



MEMORANDUM

Date: February 18, 2010

To: Robert Stanke, Chief of Police
From: Pamela A. Captain, City Attorney *PA*

RE: Alcohol Operator's License Application – Nicholas S. Duda

The alcohol operator's license application of Mr. Duda has been forwarded to me for review as required by Sec. 7-2-21(b) of the City of Menasha code of ordinances due to a felony conviction that has not been pardoned.

On the application the applicant checked "yes" to the following questions: Have you ever been charged with a felony? Have you ever been convicted of a felony? Have you ever been convicted of a misdemeanor? An applicant is required to provide accurate and complete information about all "yes" answers to the questions, including charges, dates of offenses and sentences. This applicant failed to provide complete information about the charges, offenses and sentences.

This applicant did indicate that in 2002 he was convicted of a felony for theft in a business; in 2006 he was convicted of a misdemeanor for theft in a business with a sentence that included a fine, community service and restitution; and in 2007 he was convicted of a misdemeanor for getting into a fight with his brother-in-law, possibly disorderly conduct.

In fact, applicant's record is as follows:

2002 Count 1 felony-larceny(theft)-conviction
 Count 2 felony-larceny(theft)-conviction
 Count 3 felony-larceny(theft)- dismissed
 Count 4 felony-larceny(theft)-dismissed
 Count 5 felony-larceny(theft)-dismissed
 Count 6 felony-larceny(theft)-dismissed

Sentence: 18 months probation; jail

2006 Count 1 misdemeanor-theft(business)-conviction
 Count 2 misdemeanor-theft(business)-conviction

Sentence: 2 years probation, sentence withheld; 50 hours community service; restitution; maintain absolute sobriety; subject to random drug/UA testing

2007 Count 1 misdemeanor A-battery-dismissed, but read in
 Count 2 misdemeanor B-disorderly conduct-conviction

Sentence: 12 months probation, sentence withheld; 30 hours
community service; letter of apology to victim

In addition to the recent criminal convictions, this applicant has had 9 municipal ordinance or traffic related convictions between April 2006 and July 2008, including multiple convictions for the same types of offenses such as operating a motor vehicle while suspended and unregistered motor vehicle violations. *See* attached.

In my opinion, based upon the facts as presented above as well as §125.04(5), Wis. Stats., and Smith v. City of Oak Creek, 139 Wis. 2d 788 (1987), this applicant is a habitual law offender.

For the reasons set forth herein, the applicant's request for an alcohol operator's license should be denied. Pursuant to §125.04(5), Wis. Stats., an alcohol operator's license may not be issued.