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Article Summary: Anti-smoking sentiment is in the air, but this is not the first time we've tried to kick the habit. In 1905 the state legislature enacted tobacco bans to protect Nebraskans' health and morals.

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Photographs / Images: Dixie cigarette package, 1880s; cartoon caricaturing opponents of smoking, "Thou Shalt Not Enjoy Thyself!" (*Public Sentiment*, May 1, 1920); W. Duke & Sons cigarette package; anti-smoking cartoon (private collection); anti-smoking illustration by Marie Schubert (S. Meyer Newmayer and Edwin L Broome, *Health Habits*, 1928); anti-smoking warning from a package of mock cigarette papers

# KICKING

## *Nebraska's 1905 Anti-Cigarette Law*

*After hundreds of medical studies, warnings from the surgeon general, documentaries, and lawsuits, smoking in Nebraska is on the defensive.*

IN NOVEMBER 2004, 62 PERCENT OF LINCOLN voters cast ballots in favor of a referendum outlawing smoking in all public establishments. The ban went into effect January 1, 2005, and was rigorously enforced. Lincoln Police Chief Tom Casady said violators, including business proprietors, would be charged with a misdemeanor carrying a fine of \$100 for a first offense, \$200 for a second, and \$500 for a third.<sup>1</sup>

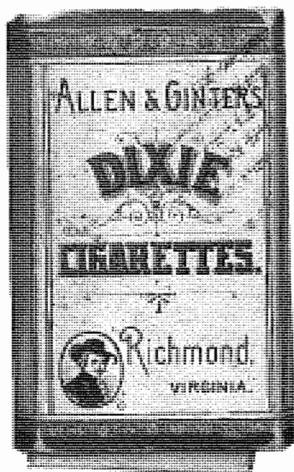
In 2005 the Omaha City Council passed similar legislation outlawing smoking in restaurants and public meeting places. The Omaha ordinance makes an exception for bars without kitchens, for existing keno and veterans' organizations, and for the horseracing track. Finally, in April 2005, LB480, a statewide tobacco ban similar to the Lincoln city ordinance fell only two votes short of the twenty-five needed for passage by the state legislature. Obviously, anti-smoking sentiments are in the air—but this is not the first time Nebraskans have tried to kick the habit.<sup>2</sup>

In the late nineteenth century, thanks to a cigarette-rolling machine invented by James Albert Bonsack and introduced in 1885, mass produced

cigarettes were available for the first time. James Buchanan Duke, an enterprising ex-Confederate soldier, rejected the widely held belief that smokers preferred hand-rolled cigarettes to those made by machine, and advertised widely hoping to create a market for inexpensive machine-made cigarettes. As Jane Webber Smith, author of *Smoke Signals*, explains, "the Bonsack machine reduced the per-unit cost of cigarette production to twenty-four cents per thousand, within reach of the average consumer. Duke now had to get the message to the masses."<sup>3</sup>

The new product was a hit, and Duke ultimately created an enormous cigarette empire that lasted until the tobacco trust was broken up in 1913.<sup>4</sup> Duke's company, W. Duke & Sons, made cheap cigarettes widely available. This emerging product, coupled with the increasing prosperity and dawning consumer culture of the late nineteenth century, made it almost inevitable that cigarettes would become popular. But parallel to the birth and wide adoption of the modern cigarette, the late ninetieth century also saw reform movements sweep the nation. It is no surprise that reformers in Nebraska, as elsewhere, would attack the vice of smoking.

One hundred years ago, in 1905, the reformers seemed to prevail when the Nebraska State Legislature outlawed the sale, manufacture, or distribution of cigarettes and cigarette papers, hoping thereby to eliminate cigarette smoking. If the supply of cigarettes were severed, they reasoned, people would stop smoking. Although



Dixie Cigarettes, 1880s

BY MICHAEL KUZMA

# THE HABIT



Thou Shalt Not Enjoy Thyself!

