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REGULATING LIQUOR: PROHIBITION ENFORCEMENT, OFFICIAL CORRUPTION, AND STATE EFFORTS TO CONTROL ALCOHOL AFTER PROHIBITION REPEAL

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I. INTRODUCTION

On May 25, 1933, sixty-four men and one woman representing all twenty-three Wyoming counties met briefly in the Casper City Hall. All had been selected two weeks earlier in county conventions to attend the second constitutional convention in state history. The Secretary of State included the usual formalities in the agenda but provided just one substantive item—ratification of the Twenty-first Amendment repealing national prohibition. The welcoming address was

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made by a councilman instead of the mayor of Casper because the mayor (along with the chief of police and the county sheriff) was under indictment for violating the very law that the convention was to repeal.

Unlike the first constitutional convention, held for twenty-five days in September 1889 when no women served as delegates, there was a woman delegate in 1933. The men at that first convention drafted the lengthy state Constitution for what would become the forty-fourth state the following July.[1] The Constitution, much amended since, essentially remains the same document passed by delegates and ratified by voters in November 1888.[2]

The constitutional convention to ratify Prohibition repeal had significantly less importance to Wyoming law and state history. Nonetheless, it ended a thirteen-year period in which contempt for the law and incidents of official corruption were greater than at any other time in the state's history. From experience gained in these years, Wyoming policy-makers learned how to regulate liquor distribution and sales. As a result of the corruption cases brought against officials at all levels in those years, they also determined how legalization with mixed state and local oversight would not allow for corrupt dealings or a return to the lawless saloons of pre-Prohibition times. Policy-makers learned that legal limitations designed to impede social habits were largely ineffective in Wyoming.

This is the story of the battles against official corruption during Prohibition, the eventual successful repeal of the Prohibition laws, and how the State of Wyoming developed the mechanisms for liquor distribution in the state—the system that largely exists to the present day.

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[1] Primary source for deliberations in that convention is: JOURNAL AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF WYOMING (Cheyenne, Wyo., The Daily Sun, Book and Job Printing 1893).

[2] The first constitutional convention has been the subject of several books, articles and master's theses. *See, e.g.*, ROBERT B. KEITER & TIM NEWCOMB, THE WYOMING STATE CONSTITUTION 3–19 (2011); MIKE MACKEY, MEETING IN CHEYENNE: WYOMING'S CONSTITUTIONAL CONVENTION (2010); GORDON M. BAKKEN, ROCKY MOUNTAIN CONSTITUTION-MAKING, 1850–1912 (1987); Gordon M. Bakken, *Voting Patterns in the Wyoming Constitutional Convention of 1889*, 42 ANNALS OF WYO., 225–35 (1970); LEWIS GOULD, WYOMING: A POLITICAL HISTORY, 1868–1896 (1968); T.A. LARSON, HISTORY OF WYOMING 243–61 (1978); Richard Kenneth Prien, The Background of the Wyoming Constitution (1956) (unpublished M.A. thesis, University of Wyoming); HENRY J. PETERSON, THE CONSTITUTIONAL CONVENTION OF WYOMING (1940); Phil Roberts, *Wyoming Constitution-Making*, *in* 3 THE UNITING STATES: THE STORY OF STATEHOOD FOR THE FIFTY UNITED STATES (Benjamin Shearer ed., 2004). Little attention has been paid, however, to the very brief second constitutional convention—the only other ever held in state history. For a lengthy account of the lead-up to the second convention and details about its deliberations, see Phil Roberts, *Wyoming's Second Constitutional Convention and the Repeal of Prohibition*, 83 ANNALS OF WYO. 10–31 (2011).

II. PROHIBITION AND OFFICIAL CORRUPTION

Two agencies enforced the Prohibition laws in Wyoming: (1) the federal prohibition agency, established by Congress under the Volstead Act, and (2) the Wyoming Department of Law Enforcement, created by the Wyoming Legislature specifically to enforce state prohibition laws. The Wyoming Department of Law Enforcement, the first agency in state history to hold statewide law enforcement jurisdiction, suffered through a succession of directors ranging from overzealous to the corrupt.[3] Half the agency heads during its existence resigned under suspicion of wrong-doing, incompetence, or conviction for blatant corruption. But it was not just this state agency where competent, honest law enforcement often seemed absent. Similar problems occurred with some frequency among county and city officials charged with enforcing the law.

In the early years of Prohibition, Wyoming Governors Robert Carey and William Ross both strongly supported strenuous enforcement, but many county officials were less enthusiastic, particularly when they knew the bootleggers as friends, neighbors, and constituents. Robert Carey's father, Governor Joseph M. Carey, advocated a statute to allow governors to remove officials not enforcing state laws in his State of the State message in 1913.[4] He complained that, as the law existed, the governor had no ability to remove county officials even when they openly refused to enforce the laws. Such a law did not pass under the first Governor Carey, but did under Governor John B. Kendrick. In 1915, Governor Kendrick signed a bill that gave governors sweeping powers to remove county officers.[5] Under the new law, the governor had discretion to initiate removal if he or she suspected a county official might be involved in any form of illegal activity.[6]

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[3] For the account of the early history of the agency, see Phil Roberts, *The Prohibition Agency's First Case: Official Zeal, Mistaken Identity, and Murder in Wyoming, 1919*, 11 W. LEGAL HIST. 145, 145–61 (1998).

[4] Carey urged passage of such a bill:

> Since I have been governor of this state I have been constantly appealed to to [sic] close up places where the law is being openly violated. I have gone as far as I could and as far as the law would justify in going. I have written to county officers; I have appealed to them, and be it said to the credit of some of these that they have acted promptly. They have stopped prize fights, they have closed places where intoxicants were being sold outside of incorporated towns, and especially those places being run under the name of 'clubs' which were in fact only ordinary saloons. Unless some power is given by which the Governor can take immediate steps to stop the kind of offenses enumerated, the laws will be violated and every day the people will have less respect for the law.

Governor Joseph M. Carey, Message to the Twelfth State Legislature 32 (Jan. 21, 1913) (available in Carey family papers, Coll. 1212, Box 14, File folder 4, American Heritage Center, University of Wyoming).

[5] *See* 1915 Wyo. Sess. Laws 136 (codified as amended at WYO. STAT. ANN. § 30-202 (1931)). Originally House Bill No. 124 and titled "Removal of Unfaithful County Officers," the act was signed by Gov. John B. Kendrick on February 26, 1915.

[6] WYO. STAT. ANN. § 30-202 (1931).

Kendrick apparently never used the law, but his successor, Robert Carey, presided over passage of the state's first Prohibition laws in the wake of the state constitutional amendment and national passage of the Eighteenth Amendment to the United States Constitution. The law was unpopular with many Wyoming officials from the beginning. Carey, two years into Prohibition enforcement, warned the 1921 Legislature:

> If we have laws on our statutes that people do not want they should be repealed, but until they are repealed, the officers of this state have no right to disregard or to make them inoperative. Our laws apply to the whole state and neither county nor city officials have any right to decide whether or not a particular law be enforced in any community.[7]

Even though Robert Carey was forced to demand the resignation of his first director, Fred L. Crabbe, Governor Carey apparently did not utilize the statute for removals of county officers.[8] However, his successor, William Ross, convinced legislators that even a mere lack of enthusiasm in enforcing Prohibition laws would be sufficient for governors to investigate county officials.[9] In the following year, he applied the reduced standards against officers in several counties.

During his first year as governor, Ross heard complaints from Sheridan County that the sheriff was either ineffective with respect to enforcement of Prohibition laws or conspiring with bootleggers to evade the law.[10] In January 1924, he turned over the information he received from Sheridan County residents to Merle C. Wachtel, director of the Wyoming Department of Law Enforcement.[11] The

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[7] House Journal, 16th Leg. 27 (Wyo. 1921) (message of Governor Robert Carey).

[8] For the details of Crabbe's resignation, see Roberts, *supra* note 3, at 145.

[9] Senate Journal, 17th Leg. 23 (Wyo. 1923) (message of Governor William Ross) ("The violators of the prohibition law have been so strongly entrenched in some counties of the state that the authorities of those counties have made practically no effort to enforce the law. In order to secure enforcement it is necessary for the Executive to have the power to remove any officer who fails to discharge his full duty in this regard."). Governor Ross frequently spoke about his strong support for Prohibition. *See, e.g.*, *Prohibition Amendment Safe Forever, W.C.T.U. Diners Told*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Mar. 26, 1924, at 1. During the dinner, Wachtel spoke, noting that during Ross's first year, 511 bootleggers were arrested, 166 more than during Governor Carey's first year in office. *See id.*

[10] According to a later newspaper article, the governor's informant apparently was Sheridan County coroner, Dr. W. A. Steffen. *Sheriff Toy of Sheridan Quits Office*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Feb. 10, 1924, at 1, 6.

[11] Wachtel, a 32-year-old native of Ohio, had served as deputy to Carl Jackson, the Wyoming director of the federal prohibition agency prior to Ross appointing him to head the state agency soon after Ross took office. *Rumors Tell of Many State Appointments Gov. Ross May Make*, LARAMIE DAILY BOOMERANG, Dec. 29, 1922, at 1; *Wachtel and Bartlett Take Over Office*, BUFFALO BULL., Apr. 5, 1923, at 1. Prior to coming to Wyoming, Wachtel served as a deputy collector of revenue in Denver. 1920 Census, Denver, Denver County, Colo., Roll T625 162, 3A, Enumeration District 265.

director wrote to Sheridan attorney Carl Sackett that two agents would be coming to Sheridan to investigate the allegations that Sheriff Frank Toy was cooperating with bootleggers or, at least, ignoring their activities.[12]

Soon after Wachtel sent the letter, Governor Ross wrote personally to Sackett reminding him that if Toy had acted improperly in any manner, the governor had the authority to investigate. He asked Sackett for help, stating any evidence would be admissible: "I want, however, plenty of evidence upon which to base the removal of an officer, so that if I remove him it will be upon the overwhelming amount of evidence of improper conduct on his part."[13] Ross urged Sackett to "go into detail and secure every bit of evidence possible"[14] and emphasized that not everyone in Sheridan believed the sheriff was guilty: "I am just in receipt of a letter from J. C. Hutchens of Sheridan, who claims that the Sheriff has been doing good work and that this is a ruse to damage the Democratic Party."[15]

Sackett insisted proper notice was not a problem, but the law apparently did not allow the governor to take depositions from various witnesses. Neither Sackett nor the two lawyers he consulted on the matter knew of any authority for depositions. Sackett reported to the governor that this would not be a fatal impediment: "No doubt you could request the witnesses to appear before you at Cheyenne."[16] On the other hand, he pointed out if the governor were to come to Sheridan County for a hearing, it would save the expense of depositions and travel for the witnesses as well as eliminate the question of the legality of depositions.[17] The complaint listed five counts of public intoxication and four counts of willful failure, neglect, and refusal to perform the duties of his office.[18]

Toy engaged Sheridan attorney H. Glenn Kingsley as his counsel. Although not in the county attorney's office, Kingsley had assisted the county attorney in recent prosecutions.[19] Kingsley prepared to defend Toy's action in the

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[12] Toy was served with two notices to appear before the governor, the last delivered to him by county coroner Dr. W. A. Steffen. *Sheriff Toy of Sheridan Quits Office*, *supra* note 10, at 1. Toy, born in Kansas in 1883, came to Sheridan as a young man and initially worked as a railroad conductor. 1910 Census, Sheridan Ward 1, Sheridan, Wyo., Roll T624 1747, 28A, Enumeration District 0103.

[13] Letter from William Ross, Governor of Wyo., to Carl Sackett, att'y (Jan. 22, 1924) (on file with the Wyoming State Archives in Sackett Papers, H73-19, Box 9).

[14] *Id.*

[15] *Id.* Sackett, a personal friend of the governor, was voluntarily advising the governor on the issue. "I am very sorry that we are not in a position to compensate you," Ross wrote. *Id.*

[16] Letter from Carl Sackett, att'y, to William Ross, Governor of Wyo. (Jan. 22, 1924) (on file with the Wyoming State Archives in Sackett Papers, H73-19, Box 9).

[17] *Id.* ("The presence of the governor or a judge adds dignity to a hearing and prevents 'horse play.'").

[18] *See generally Sheriff Toy of Sheridan Quits Office*, *supra* note 10. The article contains the language of all counts. *Id.*

[19] Letter from Carl Sackett, att'y, to William Ross, *supra* note 16.

hearing before Governor Ross, but before the hearing convened, Toy resigned his position.[20]

Just two weeks after Governor Ross had brought an action against Sheriff Toy in Sheridan County, Fred Wyckoff, Hot Springs County Attorney, gained the governor's attention. Newspaper accounts stated that Wyckoff had asked to drop charges against a man arrested in early February by the State Law Enforcement Department.[21] A local activist member of the Anti-Saloon League posted handbills around town decrying the failure to prosecute.[22] Unhappy with Wyckoff's action, Commissioner Wachtel charged that refusal to prosecute amounted to willful disregard for the Prohibition laws. The commissioner recommended initiation of removal procedures under the statute to Governor Ross who was more than happy to comply.[23]

When Wyckoff received the governor's order to appear at a hearing on the matter, he filed a writ of mandamus in the Wyoming Supreme Court challenging the constitutionality of the law. According to the writ, the governor was assuming judicial power "to hear, try and determine the charges," and the Wyoming Constitution barred such executive action.[24] The court unanimously determined the law valid and constitutional.[25] Justice Ralph Kimball wrote the opinion in which he emphasized the inherent difficulty of Prohibition enforcement. The removal authority granted to the governor was designed to deal with these unique problems.[26] After the decision was announced, Wyckoff's lawyer withdrew the hearing request, and Wyckoff personally handed his resignation to Wachtel on

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[20] *Sheriff Toy of Sheridan Quits Office*, *supra* note 10. Wachtel announced more details of the case against Toy in *Charges Toy Frame-Up To Retain Star*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Feb. 13, 1924, at 1. C. S. Barney, an officer in Wachtel's agency, was seriously injured when he was placed inside a cell with a moonshiner who was told the man was a government stool-pigeon and beat him severely. *Id.*

[21] *New Complaint Against Fred Wyckoff Is Filed by Wachtel*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, July 11, 1924, at 1.

[22] *Handbills in Springs Town*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Mar. 24, 1924, at 8.

[23] Wachtel had troubles within his own agency at the time. One of Wachtel's agents, Thomas J. Sisto, entered a guilty plea to taking a bribe in April 1924. The law enforcement agent was arrested in Nov. 1923. *State Agent Who Accepted Hush Money Given 4 Months*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Apr. 10, 1924, at 1.

[24] *Wyckoff Challenges Governor Ross' Authority and Supreme Court to Pass on Questions*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, July 18, 1924, at 1 (internal quotation marks omitted). The new complaint listed fifteen occasions when Wyckoff was seen drunk in public along with several charges of failure to prosecute liquor law violators. *New Complaint Against Fred Wyckoff Is Filed by Wachtel*, *supra* note 21, at 1.

[25] *See* State *ex rel.* Wyckoff v. Ross, 228 P. 636, 641 (Wyo. 1924).

[26] *See id.* at 638–39.

August 28 while the Law Enforcement Director was in Thermopolis. Thus, the scheduled hearings before the governor were not held.[27]

Governor William Ross died soon after Wyckoff's resignation.[28] A month after Governor Ross's death, in the general election of 1924, William Ross's widow Nellie Tayloe Ross became the first woman elected governor of any state. During her campaign, she pledged to continue her husband's policies, including his strong Prohibition stance.[29]

A few months into her term, she learned that the sheriff of Park County, William H. Loomis, was getting protection money from Cody area bootleggers. In two specific cases, he was demanding and receiving protection money to allow business owners, Cassie Stevens and Viola Mackenzie, to sell liquor in their establishments.[30]

Governor Ross, invoking her powers of removal of county officials for refusing to enforce Prohibition laws, traveled to Cody in April 1925 to conduct the removal hearing against Sheriff Loomis.[31] During the course of the hearing, Loomis's counsel argued that, if such evidence existed implicating him in extracting pay-offs, the incidents occurred in an earlier term and therefore, were not admissible against him in the hearing. In spite of this challenge, Governor Ross confirmed Loomis's removal: "All the evidence of acts of misconduct during the sheriff's previous term lend proof that he is a type of man unfitted for the

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[27] *Fred Wyckoff Has Resigned Post of County Attorney*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Sept. 2, 1924, at 1; *see Authority Vested in Governor Not Unconstitutional*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Aug. 28, 1924, at 1.

[28] *See Governor Ross Is Dead*, THERMOPOLIS INDEP., Oct. 3, 1924, at 1. "Governor Ross was among the pioneer prohibitionists in Wyoming . . . [h]is administration . . . was especially energetic along the lines of law enforcement." *Id.* The article then described his role in forcing Wyckoff's resignation. *Id.*

[29] For Nellie Ross endorsing her late husband's position on Prohibition, see TEVA J. SCHEER, GOVERNOR LADY: THE LIFE AND TIMES OF NELLIE TAYLOE ROSS 82 (2005). In her message to the Eighteenth Legislature, she spoke of utilizing the governor's powers to remove county officers not enforcing prohibition. House Journal, 18th Leg. 33 (Wyo. 1925).

