Bureaucratic Advocacy and Ethics A State-Level Case of Public Agency Rulemaking and Tobacco Control Policy

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Abstract

Before 2001, the Oklahoma Department of Health achieved little to protect the public from the dangers of secondhand tobacco smoke. In an ongoing effort between 2000 and 2003, the department joined with health groups to lobby for stronger requirements, resulting in a new Oklahoma administrative rule in 2002 and legislation in 2003 regulating secondhand tobacco smoke. This action was congruent with the American Society of Public Administration’s Code of Ethics for interactive democratic policymaking, in which administrators are required to serve the public interest with compassion, benevolence, fairness, and optimism.

Keywords: administrative activism, corporate power, democratic participation, public ethics, tobacco lobby

Public administrators, according to the American Society of Public Administration’s (ASPA) Code of Ethics (2008), are required to serve the public interest through interactive participation in the democratic policymaking process that responds to citizen demands. The Code of Ethics has long been recognized as an important means to promote ethical behavior and professionalism in public administration (ASPA 2008; Bowman and Knox 2008). Included in this obligation are requirements for administrators to support the public’s right to know, to be prepared to make decisions that are not popular, and to exercise compassion, benevolence, fairness, and optimism when interacting with citizens. These general objectives to ethically serve the public interest through enhanced interaction in policymaking raise the crucial issue of what specific ends public administrators, as individuals and as members of
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public organizations, can and should pursue to achieve greater societal progress. The question this article addresses is whether administrators, interacting on an ongoing basis with health groups as called for by the ASPA Code of Ethics, can advance societal progress by bettering the public health through vigorous anti-tobacco legislation. Ongoing participatory actions, including advocacy by and between individuals, groups, politicians, and public administrators, can and does strengthen societal progress.

This proposition is tested by analyzing whether the adoption of secondhand tobacco smoke restrictions by the Oklahoma Department of Health (using ASPA Code of Ethics criteria for public administrators to develop policies) enhanced societal progress. According to the Department of Health, secondhand tobacco smoke annually killed more than 700 Oklahomans (Miner and Crutcher 2002; Oklahoma Department of Health 2008). Secondhand tobacco smoke was first scientifically verified as a Class A carcinogen known to kill humans due to lung cancer in 1992 by the U.S. Environmental Protection Agency (1992). According to the California Environmental Protection Agency (2005), secondhand tobacco smoke annually kills about 50,000 Americans. Secondhand tobacco smoke is defined as “side stream smoke released from the smoldering cigarette or other smoking device (cigar, pipe, bidi) and diluted with ambient air” (International Agency for Research on Cancer 2002, 9).

The major health impact associated with this issue was the impetus for Oklahoma’s emergency secondhand tobacco smoke rule in 2002. In examining the ASPA ethics criteria for democratic interactions, this study will ascertain whether the Department of Health, from 1987 to 2003, also promoted societal progress. Specifically analyzed is whether the department’s emergency secondhand tobacco smoke rule included interactive and ongoing participation that responded to citizen demands in the policymaking process and supported the public’s right to know. Included, in addition, is decision-making that might not have been popular, as well as compassion, benevolence, fairness, and optimism when interacting with citizens.

Literature Review

This section provides an overview of pertinent current scholarly literature. Has the development of policy by administrators, based on the ASPA administrative ethics requirements of democratic interaction, been found to be sufficient to further societal progress?

Public Administration Ethics

In 1985, Dennis Thompson asked the provocative question: “Is administrative ethics possible?” He answered this important question by posing two ethical courses of action for public administrators. The first course of action is when administra-
tors are ethical by remaining loyal to the mandates of enabling legislation. While administrators can use discretion in determining how to implement a public law, they must always follow the mandates and requirements of those who enact public policies. Thompson (1985) criticizes this approach, arguing that administrators cannot always be neutral because they have competing obligations to colleagues, their agency, and society as a whole. Additionally, the ethics of neutrality limit managers to obedience or resignation. Thompson rejects this either-or dichotomy because there are ways that an administrator can dissent but continue to be employed by the agency.

A second course of public ethics action by administrators is based on moral action for the government or the society. In this case, administrators have no accountability for personal moral judgment and individual actions. Instead, their ethical responsibilities are a fixture of their job requirements for a public agency. Thompson also criticizes this perspective, arguing that personal responsibility is a requirement to maintain legal and democratic accountability.

