules?

3. Why should any small business owner in Iowa lose one dime of revenue or experience any administrative burden to support an advocacy scheme directed toward promoting sales of pharmaceutical nicotine or other commercial smoking cessation products?

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,

Marilea David
Director
Iowans for Equal Rights