



## July 2015 Government Affairs Update

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### LOCAL ISSUES

#### **SUPREME COURT RULES LOCAL ORDINANCES ON MANDATORY REGISTRY SEARCH ARE UNCONSTITUTIONAL**

*Courtesy of Felix Wade, Ice Miller LLP*

On June 22, 2015, the U.S. Supreme Court found a City of Los Angeles ordinance that required hotel operators to make hotel records available to police for inspection at any time was unconstitutional. The Court decided that allowing police officers to inspect hotel records without advance notice or probable cause violates the Fourth Amendment, which prohibits unreasonable searches and seizures.

Ohio's state laws regarding hotels relate to building safety and hotel permits, focusing on compliance with the state fire marshal and the assistant state fire marshals, who normally do not need warrants to complete inspections. Local ordinances in Ohio have addressed this issue and been reviewed by the courts. In 2005, the Court of Appeals for Cuyahoga County held that a City of Strongsville ordinance was unconstitutional when it provided that motels or lodging houses were subject to official inspection "at any time," and that guest registers "shall always be open for inspection."

This Supreme Court decision will impact any similar local ordinances. It should ensure that hotel operators and those in similar roles have the opportunity for judicial review of requests by local government authorities. The decision equates compelled government inspection of commercial records to a "search," thereby requiring judicially sanctioned warrants and subpoenas, prior to forcing a review. All in all, this decision should help guarantee the constitutional rights of hotels to protect the privacy of their customers.

OH&LA will revisit the issue with local jurisdictions in Ohio that may have ordinances on the books which contravene the ruling. The latest jurisdiction where this issue has arisen is the City of Westlake (see item below).

## **CITY OF WESTLAKE ENACTS REGISTRY SEARCH, 30 DAY STAY PROHIBITION**

The Westlake City Council passed Ordinance No. 2015-77 on June 4, to enact a new chapter on hotel regulations. Included are provisions requiring guest registers to be open for inspection and review by members of the Police and Fire Departments upon demand, and a requirement which states “Hotel and Motel rooms or accommodations shall not be used as a permanent or voting residence by any person. Any person occupying a room in excess of thirty consecutive days at a hotel or motel shall be presumed to be a permanent resident in violation thereof.”

OH&LA is discussing both provisions with member hotels and interested parties, and will approach the city in a collaborative fashion to offer suggestions and solutions to avoid problems for responsible businesses, while being sensitive to city official’s concerns.

## **HEARING SET FOR AVON CITY LODGING TAX**

The Lorain County Court of Common Pleas scheduled a hearing on July 8 regarding motions in the case of J. Evans v. City of Avon. This long-awaited step by the court will allow OH&LA and our industry partners to present our arguments on the Avon local lodging tax. Avon City Council enacted an ordinance increasing the city lodging tax from 3% to 6%, even though the existing lodging taxes already in place meant the new tax exceeded authority granted by the Ohio Revised Code. The hotel and tourism industry’s case is based on a clear reading of the Ohio Revised Code, and an amicus brief from the Ohio Attorney General. OH&LA is committed to combating harmful lodging tax maneuvers which exceed any local jurisdiction’s authority.

## **STATE ISSUES**

### **ONLINE TRAVEL COMPANY LEGISLATION**

OH&LA’s lobby team persevered through a temporary setback as language intended to help create tax parity between the out-of-state OTCs and hotels was removed at the 11th hour and 59th minute from the state operating budget bill as the final version was moved by a House-Senate conference committee. This action was not unanticipated, and the OTC issue is not dead. This very possibility is one reason why the lobby team worked hard to make sure stand-alone legislation, HB 150 and SB 160, were introduced in both the House and Senate. We will continue to work in the legislature after the budget session to capitalize on the wide and growing support that exists for the OH&LA-backed versions of this legislation.

Well-funded opponents of the OTC measure worked hard throughout the budget process, but make no mistake that the OH&LA team effectively countered those efforts and kept this issue in the forefront of discussion, adding more supporters along the way. Among many challenges that made inclusion in the budget bill a tall order, the substitution of language into the budget bill originating from the tax department instead of the agreed-upon language from HB 150/SB 160

caused confusion and questions that just could not be overcome with the very limited time available as the deadline approached.

Your association moved this issue further than ever before and built working partnerships that have created very real support for our efforts. We will analyze the outcomes of next week and immediately pivot to building on the momentum that we created for HB 150/SB 160. Stay tuned, there is more to come on this important issue.

## **GOVERNOR WIELDS VETO PEN ON 44 ITEMS, BUT SIGNS STATE BUDGET**

Ohio enacted a \$130.3 billion biennial budget for 2016-17 when Gov. John Kasich signed the more than 4000-page long H.B. 64 into law on June 30. The Governor also vetoed 44 provisions in the bill that was approved by the House and Senate. Spending growth has been limited to an average of two percent each year, which is consistent with the level of additional spending in Kasich's first four years. The bill includes a 6.3 percent across-the-board state income tax cut, and additional deductions for business owners.

## **FEDERAL ISSUES**

### **FEDERAL RULES WILL INCREASE OVERTIME ELIGIBILITY**

The U.S. Department of Labor is preparing regulations to more than double the salary threshold for employees eligible for overtime from \$23,660 to \$50,400 next year. The new rules would have negative consequences for many in our industry, creating barriers to advancement and opportunity, and hindering our continued ability to grow and preserve jobs.

The American Hotel & Lodging Association said it would file official comments in the Federal Register during the open comment period to ensure that the Department of Labor fully understands how these rules will negatively impact businesses across America, and how they will create further obstacles to economic growth, job stability, flexibility and opportunity for employees.