

IN THE SUPREME COURT OF MISSISSIPPI

NO.:2009-CA-00243

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**WENDY RYALS and
RONALD PERRY**

APPELLANTS

VS.

**BOARD OF SUPERVISORS OF
PIKE COUNTY, MISSISSIPPI**

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

Rule 28(a)(1), Mississippi Rules of Appellate Procedure, provides that governmental parties need not supply this certificate.

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APPELLEE

STATEMENT OF THE ISSUES

POINT 1.

THE CIRCUIT COURT DID NOT ERR IN UPHOLDING THE ORDINANCE BANNING ALCOHOL ON CERTAIN PORTIONS OF THE BOGUE CHITTO RIVER AND TOPISAW CREEK IN PIKE COUNTY, MISSISSIPPI

POINT 2.

THE ORDINANCE BANNING ALCOHOL ON CERTAIN PORTIONS OF THE BOGUE CHITTO RIVER AND TOPISAW CREEK IN PIKE COUNTY, MISSISSIPPI IS NOT ARBITRARY AND CAPRICIOUS

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**STATEMENT OF THE FACTS RELEVANT TO THE
ISSUES PRESENTED FOR REVIEW**

For many years, large numbers of persons, including minors under the age of twenty-one (21) years, from within Pike County, from other counties in Mississippi, and from other states, particularly Louisiana, have used inner tubes, canoes, and other flotation devices to float the Bogue Chitto River and the Topisaw Creek in Pike County, Mississippi. Record at 21, 34, 135.

A large percentage of those persons floating the Bogue Chitto River and the Topisaw Creek in Pike County, Mississippi, including minors, have openly consumed beer, light wine, and other alcoholic beverages. R. at 21, 42, 63, 70, 98. The Board of Supervisors of Pike County, Mississippi has, for many years, heard complaints regarding the behavior of individuals floating the river, from both landowners adjacent to the river and law enforcement personnel. R. at 11.

The wide-spread and frequent complaints included reports of public drunkenness, lewd behavior, disturbances of the peace, profane language, littering, and other similar acts

committed by intoxicated persons while floating the Bogue Chitto River and the Topisaw Creek in Pike County, Mississippi. R. at 19, 21, 54, 84, 96, 97, 99.

Law enforcement officers and related officials, including Pike County Civil Defense, have been summoned to drownings and other serious accidents resulting in grave bodily injury and death upon the Bogue Chitto River and Topisaw Creek in Pike County, Mississippi, and these events have been attributed to drunkenness and excessive use and consumption of beer, wine, and other alcoholic beverages. R. at 39, 41, 43.

Private land owners whose property adjoins the Bogue Chitto River and the Topisaw Creek have been frequently and regularly subjected to trespass, indecent behavior, disturbance of the peace, littering and unauthorized use of their private property by intoxicated persons, including minors. R. at 96, 117, 118, 122.

Policing those areas of the Bogue Chitto River and Topisaw Creek at issue herein has posed special problems for law enforcement officers due to lack of access to large portions of the waterways, and lack of manpower. R. at 98, 103.

Law enforcement agencies from Pike County and adjoining jurisdictions have regularly reported arrests of intoxicated drivers, who, after becoming intoxicated while floating the Bogue Chitto River and Topisaw Creek, drive from the area of the Bogue Chitto River and the Topisaw Creek along U.S. Highway 98, Interstate Highway 55, and other roads and highways. R. at 86, 87. There have been serious automobile accidents involving drunken drivers who, after leaving the Bogue Chitto River and Topisaw Creek, and while driving while intoxicated, have caused fatalities and other serious bodily injuries. R. at 88.

