

"ANYTHING TWO PEOPLE KNOW IS NOT A SECRET."

THE
CHEYENNE

HERALD

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What is taxpayers liability for "the fight"?

Two Parks Dept. employees, at a City meeting, fought in the Old Chicago parking lot. Alcohol may have been involved.

The second day following an incident at Old Chicago, the Cheyenne Herald was contacted about what had happened. The source was knowledgeable and reliable.

Asked what other media might investigate and report on a fight between two City of Cheyenne employees that took place outside an establishment that serves alcohol and during a meeting called by a Parks Department supervisor, my advice was that the Tribune-Eagle does not follow up on stories embarrassing to the mayor. It was suggested the caller contact Justin Joseph of Channel 5.

At that point, my January 29th issue was put to bed and I did not have time to make the contacts to do the story justice.

Many readers then are familiar with at least an outline of the story from Justin's reportage. But his take on the issue is different from mine. He is focusing on the fight, injuries to one of the parties and whether more serious charges will or should be brought against the other party.

Mine focuses on the lack of supervision and management within City Hall that could lead to an incident such as this one.

According to my sources, on Thursday night, January 25th, several members of the Parks Department attended what was called a "Safety Meeting," at the behest of a Department supervisor.

These "meetings" were regular occurrences over a period of time and it was understood by employees that it was in their best interest to attend.

Those factors, in my opinion, made this an official City meeting. As such, attendees were entitled to be paid and worker's compensation insurance coverage would apply. Salaried employees could be compensated with "comp time," in which they take an equivalent amount of time off during their regular schedule and are paid not to work. That benefit is why few City employees work on Friday afternoon.

This meeting, and others before it according to my sources, was held at the new pizza restaurant out north, Old Chicago.

For those who would argue that Old Chicago is not a pizza and beer destination, their slogan is: "Eat. Drink. Be Yourself." Odds are they are not referring to Coke or iced tea. There was no mistake on the part of the supervisor arranging the "meeting" that it was going to be held in a place that served alcohol.

My sources also told me that alcohol was consumed during the course of that meeting - while the employees were together.

There is no prohibition against a group of employees of the same company socializing outside work. They are at liberty to go to bars, dance halls or strip joints. But once a supervisor of that employer schedules a meeting, making attendance "recommended" or mandatory, and discussing anything to do with the duties of those in attendance - in any kind of structured environment - it is official business.

As such, you, the residents of the City of Cheyenne, are at risk financially should any untoward incidents occur. That would include inside the bar, outside the bar or on the way home.

Our investigation will be ongoing. We will determine whether the City has reimbursed for food and beer (or hard liquor at other establishments) in the past for gatherings involving City employees.

Sources told me that the City has a personnel policy that an employee charged and convicted of DUI presents grounds for dismissal. That, of course, applies to people in violation on their own time. It would go without saying that a City employee on City time would be dismissed.

Another allegation is that City vehicles were involved. That some in attendance, possibly drinking beer, drove City-assigned vehicles to and from that meeting and others at Old Chicago.

The City Attorney first admitted this was an official meeting when he refused information on the basis it was "a personnel matter," then retreated. Obviously, it isn't a "personnel matter" unless the employees are on the job. What they do on their own time is not a personnel matter.

Dwayne Sells wrongful death civil trial

During the first week of this civil trial, I have been in attendance about 15-20 hours in total. I have listened to the testimony, including cross examination, of several witnesses. Initially, I had decided not to write on the matter until its conclusion and verdict. But, as I have seen Channel 5 and WT-E report erroneously on the simplest matters, I decided I would put at least a brief story in this issue.

I have noticed during the first five days of the trial, no other media representative was in attendance to any meaningful degree. How will they report? You're not allowed to record the proceedings so my reflections will be based on my written notes and a pretty fair memory.

Their mistakes, by the way, don't affect the basic truth of the matter but prove the lack of knowledge of those reporters. Channel 5 called Don Nath, "David Nath," the WT-E said Don Nath was a bouncer. His and the bar owner's testimony referred to him as a former "door man". The Don Nath settlement is a matter of public record and was \$250,000, not the \$225,000 reported by the WT-E reporter.

Another reason I decided to write at least briefly about the trial is that the Cheyenne Herald has become the media of record on this case and many people are checking the our website for updates on the Dwayne Sells trial. Also, neutralize some venomous words published elsewhere.

The jury is not sequestered and has access to outside information and opinions about the case. Assuming they adhere to the judge's admonition, they are not following media coverage (which has been Spartan and meaningless) of the trial. There's no reason to believe other.

With all of this as a preamble, this is what I have to share about the civil trial in the wrongful death claim against the Outlaw Saloon by the family of Dwayne Sells:

First, what the extensive testimony and introduction of evidence in this case would convince any fair-minded individual is what a totally incompetent job was done at the coroner's inquest and by the three elderly men on the inquest jury. The testimony is conflicting, contradictory and incredibly hard to piece together to a

coherent and certain conclusion. For those three men to spend but five minutes in "deliberations" and reach the determination they did that Dwayne Sells' death was the result of an accident has been proven in this trial to have been a travesty. Had they spent three or four hours in deliberation, at least there would have been some semblance of seriousness on their part. They didn't. Five minutes.

Only one witness has testified to having seen the events leading up to the altercation and the "fight" itself. An attempt to discredit him led to an emotional reaction on his part but I have seen him testify at the coroner's inquest and this trial, as well as having interviewed him by telephone while he lived in Tennessee. Unlike other witnesses, describing themselves as "friends" or "good friends" of the bar owners who changed their testimony, Dwayne's companion has been steadfast.

The recitation of events that night has been lengthy - obviously much more lengthy than at the coroner's inquest. A number of Outlaw Saloon employees in April 2005, previous employees of the bar, as well as patrons in the bar that night have testified. None have, in my opinion, contradicted the basic claim in this case - that the bar was understaffed for its size and crowd and that the staff present was untrained or inadequately trained.

The Plaintiff presented a consultant on bar security and he (remember that he was retained by the Plaintiff), painted a picture of inadequacy and improper operation of a bar that described the Outlaw Saloon perfectly. The owner and head "door man" had previously testified, as had several persons either employed or previously employed in that capacity, that there was no formal training for the job.

It is almost comical to observe all on the side of the Defendant fastidiously avoid referring to a bouncer as a bouncer. They were "door men". They did check IDs, take the cover charge and stamp hands - but they were bouncers and I doubt their effort is playing well with the nine woman and four man jury (one will be an alternate if no one leaves the jury before a verdict). The Defendant has not presented witnesses and should begin on Tuesday, February 13th. *More to come*

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