[30] *Gov. Nellie T. Ross Will Preside Over Proceeding Against Sheriff*, CODY ENTERPRISE, Apr. 8, 1925, at 1; *Hearing of Charges Against W. H. Loomis May Be Postponed*, CODY ENTERPRISE, Apr. 15, 1924, at 1, 4; *Loomis Hearing at Cody Ends Thursday; Decision Expected*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Apr. 30, 1925, at 1; *Loomis Hearing Is Closed; Governor Starts for Home*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, May 1, 1925, at 1. Almost a year earlier, the Wyoming State Tribune and Cheyenne State Leader, on July 17, 1924, ran a photograph of Loomis's wife on the front page, noting she was "undersheriff at Cody." WYO. ST. TRIB. AND CHEYENNE ST. LEADER, July 17, 1924, at 1.

[31] *Sheriff Loomis Makes Hard Fight*, CODY ENTERPRISE, Apr. 29, 1925, at 1. The lengthy article provides details of the testimony including some verbatim quotations.

office he occupies and that his previous misconduct disqualifies him for service in that position."[32]

Soon after Loomis's removal, Governor Ross was suspicious of her own Prohibition Enforcement Commissioner, M. C. Wachtel, for violating Prohibition laws. Specifically, rumors circulated about Wachtel cooperating with another Hot Springs County official, Sheriff Scott Hazen, in allowing bootleggers to operate.[33] The stories circulated soon after the Hot Springs county attorney was removed for similar inaction.[34] Both men insisted on their innocence as Governor Ross traveled to Thermopolis for the hearing.[35] Whatever the truth of the allegations, Hazen resigned as county sheriff just before the hearing.[36] Wachtel had tendered his resignation to Governor Ross at the time the news of his involvement in the case was coming to light.[37]

Wachtel's resignation surprised state media. The *Wyoming State Tribune and Cheyenne State Leader* reported it under the headline: "M. C. Wachtel Resigns Post . . . No Reason for Resignation Given at Capitol."[38] Noting his resignation would be effective less than a week later on September 1, the newspaper repeated what its reporter had been told at the Capitol: "The governor authorized the following, by E. B. Almon, her secretary: 'Mr. Wachtel's resignation has been accepted.'"[39] Statewide, the press expressed surprise that no reason was given by Wachtel, or by the governor, for Wachtel's resignation.

When contacted by a reporter for the Cheyenne paper, Wachtel refused to comment on why he resigned. The paper reported: "Wachtel said Monday night

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[32] *Sheriff W. H. Loomis, of Park County, Removed From Office After Charges of Misconduct*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, June 14, 1925, at 1. The article quotes the complete removal order and the letter Governor Ross sent to Park County Commissioners announcing her decision. Loomis filed suit challenging the legality of Governor Ross's action. *Id.*; *Loomis Hearing Concluded Last Wednesday—Decision Is Awaited*, CODY ENTERPRISE, May 6, 1925, at 1; *W. H. Loomis Starts Proceedings in Court*, CODY ENTERPRISE, June 24, 1925, at 1.

[33] Wachtel's name was listed as a conspirator with Hazen in the "Complaint to Remove," filed by the Hot Springs County Commissioners against Hazen. *Charges Filed with Gov. Ross Against Sheriff Scott Hazen*, THERMOPOLIS INDEP., Sept. 18, 1925, at 1. Five places in Thermopolis were selling illegal liquor, according to the complaint against Hazen. *Id.*

[34] *See Charges Are Made Against Co. Official*, THERMOPOLIS INDEP., Sept. 11, 1925, at 1.

[35] *Charges Filed with Gov. Ross Against Sheriff Scott Hazen*, *supra* note 33, at 8 (listing specific charges against the sheriff); *Dates Set for Trial of Hazen*, THERMOPOLIS INDEP., Sept. 25, 1925, at 1.

[36] *Scott Hazen Will Hand in Resignation*, THERMOPOLIS INDEP., Oct. 9, 1925, at 1.

[37] Governor Ross had been in Thermopolis for the hearing, but it was cancelled when Hazen resigned. *Id.* She had been in Thermopolis the previous weekend as speaker for the state meeting of Wyoming Federation of Women's Clubs. *Gov. Ross Addresses Big Crowd*, THERMOPOLIS INDEP., Oct. 2, 1925, at 1.

[38] *M. C. Wachtel Resigns Post*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Aug. 25, 1925, at 8.

[39] *Id.*

that he had several propositions in mind but had not decided what his future work would be. He declined to discuss the resignation other than to say that he had tendered his resignation Monday morning."[40]

Governor Ross announced the appointment of L. D. Christenson, sheriff of Uinta County, as Wachtel's successor and fourth director of the five-year-old agency. The news was contained in the same release announcing Wachtel's departure. Christenson had no experience with the statewide agency. "Christenson's appointment was certified in the office of the secretary of state late Monday afternoon," the newspaper reported, "and Tuesday Mr. Christenson arrived in Cheyenne to familiarize himself with the work of the office."[41]

Despite constant enforcement difficulties and mounting numbers of officials implicated in corruption or willful failure to enforce the law, many Wyomingites throughout the 1920s thought Prohibition was "here to stay."[42] In 1927, Mrs. Minnie Fenwick, the state president of the Wyoming chapter of the Women's Christian Temperance Union (WCTU), spoke to a group at the Cheyenne Methodist Church commemorating the seventh anniversary of the ratification of the Eighteenth Amendment.[43] "The people of the United States outlawed the saloon and are paying less attention to the bootlegger except to give him longer sentences and heavier fines," she said.[44] "The great majority of people welcomed prohibition and are doing well under it, and by God's assisting grace, we can keep it."[45]

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[40] *Id.*; *see also State Agents with Wachtel*, LARAMIE REPUBLICAN-BOOMERANG, Sept. 16, 1925, at 3.

[41] *M. C. Wachtel Resigns Post*, *supra* note 38, at 8. Christenson, sheriff of Uinta County for the previous eight years, was appointed to serve until the end of Governor Ross's term, January 3, 1927. *Id.* According to the Wyoming State Tribune, "Wachtel's resignation is the second in the law enforcement department this month. Early in August, Governor Ross requested and received the resignation of Mrs. Gertrude Corey Hicks, for six years in the department. Confirmation of the report that Wachtel's resignation had also been requested, could not be obtained from the state executive's spokesman." *Id.*

[42] *Storm Of Protest Against 'Dry' Referendum—Mass Meeting Resolves to Squelch Idea*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Jan. 28, 1927, at 1. An estimated 450 people attended the rally in the Methodist Church, Cheyenne, opposing repeal. *Id.*

[43] *Id.* Minnie Fenwick, born in Illinois in 1866, lived in Burns in 1920, but she is not listed in the 1930 census for that community. She is listed as a minister and "super. missionary." Her husband Cyrus operated a Burns photographic studio. 1920 Census, Burns, Laramie, Wyo., Roll T625 2027, 2A, Enumeration District 52.

[44] *Prohibition Here to Stay, Is Opinion of W.C.T.U Leader*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Jan. 17, 1927, at 6.

[45] *Id.* Mrs. Fenwick's address was printed in full. The main points incorporated most of the arguments against repeal. *See id.*

Not everyone was as confident of Prohibition's lasting future as Mrs. Fenwick was, however. After almost a decade under Prohibition, many Wyomingites and legislators were tired of the costs of enforcement and the seemingly fruitless effort to stamp out drinking. In the Senate during the 1927 session, Senator Frank Yates of Sweetwater County, a Republican, introduced a bill to repeal federal Prohibition.[46] His Senate Joint Memorial #1 (S.J.M. #1) asked that Congress submit the repeal of the Eighteenth Amendment to a vote of the people. Indicative of the split in opinion, the bill was reported out of judiciary committee without recommendation. Yates, not only the author of the memorial but also a member of the committee, was left to submit a minority report urging its adoption.[47]

The legislature was divided between the "wets" and the "drys," so it is no surprise that the measure drew fierce opposition. "I regard the 18th amendment as the greatest constructive achievement that has been reached in this country for many years," said Senator Stephen H. Sibley from Burns.[48] He referred to a well-publicized flaunting of Prohibition laws. He spoke at length in favor of the act and said he hoped the Wyoming Legislature would never go on record as opposing Prohibition.[49] Later, Sibley introduced his own bill, strengthening the penalty for possession of a still to a felony.[50]

Senator Yates replied that he was "a dry when the country voted for prohibition and still is a dry," but that he regarded enforcement as a failure.[51] Pointing out that Prohibition had a test of eight years, Yates added, "[a]ll we are asking is that the question be resubmitted and I, for one, can certainly see nothing unpatriotic or un-American in such a request."[52] Echoing Yates's concerns, Senator J. G. Hartwell from Niobrara County "asserted that the question [was] a serious one and should be acted upon with deliberation, moving that further consideration be postponed" until later in the session.[53]

Yates contended that bootleggers opposed the repeal of the Volstead Act. Sibley took an opposite view stating, "[a]re there more bootleggers in this

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[46] *Heated Verbal Battle Ensues as 'Wet' Memorial is Brought Before State Senate Monday*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Jan. 17, 1927, at 1.

[47] *Id.*

[48] *Id.* Sibley, born in Wisconsin in 1859, practiced law in Burns. 1930 Census, Burns, Laramie, Wyo., Roll 2623, 2A, Enumeration District 18.

[49] *Heated Verbal Battle Ensues as 'Wet' Memorial Is Brought Before State Senate Monday*, *supra* note 46.

[50] *First General Debate of 19th Legislature Brought About by Proposed Still Measure*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Jan. 18, 1927, at 1.

[51] *Heated Verbal Battle Ensues as 'Wet' Memorial Is Brought Before State Senate Monday*, *supra* note 46.

[52] *Id.*

[53] *Id.*

country than there are decent people?"[54] To which Yates responded: "I voted for prohibition but have come to the conclusion that conditions it has brought about are anything but desirable and I believe that some form of controlled, legalized sale of liquor would be better than the way things are going at the present time."[55] He added:

> [A]lthough I do not believe any of us would tolerate the return of the old saloon.
>
> Some states have repealed their prohibition law leaving the constitutional amendment 'high and dry' and without any enforcing legislation. I feel that insofar as our own state is concerned such action would constitute cowardice and an absolute shirking of the responsibilities we have assumed.[56]

Yates said he agreed with Governor Frank Emerson that as long as the prohibition law was in force, it is the duty of the state to try to enforce it.[57]

At any point Prohibition appeared to wane during the late 1920s, its supporters, many affiliated with Cheyenne churches, mobilized. In light of the Yates repeal bill, they organized a mass meeting at a local Methodist church. Among the eleven speakers addressing the 450 people at the rally were State Senator P. W. Jenkins (senate president), State Senator Sibley, and Mrs. Fenwick (the WCTU state president).[58] According to a news story the following day, 450 "church people" turned out at the rally to oppose the repeal bill.[59]

Even as late as 1927, Wyoming legislators were reluctant to admit they personally imbibed or advocated repeal on principle rather than on the futility of enforcement. State Senator Thomas Cooper, who voted for Yates's memorial, said he never touched a drop of liquor in his life. He said he supported repeal only "as a protest against the present lack of law enforcement."[60] During the discussions,

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[54] *Id.*

[55] *Id.*

[56] *Id.* (internal quotation marks omitted).

[57] *Id.*

[58] *Mass Meeting Dry Question*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Jan. 26, 1927, at 3. Jenkins, Sibley, and Mrs. Fenwick were joined by Prof. G. V. Cutler, Superintendent of Schools, Lovell, Wyo; Clarence Gardner, State Senator, Lincoln County; Rev. Mary E. Bakewell, Episcopal minister, Lusk, Wyo.; Rev. Charles Schofield, pastor of the First Methodist Church of Casper; C. R. Ingle, Thermopolis attorney; State Sen. E. T. Lazear; Rev. W. L. French, Methodist Church, Laramie, Wyo.; P. T. Lener, state representative from Goshen County.

[59] *Storm of Protest Against 'Dry' Referendum—Mass Meeting Resolves to Squelch Idea*, *supra* note 42.

[60] *Session's End Stride Struck by Legislature*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Feb. 19–20, 1927, at 5.

he alleged that graft in the Department of Law Enforcement was considerable.[61] As time passed, Cooper's claims were vindicated. As demonstrated above and following, corruption problems within that agency proved to be an ongoing issue throughout its existence.

As the repeal debate continued in the State Senate, only Senator Peter J. Kinney of Newcastle said he was a "wet." "[The Eighteenth Amendment] is a curse to the nation as it exists today," declared Senator Kinney.[62] "[Eighty-five] percent of the people of Weston [C]ounty want a chance to vote against it." Senator Jenkins, who had spoken at the rally the night before, contradicted Kinney's claim at least with respect to his home county, arguing that such support for repeal "didn't exist in Sublette County."[63]

State Senator Sibley, who was the most prominent opponent of repeal said:

> I do not believe the 'dry' sentiment in Wyoming has decreased. When the 18th amendment became effective, 117,790 saloons went out of business in the United States as did 1,247 breweries, 407 distilleries and 275 Keeley cure institutes. Maybe this liquor is now being supplied by bootleggers, but I doubt it.[64]

In the end only Senators Yates, Cooper, Kinney and Robert C. Lundy voted for the repeal memorial.[65] Action on the bill, S. J. M. #1, was indefinitely postponed.[66]

Even though bills advocating repeal of Prohibition were infrequent during the period, several bills seeking the demise of the Department of Law Enforcement gained support in the late 1920s. In the 1927 session, State Representative Thomas Gibson introduced a bill to abolish the agency.[67] The Sweetwater

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[61] *See id.*

[62] *Storm of Protest Against 'Dry' Referendum—Mass Meeting Resolves to Squelch Idea*, *supra* note 42.

[63] *Id.*

[64] *Id.* (internal quotation marks omitted).

[65] *Id.*

[66] Senate Journal, 19th Leg. 129 (Wyo. 1927).

[67] H. B. 218, introduced on Feb. 5, 1927. House Journal, 19th Leg. 254 (Wyo. 1927). The Revenue Committee reported the bill back on Feb. 10 with a do not pass recommendation. *Id.* at 341. Republicans held a 45-17 majority in the House in the 1927 session, but as in other Prohibition-era sessions, party affiliation was not necessarily determinative with respect to the legislators' position on Prohibition. More important was geography. Legislators from Sweetwater, Sheridan, Hot Springs and Lincoln counties tended to be "wet," regardless of party affiliation during the period. *Would Abolish Law Enforcement Office—Introduce Bill Which Will Be Hotly Debated*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Feb. 7, 1927, at 1. The bill was the last to be introduced in the session.

County Republican cited the huge costs and inefficiencies as reasons to both end Prohibition and the agency charged with enforcing the law.[68]

When opponents of the agency failed to end its existence, a measure to strip the appropriation from the Department of Law Enforcement was introduced.[69] Again, Senator Cooper spoke against the agency, calling "[t]he law enforcement department . . . a complete failure" and referring to such incidents as the Wachtel case as giving "a certain class of officers a chance to graft among moonshiners and bootleggers."[70]

Senator Yates joined Cooper in opposing funding for the agency: "The money spent this way the last six years has been absolutely wasted, . . .The department has been an instrument of graft."[71] Senator Charles A. Myers predicted that the next national election would turn on the prohibition question, which will split both major parties. "'What can you expect of prohibition enforcement?' he asked, 'with Secretary Mellon at the head of the department.'"[72] Ultimately, the amendment to cut off the appropriation for the Department of Law Enforcement failed by a vote of twenty to five.[73]

Not only were repeal advocates losing the argument in 1927, but the Prohibition boosters were becoming more bold. During the same session, State Senator Sibley introduced a bill to make the prohibition law tougher—charging the mere possession of a still as a felony.[74] Eight senators, more than one-third of the membership, addressed themselves on the measure. The committee recommended the bill for passage and the Senate adopted its recommendation. Most senators spoke in favor of the bill, but those who opposed it claimed stills

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[68] *Would Abolish Law Enforcement Office—Introduce Bill Which Will Be Hotly Debated*, *supra* note 67; *Budget Bill Is Brought to the House Monday: Provides for Larger Sums for Expense*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Feb. 14, 1927, at 1; *General Appropriations Bill, Printed, Before Legislature*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Feb. 16, 1927, at 1.

[69] *Divorce Bill Discussion in Senate Warm*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Feb. 11, 1927, at 1; *Wet and Dry Issue Is Raised by Legislature*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Jan. 18, 1927, at 1.

