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DRAFT

MEMORANDUM

November 30, 1992

TO: Samuel D. Chilcote, Jr.
FROM: Kurt L. Malmgren
RE: Expanded Local Program

BACKGROUND

We face increasingly serious challenges at the local level of government in the areas of smoking bans, point-of-sale display bans and restrictions, punitive retailer licensing schemes, sampling/couponsing bans, advertising bans and many other related issues. The anti-tobacco forces have developed a more sophisticated and well-funded structure to address local government affairs. Among recent anti-tobacco assaults are the following:

- ASSIST, the \$115 million grant program from the National Cancer Institute which ensures continued funding for local battles in the 17 states chosen for the program. ASSIST guarantees that local matters will take increasing portions of our time and effort. ASSIST's forerunner, COMMIT, was geared toward local anti-tobacco activity as well, and laid the groundwork for the current program.
- Prop 99 in California and the recently adopted Question #1 in Massachusetts provide tens of millions of dollars in continued funding and organizational support for anti-tobacco activities at the local level.
- A major portion of the blueprint from the Coalition on Smoking OR Health outlines anti-tobacco activities to be undertaken at the local level of government. Other groups also have "blueprints" for action and are carrying them out.
- STAT (Stop Teenage Addiction to Tobacco) meets regularly to plan anti-tobacco approaches on "youth-related" issues such as advertising bans, punitive retailer licensing, sampling/ couponsing bans and other measures.
- The Advocacy Institute acts as a clearinghouse and organizational arm for many of the most vocal anti-tobacco groups, with a significant portion of its materials aimed at the local level. One of the focuses of this group has been opposing local preemption laws.

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- The American Medical Association has turned its attention to "youth-related" tobacco matters, locally in many cases.
- Health and Human Services Secretary Sullivan picked up Surgeon General Koop's banner, with an eye to state and local matters. Sullivan proposed model state legislation on a range of anti-tobacco matters, which also has been taken to the local level. The incoming Clinton Administration is expected to continue such anti-tobacco efforts.
- The anti-tobacco momentum continues in the media, focusing largely on local battles and routinely reporting, in a one-sided fashion, on the Environmental Protection Agency (EPA) risk assessment on environmental tobacco smoke (ETS) and other issues. The anti-tobacco leadership is expert in using the media in projects at all levels of government.

Clearly, there is a well-orchestrated effort among the anti-tobacco leadership to strike where it perceives as the tobacco industry to be vulnerable: the local level.

The activity at the local level has been with us since the early 1980s. It is evident that in recent years, however, increased organizational energies have been channeled into local matters. As a result, local proposals have become more numerous and more serious in nature.

RECENT HISTORY OF THE LOCAL CHALLENGE

The industry has faced serious local challenges -- largely in the form of public smoking restrictions -- since the early 1980s. However, voter passage (50.4-49.6%) in 1983 of workplace smoking restrictions in San Francisco was a watershed event in the onslaught of local anti-tobacco battles.

In 1983, 73 localities proposed smoking restriction ordinances. A large percentage of those introductions occurred in California, Massachusetts and Illinois. By 1986, the year of the Surgeon General's first major report on environmental tobacco smoke, the number of localities reviewing anti-smoking ordinances had grown to 229.

In 1987, Beverly Hills, CA, adopted the first restaurant smoking ban. The passage of Prop 99 in November 1988 provided the funding for increased local activity in California, as well as the springboard for action in other areas of the country. Press leaks and related discussions in 1990 on the EPA's draft report on ETS provided another major argument in the arsenal for severe smoking restrictions and bans.

These events worked together to help set the stage for a change in local direction from workplace and restaurant smoking restrictions to outright smoking bans.

In 1990-1991, nearly 50 smoking bans were introduced in California. During the first three quarters of 1992 alone, more than 50 localities in California had considered smoking bans.

In addition, smoking ban proposals have been introduced in a handful of other states, including Arizona, Massachusetts, Washington and Wisconsin.

Beginning in 1989, there also was a new push for state and local laws and ordinances on "youth-related" issues, such as advertising bans, vending machine bans and restrictions, punitive licensing schemes and other matters, couched as measures designed to "protect" young people from tobacco.

The effort began with restrictions and bans on vending machine sales. In 1988, fewer than 30 communities considered such legislation. By the end of 1989, that number had increased to 60.

The number and severity of "youth-related" local ordinance introductions continues to increase. Since mid-1990, 80 California localities, spurred on by Prop 99 funding, considered "youth-related" matters on vending, sampling/coupons, licensing and advertising. In 1992 alone, 156 localities in 27 states looked at this set of issues.