This 1920 cartoon from an Omaha tabloid caricatures opponents of smoking. The debate over tobacco has been contentious in Nebraska for more than one hundred years *Public Sentiment*, May 1, 1920



James Bonsack's rolling machine made mass-produced cigarettes affordable by the working classes. One early brand was W. Duke & Sons' Cross-Cut, "the very best, bright, sweet and aromatic cigarette...in packages of 20 at 10c."

Before Bonsack's machine was introduced in 1885, cigarettes were a luxury item marketed to the elite, but as the price came down the image of the cigarette smoker changed. Cigarette smokers were seen as crude and even morally suspect, unlike pipe and cigar smokers, who used tobacco in socially acceptable forms.<sup>5</sup> The 1905 legislation placed no restrictions on pipe tobacco or cigars, but lawmakers apparently felt that making cigarette smokers quit cold turkey would improve both the health and the morality of the state.

After heated debate, the bill was passed into law on April 4, 1905. Chapter 198, House Roll 72 of *Laws, Joint Resolutions and Memorials passed by the Legislature of the State of Nebraska, at the Twenty-ninth Session* reads:

Section 1: That it shall be unlawful on and after the date this act shall go into effect to manufacture, sell, give away, or willingly allow to be taken any cigarettes or the material for their composition known as cigarette paper within the State of Nebraska.

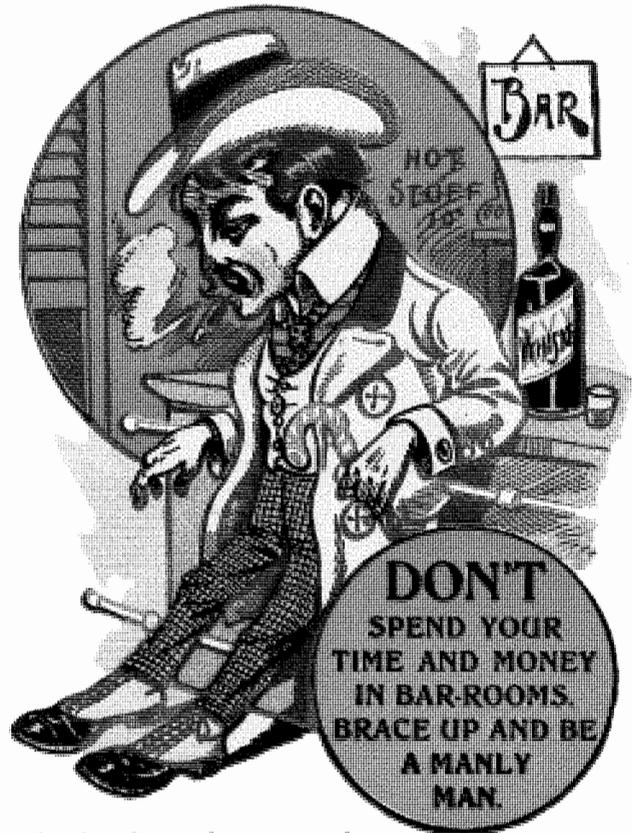
Section 2: That any person, firm, association, or corporation in this state violating the provisions of this act he or they, shall be guilty of a misdemeanor and shall upon conviction thereof be fined for each and every such offense, a sum not less than \$50.00 nor more than \$100.00 at the discretion of the Court together with costs of prosecution.

perhaps noble in its intentions, the law was ultimately unsuccessful because it did not prohibit or in any way control smoking—of cigarettes or any other form of tobacco. It only restricted cigarette sale, manufacture, and distribution. Resourceful smokers perpetuated their old habit by pioneering some ingenious methods of securing cigarettes.

Much like the current anti-smoking experiments in Lincoln and Omaha, passage of the law was motivated by what supporters considered the public's best interests. Even in 1905, people knew smoking was bad for health. However, the 1905 legislation was not based solely on preserving Nebraskans' health. Legislators also had moral improvement in mind.

