



DEPARTMENT OF
**LEGAL AND
ADMINISTRATIVE
SERVICES**

CITY ATTORNEY'S OFFICE
100 North Appleton Street
Appleton, WI 54911
p: 920.832.6423
f: 920.832.5962
www.appleton.org

TO: Safety and Licensing Committee, Common Council

From: ACA Zak Buruin

Date: 12/2/24

RE: Crystal Williams, Operator License Denial

Crystal Williams has applied for an Operator's (Bartender's) License and is appealing the denial of that application. Below is a summary of the relevant Chapter 125 eligibility requirements and an analysis of their application in this case.

Summary / Conclusion

The applicant has been convicted of an "exempt" misdemeanor criminal offense. This conviction is for a misdemeanor with a substantial relationship to the licensed activity. Denial on this basis does not constitute unlawful discrimination. Ms. Williams does not meet the eligibility criteria required by §125.04(5), and therefore may not be granted any license under Chapter 125.

§125.04(5) Licensing Requirements

According to §125.04(5)(a)1, in order to be granted a license or permit under Wisconsin Statutes Chapter 125, the applicant may not have an arrest or conviction record. This prohibition is subject to the requirements of various statutes prohibiting certain types of employment discrimination, which will be discussed below. These statutes are §111.321, §111.322, §111.335 and §125.12 (1) (b).

§125.04(5)(b) states that "No license or permit related to alcohol beverages may, subject to §111.321, 111.322 and 111.335, be issued under this chapter to any person who has habitually been a law offender or has been convicted of a felony unless the person has been duly pardoned."

In summary, §125.04(5) prohibits the issuance of alcohol related licenses under chapter 125 to anybody with an arrest or conviction record, anybody with an unpardoned felony conviction, or anybody "who has habitually been a law offender," regardless of whether any arrests or convictions exist (see State ex rel. Smith v. City of Oak Creek, 139 Wis. 2d 788, 407 N.W.2d 901 (1987)), unless failing to grant that license would constitute prohibited discrimination.

Prohibited Discrimination

§111.322 – Discriminatory Actions Prohibited

§111.322(1) specifies that refusal to license any individual on any of the bases listed in §111.321, which includes arrest and conviction history. This is subject to exceptions set forth in §111.33 to §111.365, neither of which apply to the instant circumstances.

§111.335 – Arrest or Conviction Record; Exceptions and Special Cases

§111.335(3)(a)1 states that it is not employment discrimination because of a conviction record to refuse to license an individual where that person has been convicted of “any felony, misdemeanor, or other offense the circumstances of which substantially related to the circumstances of the particular job or licensed activity.” In evaluating the existence of a substantial relationship, it is the circumstances that provide the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the applicant that are the proper considerations. It is not relevant whether the applicant has the ability to perform the work to an employer’s standards. (See Milwaukee Cnty. v. Lab. & Indus. Rev. Comm'n, 139 Wis. 2d 805, 407 N.W.2d 908 (1987)).

Each offense must be evaluated under the above criteria for determination of whether or not it is substantially related to the activity for which a license is sought. Any arrest, conviction, or other offense which is substantially related to the licensed activity is to be considered in the licensing decision.

Consideration of Rehabilitation

§111.335(4)(c)1 requires that if a license is denied *based upon §111.335(3)(a)1* (as discussed in the preceding section), the licensing agency *typically* has two further obligations. It must state the reasons for denial in writing, including a statement of how the circumstances of the offense(s) relate to the licensed activity. It must also allow the person to show evidence of rehabilitation.

Exempt Offenses

“Exempt Offenses” are defined by §111.335(1m)(b). Exempt offenses are those specified in Chapter 940 or §948.02, 948.025, 948.03, 948.05, 948.051, 948.055, 948.06, 948.07, 948.075, 948.08, 948.085, or 948.095, or a violation of the law of another jurisdiction that would be a violation of one of the listed statutes if committed in Wisconsin.

§111.335(4)(c)2 indicates that the considerations of rehabilitation and the requirement to state the reasons for denial based upon §111.335(3)(a)1, including the substantial relationship, do not

apply to an “exempt offense.”¹ The allowance for demonstration of rehabilitation is only provided for by §111.335(4)(c)1.b, which does not apply to “exempt offenses.” Where a particular offense is considered “exempt,” its consideration stops at the existence of a “substantial relationship,” and does not progress to rehabilitation.

Chapter 940 offenses are crimes against life and bodily security. Homicide offenses, sexual offenses, various forms of battery and other more general violent offenses are contained within Chapter 940. Any offense in Chapter 940 is considered “exempt.” While it is true that a licensing agency is statutorily much more restricted in how it may consider “exempt offenses,” those restrictions are reserved for a limited class of criminal offenses.

Applicability to Crystal Williams

According to the information gathered by the Appleton Police Department, Ms. Williams was convicted of Battery, a class A misdemeanor offense, contrary to §940.19. This conviction occurred in Outagamie County case 19CM863 on 2/26/2020. As a Chapter 940 offense, this offense is considered “exempt.” It is not subject to the requirement that the applicant be permitted to demonstrate rehabilitation. It is not subject to the requirement that a written explanation of the “substantial relationship” be provided.

Conclusion

The applicant has been convicted of an “exempt” misdemeanor criminal offense. This conviction is for a misdemeanor with a substantial relationship to the licensed activity. Denial on this basis does not constitute unlawful discrimination. Ms. Williams does not meet the eligibility criteria required by §125.04(5), and therefore may not be granted any license under Chapter 125.

¹ It is the advice of Legal Services that a substantial relationship must still exist between the circumstances of the offense and licensed activity, even though the licensing agency is statutorily relieved from documenting its nature in writing.