

CITY OF MADISON, WISCONSIN

REPORT OF THE CITY ATTORNEY

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TO THE MAYOR AND COMMON COUNCIL:

RE: Application of Cedric Jackson for Operator's License; I.D. #09259

On April 8, 2008, the Common Council referred ID # 09259, relating to the application of Cedric Jackson for an Operator's license; to the Office of the City Attorney, for a Report on the standards for denial of Operator's licenses and the standards for denial of retail licenses to sell alcohol beverages. The basic standards for license denial are contained in Chapter 125, Wis. Stats., and Chapter 38, Madison General Ordinances. The standards for denial of an operator's license are different from the standards for denial of a retail license to sell alcohol beverages.

Operator's Licenses. Operator's licenses should be denied only for failure to meet statutory qualifications. General public policy considerations are not normally involved in denying this type of license. The statutory requirements, contained in Sec. 125.04(5)(a)(b) and (d), Wis. Stats., for issuance of an operator's license are:

1. The applicant must have attained the age of 18 (this is set by state law and may not be increased by local ordinance).
2. The applicant must have successfully completed a state certified responsible beverage server course (a community may not require additional training requirements).
3. Subject to Wisconsin's Fair Employment Law, Chapter 111, Wis. Stats., the applicant may not have been convicted of a felony or be a "habitual law offender". Additionally, no violation of Sec. 125.04(5)(a)(1), Wis. Stats. (sale to underage persons) may be considered as a reason for denial or nonrenewal unless the applicant has committed another violation within one year preceding the violation.

Madison Ordinances may generally be more restrictive than state law, but may not conflict with state law. Sec. 125.10., Wis. Stats. Sec. 38.05(9)(b), MGO, establishes the requirement that no operator's license will be granted to any person afflicted with a contagious or venereal disease. While this is a long standing requirement, no application has been denied for this reason in recent memory.

Madison General Ordinance 38.05(9)(n), establishes the additional requirement that the applicant be of "good moral character". Under the ordinance, an applicant may not be denied on the grounds that the applicant lacks good moral character "unless there is evidence that the applicant...would pose a threat to the safety or welfare of patrons...". The grounds for a determination that an applicant lacks good moral character is specifically limited to three situations: 1) dismissal from a bartending job within a year of the date of application or from more than one bartending job within 3 years, provided that the reason for dismissal relates to the applicant's ability to competently tend bar without endangering the safety and welfare of patrons; 2) exhibiting the use of alcohol beverages, within 3 years of the application, to an extent or in a manner dangerous to other persons, or to an extent that would impair the ability to tend bar, and 3) a criminal conviction for which a pardon has not been received, if there is a relationship between

the nature of the crime and the ability to competently tend bar without endangering the safety and welfare of patrons, and the applicant was convicted within two years, or within three years if more than one offense, or if the applicant was convicted within one year of selling controlled substances. The applicant whose good moral character is questioned has the right to present evidence of rehabilitation to the Alcohol License Review Committee.

Most of the questions facing the ALRC regarding the denial of operator license applications relate to the third category and involve the question of whether the arrest and conviction record substantially relates to the operator's license under Wisconsin's Fair Employment law. The Wisconsin Fair Employment Law prohibits discrimination in licensing unless such a substantial relationship can be established. It is not often clear that such a relationship exists. As a result, the City cannot automatically deny a license to a person with a criminal record. A conviction for a felony is not an automatic bar to licensure, unless the offense is one that relates to tending a bar. For example, it can be argued that a felony conviction for burglary would not substantially relate to the operator's license application unless the offense somehow involved alcohol beverages or the operation of a licensed establishment. It can be argued that a conviction for OMVWI relates to such licensure, particularly in light of Madison's ordinance. While tending bar does not involve driving, under Sec. 38.05(9)(n)2b., MGO, such a conviction within 3 years of the application date could be considered the use of alcohol in a manner "...dangerous to any other persons...". Under the City's ordinance, the applicant would have the right to present evidence of rehabilitation. Sec. 38.05(9)(n)3. MGO. As indicated above, a violation involving the sale, dispensing or giving away of alcohol to underage persons can only be considered if the applicant has committed 2 or more such violations within one year.

The term "habitual law offender" refers to multiple convictions. Based on advice from the Wisconsin League of Municipalities, such offenders could include habitual violators of ordinances, in addition to criminal law. Such habitual violations must still substantially relate to the licensed activity.

It is common in the City of Madison for the Madison Police Department to cite individuals for civil, rather than criminal battery. This is done because the caseload of the Dane County District Attorney's Office. A civil conviction for battery, particularly one that involves the use of alcohol, could be grounds for denial, if it is found that such an offense substantially relates to tending bar.

Although operator's licenses are usually issued to a person who wishes to work at a particular licensed establishment, state law provides that the operator's license is valid within the entire issuing municipality. A license could not be denied for a failure to state an employer on the application.

Denial of Retail Licenses. While the agent or owner of a retail business must meet similar standards as that of a holder of an operator's license; a retail Class A, B or C license may also be denied for substantive policy reasons related to the health, welfare and safety of the City. The Common Council has broad discretion regarding whether to issue a new license for a particular applicant for a particular location and an applicant does not have an absolute right to a license. If the Common Council or the ALRC denies a retail license, it must state the reasons for the denial in writing and must inform the applicant in writing of the reasons. Sec. 125.12(3m) Wis. Stats. Valid reasons for denial could be based on concern for the health, welfare and safety of the community and could include the ability of the police to provide law enforcement services, adverse impact on the peace and quiet of the neighborhood, proximity to other licensed establishments, schools, churches or hospitals, parking or traffic concerns or other relevant health, safety or welfare issues. An applicant who is denied a retail license may appeal the denial to circuit court, under Sec. 125.12(2)(d), Wis. Stats.

Because of the complexity of this issue, I have attached a copy of a Legal Comment from the legal counsel of the Wisconsin League of Municipalities for the edification of the Common Council.

Respectfully submitted,

Michael P. May
City Attorney