Section 3: Any officer, director, or manager having in charge or control either separately or jointly with others the business of any corporation, which corporation violates the provisions of this act if he have knowledge of the same, shall be guilty and subject to the penalty herein provided.<sup>6</sup>

Unlike the modern anti-smoking legislation, which was based primarily on public health issues and the effects of "secondhand" smoke on non-smokers, the 1905 anti-cigarette law, in spite of its neutral language, was as much about restricting a



Smoking began to carry overtones of vice and dissolution, especially as inexpensive machine-made cigarettes were widely adopted by working class smokers. Private Collection

socially disdained habit as it was about protecting public health. As the Nebraska Supreme Court declared in *Dempsey v. Stout*, a case challenging certain applications of the law, the legislature had "supposed that the use of cigarettes was injurious to the public in general, through its effects upon the health and morals [author's emphasis] of the people."<sup>7</sup>

By 1905 it was widely held that only riff-raff, ruffians, and vagrants smoked cigarettes, and the anti-cigarette law was aimed at them. Many of the anti-cigarette legislation stories filling the news-

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papers referred to cigarette smokers in pejorative terms such as “fiends” and “coffin nail addicts.”<sup>8</sup> Proponents of the anti-cigarette legislation said that they were “speaking for nine-tenths of the women in the state,” by supporting the legislation.<sup>9</sup>

Furthermore, tobaccoists noted that the restriction on cigarettes would not hurt overall tobacco sales because of the low profit margin on inexpensive cigarettes. “Lincoln tobaccoists do not express much grief over the passing of the cigarette, for they say that it is a bad trade to handle both morally and financially. . . They say that although there is money in keeping many high grade cigarettes, the Lincoln ‘fiends’ are not fastidious or liberal enough to buy them.”<sup>10</sup>

Although the newspaper characterizations of smokers are stereotypes, those popularly held beliefs carried a grain of truth. With the greatly reduced price of cigarettes that followed the introduction of the Bonsack machine, the working class, often regarded as coarse and uncouth at best, had quickly adopted cigarette smoking. Moreover many reformers regarded the growing consumer power of the working classes as part of a new culture of instant gratification—and cigarettes seemed to fit perfectly. The high fine, (fifty dollars in 1905 is equivalent to more than a thousand dollars in 2005) would fall upon a social class that often could not afford the more socially acceptable forms of tobacco. Cigarette smokers certainly would have found such a harsh financial penalty an enormous burden.<sup>11</sup>

HR 72 did not, however, outlaw cigarette smoking. In the days leading up to the ban, the *Lincoln Daily Star* noted that “cigarette smokers and tobacco dealers made some remarkable transactions,” and on July 1, when the ban went into effect, “not a cigarette could be seen in the showcase or on the shelves of the stores.”<sup>12</sup> But as long as smokers could acquire packaged cigarettes, smoking itself was not illegal. However, hoarding cigarettes was only a short-term solution, and resourceful, addicted smokers soon discovered loopholes in the law: “The law does not prohibit the shipping of cigarettes into the state from outside points. The smokers say they intend on ordering from the jobbers in Iowa, Missouri, and Kansas.”<sup>13</sup> Legally acquired cigarettes from out-of-state sources greatly undermined the

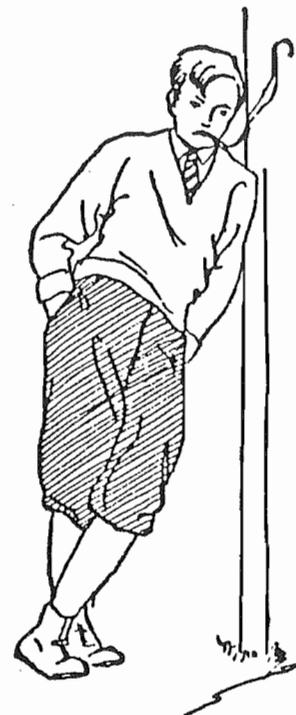
effectiveness of the law, but were not the only thing that helped bring it down.

It did not take long for cigarette smokers to challenge the new law in court. In 1905 John Alperson of Douglas County had been charged, convicted, and fined for giving away cigarettes and cigarette paper. Alperson contended that the law was unconstitutional. Section 11 of Article 3 of the Nebraska Constitution, states, “no bill shall contain more than one subject and the same shall be clearly expressed in its title.”<sup>14</sup> The title of the anti-cigarette bill does not mention a prohibition on giving cigarettes away, although that is included in the text of the legislation.