To further this argument, Thompson (1992) advanced the notion that there are paradoxes in government ethics, including other major public policy issues of greater importance than government ethics and differences between personal and governmental ethics. Gormley (2001) examined the role of individual motivation in public ethics by classifying public administrators as moralists who follow the law, pragmatists who balance obedience with self-interest, or rogues who lie and disobey orders. Maletz and Herbel (2000) found that ethics in government can only occur modestly through ethics requirements, education, and reform efforts. They concluded that democratic politics is a potent means to check self-interest and ensure ethics in government.

The notion that the democratic process is an important factor in ensuring public ethics is codified by the ASPA Code of Ethics (2008). More specifically, the code calls for interactive participation in response to citizen demands in the policymaking process, support for the public’s right to know, making decisions that may not be popular, and compassion, benevolence, fairness, and optimism in interactions with citizens (Gormley 2001). All of these criteria raise an important question: Is a process of creating a policy through democratic interactions and inquiry sufficient to further greater societal progress? This article addresses the question by examining Oklahoma’s secondhand tobacco smoke regulation from 1985 to 2003.

Methods

The present research, examining whether administrators’ interactions in the democratic process can promote societal progress, is a qualitative archival analysis of Oklahoma’s secondhand smoke policy from 1985 to 2001 as compared with 2001 to 2003. The period from 1985 to 2001 provides a long-term perspective to compare with the state’s 2002 emergency secondhand tobacco smoke rules and its subsequent secondhand tobacco smoke legislation enacted in 2003.

and the Tobacco Institute initiated archives of internal documents available through an Internet search engine (available at the University of California, San Francisco library Web site, http://legacy.library.ucsf.edu). The search of the tobacco documents was progressive, beginning with the terms “Oklahoma” and “OK” on each of the industry sites. Then, to discern the relevant names and issues in Oklahoma tobacco policy making, the analysis went back and used more specific terms related to the Oklahoma documents including “environmental tobacco smoke,” “ets” (abbreviation for environmental tobacco smoke), “secondhand tobacco smoke,” “Nance,” “Vanatta,” “Vaughn,” and the names of other key policy actors, and the names of legislative bills. The search found eighty-one potentially applicable documents from 1985 to 2003; sixteen of the documents were directly applicable to this study.

Also reviewed from the LexisNexis search engine were all relevant newspaper reports on secondhand tobacco smoke administrative policymaking in Oklahoma between 1985 and 2003. The language of Oklahoma legislative statutes and Oklahoma agency reports was also analyzed. Finally, taped open-ended interviews were conducted with policy insiders who had knowledge of state secondhand tobacco smoke policymaking: Oklahoma Department of Health employees, including the chief of tobacco use prevention services and the clean indoor air coordinator; public health leaders in the American Heart Association, American Lung Association, and Oklahoma State Medical Association; and the Oklahoma attorney general. Information from these sources was placed in chronological order with the tobacco documents to ascertain the overall policy and administrative context of secondhand tobacco smoke rulemaking.

The strengths of the case study methodology include the use of multiple sources of data to double-check research. Case studies provide dense analyses of a single research subject, as opposed to the less detailed evaluations when numerous cases are analyzed (O’Sullivan, Rassel, and Berner 2003). Since the research reported in this article was a single-case study, further research is required to confirm or deny the results herein.

Results

The first phase of modern Oklahoma legislation, resulting in weak clean-indoor-air restrictions, lasted from 1985 to 2000. In the second phase, commencing in 2001, clean-indoor-air restrictions were significantly strengthened. The underlying causes and effects for these distinctly different phases in indoor-air regulation are analyzed in this section.

The Era of the “Unclean Indoor Air Act”

Throughout the 1980s and 1990s, tobacco industry efforts to block clean-indoor-air legislation in Oklahoma were largely successful, although some slow progress was made (Barnes 2001; McGrew 1996). A 1992 joint resolution passed the legislature that prohibited tobacco use on the premises of licensed day care centers, and the following year a Senate resolution congratulated the president of the University of Oklahoma for proposing a smoke-free campus (Barnes 2001; McGrew 1996).