[70] *Session's End Stride Struck by Legislature*, *supra* note 60, at 5. Nationally, the WCTU was concerned with government graft. *Strict Personal Observance of Liquor Law by Public Servants Is Demand of Women's Christian Temperance Union*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Jan. 27, 1927, at 1.

[71] *Session's End Stride Struck by Legislature*, *supra* note 60, at 5.

[72] *Id.*

[73] *Id.*

[74] *First General Debate of 19th Legislature Is Brought About by Proposed Still Measure*, *supra* note 50. The Bill made possession of a still used or designed for the manufacture of intoxicating liquor a felony, punishable by not less than two years nor more than five years. *Id.*

had other uses. The bill passed the Senate by a large majority.[75] The action signaled that Wyoming legislators wanted law enforcement to get even tougher on Prohibition lawbreakers.

During floor debates in the House over the Sibley bill, State Representative Milward Simpson[76] accused both the federal and state prohibition agencies of inefficiency and corruption. Simpson said he spoke from first-hand knowledge about inefficiency. He said he gained the information when he "called in all the bootleggers" in his county "and there were [fifty-seven] of them."[77] He made an even more serious charge against a federal officer. Simpson said the agent needed a new car and, consequently, told a man who operated five stills in Wild Cat Canyon near Thermopolis that if he was given $1000, he would look the other way while the still operators finished an $8000 run.[78] Simpson claimed the law was impossible to enforce stating, "I defy the prosecuting attorney to convict a man and send him to the penitentiary under this statute if I am defending him."[79] "Juries, he said, would not convict for mere possession of a 'dry' still when conviction would mean that the defendant must go to the penitentiary."[80] Despite Simpson's spirited opposition, the Sibley bill passed the House and was signed by Governor Frank Emerson, who had defeated Governor Ross in the previous November general election.[81]

The harsher law was enforced almost immediately with the highly publicized arrests of a Japanese railroad supervisor and two Mexican men.[82] Whether by design or accident, the arrests signaled that legislators at least in part, viewed the new law as a necessary response to aliens and non-Whites who appeared to be

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[75] *Still Measure Passes Senate Sent to House*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Jan. 21, 1927, at 1.

[76] R-Hot Springs. By 1933 Simpson was living in Cody and was elected a delegate to the Constitutional Convention from Park County in the spring of that year.

[77] *Corruption Is Alleged Dry Enforcement; Spirited Talk by Simpson Fails to Stay Still Bill*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Feb. 12–13, 1927, at 1.

[78] *Id.* "Hot Springs County is 'sopping wet and the saloons run wide open,'" Simpson charged. The bill passed by a vote of thirty-two to twenty-seven and went to the governor for his signature. *Id.* "'If opposition to this bill dubs one a wet,' he said, 'then I'm so wet that if you blow me I'll probably ripple.'" *Id.*

[79] *Id.*

[80] *Id.* ("Representative Coltrane said that he supported Simpson's position because he believed that to make prohibition effective 'you must kill the demand and then you'll kill the supply.'").

[81] Some political observers believed Nellie Ross's unpopular efforts to remove county officials, particularly in Park and Hot Springs counties, contributed to her defeat. *See, e.g.*, SCHEER, *supra* note 29, at 101.

[82] *First Arrests Made Under Still Law of Wyoming*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Feb. 25, 1927, at 1.

violating the law with impunity.[83] Despite such highly publicized cases, over the next year, Sibley and other dry leaders repeatedly pressed the governor, demanding even more stringent Prohibition enforcement. They charged that the agency was rounding up only the most visible violators. Agency personnel defended their work, insisting that the "sale of liquor that constantly goes on throughout the state is no worse than in any other state."[84]

In response to Sibley's calls for more rigorous enforcement, during the fall of 1928, Governor Emerson had two long meetings with William C. Irving, his State Law Enforcement commissioner. The *Wyoming Eagle* reported that, in the second meeting, "Mr. Irving told his superior in effect that he was doing the best he could and that if that was not good enough, someone else could have the job."[85]

Irving, the former police chief of Parco (Sinclair) and Casper police officer, had served about one and a half years as the state's law enforcement commissioner when questions about him emerged.[86] The agency's deputy director since May 1927, Irving was appointed director in November 1927.[87]

An investigation into the operations of Irving's office began in November 1928 when Governor Emerson heard of "irregularities" in the law enforcement department. He wrote to Lon Davis and asked for federal government assistance to check into the rumors.[88] Davis sent agents into the field and, later, sent the governor's request to other agencies. The United States Treasury Department

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[83] *See, e.g.*, *id.* Sheriff Cosby of Albany County and Special Agents Kenworthy and Carl Christensen of the Union Pacific and Undersheriff Gus Romsa of Cheyenne conducted the raid early Thursday, three days after the law took effect. *Id.* The paper reported that they arrested a "Japanese section boss at Buford and two Mexicans on charges of operating an illicit distillery." *Id.* "They confiscated a still, four gallons of whiskey, and 30 gallons of a Japanese drink known as saki. The prisoners are being held in Laramie." *Id.*

[84] *Speculation Runs Riot as Irving "Quits" State Post . . . Question Is Asked: "Did He Resign by Request?"*, WYO. EAGLE, Nov. 30, 1928, at 1.

[85] *See id.*

[86] *See id.* For Emerson's official letter of appointment and letters recommending Irving's appointment, see Appointments Correspondence, Frank Emerson Papers, Record Group 1.25 (on file with the Wyoming State Archives, State Parks and Cultural Resources Department, Cheyenne).

[87] *Id.* The previous holder of that position, A. S. Roach, accepted appointment as warden of the state penitentiary at Rawlins. In 1935, Roach was replaced as warden and later became Rawlins chief of police. *Roach Named New Rawlins Police Chief*, WYO. EAGLE, Jan. 7, 1937, at 4.

[88] Davis was deputy prohibition administrator for the federal agency and acting agency director in Wyoming until his permanent appointment in May 1931. *Wyoming State News*, SUNDANCE TIMES, May 14, 1931, at 6. For the complete text of the Emerson letter, see *Nearly Thirty Indicted with W. C. Irving*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, May 18, 1929, at 1.

planned to send two special investigators to work on the case.[89] Before the treasury investigation could get underway, Irving abruptly resigned from his position on December 1, 1928.[90] Newspapers reported the cause of his resignation was "ill health" and that "he will shortly leave the state for an operation."[91] Governor Emerson formally accepted the resignation and noted that "law enforcement work in the state will be carried on with vigor."[92]

In reporting on Irving's resignation, the *Wyoming Eagle* repeated charges from the 1926 gubernatorial campaign between Emerson and incumbent Nellie Tayloe Ross:

> Commissioner Irving comes from Parco [Sinclair] which in 1926 gave Governor Emerson a vote of 369 to 66 over his opponent, Nellie Tayloe Ross, by far the greatest majority of any sizeable precinct perhaps ever recorded and a vote out of all proportion to the rest of the state. It was in recognition of that vote, so it is generally accepted, that the Governor appointed Irving. Shortly after the 1926 election the Democrats planned to challenge alleged irregularities in balloting there. But the plan was abandoned when it was found that even if the precinct were thrown out, it would not [a]ffect the result of the state as a whole.[93]

Rumors that Irving resigned due to corruption were not quelled by the Governor's message to the opening of the 1929 Legislature. Governor Emerson commented on the Law Enforcement agency's record: "While there have been some disturbing

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[89] The facts in the case are drawn from the accounts printed in the *Wyoming Tribune*, the *Wyoming Eagle*, from the trial record of *United States v. Irving*, Case File No. 2896 (on file with the National Archives, Rocky Mountain Branch, Denver, Colorado, located in the Wyoming Criminal Case Files, RG21, Box 98) [hereinafter *Irving*], and from the facts stated in *Mercante v. United States*, 49 F.2d 156 (10th Cir. 1931).

[90] Emerson later defended his decision to turn the case over to federal authorities. "'The state has no organization to conduct an investigation of this kind.'" *Irving Case Before Grand Jury Tuesday*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, May 14, 1929, at 1. Less than two weeks after Irving resigned, Lee Craft, a former agent of the Department of Law Enforcement during the Nellie Tayloe Ross administration, was charged in Colorado with illegal possession of liquor. *Lee Craft, Former Wyoming Dry Officer, Held in Denver Raid*, CASPER DAILY TRIB., Dec. 12, 1928, at 1.

[91] *W. C. Irving Resigns Place as State Law Enforcement Officer*, RAWLINS REPUBLICAN, Dec. 4, 1928, at 1; *W. C. Irving to Quit Post*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Nov. 29, 1928, at 3.

[92] *Irving Resignation Taken*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Dec. 1, 1928, at 2.

[93] *Speculation Runs Riot as Irving "Quits" State Post . . . Question Is Asked: "Did He Resign by Request?"*, *supra* note 84, at 1.

factors in relation to the department, upon the whole a good record has been made during the present two-year period."[94]

Rumors implicated Irving in a massive conspiracy to violate the very laws he had sworn to enforce.[95] State Senator Leslie Miller,[96] apparently aware of the rumors, introduced a bill to establish a legislative investigation into the Law Enforcement agency's actions.[97] The Senate authorized a select committee to investigate the charges and write a report to be presented to the Senate in executive session. Miller and several of his colleagues inveighed against the agency's reputation.[98] Their report, issued at the end of the legislative session, stated that the agency had only two honest directors in its history. Nonetheless, the legislative report concluded that there was "no tangible evidence to substantiate rumors" of Irving being involved in illegal activities.[99] The current director George Smith was doing a good job with just three field agents.[100]

Late in the session, State Senator D. A. Preston moved to kill the agency's appropriation during second reading of the entire appropriations bill.[101] Preston criticized agency directors, noting that one "was a carpetbagger . . . who associated himself with hijackers from Colorado . . . and the second was Wachtel and you all know his record."[102] He concluded with a denunciation of the agency and noting that "Prohibition will only come with education and not by force."[103]

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[94] *Text of Governor's Message to the Legislature*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Jan. 11, 1929, at 12. At the same time, Emerson continued to use his powers as governor to remove county officials for failure to enforce prohibition laws. In January 1929, Earle Burwell, the third of three Natrona County commissioners who had been charged with malfeasance and misconduct brought by Emerson, resigned. The governor dropped charges against commissioners J. F. Scott and Earl D. Holmes earlier when both agreed to resign. *Burwell Has Quit Position*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Jan. 23, 1929, at 10.

[95] *Attack Enforcement Bureau*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Feb. 5, 1929, at 1. Both Preston and Miller spoke of rumors circulating about Irving's resignation. *Id.*

[96] Miller, a Democrat who owned gasoline stations in Cheyenne, ran unsuccessfully against Emerson for governor the following year. Following Emerson's death, Miller won election to fill out the remaining two years of the term.

[97] *Miller Seeks Bureau Probe*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Jan. 30, 1929, at 3.

[98] *Law Enforcement Bills Killed in Senate, Debate Gets Warm*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Jan. 28, 1929, at 1.

[99] *Make Report Enforcement Department*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Feb. 15, 1929, at 1.

[100] Senate Journal, 20th Leg. 473–76 (Wyo. 1929) (Select Committee report, Executive Session). Smith told the committee that he could count on cooperation from officials from "about half" of the counties. *Id.* at 475.

[101] *Attack Enforcement Bureau*, *supra* note 95, at 1.

[102] *Id.*

[103] *Id.*

On May 17, 1929, a federal indictment was returned against twenty-nine individuals, including Irving, James Ader (his former assistant), other employees of the Prohibition Bureau, and several Thermopolis residents.[104] The whereabouts of Irving and Ader were unknown, but the rest of the defendants were served with bench warrants. The following week, six more people were indicted in the Irving case, including: from Thermopolis, Mr. and Mrs. Mike Bell, Gus Taylor, Tom Ray, and from Cody, Robert Avery and Charles Saunders. Avery had several liquor-related arrests in Natrona County over the previous four years and had only recently moved to Cody.[105]

Irving and Ader were each indicted on conspiracy charges. As the first reports of the indictment in the Casper press indicated, "The grand jury also is understood to have voted true bills against a number of liquor violators in Wyoming alleged to have arranged through Ader for 'protection.'"[106] The United Press story continued by noting that the chief investigating officer "is considered one of the government's most careful of conspiracy investigators."[107] The investigation had been ongoing since January 1929, a month after Irving's resignation.

For more than two months after the indictments were handed down, Irving's whereabouts remained unknown. Investigators believed he was in either Mexico or South America.[108] Some reports indicated he had been kidnapped.[109] After weeks of newspaper and official speculation,[110] Irving, who had fled to California, turned himself in, declaring he was innocent of all charges.[111] During his initial

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[104] The legal details of the case come from analyzing the records in United States v. William C. Irving, James Ader, Olinto Marcante, Charles Redmon, Amenda Nostronds, Biassetti Alfonso, Otto Jahn, William C. Graham, John (Spud) Murphy, Frank Boyd, Tony Kunlis, Morris Robinson, Herman (Curley) Schroeder, Fred Rumph, Eddie Sears, Eliseo Cruz aka Fat Cruz, Bert Maxon, Robin Ehlers, Robert Avery, Charles Saunders, Mike Jukich aka Crippled Mike, Mike Bell, Mrs. Mike Bell, A. E. (Gene) Schmitt, Sylvester (Gus) Taylor, Ray Seitz, Tom Ray, William Montgomery and H. Hansen. *Irving*, *supra* note 89.

[105] *Six More Indicted with Irving as Parties to Liquor Ring Are Seized*, CASPER TRIB.-HERALD, May 24, 1929, at 1.

[106] *Bill Irving Indicted for Liquor Plot*, CASPER TRIB.-HERALD, May 17, 1929, at 1.

[107] *Defendants Too Late Indictments Given Time for Pleadings*, CASPER TRIB.-HERALD, May 20, 1929, at 1.

[108] *Irving Case Before Grand Jury Tuesday*, *supra* note 90, at 1.

[109] *See*, *e.g.*, *Irving May Have Been Kidnapped*, SALT CREEK GUSHER, July 12, 1929, at 1.

[110] *See, e.g.*, *Federal Grand Jury Completes Report*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, May 18, 1929, at 1 (noting that Irving was "still at large"); *Six More Held in Graft Ring Investigation*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, May 24, 1929, at 1 (noting that both Irving and Ader were "still at large").

[111] *Irving Appears to Post Bond on Federal Conspiracy Count*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, July 12, 1929, at 1. Two earlier reports suggested that Irving was in Cheyenne, "hearing of the nation-wide manhunt for him, [he] decided to return to Wyoming where his chance of finding bondmen would be much greater." *Former State Law Official Said in City*, WYO. ST. TRIB. AND

appearance, the court gave Irving until June 3 to enter a plea.[112] The record did not point toward Irving's innocence. The grand jury indictment described the extent of the corruption including a report that "Irving, with [James] Ader as chief collector and assisted by deputies, had a flat rate of [fifty dollars] a month levied on 'speakeasies' at Rawlins."[113] As the grand jury report revealed, Irving was deeply involved with co-conspirators elsewhere in the state, and "the amount varied according to the size of the business 'protected.'"[114] Further, Ader had a business connection with Irving. Federal authorities claimed that he and Irving had been partners in 1926 in a Parco[115] pool hall known as "the Bucket of Blood."[116] It was at the same time that Irving was serving as the town's chief of police.[117]

The strongest evidence outside the Rawlins payoffs involved the operators of a large still near Thermopolis who paid for protection "at the rate of a dollar a gallon on the finished product."[118] Federal officials believed that Irving talked to his counterparts in the federal prohibition enforcement office, determined where agents were scheduled to visit, and then informed bootleggers in those locations, and charged the bootleggers substantial fees for such valuable tips.[119]

A. Indictments and Trials of Corrupt Officials

Twenty of the defendants pleaded not guilty on August 1, 1929, with one other making a similar plea on August 6.[120] Subpoenas were issued to numerous

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CHEYENNE ST. LEADER, July 9, 1929, at 1. Two days later, the same paper denied that Irving was in town, asking the question, *Where is Bill Irving? Former State Official Still Missing Despite Search Here*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, July 11, 1929, at 1.

[112] *Irving Appears to Post Bond on Federal Conspiracy Count*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, July 12, 1929, at 1.

[113] *Federal Grand Jury Completes Report*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, May 18, 1929, at 1. The general facts from the indictment are mentioned in *Mercante v. United States*. 49 F.2d 156, 157 (10th Cir. 1931).

[114] *Federal Grand Jury Completes Report*, *supra* note 113, at 1; *see also Mercante*, 49 F.2d at 157 (referring to similar statements).

[115] Parco had been founded by the Producers and Refiners Company and the name came from company initials. The entire town was sold in a bankruptcy sale on April 12, 1934. The name was changed to that of the company making the purchase, Sinclair, in December 1942. PHIL ROBERTS ET AL., WYOMING ALMANAC 143 (6th ed. 2010).

[116] *Federal Grand Jury Completes Report*, *supra* note 113, at 1.

[117] *Wyoming Centers Gaze on Irving Trial as Witnesses Assemble Here*, WYO. EAGLE, Jan. 24, 1930, at 12.