The constitutional provision cited by Alperson was designed, the Douglas County Court said, to prevent the legislature from passing a law under a guise that could affect some other interest or right. The court agreed with his contention that the anti-cigarette law illegally affected a right other than those expressly stated in the title of the legislation and overturned his conviction.

The plaintiff, Michael Whalen, appealed to the Nebraska State Supreme Court. The supreme court agreed with the plaintiff, declaring that the title of anti-cigarette legislation, “A bill for an act to prohibit the manufacture and sale of cigarettes and what is known as cigarette paper and to provide a penalty for its violation,” implies that the purpose of the law is to inhibit the “avenues of commerce” through which these dangerous articles move.<sup>15</sup> Furthermore, the court said, the bill’s purpose implies that the legislature was trying to protect the public from articles that were known to be bad for both health and morals. The court reversed the Douglas County Court’s decision stating that, “we think that it is manifest from the title of this act, and therefore sufficiently expressed therein, that it was the purpose of the proposed legislation to protect the people of the state against results arising from furnishing these articles to the public.”<sup>16</sup> The cigarette law was constitutional and, unless repealed, would remain in effect.

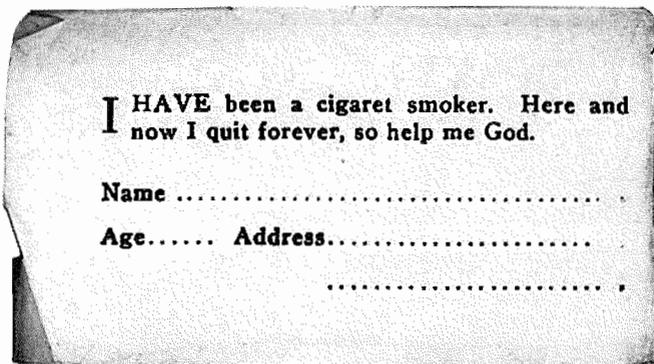
A second legal challenge focused on the legislature’s assumption that the law would apply not only to the commercial manufacture of cigarettes, but also to individuals who made cigarettes for personal consumption. The *Lincoln Daily Star* notes that a similar anti-cigarette law in



The original caption for this illustration reads, “Notice how often cigarette smoking and slouchy, careless posture go together. An erect, upright position inspires confidence and wins countless friends.” Illustration by Marie Schubert from S. Meyer Newmayer and Edwin L. Broome, *Health Habits*, 1928

Indiana had been interpreted in that way.

In November 1905, Edward Stout of Omaha, in possession of tobacco and cigarette paper, proceeded "to roll the same into form as a cigarette, solely for his own use and for the purpose of smoking the same himself"<sup>17</sup> He was subsequently fined for "manufacturing" cigarettes. Stout took the matter to the Douglas County Court, which ruled that it was not the intent of the legislation to prohibit the manufacture and use of cigarettes by private citizens, but rather it was to prohibit cigarette traffic and commerce. The court threw out the plaintiff's case.



An early anti-smoking warning came in the form a package of mock cigarette papers, each leaf bearing an anti-smoking message. The final leaf is this anti smoking pledge.

The plaintiff, Michael Dempsey, also an Omaha resident, appealed to the Nebraska Supreme Court. In its January 1906 session, the supreme court affirmed the county court's decision, ruling that the state "has

no power to regulate the personal habits of an individual by forbidding him to use cigarettes; that it is the right of the sovereign citizen to eat, drink, and smoke what he may choose to, although it may be the judgment of the legislature that he is injuring himself."<sup>18</sup> The decision further weakened the practical effects of the law, adding yet another loophole to effective enforcement.