In 1986, the American Lung Association began a campaign in Tulsa run by Dr. Dan Brannin, a Tulsa dentist, to enact a local secondhand tobacco smoke ordinance
In an effort to counteract this initiative, opponents lobbied the 1987 legislature to enact Senate Bill 327 (SB 327), also known generically as the Smoking in Public Places Act (Barnes 2001).

SB 327, a pro–tobacco industry bill, began the 1987 legislative session with strong language for the standards of the time, prohibiting smoking in all public places, including bars, and proposing stiff enforcement with misdemeanor fines (Barnes 2001; Oklahoma State Senate 1987). By the time the bill passed the legislature and was signed by Governor Henry Bellmon in June, it only required the designation of smoking and nonsmoking areas in enclosed indoor public areas, including state and local government buildings, educational and health facilities, museums, theaters and performing arts centers, and restaurants.

Exempted were jails, enclosed or separate bars, and facilities for private functions not under the control of state or local government. Section 4 (A) mandated that “Existing physical barriers and ventilation systems shall be used to minimize smoke in both smoking and adjacent nonsmoking areas,” and required that owners of public places consisting of a single room “shall be in compliance with this act if an area of the room is reserved and posted as a nonsmoking area.” The weak legislation also required the posting of a sign indicating that smoking was not permitted in nonsmoking areas. Perhaps most important, the bill also preempted local governments from enacting local legislation that was stronger than state law (Barnes 2001; McGrew 1996). Richard Barnes (2001), an attorney and government relations manager for the American Lung Association of Oklahoma from 1997 to 2004, referred to this law as the “Unclean Indoor Air Act of 1987.”

Continuing Industry Dominance in the 1990s

In 1994, an amendment to SB 327 weakened the previous legislation by permitting restaurants the voluntary option of creating smoke-free areas in their facilities (Barnes 2001; McGrew 1996). The amendment also required the Department of Health to issue rules implementing the Smoking in Public Places Act. By 2001, the rules followed very closely the legislative intent of the weak provisions and enforcement penalties of Oklahoma’s Smoking in Public Places Act. Richard Barnes (personal communication, September 23, 2004) also noted, with respect to health group anti-tobacco efforts prior to 2002, “Oh, there was plenty of activity [by organized health groups], there was just no success.” In the early 1990s, the Alliance on Health or Tobacco (known after 2000 as the Tobacco Free Oklahoma Coalition, or TFOC) was organized by members of various government, health care, and nonprofit organizations to address tobacco issues and lobby on behalf of health interests (Oklahoma Alliance on Health or Tobacco: A Partnership for a Healthier Oklahoma 2004).

The Emergence and Impact of an Activist Bureaucracy

The situation began to be reversed during the 2002 and 2003 legislative sessions (Bisbee 2003a, 2003b). The primary catalyst for developing and strengthening tobacco control and health advocacy with regard to clean-indoor-air issues was the arrival in June 2001 of Dr. Leslie Beitsch, M.D., J.D., formerly deputy secretary of
the Florida Health Department, as Oklahoma’s new health commissioner (Bisbee 2003a, 2003b; Green 2001). The commissioner of health is appointed by the nine-member Board of Health with State Senate confirmation and serves for nine years (Oklahoma Department of Health 2008).

An outsider to Oklahoma, Beitsch was educated at Harvard and Georgetown, and came to Oklahoma after his predecessor as commissioner resigned in the midst of a nursing home scandal (Spivak and Givel 2005). Beitsch gained attention in April 2001, while still deputy secretary of the Florida Health Department (but already selected to come to Oklahoma), by sending a letter (coauthored with the president of Oklahoma’s Board of Health, Dr. Jay Gregory) to Oklahoma’s House speaker, Larry Adair, urging the legislature to reconsider the Oklahoma Tobacco Use Prevention and Cessation Act (Philip Morris 2001).

Beitsch’s “sometimes brash style and zealous pursuit of anti-tobacco policies irritated some policy-makers in Oklahoma” (Spivak and Givel 2005, 19). However, Barnes (personal communication, September 23, 2004) recalls how Beitsch’s aggressive advocacy and fairly novel strategy to advance tobacco control enhanced the development of tobacco control efforts in Oklahoma:

He is the new kid on the block . . . He became very vocal and very forceful in pushing for clean indoor air . . . . He had been involved in that battle down there [Florida] and he became literally like a lightning rod. And just caught all kinds of hell from the legislature and the Daily Oklahoman [statewide Oklahoma newspaper].

