



# VIEW FROM THE BAR

by Marc Reisman, Esq.

## Where There's Smoke, There May Be a Citation

As I've mentioned in previous columns, the Pennsylvania Liquor Code contains a "kitchen sink" provision that authorizes the Pennsylvania State Police Bureau of Liquor Control Enforcement to cite liquor licensees for violation of *any* Pennsylvania law, in addition to a violation of any particular provision of the Liquor Code itself. Examples of typical citations in this category include citations for violation of the Pennsylvania Human Relations Act for "Ladies Only" promotions and for violation of gambling laws.

Effective September 2008, the Legislature added another "kitchen sink" basis for citing liquor licensees: violation of the Pennsylvania Clean Indoor Air Act. The Act does provide for exceptions for some liquor licensees, but only if they meet – and continue to meet every year – all the qualifications and requirements set forth

in the Act. While discussion of those qualifications and requirements is beyond the scope of this column, suffice to say that the Act provides fertile grounds for the State Police to plow – and plowing they are.

The most obvious grounds with respect to violating the Clean Indoor Air Act (i.e., permitting smoking in a public place where it is not allowed) materialize when the State Police discover that the licensee is permitting smoking without having obtained a bona fide exemption under the Act from the Pennsylvania Department of Health, Division of Tobacco Prevention and Control. Typically, the State Police add a second charge: that the licensee failed to post the signage required by the Act.

In my experience, the fines for a first violation of the Act are relatively modest; however, I have been cautioned that they will increase upon repeated violations. Such citations will also count under the Liquor Code's three-strike rule so that upon the third or subsequent violation of the Liquor Code within four years, the Administrative Law Judge must impose a suspension (or revocation) of the liquor license.

*This column is brought to you as a public service by Marc Reisman, a partner in the law firm of Gelman & Reisman. If you have an issue you would like to see addressed, or if you would like a reprint of a previous column, write to him at 429 4th Avenue, Suite 1701, Pittsburgh, PA 15219, or call 1-800-883-1LAW. This column is intended for informational purposes only. Consult Mr. Reisman for legal advice specific to your situation.*

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