

## Smoking ban goes too far, judge rules

By [William Hershey](#) | Thursday, February 25, 2010, 11:19 AM

Huber Heights bar owner Dave Grusenmeyer says he's pleased with a Columbus judge's decision that throws a potential wrench into the way Ohio's statewide smoking ban is being enforced.

"What it's going to mean is that they get things changed around so I once again will have the right to run my business the way I choose to run it," Grusenmeyer, owner of the Beacon Lounge and president of the Miami Valley Licensed Beverage Association, said on Thursday, Feb. 25.

Still, it might not be a good idea to light up when you visit the bar if you don't want to subject the bar owner to a fine.

Attorney General Richard Cordray is appealing the decision from Franklin County Common Pleas Judge David E. Cain and has asked for a stay pending appeal. Also, Dr. Alvin Jackson, state health director, said in a statement that "we will continue to enforce the Smoke Free Act." Ohioans approved the ban in 2006.

Cain ruled that the health department overstepped its legal authority in enforcing the ban against Zeno's, a Columbus bar, and tossed out citations that resulted in \$30,000 in fines. The judge faulted a "strict liability" policy against bar owners that resulted in citations without taking into consideration "no smoking" signs, removal of ashtrays and notifying customers that smoking wasn't permitted.

Grusenmeyer said that he has taken similar measures in Huber Heights but some people still smoke. He has not been fined so far, he said.

"Would the Department of Health require property owners to pat down visitors for cigarettes before they are allowed to enter?" Cain wrote. "Would it have property owners remove people by force from the premises at the risk of personal injury?" Placing the enforcement burden on bar owners is "ludicrous and defies basic notions of fairness," wrote Cain.

Sara Morman, spokeswoman, for the health department, said in an e-mail that the smoking ban was set up more to protect people from second-class smoke in public places and that it is difficult to cite individuals violating the ban, as opposed to bar owners.

No individuals have been fined, she said. To cite an individual, the department needs a name and address, she said. Also, if an investigator goes into a bar and sees someone smoking but doesn't see the bartender ask the person to quit, the smoker is not in violation, she said.