


Fundamentals of Public Health Law

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PollEverywhere for this session


Two options for how to access:

- Web: pollev.com/jillmooresog
- Text: Text jillmooresog to 22333




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Game plan



- Where does public health get its legal authority?
- What kinds of laws are involved in public health?
- Where can you find the law?
- Who can help you with legal issues?



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Police power


- General power of government to protect the health, safety, and welfare of the population
- Includes the power to require people to act, or refrain from acting, in certain ways
- Subject to constitutional limitations:
 - Equal protection of the laws
 - Due process required when person deprived of life, liberty, or property

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Due process

 Notice

 Opportunity to be heard

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What is a law?


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Defining “the law”

Sample definitions:

- Rules of conduct that a governmental entity has the authority to enforce
- The structure, norms, and rules that a society creates to govern itself, provide for the resolution of disputes, and order the relations between members of the society
 - Centers for Disease Control & Prevention, *Public Health Law 101*, available at cdc.gov/phlp




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Exercise

Think of a law that you have to comply with.

Who (or what entity) made that law?


Is it a civil or criminal law?



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Four types of laws

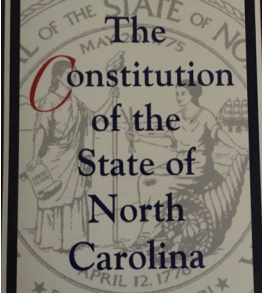
- Constitutions
- Legislation
- Rules (Regulations)
- Case law



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Constitutions: US and NC


- Basic charters for government:
 - Establish governmental structures/branches
 - Set forth the basic rights of individuals
- Affect public health by:
 - Providing the legal authority for government to act to protect health, safety, and welfare
 - Prescribing the boundaries of that authority



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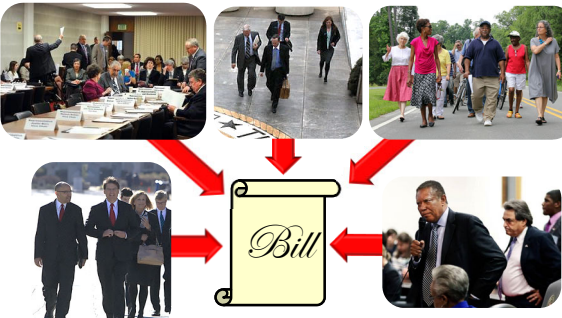
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LEGISLATION



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It Starts With an Idea . . .



The diagram illustrates the legislative process. At the top, the text "It Starts With an Idea . . ." is followed by three small images: a legislative session, people walking, and a group of people. Red arrows from these images point to a central yellow scroll labeled "Bill". Below the scroll, another set of red arrows points to an image of a man in a suit, likely a legislator, who is then shown in a separate image at the bottom right.

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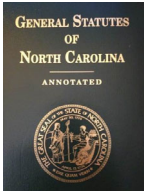
NC Legislative Process

- **Governor's options:**
 - Sign the bill → it becomes law
 - Decline to sign the bill → it becomes law after a period of time has passed
 - Veto the bill → it does not become law; it goes back to the legislature
- **House and Senate options in the event of veto:**
 - Let the veto stand → the bill is dead
 - Hold a veto override vote → a supermajority (2/3) of both H and S must vote to override for it to pass.
- **Final product: Session Law**
 - If/when a bill finally becomes law, it gets a session law number in a format that reflects the year and chronological order in which it passed.
 - E.g., S.L. 2017-18 = the 18th law passed during the 2017 legislative session

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NC Public Health Statutes

- Adopted by NC General Assembly
- Mostly in G.S. Chapter 130A
 - Citation example: G.S. 130A-248
- Mission and framework for public health system, powers and duties of public health boards and local health directors, public health programs, public health remedies, etc.
- On-line at www.ncleg.net



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RULES



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Judge-Made Law: Cases

- Judges decide how law applies to specific cases or controversies that arise
- The “holding” is the court’s statement of the law that determines the case
- Legal precedent arises from “reported” (written) court “opinions” (decisions) and establishes rules of law that lower courts must follow



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Pop Quiz: Hypothetical



N.C. General Assembly enacts a statute that prohibits environmental health specialists from smoking at work.



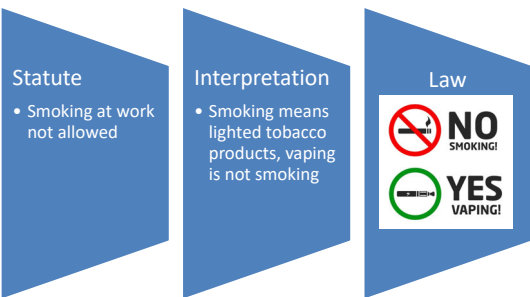
NC Supreme Court interprets the statute. It notes that this law does not define “smoking,” but elsewhere in public health law, smoking is defined to mean the use of lighted tobacco products only. Applying that definition in this context, the court concludes that environmental health specialists may not use lighted tobacco products at work, but vapor products are allowed.

What is the law?



