

## How was tattoo artist permit application denial worded?

I'm not taking sides as to whether the City should have denied renewal of the tattoo artist's license. And I sure as hell am not going to watch the video that showed far more than city council members and the mayor had to see to make a call on whether the license should have, in effect, been revoked before criminal charges were resolved against this guy.

As the story played out, I made a mental note to myself to review the minutes for the exact wording used on a motion that ended in a tie vote and an inexperienced lawyer (who may possibly be a friend of someone who retained him as hearing officer and learned that he was not up to the task), did not know how to handle such an outcome.

I picked up copies of the minutes of at least three meetings at which this matter was discussed and voted upon, as well as the Findings of Facts and Conclusions of Law submitted by the kid attorney.

When I review things like this, I start on the premise that the one hired is more likely than not to favor the one who hired him. It will become obviously clear if that is the case as my review moves forward.

The mayor and city attorney hired this hearing officer. They wanted the tattoo artist's personal permit to be denied. And the city attorney once again felt inadequate to chair the hearing himself.

What has always been hard for the city attorney to understand is that he/she is the "city attorney" not the "mayor's attorney." At the salary paid attorneys employed by the City, one of them should have been capable of being hearing officer on behalf of the residents.

In this case, the city council should have retained their own attorney. They can not rely on good legal advice from the mayor's attorney - he has an axe to grind because of his legal advice and a boss to defend. That (hiring an attorney to represent the city council) has been done in the past and the council members were fools not to have counsel on a matter this touchy, controversial and unique.

In the minutes of meetings held on this denial, there are many interesting revelations. On May 10, 2010, it is written in the minutes: "Council President Broyles opened the meeting and requested Mr. Jarosh brief Council members on his legal research regarding the effect of a tie vote. Mr. Jarosh reviewed his research, which indicated there is no Wyoming case law providing a clear answer relative to split decisions ..." He also opined, "his legal guidance is that a tie vote would result in the permit not being approved as it is not an affirmative action by a majority vote." Wrong. And wrong.

And for this faulty legal advice, the law firm of Hirst Applegate LLP, for which Jarosh toils, was paid \$4,795.52 and \$1,276.75.

First, there IS Wyoming case law that rules specifically on a tie vote. Had the mayor called me, I would have told him that. Free. At no charge. Gratuitously. As a personal favor. I would not have charged residents of the City of Cheyenne \$6,072.27. I would not have charged a dime. Any lingering questions why the first meeting went until 2:45 am without a resolution? Billable hours, it is called.

For beginners, the motion before the Council (made by Pierson, seconded by Spiker) was to "uphold the administration's denial of the permit." A tie vote on that motion, which is what transpired, would reverse the mayor's action of denying [renewal of] the permit. Had it been worded, "to reverse" the denial, then Jarosh would have been right.

A precedent is LCSD2 v. Albin CATS Charter School Inc. (2005 WY 43, 109 P.3d 552). In one of the poorest worded of all Supreme Court decisions, the Court definitely addressed the effect of a tie vote. It reads, in part, "That motion failed on a tie vote. In other words, the only action of the District Board was a failure to find the negative proposition." Then, "First, it is clear that the District Board did, indeed, take action; it denied the application." The City also took action; it denied support for the mayor's denial.

## The Chamber charges to attend a candidate forum. Again.

Once again, the Downtown Cheyenne Chamber of Commerce had an opportunity to provide a valuable service to local voters and once again it failed.

One of the few groups with both the funds and the standing to host candidate forums involving statewide candidates, the Chamber, instead of offering the forums free of charge to all residents, uses the gatherings to raise money - to charge a fee in excess of the food costs - and to exclude those who choose not to break bread with Chamber members like Reed Eckhardt and Tom Segrave and will not pay to attend a forum. While it is understandable that the low membership Downtown Chamber needs money, these forums are functions they could host in the

interest of positive PR instead of as a fundraiser. Did they sell beer?

And, worse still for them, it's not working. If the WTE had it right and only 100 attended, that is embarrassing in a city with 75,000 people within five miles of the luncheon, 800 members of the Chamber/ and several public employees whose lunch is paid for with taxpayer money.