Doug Matheny (personal communication, July 15, 2004), chief of the Department of Health’s Tobacco Use Prevention Service at OSDH, and Bob Miner, coordinator of the department’s Clean Indoor Air Program, described the new commissioner in comparison to his predecessor, Dr. Jerry Nida: “One year Dr. Nida called me [Matheny] into this office and said they had gotten a call from Benny Vanatta [lobbyist for the Oklahoma Restaurant Association] . . . and they called Dr. Nida and said that I needed to back off.”

Matheny (personal communication, July 15, 2004) also remembered:

Dr. Nida was a very very [sic] beloved figure as a commissioner of health in our agency. Nothing against him but their contrasts and styles on this. Dr. Nida was never seen as a forthright advocate . . . I would predict that if Dr. Beitsch had gotten a call like that that Dr. Beitsch [received, he] would have said well thank you very much, I appreciate you bringing that. And he would have picked up the phone and called a reporter . . . he would have seen that as an opportunity to expose Benny Vanatta.

Using Bureaucracy to Set Policy

Meanwhile, frustrated by the mediocre progress of Oklahoma’s lawmaking bodies on the secondhand smoke issue, Commissioner Beitsch and the Board of Health, using a novel strategy, decided to extend the department’s internal smoking ban policy in 2002 to all public places and workplaces in Oklahoma via permanent amendments to the board’s administrative rules (Bisbee 2003a, 2003b; Green 2001; Doug Matheny and Robert Miner, personal communication, July 15, 2004). The development of the policy effort occurred due to direct consultation and lobbying by state health groups, including the American Cancer Society, American Lung
Association, American Heart Association, Oklahoma State Medical Association, and TFOC (Barnes 2001; McGrew 1996). The Administrative Procedures Act allows the Oklahoma Health Department and other state agencies to adopt new rules when the legislature is not in session that have the full effect of law for up to one year. In order for the rule to become permanent, the bill must be approved by the governor and not blocked by majority votes in the Oklahoma Senate and House.

According to Richard Barnes (personal communication, September 23, 2004), plans for the emergency rules had already been in the works for a year. Barnes was asked in 2000 by Bob Vincent, deputy commissioner for health planning and policy for the Oklahoma Department of Health, whether the state board could issue rules regulating smoking in public places.

I said well don’t you have lawyers in the health department and he says yes but they always tell us we can’t do anything. I want someone from the outside to look at it and tell me what we can do. So I concluded they could do about anything they wanted. . . .

He [Dr. Beitsch] was not the thing that started it . . . it was already in the works. But him being vocal and visible in support of it which the prior commissioner had not done and probably wasn’t going to do but with Beitsch being as out front as he was, was a major help getting everything to happen.

Meanwhile, Joy Leuthard (personal communication, July 9, 2004), director of health care policy and research at the State Medical Association, recalled the suggestion of Health Department rules for clean-indoor-air as a joint effort of nongovernmental health organizations:

One of the things . . . posed to the health department was the possibility of . . . looking at their legal purview as the state agency . . . to possibly pass rules that would require clean indoor air . . . I mean, we were really working as partners. All of our organizations: Heart, Lung, Cancer, OSMA [Oklahoma State Medical Association], all of these working together to try to get that through so eventually the legislation was introduced.

Progress toward drafting and implementation of clean-indoor-air rules temporarily stalled early in 2001 when a nursing home scandal, as already mentioned, caused the resignation of Nida. The Health Department’s resources were redirected toward dealing with the crises and looking for a new commissioner (Barnes, personal communication, September 23, 2004). When Dr. Beitsch took office, he initially had to focus on bio-terrorism issues following 9/11, but his attention then returned to tobacco (Barnes, personal communication, September 23, 2004). Bob Miner (personal communication, July 15, 2004), former coalition leader (1997–1999) and currently Clean Indoor Air Program coordinator at the Oklahoma State Department of Health, described the final decision-making process for the emergency rules.

