

STATE OF MICHIGAN
IN THE 46th CIRCUIT COURT
OTSEGO COUNTY

MOORE MURPHY HOSPITALITY, LLC
D/B/A IRON PIG SMOKEHOUSE,
Plaintiff,

Case No.: 23-19393-CZ
Hon. Colin G. Hunter

v

HEALTH DEPARTMENT OF NORTHWEST
MICHIGAN,
Defendant.

**OPINION AND ORDER REGARDING PLAINTIFF'S MOTION FOR DECLARATORY
JUDGMENT AND DEFENDANT'S MOTION FOR SUMMARY DISPOSITION**

Background Facts

Plaintiff Moore Murphy Hospitality, LLC which operates as the Iron Pig Smokehouse in Gaylord, Michigan, (Iron Pig) filed its complaint in this case seeking a declaratory judgment that five statutes within the Michigan Public Health Code are unconstitutional. The parties agreed that no trial would be needed, and each have now before the Court motions for dispositive relief: a motion for declaratory judgment filed by Iron Pig and a motion for summary disposition filed by Defendant

Health Department of Northwest Michigan (HDNW). After receiving those motions and responses the Court heard detailed arguments regarding both matters.

In its motion for declaratory relief, Iron Pig places reliance on the Michigan Supreme Court case of *In re Certified Questions From United States District Court, Western District of Michigan, Southern Division*, 506 Mich 332 (2020) (*In Re Certified Questions*), this Court's opinion and order in a prior action between Iron Pig and the Michigan Department of Health and Human Services (MDHHS) in Otsego County case number 21-18522-AE (the prior Iron Pig case), and the case of *T & V Associates, Inc., d/b/a River Crest Catering v Director of Health and Human Services*, Michigan Court of Appeals No. 361727 (2023), among various other Michigan and out of state cases, treatises and other secondary sources. Both this Court's opinion in the prior Iron Pig case and the *T & V Associates, supra* case involved consideration of MCL 333.2253 and both Courts determined that the statute was unconstitutional. However, as it relates to the instant challenges, Iron Pig posits that while MCL 333.2253 (which related to the state health department) has now been ruled unconstitutional, HDNW can and still will rely upon other statutes that provide authority to local health departments but which suffer from the same flaws that made MCL 333.2253 an impermissible delegation of authority.