
Coates' Canons Blog: Does North Carolina's New Smoking Ban Apply to your Country Club?

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UPDATE: In March 2012, the N.C. Court of Appeals held that the smoking law's exemption for country clubs extends only to nonprofit country clubs. *Edwards v. Morrow*, 725 S.E.2d 366 (N.C. App. Mar. 20, 2012), appeal dismissed and review denied, 2012 WL 6651164 (N.C. Dec. 12, 2012). For more information, see this [post](#).

Since January 2, 2010, smoking has been prohibited in most restaurants and bars in North Carolina, as well as many lodging establishments. However, there is an exception to the ban for private clubs. **G.S. 130A-492(11)** defines a "private club" as "a country club or an organization that maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or member's guest, and is" a non-profit establishment. The definition concludes, "for the purposes of this Article, private club includes country club." In the weeks since the law took effect, this provision has provoked two frequently asked questions: (1) How do you know if an establishment is a country club? Must it meet certain criteria, or is it sufficient if the establishment simply uses the words "country club" in its name? (2) To be exempt from the smoking ban, must a country club (whatever that is) meet the conditions set forth in the definition for private clubs?

What is a "country club"?

The General Assembly did not define the term, so we can't know for sure what kinds of establishments the legislators had in mind. When a term in a statute is undefined, the rules of statutory construction direct us to give it its plain and ordinary meaning. One way to discern the plain and ordinary meaning is by referring to dictionary definitions. Here are a few dictionary definitions of "country club":

- From the American Heritage Dictionary: "A suburban club for social and sports activities, usually featuring a golf course."
- From Merriam-Webster: "A suburban club for social life and recreation; *especially*: one having a golf course."
- From dictionary.com: "A club, usually in a suburban district, with a clubhouse and grounds, offering various social activities and generally having facilities for tennis, golf, swimming, etc."

The dictionary definitions aren't exactly the same and they offer examples, rather than definitive lists, of the types of activities or facilities one might find in country clubs. For example, even though they all refer to golf courses, the definitions don't say a club must have a golf course to be a country club—rather, I read them simply to imply that you often find golf courses at country clubs. Still, the definitions have enough similarities that I think we can begin to get a picture of what a country club is. Of course we also have to consider, what is a "club"? There are multiple definitions of that term as well but I think the ones that are most likely to be applicable in this context are those that refer to entities that provide benefits to members who pay dues.

Applying these definitions and my personal experience with establishments that have traditionally been called country clubs in North Carolina, I would probably conclude that a country club is a social club that is open only to dues-paying members and their guests, and that offers outdoor recreational activities, such as golf, tennis or swimming (but not necessarily all of them). But this is just one person's opinion. What do you think?

Regardless of the ultimate definition of the term, I do not believe an establishment such as a conventional restaurant may reasonably claim the country club exemption simply by changing its name to include the words "country club" (e.g., Jill's

Pizza Parlor & Country Club). However, in the absence of a definition, I think there will continue to be questions about whether the term country club may reasonably be interpreted to embrace different types of facilities that are restaurants or bars under the smoking law's definitions, but also have dues-paying members and offer recreation of some type.

To qualify for exemption from the smoking ban, must a country club meet the four conditions for private clubs that are in the legislation?

To review, those conditions are : (1) maintains selective members, (2) is operated by the membership, (3) does not provide food or lodging for pay to anyone who is not a member or a member's guest, and (4) is a nonprofit organization under NC laws or exempt from federal income tax under the federal tax laws.

The statute is unclear on this issue. On one hand, it defines a "private club" as "a country club *or* an organization that [meets the above conditions]" (emphasis added). So, one reasonable interpretation of this section is that the use of the word "or" means these are separate things—country clubs are exempt regardless of whether they meet the four conditions, but other private clubs must meet the four conditions. On the other hand, the term country club is not further defined or explained anywhere, and the definition of private club concludes with this statement: "For the purposes of this Article, private club includes country club." That statement may be interpreted to mean that country clubs are encompassed in the portion of the definition of "private club" that establishes the four conditions that must be met for a club to be exempt from the smoking ban. This is the **interpretation the NC Division of Public Health has embraced** for purposes of local health department enforcement of the smoking ban.

In my view, the bottom line is that the law is ambiguous on these questions; however, the NC Division of Public Health's interpretations are the ones that are likely to be relied on at the local level. Therefore, as a practical matter, it is likely that a club that is otherwise subject to the smoking ban (because it meets the definition of bar or restaurant) will not be considered exempt from the ban unless it meets the four conditions described above, regardless of whether it meets a dictionary definition of "country club" or includes those words in its name.

My colleague Aimee Wall has written extensively on smoking regulation in North Carolina and has produced a set of frequently asked questions on the new smoking law. Those materials are available on the **smoking regulation topic page** of the **SOG's NC Public Health Law website**.

Links

- canons.sog.unc.edu/?p=7000
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_130A/GS_130A-492.html
- tobaccopreventionandcontrol.ncdhhs.gov/smokefreenc/faq.htm
- www.sog.unc.edu/resources/microsites/north-carolina-public-health-law/smoking-public-places-and-other-tobacco-regulation
- www.ncphlaw.unc.edu/