

# Laws on the Table

## Smoking Ban Fumes

Second in a Series

### Lexington's Smoking Ban Update

By Matt O'Neil PREP Magazine Correspondent

#### Lexington's Smoking Update

The first challenge to Lexington's indoor smoking ban will go to court on September 24. On July 27, Fayette County District Court Judge David Hayse ruled that Lexington Bingo Associates, LLC must answer the citation. The Florida-based company had claimed that it was exempt from the ban because it rents its facility to a private charity. Fayette County Health Department officials counter that because the public is allowed in the parlor, the ban applies.

In an effort to crackdown on persistent smoking ban violators, Lexington health department officials, accompanied for the first time by police escort, inspected 20 establishments in Fayette County, issuing 15 citations. Thirteen of the 15 businesses cited had been issued citations previously, and all had had multiple citizen complaints filed against them. Three establishments were issued two citations each, one on the same visit and the other two upon repeat visits the same evening. Five health department teams, comprised of two health department inspectors and two Lexington Police officers made their rounds between 7 p.m. and 9:30 p.m.

Officials say police were added because health department officials have experienced verbal harassment in the past and some have been followed to their cars. However, adding uniformed officers also sent a message to bar and restaurant owners who have been violating the ban. "I think it shows people that this is serious. We have been continually writing citations, but this is just a little stepped-up enforcement" Christine Atkinson, acting director for the Lexington-Fayette County Health Department

told the Lexington Herald-Leader. "This just needed some aggressive attention." As of August 19, the city had received 455 citizen complaints resulting in 64 citations issued to 23 individual establishments. The first smoking ban challenge, involving Lexington Bingo, LLC, will go to court on September 24.

#### Are Servers Independent Contractors?

Can restaurant servers be treated as independent contractors? Furlongs restaurant owner Tommy Walters thought yes, much to the chagrin of the Department of Labor. Beginning on July 12, Mr. Walters had his servers sign an agreement stating that pay would come solely from customers and that taxes and worker's compensation were their responsibilities. The contract was drawn up by Furlong's manager Tony Stewart, who in the past had been informally paid as an independent contractor while serving at other Lexington restaurants. Mr. Stewart said he preferred the arrangement for himself.

According to Jim Rogers, district director of the Wage and Hour Division of the U. S. Department of Labor in Louisville, the nature of the relationship determines when an employee can be considered an independent contractor. Determining factors include the nature of the services provided, and how much control the owner has over the hire. "Independent contractors are in business for themselves. They hire themselves out," said Mr. Rogers. "They have equipment and facilities to run their business. They may advertise. They may hire employees" Mr. Walters counters that the relationship between server and restaurant is the same as exotic dancer and gentleman's club owner. "What would be the difference between exotic dancer at one of those strip clubs? They pretty much

work like a server. They get paid by their customers. In fact, some girls even have to pay the place to work." After hearing from Labor Board investigators Walters has decided not to continue his new policy.

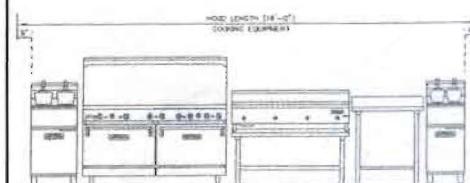
"I still don't see why it wouldn't be OK for a server to be an independent contractor," he said. "(But) I'm not fighting it."

The Labor Board will nevertheless complete its investigation.

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