The ABC's of Administrative Law in Public Health Practice

Part 1



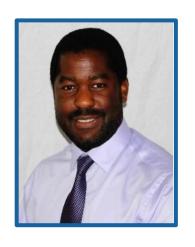
National Association of County & City Health Officials



Centers for Disease Control and Prevention

Office for State, Tribal, Local and Territorial Support

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CDC's Public Health Law Program

What we do

Advance the use of law as a public health tool

How we do it

- Legal Epidemiology: legal mapping and legal evaluation
- Workforce Development: webinars, trainings, training materials, fellowships, internships, and externships
- Partnerships and Outreach

Whom we serve

 CDC programs and state, tribal, local, and territorial (STLT) communities

To submit a request or learn more about public health law, visit us at: www.cdc.gov/phlp

Our Mission



NACCHO is comprised of nearly 3,000 local health departments across the United States.

Our mission is to serve as a leader, partner, catalyst, and voice with local health departments.

Our Work





Advocacy



Partnerships



Funding



Training and education



Networking



Resources, tools, and technical assistance

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Public Health Law Competencies

- Define basic constitutional concepts framing the practice of public health
- 2: Describe public health agency authority and limits on that authority
- 3. Identify legal tools and enforcement procedures to address day-to-day public health issues
- Distinguish public health agency powers from those of other agencies, legislatures, and courts



What we'll DISCUSS:



What are the sources and limitations on agency power?



Why is administrative law important to public health?



What is administrative law?

Administrative law

Governs the organization and activities of administrative agencies, including public health agencies.



What is an administrative agency?

An organization within the executive branch of government, with the authority to implement and administer legislation.



Separation of powers

LEGISLATIVE

Create laws

EXECUTIVE

Enforce laws

JUDICIAL

Interpret laws



Congress

President

Federal Courts



State Legislature

Governor

State Courts



City Council

Mayor

Municipal Courts

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What do administrative agencies do?

Adopt rules and regulations





A regulation is a law adopted by an administrative agency.

LEGISLATIVE Create laws



Congress



State Legislature



City Council



Wait, I thought only the legislative branch could create laws?



The U.S. Constitution:

Article I, Section 1

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Delegation of Authority

Legislature



Executive Agencies



Legislation



Regulation

- Drafted by a legislative body
- Sets the big picture

- Drafted by administrative agencies
- Fills in the details



Both have the effect of law

Which of the following are regulations?

- A. Laws adopted by Congress
- B. Laws adopted by a state legislature
- C. Laws adopted by a city council
- D. Laws drafted by an administrative agency, like a local health department
- E. Answers A, B, and C

Multiple Choice



Which of the following are regulations?

- A. Laws adopted by Congress
- B. Laws adopted by a state legislature
- C. Laws adopted by a city council
- D. Laws drafted by an administrative agency, like a local health department CORRECT ANSWER!
- E. Answers A, B, and C





What do administrative agencies do?

- Adopt rules and regulations
- Issue licenses and benefits
- Conduct investigations and inspections
- Initiate enforcement actions against people and businesses





Food safety



Retail licensing



Environmental Protection Standards



Emergency preparedness

Openended question



What kind of regulatory activities does your local health department do?

1. Food service establishments (79%)	6. Body art (60%)
2. Schools/daycare (74%)	7. Private drinking water (60%)
3. Recreational water (68%)	8. Children's camps (59%)
4. Septic systems (67%)	9. Hotels/motels (58%)
5. Smoke free ordinances (65%)	10. Lead inspection (53%)

What are LHD's most common regulatory activities?

Recap: What is Administrative Law?



- ✓ Governs the organization and activities of administrative agencies, including public health agencies
- ✓ Serves as "guardrails" for administrative actions
- ✓ Helps to ensure appropriate separation of powers



What are the limitations on agency action?



Meet Jackie!

Delegation of Authority



New York City Smoke-Free Air Act:

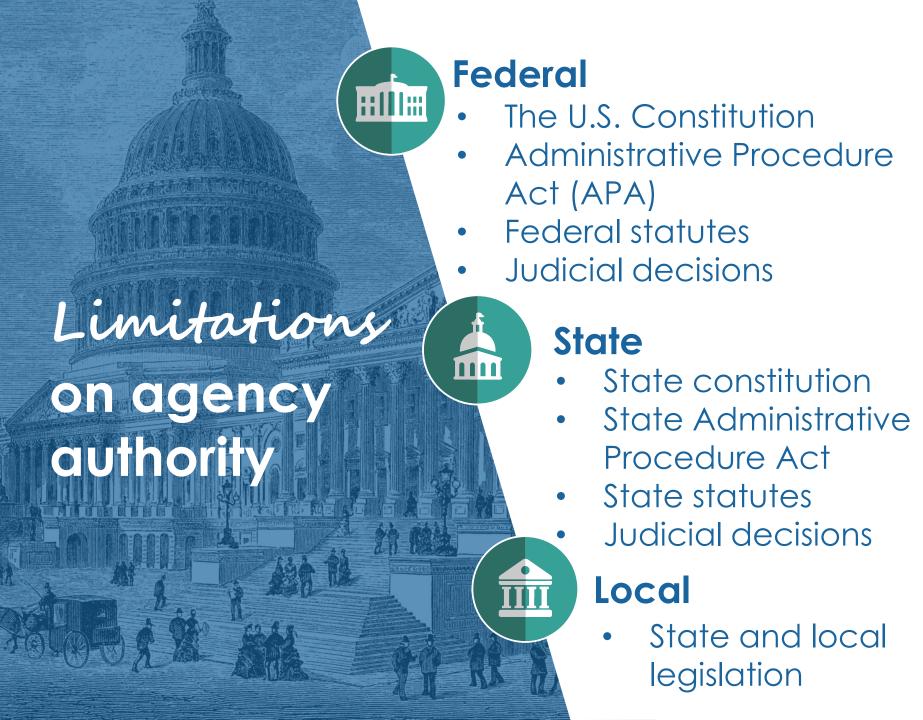
Section 17-513

"The commissioner shall promulgate rules in accordance with the provisions contained in this chapter, and such other rules as may be necessary for the purpose of implementing and carrying out the provisions of this chapter."



What steps must Jackie follow

when adopting smoke-free workplace regulations?



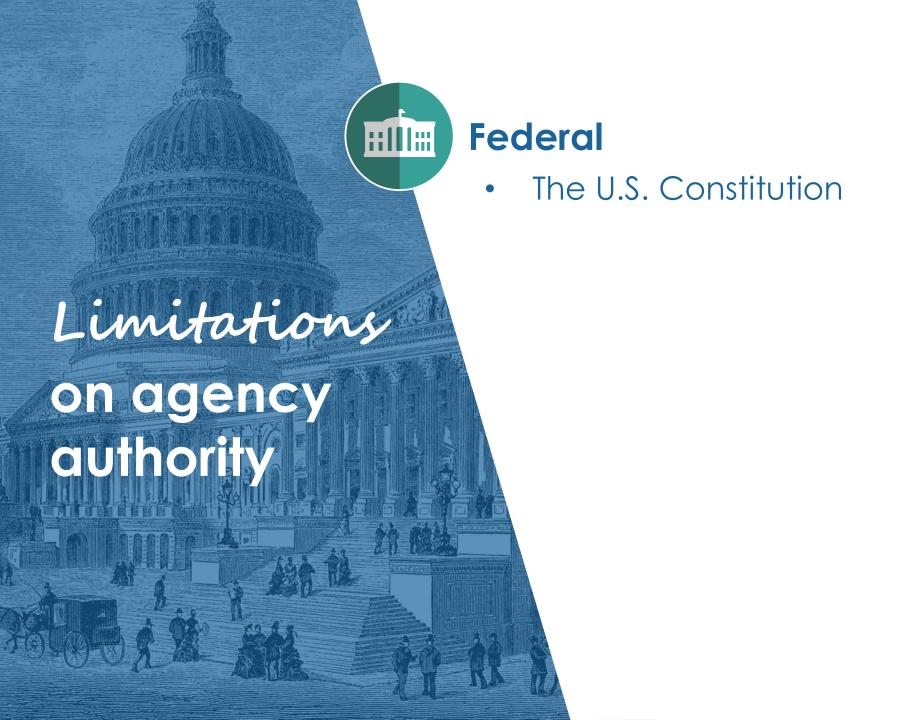


Local

 State and local legislation



How do local laws (of the lack thereof) apply to Jackie?