Following public notice of a hearing, which was published in the *Enterprise Journal*

newspaper on Wednesday, May 14, 2008 and on Sunday, May 18, 2008, the Board of Supervisors of Pike County, Mississippi conducted a public hearing at the Pike County Courthouse, Chancery Annex, on May 20, 2008, at which hearing the Board of Supervisors received factual information, opinions, and other input of interested citizens regarding a proposed ban on the consumption of alcohol for portions of the Bogue Chitto River and the Topisaw Creek in Pike County, Mississippi. R. at 11. At that time, the Pike County Board of Supervisors permitted all persons who wished to speak on the matter to air an opinion regarding the proposed alcohol ban. R. at 12. Following the public meeting, on June 12, 2008, the Board of Supervisors adopted an Ordinance Banning Alcohol on Certain Portions of the Bogue Chitto River and Topisaw Creek in Pike County, Mississippi ("the Ordinance"). R. at 13.

Plaintiffs herein appealed the passage of the Ordinance and, pursuant to statute, a hearing was held in the Circuit Court of Pike County, Mississippi. At that hearing, law enforcement personnel testified that since the Ordinance was passed, there have been little or no problems on the river. Law enforcement officers attributed the positive change directly to the Ordinance. R. at 21, 103. Landowners gave substantially similar testimony. R. at 118, 123. The Circuit Court upheld the Ordinance, finding that the actions of the Board of Supervisors were reasonable, and not arbitrary and capricious.

SUMMARY OF THE ARGUMENT

The Mississippi Legislature has not preempted all regulations which touch on alcoholic beverages, so long as any regulations enacted do not conflict with state statute or the Mississippi Constitution. The Ordinance at issue herein is reasonable according to the facts disclosed before the Board of Supervisors, is supported by substantial evidence,

is not arbitrary or capricious, or beyond the power of the board to make, and does not violate any constitutional right of the complaining party. The Ordinance is a valid exercise of the legislative power of the Board of Supervisors, enacted to promote public health, morals and safety, with a substantial relationship between the police power invoked and the problem sought to be addressed. The Board of Supervisors of Pike County, Mississippi held a properly noticed public hearing on the proposed ordinance in question, and considered input from persons who support and oppose the ordinance. The Board of Supervisors received a great deal of evidence regarding conditions on the river and possible solutions to problems therein, including information from various law enforcement agencies, landowners of property along the affected areas of the Bogue Chitto River and Topisaw Creek, and local business owners who would be directly and indirectly affected by the Ordinance. After careful consideration of the input received, and mindful of the public safety issues presented by problems directly attributable to alcohol consumption on the river, the Board of Supervisors passed the Ordinance to address those public safety issues. The Board of Supervisors correctly used zoning and policing powers conferred upon them by the Mississippi Constitution, in concert with authority provided by Mississippi statute, specifically by § 19-3-40, Mississippi Code Annotated, the County Home Rule Statute, in conjunction with § 67-3-65, the Beer Statute, in enacting the Ordinance at issue herein.

ARGUMENT

- I. THE MISSISSIPPI LEGISLATURE HAS NOT PREEMPTED THE REGULATION OF CONSUMPTION OF ALCOHOLIC BEVERAGES SO LONG AS THE REGULATIONS ARE CONSISTENT WITH STATE STATUTE.

Preemption is the preliminary question in an examination of whether a Board of

Supervisors has statutory authority to make regulations regarding consumption of alcohol. The doctrine of preemption holds, generally, that where state legislation exists on a certain subject, the legislation shall take precedence over local ordinances which are inconsistent. 5 E. McQuillin, Municipal Corporations, §15.20. This Court has held that the Mississippi Legislature has not preempted all municipal regulations which touch on alcoholic beverages, as long as those regulations are consistent with state statute. *Maynard v. City of Tupelo*, 691 So. 2d 385 (Miss.1997).

