

Memo

TO: GERARD A. ECKSTEIN, SD
FROM:
DATE: NOVEMBER 17, 2006
RE: KOC AND THE SMOKING BAN

You posed the question as to how the new smoking ban will impact a private club owned by a fraternal organization.¹ According to R.C. § 3794.05(G), private clubs are exempt from the ban, as long as the club meets a number of requirements. These requirements are:

- The private club must meet the definition of R.C. § 4301.01(B)(13). This definition includes a corporation or association organized in good faith for charitable or fraternal purposes. The KOC falls under this definition.
- The private club must have no employees
- The private club must be organized as a not for profit entity
- Only members of the club are present in the club's building
- No persons under the age of eighteen are present in the club's building
- The club is located in a freestanding structure occupied solely by the club
- Smoke from the club does not migrate into an enclosed area where smoking is prohibited and
- If the club serves alcohol, it must hold a valid D4 liquor permit²

So, the short answer is a qualified yes. Should the private club fail to meet the preceding requirements, the smoking ban will apply.

Should the club fail to comply with the smoking ban and anyone files a report of the violation, the department of health will investigate the report and determine whether a violation occurred.³ In the event the department of health concludes a violation occurred, it will issue a warning letter, in the instance of a first violation, and level a fine, in the instance of a second violation.⁴ Fines range from a minimum of \$100.00 to a maximum of \$2,500.00.⁵ Each separate day of violation constitutes a separate violation and a separate fine. Intentional violations result in doubled fines.⁶

¹ See attached phone message printout.

² R.C. 3794.03(G) – see attached.

³ R.C. 3794.09(A)-(B).

⁴ *Id.*

⁵ R.C. 3794.07(B).

⁶ *Id.*