[118] *Id.*

[119] *Pleas of Not Guilty Entered by 20 to Conspiracy Charges*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Aug. 1, 1929, at 1.

[120] *See Irving*, *supra* note 89. Some of the best-known lawyers in Wyoming represented various parties. Two of the accused, H. Hansen and William Montgomery, were represented by Joseph C. O'Mahoney, a Cheyenne trial lawyer who later became United States Senator.

people in Rawlins to appear as witnesses on December 23 and to many others in Thermopolis a week later.[121] One of the numerous co-conspirators, Hugh O'Donnell, was arrested by federal authorities and was prepared to testify against Irving in exchange for leniency. Before the trial began, O'Donnell, a Rawlins resident, died in an explosion when he tried to light a cigarette in a room filled with gas.[122]

United States Attorney Albert D. Walton prosecuted the Prohibition conspiracy case. Well-known as a dependable ally of Senator Francis E. Warren, Walton was United States Attorney throughout the Prohibition era in Wyoming.[123] Because of Irving's official position and his connection to their case, prosecutors decided to try all of the defendants at once. While it had no impact on the outcome of Irving's case, the decision was fatal to gaining convictions for many of the other conspirators.[124]

After the six lawyers representing various defendants filed numerous motions, the trial was set for January 28, 1930.[125] Governor Frank Emerson was scheduled to testify along with the various individuals from Thermopolis and Rawlins. During three days of testimony, the prosecution argued that Irving and the Prohibition officials had engaged in a huge conspiracy of corruption with city officials and bootleggers in numerous cities of the state.[126] Government counsel moved to dismiss charges against eleven of the defendants.[127] Further, the lawyers

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[121] *See id.*

[122] O'Donnell's death and the theories of his suicide are spelled out in *Wyoming Centers Gaze on Irving Trial as Witnesses Assemble Here, supra* note 117, at 12. A few people suspected vengeance, but others believed inquest reports that O'Donnell had turned on the gas and went to bed, assuming he would die of asphyxiation. To his surprise, he woke during the night and lighted a cigarette to contemplate his failure at suicide. *Id.*

[123] *See* WYOMING BLUE BOOK 483 (Virginia Cole Trenholm ed., vol. II, 1974). Born in New York in 1886, Walton and his wife Harriet and three young children lived near the State Capitol. 1930 Census, Cheyenne, Laramie, Wyo., Roll 2623, 2A, Enumeration District 9.

[124] Mercante v. United States, 49 F.2d 156, 158 (10th Cir. 1931).

[125] *Irving*, *supra* note 89. Two defendants were not tried with the group. The first defendant, Tony Kunelis of Rawlins, was arraigned and entered a plea of not guilty. The judge dismissed the case against Kunelis, discharging him after plea of abatement entered. The second defendant, Saunders, was ill. His counsel asked for a separate trial.

[126] *Irving Conspiracy Charges Are Facing Collapse*, WYO. EAGLE, Jan. 31, 1930, at 1. Early in the trial, the prosecution strategy became apparent when the U.S. Attorney called the defendants' spouses to testify against Irving and Ader. Mrs. Jessie Schmidt testified that she had sent money in packages to Irving while he was the deputy commissioner, but after he became commissioner, she was instructed to send money to his deputy, James Ader. When Mrs. Irene Taylor took the stand, the defense vigorously tried to impugn her character, according to a *Wyoming Eagle* report. *Id.*

[127] The court in the *Mercante* decision described how the various defendants fared: "Of the 29 defendants indicted 23 brought to trial; the government dismissed as to 11, the trial court directed a verdict as to 7, and the jury convicted 5, among them Irving, the commissioner of law enforcement

for seven of the dozen remaining men moved for a directed verdict.[128] Judge T. Blake Kennedy, well known nationally for his controversial rulings in the Teapot Dome cases a few years earlier, denied the request and the trial continued for the twelve defendants on February 1.[129]

By the time the case was tried, Kennedy was very experienced hearing Prohibition cases. "We had our share [of Prohibition cases] in Wyoming and while they were not comparable in number with many of the larger districts they were sufficiently numerous to take a substantial portion of the Judge's time in disposing of them," Kennedy wrote years later in his unpublished autobiography.[130]

Governor Emerson's testimony was called in advance the "most sensational testimony" in the case.[131] The governor had sent George Smith, deputy state law enforcement chief, to Thermopolis to investigate stories he had heard about possible pay-offs from bootleggers.[132] By the time Smith returned, the governor

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for the entire state, who has not appealed." *Mercante*, 49 F.2d at 157. Earlier in the trial, charges against two Thermopolis men, Sylvester "Gus" Taylor and A. E. Schmidt, had been dismissed. *Irving Conspiracy Charges Are Facing Collapse*, *supra* note 126, at 1.

[128] *Irving Conspiracy Charges Are Facing Collapse*, *supra* note 126, at 1. Throughout the trial, Irving was "alert to every word, [sat] with a battery of defense counsel at a long table and [was] frequently . . . seen in whispered conference with his attorney Jack Dillon." *Id.*

[129] *Id.* Kennedy, born in Michigan in 1874, began practicing law in Syracuse, N. Y., in the late 1890s. *See generally* T. Blake Kennedy, T. Blake Kennedy Papers (unpublished autobiography) (1892–1957) (on file with the American Heritage Center, University of Wyoming in Acc. 405, Box 1, Folder 19). He and his Syracuse law partner Roderick M. Matson moved to Cheyenne in 1901 where one of their first cases was the defense of gunman Tom Horn. *Id.* From 1903 to 1913, Kennedy served as referee in bankruptcy. *Id.* He was appointed to the U.S. District Court judgeship in 1921 when Wyoming's first federal judge John Riner took senior status (Riner died in 1923). *Id.* Kennedy served as Wyoming's only U.S. District Judge until his retirement in 1955. *Id.* He died in 1957. *Id.*

[130] T. Blake Kennedy, *supra* note 129, at 482–83.

[131] *Irving Conspiracy Charges Are Facing Collapse*, *supra* note 126, at 1. Reporters were disappointed with the limited testimony that was "reduced to an account by Gov. Emerson of a mysterious telephone conversation" he claimed to have had with a "Gus Taylor." *Id.* The governor testified that he was called three times in one night while he was in Casper. Each time "Taylor" inquired as to the whereabouts of Irving. *Id.* The third time that the governor told him that he didn't know where Irving was, Taylor said, "You are Irving's boss, aren't you?" When Emerson answered, "I am the Governor, if that is what you mean." *Id.* Taylor answered, "Well, you know very well what I mean." Emerson noted that the conversations "raised his suspicions." *Id.*

[132] When Smith took the stand, he said Taylor told him that he "wanted protection against out-of-town liquor which was competing with the Thermopolis product." *Witness Tells of Paying Irving Protection Money*, LARAMIE REPUBLICAN-BOOMERANG, Jan. 28, 1930, at 1, 8. Other testimony revealed that two kegs of "Red Canyon" whiskey from the Thermopolis area had been confiscated and shipped down to Cheyenne where they were placed in a safe in the Law Enforcement Bureau's offices. After Irving's resignation, however, an inventory revealed that both kegs were gone. Smith became the director of the agency in June 1932. *Veteran Law Enforcement Officer Declares for Government Sale of Liquor*, WYO. EAGLE, July 1, 1932, at 1.

had obtained a cashed check made out to Irving that seemed to confirm Smith's reports about pay-offs.[133] In all, two-dozen witnesses testified for the government. After brief summations, the case went to the jury on February 1, the fourth day of the trial.[134]

The twelve-man jury returned with two verdicts: not guilty as to the minor figures in the case: Otto Jahn, Kemmerer; Morris Robinson, Frank Boyd and William C. Graham, Rawlins; John Murphy, Rock Springs; Ray Seitz and Tom Ray, Thermopolis. In Irving's case, however, the jury accepted the prosecution's contentions. After deliberating one hour and forty minutes, they found the former head of the Prohibition bureau for the State of Wyoming guilty of corruption along with four well-known Thermopolis bootleggers: Olinto Marcante, Charles Redmon, Biasetti Alfonso, and Mike Bell.[135]

Judge Kennedy then imposed the sentence.[136] Mercante and Redmon each received one year in Laramie County Jail and were fined $500. Thermopolis bootlegger Mike Bell was given one year in Hot Springs County Jail and a $500 fine. Alfonso was sentenced to six months in the Laramie County Jail and fined $100. Irving, once the state's highest ranking law enforcement officer, received the harshest sentence—eighteen months in the federal penitentiary in Leavenworth, Kansas, and a $1000 fine.[137]

Newspaper reports said Irving was "visibly affected [by] the severe penalty he received."[138] Before sentencing, Irving told the court he had "been convicted on the testimony given under a grudge" and that "[i]f such a frame-up was to be allowed to convict, not an officer in the state had a chance."[139] He added that if he had known the result, he would have offered a defense, but claimed counsel had advised against it.[140] The day after his conviction, Irving, escorted by

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[133] The check was described in the grand jury report. *See Federal Grand Jury Completes Report*, WYO. ST. TRIB. AND CHEYENNE ST. LEADER, May 18, 1929, at 1.

[134] *See generally Irving*, supra note 89; *see also Irving Case to Reach Jury This Afternoon*, LARAMIE REPUBLICAN-BOOMERANG, Feb. 1, 1930, at 1, 10.

[135] *See generally Irving*, supra note 89.

[136] *Irving Gets 18-Months*, LARAMIE REPUBLICAN-BOOMERANG, Feb. 3, 1930, at 10.

[137] *See Irving*, supra note 89; *Irving Sentenced to 18 Months for Violation of Liquor Laws*, SHOSHONI ENTERPRISE, Feb. 7, 1930, at 1. Subsequently, Irving was released from prison and took a job as a "radio mechanic" for a large Denver company. Judge Kennedy wrote about encountering Irving several years after the trial "when purchasing some radio accessories and he was quite friendly." Kennedy described how Irving introduced the judge to his young son. "That's the man that sent Daddy away," Irving said to the boy. Kennedy concluded the story: "Such a situation is indeed trying." T. Blake Kennedy, *supra* note 129, at 608.

[138] *Irving Begins Serving Term in U.S. Prison*, WYO. EAGLE, Feb. 7, 1930, at 13; *see Irving on His Way to Start Prison Term*, LARAMIE REPUBLICAN-BOOMERANG, Feb. 5, 1930, at 1, 2.

[139] *Irving Sentenced to 18 Months for Violation of Liquor Laws*, *supra* note 137, at 1.

[140] *Id.*

United States Marshal Hugh L. Patton, was taken to the federal penitentiary. His lawyer saw them off at the train station.[141] As the *Wyoming Eagle* reporter, Julian B. Snow put it, "Thus ended Wyoming's most talked-about federal trial since Teapot Dome."[142]

The attorney for Mercante, Redmon, Alfonso, and Bell filed appeals in their cases. The United States Tenth Circuit Court of Appeals reversed Mercante, Redmon, Alfonso, and Bell's sentences on April 17, 1931.[143] The court based its decision on the large number of defendants charged in one conspiracy, stating that the prosecution had failed to prove its existence.[144] The court said prosecutors should have divided the case and, therefore, likely could have proven several smaller conspiracies. Pending charges against the four men were dismissed the same day for failure to prosecute.[145] The United States Court of Appeals for the Tenth Circuit stated that a conspiracy case brought against such a large number of people was impossible for any jury and even "extremely difficult for an experienced trial judge" to handle properly.[146] Ader and one other man who had been indicted were never prosecuted and the cases against them were dismissed in November 1931.[147]

B. Reexamining Prohibition after Charges

Charges against these former and past agents fueled legislative efforts to abolish the state's prohibition enforcement agency and prompted newspaper editors again to question the notion of Prohibition. "The world knows that in this state and over the country today there are literally thousands enjoying freedom who are just as guilty of infractions of the prohibition laws, in one form or another, as he is," editorialized Tracy McCraken in the *Wyoming Eagle*.[148] He continued: "The old law of supply and demand regulates the bootleg business . . . and so long as a very substantial majority of our population demands alcoholic beverages there will be those who are willing to assume the risks incident to supplying the stuff to satisfy the demand."[149]

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[141] *Irving Begins Serving Term in U.S. Prison*, *supra* note 138, at 13. Irving claimed an address in Denver at the time of his trial. *Id.*

[142] Julian B. Snow, *Wets and Drys Both Claim Victory from Irving Trial*, WYO. EAGLE, Feb. 7, 1930, at 14.

[143] Mercante v. United States, 49 F.2d 156, 158 (10th Cir. 1931).

[144] *Id.*

[145] *Star Witness in Conspiracy Case Is Again in Legal Fire*, WYO. EAGLE, Feb. 7, 1930, at 1.

[146] *Mercante*, 49 F.2d at 158.

[147] *Irving*, supra note 89.

[148] Editorial, *The Irving Case*, WYO. EAGLE, Feb. 7, 1930, at 9.

[149] *Id.*

Despite the rising discontent with the Prohibition laws and the enforcement agency, Governor Emerson remained resolutely in favor of Prohibition and in strong support for the agency. As the Irving drama was playing out, the governor, still supportive of the agency, immediately sought applications to fill the open slot. In his message to the legislature, he said he intended to "make the Department of Law Enforcement a potent influence for good."[150] Responding to agency critics, the governor said, "All reasonable endeavor will be made to enforce the Prohibition Law" and stated flatly that he "would oppose any effort at this time to abolish the Department."[151] Even though his commissioner had resigned December 1 amid accusations of official corruption, Governor Emerson, in his message to the 1929 session of the Wyoming Legislature emphasized his continued support for the Department of Law Enforcement.[152]

Even two years later, despite Irving's conviction and sentencing in February 1930 to one and a half years in Leavenworth, the governor still remained steadfast for keeping the Department of Law Enforcement. In his message to the 1931 Legislature, Emerson recommended that the agency "continue in its efficient work," pointing out that the agents had made 938 arrests during the previous two years "and that [ninety] different offenses, running from peddling without a license to murder," were listed.[153] He added that the agency's appropriation "could well be increased were it not for our present economic situation."[154]

The agency was carrying its weight. R. J. "Jack" Allen, Irving's replacement as law enforcement commissioner, reported that the agency, during 1929, had collected fines of $37,634 while total expenditures were just $17,700. The rest of the report, however, suggested that Wyoming's experiment with Prohibition might not be doing very well. Some 3990 gallons of whiskey, 9515 gallons of home brew beer, 324 quarts of bonded whiskey, and 24 stills had been confiscated that same year.[155] This hardly confirmed WCTU assertions that bootlegging and illegal importation of alcohol was in decline in the state.

By the end of the 1920s, every county had local lore enriched with countless tales of bootlegging and successful evasion of the "revenuers." Even Prohibition enforcers added to the legends. For instance, Ira Sisco, deputy law enforcement agent, told a *Wyoming Eagle* reporter in 1930 about several instances of bootleg

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[150] Senate Journal, 19th Leg. 34 (Wyo. 1927). Emerson actually requested an increase in the appropriation for the department. *See generally Would Abolish Law Enforcement Office—Introduce Bill Which Will Be Hotly Debated*, *supra* note 68.

[151] Senate Journal, 19th Leg. 34 (Wyo. 1927).

[152] Senate Journal, 20th Leg. 24 (Wyo. 1929).

[153] *Id.*

[154] *Id.* at 29–30.

[155] *Jack Allen Supplies Dry Leaders with Statistics*, WYO. EAGLE, Jan. 31, 1930, at 14.

operations in southeastern Wyoming that were "found by accident." One was a cache of 2205 gallons found on a farm "buried in a field of potatoes." Another stash was found in an old slaughterhouse where "state and county officers have been accustomed to visit the place and fire guns at the boilers to test the power of the firearms. Not long ago the officers' 'shooting gallery' was found to contain a good-sized still. He noted that cabins in the Laramie Peak area often were bootleg still sites."[156]

Although its remote location, lack of good roads and winter access, and few structures immunized Yellowstone National Park from most bootlegging activity, several instances are recorded. In 1930, the area press made light of one discovery of bootleg alcohol in the park:

> Peculiar actions of fish in Gardiner River in Yellowstone. Recently about 20 gallons of moonshine of a very poor quality—the kind that would take the hair off a camel's back, was poured into a stream which finally finds its way into the Gardiner [R]iver. . . . The liquor was a portion of several cargoes confiscated by rangers who grabbed four persons in less than a week. A ranger told the story that he gave some to a rabbit. "No sooner had he swallowed the stuff, than he shouted in his rabbit-like way, "Whoopee! Bring on your grizzly bear!"[157]

Wyomingites in several counties continued to flaunt the law with impunity, but it should not be inferred that other laws were also ignored in those counties. Enforcement of game laws, for instance, was treated with greater seriousness than Prohibition laws in Lincoln County. In the summer of 1930, State Prohibition Officers Louis Jones and Iredale visited the area around the town of Carter:

> [W]hile searching for liquor in a suspicious place, ran on to four sage hens. The officers also found 155 bottles of beer and arrested Henry Droghini, the owner of the property, for illegal possession of intoxicating liquor and killing game birds out of season. He was taken to Lyman where he was fined $50 and costs for the possession of the liquor and bound over on the charge of killing the sage hens.[158]

Despite lack of popular support for Prohibition, the enforcement agencies continued to seek out violators. Federal agents brought several more high-profile defendants to trial in the summer of 1930. Prohibition charges were brought

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[156] *Officers' Shooting Gallery Here Hides Moonshine Still*, WYO. EAGLE, June 6, 1930, at 13.

