

Health Dept. Overstepped Authority In Enforcing Smoking Ban, Court Rules

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COLUMBUS, Ohio — A court on Thursday said the Ohio Department of Health has overstepped its authority in enforcing Ohio's smoking ban.

The ruling does not change the state law, enacted in 2006 to outlaw smoking inside businesses, but it just gives them grounds to appeal their fines if the department of health catches smokers in their establishment, 10TV's Cara Connelly reported.

The ruling comes after Columbus bar Zeno's appealed the more than \$30,000 in fines received from smoking ban violations.

If the bar has made an effort to keep patrons from smoking, by posting signs, removing ash trays and telling patrons not to light up for example, then the business can appeal their fine, the court ruled.

The Franklin County Common Pleas Court ruling said it is unfair to fine bars for the behavior of their patrons if they made an effort to keep them from smoking, Connelly reported.

Zeno's attorney said the bar has done all it can to get their customers to comply with the smoking ban, but some people were still lighting up, Connelly reported.

"The way the department of health is enforcing the law is in fact unlawful," said the bar's attorney, Maurice Thompson.

Thompson said Ohio businesses cannot be hit with fines if they make an effort to prevent customers from smoking.

"The department of health has essentially taken the law into its own hands," Thompson said.

In a written statement to 10TV the director of the Ohio Health Department disagreed.

"We have appealed the decision by Franklin County Court of Common Pleas. ODH is working with the Attorney General's Office and they have also filed a motion to stay on our behalf," Dr. Alvin D. Jackson said. "In the meantime we will continue to enforce the Smoke Free Act."

The health department could face resistance from patrons and business owners who said the ruling is just, Connelly reported.

"Bartenders aren't the police. I think it's up to an individual person to smoke," said Zeno's customer Deb Roberts.

Lawyers involved in this case said bars that have already paid fines may be entitled to get that money back, Connelly reported.

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