INDUSTRY APPROACHES TO THE LOCAL CHALLENGE

Since the advent of local anti-tobacco challenges in the early 1980's, the industry has moved to deal with the local situation as effectively as possible. The Institute's regional directors, a handful of local legislative representatives, member company mailings and smokers' rights groups all were used to work on local ordinances in key localities. During the 1980s and until very recently, however, the clear priority for the industry was in the state capitals; local activities always took a back seat as far as time and resources were concerned.

Even with the development of state affairs staff and lobbyists from Philip Morris and R.J. Reynolds, Institute staff were charged with handling the bulk of the local load. Company state affairs operations were state operations, with limited focus on local concerns.

Today, local challenges are not only more numerous, but much more severe in nature. In the mid-1980s the question was smoking and other restrictions. Today, the industry must address anti-tobacco bans. Therefore, local efforts must be placed on a par with state efforts. That requires industry coordination of suitable resources and close staff attention to the myriad of complex and extremely punitive anti-tobacco measures at the local level.

Our local experiences in California, Massachusetts and other areas provided the basic blueprint for a local program of national scope.

The California Experience

The 25-cent/pack initiative forever altered the nature of the local challenge, first in California and now in much of the rest of the country. Instead of facing a few local smoking restriction proposals per month in California, we were facing scores of smoking bans -- and youth-related restrictions and bans -- weekly. It became physically impossible to attend all the hearings held on certain days, let alone mount successful opposition campaigns.

More troubling still, the industry did not have in place a mechanism to make it aware of the introduction of some local ordinances while opposition was still feasible.

Therefore, the industry was, on occasion, forced to address local concerns at the ballot box, an extremely expensive undertaking. It was a necessary approach early on, however, because the industry was not prepared in some instances to deal effectively with local challenges in city councils or county commissions.

In addition, perceived public pressure was mounting on many of our traditional allies in California to take positions in favor of smoking bans. In many instances, local chambers of commerce and other groups in California were pressured into supporting smoking bans in the workplace and other public places. In 1990 the California Restaurant Association came out in favor of a statewide smoking ban for restaurants.

To slow the local hemorrhaging in California, The Institute and member company representatives, through an umbrella organization, began to coordinate resources and stem the success of the anti-tobacco leaders. Under this team approach, most of the key components necessary to wage a campaign to address local concerns in California are in place. Primary among the crucial elements are the following:

- Sophisticated monitoring of local ordinance introductions;
- Ability to respond quickly with locally-based advocates;
- Local consultants who can go door-to-door to educate restaurateurs, business leaders, minority group leaders, representatives from organized labor, and other potential allies;
- The ability to rightfully project a local concern about a given anti-tobacco ordinance, making it more difficult for anti-tobacco leaders to say, "The only people who oppose this ordinance are the out-of-state tobacco companies"; and,
- Reasonably coordinated and effective means to trigger direct mail campaigns, phone bank operations and other contacts.

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The Massachusetts Experience

In another recent twist, local Massachusetts boards of health have taken the lead to push for the adoption of smoking bans and restrictions, punitive retailer licensing schemes, advertising restrictions, vending bans, point-of-purchase display bans and other measures. Boards of health in the Commonwealth are un-elected, authoritarian bodies. It is difficult for the industry to make its voice heard in their decision-making process.

The Institute, Philip Morris and R.J. Reynolds all recognized the seriousness of the situation early on. Each entity identified and deployed programs to deal with an increasingly challenging set of dynamics.

Earlier this year the industry established a formal, solid working relationship with the New England Convenience Store Association to develop a better coordination of their existing resources. Through weekly conference calls, all elements of the industry are afforded an opportunity to have input into legislative strategies and tactics. Together the Massachusetts team has streamlined and coordinated the entire process.

For monitoring purposes, we fund our allies in the convenience store group to regularly report on ordinance introductions and assist in campaigns to stop unreasonable measures. That reporting is complemented by other reporting mechanisms and channels such as member company sales representatives and other allied groups. Promotion of The Institute's "It's the Law" program and other industry programs play a helpful role as well.

As a result, the industry is prepared to deliver direct mail, run phone bank operations and otherwise attack local proposals with our local business allies in a generally coordinated and productive fashion.

The team is beginning to export the Massachusetts efforts to other states in New England to prepare for the increase in local activity expected from ASSIST funding in Maine and Rhode Island, as well as in Massachusetts.

Experiences in Washington State

Within the past month, and working with company representatives, The Institute has put in place in Washington State a program to address increasing anti-tobacco concerns at the local level. As in California and Massachusetts, they are forming an umbrella group to coordinate the local activity.