Separation of powers

LEGISLATIVE

Create laws

EXECUTIVE

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Interpret laws



Congress

President

Federal Courts



State Legislature

Governor

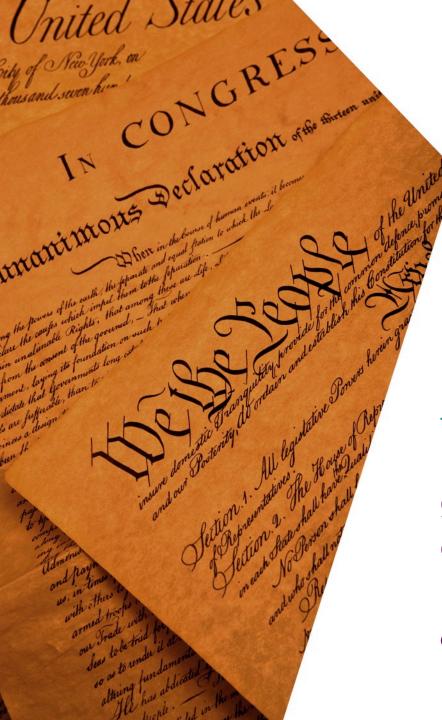
State Courts



City Council

Mayor

Municipal Courts



Due Process



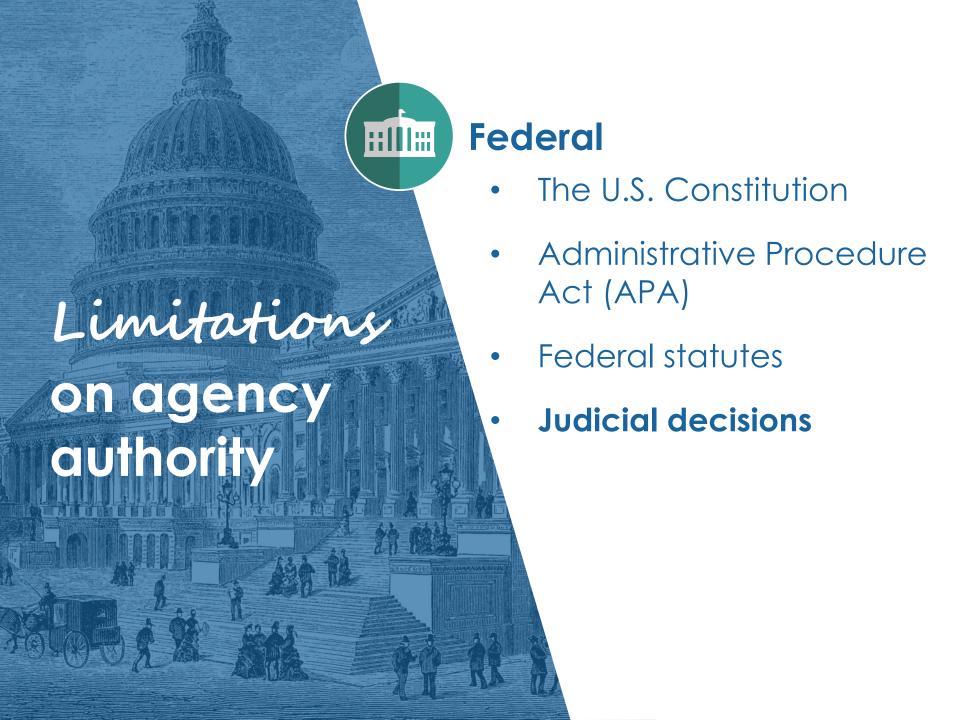
According to the 5th & 14th amendments, the government cannot deprive people of life, liberty, or property without due process of law.



For example ...



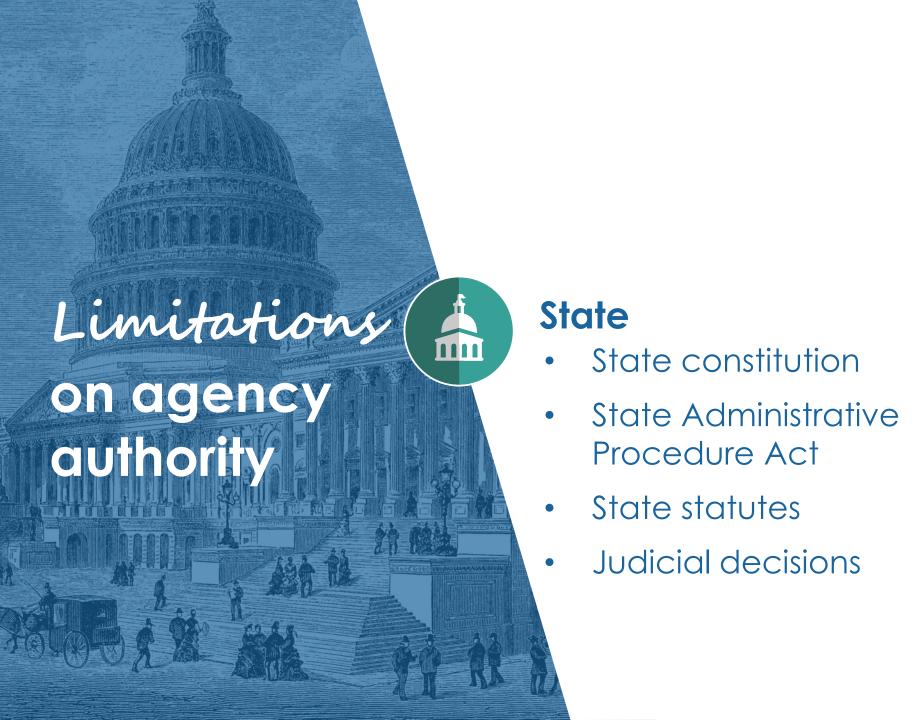






- ✓ Separation of powers?
- ✓ Due process?