The laws governing beverages containing alcohol fall into two categories. Alcoholic beverages which contain more than four percent alcohol by weight are governed by Section 67-1-1, et seq., of the Mississippi Code of 1972 (the "Liquor Statute"). Alcoholic beverages containing four percent alcohol by weight or less are governed by Section 67-3-1, et seq., of the Mississippi Code of 1972 (the "Beer Statute"). The Liquor Statute takes a prohibitory approach, prohibiting the "manufacture, sale, distribution, possession and transportation of intoxicating liquor" unless a license or permit is held pursuant to the Liquor Statute. The Beer Statute takes the positive approach of legalizing beer and light wine, except in places which have voted the sale of beer illegal. The Beer Statute further provides at Miss. Code Ann. § 67-3-65 that the Board of Supervisors may "fix zones and territories, enforce such proper rules and regulations, and for such other measures as will promote public health, morals and safety" regarding the possession and consumption of alcoholic beverages in Pike County, Mississippi.

Under § 67-3-65, Municipalities and Boards of Supervisors have been permitted to enforce rules and regulations for fixing zones and territories for sale and consumption of certain alcoholic beverages in the following cases:

(1) City of Tupelo brown bag ordinance prohibiting all commercial establishments from allowing the consumption of alcoholic beverages on their premises between midnight and 7:00 a.m., upheld. *Maynard v. City of Tupelo*, 691 So. 2d 385 (Miss. 1997). The Court found that "the Legislature has not clearly expressed an intent that the consumption of alcoholic beverages, as opposed to the mere possession thereof, be permitted without limitation in wet areas. Absent such a clear expression of intent, the public policy considerations in favor of granting a municipality the right to prevent accidents and deaths related to drunken driving, alcohol related altercations, and similar societal ills are so strongly in favor of Tupelo that this Court will allow the ordinance to stand." *Maynard* at 388. In an examination of § 67-3-65, the Court noted that "the Legislature appears to understand the importance of granting local governments the power to regulate the impact of alcoholic beverages within their communities." *Id.*;

(2) Ordinance of Board of Supervisors prohibiting the sale of alcoholic beverages in a limited area of the Petal and Harvey communities of Forrest County, upheld. *Miller v. Board of Supervisors of Forrest County*, 230 Miss. 849, 94 So.2d 604 (Miss. 1957). In this case, before passing the order, the Board was advised by the Sheriff that the order was necessary in the interests of adequate law enforcement. "The board found that the existence of U. S. Highway No. 11 in this heavily settled area, and the resulting problems of law enforcement, rendered it reasonable and proper to prohibit such sales, in order to furnish adequate police protection to this restricted area of the county, and in order to promote the public welfare, health, safety and morals." (emphasis added) *Miller* at 857.

(3) Order entered by the Board of Supervisors of Clay County prescribing

certain hours within week days, and all of Sundays, outside of municipalities, during which beer and wine should not be sold; the circuit court held the order of the board void and the board of supervisors appealed. The Court reversed and judgment was entered for appellant board. *Board of Supervisors of Clay County v. McCormick*, 207 Miss. 216, 42 So.2d 177 (Miss. 1949). The Court held that when a Board of Supervisors enacts an ordinance of the kind at issue, the proper question is whether the order is reasonable according to the facts disclosed before the board, that is, whether or not its decision is supported by substantial evidence, or is arbitrary or capricious, or beyond the power of the board to make, or whether it violates any constitutional right of the complaining party.

(4) Ordinance of Board of Supervisors of Carroll County zoning out the sale of beer and wine in a strip of land, bordering adjoining dry counties, upheld. *Herbert v. Board of Supervisors of Carroll County, Mississippi*, 241 Miss. 223, 130 So 2d 250 (Miss. 1961). "Zoning regulations may incidentally confer a benefit upon some and place a burden upon others, but such result is not the true criterion by which the validity of such order is to be tested. That criterion, in a case of this kind, is the public health, morals and safety of the community at large, in which the regulation in question is made operative." *Herbert* at 232.

