

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Harrison County Fraternal and Service
Association, Inc., a corporation,
Plaintiff Below, Petitioner**

FILED

March 30, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs) **No. 11-0286** (Harrison County 10-C-316-2)

**Harrison-Clarksburg Board of Health,
Defendant Below, Respondent**

MEMORANDUM DECISION

Petitioner, the Harrison County Fraternal and Service Association, Inc. (hereinafter “Association”), appeals the circuit court’s January 19, 2011, “Final Order Dismissing Case and Denying the Plaintiff’s Requested Relief” in this declaratory judgment action. The Association appears by its attorneys, Jerald E. Jones and Perry B. Jones. Respondent, the Harrison-Clarksburg Board of Health (hereinafter “Board”), appears by its attorneys, John R. Hoblitzell and Ann L. Haight.

This Court has considered the parties’ briefs and the record on appeal. The facts and legal arguments are adequately presented in the parties’ written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court concludes that a memorandum decision affirming the circuit court is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

The Board passed the Harrison County Clean Indoor Air Regulation of 2008, to take effect on June 1, 2010. This regulation prohibits smoking in public places and places of employment in Harrison County with certain specified exceptions. In *Foundation for Independent Living, Inc. v. Cabell-Huntington Board of Health*, 214 W.Va. 818, 591 S.E.2d 744 (2003), we held that local boards of health have statutory authority to enact clean indoor air regulations, and that such regulations are consistent with public policy established by the Legislature.

The Association filed this declaratory judgment action asserting that, in light of West Virginia Code of State Rules § 110-37-26a.1, the Board must make an exception to the smoking ban for locations where certain charitable raffles are held. We have reviewed the parties’ arguments and

our opinion in *Foundation for Independent Living*, and we conclude that the circuit court was correct in denying declaratory relief. Accordingly, we affirm.

Affirmed.

ISSUED: March 30, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Justice Brent D. Benjamin