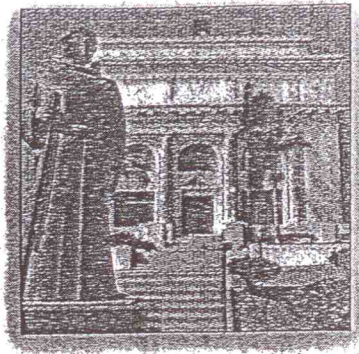


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IN THURSDAY'S STAR

Boy's dream comes true

An Ohio boy with cystic fibrosis is in Ventura County to talk about his book, "The Spider Who Never Gave Up," which was published after he asked the Make-A-Wish Foundation for help.

Wednesday, Oct. 6, 2004

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Public defender attacks alcohol law

He contends the city of Ventura can't regulate possession of open containers

By Kevin Clerici

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More than 50 criminal cases could be dismissed if a court commissioner strikes down a new Ventura city law that bans the possession of open containers of alcohol in public.

Jay Leiderman, a Ventura County

deputy public defender, argued Tuesday in court that the law, adopted in April, goes too far in regulating those with open bottles or cans of alcohol in public, many of whom are homeless. The state constitution, he said, prohibits cities from regulating the possession of alcohol.

Superior Court Commissioner Doug Daily agreed to make a ruling next week on the law's constitutionality. If he sides with the public defender, dozens of cases could be tossed out.

Cities have wide authority to regulate drinking in public, but possession of open containers is a different matter. Ventura officials believe the state constitution does grant cities some limited powers to go after people who possess booze in public.

"As written, we still think our ordi-

nance is constitutional," Assistant City Attorney Chris Norman said. "Regardless (of the judge's decision), we think it will be easy for us to prove a consumption violation without much change in police procedure."

The Ventura City Council changed the city's public drunkenness law to deter repeat violators. Police asked for the change, saying drinking and drunkenness in public were increasing.

Under the old law, violators were charged with an infraction and received a

ticket. Now, violations are misdemeanors, and those who fail to appear in court typically are subject to an arrest warrant, police Lt. Quinn Fenwick said.

Police issued more than 1,000 citations last year, many of which went unpaid, he said.

"As an infraction, it was a law without any teeth," Fenwick said. "People were blowing off their court dates, and you couldn't arrest them for not showing up."

See CHALLENGE on B2
COUNTY

Ruling could affect county, T.O. laws

CHALLENGE

From B1

Leiderman's central argument is that the California Constitution prohibits cities from regulating the possession of alcohol, and because Ventura includes possession in its ordinance, it is acting beyond the scope of its power.

After the repeal of prohibition

in the 1930s, the state wanted to make sure it was the sole regulator of alcohol possession, Leiderman said.

"The city expects its visitors and residents to follow its laws," he said. "Well, I expect the city to follow laws the state set out for it."

The legal issue could have implications for other agencies. Lei-

derman said the city of Thousand Oaks and the county have similar laws, which he intends to target if the judge rules in his favor.

Tim Giles, assistant city attorney for Thousand Oaks, said its public drunkenness law has been used successfully against repeat offenders. But if the court rules against Ventura, then "we would review our ordinance," he said.

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