The State Board of Health had tentatively planned for many months to use their administrative rulemaking authority in 2002, if the legislature had not yet acted, to extend effective protections from secondhand smoke under the Smoking in Public Places Act. . . . In March, rules were promulgated for seven additional types of establishments licensed by the Department of Health, plus a set of more comprehensive rules covering most indoor public places and indoor workplaces with only a few exemptions.
Barnes (personal communication, September 23, 2004) described the political atmosphere and media attention associated with waiting for the gubernatorial response.

So we started the pressure on him on the governor to sign the darn things. I think it was April Fools day. It was the first day that the ads [anti-secondhand tobacco smoke ads] started running . . . which I believe was a Monday. By Thursday the governor’s chief of staff called the lung association because we were the only organization named as the sponsor on the ads . . . and said can you please do something to pull those ads. You have shut down our switchboard. They were getting that many calls.

Governor Frank Keating, who was “viscerally in favor of a smoking ban in restaurants,” signed most of the first emergency rules except for adult care centers and birthing centers (Talley 2002c). However, Keating (2002) did not sign most of the second emergency rules, expressing legal concern about the Oklahoma Department of Health’s having created a new law that might conflict with the Smoking in Public Places Act. In an April 5, 2002 letter to Commissioner Beitsch, the governor regretfully stated his objections.

I wholeheartedly support the Oklahoma Board of Health’s efforts to reduce the incidents of smoking and the negative effects of secondhand smoke, within the confines of the law. However, I must disapprove all rules in the second set regarding smoking in public places other than health care facilities. A great majority of these proposed rules directly conflict with the Smoking in Public Places Act. . . . when the law specifically authorizes smoking in a public area, the Oklahoma Board of Health cannot pass a rule prohibiting it . . . again, I do support your efforts, but believe we must respect constitutional principles such as the doctrine of separation of powers. (Keating 2002, 1)

The governor worked publicly with the Health Department to develop strong rules that would restrict smoking but conform to the law (Keating 2002). Matheny and Miner (personal communication, July 15, 2004) recalled the process of working with the governor’s staff in the following months.

As soon as the legislature adjourned in 2002 without enacting more extensive clean indoor air legislation, the Health Department team—working closely with its legal counsel, TFOC [Tobacco Free Oklahoma Coalition] leadership and the governor’s staff—moved into high gear to draft a new set of rules during the few days left before the Board of Health meeting in June.

On June 27, 2002, Keating, due to his “visceral” support for restrictions on smoking in public places and his view that smoking is a “serious public health issue,” signed all of the clean-indoor-air rules newly adopted by the Board of Health, and they became effective on July 1, 2002 (Talley 2002b, 2002c).

Political Struggle and Opposition

Many legislators felt that the governor and the Health Department had exceeded their constitutional authority, and that unelected officials did not have the right to make policy. The tobacco lobby and its allies certainly felt this way. Benny Vanatta, lobbyist for the Oklahoma Restaurant Association (ORA), stated of the original proposed rules in March, “We think the commission has way overstepped its bounds and is
making new law,” and followed in July with the comment: “I hope Dr. Beitsch is a better doctor than he is an attorney” (Spivak and Givel 2005, 24).

On June 27, 2002, the day after the governor signed the new emergency rules, Freddie’s Barbecue and Steakhouse and Veterans of Foreign Wars Post 1320, in consultation with the ORA, filed suit in Creek County District Court in Tulsa against the Oklahoma State Department of Health and Governor Frank Keating (Bellamy 2002). The lawsuit alleged that the rules were contrary to the intent of state legislation. Keating and the Health Department filed a motion to move the case to the U.S. District Court in Tulsa, arguing that there was federal jurisdiction to hear the case based on the Americans with Disabilities Act. On July 12, 2002, U.S. District Court Judge James H. Payne remanded the case to state court, ruling that the legal issue being decided was based on Oklahoma law and not federal law (Bellamy 2002).

