

Idaho '50 Shades of Grey' case cited in Brewvies liquor battle in Utah

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Jon Harper says Idaho case shows liquor law won't trump free speech.



Brewvies Cinema Pub is viewed Monday, April 18, 2016, in Salt Lake City. Utah alcohol bosses have filed a complaint and will cons

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By Kathy Stephenson The Salt Lake Tribune

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The state could have avoided a lawsuit brought last week by Brewvies Cinema Pub if Utah Attorney General Sean Reyes and his staff had taken a cue from their counterparts in Idaho, Reyes' Democratic challenger argued Tuesday.

Jon Harper, speaking to the Utah Department of Alcoholic Beverage Control Commission, said Utah attorneys should have been aware of a case involving Meridian Cinemas, which, much like Brewvies, was ticketed for serving alcohol during a showing of a movie with sex and nudity.

In January, the Idaho theater filed a federal lawsuit contending that the movie screening of "50 Shades of Grey" was protected by the First Amendment.

Rather than allowing the case to proceed, Idaho officials agreed to hold off enforcing the state statute until its Legislature could examine it closer. Harper said the lawyers in the Idaho case cited a 9th Circuit Court of Appeals decision that clearly established that state liquor regulations could not trump freedom of speech provisions allowed under the First Amendment.

"The Idaho Legislature conceded that it was unconstitutional and eliminated the state provision," Harper said, noting that Utah could have done something similar with the Brewvies case.

"Instead, they allowed the state of Utah to be sued in a lawsuit it cannot win," said Harper, who spoke during the public comment period of the meeting. "The citizens and businesses of Utah are tired of wasting taxpayer money on unnecessary litigation."

A spokesman for Reyes said Harper is misplacing blame because it was the DABC's decision not to negotiate with Brewvies and its attorney, Rocky Anderson, Salt Lake City's former mayor.

"Like every agency in the state, we provide legal counsel, but it is up to the DABC how they enforce the statutes," said Dan Burton, the attorney general's spokesman. "We can only advise them."

Earlier this month, officers from the State Bureau of Investigation cited Brewvies for serving alcohol during screenings of the R-rated superhero movie "Deadpool." Because it was not the first time the Salt Lake City theater had been ticketed, it faced a stiffer fine of up to \$25,000 and a potential 10-day revocation of its liquor license.

"The visit was at the request of the DABC," said Marissa Villaseñor, director of public relations with the Utah Department of Public Safety, which oversees the SBI division.

Utah's Attire, Conduct and Entertainment Act, does not allow alcohol to be served during R-rated movies in which characters are shown having sex while nude. Brewvies filed a federal lawsuit in U.S. District Court of Utah, contending — like the Idaho theater — that the film is protected by the First Amendment.

Commission members listened to Harper's comments, but had stated earlier they would not discuss the lawsuit. "While the litigation is pending the commission and department will have no comment and will not engage in any dialogue," said commission Vice Chairman Jeff Wright.

However, the board welcomed citizen comment and action, Wright said. "We collectively look forward to the legal discussion and clarification of laws that we did not create or write, but are bound to enforce."

kathys@sltrib.com