(5) Ordinance of City of Hazlehurst prohibiting on-premises beer permit holders to sell to persons under the age of twenty-one (21) years or to permit minors to enter their establishments where beer is consumed, upheld. *Collins v. City of Hazlehurst*, 709 So. 2d 408 (Miss., 1997). In this case, the Court gave special consideration to minors and upheld the city ordinance prohibiting minors from entering establishments where beer is consumed, even though the ordinance was potentially in conflict with a state law. Under

Miss. Code Ann. § 67-3-53(e)(fn1), appellant argued that minors were permitted to enter her Club if they were "accompanied by parents or guardians, or under proper supervision." The City enacted an ordinance that made it a misdemeanor to allow anyone under twenty-one years of age in an establishment that had an on-premises retail beer permit, regardless of accompaniment by parents, guardians, or other proper supervision. The Court found that the importance of protection of the welfare of minors warranted upholding the city ordinance. *Collins* at 412.

(6) City of Vicksburg authorized to enact ordinance banning sale and/or consumption of beer and light wine on adult entertainment premises. *Steverson v. City of Vicksburg, Mississippi*, 900 F. Supp. 1 (S.D. Miss., 1994);

(7) Board of Supervisors of Hinds County, Mississippi allowed to create a zone of a residential section adjoining the City of Jackson on the north, and prohibited the sale of beer within the said zoned territory. *Alexander v. Graves*, 178 Miss. 583, 173 So. 2d 417 (Miss., 1937).

In all of the aforementioned cases, there were existing laws which could have been utilized to curb the activity sought to be addressed by the ordinances in question. In each instance, however, the Court found that consideration of public health, morals and safety of the community, as well as the importance of granting local bodies the ability to regulate the impact of alcohol in their communities, allowed the ordinances to be upheld.

In the instant case, given the duration and seriousness of the complaints regarding activities on the river directly attributable to intoxication, the Board reasonably concluded that the only way to resolve the situation and provide for the public health, morals and safety of the community at large was to enact the Ordinance. The Ordinance, as firmly

established at the public hearing and in the findings of the Board contained within the text of the Ordinance, was passed to address public safety, health and good order. In the face of these findings, the Court should not substitute its judgment for that of the legislative body in the legitimate pursuit of county government in protecting the public. *Pathfinder Coach v. Cottrell*, 216 Miss. 358, 62 So. 2d 383 (Miss. 1953).

II. THE ORDINANCE IS AUTHORIZED BY THE COUNTY HOME RULE STATUTE.

The Mississippi Legislature has conferred broad powers upon the Board of Supervisors of Pike County, Mississippi by the provisions of § 19-3-40, Mississippi Code Annotated, popularly known as the County Home Rule Statute. § 19-3-40, as amended, states in pertinent part:

(1)The board of supervisors of any county shall have the power to adopt any orders, resolutions or ordinances with respect to county affairs, property and finances for which no specific provision has been made by general law and which are not inconsistent with the Mississippi Constitution, the Mississippi Code of 1972, or any other statute or law of the ~~State of Mississippi~~; and ~~any such board~~ shall likewise have the power to alter, modify or repeal such orders, resolutions or ordinances.

The very essence of County Home Rule is the promotion of local interests based on the premise that municipal and county citizens are capable of self-government, so long as said self-government is not in conflict with the Mississippi Constitution, Mississippi Code or any other statute or law of the State.

In the instant case, Appellants do not claim that any rights conferred by the Mississippi Constitution have been infringed. The Board of Supervisors of Pike County, Mississippi held a properly noticed public hearing on the proposed ordinance in question, and considered input from persons who support and oppose the ordinance. The Board of Supervisors received a great deal of evidence regarding conditions on the river and

possible solutions to problems therein, including information from various law enforcement agencies, landowners of property along the affected areas of the Bogue Chitto River and Topisaw Creek, and local business owners who would be directly and indirectly affected by the Ordinance. Further, Appellants have not been deprived of the right to conduct their businesses, which primarily involve renting inner tubes and canoes. The Ordinance simply addresses the public safety issues which exist on the river.

