



Bartec v. Wymyslo, 2012 Ohio 2187 (Ohio 2012)

Topics Covered: Anti-tobacco

Outcome: Very Favorable

Issue

The issue in this case was whether businesses and their owners could be held liable for violations of the Ohio Smoke Free Workplace Act (the Smoke Free Act) and the regulations that implement it.

AMA Interest

The AMA, in keeping with its objective of protecting public health, supports a smoke-free America.

Case Summary

The Smoke Free Act prohibits smoking in public places, including places of employment. The implementing regulations to the Smoke Free Act require that businesses and their proprietors take reasonable steps to ensure that smoking does not occur within or directly adjacent to the business premises.

Bartec is a restaurant in Columbus, Ohio. The Ohio Department of Health (ODH) fined Bartec for ten violations of the Smoke Free Act. ODH then sued Bartec to secure a legal judgment based on the ten imposed fines and for an injunction to prohibit future violations of the Smoke Free Act. In defense, Bartec claimed that the Smoke Free Act and its implementing regulations are unconstitutional. It contended that the law imposed liability on it for smoking by its patrons, activity beyond its control.

The trial court found in favor of Bartec. It vacated the fines and denied the requested injunction. ODH then appealed to the Ohio Court of Appeals which reversed and remanded. It found that neither the language of the Smoke Free Act nor the regulations passed under it imposed strict liability on businesses.

Bartec appealed to the Ohio Supreme Court. On May 23, 2012, the Supreme Court affirmed the Court of Appeals, finding the Smoke Free Act valid.

Litigation Center Involvement

The Litigation Center, along with the Ohio State Medical Association and several other public health organizations, filed an *amicus curiae* brief to support the Smoke Free Act.

Ohio Supreme Court brief