

**N.D.A.G. Letter to Green (May 12, 1987)**

May 12, 1987

Mr. Jerry G. Green, M.D.  
Chief, Pulmonary Section  
University of North Dakota  
2100 North Elm  
Fargo, ND 58102

Dear Dr. Greene:

Thank you for your letter of April 6, 1987, regarding smoking control at Air National Guard facilities.

N.D.C.C. § 23-12-09 defines a "place of public assembly" for purposes of smoking control. N.D.C.C. § 23-12-09(2) states, in part:

23-12-09. SMOKING IN PLACES OF PUBLIC ASSEMBLY --  
DEFINITIONS.-

\* \* \*

2. All buildings and other enclosed structures owned by the state, its agencies, or political subdivisions, . . .

N.D.C.C. § 23-12-10 states:

23-12-10. NONSMOKING AREAS DESIGNATED.--For the purpose of separating persons who smoke from persons who do not smoke for the comfort and health of the persons not smoking, in 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 July 1, 1977.

Air National Guard facilities are buildings owned by the State of North Dakota and are therefore subject to §§ 23-12-09 and 23-12-10. Further, the General Services Administration has indicated to our office that state guidelines apply in Air National Guard facilities.

Under current law, the person with general supervisory responsibility for each Air National Guard facility must designate a nonsmoking area.

Please note that HB 1272 regarding designation of smoking areas was passed by the 1987 legislative assembly and will become effective as of July 1, 1987. A copy of the engrossed bill is attached for your information.

Under HB 1272, it is my opinion that smoking areas must be designated in Air National Guard facilities by the person with general supervisory responsibility unless smoking is prohibited by rules which have been adopted by the Air National Guard. Further, a sign must be posted in any designated smoking area which states "Designated Smoking Area" or words to that effect.

Designated smoking areas in a place of public assembly may not occupy more than fifty percent of the total area available to the public and must be situated to minimize smoke drift.

Should you have any further concerns or questions, please contact the State Department of Health.

Sincerely,

Nicholas J. Spaeth

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