While assessing the reasonableness of zoning ordinances regulating intoxicating liquor, Courts need recognize that judicial deference is the watch word, and such ordinances are not reviewable, absent a showing of arbitrariness or irrationality. *Trustees of Mortg. Trusts of America v. Holland*, 554 F 2d 237, 238 (5th Cir. 1977). Accordingly, only a minimal showing of rationality is necessary to enable a liquor zoning ordinance to withstand constitutional attack. In the instant case, it is clearly rational to determine that prohibiting the consumption of alcohol on the river is an effective way to combat illegal activity on the river directly attributable to alcohol consumption.

The zoning function is traditionally a governmental task requiring the balancing of numerous competing considerations, and Court should properly refrain from reviewing the merits of such decisions, absent a showing of arbitrariness or irrationality. Given the broad powers of states under the Twenty-First Amendment, judicial deference to the Legislative exercise of zoning powers by a City Council or other Legislative zoning body is especially appropriate in the area of liquor regulation. *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 103 S Ct. 504, 74 L Ed. 2d 297 (1982).

III. THE ORDINANCE IS A VALID EXERCISE OF POLICE POWER.

The existence of police power is essential to every well-ordered government and is

implicit in the concept of orderly government of any political entity. It is "the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of government." *Eubank v. Richmond*, 226 U.S. 137, 142 (1912). The police power confers upon local governmental the right to "promote the public health, safety, morals and general welfare, peace and order, and public comfort and convenience." *Stone v. Mississippi*, 101 U.S. 814, 25 L.Ed. 1079 (1879). See also *Harper v. Lindsey*, 616 F 2d 849 (5th Cir. 1980). The Ordinance passed by the Board of Supervisors at issue herein is a legitimate mode of ensuring the health and safety of the community, with a substantial relationship between the police power invoked and the problem sought to be addressed. *City of Lake Charles v. Henning*, 414 So.2d 331 (La.1982). Based on the findings contained in the language of the ordinance and upon comments received at a public hearing, the Board of Supervisors concluded that the consumption of alcoholic beverages on the portion of the rivers affected by the Ordinance endangered the public through motor vehicle accidents, public disturbances, malicious mischief, trespassing, and endangerment of minors. The Circuit Court below validated those findings.

The Board of Supervisors of Pike County, Mississippi correctly used zoning and policing powers conferred upon them by the Mississippi Constitution, in concert with authority provided by Mississippi statute, specifically by § 19-3-40, Mississippi Code Annotated, the County Home Rule Statute in conjunction with § 67-3-65, the Beer Statute, in enacting the Ordinance at issue herein.

IV. THE ORDINANCE PASSED BY THE BOARD OF SUPERVISORS IS NOT ARBITRARY AND CAPRICIOUS.

As a general rule, ordinances are presumed valid and reasonable, and should not

be overturned unless the ordinances are shown to be arbitrary and capricious. The burden of proof to establish that they are arbitrary and capricious rests on the party seeking to overturn them. *Trustees of Mortg. Trusts of America v. Holland*, 554 F 2d 237, 238 (5th Cir. 1977). It was clearly rational for the Board to conclude that banning alcoholic beverages on portions of the Bogue Chitto River and the Topisaw Creek would have a significant impact on the amount of illegal activity on the river which was a direct result of intoxication. The Board of Supervisors was told by law enforcement officers on numerous occasions over many years that existing laws were inadequate to combat the pervasive illegal activity in the areas affected by the ban, and was advised repeatedly that the illegal activity directly attributable to intoxication posed a threat to public safety. R. at 34.

During the hearing in the Circuit Court of Pike County, Mississippi, Pike County Sheriff Mark Shepherd offered the following testimony upon redirect examination by Mr. Dowdy:

- Q. Sheriff, Mr. Felder asked you a question about the laws on the books, about public drunkenness and what-have-you. And he asked you questions about were you making arrests for laws that were already on the books before the ban, and I heard your answer.
- A. Yes, sir.
- Q. By doing that, were you making a dent at all in what was going on out on the Bogue Chitto River?
- A. None whatsoever.
- Q. Why?
- A. Just the number of people. There were people coming from all over the state, other counties, and other states, especially Louisiana. They would come here and one weekend after the other, it would just be, we would be bombarded with people who had cases and cases of alcohol or beer. It was just not enough of us to go around, Mr. Dowdy.