[157] *Fish Got Soused Is Latest Report*, KEMMERER GAZETTE, Aug. 15, 1930, at 8.

[158] *Officers Look for Booze; Find Chickens*, KEMMERER GAZETTE, July 25, 1930, at 1.

against officials in Rock Springs and Thermopolis in the spring of 1930.[159] It was the second case in six months in which Thermopolis had been targeted by federal agents, but this time, those indicted included city and county officials. If the federal agents felt arrest and trial of such individuals would gain greater respect for the law and demonstrate enforcers' resolve, they were wrong in Wyoming—at least with respect to the media.

The *Douglas Budget*, among other papers, questioned the judgment of the federal government's action in official corruption and Prohibition violation cases.

> The average citizen has held certain ideas of the duties of the Washington government. He has felt that the power and indignity [sic] of that government were so great as to keep it aloof from the petty police affairs of a country town and that the people themselves should be entrusted with the conduct of their local government.[160]

The Douglas editor noted that the state had an entire agency devoted to enforcement of Prohibition and it did nothing in either the Rock Springs or Thermopolis cases. Either the agency did not know about the violations or it was waiting "for Washington to come in and clean us up." The editor concluded:

> Probably some fines will be imposed in federal court in Cheyenne. Maybe some one will go to jail. Then normalcy will again return to Rock Springs and Thermopolis and the 'clean-up' will not even be a memory, for conditions that existed were brought about by the sentiment of a large majority of the residents of these towns. That sentiment was not changed because some one has been arrested.[161]

On June 20, 1930, charges were dismissed against fourteen of the twenty-seven Thermopolis officials and residents indicted by the federal grand jury.[162] Six of the remaining defendants were city officials represented by Thermopolis attorney C. W. Axtell. The six decided to plead guilty to granting licenses to clubs even though they had no idea that liquor was being served. Axtell spoke with Judge Kennedy, informing the judge that his clients feared they would be swept into

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[159] During the 1921 legislative session, Governor Robert Carey urged passage of Prohibition laws and, within the act, a provision authorizing the governor to remove officers refusing to perform duties imposed by the Prohibition laws. *See* 1921 Wyo. Sess. Laws 159.

[160] Editorial, *Impotency of the State*, DOUGLAS BUDGET, *reprinted in With Wyoming Editors*, WYO. EAGLE, May 30, 1930, at 9.

[161] *Id.* ("We do not believe that the combined military and naval forces could enforce it in Wyoming alone, even with our small population.").

[162] *U.S. Liquor Conspiracy Trial Nears Collapse*, WYO. EAGLE, June 20, 1930, at 1.

even more conspiracy charges along with the remaining bootlegger defendants if they took their cases to trial. Years later Judge Kennedy wrote, "[Axtell] made a plea in open Court after [the defendants] had pleaded guilty which was unique. He laid stress upon the fact that they had been earnest, honest and law-abiding citizens and had been considered by the community as of an average standard of its citizenship."[163] He stated that the court "could look them over as they were of an average standard of the citizens of Thermopolis."[164] Except for the half who entered guilty pleas prior to trial—the city officials who entered the guilty pleas prior to trial—the remaining defendants were exonerated.[165] The governor's unwavering support for strenuous state enforcement seemed the exception among many Wyomingites.[166] To some observers, local communities no longer should expect federal or state assistance in the Prohibition effort.[167]

Even though many Wyoming editors were avowedly "dry," their newspapers often noted the unpopularity of the law among the general public. At most conventions in the state "liquor is always more or less in evidence," the *Lusk Herald* editor noted, adding, "Perhaps the WCTU or a Ministerial Association gathering is an exception."[168] In the same week, however, the editor of the *Powell Tribune*, a Republican newspaper like the *Herald*, saluted the efforts being made to stamp out liquor use in Wyoming. "The Women's Christian Temperance Union stands for the good in everything," the Powell editor wrote, "and in battling for the right they come in conflict with the devil and all his cohorts for nobody ever found this fighting for right and justice an easy road to travel."[169]

A few Wyoming papers supported repeal. One of them, the *Wyoming Eagle*, edited by Tracy McCraken, editorialized in January 1930 that prohibition was the primary cause of the great increase in the prison population. Shortly after the editorial appeared, Anna Marden Deyo, an Illinois woman who served as National WCTU Secretary, wrote to the paper taking issue with the assertion. She stated, "Prohibition suffers considerably from some of its friends who claimed too many sudden benefits," noting that it took no census figures to see "that the old-fashioned drunk and disorderly police court tramp and hobo that once filled

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[163] T. Blake Kennedy, *supra* note 129, at 604–45.

[164] *Id.*

[165] For details of the guilty pleas and Axtell's communications with the judge, see *id.*

[166] *See id.*

[167] *See* Editorial, *Why Rock Springs?*, CASPER TRIB.-HERALD, *reprinted in With Wyoming Editors*, WYO. EAGLE, May 30, 1933, at 16.

[168] *Senator Brookhart's Loose Mouth*, LUSK HERALD, *reprinted in With Wyoming's Editors*, WYO. EAGLE, July 4, 1930, at 9. The Iowa senator complained that conventions of the American Legion were merely "a drunken debauch." *Id.*

[169] Editorial, *The White Ribbon Band*, POWELL TRIB., *reprinted in With Wyoming's Editors*, WYO. EAGLE, July 4, 1933, at 9.

the county jails are nowhere near as much in evidence as they were at the height of the saloon era."[170] She quoted President Hoover's assertion that prohibition did not increase the crime rate, "Most jurists believe that criminal activity in large cities flourishes because criminals are not punished."[171]

By 1930, state and federal juries and prosecutors were leaning more toward the view of the Lusk and Cheyenne editors. The trial of Rock Springs residents and government officials, including Mayor P. C. Bunning, was held the week of June 22.[172] The government charged that the city had a licensing system in which speakeasies and brothels paid fines in order not to be busted by Prohibition officers. City officials requested being seated separately from the other defendants, even though the cases had been combined for trial.

The jury returned a verdict of not guilty against Mayor Bunning and all of the other co-defendants in the case.[173] The editor of the *Casper Tribune-Herald* defended Rock Springs officials by pointing out that they "doubtless adopted what they considered the best method for controlling a situation forced on them by the state and nation and in which they received little or no aid." The editor admitted: "[T]he town, like some others in the state, is 'wet.' The demand for liquor makes it impossible for municipal laws and their limited penalties to stop the flow."[174] The acquittals in these cases seemed to be indicators that when conspiracy to violate Prohibition laws was suspected, it would be a waste of law enforcement and court time to pursue it.[175] As the trial judge wrote years later: "These cases

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[170] *WCTU National Secretary Takes Issue with Wyoming Eagle Charge Increased Prison Population Due to Prohibition*, WYO. EAGLE, Jan. 14, 1930, at 9.

[171] *Id.*

[172] *Rock Springs License System Related in Court*, WYO. EAGLE, June 27, 1930, at 1. The federal case hinged on witnesses asserting that city officials tipped them off whenever federal prohibition agents were in the vicinity. Bunning, born in Grebin, Germany, in 1859, came to Wyoming in 1886. He started as a common laborer in the coal mines and worked his way up to contractor and mine operator. He opened the Little Megeath mine and organized the Rock Springs Fuel Company in Superior. An organizer of the North Side State Bank, he served as the bank's vice president. He was elected mayor in 1923, serving for the next ten years. He died August 18, 1935, in Rock Springs. *See Our Congratulations*, ROCK SPRINGS ROCKET, Mar. 13, 1935, at 1; *Funeral Services this Afternoon for Former Mayor Chris Bunning*, ROCK SPRINGS ROCKET, Aug. 21, 1935, at 1.

[173] *All Rock Springs Exultant as News of Acquittal Reaches Anxious City*, WYO. EAGLE, July 4, 1930, at 6.

[174] Editorial, *supra* note 167, at 16.

[175] Offenses in which alcohol was a suspected component continued to be prosecuted even when the illegal act of drinking alcohol was ignored. See, for example, the case in Kemmerer, a town notorious for open flaunting of Prohibition, of two drunk drivers. *The Cure Given Tipsy Motorists*, KEMMERER GAZETTE, July 4, 1930, at 1.

> Joe Baran of Frontier who suffered heavy damage to his car was arrested Saturday afternoon by Undersheriff Alex Scott for drunk driving. Baran was emerging from the wreck like a mud turtle, according to the officer, but so inebriated was he that the wreck had neither injured nor seemed to sober him up.

demonstrate the folly on the part of the Department of Justice in trying to convict whole communities in one fell-swoop of violations of the Prohibition Act."[176]

C. *Legislative Response to Prohibition*

In the 1930 general election, several more legislators from both parties were elected who favored either outright repeal or a referendum to determine state support for Prohibition repeal. One was State Senator George McClellan (R-Washakie) who introduced a bill in 1931 to abolish the law enforcement department.[177] McClellan, a well-known rancher from the Ten Sleep area, claimed the agency and its enforcement duties, limited only to Prohibition, was nothing but a sham. He accused prominent defense lawyers in Wyoming of opposing repeal because they made their living from defending Prohibition violators.[178] State Senator Dora McGrath (R-Hot Springs), the first woman elected to the Wyoming State Senate, said that Prohibition enforcement was a difficult problem, "but I do think the prohibition law cannot be enforced, regardless of how much money is spent or how hard the government tries to enforce it."[179]

McClellan's efforts failed.[180] The law enforcement agency not only escaped elimination in 1931, but the legislature also gave the law enforcement agency

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Id. He was fined $25 and sentenced to thirty days in jail.

> Several complaints to the officers that Dan Elsovech had been driving his car in Kemmerer, Oakley and Diamondville while allegedly on a prolonged spree, brought an investigation by officers. Sunday he was arrested and in court Monday Judge Taylor fined him $15, assessed costs of $2.50 and sentenced him to ten days in jail.

Id.

[176] T. Blake Kennedy, *supra* note 129, at 606.

[177] *Bill to Abolish State Law Enforcement Department Is Introduced in Legislature*, CASPER HERALD, Jan. 22, 1931, at 1.

[178] *Id.*

[179] *Woman Solon, Dry, Is Foe of Volstead Law*, LARAMIE REPUBLICAN-BOOMERANG, Jan. 17, 1931, at 7.

[180] S. F. #9 failed by a vote of 22-2 with 3 absent on January 29, 1931. Only McClellan, the bill sponsor, and State Senator Pearson voted against the motion to indefinitely postpone consideration on the bill. Senate Journal, 21st Leg. 137 (Wyo. 1931). A similar bill, H. B. 113, introduced in the House by Charles E. Blydenburg, Jr., (D-Carbon) initially passed the House by a vote of 37-24, with one absent, but it died in the Senate. *Id.* at 336, 406. Voting in favor of killing the agency: Bain (Hot Springs), Blydenburgh, Brandon (Sheridan), Cady (Albany), Caldwell (Laramie), Carey (D-Hot Springs), Clark (D-Laramie), Cross (Converse), DeLoney (Teton), Dinsmore (Carbon), Gaylord (D-Fremont), Gilleard (D-Sweetwater), Gose (D-Weston), Harkin (D-Niobrara), Hewlett (Laramie), Jack (Natrona), Johnstone (D-Crook), Kemmer (D-Natrona), Knight (Albany), Knox (D-Sweetwater), Lamb (D-Washakie), Lewis (Laramie), Littleton (D-Campbell), McMicken (D-Carbon), Mitchell (Platte), Moore (C. C.) (Fremont), Moore (J.E.) (D-Uinta), Polson (D-Uinta), Porter (Laramie), Russell (Converse), Spence (D-Sweetwater), Taylor (Campbell), Terhune (D-Crook), Thirlwell (D-Sheridan), Watenpaugh (D-Sheridan), Wilde, and Wilson (both D-Lincoln Co.). Voting against the bill to kill the agency were: Bream (D-Natrona),

additional duties.[181] The jurisdiction was expanded: "[It] shall have such powers and perform such duties as are now enjoyed by and required of all peace officers of this state, save and except the power to serve civil process."[182] The law also gave the agency an additional job: "It shall also be the duty of this department to enforce all laws pertaining to the registration, regulation and operation of motor vehicles upon public roads and highways in the state."[183] Originally conceived as an agency to fight bootlegging, with the new duties the agency evolved into the precursor to the Wyoming Highway Patrol, to be established four years later.[184]

As to Prohibition, the legislature reaffirmed its support through passing an act increasing the penalties for sale and manufacture of intoxicating liquors. For manufacture, conviction could bring fines between $250 and $1000 and imprisonment for three months. Second offense penalties could increase potential fines between $400 and $2000 and imprisonment for one to five years upon conviction.[185]

The session was not a total failure for repeal advocates. After considerable debate, the same legislature passed a law introduced by State Representative Charles Spence (D-Sweetwater) to seek out public opinion on whether or not to repeal Prohibition.[186] The resolution called for a ballot measure to be submitted to the voters in the next general election.[187] The election result would have no legal

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Brewer (Goshen), Mrs. Campbell (Lincoln), Carroll (Sheridan), Culbertson (Sublette), Edwards (Fremont), Embree (Lincoln), Goppert (Park), Hansen (H.) (Big Horn), Hanson (D.) (D-Niobrara), Irwin (Big Horn), Krueger (D-Park), Layman (Natrona), Lehmer (Goshen), Loveland (Big Horn), McCollough (Albany), Mills (Sheridan), Mullens (Laramie), Nicholson (Fremont), Patch (Johnson), Small (Platte), Wales (Sheridan), Warren (Natrona), and House Speaker Mann (Big Horn). Scott (Sweetwater) was absent for the vote. House Journal, 21st Leg. 370 (Wyo. 1931).

[181] The 1931 Legislature appropriated $8000 for the salary of the Commissioner of Law Enforcement; $5400 for the deputy; and salaries of $19,230 and expenses of $16,770. *See generally* 1931 Wyo. Sess. Laws 235. The State Penitentiary warden was paid $6000 per year; the attorney general, $9600; the governor, $16,000; and the other four statewide elected officials, $8000 per annum. *Id.*

[182] *Id.* at 150.

[183] *Id.* The act was initially Senate File No. 81, introduced on Feb. 11. Senate Journal, 21st Leg. 318 (Wyo. 1931). Only Senator Lazear of Laramie County voted against the change. *Id. at* 472. The measure met stiffer opposition in the House, but passed by a vote of 35-27 on Feb. 18. House Journal, 21st Leg. 547 (Wyo. 1931).

[184] 1935 Wyo. Sess. Laws 47–48. The act creating the highway patrol was passed in 1935. The act was initially House Bill No. 37. *Id.*

[185] 1931 Wyo. Sess. Laws 153. Originally House Bill No. 188. The bill, introduced by Representatives McMicken and Goppert, passed the House by a vote of 52-9 with one absent on February 11. Representatives Gilleard, H. Hansen, Kemmer, Knight, Lewis, Nicholson, Scott, Taylor and Wilde voted against it. Six were Republicans; three, Democrats. House Journal, 21st Leg. 358 (Wyo. 1931). The bill passed the Senate by a vote of 20-5 with two absent. McClellan, long an opponent of Prohibition, was joined by Senators Austin, Lundy, Myers and Saunders.

[186] House Journal, 21st Leg. 161 (Wyo. 1931).

[187] H.J.R. Res. 4, 21st Leg., 1931 Wyo. Sess. Laws 249. The measure was House Joint Resolution No. 4, "PROVIDING FOR a referendum to determine the sentiment of the electors of

effect, but it provided guidance to the legislature with respect to sentiment toward the law. "Shall the Eighteenth Amendment to the Constitution of the United States prohibiting the manufacture and sale of intoxicating liquors for beverage purposes be repealed?"[188] The measure passed both Houses.

