

It is no crime in Wyoming to be a felon in possession of a liquor license.

A criminal background check is required for an optometrist ... but not for the holder of a liquor license

by *Dave Featherly*

Among the telephone calls, emails and messages left for me after the two articles about the death of Dwayne Sells in an assault in a Cheyenne bar was one in which a guy claimed that a liquor license holder in Cheyenne had a felony conviction and that he (the caller) was sure you couldn't be a felon and own any part of a Wyoming liquor license.

The accusation was intriguing.

Somewhere in the very long list of things I know little or nothing about, liquor licenses would rank high. But, I decided to look into the matter and see: First, was there such a liquor license owner in Cheyenne; second, was it illegal; and third, if illegally held, how did the approval slip through the cracks?

After a review of certain files pertaining to liquor licenses, a meeting with both the city and county clerks and their offices, and a meeting at the liquor commission offices in Cheyenne, I was left like the AFLAC duck after hearing Yogi Berra speak.



As Yogi might say, nobody seems to know what the other doesn't know.

And, so long as an application for a liquor license or application for renewal is in compliance with the inadequate Wyoming statutes, it will sail straight through.

Research of state statutes shows that it is much easier to "qualify" for a liquor license than for licenses necessary to do many other sorts of businesses in Wyoming.

For example, under W.S. 31-16-103(a)(v), someone wanting to operate an "automobile franchise" faces: **"Any new applicant for a license issued under this act, including all officers of a corporation or members of a limited liability company or limited partnership, shall provide information necessary for a state and national criminal history record background check and release of information as provided in W.S. 7-19-106(k)(ii) and consent to the release of any criminal history information to the department; ..."**

"A state and national criminal history record background check ..."

To sell cars! But to peddle booze, all you need do is admit that you **HAVE** a

felony conviction in your background and you're in like Flint. You don't have to provide information about what the felony conviction is - just that you have one.

Wyoming Liquor Division (WLD) form WLD-28(Apr99) asks of applicants:

"Have you been Convicted of a Felony Violation?"

Then boxes are provided to check YES or NO.

That felony could be for forgery or it could be for selling drugs from the last bar you owned. It doesn't matter. No one asks and the licensing authorities (governing bodies of the city and/or county) don't seem to much care.

Add to the admission of such a felony on the applicants record a second and similar question, right beside the first:

"Have you been Convicted of a Violation Relating to Alcoholic Liquor or Malt Beverages?"

What does this one mean? Could it mean that the applicant had one or several DUI violations or it could mean that the applicant had one or several violations for selling alcohol to minors? It doesn't seem to matter to anyone in authority to approve or deny an application or renewal.

What follows are other sections of the statutes pertaining to owning an automobile franchise:

"... (c) The department may deny, suspend, revoke or refuse to renew a license issued under this act if it finds the person, applicant, vehicle dealer, salesperson, agent or Wyoming based manufacturer:

iv) Has any previous administrative or criminal actions or has lost a civil action in this state or any other state relating to the conduct of the business license or applied for during the ten (10) years preceding the date of the application;

(vii) Has been convicted of a felony involving fraud, conspiracy to commit fraud, forgery, embezzlement, obtaining money under false pretenses, larceny or extortion within the immediate ten (10) year period prior to the date of license application; ..."

Even having lost a civil action can disqualify the applicant.

But to sell booze and operate one of the toughest businesses in the world, no such restrictions apply. To sell booze, you just have to have the guts to say, "Yes, I have a felony conviction."

Because, under W.S. 12-4-102 (a)(iii), the requirement to disclose criminal violations says only:

(iii) A disclosure of any criminal record of the applicant or any partner equal to a felony conviction under Wyoming law and of any conviction for a violation of Wyoming law relating to the sale or manufacture of alcoholic liquor or malt beverages within ten (10) years prior to the filing of the application; and ..."

Does drunk driving relate to the "sale or manufacture of alcoholic liquor or malt beverages"? The statute may not be clear but it seems that the intent is to ascertain whether the applicant violated Wyoming law in a bar setting, not behind the wheel.

And while a person wanting to sell a few used cars annually may be subjected to everything short of a UA, not so for this type of business.

Chapter 19 of the Wyoming Statutes is CRIMINAL HISTORY RECORDS. This is another opportunity to see how out of whack Wyoming laws appear to be. Article 2 of this Chapter lists some who "shall be required to submit to fingerprinting to obtain state and national criminal history record information." Included are various persons who work in the department of family services; teachers; All persons applying for licensure to the Wyoming Board of Examiners for Optometry on or after July 1, 2005; ...

Whoa, Nellie. Run that one by me again.

"All persons applying for licensure to the Wyoming Board of Examiners for Optometry on or after July 1, 2005?"

Also, "the division shall process and obtain state and national criminal history record information for the Wyoming state board of nursing and the board of pharmacy or for an applicant for licensure or certification by either board."

"Any public or private fire department, ambulance service or regional emergency response team may as a condition of employment or other participation with the entity require all applicants for employee or volunteer positions with the entity to submit to fingerprinting in order to obtain state and national criminal history record information."

Volunteers are subjected to fingerprinting and criminal history checks to the national level but liquor license owners are on the honor system? "Yes, I have a felony in my past but you didn't ask what it pertains to and I'm not volunteering that information."

It was shocking to learn that the police department and the sheriff's department locally do not have an active and required role in the approval of a liquor license application or renewal.

A few years ago, Sam's Club challenged the City of Cheyenne's decision to deny the transfer of Scooter's retail liquor license to them for use as a package liquor store - in or near their warehouse operation on Dell Range.

The Wyoming Supreme Court ruled that, basically, the governing body had absolute authority on those decisions. That the City had the right to deny such a transfer.

Yet, it seems that law enforcement and governing bodies in Cheyenne and Laramie County run scared about denying an application or renewal of a liquor license.

There are bars in town that have reputations - and probably citations to warrant the reputation - for selling to underaged patrons. Instead of jerking their license or refusing to renew it when the time comes, the City shields their misbehavior from action. The Supreme Court seemed, at least to me, to rule that the municipality has the absolute right to determine where liquor can be sold in its community.

I would love to be in attendance when a local misbehaving bar appealed to the Wyoming Supreme Court because their liquor license was not renewed because they were cited repeatedly for violations of the liquor laws. To see an attorney for one of them argue to Justices Burke, Kite, Golden and the other two that, "they wouldn't renew my license because I kept selling booze to kids and that ain't right. Make them give me my license back."

Yeah, that would be fun.

In the meantime, somebody somewhere has got to pay more attention to these applications and to these renewals.

When both the City and Laramie County governing bodies approve renewals involving the same person owning up to both a felony conviction and a conviction of alcohol laws and not be questioned on the specifics is not good.

It is just inconceivable to me that such a renewal would go through unchallenged. But they did. Both just recently. Both with the forms filled out as described. Both had the applicant admitting to having a felony conviction. Should it make a difference? Who knows for sure without knowing what the felony was for. That is the rub. Campaign contributions should not enter into the decisions.