R. at 34-35.

At the hearing, Chief Deputy Steve Rushing further testified as follows:

- Q. What effect, from your perspective as a law enforcement officer, peace officer, has this ban had on the public health, safety and morals on the Bogue Chitto River and the Topisaw Creek?
- A. We've seen very little illegal activity going on at the Bogue Chitto River and have made a fraction of the arrests that were made prior to the ban.
- Q. Before the ban was implemented, Deputy Rushing, did the Pike County Sheriff's Office have the manpower or the wherewithal to police the Bogue Chitto River and Topisaw Creek and protect the public's health, safety, and morals?
- A. We did not have the necessary manpower. We had [previously] gone to the Board of Supervisors at which time they had allotted two more positions to try and help with some manpower problems to the extent that they thought they could do at that time, along with some equipment. But, no, sir, we do not have, prior to the ban, did not have enough law enforcement officers to deal with all of the problems on the river.

R. at 103-104.

Prior to enacting the ban, the Board heard from landowners and other concerned citizens regarding illegal and immoral activity taking place on the river as a direct result of intoxication. At the hearing in the Circuit Court of Pike County, landowner Andrew Parker testified as follows regarding the types of activities he had observed prior to the alcohol ban:

- Q. What types of things would you see on or about your property in terms of activities by people going up and down the Topisaw Creek?
- A. A tremendous amount of littering and a lot of trespassing.
- Q. Where there other types of law violations committed in your presence?
- A. What appears to be a lot of underage drinking and just extreme public intoxication.

Q. Was that rare?

A. No, that was common.

R. at 117.

Q. What did you experience in terms of profanity or other...

A. A lot of profanity.

Q. At any point in time were you threatened?

A. Yes, I've been threatened, probably, about a dozen times since [people floating the river] started putting in [near my property] in 2002.

R. at 118.

Other landowners gave similar testimony at both the public hearing conducted by the Board of Supervisors and at the hearing conducted in the Circuit Court of Pike County, Mississippi. R. at 19, 21, 54, 84, 96, 97, 99

At the Circuit Court hearing, Troy Travis, Master Sergeant, Department of Public Safety, Mississippi Highway Patrol, testified as follows regarding sobriety checkpoints on Highway 98 conducted prior to the alcohol ban:

Q. How frequently did you set up or participate in these activities near the Bogue Chitto River?

A. Quite frequently...

Q. What were the results that you observed at those activities on location near the Bogue Chitto River?

A. During the late afternoon hours we would always set up on the westbound lanes of traffic. Most of the time we would be west of the Bogue Chitto River with our roadblocks, and we would take a fairly substantial number of people to jail.

Q. With what would they be cited? What, if anything?

A. Anything from a suspended driver's license, driving under the influence of

alcohol or drugs, as well as drug violation charges.

R. at 86-87.

Q. Was there anything about them or anything that you learned that would indicate to you where they became intoxicated?

A. The majority of the ones that will be coming through the roadblock would be coming from the Bogue Chitto River. And, of course you could tell this, obviously, by the attire that they were wearing. They would be wet and sandy and you would ask them where they were coming from and they would tell you, coming from the Bogue Chitto River.

R. at 87.

At the Circuit Court hearing, the following testimony regarding difficulties policing the areas of the river affected by the alcohol ban was offered by Lane Ball, Southern Region Administrator for the Law Enforcement Bureau, Mississippi Department of Wildlife & Fisheries:

Q. What did you do?

A. Well, our agency is in charge of public safety on the water, boating safety laws, as well as littering...Back in about 2000 or 2001, before that summer, our agency had had so many complaints from the Bogue Chitto River that I was called in and was asked to do some stringent enforcement on that part of the river...So starting in 2001, we did start an intense enforcement, mainly for boating safety and for the littering aspect of it. It became apparent real quick that there was a lot more involved. Officers were having to deal with people drinking, drunk, jumping off this bank that they've been talking about...It became apparent real quick that we didn't have enough people.