Thus, the industry already has in place the apparatus to address the local challenge in California, most of New England, Washington State and, to a lesser degree, in certain other areas of the country.

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What We Have Learned from California and Massachusetts

Recent experiences in California, Massachusetts and a few other states make it clear that the industry can monitor and address local concerns with reasonable results -- if strategies and tactics are developed, coordinated and triggered in an effective and timely manner in conjunction with necessary resources. What follows is our strategy to implement successful local programs in other extremely important areas of the country.

The Goal of Preemption

Industry leaders have recognized that state laws which preempt local anti-tobacco ordinances are the most effective means to counter local challenges. Strategies and targets for this program have been discussed in detail and will continue for the foreseeable future.

Preemption efforts, however, do not preclude the need for a more coordinated and aggressive strategy to deal immediately with the onslaught on local challenges.

THE LOCAL STRATEGY

The local strategy calls for the industry to tackle two interrelated challenges: (1) defeat unfair anti-tobacco attacks at the local level of government in key states in a timely and effective manner; (2) ensure the adoption of reasonable laws relating to the sale and use of tobacco products. The past histories of anti-tobacco activity, the presence of ASSIST funding, fallout in New England and the mid-Atlantic states due to the Massachusetts 25-cent/pack initiative, and other related factors make 27 states primary targets for immediate additional attention to local concerns.

Thorough analysis of these factors makes it clear that the following 14 states present the most immediate and serious challenges: New York, Maryland, Massachusetts, Virginia, North Carolina, Michigan, Ohio, Wisconsin, Minnesota, Washington, California, Arizona, New Mexico, Texas. In each of these states, save Virginia, we anticipate more numerous and severe attacks on public smoking and youth-related issues. In Virginia we may also see these challenges (despite the existence of local public smoking preemption), but the focus centers on local tax concerns.

Our analysis suggests that the following 13 states are positioned to become even more challenging with the next year: Maine, Rhode Island, New Jersey, West Virginia, South Carolina, Florida, Louisiana, Missouri, Colorado, Utah, Oregon, Illinois, Indiana. While Florida and South Carolina offer a degree of local preemption protection, we believe localities in all of these states will redouble their efforts on public smoking and youth-related issues. In addition, local taxes in Missouri will be a focus of our attention.

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Furthermore, the 25-cent/pack increase in Massachusetts will undoubtedly cause pressure for similar measures throughout the remainder of New England and in many of the mid-Atlantic states. The pressure will mount not only for state tax increases, but also for funding for local anti-tobacco activity.

Our program is largely up and running in California, and getting there in Massachusetts and New England, and Washington State. Goals and tactics discussed below also are intended for use in these areas as well as the other extremely challenging states.

Goals and Tactics

*Plus
would
be more
effective as
a package
for state
legislature*

*Build a coalition
through Trade
Council*

A. Develop effective monitoring systems to ensure that the industry learns of the introduction of unfair local anti-tobacco proposals in a timely fashion.

1. We must employ the best monitoring systems available. In some instances, systems may build upon our existing resources and will vary from location to location, depending upon the results of our continuing research in this area. In many cases, feedback from company sales representatives and other allies greatly improves the timeliness of our intelligence. The bottom line is that if we do not know a local battle is taking place in a timely manner, there is no way in which we can employ our resources to challenge unfair outcomes.
2. Our experience with local matters in California and elsewhere makes it clear that nothing we have seen to date works more effectively than a system in which city and county clerks are contacted on a regular basis to determine if anti-tobacco activity is scheduled. The work of our local system in California has been instrumental to industry success. Effective systems also are at work in New England and Minnesota, where we learn of anti-tobacco proposals in a generally timely fashion. Unlike Massachusetts, where convenience store allies and member company sales reps fill the role, in Minnesota, the wholesalers have implemented a similar program which has proved effective.
3. Monitoring activities can be handled in a multitude of different ways. Because of the large number of communities and the speed of local action, we need an extremely sophisticated operation in California. A lesser number of communities and a slower process may justify a more informal and less costly "New England approach." Our research in this area is ongoing.
4. To achieve the most efficient and cost-effective monitoring results, our local team will continually review proposals from several

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businesses with expertise in this area to determine the most effective group(s) to employ, or to create, for this vital function. In some instances, as in California, it may be that an effective monitoring system team can also provide some of the necessary coalition coordination discussed later in this document.

B. Employ effective local advocates as necessary in the targeted states and regions of the country.

1. Identifying and deploying the local person who can "make the sale" before local government entities on our arguments for reasonable approaches accounts for an extremely large portion of the reason the industry achieves its goals. This is the single most important non-managerial element of the program. In many cases the advocate will be part of a given local umbrella group or a person close to a member of our local team.

