Peculiar? Liquor laws lambasted as just plain weird

Jerry Spangler, Staff Writer

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There is little doubt that Utah's liquor laws have provided rich fodder for talk show hosts who criticize, ridicule and lampoon the peculiarity of the regulations.

But a new voice has been added to the debate that state lawmakers cannot dismiss so easily. In an opinion delivered last month, Michael Zimmerman, chief justice of the Utah Supreme Court, lambasted state alcohol policy as nothing less than hypocritical, irrational and absurd.``It certainly lends credibility to what we have been saying all along. The question is, whether anyone - the Legislature, the liquor commission - is really listening," said civil rights attorney Brian Barnard, who represents the Utah Licensed Beverage Association.

Zimmerman's opinion gives added impetus to the association's lawsuit challenging the state's ban on alcohol advertising. In the wake of a U.S. Supreme Court decision late last year, the Alcoholic Beverage Control Commission reluctantly lifted a ban on beer advertising but left in place a ban on advertising wine and hard liquor.

Making that kind of distinction between beer and spirits - a distinction that appears elsewhere in Utah liquor laws - doesn't make much sense to Zimmerman, who noted one 12-ounce bottle of beer has the same alcohol content as a 3-ounce glass of wine or a 1-ounce shot of hard liquor.

Per capita, Utahns consume roughly 1.5 gallons of wine and spirits per year, compared to 12 gallons of beer. ``Given this enormous disparity, it is not unreasonable to assume that beer is involved in more alcohol-related automobile accidents than are heavy beer, spirits and wine," the chief justice wrote.

One survey of drunken drivers revealed 76 percent were beer drinkers.

Zimmerman's opinion was delivered in a case in which Beehive Travel was held liable under the Dramshop Act because its employees served vodka in a social setting to an individual who later caused a fatal traffic accident.

The Supreme Court, with Zimmerman concurring, ruled private citizens and private businesses are liable under the Dramshop Act if they serve their guests wine or hard liquor**.**

The hypocrisy of state alcohol policy, Zimmerman said, lies in the fact that legislators have drawn a legal distinction between beer and all other forms of alcohol. If Beehive Travel had served the guest beer, the company would not have been liable under the law for damage caused by the drunken driver.

Businesses that sell beer for profit, such as grocery stores and convenience stores, are also not liable under the Dramshop law**.**

``These distinctions suggest a strong measure of hypocrisy in the state's policy toward those furnishing alcohol to others," Zimmerman wrote in a terse opinion that also used the phrases ``irrational distinction" and ``absurd distinction."

So why then does state law, as well as the liquor commission's internal rules, make a legal distinction between beer and spirits?

Zimmerman suspects beer wholesalers and retailers have a ``much stronger lobby than those social hosts who may provide their guests with wine in their homes or elsewhere."

That may be part of it, but the real reason behind the distinction, liquor officials say, is actually a part of Utah's liquor history, specifically in Prohibition. Utah and other states prohibited ``intoxicating liquors,'' which were defined as anything stronger than beer with 3.2 percent alcohol. Throughout Prohibition, Utah and other states continued to allow the sale and consumption of beer as a non-intoxicating liquor.

When Prohibition was repealed, Utah chose to regulate the sale of ``intoxicating liquors,'' but beer fell outside those regulations because it was still not considered an intoxicating liquor. Hence, the differentiation in Utah law, according to Earl Dorius, manager of the licensing and compliance division of the Department of Alcoholic Beverage Control.

``Whether that is intellectually right or wrong, that was the way it was,'' Dorius said. ``That is why today you can only buy liquor in state liquor stores, but you can buy beer in any grocery store. The state does not regulate it.''

If Zimmerman's observations are relevant to liability issues surrounding alcoholic beverages, would not the same alcohol-is-alcohol standard apply to the advertising debate? Barnard is convinced the liquor commission's logic in allowing beer advertising and prohibiting other forms of alcohol advertising is as flawed as the state Dramshop Act.

``It allows purveyors of alcoholic beverages to encourage people to drink beer when there is already a great consumption of beer,'' Barnard said. ``It doesn't make sense and is inconsistent if not hypocritical.''

Dorius said the state liquor commission removed the prohibition on beer advertising, but not wine and spirits, because of a U.S. Supreme Court ruling in a Rhode Island case. The court determined that because alcohol was a legal product and was openly and competitively marketed, that state could not ban stores from advertising the price of alcohol.

Because beer is distributed and marketed in Utah within a competitive atmosphere without state regulations, the commission determined the state would probably lose a legal challenge to beer advertising. But the commission believed there were enough dif-fer-ences between Rhode Island, where all liquors are sold competitively, and Utah, where the state regulates the sale of wine and spirits, to warrant leaving the ban in place.

That issue will likely be resolved in federal court, not state courts. U.S. District Court for Utah Judge David Sam has yet to set a hearing on motions related to Barnard's challenge that the state's ban on all forms of alcohol advertising is unconstitutional.

Meanwhile, Utah taverns, private clubs and restaurants have been gobbling up neon beer signs, which are now permitted under the liquor commission's new rule allowing beer advertising.

Some convenience stores have openly advertised their beer, including special sale prices. And some restaurants have advertised beer on their table-top teasers and in their menus.

The shift toward beer advertising is most evident at taverns and clubs that have erected bright neon signs with beer logos. Kent Know-ley, owner of the Port-o-Call private club and president of the Utah Hospitality Association, said the beer wholesalers have been backlogged with some 1,600 to 1,700 requests for the neon signs since the liquor commission lifted the ban last September.

Those signs are provided to the establishments free of charge by wholesalers like Coors, Miller and Budweiser.

``Demand for the signs was down (because of the ban) and then suddenly the rule was changed and everyone wanted to put signs back up. The beer wholesalers could not meet the initial demand," Knowley said. ``Now, just about everybody who wants a sign can get one."

The Utah Hospitality Association has not taken a formal position on Barnard's lawsuit, but its members are watching it closely.

Private clubs and restaurants, in particular, want to be able to advertise the fact they serve alcoholic drinks.

``No one is much interested in advertising prices, but they do want to provide information that wine and spirits are available," Knowley said. ``They obviously want to target people visiting the state who do not understand our laws. That is where the biggest confusion comes in. And it would be nice when promoting Cinco de Mayo, for example, to advertise that they serve margaritas."

Zimmerman's opinion will likely have little bearing on the federal lawsuit, which claims state law is a violation of constitutionally protected free speech. But Barnard and Knowley both believe the justice's comments should serve as a wake-up call to state lawmakers and liquor regulators that the current system is more than peculiar. It is seriously flawed.