

Prosecutor Says Judge's Ruling

'Ominous Threat' To Lakes

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Faced with a circuit ruling that city attorneys say threatens the City of Winter Park's ability to regulate its lakes, Winter Park City Commissioners on Friday had harsh words for Orange County Circuit Court Judge Thomas Kirkland and decided to appeal the decision.

The City of Maitland, which shares Lake Maitland with Winter Park, has agreed to join Winter Park in the appeal to the new 5th District Court of Appeals.

Kirkland ruled in May that state statutes prohibit the city from charging a boat license fee to non-residents. City Prosecutor Frederick O'Neal interpreted Kirkland's decision last week not to modify that ruling so it applies only to the city's taxing authority as a blow to the city's ability to regulate its lakes -- even its speed limits.

"Judge Kirkland had to really dig down in left field to get that one," Commissioner Harold Roberts said at a special commission meeting on Friday.

"It sounds nuts to me," Commissioner Jerome Donnelly added.

In his ruling, Kirkland referred to a state statute on boats that describes a municipality's abilities to tax, certify and regulate boats resident in the city. Kirkland ruled that "resident" meant boats regularly kept in the city, and not simply boats operated in the city.

Commissioners were concerned that the ruling means the city will not be able to regulate non-residents using city lakes, even if they are speeding or operating boats while intoxicated.

O'Neal, who called the ruling "an ominous threat" to lake safety in Winter Park, said the city can regulate lakes based on state statutes that prohibit "drunken boating" and reckless operation of a boat.

But ordinances unique to Winter Park, such as canal speed limits, age limit of boat operators, lake speed limits for day and night, and prohibition of motorboats on Lakes Chelton, Midget, Knowles, Silver, Mensen, Grace, Francis, Sylvan and Wilbar, could only apply to boats regularly kept in the city.

O'Neal described Kirkland's decision not to modify his ruling as creating "a delicate legal situation with regard to regulation."

But at a budget meeting on Monday, city commissioners said they will include \$2,500 for police lake patrol in next year's budget despite the ruling.

"No matter what the court's ruling is, we've got to continue it," Roberts said.

Roberts said even if the city could not fine offenders it could "order them off the lakes" and, if they did not like it, "let them sue us."

Asked by resident Howard "Buck" Harris if the city still has arresting authority on the lakes, City Manager David T. Harden replied, "We're doing it, but the judge's ruling throws that into doubt."

Harden said Tuesday there would be "no change" in the way the city patrols its lakes while the city awaits the outcome of an appeal.

Kirkland's ruling does not actually come out and say the city cannot regulate its lakes, Harden said, "but it's implied. It's just not clear in his order."

The city is not enforcing its ordinance requiring boat owners using Winter Park lakes to obtain a city boat license, Harden said.