On July 23, 2002, Judge Donald D. Thompson issued a temporary injunction blocking enforcement of the emergency rules on all affected businesses pending a final decision of the case (Bellamy 2002). Benny Vanatta declared a victory, stating, “It’s exactly what we wanted to happen. . . . It was never a smoking issue. . . . It was an issue about who had the authority to do it. They did not have the authority to make new law” (Talley 2002a). Echoing the sentiments of the restaurant lobby, State Senator Mike Morgan, a Democrat from Stillwater who was also the plaintiff’s attorney, told the Associated Press that enforcement of the new Health Department rules “would create a ‘bureaucratic dictatorship,’ ” and that “this is government bureaucracy out of control . . . this practice has to be stopped now before it goes any further” (Talley 2002a). He called Judge Thompson’s injunction “a big victory for Oklahoma businesses” (Talley 2002a).

The Bureaucracy Incites Lawmakers to Legislation

The court battle over the rules became a moot issue with the introduction and passage of Senate Joint Resolution 21 (SJR 21) in early 2003 (Oklahoma Restaurant Association 2002). The development of this new legislation, which provided for smoke-free workplaces and public places, began when the ORA announced at a press conference on December 11, 2002, that it would support smoke-free public places and workplaces legislation in the Spring 2003 legislative session (Oklahoma Restaurant Association 2002). Matheny and Miner (personal communication, July 15, 2004) recalled the suspicions surrounding the ORA’s sudden turnaround.

The association attracted considerable attention when they called a news conference to announce their support for a clean indoor air bill. But instead of a realistic proposal, they called for a stringent smoking ban to include bars and that it is submitted to a vote of the people, with a two-thirds supermajority required for passage. The Restaurant Association claimed to be turning over a new leaf, but the proposal seemed designated to frighten some potential supporters and to have little chance of getting a majority, much less two-thirds, of the electorate to support it if the legislature were to place the matter on the ballot.

Beitsch agreed that the supposed change of heart was a facade (Francis-Smith 2002). The measure would prohibit smoking even in bars, and would be even more stringent than the smoking bans in California and Massachusetts (Francis-Smith 2002). Further, the proposed two-thirds referendum requirement that the ORA sup-
ported was contrary to the state’s constitution (Francis-Smith 2002). Doug Matheny and Bob Miner (personal communication, July 15, 2004) describe Beitsch’s characteristic brazenness in reacting to the December 11, 2002 ORA press conference. And of course it was important to his news conference he didn’t try to take over [the ORA news conference] . . . but all the press knew who he was and here is Dr. Beitsch the commissioner of health sitting at the back of the room so as soon as the restaurant association had said whatever they wanted to say the press was eager to gather around Dr. Beitsch [and hear what he] thinks about that.

“It is clearly the intention [of the association] to put on the ballot a measure destined to fail,” Beitsch told reporters in the parking lot outside the site of the December 11, 2002 press conference (Francis-Smith 2002). The governor-elect, Brad Henry, remarked: “I think it’s an unrealistic proposal and they probably realize that . . . I just can’t imagine why in the world we would submit any vote to the people and then require a two-thirds vote for passage. It makes no sense to me” (English 2002; Francis-Smith 2002). Benny Vanatta stated that “the results of the election would serve as an indicator to the Legislature and to future legislatures of what the people want,” and when asked whether ORA was deliberately proposing a bill designed to fail, replied, “We think it has a very good chance to pass” (English 2002; Francis-Smith 2002).

Beitsch eventually resigned and moved back to Florida in 2003. The reasons were not specified, but his leaving took place amid growing pressure from those hostile to his agenda (Spivak and Givel 2005). The controversy over clean indoor air, initiated by his pursuit of the emergency rules, prompted the development of SJR 21. Amid a flurry of public smoking bills, only SJR 21 survived the 2003 legislative session.

The bill brought a clean-indoor-air standard to most Oklahoma public places and most workplaces, with some exceptions (Oklahoma State Senate 2003). Restaurants were given an extension for phase-in of the bill until March 1, 2006, ostensibly so that those who chose could build smoking rooms in which food and beverages could be served, but “which shall be in a location which is fairly enclosed, directly exhausted to the outside, under negative air pressure so smoke cannot escape when a door is opened, and no air is re-circulated to non-smoking areas of the building” (Oklahoma State Senate 2003). Otherwise, the act became effective September 1, 2003. Some specified places, such as stand-alone bars, licensed bingo rooms, tobacco stores, and workplaces “where only the owner or operator of the workplace, or the immediate family of the owner or operator, performs any work in the workplace, and the workplace has only incidental public access,” were exempt (Oklahoma State Senate 2003).