*Use Arthur's -
no need to
duplicate the
S/R's*

2. In other cases, local legislative advocates may have to be retained on a contract basis. In these cases, local representatives must have a thorough knowledge of local legislative procedures, be willing and able to travel extensively, and be able to work closely with a range of consultants.

*Just
keep -
Don't
to have people
put up with
27 states*

3. In some instances, The Institute's and the companies' current local legislative representatives are capable of being a part of this proposed operation.

4. As noted, local advocates will be identified and deployed in several ways. Where possible, and we believe in most cases, local persons will lead the program. In others, we will either prepare annual contracts or engage local advocates on a single project basis.

C. Implement mechanisms necessary to provide a solid foundation for coalition development and deployment.

1. With tobacco, the messenger is usually as important as the message. The constant claim on the local front is that "It's only the out-of-state tobacco industry that opposes this ordinance." Thus, a solid coalition of willing and able home-town allies is essential to the mix. If local advocates are the single most important element of the plan, local coalition activities are clearly second.

*Always a
local
representative*

2. As noted earlier, the industry's most positive local coalition building successes to date have occurred in California and in New England.

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3. In California, the industry team employs coalition coordinators who can -- quickly and effectively -- do the necessary legwork to develop support from individual restaurateurs, retailers, hoteliers, local labor leaders and others. The coordinators get in the door, educate the potential allies, form official local groups if necessary (such as "San Franciscans for Fairness"), encourage their attendance at the hearings, motivate them to testify, have them to sponsor local economic analyses, polls and other activities, and even encourage them to write letters to lawmakers and the press, etc.
4. In New England and Minnesota, similar organizational activity takes place, largely through member company support and the retail community in New England and through the wholesalers in Minnesota. Once energized, these allies also become part of the early-warning-system on additional local matters.
5. To locate, educate and maintain these local allies, it will be necessary for the industry to contract with local coalition coordinators, much as is currently done in California. Without people on the ground everyday working these potential allies, new ones will not be found and existing allied relationships will atrophy. In some cases, T.I. or the companies have these coordinators in place; in other cases, new ones need to be brought into the equation.
6. As with the monitoring system(s), we must evaluate present assets as well as various consultant proposals for this activity and decide what group(s) can best fill our needs. As noted before, this may well be an activity we can possibly incorporate within a monitoring system in some locations.

D. Deployment of necessary support activities in a timely and effective manner.

1. Maintaining mailing lists, employing phone banks, preparing economic analyses for specific locations, are among the very costly/labor intensive operations necessary to install and to maintain an effective local component. Its overall importance to the success of a given local battle may be less than direct local advocacy or coalition development and implementation, but it remains an important function in some battles.
2. For mailing and phone bank operations, we currently rely on member company programs to contact smokers. When it comes to contacts with business organizations and other, more specific audiences, The Institute normally manages the programs. This process should continue where it currently exists and should be incorporated into new targeted areas.

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4. It is the belief of many experts in the area within the industry that existing mailing lists are in need of additional care. With the advice and counsel of member company experts, the industry should undertake a thorough review of list maintenance and instigate a "merge and purge" operation to ensure that we have immediate access to quality lists for mailing and phone bank purposes. Institute and member company experts should work in unison to establish the best procedure for reaching this goal.

Agree

5. There is a side benefit to a merge and purge operation. Clean merged and purged lists offer the industry many advantages not tied to the local program. With serious tax and other challenges facing the industry at the federal and state levels, as well as at the ballot box, merged and purged lists offer a ready-made resource for additional contact uses.

*Yes -
+ merge
database
is well*

6. Responsibility for mail/phone contacts with business groups should continue to rest with Institute staff, unless there is a better alternative. Positive results have been gained through the use of association lists or lists acquired from local vendors.

*Yes -
+ bus
need not
be local*

E. Expand TI Public Affairs Division programs to meet anticipated additional demands likely to emerge as a result of this plan.

1. The Public Affairs Division plays an important role in providing assistance -- from Division staff, written materials, experts and allies - which can be triggered quickly.

Yes

2. Several areas of Public Affairs assistance are important to the success of this plan.

*no -
we should
do -*

- a. Expand use of media relations staff to brief local media on behalf of the industry, and to provide assistance to local allies and coalitions with regard to media contacts. Assistance may include advice in drafting letters to the editor or press releases, or provision of media training for certain allies.