At a Casper forum for US House candidates two years ago (free), there were about 100 in attendance and only about 20 were unaffiliated with a candidate. There were five candidates at this Chamber forum - probably 50 were with candidates and 20 were public employees. Few unaffiliated voters were there.

## Hynds Building

When the venerable Hynds Building withstood the ravages of the December 2004 downtown fire, it confirmed it was fire-proof.

The tough old building has also withstood abandonment for nearly 25 years. It has stood empty, neglected and ignored since 1986 and virtually of no importance in the downtown since 1981. One of the many properties taken from a savings and loan and almost given to a local buyer, the public ate the difference between a mortgage of about \$880,000 held by Broward County Savings and Loan of Florida and the measly amount paid for the building by local investors. In the area, it is estimated, between \$25,000 and \$50,000.

For year after disappointing year, the Hynds Building has sat empty and abandoned at one of our major downtown intersections. At the beginning of this century, this biennium, "potential" lessees promised the mayor of Cheyenne that they would lease a hundred or more spaces in a downtown garage on one condition. That the garage be paid for with public funds - that neither they nor the building owner at the time had to pay a dime for the necessary parking garage.

They were not the only property owners to renege on unenforceable promises related to that ill-advised parking garage. They were just the most significant because their property was unoccupied at the time. Their promise was to occupy a

landmark downtown building of some prominence - IF a publicly funded parking garage would be built for them.

It was. And, they didn't.

Some years later, the Wyoming Business Council made a promise to the then-owner of the Hynds Building to move into the building and, presumably, pay upfront rent that would enable the owner to remodel the building to satisfy the tenants.

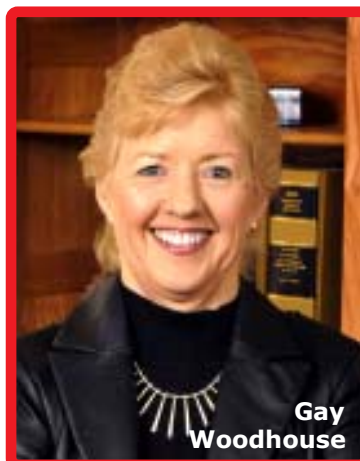
The Cheyenne Herald broke that story during the transition period of the first term of Dave Freudenthal and that planned public financing was thwarted at the direction of the new governor-to-be.

Other than those two closely-held secrets toward potential use of the Hynds, nothing has happened during the years since it emptied in 1986.

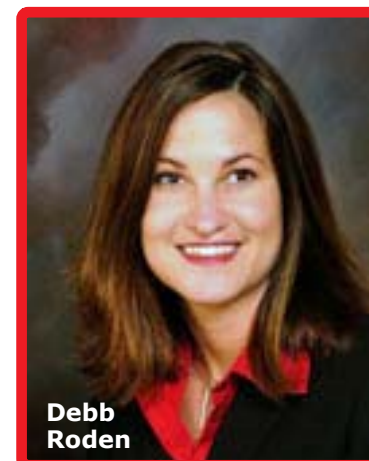
Now, there is talk about another publicly funded project - an arts council of some kind. As though one ratty old building, vacant for 24 years, almost empty for 29, will make downtown Cheyenne the new Santa Fe. If this were such a good idea, why, once again, is there no private money available to finance the effort? The answer is because it is not a viable or long-term use of the Hynds. And, how can one floor of the building be used when the building in total is not code compliant and is probably unsafe? Who's zooming who? It just doesn't end.

## WOODHOUSE RODEN Law Firm

1912 Capitol Avenue, Suite 500  
(American National Bank Bldg, Fifth Floor)



gaywoodhouselaw@aol.com



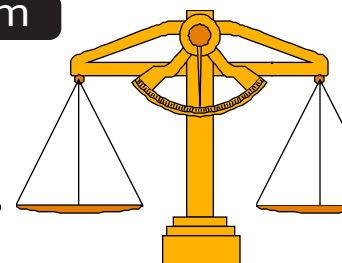
debb@woodhouseroden.com

www.gaywoodhouse.com

432-9399

FAX: 432-7522

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