



UTAH BUSINESS POLITICS

# Judge dismisses challenge to Utah liquor laws but leaves room for revised lawsuit

By Dennis Romboy | @dennisromboy | Mar 26, 2012, 6:11pm MDT



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SALT LAKE CITY — A federal judge unexpectedly dismissed a lawsuit Monday aimed at overturning recent changes to Utah liquor laws but left the door open for future litigation.

U.S. District Judge Bruce Jenkins gave the Utah Hospitality Association 20 days to amend its complaint, which alleges that state lawmakers conspired with the LDS Church to prohibit bars from selling discounted alcoholic drinks, among other things.

"We plan to do that," said Lisa Marcy, hospitality association attorney.

Assistant attorney general Kyle Kaiser said he was surprised Jenkins ruled so quickly, but called it the right result. He also knows the case he called "intriguing" isn't over.

"We'll be back here for round two," he said. "I think this is probably their last best shot."

At issue is SB314, a law the Legislature passed last year that provided for more restaurant liquor licenses but not social club licenses. It ties the state's license quota system not only to population but the number of public safety officers assigned to enforcing liquor laws, specifically related to DUI.

The law also bans establishments from offering daily drink specials, which lawmakers believe would curb overconsumption in short periods of time. The hospitality association contends it amounts to unlawful price fixing.

Bar owners also find it confusing because the law allows them to raise drink prices

but not lower them.

"What does a discount really mean?" Marcy said. "The way it's written is too ambiguous."

Kaiser said he doesn't think the statute prohibits daily drink specials, adding it depends on how they're advertised. Being confusing doesn't make it unconstitutional, he added.

More broadly, arguments Monday centered on whether the state has unfettered ability to regulate alcohol under the 21st Amendment and whether it has immunity from being sued over federal antitrust laws.

"Utah has a right to control liquor as well as a lot of other industries," Kaiser said.

Jenkins questioned the lawsuit's conclusions, saying it lacked specific facts tying the allegations to antitrust claims.

"That complaint was written as artfully as it could be," Marcy said after the hearing. "I did not make the allegations as clear as I could have. It's a difficult issue. What we'll do is focus on the facts and give him what he wants."

Attorneys also argued about the "domination clause" in the Utah Constitution, which says no church should dominate the state or interfere with its functions.

The lawsuit says lawmakers conspired with The Church of Jesus Christ of Latter-day Saints to craft the legislation. It alleges two church representatives warned them that if they did not agree with the church's support of SB314, "there would be repercussions."

"That's not stepping over the line; that's leaping over the line," Marcy said.

Kaiser called the law "religiously neutral" and enforceable even "if you believe the LDS Church said there would be consequences" if lawmakers didn't support it. He said it doesn't matter if the law matches religious tenets.

"I just don't know how a court could enjoin legislators from talking to their constituents," he said.

The LDS Church, which is not named in the lawsuit, has said one of the functions of religious leaders in a democracy is to add their voice to issues of public importance.

While the church teaches its members to avoid alcohol altogether, it acknowledges that alcoholic beverages are available to the public. It has called for reasonable regulations to limit overconsumption, reduce impaired driving and work to eliminate underage drinking.

State lawmakers, too, have used those principles as a guide to drafting alcohol policy.

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