R. at 53-54.

Q. In those years when you were out there on the Bogue Chitto River, how often - let's talk about the time frame of 2003, 2004. Explain for me the amount of traffic that took place insofar as tubers and others going down the river.

A. I mean, it was immense...I mean, when you got fifty drunks in one wad, you don't send two officers in there to try to make an arrest. People that were drinking and who have had too much to drink, you know, they become boisterous. It's dangerous for our officers, as well as them....our main

reason for tasking so many officers...was for our safety and the public's safety because of just the number of people and the number of violations there.

R. at 62-63.

Officer Ball also testified regarding the difficulty of gaining enforcement access to the river and the particular concern with minors in possession of alcohol. R. at 63-64.

The Board of Supervisors held a public hearing at which time the Board allowed comments from all those who wished to be heard on the matter. After careful consideration, the Board passed the Ordinance at issue herein.

Appellants contend that the enactment of this Ordinance by the Board of Supervisors was arbitrary and irrational because it has had an adverse effect on their businesses. However, the Mississippi Supreme Court has held that "[z]oning regulations may incidentally confer a benefit upon some and place a burden upon others, but such result is not the true criterion by which the validity of such order is to be tested. That criterion, in a case of this kind, is the public health, morals and safety of the community at large, in which the regulation in question is made operative." *Herbert v. Board of Supervisors of Carroll County, Mississippi* at 232. Testimony at the public hearing conducted by the Board of Supervisors, and at the hearing conducted in the Circuit Court of Pike County, Mississippi, clearly established that the Ordinance was enacted to protect the health, morals and safety of the public at large.

CONCLUSION

The Mississippi Supreme Court has determined that the Mississippi Legislature" has not clearly expressed an intent that the consumption of alcoholic beverages, as opposed to the mere possession thereof, be permitted without limitation in wet areas. Absent such

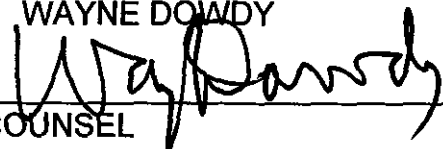
a clear expression of intent, the public policy considerations in favor of granting a municipality the right to prevent accidents and deaths related to drunken driving, alcohol related altercations, and similar societal ills are so strongly in favor of [local government] that this Court will allow [an] ordinance to stand" so long as said ordinance is not in conflict with the Mississippi Constitution, statute or any other law of the State. *Maynard* at 388. In an examination of § 67-3-65, this Court noted that "the Legislature appears to understand the importance of granting local governments the power to regulate the impact of alcoholic beverages within their communities." *Id.*

The adoption of the Ordinance Banning Alcohol on Certain Portions of the Bogue Chitto River and Topisaw Creek in Pike County, Mississippi was a legislative act of the Board of Supervisors of Pike County, Mississippi, conducted after a public hearing for which notice was published. Enactment of the Ordinance was a valid exercise of powers conferred upon the Board by the Mississippi Constitution and Mississippi statute, and should be upheld.

Respectfully Submitted,

PIKE COUNTY BOARD OF SUPERVISORS

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CERTIFICATE OF SERVICE

I, Wayne Dowdy, do hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the above and foregoing *Brief for Appellees* to the Honorable Daid Strong, Circuit Court Judge, Post Office Box 1387, McComb, Mississippi 39649, and the Honorable Alfred Lee Felder, Felder Law Firm, Post Office Box 1261, McComb, Mississippi 39649.

This the 1st day of November, 2009.



WAYNE DOWDY

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