

**LOCAL GOVERNMENT REGULATIONS
CAN BE JUST AS BURDENSOME TO YOUR BUSINESS AS
STATE AND FEDERAL LAWS**

By: Michael J. Brown/July 2002

When most people think of "big government" or excessive government regulations, they often think first of state or federal regulations as having the most impact on their business. While it is true that state and federal laws and regulations are extremely burdensome and seemingly non-ending, there is still another level of regulations that can cause you just as many problems in your business.

Recently, we have seen a number of local governments' efforts at regulations or ordinances that could also significantly impact how you run your business. For example, a few years ago the City of Marquette proposed an ordinance totally banning smoking in restaurants. Both the Marquette Circuit Court and the Michigan Court of Appeals ruled the proposed ordinance was improper because the State of Michigan already had a law on the books regulating smoking in restaurants. The Michigan Court of Appeals' Opinion issued in March, 2001, found that the Marquette ordinance conflicted with existing Michigan law which allows restaurants (and bars that serve food) to designate up to 50% of its seating capacity as seating for smokers. The Marquette case found that totally banning smoking in a restaurant or bar that served food would create conflict in the law and thus was invalid. The Michigan Court of Appeals did not say that any and all attempts at regulating smoking in a restaurant or bar would be prohibited, but only that the method of regulation, or ordinance, adopted by the City of Marquette was invalid. The Court of Appeals left the door open for other possible means of additional regulations on smoking in bars and restaurants.

With the window of possible regulations left slightly ajar by the Court of Appeals, we have recently seen efforts to further restrict this otherwise legal activity in Ingham County and Washtenaw County. In Ingham County, the Board of Commissioners recently adopted an ordinance limiting workplace smoking in practically all public areas and buildings except bars, restaurants and bowling alleys. The decision to leave out additional regulations on smoking in bars, restaurants and bowling alleys was a direct result of the Court of Appeals' decision in the Marquette case as many Ingham County Commissioners openly discussed the likelihood of a lawsuit challenging the ordinance if those places were also included in the ordinance. Thus, for the time being, the local ordinance does not yet apply to bars and restaurants. Comments by many of the County Commissioners indicate, however, that in time they hope to expand the ordinance to include bars, restaurants and bowling alleys. This gradual approach to regulation is one more way local governments can "eat away" at changing the laws and regulations applicable to your business, but doing so over a period of time and in smaller increments makes the changes seem not so harsh

Carlin, Edwards, Brown & Howe, PLLC

Attorneys & Counselors at Law

www.cebhlaw.com

John B. Carlin, Jr.+
Scott D. Edwards+
Michael J. Brown*
J. Patrick Howe+

Central Michigan*
6017 West St. Joe Hwy., Suite 202
Lansing, Michigan 48917
P. (517) 321-4616/F. (517) 321-4642

Southeast Michigan+
2855 Coolidge Hwy., Suite 203
Troy, Michigan 48084
P. (248) 816-5000/F. (248) 816-5115

Northern Michigan
213 East Main St., 2nd Floor
Gaylord, Michigan 49735
P. (989) 688-5946/F. (989) 688-5901

or restrictive. In the end, however, you still end up with excessive regulation of your business, and increased costs associated with complying with all these new laws.

In Washtenaw County, we are seeing a different approach taken that has the same effect of regulating smoking in your building. Washtenaw County local officials propose to regulate the amount of smoke in the air within your building instead of regulating the act of smoking directly. In other words, smoking itself will not be prohibited but the air within your building must meet certain "clean air" requirements or else you will be found in violation of the ordinance. To comply with these requirements, all bars and restaurants in Washtenaw County would almost certainly have to either (a) ban or significantly reduce smoking in their establishments or (b) install expensive air cleaning equipment to offset the effects of smoking. Either way, you, as the businessperson, lose. In effect, your local government will have decided for you how your business should be run.

Not all infringing local ordinances have to do with smoking issues. A few years ago, the City of Springfield proposed a local ordinance that would have allowed the City to recommend non-renewal of a liquor license within the City if property tax payments were not made on time.

In writing the ordinance, however, the City of Springfield went on to create new and different requirements for owning a liquor license even more burdensome than the requirements imposed by the Michigan Liquor Control Commission. The ordinance proposed by the City of Springfield would have imposed tougher, and more stringent, requirements on both new applicants for liquor licenses and those current licensees who sought to renew their license within the City. Several licensees organized a protest to the proposed ordinance and were successful, after testifying at public hearings on the proposed ordinance, in having the matter defeated.

Licensees should be constantly on the alert for proposed ordinances and other forms of "local control" regulations that might affect their business. State and federal law changes often get reported by the media. But only you can keep track of, and watch out for, new laws and regulations being created at the local level. Township officials, city councils and county boards of commissioners are often staffed with people who have their own agendas or who are working to make a name for themselves, one way or another. Although the vast majority of local officials are decent, hard-working people who you can trust to do the right thing, there are always a few that you have to keep your eye on at all times. These are the ones who are most dangerous to you and your business.