

**Clermont County General Health District  
Board of Health Meeting – Special Session**

A special session of the Clermont County Board of Health was held on September 30, 2009, at 9:00 a.m. The purpose of the special session was to conduct Smoke-free Workplace Administrative Reviews for Milford American Legion Post 450, 450 Victor Stier Drive, Milford, OH, 45150 and Mt. Carmel Pub, 4501 Mt. Carmel Tobasco Road, Cincinnati, OH, 45244.

James Hansbauer, President, called the meeting to order at 9:00 a.m.

Roll call:        James Hansbauer, present                      Dr. William Miller, present  
                      Dr. Janet Rickabaugh, present                      Andrew Crum, present  
                      Larry Cadwallader, present

Others present included: Marty Lambert, Health Commissioner; Elizabeth Mason, Assistant Prosecuting Attorney for Clermont County; Rob Perry, Director of Environmental Health; Sarah Pounder, Smoke-Free Ohio Program Manager for the Health District; Donna Hart, Administrative Assistant; Julie Patrick, Court Reporter; Don Chandler, Adjutant for Post 450; Charlie Thomas, bartender for Post 450; and Marshall McCachran, Attorney representing American Legion Post 450.

**Smoke-free Workplace Administrative Review**

**American Legion Post 450** - On behalf of the Clermont County Board of Health, Marty Lambert, Health Commissioner, called to order the Administrative Review of the Clermont County General Health District's Notice of Proposed Civil Fine in the amount of \$500 issued to Milford American Legion Post 450, 450 Victor Stier Drive, Milford, OH 45150. It was noted the Health District was represented by Elizabeth Mason, Assistant Prosecuting Attorney for Clermont County and American Legion Post 450 was represented by Attorney Marshall McCachran.

Ms. Lambert stated the purpose of the Administrative Review and presented an overview of the administrative review procedures which would be followed.

The witnesses; Sarah Pounder, Don Chandler and Charlie Thomas, were sworn in by the Court Reporter.

Ms. Mason presented a summary of the Smoke-Free Workplace inspection history for American Legion Post 450 which included complaint #7741 made on April 21, 2009, and the resulting \$500 fine. Ms. Mason presented Exhibit #1 and requested it be made a part of the official transcript of the hearing.

Ms. Pounder gave testimony regarding her investigation on April 23, 2009, of smoking complaint #7741 made against American Legion Post 450, 450 Victor Stier Drive, Milford, OH. She stated the persons she observed smoking during her investigation were seated at a video console and a bar which are located in an annex to the main building. Ms. Pounder stated that following her investigation in the annex building, she proceeded to the main building and presented the person in charge, Charlie Thomas, with a copy of the Notice of Report and informed him the facility was in violation of the Smoke Free Workplace law.

Mr. Chandler, Adjutant for American Legion Post 450, gave testimony in defense of the complaints against the facility, including the American Legion's past attempt to seek a ruling on whether the annex would be considered a permissible smoking area and the lack of a response on their request. Mr. Chandler testified that when Ms. Pounder was informed of the Legion's past request regarding smoking in the annex building she contacted the appropriate officials and was given a ruling that the annex was included on the permits and smoking was not prohibited in that area and she immediately relayed the information to him.

Mr. Thomas, bartender for American Legion Post 450, gave testimony that until Ms. Pounder had obtained an official ruling on smoking in the annex he was not aware that it was not an appropriate area in which to smoke and since receiving the information he was directing members to go outside to the deck area to smoke.

Following the presentation of summaries by Ms. Mason and Mr. McCachran, Ms. Lambert stated the Board of Health would deliberate the matter involving American Legion Post 450 in Executive Session. She related that a copy of the Board's final decision would be mailed to Mr. Chandler and his legal counsel, Mr. McCachran, within 30 days of the next Board of Health meeting scheduled for October 14, 2009, at which time the minutes of today's special meeting would be approved. Ms. Lambert informed Mr. McCachran and Mr. Chandler that if they wanted to wait until the Board returned to Regular Session, they would be able to hear the decision today, with formal notification to follow after the October 14, 2009, Board of Health meeting.

The hearing was closed at 9:30 a.m.

At 9:30 a.m. Mr. Crum made a motion to go into Executive Session to discuss legal issues. The motion was seconded by Dr. Rickabaugh. The vote was all aye, motion carried.

At 9:55 a.m. Mr. Crum made a motion to return to Regular Session. The motion was seconded by Dr. Rickabaugh. The vote was all aye, motion carried.

