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Social Host Ordinances Likely Unenforceable Following Court Decision

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Municipal social host ordinances aimed at preventing adults from hosting underage drinking parties at private homes are likely unenforceable following the Wisconsin court of appeal's October 26th decision in *County of Fond du Lac. V. Muche*, 2015AP2223 (publication recommended). The court of appeals reversed the circuit court's imposition of a \$1000 forfeiture against a parent who violated the county's social host ordinance by hosting his son's graduation party at their residence where alcohol was consumed by underage persons. The court concluded that the county's ordinance did not strictly conform to state law and therefore exceeded the county's authority.

Wisconsin Statute § 125.07(1) contains restrictions relating to alcohol and underage persons. Wis. Stat. § 125.10(2) allows a municipality or county to enact an ordinance regulating certain conduct regulated by 125.07 only if the ordinance strictly conforms to the statute. The court held that the term "premise" as used in §125.07 means "the area described in a license or permit," as defined in § 125.02(14m), and that Fond du Lac County's social host ordinance was not in strict conformity with Wis. Stat. § 125.07(1) because it regulates private property and therefore "forbids what the statute does not forbid" *Muche* at ¶28. An additional problem with the county ordinance, noted by the court but not addressed at any length, is that it prohibits passive conduct while the statute prohibits affirmative conduct. Finally, the court concluded that penalties for violating the county ordinance were not in strict conformity with the state statute, explaining that while strict conformity does not mean the same or identical penalty, it does mean that a penalty may not be in excess of the State penalty. In a separate concurrence, Judge Reilly agreed that the penalties for violating the county ordinance did not strictly conform with state law, but contended that the court should resolve the case on that basis alone, and avoid the "premises" debate.

Reports indicate that the County has not yet decided whether to appeal the decision. If the decision is not appealed, it is likely that the legislature will be asked to clarify municipal authority regarding social host ordinances.

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