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The Honorable Dean Sorensen
Idaho House of Representatives
STATEHOUSE MAIL

THIS IS NOT AN OFFICIAL ATTORNEY GENERAL OPINION BUT IS SUBMITTED SOLELY TO PROVIDE LEGAL GUIDANCE

Re: House Bill 65

Dear Representative Sorensen:

You have requested our review of House Bill 65 to determine whether or not the term "public place" as defined by the proposed Clean Indoor Air Act includes private offices. It is our conclusion that the bill as drafted was not intended to apply to private offices. Nevertheless, it may be advisable to amend the definition of "public place" to specifically exclude private offices.

The term "public place" has been interpreted by many courts on numerous occasions. Generally, the courts have indicated that "public place" means an enclosure, room or building considered as one in which, by public invitation, members of the public attend for reasons of business, entertainment, instruction or the like and are welcome as long as they conform to what is customarily done there. See People ex rel. Cheever v. Harding, 72 N.W. 2nd 33, 35, 343 Mich. 41, Nelson v. City of Natchez, 19 So.2d 747, 197 Miss. 26. The term "public" as applied to "place," is not an absolute, but a relative term and is used in contradiction to the term "private." State v. Sowers, 52 Ind. 311, 312; State v. Waggoner, 52 Ind. 481; Cahoon v. Coe, 57 N.H. 556, 595 cited and approved in Territory v. Lennon, 22 P. 495, 9 Mont. 1. "Public place" is, generally speaking, a place openly and notoriously public, a place of common resort; a place where all persons have the

right to go and be; a place which is in point of fact public, as distinguished from private; a place that is visited by many persons and usually accessible to the neighboring public; every place which is for the time made public by the assemblage of people. People v. Whitman, 165 N.Y.S. 148, 149, 178 App. Div. 193. A place may be public during some hours during the day and private during other hours. Gomprecht v. State, 37 S.W.2nd 734, 735, 36 Tex.Crim.Rptr. 434, Parker v. State, 26 Tex. 204, 207.

Specific cases dealing with the definition of the term "public place" have generally dealt with gambling matters, indecent exposure or drunk in public charges, and the requirement that notices must be published in public places. Cases dealing with offices have found that lawyers' offices (Burdine v. State, 25 Ala. 60, 63, Parker v. State, 26 Texas 204, 207) and physicians' offices (Sherrod v. State, 25 Ala. 78, 79) are not "public places" in relationship to the enforcement of gambling laws, while hotel offices are. See Goodwin v. Georgian Hotel Company, 84 P.2d 681, 684, 197 Wash. 173 . In short, the term "public place" means a place which in point of fact is public, as distinguished from private, but not necessarily a place devoted solely to uses of the public. State v. King, 151 S.E. 2d 566, 567, 268 N.C. 711.

It is our conclusion therefore that the term "public place" as used in the statute would probably not apply to a private office. Nevertheless, the following language could be added to clarify this point:

> Public place shall not include a private enclosed office occupied singly or jointly by less than (insert number) employees.

I hope this analysis is useful. If there is anything further I can provide, please do not hesitate to call upon me.

Very truly yours,

PATRICK J. KOLE
Chief, Legislative and
Public Affairs Division

PJK/tg