

The Gainesville Sun

City defends its underage drinking law

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Alachua County Circuit Judge Robert Roundtree heard arguments Tuesday in a case challenging Gainesville's newly enacted ordinance aimed at curbing underage drinking by punishing bars with excessive violations.

Rob Zeller, owner of Grog House, a bar across from the University of Florida campus, challenged the law enacted in April on the grounds that it was unconstitutional and discriminatory.

After an hour and a half of arguments, Roundtree closed the hearing and said he'd have a ruling by Friday on whether the city's ordinance is constitutional.

He also inquired into the possibility that only a portion of the ordinance be struck down, known as the severability of the ordinance.

Attorneys representing Zeller, who is also partial owner of two other campus establishments, The Copper Monkey and Gator City, argued that the city can't regulate the "activities or business transactions of state-regulated licensees."

Bars, because they receive alcohol licenses from the state, therefore cannot be regulated by city ordinance, Orlando-based attorney Tracy Marshall argued.

However, Elizabeth Waratuke, city litigation attorney, countered that "the Legislature specifically recognizes that a city or county may validly regulate the presence of persons under 21 years of age on the premises of retail alcoholic beverage establishments."

The ordinance in question prohibits people under the age of 21 from entering bars after 9 p.m. if the bar exceeds city-set thresholds for underage drinking violations.

Roundtree said it comes down to a question of whether the ordinance regulates the bar or the patrons, noting there is case law supporting cities that have prohibited all underage patrons from entering a bar.

The legal question may come down to whether the ordinance regulates the bars or the underage individuals.

"It's short-circuiting state law," Marshall said of the ordinance.

Roundtree disagreed saying, "there's not enough (alcoholic beverages and tobacco) enforcers in the world to regulate all the bars in Gainesville ... The ordinance is designed to supplement and enhance state law."

One of Marshall's other arguments was met more favorably by the judge, however.

She said the state law requires bar owners to be able to defend themselves from infractions where they are considered an "innocent owner."

For example, if an underage patron passes off a fake I.D. that would have fooled most people, the Division of Alcoholic Beverages and Tobacco and state laws don't hold the bar owner responsible for the infraction.

The city law does not allow bar owners to make the innocent owner argument.

"What's to prevent you from walking in with your purse with a pint of Gin in it?" was Roundtree's rhetorical question. "It doesn't matter that you didn't know, it doesn't matter that they fooled you."

Waratuke argued that the data proves bar owners are able to reasonably prevent underage drinking despite the advent of fake IDs.

"Telling were such statistics as one bar, with a patron capacity of 1,662, had one underage drinking arrest for the year, while the establishment that had 106 underage drinking arrests had a patron capacity of 373," said the city of Gainesville's legal rebuttal to the challenge.

Other cities across Florida, such as Ocala, have expressed interest in Gainesville's legislation and are likely watching this case to see if the law stands up in court.

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