

Utah's dry issues

State's top court debating alcohol sales regulation

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Booze and Utah have never made for a smooth cocktail. Alcohol issues here are both shaken and stirred.

For some, the state's quirky liquor laws are as difficult to stomach as they are to explain. Dry towns are the best towns, say others. Utah's rich, divisive history on all things alcohol promises to get richer sometime in the coming months.

The Utah Supreme Court is charged with settling an argument between the Garfield County town of Boulder and the proprietors of the Boulder Mountain Lodge.

On one level, it's a squabble over a customer's right to order a Cabernet with his T-bone. The lodge wants to offer alcohol to diners.

"No chance," say town leaders, citing what they say are community values.

But local leaders, business owners and everyday Joes in communities ranging from North Logan to Lindon are keeping a sober eye on tiny Boulder. Utah's liquor laws could be at stake. The high court's decision may determine the extent a community can regulate alcohol sales within its boundaries.

The days of G-men, speakeasies and backshed stills will likely remain the stuff of history books. But prohibition, in some form and in some communities, may return.

The start of hostilities

The Boulder Booze Battle began almost five years ago when the owner of the Burr Trail Cafe asked the Town Council to "support" his application for a restaurant liquor license allowing him to serve beer, wine and spirits with food orders.

Local support, according to state liquor law, comes in the form of "local consent." While approval of most types of alcohol license is granted by the Utah Alcoholic Beverage Control Commission, the commission will not entertain an application without local consent of the county, city or town authority.

At the time the application arose, Boulder did not have an ordinance regulating the sale of alcoholic beverages, although two small convenience stores sold beer for off-premises consumption.

Before deciding on the Burr Trail Cafe matter, the Town Council ordered an anonymous survey to be conducted among Boulder residents to measure alcohol attitudes. After reviewing the completed survey, Boulder leaders decided the majority of their constituents did not want them to OK restaurant liquor licenses.

The Town Council never had to decide on the Burr Trail Cafe application -- the place went out of business.

But later that year the owners of the not-yet-opened Boulder Mountain Lodge requested local consent for their restaurant liquor license application.

A large group of locals squeezed into the Boulder Town Hall to hear the council adopt an ordinance allowing beer sales for off-premise consumption. Licenses to sell beer or liquor for on-premise consumption were not authorized -- indirectly squashing Boulder

Mountain Lodge's request for a restaurant liquor license.

Despite the de facto rejection of its application, the lodge asked the state liquor commission to ignore Boulder's ordinance and grant it a liquor license. Sorry, answered the liquor commission, saying local consent was absent from the lodge's application.

The lodge opted to file a lawsuit against Boulder, challenging the local consent issue. After working its way up the judicial system, the matter is now being decided by the Utah Supreme Court.

A widespread issue

Since the Boulder battle, several Utah communities have snagged liquor-related headlines:

--Plans to open a microbrewery in Logan in 1996 were nixed by city leaders, who subsequently tightened the city's liquor laws. Later, North Logan leader refused to give local consent to a Ruby Tuesday's restaurant franchise request for a liquor license.

--In 1996, the Sandy City Council passed a beer sales ordinance that prohibits the sale of beer between 1 and 10 a.m. Council members worried that people from all over the Salt Lake Valley would make nighttime beer runs in Sandy.

Sandy had been one of the only cities in Salt Lake County allowing such alcohol sales.

In 1997, a divided Sandy City Council voted against allowing microbreweries and brew pubs into the city.

--In 1998, Draper's City Council opted against granting local consent on South Mountain Golf Club's application for a restaurant liquor license.

A vocal citizens group called Citizens for a Safer Draper pressured the city on the golf course application and have since drafted an initiative that would prohibit the city from issuing additional beer licenses or giving local consent to liquor license applications.

--In January, the Lindon City Council placed a six-month moratorium on issuing liquor licenses.