Do federal constitutional concepts apply to Jackie?



Search this site

RULES REGULATIONS

Home > Rules & Regulations

Rules & Regulations

The Administrative Procedures Act, ACA 25-15-201 et. seq., requires state agencies, boards and commissions to file with the Secretary of State a copy of each rule adopted by the filing group. ACA 25-15-218 requires the Secretary of State to publish all state agency rule notices, emergency rules, adopted rules, proposed rules and financial impact statements on the Secretary of State website.

For questions about Administrative Rules email register@sos.arkansas.gov.

- Search Arkansas Administrative Rules
- State Agency Public Meeting Calendar
- Agency Rule Filing Instructions
- Bulk Data Download
- Register Transmittal Sheet (To be filed with State Agency FINAL rule filings)

Administrative Rules are filed by state agencies, boards, or commissions. Agency Rules "...interprets, or prescribes law or policy, or describes the organization, procedure, or practice of any agency...". Administrative Rules do not concern the internal management of the agency, and are only filed by state agencies, boards or commissions. Administrative Rules are NOT filed by for-profit / non-profit businesses, property owners associations, or an entity not involved in state government.

Rules & Regulations

Administrative Rules Search Arkansas Register

Bulk Data Download

Secretary of State Mac Warner

Administrative Law Business Licensing

Elections

Secretary of State > Administrative Law

Administrative Law Division



Rule-Making Deadlines

The rule-making deadlines for the 2019 Legislative session have passed. All of the Legislative rules that have been proposed will be reviewed by the Legislative Rule Make Review Committee (LRMRC), if the Committee recommends changes to a rule, the agency should file the

modified rule within ten (10) days of the LRMRC meeting. The deadline dates for future years is now much easier to calculate. With the passage of SB522,

beginning in 2019, the deadline for agency approvals will be the last Friday in July. In 2020 and every four years after, the last Friday in August. This makes the public comment period deadline 30 days prior. For the 2020 Legislative session, all proposed Legislative rules must be put out for public comment by Wednesday, June 26, 2019. Agency approvals must be filed by Friday, July 26, 2019.

New Online Meeting Notice Procedures

After a thorough review of the provisions of the Open Governmental Proceedings Act W. Va. Code §8-9A et seq., the Secretary of State's office is planning some changes to the procedures for submitting a meeting notice as well as the way they are displayed online. One of

the proposed changes is adding a field called "Governing Body" intended to be the name of the group having the meeting. Another significant change would be in lieu of marking a meeting notice 'compliant" or "not compliant", the date and time the meeting notice is accepted will be displayed allowing for easy calculation of the required five (5) business days.

In order to provide notice of these changes, we have proposed procedural rule, 153CSR41, explaining the details. This rule and the changes will become effective on Monday, February 4, 2019.

Executive Records

As the keeper of the Governor's official papers, there are many documents

from Executive Orders, Proclamations and Appointments of State Officials there are some miscellaneous records as well.

Each year, the Secretary of State's office sends reminders to each of the County Commissions in West Virginia reminding them of the requirement to send a list of the Public Service Districts located in their county. Those lists and many other records are available in the Executive Records

ADMINISTRATIVE LAW SERVICES



Rule-Making

Legislative Rule-Making Steps Legislative-Exempt, Procedural, and

terpretive Rule-Making Steps Emergency Rules

Executive Records

Search Executive Records Executive Journal

Executive Records Other Documents and

Open Governmental Meetings Add Meeting Notice

Search Meetings Database Meeting Notices Information About WV Open Meeting Law

Programs and Information

Board of Public Works West Virginia State Seal

How does this work in my state?



Why is administrative law important for public health?

1

Administrative law doctrines act as gwardrails that shape what health departments and other administrative agencies can do.



2

Advancing the social determinants of health and public health work relies on many other agencies other than health departments, so it is important to know which those are and what they do.





Example:

School Nutrition Standards

3

Together, STLT and other administrative actions profoundly impact the nation's health.





Consider local innovations in tobacco control

And also ...
food retail
regulations





RECAP:
What we discussed



What are the sources and limitations on agency power?



Why is administrative law important to public health?



Questions?

Webinar 2: The ABC's of Administrative Law in Public Health Practice: Part 2

Date: Thursday, March 26, 2020 Time: 3:00–4:00 pm EDT

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Thank you!

Additional questions?

Interested in learning more?

Visit: www.publichealthlawacademy.org

Email us at: phlacademy@changelabsolutions.org

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