

# Adult Bookstore Ordinance Upheld

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A county ordinance, which prohibits adult bookstores and movie houses from locating near residential areas, won its first court test today.

Superior Court Judge Rollie Hall ruled the ordinance — which requires that an adult bookstore or movie house be placed at least 400 feet from a residential area — was constitutional.

He also refused to issue an order which would allow adult bookstore operator Earl Stanley Kuhns to open a store on Portola Drive.

The ruling came this morning after Kuhns attempted to get the court to overturn a county Board of Supervisors decision to deny a permit for the bookstore.

Hall ruled that Kuhns' proposed bookstore would be located within 120 feet of a residential area and therefore was prohibited under the new county ordinance.

Since he said the ordinance was constitutional, the bookstore could not open.

The ordinance also requires that bookstores be located at least 1,000 feet from each other and at least 500 feet from a school.

This is the third time Kuhns has been in court in an attempt to get an okay for his proposed adult bookstore.

Kuhns' lawyer, Robert Thorpe, argued that the bookstore fell under the first amendment

right to freedom of speech and therefore could not be regulated by any "discretionary" action of a public official, according to Terry Slocum, assistant county counsel.

Thorpe also argued that the county's new ordinance did not cover Kuhns' application because Kuhns had asked for the permit before the ordinance went into effect.

Slocum, who represented the county, argued that the mere fact that a business sells books doesn't mean the county can't regulate it.

"Seven-eleven stores and drug stores are subject to zoning regulations just like bookstores," said Slocum.

He also argued that the ordinance did apply because the board of supervisors passed the statute before Kuhns appeared at their meeting to ask for a permit. The ordinance went into effect in June. Kuhns appeared before the board to appeal a zoning administrator's denial in July, said Slocum.

Kuhns initially challenged the board of supervisors denial based on first amendment rights. Superior Court Judge Donald May denied the request because it had been filed after a statute of limitations ran out for the request, said Slocum. Kuhns' second appearance in court came after he began to remodel the proposed bookstore without a permit and faced a lawsuit from the county. The county won its bid to order Kuhns to stop remodeling work.