- b. Public Affairs Division staff has been able to encourage labor support and assistance in conjunction with issues faced by the industry's local teams in California. PAD staff also has -- on an as needed basis -- worked to encourage labor support on local issues in Ohio, Minnesota and Washington State. These roles with regard to local efforts can be expected to increase as this local program develops.

yes

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- c. As appropriate and subject to availability of funds, expand the team of ETS and other expert witnesses available for one-on-one briefings and testimony at the local level. Currently, four "B Team" ETS scientists are available for testimony; they have been used infrequently over the last several years. To the extent possible, encourage one-on-one briefings between ETS scientists and legislators prior to public hearings.

Yes

Review thoroughly the list of allies and experts available to assist on youth-related matters -- advertising, couponing and vending -- at the local level. As appropriate, identify additional experts and allies who may be able to assist on local matters.

Yes

- d. Although The Institute eliminated its corporate workplace assistance program in 1991, Public Affairs staff continues to work with the Labor Management Committee to provide support to union officials and members seeking assistance in opposing corporate workplace restrictions and bans.

As appropriate, these activities are coordinated with existing corporate outreach and assistance programs currently managed by the member companies; requests for assistance from employers and non-union employees are referred to the member companies for handling. Working with Institute local consultants, Public Affairs staff should provide materials and experts to assist in outreach on workplace smoking issues to local chambers of commerce and other business organizations.

Program Management

Strategy

No way

Provide the industry with the ability to manage all components of the plan. The need for regular, effective and hands-on managerial leadership is vital to the success of the program. To that end, we suggest that T.I. employ regional managers of community affairs to oversee the local operation.

Discussion

No stepping in local affairs

The Regional Managers of Community Affairs (RMs) should report directly to T.I.'s Regional Vice Presidents. It is vital, however, that the RMs' time and effort be focused completely on local matters, and not state issues.

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- One of the most important elements of the plan is for the RMs to work directly with member company personnel and allies to formulate local strategies and to coordinate the use of necessary resources and other components of the program. Local legislation and regulation can move quickly; without solid teamwork and swift approvals of local strategies and tactics, potential bureaucratic pitfalls will slow our progress. The California local team has proven that quick responses based on local decisions can bring good results.

*no
way -
thought
of
it
before*

- The RMs should be experienced individuals with an ability to direct and to judge the efficacy of significant numbers of consultants, public relations experts and others. They must be capable of anticipating challenges, and developing, implementing and directing cogent local plans, strategies and tactics. A draft job description is attached. [Attachment A]

- Twenty-seven states have been identified as primary targets for the local program. Key factors in recommending regional manager responsibilities include the number of serious states in a given area and consistency, to the degree practical, with existing Institute regions.

- The RMs should be located in the following six cities and handle the current State Activities regions in parentheses: Boston (I, II), Indianapolis (III), Seattle (IV, V), Washington, DC (VI, VII), Denver (VIII, IX, X) and Sacramento (XI). Geographic jurisdictions and the states we view as especially sensitive to local issues, are outlined on the attached map. [Attachment B]

*- no
state
dispute
out effort*

- By placing the RMs' in existing offices, we will be able to make use of current staff, equipment and space.

Program Costs

- A recommended budget is attached. [Attachment C]
- Some of the costs associated with this program have already been factored into the State Activities 1993 budget. Others are one-time start-up costs.
- Major costs for the program relate to staff, the retention of competent local advocates, legislative monitoring expenses, other administrative costs and coalition development. The Institute, through the State Activities budget, is in a position to defray some of these costs. However, some additional funds will be necessary to implement the program.

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SUMMARY AND CONCLUSIONS

It must be remembered that one of our major state goals is to encourage the adoption of state laws that preempt localities from enacting anti-tobacco proposals. For 1993, we have targeted 17 states for this effort. However, state preemption is, at best, difficult to achieve. Thus, our local plan is crucial.

In California, and more recently in New England and elsewhere, we have seen that the industry can be successful locally when it coordinates and combines its resources in a systematic fashion. The California industry team accomplishes its tasks through such systematic effort; and we rely on local decision-making, even in cases where we reach an accommodation with our adversaries. Our plan builds on what we have learned in those locations where industry coordination has worked.

It is clear that competent regional personnel are necessary to put suitable focus and coordination on the local program. For the program to work effectively, monitoring systems, local advocates, coalition building activities and related programs are vital.

This program suggests the very minimum amount of additional staff, consultants and other resources. If approved, we will proceed in a deliberate manner; and it may be that in the final analysis additional requirements will be necessary to make the plan as effective as possible.

An undertaking of this magnitude and importance will inevitably undergo course corrections as it evolves. That does not alter the fact that The Institute is best positioned to take the lead for all the companies in the industry in establishing and implementing an expanded program to address one of the most pressing challenges the industry has faced.

KLM:ww/cy

Attachments (3)

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