After a great deal of negotiating and amending, the bill did not require a referendum, and while it failed a final vote in the House on the morning of May 29, 2003 (47–51), the bill passed when brought back in the afternoon after a flurry of lobbying (52–45; gained 13 votes, lost 8 votes) (Bisbee 2003a, 2003b; Carter 2003). Governor Henry signed the bill on June 6, 2003 (Talley 2003).

Summary
Before 2001, the Department of Health undertook no significant action to advocate for the adoption of stronger clean-indoor-air requirements. From 2001 to 2003, in direct and ongoing consultation with and support by health groups, the department
engaged in significant political action by developing, negotiating, and advocating the adoption of stronger clean-indoor-air requirements. This effort reflected ASPA Code of Ethics guidelines for administrators (in this case public health experts) to engage in interactive political participation and respond to public concerns and knowledge, such as the dangers of secondhand tobacco smoke, that was opposed by the industry and its political allies, such as the ORA. At times, this action was not popular among some members of the state legislature. The effort, though, exhibited a focus on societal progress by enhancing public health and limiting exposure to secondhand tobacco smoke. The importance of the Health Department rules in bringing about legislation was summed up by Richard Barnes (personal communication, September 23, 2004): “I am not saying it was easy in 2003 but it never would have happened in 2003 if that board of health action hadn’t taken place in 2002.”

Discussion

The Department of Health’s 2002 emergency secondhand tobacco smoke rules followed the ASPA Code with respect to participation in the political process. The development and creation of the 2002 rules occurred with quite often hostile political opposition from some members of the legislature and the Daily Oklahoman. Nevertheless, the adoption of the rules constituted ethical fairness and benevolence for Oklahoma citizens because it reduced their exposure to secondhand tobacco smoke.

This approach was in stark contrast to the ongoing market and private-profit goals of the tobacco industry. As early as 1992, the industry was alarmed at the potential impact on sales and profits of clean-indoor-air restrictions, such as workplace smoking restrictions. A key Philip Morris analysis (1992, 1) stated:

Total prohibition of smoking in the workplace strongly affects industry volume. Smokers facing these restrictions consume 11%–15% less than average and quit at a rate that is 84% higher than average. Only 6.4%–10.3% of smokers face total workplace prohibition but these restrictions are rapidly becoming more common. Milder workplace restrictions, such as smoking only [in] designated areas, have much less impact on quitting rates and very little effect on consumption. If smoking were banned in all workplaces, the industry’s average consumption would decline 8.7%–10.1% from 1991 levels and the quitting rate would increase 74% (e.g., from 2.5% to 4.4%).

The industry’s historical opposition to stronger secondhand tobacco smoke requirements continued during the clash over the adoption of the 2002 emergency secondhand tobacco smoke rules.

The present study illustrates the importance of public administrators’ conducting public business pursuant to ASPA Code of Ethics requirements, including democratic interactions that are responsive to citizen demands when implementing laws. However, in order to further the greater public interest, these ethical guidelines should also increase noneconomic and economic happiness for the greatest number of people.

Central to the link between means and ends in ethics is the notion that democratic practice is a necessary requirement for administrators to further progress. In this context, responding to Thompson’s 1985 question, administrative ethics is
indeed possible. The furtherance of administrative ethics can occur through actions that better society as a whole. Furthermore, “paradoxes” in government ethics can sometimes be superseded in relation to other, competing personal issues or differences of personal or governmental ethics. If the primary focus of administrative actions and ethics is to engage in interactive political actions that openly address serious societal issues (such as the health impact of secondhand tobacco smoke), this further societal progress by increasing the greatest happiness.

Conclusion

Recent research indicates that the tobacco industry has made a concerted effort to undermine the science of secondhand smoke health effects and, as well, conducted campaigns at the federal, state, and local levels to derail secondhand smoke regulation (Givel 2006, 2007; Landman and Glantz 2009). The Oklahoma Department of Health’s administrative activism, which followed the ASPA Code of Ethics, was necessary to counteract the influence of the tobacco industry and to reverse the harmful effects of secondhand tobacco smoke. By countering the industry’s agenda, the department asserted a leadership stance that furthered ethical requirements to advance societal progress by improving the public health.

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