

# Clean Indoor Air and Bullitt County: Leadership by Local Health Departments in Kentucky

April 2013



## **Bullitt County Board of Health v. Bullitt County Fiscal Court**

The Kentucky Court of Appeals reversed a ruling by the Bullitt County Circuit Court on December 7, 2012 in favor of allowing the Bullitt County Board of Health to implement its smoke-free ordinance. The Bullitt Circuit Court held that the Board of Health did not have the authority to regulate smoking within the county, but the Kentucky Court of Appeals disagreed.

---

## **History**

The Bullitt County Board of Health began considering regulations to limit indoor smoking after an air quality study showed that indoor air pollution in Bullitt County was 42 times higher than Louisville's after their smoke-free law was put in place. These findings were presented in a series of community forums throughout Bullitt County beginning in August 2010. A public opinion poll in Bullitt County showed that 75% of the citizens favored local smoke-free regulation, but the fiscal court declined to enact a smoke-free law. After discussion with community members and seeking legal advice, the Board of Health adopted a smoke-free regulation on March 22, 2011. The Bullitt County Fiscal Court sued to stop the health department from enforcing the law. The local Circuit Court upheld the fiscal court's request. The circuit judge's ruling was then appealed to the Kentucky Court of Appeals. In addition, a group of business owners and others filed a federal lawsuit on April 6, 2011, asserting that the smoke-free regulation violated various protections provided in the U.S. Constitution. On March 20, 2012, the federal court issued a stay regarding the federal lawsuit until the state case has been ultimately decided.

---

## Court of Appeals Opinion

The Court of Appeals decided in favor of the Bullitt County Board of Health on three grounds:

1. The board of health has the authority to create regulations involving public health.
2. The legislature clearly granted local boards of health the authority to adopt regulations, as long as these regulations met several criteria. These criteria are that the regulation:
  - Did not conflict with administrative regulations of the Cabinet for Health and Family Services
  - Was necessary to protect the health of the people
  - Was necessary to carry out the purposes of Kentucky law relating to public health.
3. Exposure to secondhand smoke is a health issue.

In a previous case, *Lexington Fayette County Food and Beverage Ass'n v. Lexington-Fayette Urban County Gov't*, the Kentucky Supreme Court specifically held that protecting the public from exposure to environmental tobacco smoke can be the proper object of the police power of local government.

The Court of Appeals also considered whether the ordinances adopted by the board of health are reasonable. The Lexington case, cited above, found a similar ordinance reasonable, and the Court of Appeals followed the Supreme Court's judgment.

The Bullitt Fiscal Court asked the Kentucky Supreme Court on January 9, 2013 to reconsider the Court of Appeals opinion. The Bullitt Board of Health responded to this on February 6, 2013.

---

### Points to Consider

- Kentucky law gives local boards of health broad authority to regulate matters pertaining to public health.
- However, in Kentucky it has never been decided by the state appellate courts whether this authority specifically includes restrictions on smoking indoors until the Bullitt County case.
- Bullitt County created its regulation based on the wording of Kentucky law, as well as cases in other states with similar laws where smoking restrictions were upheld.

---

For more information, contact the Kentucky Center for Smoke-free Policy at [www.kcsp.uky.edu](http://www.kcsp.uky.edu) or 859-323-4587.