D. Gubernatorial Candidates and Elections

Governor Emerson died suddenly on the thirty-seventh day of the legislative session. Consequently, the bill was signed and approved March 6, 1931, by acting Governor Alonzo Clark, who had been Secretary of State.[189] Governor Emerson had been a consistently strong backer of Prohibition. His death necessitated an election for the two years remaining in his term. Meanwhile, Clark's views on Prohibition enforcement seemed equivocal at best during his brief tenure as acting governor.[190]

Soon after Clark said he would seek the governorship in the 1932 election, he announced the reappointment of Louis G. "Deacon" Jones as state law enforcement agent even though Jones was under federal indictment for violating prohibition laws.[191] Jones had resigned, but Clark said he examined evidence in earlier case and was skeptical of testimony given by "a combination of bootleggers."[192]

Whatever his motive, "drys" in the Republican Party used the incident as further evidence of his unfitness for nomination.[193] In that fall's primary,

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the State of Wyoming with respect to the repeal of the Eighteenth Amendment to the Constitution of the United States," approved March 6, 1931. *Id.* The bill passed the House by a vote of 35–26 with one absent on Feb. 11. House Journal, 21st Leg. 376 (Wyo. 1931). The bill passed the Senate by a vote of 16-10 with one member absent on third reading on Feb. 19. Senate Journal, 21st Leg. 520 (Wyo. 1931). Senators voting in favor were: W. W. Austin (Goshen), Oscar Beck (Sublette), James W. Christian (Niobrara), Erwin W. Froyd (Natrona), Thomas Gibson (Sweetwater), James M. Graham (Fremont), Edward T. Lazear (Laramie), Robert C. Lundy (Teton), George B. McClellan (Washakie), Roche S. Mentzer (Laramie), N. A. Pearson (Sheridan), Willis M. Spear (Sheridan), Thomas Thain (Johnson), Wesley K. Wiker (Converse), Bayard C. Wilson (Platte), and Earl Wright (Sweetwater). Voting against were: Robert A. Allan (Park), Roy H. Cameron (Crook), Charles W. Dow (Weston), H. H. Horton (Albany), Clifford A. Miller (Natrona), Charles A. Myers (Uinta), A. J. Rosier (Carbon), W. B. Saunders (Campbell), L. S. Strahan (Big Horn), and Senate President Clarence Gardner (Lincoln). Dora McGrath (Hot Springs) was absent. Senate Journal, 21st Leg. 520 (Wyo. 1931).

[188] Spriggs v. Clark, 14 P.2d 667, 667 (Wyo. 1932) (quoting the ballot resolution).

[189] *See* H.J.R. Res. 4, 21st Leg., 1931 Wyo. Sess. Laws 249 ("Providing for a Referendum to Determine the Sentiment of the Electors of the State of Wyoming with Respect to the Repeal of the 18th Amendment to the United States Constitution.").

[190] A long-time Campbell County official, Clark was born in Indiana, but reared and educated in Nebraska prior to coming to Wyoming to teach school in 1901 and later taking out a homestead in Campbell County in 1907. WYOMING BLUE BOOK, *supra* note 123, at 131.

[191] *Clark Reinstates 'Deacon' Jones as State Agent*, WYO. EAGLE, July 1, 1932, at 1.

[192] *Id.*

[193] *See id.*; *Wyoming Drys Still Hoping to Win Referendum Despite Late Swing to Wets, Leader Reveals*, WYO. EAGLE, Aug. 19, 1932, at 12.

Republicans passed over Clark to nominate Harry Weston by a tiny margin. A Teton County banker and rancher, Weston prevailed by just 265 votes of nearly 40,000 ballots cast.[194] Meanwhile, Democrats nominated Leslie Miller, a Cheyenne oil distributor, who had run unsuccessfully for governor in 1930 against the late Governor Emerson.[195]

Miller had not been known as a strong advocate for repeal. In his unsuccessful campaign in 1930 against Frank Emerson, his campaign materials stated, "while he has always been both personally and politically dry he believes majority rule to be the fundamental principle of American government and would welcome any legal and properly conducted referendum on the question."[196]

E. Repeal Efforts

Federal Prohibition agents continued to arrest suspected Prohibition violators, including more than one hundred from mid-February to June in Sheridan County alone. Officers declared in the wake of destroying a thousand gallons of whiskey and making one hundred arrests—nine arrests in two hours—that every saloon in the city was closed.[197]

But when it came to prosecution, cracks were widening between law enforcement and the courts. In early August, United States District Judge T. Blake Kennedy, after imposing minimum fines on nine people for liquor violations,

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[194] As an example of Republican dislike for Clark, Milward Simpson wrote the following to Congressman Vincent Carter on June 5, 1934, long after the election:

> Clark has done so much and double crossed so many, including Nels Smith and E. V. Robertson of Cody, that I sincerely believe that if he is nominated he will get one hell of a trimming. My experience with Clark has been very sad. He is not honest and straightforward, and double-crossed me in a most brazen manner. It was over an incidental thing, too, which surprised me very much.

Letter from State Rep. Milward Simpson to Congressman Vincent Carter (June 5, 1934) (on file with the American Heritage Center, University of Wyoming, in Simpson Papers, Coll. 26, Box 100, Folder 5).

[195] WYOMING BLUE BOOK, *supra* note 123, at 628. Weston had 16,220 votes to Clark's 15,945. Casper Mayor E. W. Rowell, the only other candidate, polled 8449 votes. *Clark Congratulates Weston as Count Nears End*, WYO. EAGLE, Aug. 19, 1932, at 1. For Miller's 1930 announcement, see *L. A. Miller Announces Candidacy for Governor*, WYO. EAGLE, May 30, 1930, at 1. Miller defeated rancher Thomas D. O'Neil by a vote of 13,997 to 11,100. WYOMING BLUE BOOK, *supra* note 123, at 628. Weston, born in Canada in 1876, came initially to Cody in 1903 as a business partner of J. M. Schwoob. *Id.* at 142. He later entered the banking profession and headed banks in Laramie, Rock Springs, and Cheyenne. *Id.* For a brief biography of Miller, noting his occupation as an oil distributor, see *id* at 26.

[196] *L. A. Miller Announces Candidacy for Governor*, *supra* note 195, at 1. Miller "state[d] that if such test vote should show that the people want a change in our prohibition status 'then certainly I am good enough an American to submit myself to such changes as would be brought about.'" *Id.*

[197] *See Every 'Saloon' in City Closed, Agents Assert*, SHERIDAN PRESS, June 5, 1932, at 1.

ordered a return of bars and fixtures to two Sheridan pool halls, declaring the equipment had been seized improperly.[198] He criticized federal agents for not following legal procedures.[199] When Ewing T. Kerr, assistant United States Attorney, argued that the agents needed to wait ten days after the arrests to impound the equipment in order to be more convenient, Kennedy replied, "I don't care anything about this matter of convenience."[200]

Barely a month later, in a municipal court case in Sheridan, the defense attorney accused federal prohibition officers of "railroading" liquor violators through lower courts.[201] In light of that case, Sheridan City Attorney John F. Raper announced he would no longer prosecute "the weak cases" brought by federal agents in municipal court and accused federal prohibition agents of "taking any cases that amount to anything to federal court at Cheyenne, while the weak cases are allowed to remain here to be tried in police court for what we can get out of them."[202] He said he gave it his best shot in the prosecution, "'but [the agents] didn't give [him] a case to work on.'"[203] Many local judges imposed minor fines even in strong cases. In federal court, punishment grew less harsh. For instance, Sheridan County rancher George Pilch was fined one dollar and sentenced to two days in jail for possession of a still.[204]

III. THE MARCH TO REPEAL

Against the divided Republican Party, Democrat Leslie Miller won election to the two years remaining in Governor Emerson's term by a margin of 3438 votes.[205]

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[198] *See Bars and Fixtures Given Back to Turf and Palm; Kennedy Raps Federals*, SHERIDAN PRESS, Aug. 9, 1932, at 1; *Nine Persons Are Fined on Liquor Charges Here as Federal Court Opens*, SHERIDAN PRESS, Aug. 8, 1932, at 1.

[199] *See generally Bars and Fixtures Given Back to Turf and Palm*; *Kennedy Raps Federals*, *supra* note 198.

[200] *Id.* The judge also questioned why, if no liquor had been found on the premises, the agent could say that the "smell of creosote" caused him to suspect the presence of bootlegging.

[201] *Raiding Tactics Scored as Trio Goes Free Here*, SHERIDAN PRESS, Sept. 7, 1932, at 1.

[202] *Weak Cases Are Doomed Here, Claim*, SHERIDAN PRESS, Sept. 7, 1932, at 1 (internal quotation marks omitted) (quoting Sheridan City Attorney John F. Raper).

[203] *Id.*

[204] *One Dollar and 2 Days Is Sentence*, SHERIDAN PRESS, Dec. 21, 1932, at 1. The sentence was handed down in federal court in Cheyenne by U.S. District Judge T. Blake Kennedy. *Id.* Pilch filed a pauper's oath and, rather than force the defendant to spend thirty days in jail before filing the oath, and running up the costs for confinement for the county, Kennedy stipulated two days in jail and release only "upon payment of the $1." *Id.*

[205] WYOMING BLUE BOOK, *supra* note 123, at 630. Socialist candidate A. O. Blow polled 1647 and Communist Party nominee Merton Willer had 180 votes. In the mid-1930s, Blow operated a Wheatland-based oil company with a station he later purchased in Torrington. *See Blow Company Locates Here*, TORRINGTON TELEGRAM, Aug. 6, 1936, at 1. The Prohibition Party fielded no candidates for statewide office in Wyoming throughout the dozen years that Prohibition was in effect.

Wyoming voters passed a non-binding referendum on the 18th Amendment in the same election. The measure passed overwhelmingly in every county of the state. The final tally was 52,957 in favor of the non-binding referendum for repeal and just 21,015 against.[206]

The 1933 regular legislative session convened in January. Prohibition repeal enjoyed significant backing among legislators, particularly among the numerous newly elected Democrats. Nonetheless, the federal Prohibition laws were still in effect. In his address to the legislature, Governor Miller suggested: "Legislation contemplating repeal of prohibitory laws . . . should be held in abeyance pending action by congress [sic] thus determining the proper procedure."[207]

Congress had not yet authorized ratification of the 21st Amendment.[208] When the Wyoming Legislature went into session in early January, many Wyoming politicians forecasted federal repeal and considered how the state could ratify the repeal amendment, should such an event occur, given that the state legislature met on a biennial basis for only forty days. When Congress did pass legislation on February 18, 1933, authorizing repeal of the 18th Amendment, state legislatures would not be involved in the process. For the first time in history, Congress stipulated that ratifying conventions in three-fourths of the states would be necessary for ratification of the 21st Amendment.[209]

Late in the session, the Wyoming Legislature empowered the governor to issue a proclamation for a constitutional convention. Governor Miller attended the inauguration in Washington, D.C., and soon after his return, he issued the official proclamation for Wyoming's constitutional convention. Some reports suggested that Wyoming could be the first state to hold a repeal convention.[210]

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[206] *See* WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Nov. 10, 1932, at 1, 2; WYO. ST. TRIB. AND CHEYENNE ST. LEADER, Dec. 3, 1932, at 1.

[207] *Message to the Legislature*, BASIN REPUBLICAN-RUSTLER, Jan. 19, 1933, at 1.

[208] Congress authorized ratification of the 21st Amendment on February 18, too late for the Wyoming Legislature to ratify.

[209] Article 5 of the United States Constitution specifies two ways that states may ratify amendments to the Constitution—by legislative action or by state convention "as the one or the other Mode of Ratification may be proposed by the Congress." U.S. CONST. art. V. With respect to Prohibition repeal, Congress specified for the first time, only the convention mode. The resolution for the exclusive use of just one mode, introduced by Senator John J. Blaine of Wisconsin, passed in both Houses by comfortable margins. *See* DAVID E. KYVIG, REPEALING NATIONAL PROHIBITION 170–72 (Kent State Univ. Press, 2d ed. 2000) (1979). In all other amendments, action could have been taken by state legislatures or by convention within each state. Ratification by constitutional conventions rather than legislatures was the idea of the wets, "led by New York attorney Joseph H. Choate Jr., who were mindful of the complications of legislative schedules and the continued domination of state legislatures by rural minorities." DANIEL OKRENT, LAST CALL: THE RISE AND FALL OF PROHIBITION 352 (2010).

[210] *Constitutional Amendment*, BASIN REPUBLICAN-RUSTLER, Mar. 16, 1933, at 1. Miller issued the proclamation on March 14, but it turned out that several states, including Michigan, convened

Senator E. C. Raymond (D-Weston) introduced the so-called "beer law," amending Wyoming law with respect to Prohibition by allowing manufacture and sale of brewed beverages containing less than four percent alcohol by volume (beer and ale).[211] To many in the full repeal movement, the beer law was a means to diminish support statewide for complete repeal.[212]

County officials, only a few years earlier threatened with removal for not vigorously enforcing Prohibition, seemed less pressured to arrest all bootleggers. As an example of diminished interest in enforcement, the Big Horn County Attorney dismissed four cases of liquor violations. "In practically all the above criminal cases," the *Basin Republican-Rustler* editor wrote, "the complaining witnesses signed statements to the county attorney that they declined to appear and prosecute . . . ."[213]

Anticipating eventual repeal and accepting Governor Miller's recommendation, the legislature also finally voted to abolish the State Law Enforcement Department, the state agency created specifically for Prohibition.[214] The bill, introduced by

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conventions before Wyoming. OKRENT, *supra* note 209, at 353. Okrent states that fourteen more states held repeal conventions by that summer. *Id.* Michigan's ratification was noted in *Michigan Is First to Ratify Repeal*, BUFFALO BULL., Apr. 20, 1933, at 1.

[211] 1933 Wyo. Sess. Laws 108 (Chapter 91 repealing the ban on beer and ale, Chapter 2 repealing all of Chapter 59, Wyoming Revised Statutes of 1931). Section 1 redefined what was allowed; Section 4 established license fees for establishments selling beer and ale. *Id.* at 108–09. The law stipulated that the drinking age would be twenty-one years. *Id.* at 110. "Evidently a man of [eighteen] is old enough to get shot by an enemy in a war but he is not old enough to drink a glass of 3.2 beer, a legally non-intoxicating beverage," one Sheridan man wrote in April 1933. Letter from Frederick L. Yates to Milward Simpson, State Rep. (April 13, 1933), Simpson Papers (on file with the American Heritage Center, University of Wyoming in Coll 26, Box 146, Folder 19). State Senator Raymond was a former district judge in Newcastle. *Bills Signed by the Governor*, BASIN REPUBLICAN-RUSTLER, Mar. 2, 1933, at 2.

[212] "Unfortunately, the Wyoming Beer law, as you say, is a damned fake. In my mind, and in the minds of many other people throughout the state, it is unconstitutional. I think it can be attacked from every angle." Letter from Milward Simpson, State Rep., to Frederick L. Yates (Apr. 10, 1933), Simpson Papers (on file with the American Heritage Center, University of Wyoming in Coll. 26, Box 146, Folder 19). Simpson wrote to James C. Reynolds of Sheridan on April 17, 1933: "We took a Legion booster to Red Lodge and Billings. The trip was a great success. Sixty-five of us were on the trip. We drank plenty of beer. It is good, but about one or two bottles is enough to put you to sleep. I don't believe anyone could get drunk on this new beverage. That is probably as it should be. It is good for anyone who want to drink beer. It doesn't take the place of a good old rye highball." Letter from Milward Simpson, State Rep., to James C. Reynolds (Apr. 17, 1933), Simpson Papers (on file with the American Heritage Center, University of Wyoming in Coll. 26, Box 146, Folder 19).

[213] *Jury Term Ends Suddenly*, BASIN REPUBLICAN-RUSTLER, Jan. 26, 1933, at 1. The paper commented that it was "the least expensive jury term of court that has ever occurred in Big Horn County." *Id.*

[214] 1933 Wyo. Sess. Laws 16. The act repealed *Wyoming Revised Statutes*, 1931, §§ 103-901 to 103-917. *Id.* The bill was reported out of committee by a 3-2 vote. *State Oil Royalties Would Be Increased by New Bill*, CASPER HERALD, Jan. 27, 1931, at 1 ("Those voting for abolition of the

State Senator B. C. Rumsey, a Park County Democrat, passed the House by a vote of forty-three to eighteen on January 30, making it possible for the state constitutional amendment on Prohibition to be repealed by voters in the 1934 general election.[215] When the Rumsey repeal resolution went to the House, State Representative Ernest Goppert (R-Park) and a few other House members strongly opposed it. Goppert sought an amendment to prevent the return of the pre-Volstead saloon.[216] Republicans and Democrats joined to defeat the amendment thirty-eight to twenty-three. Many believed the worse abuses of pre-Prohibition days would have been erased by the time passing between Prohibition and repeal. But Representative Clement Gillearr (D-Sweetwater) viewed the action differently. He told the House: "There can be no return of the saloon in Sweetwater county because saloons never left there. Our people don't know that the Volstead act was passed."[217]

In early April 1933, George "Red" Smith, who had been with the State Law Enforcement Department for six years, the three remaining agents, and the department secretary in Cheyenne packed up the office in the State Capitol and closed the door for the last time.[218] Its counterpart, the federal prohibition agency, continued to operate until August 1933, when its duties were handed over to the Bureau of Investigation (later designated the Federal Bureau of Investigation) in the United States Department of Justice.[219]

Consistent with Congress's stipulation for state constitutional conventions, Wyoming's second constitutional convention was convened in May 1933, to determine whether the delegates should ratify the 21st Amendment. As in most states, Wyoming ratifications of the 16th, 17th, 18th, 19th, and 20th Amendments

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department were Mrs. Dora McGrath, chairman; Christian of Niobrara and Wright of Sweetwater. Myers of Uinta and Allan of Park, dissented.").

