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## Mayor: Sunday booze vote bungled

articles

by Jon Gillooly  
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MARIETTA — More than 91,000 Cobb County residents were robbed of the opportunity to vote on allowing Sunday alcohol sales in unincorporated Cobb in the March 6 presidential preference primary, Kennesaw Mayor Mark Mathews said.

Because residents of Cobb's six cities are also county citizens, they should have weighed in on the matter, Mathews said. Instead, the vote was left up to unincorporated Cobb residents, with 54,359 voting in favor and 23,553 voting against.

"Those were voters that were purely disenfranchised because they weren't given the opportunity to vote on a county-wide referendum," Mathews said.

Mathews said there is only one way to rectify the problem, and that is for a voter to file suit in Cobb Superior Court and ask a judge to decide whether to call for a new election.

Today is the deadline to file such a lawsuit, he said.

Justin O'Dell with the Marietta law firm Cauthron, Nohr & O'Dell said he intends to file a petition on behalf of former state Rep. Roger Hines of Kennesaw to contest the election in Cobb Superior Court today.

"All of the registered voters of the municipalities of Cobb County did not get a chance to exercise their right to determine whether there should be Sunday sales in unincorporated Cobb County," O'Dell said. "The heart of every election is integrity in the process, and every voter has the right to vote."

O'Dell said any registered voter in Cobb's six cities could join Hines in filing the petition. The local judges will have to recuse themselves from the hearing and bring in a judge from outside of Cobb to decide the issue, O'Dell said.

"The legal standard is 'Are there more affected voters than the margin of victory?'" O'Dell said. "If the answer is 'yes,' then a new election is required. It's a very clear legal standard. You don't have to say, 'Well, they would have voted, they could have voted, what percentage of them would have voted yes, who would have voted no,' none of that's relevant. The case law is really clear."

The margin of victory in the March 6 election was 30,806 votes, far fewer than the 91,000 affected voters.

Mathews discovered the issue when he went to vote last week. Although voters in the city of Kennesaw had already approved Sunday sales in the November election, Mathews said he expected to vote on a presidential primary candidate and allowing Sunday sales in unincorporated Cobb on the March 6 ballot.

"And I got up, and I pushed the button, and I pushed next, and instead of it going to Sunday sales, it spit my card out," Mathews said.

County Commission Chairman Tim Lee said that when Cobb Elections Director Janine Eveler asked for clarification on the matter back in May, county attorney Dorothy Bishop told her city voters in Cobb should not be allowed to also vote on the Sunday sales question for unincorporated Cobb.

“Dotty gave the wrong advice to Janine,” Lee said.

Lee said if someone files suit today and the judge calls for a new election, he hopes the judge will make that decision by May 6, because that would give him enough time to put the question on the July 31 ballot.

Unincorporated Cobb was set to begin allowing Sunday sales on June 1, but if voters were to approve the question again on the July 31 ballot, Lee said he would work to allow Sunday sales to begin on August 1.

“Dotty did what she thought was best, and in her opinion, you could argue it both ways,” Lee said. “Because there is reasonable doubt, the issue is we need to make sure we get it right, so if someone does bring (a lawsuit) forward I would support that effort to get it clarified by a judge and follow whatever the recommendation a judge brings forward.”

Lee and Mathews support allowing Sunday sales, but they say that’s not the issue.

“The subject matter is not the issue,” Lee said. “The issue is the process. And it’s unfortunate that it occurred. I believe that there’s reasonable doubt that the integrity of the election process and representation of the citizens need to be protected foremost, so if somebody does bring forward and objection, I would support a judge looking at it and deciding what’s the best fate for this issue.”

Like Kennesaw, Acworth and Smyrna residents approved allowing Sunday sales back in November’s election.

Residents in Marietta, Austell and Powder Springs approved the question on March 6.

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