

# CONNECTICUT

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## Orange cig ban snuffed by court

### Judge strikes down vending machine law

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ORANGE — A judge struck down the town's historic but controversial ban on cigarette vending machines Wednesday, ruling that a New Haven company's right to do business prevailed over local attempts to keep cigarettes out of the hands of teen-agers.

The ordinance, the first of its kind in the state, went into effect July 1, 1998, and was challenged by Modern Cigarette Vending Inc.

"I'm thrilled," Douglas Montano, president of the vending machine company, said about the judge's ruling. He said the ordinance impeded his ability to operate a business legally licensed by the state. Town and state officials immediately announced plans to appeal the decision.

In the landmark case, New Haven Superior Court Judge Jonathan Silbert said the ban flew in the face of state laws that allow vending machine companies.

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## Vendors win right for sales in Orange

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Those statutes set up licensing requirements and other regulatory measures governing such businesses. All tobacco vending companies must pay \$1,000 a year for a license that allows them to sell tobacco products in the state.

Citing a 1930 decision, Silbert wrote that it is "a case of a direct conflict between the state statutes and the town ordinance. They are irreconcilably inconsistent with one another. The ordinance must yield."

Attorney General Richard Blumenthal and First Selectman Robert Sousa said Wednesday the decision would be appealed. The state had joined the town in its fight for the ordinance.

Blumenthal said the ruling was a setback for attempts to impede teen-agers from getting their hands on cigarettes.

The ordinance also bans outdoor advertising of tobacco products, something the judge said is unaffected by his ruling.

A similar ban was passed in Seymour, and Derby and New Haven were waiting for the outcome of this case before contemplating comparable ordinances.

"There is no question we will join in the appeal," Sousa said. "With all due respect to the judge, I'm confident the appeals court will reverse his decision."

Attorney Richard Altschuler, one of the attorneys that represented the town on a volunteer basis, said the good news in Silbert's decision is that he found all the facts presented regarding children's access to tobacco via vending machines to be true.

"Connecticut youth, and those in Orange are no exception, have had little difficulty in making illegal purchases of tobacco products from such machines," Silbert wrote.

The Connecticut Civil Liberties Union had filed a friend of the court motion to be included in the case on the side of the vending machine company.

"Although the goal of preventing teen-age smoking is a laudable one, the methods the Town of Orange chose are neither effective [nor] legal," said CCLU executive director Joseph Grabarz. "It was our opinion from the beginning that this ordinance was overreaching in many respects."

Modern Cigarette's Hamden attorney, Anthony Bonadies, said the case was not about banning the sale of cigarettes to minors.

"We never considered it a case about tobacco," Bonadies said, "but rather a case about a person's right and ability to run a business under a state license without prohibitive municipal intervention."

Modern Cigarette only had one machine in town — in the Orange Blossom Café on the Boston Post Road — and Montano said he's not sure the owner will even want the machine back, but he feels vindicated.

Altschuler said that the matter may ultimately be decided "at the appellate level, and perhaps will go all the way to the Supreme Court."

Sousa said the state Legislature could ban the sale of tobacco products via vending machines, and he hopes members will "step up to the plate and have the courage to do so."