Lindon administrator Ott Dameron said the city had received some alcohol license inquiries but decided to hold off any would-be decisions until the high court rules on the Boulder matter.

Dameron said there is some sentiment among council members "to ban (alcohol) sales all together," adding he is uncertain how a formal vote would go.

100 years of history

Long before brew pubs ever became trendy, prohibition was a hot, divisive subject in Utah.

The state's 1895 constitutional convention soundly rejected an article to prohibit the sale of alcohol but later, the Anti-Saloon League achieved some success throughout the Midwest, according to Thomas G. Alexander's book "Utah: The Right Place."

The issue divided Utah for years. While most people reportedly viewed prohibition as a reflection of local family values, some lawmakers feared supporting statewide prohibition would alienate non-Mormons and endanger political ambitions.

"In 1909, prohibitionists marched proudly into the Legislature like crusaders expecting victory over the forces of sin and debauchery," Alexander wrote.

A bill promising to abolish alcohol from the state passed in the House but was later defeated in the Senate. Instead, the Senate championed a bill that would allow cities and towns to vote on local prohibition.

Utah Gov. William Spry vetoed the bill and was targeted for public criticism. He later signed a similar bill in 1911 and in local elections that followed "virtually all towns except Salt Lake City, Ogden, Farmington, Sandy, Midvale, Price and the hard-drinking mining camps went dry," Alexander wrote.

Then in 1920 began the "noble experiment" as the U.S. Congress approved the 18th Amendment establishing the Prohibition.

Compliance was never really achieved. Utah had its share of speakeasies, bootleggers and home-brew distillers.

The 21st Amendment to the Constitution was drafted to repeal Prohibition in 1933. The 21 members of Utah's Constitutional Convention unanimously supported the 21st Amendment. Ironically, it was Utah's vote to scratch Prohibition that put the issue over the top.

Two years later, legislation created a state liquor commission with the charge to sell and regulate alcohol in Utah.

The commission also issues licenses and, since its inception, has required local consent before considering an application.

"I cannot recall a time when the commission has granted a license without that local consent," said commission spokesman Earl Dorius.

Varied arguments

In a simple world, the local consent issue in front of the five Utah Supreme Court justices could be divided into sides: teetotalers vs. imbibers, Mormons vs. non-Mormons, conservatives vs. liberals.

But arguments about such divisions only fizzle.

Some folks who have never tipped a beer oppose dry towns, while a non-Mormon Boulder Council member was instrumental in passing the town's restrictive alcohol ordinance.

In fact, some 65 percent of members of The Church of Jesus Christ of Latter-day Saints questioned in a recent Deseret News poll were opposed to giving local government the authority to ban alcohol sales. Almost 70 percent of those who said they were somewhat conservative, and 58 percent of those who said they were very conservative, were likewise opposed.

North Logan Councilman Wayne Watkins, for example, is a non-drinker who said he is personally against alcohol, yet cast the deciding vote in a recent 4-3 ballot that allowed a Winger's restaurant in the city's general commercial zone to sell beer.

Instead, arguments for or against local alcohol bans vary -- although both sides generally point to preserving their rights, be it majority or personal -- as their motivation.

Bryan Larson, an attorney and citizen activist in Draper, believes alcohol sales should be determined by community standards. If a majority of residents want a watering hole on every corner, so be it. If most want a dry town, then plug the tap.

"A community ought to have the right to choose for themselves," echoed Dr. George

Van Komen, a Salt Lake physician who has been outspoken on drinking and driving issues.

Although the LDS Church has been mentioned in the Boulder debate, Larson said the initiative that will soon be facing Draper City voters is not a Mormon issue. "But why should we take religion and morality out of politics?" he asked.

Larson emphasized the initiative would not outlaw alcohol in the growing city, "but we feel if we reduce availability we reduce consumption," he said.

North Logan Mayor Jack Draxler argued passionately against allowing beer sales in some restaurants in the city.