[215] S.J.R. Res. 3, 22d Leg., 1933 Wyo. Sess. Laws 178. The bill passed the house forty-three to eighteen on third reading, Jan. 30, 1933. House Journal, 22d Leg. 219 (Wyo. 1933). Twelve of the House members voting against the measure issued an explanation of their vote: "We voted no because we feel that the same should not be presented to the voter without a proper anti-saloon clause being contained therein." House Journal, 22d Leg. 219 (Wyo. 1933); *see also*, *Resolution on Repeal Passed*, BASIN REPUBLICAN-RUSTLER, Feb. 2, 1933, at 1. The newspaper was owned by P. P. Anderson, Republican state chairman at the time.

[216] House Journal, 22d Leg. 218 (Wyo. 1933).

[217] *Resolution on Repeal Passed*, *supra* note 215, at 1 (internal quotation marks omitted). On page three of the same issue, the paper ran the WCTU column that was titled for the week, *Strong Words for Prohibition by Great Men*, BASIN REPUBLICAN-RUSTLER, Feb. 2, 1933, at 3. The column noted that Big Horn County led the state with respect to sponsoring declamatory contests in schools on the temperance question. *Id.*

[218] *See Many Changes in Appointive Offices Made*, THERMOPOLIS INDEP. REC., Apr. 14, 1933, at 1. The last agents were Ira Sisco, Cheyenne; William Iredale, Rock Springs; and George Waln of Wheatland. Emma Gogerty was the department stenographer. *Id.*

[219] *Dry Enforcement Now up to Bureau of Investigation*, WYO. EAGLE, Aug. 11, 1933, at 3.

had been accomplished using the more common legislative mode.[220] Other state legislatures met annually, but Wyoming's met only once every two years, for forty days during the first two months of the odd-numbered years. Even if Congress had authorized legislative repeal, for the "wets" ratification in Wyoming would have had to wait until January 1935, unless the governor chose to call a special session.

In March 1933, Governor Miller issued the proclamation calling for an election for delegates to a constitutional convention.[221] During the spring of 1933, each of the twenty-three counties elected delegates to attend county conventions where one delegate per county was elected to attend the state constitutional convention and an additional delegate was sent for each additional 5000 people in the county.[222] The sixty-five-member body met on May 25, 1933.[223]

Just before the delegates assembled in Casper for the constitutional convention, the new law legalizing beer and ale took effect.[224] When the law passed the legislature and was signed by the governor in late February, a few Wyomingites believed the law took effect immediately. The drafters of the law did not include an enacting clause and, therefore, ninety days had to pass after the session ended before enactment would occur. The date for legal sale of 3.2 beer would be May 19, 1933.[225] Meanwhile, nationally, the repeal amendment went to the states and,

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[220] *See, e.g.*, Phil Roberts, *A History of the Wyoming Sales Tax: How Lawmakers Chose It from Among Severance Taxes, an Income Tax, Gambling, and a Lottery*, 4 WYO. L. REV. 157, 160–63 (2004) (discussing ratification of the 16th Amendment by the Wyoming Legislature in 1913). The Wyoming Legislature ratified the 18th Amendment to the United States Constitution on January 17, 1919. 1919 Wyo. Sess. Laws 269.

[221] Miller Proclamation, 1933, Eugene J. Sullivan Papers (on file with the American Heritage Center, University of Wyoming in Coll. 3586, Box 1, Folder 9). The public proclamation was printed in Wyoming newspapers. *See, e.g.*, *Public Proclamation*, PLATTE CNTY. REC., Mar. 23, 1933, at 6.

[222] 1933 Wyo. Sess. Laws 111.

[223] Proceedings and Minutes of the Constitutional Convention for the State of Wyoming Held at Casper, Wyoming, May 25, 1933 [hereinafter *Proceedings*] (on file with the University of Wyoming Library in the Chisum Room, Folio KF 4558 21st .W965 1933) (mimeographed copy). Another copy is in the Eugene J. Sullivan Papers, Coll. 3586, AHC, Box 1, Folder 9. Initially, precinct caucuses chose delegates to county conventions where delegates to the state constitutional convention were elected. County conventions were convened by the chairman of the board of county commissioners in each county. *Proceedings*, *supra*, at 4. For a printed question-and-answer sheet on the process, see "Repealer!", an unattributed circular in the Simpson papers, Coll. 26, Box 146, Folder 19. For a lengthy description of precinct caucuses, county conventions and the State Constitutional Convention that May, see generally Roberts, *Wyoming's Second Constitutional Convention and the Repeal of Prohibition*, *supra* note 2.

[224] *Anti-Prohibition Bills Are Signed*, SUNDANCE TIMES, Feb. 23, 1933, at 1.

[225] *Sweetwater County Board Issues Only One Beer License*, CASPER TRIB.-HERALD, May 12, 1933, at 3. For some counties, licenses were issued and operations seemed ready for the opening. In Cheyenne, seventeen retailers and eight wholesalers were licensed for beer. Not all counties were as prepared, however. Sweetwater County, for example, issued only one beer license by May 12. *Id.*

ten months after the process started, the 21st Amendment was ratified. America's nearly fourteen-year "noble experiment" came to an end.[226]

In Wyoming, state and federal Prohibition officers tried to put a favorable light on the new Wyoming beer law even though it signaled complete repeal in the near future. E. E. Collins, federal Prohibition administrator for Wyoming, claimed that passage of the beer law actually would bring about "greater co-operation in the enforcement of the Federal law relating to hard liquors."[227] He said that merchants paying the required $250 per license, required by Congress and the State, "will not tolerate speakeasy violators of the prohibition law who would be cutting into legitimate profits from beer."[228] The Casper City Council declared "[r]elentless war on bootleggers."[229] A. F. Newlin, Captain of Detectives, received instructions from the council to "'bear down' on every illicit place that may exist in the municipality, taking every step that may prove necessary to effect a clean-up."[230]

Whether through cooperation or not, state Prohibition officers or their federal counterparts brought numerous cases against bootleggers in 1933.[231] The highest profile case was brought by federal officers on May 3, just two weeks before the constitutional convention was to convene in Casper, and the indictments were brought against Casper's mayor, police chief, Natrona County sheriff, and more than three dozen others.

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[226] The literature on Prohibition and repeal is extensive. For two lively popular accounts written primarily for lay readers, see EDWARD BEHR, PROHIBITION: THIRTEEN YEARS THAT CHANGED AMERICA (Arcade Pub., 1st N. Am. ed. 1996) and OKRENT, *supra* note 209. *See generally* KYVIG, *supra* note 209. For three regional treatments of Prohibition, see NORMAN H. CLARK, THE DRY YEARS: PROHIBITION AND SOCIAL CHANGE IN WASHINGTON (rev. ed. 1988); JOE L. COKER, LIQUOR IN THE LAND OF THE LOST CAUSE: SOUTHERN WHITE EVANGELICALS AND THE PROHIBITION MOVEMENT (2007); MICHAEL A. LERNER, DRY MANHATTAN: PROHIBITION IN NEW YORK CITY (2007).

[227] *Collins Believes Beer Law May Help His Dept.*, LUSK HERALD, Mar. 30, 1933, at 5.

[228] *Id.*

[229] *City Council Plans War on Bootleggers*, CASPER TRIB.-HERALD, May 16, 1933, at 1.

[230] *Id.* The item appeared on the same page as the results showing Wyoming voters overwhelmingly voted for repeal in precinct caucuses statewide the previous day. *See Wyoming Votes Repeal*, CASPER TRIB.-HERALD, May 16, 1933, at 1.

[231] Convictions of bootleggers, however, were already on the wane. "Of nearly 300 prisoners in the Wyoming state penitentiary here [in Rawlins]," the paper noted, only "three [were] serving sentences for infractions of the state liquor laws" in April, 1933. *Only Three in Pen for Dry Law Violation*, WYO. ST. TRIB., Apr. 14, 1933, at 5. The three were serving sentences of one to two years. *Id.* According to the paper, in light of legalization, "[w]hether they [would] present applications for clemency . . . was not known." *Id.*

Mayor E. W. Rowell was serving his third term as Casper's mayor and he had been a candidate for governor in the Republican primary in 1932.[232] Long prominent in state politics, the forty-four-year-old businessman was the first president of the state's League of Municipalities.[233] The thirty-nine-year-old Sheriff Gilbert O. Housley, a Democrat, also was serving in his third term and "considered a candidate for Secretary of State" in the forthcoming election.[234] Both were charged along with thirty-four others with conspiracy to manufacture, transport, possess, and sell intoxicating liquors.[235] Seven were charged with conspiracy to operate a brewery even though beer was to be legalized shortly

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[232] Rowell finished third in a three-man field with 8449 votes. WYOMING BLUE BOOK, *supra* note 123, at 628. California-born Rowell had moved to Casper in 1921, serving as mayor from 1930 to 1934. In 1938, he moved to Anchorage, Alaska and died at the age of sixty-seven at the Mayo Clinic in Rochester, Minnesota, while being treated for a brain tumor in May 1953. *See Former Casper Mayor Is Dead*, WYO. ST. TRIB., May 29, 1953, at 20; *see also* 1930 Census, Casper, Natrona, Wyo., Roll 2624, 94, Enumeration District 6.

[233] *Notes and Events*, 20 NAT'L MUN. REV. 241, 244 (1931) (subsection entitled *Wyoming Organizes League of Municipalities*), *available at* http://onlinelibrary.wiley.com/doi/10.1002/ncr.v20:4/issuetoc.

> The League of Wyoming Municipalities was formed in the city of Cheyenne on January 2 and 3, with thirty-six delegates from cities and towns present. A constitution was adopted and the following officers were elected for the first year: E. W. Rowell of Casper, president; Cal Holliday of Cheyenne, vice president; G. R. McConnell of Laramie, executive secretary and treasurer; trustees—George L. Smith of Sheridan, one-year term, W. Gwynn of Lovell, two-year term, William Rogers of Green River, three-year term.
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> The outstanding fact brought to the attention of the delegates was the present confusion and uncertainty of the rights and powers of municipalities under the present municipal code. It was the unanimous opinion of all delegates that the Wyoming municipal code should be studied with care for the next two years, at which time it is proposed to present to the legislature bills repealing or modifying the present municipal code, and that a movement be started to bring the ordinance of various towns into uniformity in so far as is possible, especially the traffic ordinances.
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> The only piece of legislation sponsored by the Municipal League at this session of the legislature is a bill to obtain a portion of the present gasoline tax for the use of the cities in maintaining the streets.

Id.

[234] 1930 Census, Casper, Natrona, Wyo., Roll 2624, 8B, Enumeration District 7. Born in Missouri, he and his wife Olie, thirty-one, lived with their two young children in an apartment at the county jail.

[235] United States v. Rowell, Case file No. 3702 (on file with the National Archives, Rocky Mountain Branch, Denver in Wyoming Criminal Case Files, District Court files, RG21, Box 100) [hereinafter *Rowell*]; *see Officials Named in Charges*, CASPER TRIB.-HERALD, May 1, 1933, at 1 (detailing the indictments); *Chief Quealy Is Suspended*, CASPER TRIB.-HERALD, May 2, 1933, at 1 (detailing the indictments).

thereafter.[236] At the time, it was the most warrants issued in one federal conspiracy case in Wyoming.[237]

The mayor, who learned of the indictment while traveling from Philadelphia to Washington, D.C., on April 30, was to return May 4, but his plane was delayed due to bad weather in Nebraska.[238] He appeared before the U.S. Commissioner in Casper on May 6 and was released on $2500 bond.[239] Police Chief Mike Quealy also had been released on $2500 bond.[240]

While its mayor and police chief were in Cheyenne, Casper's city council convened in special session to pass the city's new "beer law."[241] The council approved the ordinance on May 10, with legalization set to begin May 19, just in time for the arrival of delegates to the constitutional convention.[242] Ironically, the measure that passed had been authored by the mayor and submitted to the council on April 13, before his arrest.[243] Rowell "retire[d] as mayor" on May 15,

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[236] *See Rowell*, *supra* note 235 ("Rowell took a $250 bribe from Joseph E. Warren about Sept. 15, 1930; Quealy took a $200 bribe from Warren about Feb. 15, 1931; Housley about March 1, 1931, he allowed Pat Nash to depart the county jail; David E. Davidson paid to Charles W. Tobin; Gilbert Davidson broke a jug against the side of the car at or near 543 S. Wolcott St. March 16, 1933; Guy Bartrum and Wm. A. White operated 'The Mint' at 256 S. Center St. from Jan. 1–Dec. 31, 1931. Baird had possession of a quantity of whiskey at Union Pool Hall basement. Farrell operated business place known as Pinkie Farrell's rear of 214 S. Center. Irch sold whiskey to C. F. Prehsaw at Standard Pool Hall, 226 W. 1st St. March 6, 1931, Mann worked at Standard Pool Hall; Jacklin sold whiskey to E. J. Reid, Nov. 1, 1932; Clarence E. Jones carried cases of beer to car near 232 E. 13th St.; Lesperance operated Grand Central business in Casper in Dec. 1931; Murphy delivered one gallon of whiskey to John L. Ohlsen, Fall of 1931.").

[237] The story was reported in every Wyoming newspaper. *See, e.g.*, *Casper Officials Under Arrest*, BASIN REPUBLICAN-RUSTLER, May 4, 1933, at 1; *Sheriff, Mayor and Chief of Police at Casper Under Fire by Federal Officers*, LUSK HERALD, May 4, 1933, at 1.

[238] *22 Seized in Casper Probe*, CASPER TRIB.-HERALD, May 5, 1933, at 1. Rowell was one of a handful of Wyomingites during the period who was a private pilot and owned an airplane.

[239] *Grand Jury Docket at Cheyenne Said Heavy*, CASPER TRIB.-HERALD, May 7, 1933, at 1.

[240] *See generally Chief Quealy Is Suspended*, *supra* note 235.

[241] *Beer Ordinance Nearing Final Passage*, CASPER TRIB.-HERALD, May 9, 1933, at 1. According to the report, of the approximately sixty people attending, "[p]rospective dealers predominated." *Id.* Acting Mayor Walter Galles presided. *Id.*

[242] *City Beer Ordinance Approved by Council*, CASPER TRIB.-HERALD, May 11, 1933, at 1. Licenses were granted to thirteen of twenty-one applicants. *Id.* Town councils of other cities acted to consider beer licenses and ordinances regulating sales. *See, e.g.*, *Will Consider Beer Licenses*, BASIN REPUBLICAN-RUSTLER, May 4, 1933, at 1. The Basin ordinance, No. 224, signed by Mayor C. C. Phillippe, is published on p. 6. *Ordinance No. 224*, BASIN REPUBLICAN-RUSTLER, May 4, 1933, at 6. Six Basin men applied for the retail beer licenses and five of the six were awarded. *Council Proceedings*, BASIN REPUBLICAN RUSTLER, May 11, 1933, at 6.

[243] *See generally City Beer Ordinance Approved by Council*, *supra* note 242 ("It was the measure submitted by Mayor Rowell, subject to the revisions made after second and third readings, that was enacted.").

the day the precinct caucus elections were held.[244] After a change of venue to Cheyenne, the trial was held in July 1933.[245] Charges were dropped against seven of those arrested. On July 26, the jury returned a not guilty verdict against the thirty remaining defendants in the case.[246]

In May 1933, two other prominent Wyomingites were tried a second time for violating the prohibition law.[247] Kemmerer physician, Dr. M.J. Goldberg, and State Law Enforcement Agent Louis G. "Deacon" Jones were charged with conspiracy in federal court.[248] Their first trial a year earlier ended in a hung jury. The forty-two-year-old Goldberg was Republican state committeeman from Lincoln County.[249] A. D. Walton, the U.S. Attorney, charged that Jones would tip off Goldberg if a federal prohibition agent was coming to the area; Goldberg would then alert community members and both would share "protection money" from those informed.[250] The case went to the jury the week before the constitutional convention was due to convene.[251] Both men were acquitted.[252]

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[244] *See Rowell Retires as Mayor, Pending Outcome of Trial on U. S. Charges*, CASPER TRIB.-HERALD, May 16, 1933, at 1.

[245] *Rowell*, *supra* note 235. The trial was reset for Cheyenne on July 17, 1933. *Id.*

[246] *See id.*; *Conspiracy Case*, THERMOPOLIS INDEP. REC., July 22, 1933, at 1.

[247] *Goldberg Case Delay Refused*, CASPER TRIB.-HERALD, May 7, 1933, at 4; *Goldberg and 'Deacon' Jones on Trial Here*, WYO. ST. TRIB., May 15, 1933, at 1.

