

SMOKING IN THE LEGISLATIVE WING - BACKGROUND

This memorandum addresses the statutory and legislative rule provisions relating to smoking in areas of public assembly, specifically the legislative wing of the State Capitol.

STATUTORY RESTRICTIONS REGARDING SMOKING

North Dakota Century Code (NDCC) Sections 23-12-09 through 23-12-11 relate to smoking in places of public assembly. As originally enacted in 1977, Section 23-12-10, in relevant part, provided:

[I]n every place of public assembly there shall be an area where smoking is not permitted, which shall be designated a no-smoking area. The designation shall be made by the person with general supervisory responsibility over the place of public assembly before the place of public assembly is next or first made available to the public after the effective date of this Act.

Thus, smoking was generally permitted in places of public assembly, and any nonsmoking area had to be designated as a no-smoking area. This changed in 1987, when the Legislative Assembly enacted House Bill No. 1272, which substantially amended the statutes on smoking restrictions. As amended in 1987, Section 23-12-10, in relevant part, provided:

Every place of public assembly is an area where smoking is not permitted outside of designated smoking areas. Smoking areas must be designated by the proprietor or other person with general supervisory responsibility over the place of public assembly, except in a place in which smoking is prohibited by the state fire marshal, by other governing law, rule, or ordinance, or by corporate or private policy. A sign must be posted in any designated smoking area which states "Designated Smoking Area" or words to that effect.

With the 1987 changes, places of public assembly generally became no-smoking areas, but proprietors were required to designate smoking areas. With respect to the amount of space to be designated, Section 23-12-10 provided that a smoking area in a place of public assembly may not occupy more than 50 percent of the total area available to the public. The next change to this section came in 1993, when the Legislative Assembly changed the designation of smoking areas from a mandatory requirement to a permissive authorization. As amended in 1993 and currently in effect, this section, in relevant part, provides:

Smoking is not permitted outside of designated smoking areas in places of public assembly as provided in this section. Smoking areas may be designated only by

proprietors of privately owned buildings or by public officials having general supervisory responsibility for government buildings. No smoking area may be designated in a place in which smoking is prohibited by the state fire marshal. A sign must be posted in any designated smoking area which states "Designated Smoking Area" or words to that effect.

Section 23-12-09 defines a place of public assembly as including any building or other enclosed structure owned or leased by the state, its agencies, or political subdivisions, and all public education buildings. Section 23-12-11 provides that any proprietor or other person with general supervisory responsibility over a place of public assembly who willfully fails to comply with Sections 23-12-09 through 23-12-11 is subject to a fine not to exceed \$100 per violation.

LEGISLATIVE RULES

The first legislative rule relating to smoking in areas of the legislative wing was adopted by the House in 1979. House Rule 87 provided:

There shall be no smoking in the committee rooms.

House Rule 87 was redesignated as House Rule 511 in 1981. In 1985, House Rule 511 was amended to read:

Each committee shall decide if smoking by members only is to be permitted in the committee's room, and each committee that permits smoking by members shall, to the extent possible, designate a smoking section of the room.

In 1987, the House adopted House Rule 105, which provided:

There may be no smoking in the House chamber while the House is in session.

In 1987, the Senate adopted its first rule relating to smoking. Senate Rule 105, as adopted in 1987 and currently in effect, provides:

No person may smoke in the Senate chamber. "Smoke" includes the carrying of a lighted cigarette, lighted cigar, or lighted pipe.

In 1989, the House amended House Rule 105 to somewhat track Senate Rule 105. House Rule 105, as amended, provided:

No person may smoke in the House chamber. "Smoke" includes the carrying of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted smoking equipment.

In 1991, the House repealed House Rule 511, relating to smoking in committee rooms, and amended House Rule 105 to apply to committee rooms in addition to the House chamber. House Rule 105, as amended in 1991 and currently in effect, provides:

No person may smoke in the House chamber or in House committee rooms. "Smoke" includes the carrying of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted smoking equipment.

As a result of the 1993 statutory changes to NDCC Section 23-12-10, the legislative chambers, committee rooms, and other areas in the legislative wing are no-smoking areas. Because the statute prohibits smoking in public areas except in designated areas, Senate Rule 105, as adopted in 1987, and House Rule 105, as adopted in 1991, are not necessary to prohibit smoking in the areas identified in those rules.

In 1991, both houses adopted Joint Rule 804, relating to smoking in areas used by the Legislative Assembly. Joint Rule 804 provided:

The legislative study room on the first floor of the state capitol is a designated smoking area during a legislative session for members of the Legislative Assembly, guests specifically invited by members of the Legislative Assembly, and employees of the legislative branch. No other space in the state capitol which is used by the Legislative Assembly, including the chambers, committee rooms, halls, passageways, and restrooms, may be designated as a smoking area.

In 1993 each house adopted a different version of Joint Rule 804. Consequently, neither version of the joint rule became effective because neither version was adopted by both houses. The Senate version of Joint Rule 804 was the same as it existed in 1991. The House version, however, replaced "employees of the legislative branch" with "state employees." There has been no joint rule designating a smoking area in the legislative wing since 1991.

SUPERVISORY RESPONSIBILITY OVER THE LEGISLATIVE WING

North Dakota Century Code Section 54-21-17.1 requires the director of the Office of Management and Budget to see to the security of the State Capitol, and keys to doors in the legislative wing must be issued and controlled by the Legislative Council when so requested by the Office of Management and Budget. Section 54-21-17.1 primarily relates to security. Traditionally, the Legislative Assembly has exercised supervisory control over areas it uses within the State Capitol. In 1979, for example, the appropriation for improvements to and renovation of the legislative wing was to the Legislative Assembly and the contracting agent was the Legislative Council.

Joint Rule 803 provides that during a legislative session, committee rooms under the jurisdiction of the Senate or House and hearing rooms under the jurisdiction of the Legislative Assembly may be used only for the functions and activities of the legislative branch, except as otherwise provided by that rule. The rule further provides that a state agency may be granted permission by the Secretary of the Senate or Chief Clerk of the House, individually with respect to a room under the jurisdiction of the Senate or House, respectively, or jointly with respect to a room under the jurisdiction of the Legislative Assembly, to use a room at times and under conditions not interfering with the use of the room by the legislative branch. The Senate and House each appoint a procedural Committee on Committee Rooms to designate the rooms in which committees of that house are to meet. Section 48-08-04 provides that during the interim between legislative sessions, the committee rooms, halls, passageways, and other space in the State Capitol used by the Legislative Assembly may not be used without authorization of the Legislative Council or its designee.