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Hypothetical (not a real case!)



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Civil vs. criminal cases

Civil	Criminal
<ul style="list-style-type: none">• Plaintiff v. Defendant• Role of government: provide the forum for case to be heard and decided• Examples of possible outcomes if defendant held liable:<ul style="list-style-type: none">• Pay damages (money) to plaintiff• Take specific actions to fix or mitigate the wrong	<ul style="list-style-type: none">• State v. Defendant• Role of government: bring the case & provide forum for it to be heard and decided• Examples of possible outcomes if defendant found guilty:<ul style="list-style-type: none">• Incarceration or other supervision• Monetary fines or other restitution

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Administrative hearings

Administrative hearings

Heard by an executive body acting in a court-type role

- NC Office of Administrative Hearings (state)
- Local board of health (local rules/locally-imposed fines only)

Decided by a person or body authorized by law to decide administrative cases

- Administrative law judge (state)
- Local board of health

Often the first line of appeal for an individual aggrieved by a public health decision affecting the individual or the individual's property.

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Put all the pieces together to know what the law is

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INTERACTION OF LAWS

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Basic rules of interaction

Constitutions
↓
Legislation
↓
Regulations

COURTS

- Constitutions limit the scope & reach of other laws.
- Legislation must be constitutional.
- Regulations (rules) must be authorized by statutes.
- Courts:
 - Determine whether legislation is constitutional.
 - Decide whether regulations are within the scope of their authorizing legislation.
 - Interpret and apply statutes and regulations.
 - Create their own rules of law (common law).

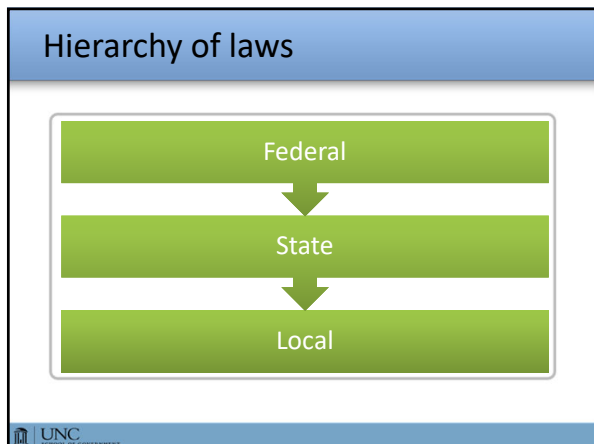
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What do you think?

A North Carolina state law (G.S. 130A-39) authorizes local boards of health to adopt rules to protect and promote the public health, but adds: "However, a local board of health may not adopt a rule concerning the grading, operating, and permitting of food and lodging facilities" that are regulated by state law.

May a local board of health adopt a rule that adds requirements to the state standards for restaurants, and denies a permit to restaurants that don't meet the local requirements?

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Preemption

- Federal law may preempt state/local law
- State laws may preempt local laws/rules
- Preemption may be **express** or **implied**
 - **Express:** A higher law-making body specifically prohibits action in a particular area by lower law-making bodies
 - **Implied:** A higher law-making body has not said lower law-making bodies may not act in the particular area, but it has “occupied the field,” possibly by providing a “complete and integrated regulatory scheme.”

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FINDING & GETTING HELP WITH THE LAW

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Different lawyers, different roles


- Who is your lawyer?
 - Attorney who represents health department
 - Often the county attorney
 - Sometimes the state Attorney General's office
 - Attorney for agency's insurance carrier
- Role of SOG attorneys
 - Educational, not representational
 - No attorney-client relationship (therefore no attorney-client privilege)



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What to expect from conversation


- "Issue-spotting" with focus on *legal* issues
- Keen interest in facts – different facts may produce different answers to same question
- Methods for dealing with ambiguous laws:
 - Interpretation rules
 - Drawing analogies
- Possibility of no answer or competing answers:
 - Law may be ambiguous or silent on a particular question
 - Response may describe options and/or risks to weigh rather than giving "solid" answer



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Finding the law

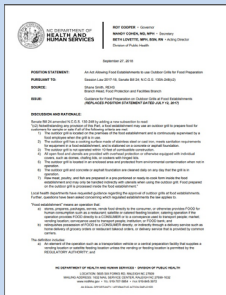
- Many resources (statutes, regulations, cases) are now available online
 - www.ncleg.net: NC General Assembly website – bills, session laws, General Statutes
 - <http://reports.oah.state.nc.us/ncac.asp>: NC Administrative Code
 - www.nccourts.org: North Carolina cases – Court of Appeals & Supreme Court



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Other sources of legal info

- NC Attorney General Advisory Opinions
- Agency policies or guidance regarding how laws will be enforced
 - Position statements: <https://ehs.ncpublichealth.com/positionstatements.htm>
- UNC School of Government publications, blog posts, and websites
 - www.ncphlaw.unc.edu
 - www.sog.unc.edu



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A final source: legal advice

Sometimes there is no statute, rule, or case that answers a legal question, but you need a lawyer's advice on what to do.



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