"It's mainly a stand against the ills of alcohol," said Draxler, who admits his opposition was largely symbolic because beer is available in nearby communities.

It is inconsistent for local governments to spend money promoting DARE and other alcohol and drug educational programs, Draxler said, then turn around and accommodate alcohol sales.

Draxler knows alcohol sales pump money into local communities but adds eliminating alcohol makes civic sense.

Sandy spokesman Rick Davis said the city was once famous for its saloons and currently has its share of private clubs. But when the microbrewery application came up in 1997, some council members bristled at suds being brewed at a gathering place where families eat.

"The city had to ask, 'Is this a good thing for our community?'" recalled Davis.

While there may not be any Utah towns where the majority of adults drink, a few elected leaders and business owners say the rights of the few must be protected.

Last year, Midvale's city council cleared the way for a new brew pub, voting 3-1 to allow the Avalanche Brewing Co. -- the same group that petitioned Sandy City -- to open for business.

Draper Councilman Lyn Kimball is a non-drinking, former LDS bishop who cast the lone vote to approve the South Mountain Golf Course liquor license.

Kimball believed the city was singling out the golf course, saying liquor licenses already existed in a Draper. Plus, Kimball added, the minority are entitled to their rights.

Kimball, who has said he would probably endorse a rumored ordinance limiting alcohol sales to a designated area of town, has taken heat for his opinion. A few residents said Kimball should quit, saying his alcohol stance was a disgrace to Draper.

Kimball has no plans to resign.

A national trend

Bryan Larson believes calls to limit alcohol sales in Draper have sometimes been bruised by a sloppy press.

Terms like "dry town" and "prohibition" have sound-bite appeal -- but they misrepresent what's really happening, Larson said. And they turn off some who don't understand the facts of many proposed alcohol sales bans.

The upcoming Draper initiative is not merely a reflection of the community's predominant Mormon population, added Scott Howell, a Brigham Young University administrator and co-sponsor of the Draper alcohol initiative.

"This is not a Mormon vs. gentile issue, it's a public safety issue," he said.

Howell said he believes the Draper initiative is one element of a growing national trend

to curb alcohol sales, pointing to dry town campaigns in areas where LDS Church membership is scant.

Hundreds of Chicago precincts have gone totally or partially dry and scores of liquor licenses have been revoked since Richard Daley was elected mayor, according to news reports. The Windy City has also passed a ban on alcohol billboards.

A number of counties in the South, in some place led by Baptist temperance organizations, are now dry. In fact, the Kentucky home of Jim Beam Whiskey distillery is a dry county.

And the majority of counties in the Texas Panhandle are reportedly dry or nearly dry, making it one of the largest contiguous dry areas in the United States.

Howell wonders if this momentum could lend itself to eventual legal action against alcohol producers in the spirit of the recent tobacco lawsuit.

'Stewards of consumption'

Boulder Mountain Lodge owner Mark Austin and Boulder's attorney, Larry Jenkins, are courtroom adversaries -- but both men regret their case is often portrayed as a religious crusade.

"The media has made this a Mormon vs. non-Mormon issue," Jenkins said.

Boulder is a tiny town with two convenience stores already selling beer. The town council simply "felt like people did not want more than what was already here," Jenkins said.

Austin adds that several close friends are members of the LDS Church and support his business ambitions.

An alcohol license, Austin said, is not a license to abuse alcohol.

Austin said he and others who serve alcohol are "stewards of consumption" committed to do business responsibly. "Our intent is to serve beer and wine, not get people drunk," he said.

Austin's attorney, R. Scott Berry, said he believes post-Prohibition Utah lawmakers intended to place alcohol and liquor control in state hands. But local consent provisions have proved local communities are the omnipotent gatekeepers.

"Local authorities really are in the driver's seat," Berry said.

Local consent, counters Jenkins, can only be read one way.

How Utah's top five judge's read "local consent" may soon determine the extent local leaders can cork the bottle and kink the tap.