Mr. Crum made a motion to find the complaint against American Legion Post 450 valid for violating the Smoke Free Workplace Law but due to the possible lack of education on the Smoke-Free Workplace rules, to suspend the \$500 fine. If the Health District receives and investigates another Smoke-Free Workplace complaint against the facility and it is found to be a valid, the fine levied will pick-up at the third level of offense. The motion was seconded by Dr. Rickabaugh. The vote was as follows: Mr. Hansbauer, aye; Mr. Crum, aye; Mr. Cadwallader, abstained; Dr. Rickabaugh, aye; Dr. Miller, aye. The vote was 4 aye, 1 abstention, motion carried.

Following a brief recess the Special Session of the Board of Health reconvened with Jim Martin, co-owner of Mt. Carmel Pub and George Pattison, Attorney representing Mt. Carmel Pub present.

#### **Smoke-Free Workplace Administrative Review**

**Mt. Carmel Pub – 4510 Mt. Carmel Tobasco Road** – At 10:00 a.m., on behalf of the Clermont County Board of Health, Marty Lambert, Health Commissioner, called to order the Administrative Review of the Clermont County General Health District's Notice of Proposed Civil Fine in the

amount of \$500 issued to Mt. Carmel Pub , 4501 Mt. Carmel Tobasco Road. It was noted the Health District was represented by Elizabeth Mason, Assistant Prosecuting Attorney for Clermont County and Mt. Carmel Pub was represented by Attorney George Pattison.

Ms. Lambert stated the purpose of the Administrative Review and presented an overview of the administrative review procedures which would be followed.

The witnesses, Sarah Pounder and Jim Martin, were sworn in by the Court Reporter.

Ms. Mason presented a summary of the Smoke-Free Workplace inspection history for Mt. Carmel Pub which included complaint #7813 made on May 21, 2009, and the resulting \$500 fine.

Ms. Pounder gave testimony regarding her investigation on May 22, 2009, of smoking complaint #7813 made against Mt. Carmel Pub, 4503 Mt. Carmel Tobasco Road, Cincinnati, OH. She stated she observed three persons smoking when she entered the establishment. Ms. Pounder stated she completed a Notice of Report and gave it to the person in charge at the time of her investigation informing him the facility was in violation of the Smoke Free Workplace law.

Mr. Martin, co-owner of Mt. Carmel Pub, gave testimony in defense of the complaints against the facility. Mr. Martin stated his employees had been instructed to make every attempt to keep patrons from smoking up to the point of using physical force. He stated he had contacted Union Township police and although they were very cooperative with other issues, they informed him it was not their responsibility to enforce the Smoke-Free Workplace law. Mr. Martin testified that he was doing everything possible to enforce the law and he felt complaints were being made against his establishment by competitors.

Following the presentation of summaries by Ms. Mason and Mr. Pattison, Ms. Lambert stated the Board of Health would deliberate the matter involving Mt. Carmel Pub in Executive Session. She related that a copy of the Board's final decision would be mailed to Mr. Martin and his legal counsel, Mr. Pattison, within 30 days of the next Board of Health meeting scheduled for October 14, 2009, at which time the minutes of today's special meeting would be approved. Ms. Lambert informed Mr. Martin and Mr. Pattison that if they wanted to wait until the Board returned to Regular Session, they would be able to hear the decision today, with formal notification to follow after the October 14, 2009, Board of Health meeting.

Mr. Pattison made comment that in his opinion it was not appropriate to deliberate this issue in Executive Session.

The hearing was closed at 10:40 a.m.

At 10:40 a.m. Mr. Crum made a motion to go into Executive Session to discuss legal issues. The motion was seconded by Dr. Rickabaugh. The vote was all aye, motion carried.

At 10:50 a.m. Mr. Crum made a motion to return to Regular Session. The motion was seconded by Dr. Rickabaugh. The vote was all aye, motion carried.

Mr. Crum made a motion to uphold the Clermont County General Health District's Notice of Proposed Civil Fine in the amount of \$500 issued to Mt. Carmel Pub, 4501 Mt. Carmel Tobasco Road, Cincinnati, OH. The motion was seconded by Dr. Rickabaugh. The vote was as follows: Mr. Hansbauer, aye; Mr. Crum, aye; Mr. Cadwallader, aye; Dr. Rickabaugh, aye; Dr. Miller, nay. The vote was 4 aye, 1 nay, motion carried.

**ADJOURNMENT**

Mr. Crum made a motion to adjourn the meeting at 10:52 a.m. The motion was seconded by Dr. Rickabaugh. The vote was all aye, motion carried.

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JAMES HANSBAUER, PRESIDENT

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ANDREW CRUM, V-PRESIDENT

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DR. WILLIAM MILLER

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LARRY CADWALLADER

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DR. JANET RICKABAUGH

Respectfully Submitted  
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