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ZONING - NEW MEXICO

State, City of Albuquerque v. Pangaea Cinema LLC

Supreme Court of New Mexico - September 12, 2013 - P.3d - 2013 WL 4857693

Art-house movie theater appealed decision of the Metropolitan Court finding theater guilty of criminal zoning violation after it showed one or more erotic or pornographic films during weekend-long “Pornotopia” film festival.

The District Court held that theater had committed zoning violation, rejected theater’s argument that zoning ordinances were unconstitutional as applied to it, and imposed criminal fine of $500.

The Supreme Court of New Mexico held that theater was not an “adult amusement establishment” within the meaning of zoning ordinance prohibiting adult amusement establishments in zone in which theater operated.

Although films shown during “Pornotopia” festival qualified as adult “amusement or entertainment” under ordinance, theater was not an “adult amusement establishment” in the ordinary meaning of the term. The presumed intent of ordinance was to regulate businesses of a clearly adult nature to avoid or quarantine negative secondary effects of adult businesses, and ordinance contained no indication that it was applicable to venues that only occasionally showed pornographic films.

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