It is unclear how effective the anti-cigarette law was in actually reducing cigarette smoking. In 1919 it was repealed, presumably because it was considered ineffective. The repealed legislation was replaced by two new cigarette laws, "Smoking cigarettes in public eating places, penalty" and "Advertising cigarettes, penalty."<sup>19</sup> This subsequent legislation may allude to the failure of the 1905 law in preventing cigarette smoking. The second of the two new laws implies that the tobacco industry's heavy advertising campaigns had been effective.<sup>20</sup>

Echoing the reformist tenor of the times, Nebraska's 1905 attempt to stamp out cigarette smoking was enacted to improve the health and morals of the state, while at the same time reinforcing class and economic distinctions by levying penalties not against smokers in general, but only against users of the inexpensive form of tobacco used by the working classes. One hundred years later, the anti-smoking regulations in Lincoln and

Omaha appear to be more effective in achieving their goals, the prohibition of all smoking in most public establishments and eating places. Only time will tell if these legislative experiments in improving the health—and, cynics might say, also the morals—of Lincoln and Omaha residents will endure and become the models for a statewide smoking ban, or will go the way of HR 72.

## NOTES

Admiral Cigarettes advertisement (contents page), <http://www.tobacco.org/>; Dixie and Cross-Cut cigarette packages (92, 94) and anti-smoking cigarette paper (96), Tobacco Advertising Collection, Emergence of Advertising On-Line Project, John W. Hartman Center for Sales, Advertising, and Marketing History, Duke University Rare Book, Manuscript, and Special Collections Library, <http://scriptorium.lib.duke.edu/ea/>.

<sup>1</sup> City of Lincoln Mayor's Office, 2004 Media Releases, "Enforcement of Smoking Ban to Begin January 1," Nov. 4, 2004, <http://www.lincoln.ne.gov/city/mayor/media/2004/110404.htm/>; Mark Andersen, "Casady: Smoke ban enforcement will be vigorous," *Lincoln Journal Star*, Nov. 22, 2004.

<sup>2</sup> Joe Ruff, "Omaha passes partial smoking ban," *Lincoln Journal Star*, Jan. 26, 2005; Joe Ruff, "Omaha passes partial smoking ban," *Lincoln Journal Star*, Jan. 26, 2005; Nate Jenkins, "Bid for statewide smoking ban fails," *Lincoln Journal Star*, Apr. 14, 2005.

<sup>3</sup> Tara Parker-Pope, *Cigarettes: Anatomy of an Industry from Seed to Smoke* (New York: The New Press, 2001), 9–10; Jane Webb Smith, *Smoke Signals* (Chapel Hill: University of North Carolina Press, 1990), 17.

<sup>4</sup> *Ibid.*, 19.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Laws, Joint Resolutions and Memorials passed by the Legislature of the State of Nebraska, at the Twenty-ninth Session (1905)*, Chapter 198, House Roll 72, 691.

<sup>7</sup> *Dempsey v. Stout*, 76, 152.

<sup>8</sup> See, for example, "Four More Days of the Cigarette: Fiends are Taking Their Final Smokes in Preparation to Abide by the Law" *Lincoln Daily Star*, June 26, 1905.

<sup>9</sup> "Anti Cigarette Bill Will Win in Senate," *Lincoln Daily Star*, Mar. 30, 1905.

<sup>10</sup> "Four More Days of the Cigarette" *Lincoln Daily Star*, June 26, 1905.

<sup>11</sup> Smith, *Smoke Signals*, 42–43; John J. McCusker, "Comparing the Purchasing Power of Money in the United States (or Colonies) from 1665 to Any Other Year Including the Present," Economic History Services, 2004, <http://www.eh.net/hmit/ppowerus/>

<sup>12</sup> "A Bargain Sale" *Lincoln Daily Star*, July 1, 1905.

<sup>13</sup> "A mail order business" *Lincoln Daily Star*, July 1, 1905.

<sup>14</sup> Nebraska Constitution art. 3, sec. 11.

<sup>15</sup> *Alperson v. Whalen*, 74, 683.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Dempsey v. Stout*, 76, 154.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Laws, Resolutions and Memorials passed by the Legislature of the State of Nebraska, at the Thirty-Seventh Session (1918–19)*, ch. 180, sec. 10–13, 403–404.

<sup>20</sup> Parker-Pope, *Cigarettes*, 9.