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Huckabee Won't Sign Restaurant Smoking Ban

By Elizabeth Caldwell

Donrey Little Rock Bureau

LITTLE ROCK -- Gov. Mike Huckabee cited property rights and constitutional issues among reasons he will not sign into law a state Board of Health regulation banning smoking in most Arkansas restaurants.

"This decision will be unpopular with some no matter what I say," Huckabee wrote in a letter to the board a day after it voted 15-4 in favor of the ban.

"I don't expect everyone to agree with my conclusions. I wish it were possible to make all parties content. At least know my decision was made after deep reflection and careful consideration of all the viewpoints presented to me," he said.

The board's decision is invalid without Huckabee's signature.

"I'm very disappointed," said state Rep. Jim Wood, D-Tupelo, who asked the board two years ago to regulate smoking in restaurants. "I knew it was a great possibility, but I thought he would give us a week or two to make our case."

Huckabee liaison Chris Pyle had said after the board's vote that the governor would likely not announce his decision until next week. Board members studied the issue for almost two years and held several public hearings before Thursday's vote.

"We're grateful that he chose not to sign it," said Montine McNulty, executive director of the Arkansas Hospitality Association.

She said her trade organization doesn't support smoking "but we do support the owner's right to determine their own policy. The customer should be the one to give input to the business owner."

Melinda Pyle, executive director of Coalition for Tobacco Free Arkansas, said her organization is extremely disappointed.

"We feel it's a strong blow to improving public health in Arkansas," she said.

Dr. Fay Boozman, state Health Department director, said as chief health officer of one of the unhealthiest states, largely due to tobacco use, he felt he had to support the ban.

Boozman said Huckabee had to look at the issue from a broader perspective.

"I talked to Governor Huckabee. He understands what the Board of

Health had to do and the board understands what the governor had to do. I think the governor clearly understands that there is a significant health issue," Boozman said.

The regulation would have banned smoking in food service establishments that earn more than 30 percent of their gross revenue from food sales, but would have allowed smoking in outdoor seating.

Huckabee pointed out that the Board of Health is an appointed body rather than an elected one and that "without accountability to the voters isn't the best vehicle to make such sweeping changes in the law."

Huckabee, a nonsmoker, said he deplores tobacco use and that smoking is harmful and has no redeeming benefits to the user.

"But until the law changes, one citizen cannot prohibit others the right to engage in lawful behavior unless it directly infringes upon the rights of others," Huckabee wrote. "While people have the right to expect to be smoke free in a publicly owned facility, they don't have the right to be smoke free in a privately owned facility any more than one has a right to smoke in a private facility or home that prohibits it."

Huckabee told board members he respected their conclusion to ban smoking in most restaurants and said he might have done the same thing in their position, considering only the health of Arkansans. He said he had to act "according to the broader considerations of the law based on the constitutions of our nation and state and of the many statutes that apply."

Huckabee thanked board members "for doing what you believed was your duty."

Boozman said that the governor's decision was not a total loss for the board. He said the publicity that has resulted from the debate has helped make Arkansans more aware of the issue.

"I think much has been accomplished in terms of educating the citizens of Arkansas on the importance of this issue," he said.

Pyle said her organization will regroup and is considering developing local ordinances.

"The issue just isn't going away," she said. "It's a viable public health concern. We hope we can continue working with Gov. Huckabee. We hope he stays open-minded."