[248] *Judge Forcing Goldberg Case*, WYO. ST. TRIB., May 6, 1933, at 1.

[249] Even though he was one of the town's few medical doctors, Goldberg's background seems not unlike numerous other first- or second-generation eastern or southern Europeans who resided in Kemmerer, a coal-mining and railroad town at the time. A native of Illinois, both of the doctor's parents had come to America from Russia. When the census was taken, Goldberg, his wife May, and his infant daughter lived next door to the county attorney. At that time, a thirty-one-year-old Rumanian-born boarder and his wife shared the Goldberg house along with a twenty-four-year-old house maid. 1930 Census, Kemmerer, Lincoln, Wyo., Roll 2623, 15A, Enumeration District 1.

[250] *Witnesses Display Enmity in Goldberg-Jones Trial*, WYO. ST. TRIB., May 16, 1933, at 1.

[251] *Goldberg and Jones Awaiting Jury's Verdict*, WYO. ST. TRIB., May 17, 1933, at 1. Louis Gomel Jones, born in Mound City, Missouri, in 1874, served in the Spanish-American War with the Kansas Infantry. *Louis Gomel Jones Died Early Friday Morning in Local Hospital*, KEMMERER GAZETTE, Apr. 4, 1968, at 1. He moved to Opal, Wyoming, after the war and worked as meatcutter at the Opal Mercantile. Later, he homesteaded on the south fork of the Fontenelle where he raised sheep. After selling the ranch, he was appointed game warden and, later, officer of the Law Enforcement Department. After a stint as town marshal of Kemmerer, he served as a cell block captain under Warden A. J. Roach at Rawlins, and later, as a guard at Sinclair and at an ordnance depot in Ogden. For a time, he was "receptionist" in the Wyoming State Capitol. He died in Kemmerer at the age of 94 in 1968. *Id.*

[252] *See Acquittal Comes as Climax to 2 Goldberg-Jones Trials*, WYO. ST. TRIB., May 19, 1933, at 1; *Goldberg and Jones Freed*, CASPER TRIB.-HERALD, May 19, 1933, at 1; *Wyoming Doctor Expires While at Work on Patient*, SHERIDAN PRESS, July 17, 1944, at 1 (explaining Goldberg died suddenly at the age of forty-nine of a heart attack while he was "sewing up a knife wound under Night Marshal Jack Piz's nose. He had taken six stitches in the wound when he succumbed. . . . Dr. R. O. Hummer finished closing the wound with eight stitches. Piz said the wound was made by a man whom he later shot in the abdomen and who was in a critical condition at a Kemmerer hospital.").

The numerous incidents of official corruption during Prohibition far surpassed the numbers of those brought in any decade in the state's history. Further, every one of the incidents involved either charges of failure to enforce Prohibition laws or overt profiting from illegal liquor. Justice Ralph Kimball summed up why corruption might be more common when, early in the Prohibition years, he defined why the Prohibition statutes were uniquely difficult to enforce:

> We think it may be stated as a fact that the enforcement of the Eighteenth Amendment by the combined agencies of the states and nation is attended with some difficulties not met in the enforcement of other laws. The law affected the habits of a great many people. Among those who do not actually violate it, it is claimed there are many who view its enforcement with indifference, and others who actually encourage its breach.[253]

IV. PREPARING FOR REPEAL

Just a week after beer sales had become legal, the constitutional convention met to ratify complete repeal. On Saturday, May 25, 1933, delegates and spectators filled the council chambers of Casper's city hall:[254] "Due to the large crowd in the hall, a number of extra chairs were carried in to accommodate the interested spectators."[255] Unlike the state's first constitutional convention in 1889, this convention had a woman delegate—but just one—Mrs. Sam H. Payne of

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[253] State *ex rel.* Wyckoff v. Ross, 228 P. 636, 640 (Wyo. 1924).

[254] The delegates, by county, were: Albany County: N. A. Swenson, alternate for T. L. Johnson, J. R. Sullivan, Oscar Hammond; Big Horn: J. P. Wheeler, alternate for T. K. Bishop, J. R. French, alternate for H. B. Richardson; Campbell County: Guy Garrett, W. D. McGrew; Carbon County: Victor H. Scepansky, alternate for H. J. Cashman, Gus Larson, C. D. Williamson; Converse County: Waldo Bolln, Joe Garst; Crook County: Chas Louis, alternate for James T. McGuckin, G. W. Earle, alternate for Jay Durfee; Fremont: Mrs. Sam Payne, Walter Oswald, R. S. Price (also alternates Charles Moore and A. O. Heyer); Goshen County: L. G. Flannery, J. M. Roushar, Erle H. Reid (also alternate Wm. Bosse); Hot Springs County: Henry Cottle, John McCullum; Johnson County: Frank O. Horton, Jean Van Dyke (also alternates Burton Hill and Richie Young); Laramie County: A. D. Homan, Fred W. Roedel, Wilfrid O'Leary, Abe Goldstein, Perry Williams, Fred Hofmann (also alternates W. Q. Phelan and T. Joe Cahill); Lincoln County: Dr. C. D. Stafford, Glen E. Sorensen, Oluf Jefson; Natrona County: Robert N. Ogden, J. E. Jones, alternate for John Nance, T. F. Speckbacker, T. C. Spears, E. J. Sullivan, J. F. Cowan (also alternate L. B. Townsend); Niobrara County: Albert P. Bruch, C. W. Erwin; Park County: Alex Linton, B. C. Rumsey, M. L. Simpson (also alternate Eugene Phelps); Platte County: Hans Christiansen, B. L. Dixon; Sheridan County: Malcolm Moncreiffe, Peter Kooi, R. A. Keenan, Roy Bedford; Sublette County: Albert Larson (also E. D. Key, his alternate); Sweetwater County: William Evers, Dr. R. H. Sanders, Glen A. Knox, P. C. Bunning, Joe Bertagnolli; Teton County: R. C. Lundy, Sr., O. A. Pendergraft; Uinta County: Matthew Morrow, S. S. Kastor, J. H. Holland; Washakie County: Dr. W. O. Gray, R. C. Schultz (also L. L. Dorman, alternate); Weston County: A. F. Leslie, alternate for E. C. Raymond, M. M. Falk (also A. S. Boatsman, alternate). *Proceedings*, *supra* note 223, at 14.

[255] *Wyoming Casts Formal Vote for Repeal*, CASPER TRIB.-HERALD, May 25, 1933, at 1.

Fremont County.[256] City Councilman Carl M. Albin extended the welcome, explaining that Mayor Rowell was absent from the city and Acting Mayor Walter Galles was ill.[257]

Secretary of State A. M. Clark presided over the convention even though it was noted by some papers that he was "a reputed dry advocate."[258] The only business was a vote on Prohibition. Once the convention came to order, the county chairs convened separately to select a permanent chair. In the meantime, Governor Miller addressed the convention about the matter under consideration. When the chairs returned, Erle H. Reid,[259] a Torrington attorney, was nominated and selected permanent chairman.[260]

Reid asked the delegates, "Shall this convention ratify or reject the proposed amendment to the Constitution?"[261] The number of delegates on record for repeal made it clear that repeal would gain overwhelming support.[262] Precinct voters in only one county (Platte) elected delegates opposing repeal. To add some levity to the occasion, Milward Simpson, a Park County delegate, asserted that he was "a bit fearful of the outcome of this vote."[263] With obvious reference to the recent arrests of city and county officials in Casper, Simpson added: "In as much

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[256] *See id.*; *State of Wyoming Voted Repeal on 25th*, RIVERTON REV. AND RIVERTON CHRON., June 1, 1933, at 1. Oddly, Mrs. Payne is mentioned as the only woman delegate in the last sentence of the story with no local references made to her. *See State of Wyoming Voted Repeal on 25th*, *supra*.

[257] *Wyoming Casts Formal Vote for Repeal*, *supra* note 255, at 1. The councilman carefully avoided mentioning the reasons for the mayor's absence, but the Rowell case had been so widely reported that it is unlikely there was anyone present who had not heard about his arrest.

[258] *Id.*

[259] Reid was a Republican, but Frank O. Horton, a Republican delegate, apparently made the nomination thinking Reid was a Democrat. "He explained his reason . . . was that that party had taken many forward steps on behalf of the wet movement and because of the Democratic Party now being more or less in power." Reid set the record straight when he returned to Torrington in a speech to the local Rotary Club. *Reid Declares Convention Report Wrong*, TORRINGTON TELEGRAM, June 1, 1933, at 1. Reid explained that there were three slates developing for convention officers and Horton wrongly assumed that because the other two were headed by Republicans, E. J. Sullivan of Casper and Frank Horton himself, that Reid's must be the nomination for the Democrats.

[260] *Proceedings*, *supra* note 223, at 11. Reid had served as president of the Wyoming State Bar in 1929. Reid, born in Tarkio, Missouri, in 1887, was admitted to the Wyoming Bar in 1911. *Erle H. Reid, Torrington Lawyer, Dies*, WYO. ST. TRIB., Mar. 4, 1954, at 1. He practiced law in Torrington until his death at the age of 67 on March 4, 1954, in Torrington. He was president of the Wyoming Taxpayers Association from its inception in 1937 until 1950. *See generally id.*

[261] *See Proceedings*, *supra* note 223, at 25; *see also Wyoming Casts Formal Vote for Repeal*, *supra* note 255, at 1.

[262] The listings of delegates elected from each county indicated the majority. For a listing of the delegates and their home counties, see *Proceedings*, *supra* note 223, at 14.

[263] *Id.* at 16.

as Natrona County and the City of Casper don't seem to be going to take care of us, I suggest we spend this money for a few bottles of beer for the delegates to this convention."[264] His motion carried.

Immediately after, the convention accepted another more serious motion made by Pat Flannery of Goshen County to ratify the proposed 21st Amendment. The secretary called the roll. Of the sixty-five votes cast, sixty-four were for repeal and one delegate did not vote.[265] "After Chairman Reid announced that the ratification [vote] had been unanimous, there was a wild applause ringing out from the crowd throughout the hall."[266] After discussion about sending a message to FDR that it was passed, R. J. Hofmann of Laramie County took the floor and asserted:

> We must not let the business we condemned in 1919 get into the same rut, we want to see it carried on in a clean and honorable manner, and you will never be able to do this if you have the Government, the States or the Cities mixing whiskey with beer. Whiskey should be divorced from beer.[267]

The convention adjourned. The record is silent about whether Simpson's motion was effectuated with beer for all delegates.[268]

Ratification of the 21st Amendment to the United States Constitution demonstrated that Wyomingites were overwhelmingly ready to repeal statewide Prohibition. While the 21st Amendment took effect with respect to federal law, the timing made it impossible to consider the repeal of the state's Prohibition article until the special session of the legislature in December 1933, at the earliest.[269] As observers noted, Wyoming was one of the first states to vote for repeal of national prohibition, but it had to wait until its state constitution was changed in order to abandon its "dry" status.[270]

By the end of June 1933, federal prohibition forces were cut drastically. The duties of the agency were transferred to the Bureau of Investigation in the

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[264] *Id.*

[265] *Id.* at 21.

[266] *Wyoming Casts Formal Vote for Repeal*, *supra* note 255, at 1.

[267] *Proceedings*, *supra* note 223, at 26.

[268] Casper newspapers failed to mention Simpson's comments. Nothing is reported about this aspect of the convention by the *Casper Tribune-Herald* that provided lengthy coverage of the convention. *See Wyoming Casts Formal Vote for Repeal*, *supra* note 255.

[269] Senate Journal, Special Sess., 22d Leg. 14 (Wyo. 1933) (message of Gov. Leslie Miller). House Bill 6, passed by the 1933 Legislature, eliminated the State Department of Law Enforcement. *See generally* House Journal, 22d Leg. (Wyo. 1933).

[270] *Wyoming, One of First States to Vote Repeal, Remains Dry*, WYO. EAGLE, Nov. 3, 1933, at 12.

Department of Justice on August 10.[271] Two of the Prohibition bureau's agents were transferred immediately to the Bureau of Investigation[272] where they continued enforcing the Prohibition law "so long as it [was] on the books."[273] By mid-September, the offices on the top floor of Cheyenne's city and county building were closed, the records stored, and agents Lindsley and Vance, the only two transferred to the new agency, started taking orders from the regional office in Salt Lake City.[274] Four men, three from Carbon County and one from Weston County, became the last three Prohibition lawbreakers to be arrested by federal prohibition agents.[275]

Funding for state government required Governor Miller to call a special session of the legislature for December 1933. Prohibition was not a priority for the special session.[276] Nonetheless, Governor Miller told the joint session in his opening address, "The most optimistic advocates of repeal of the 18th Amendment had no thought that it would be repealed by the end of 1933, but

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[271] *Dry Enforcement Now up to Bureau of Investigation*, *supra* note 219, at 3. The article noted that: "Almost unnoticed in the rush of recovery activity, the prohibition bureau was quietly laid to rest." *Id.*

[272] *Two Prohibition Agents Retained for New Bureau*, WYO. EAGLE, Aug. 11, 1933, at 5. The two were C. D. Lindsley and J. A. Vance. *Id.*

[273] *Dry Enforcement Now up to Bureau of Investigation*, *supra* note 219, at 3.

[274] *Records and Files Removed as Local 'Dry' Office Is Closed*, WYO. EAGLE, Sept. 15, 1933, at 1. The reassignment of the two officers to Salt Lake City and, thus, out of the Denver region, was fortuitous with respect to retention of the agency's investigative files. The materials, stored in the post office initially, were eventually transferred to the National Archives Pacific Northwest Branch. My thanks to Joyce Justice, National Archives, Seattle Branch, for bringing the long-lost files to my attention in the summer of 1993. After inquiries to the National Archives and to other branches, it was determined that the Edgerton file and the few others, amounting to less than two cubic feet, were all that remained of the extensive investigative files maintained by the Bureau of Prohibition. *See* Phil Roberts, *Inside Federal Prohibition Enforcement in Wyoming*, 74 ANNALS OF WYO., 2–8 (2002).

[275] Gust Ellis, Rawlins, was arrested June 27 and charged with possession and transportation of liquor. George and Fred Picard of Saratoga were arrested the following day for possession. Albert P. Wegher, Newcastle, became the last Wyomingite arrested by federal prohibition officers on June 29. He was charged with possessing a still. *Federal Booze Charges Filed Against Four*, WYO. EAGLE, July 7, 1933, at 4. It should be noted, however, that law officers continued to arrest and charge bootleggers even after the Prohibition laws were repealed because the new state regulations did not permit individual manufacture of liquor. Repeal affected grape sales in Rock Springs. "Only three carloads of grapes have been received here to date this fall as compared with from 10 to 20 usually consigned to Rock Springs at a corresponding time in recent years. . . . The highest number received, one fall several years ago, was approximately 100 cars." *Wine Making Falls Off in Rock Springs*, WYO. ST. TRIB., Sept. 13, 1933, at 3.

[276] *See generally* GRIFFENHAGEN ASSOCIATES, REPORT MADE TO THE SPECIAL LEGISLATIVE COMMITTEE ON ORGANIZATION AND REVENUE (1933) (2 vols.). Among the measures to be considered were the Griffenhagen recommendations for cost saving and plans to adopt either an income tax or sales tax to fund struggling cities and state government. Julian B. Snow, *Proposed Five-Point State Tax Reform Program Center of Interest*, WYO. EAGLE, Oct. 13, 1933, at 12.

such was the case."[277] He noted that repeal already was taking effect two days later, December 6, 1933, in both Colorado and Montana. Problems were sure to ensue on both the southern and northern borders once liquor was legalized in those states. Wyoming's repeal was inevitable, he pointed out, and he advocated a beverage control commission in order that old abuses from the saloons of old would not reappear. He pointed out that private profit led to most evils of the liquor trade and the price of liquor, on the other hand, had to be "kept low enough to discourage bootlegging."[278]

Governor Miller told the legislators he had already appointed an advisory committee to develop the blueprint for liquor distribution after repeal.[279] The fifteen people selected for the advisory committee included churchmen, businesspersons, labor representatives, a druggist, and both the president and past president of the Wyoming Federation of Women's Clubs.[280]

The Advisory Committee studied the issue throughout the fall, but did not meet until the end of October. Apparently, the proposals that were advocated nationally by John D. Rockefeller, Jr. had a strong influence over the deliberations. Rockefeller, "once an ardent prohibitionist, . . . became convinced that Prohibition was a failure."[281] Consequently, he financed "an exhaustive study of the liquor problem."[282]

The Rockefeller committee "recommend[ed] that the sale of liquor be handled by state-owned stores," while Governor Miller took a different view, preferring "[t]he Swedish system, in which the states exercise rigid control and regulate the price but in which private business handles the sale and distribution

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[277] Senate Journal, Special Sess., 22d Leg. 14 (Wyo. 1933) (message of Gov. Leslie Miller).

[278] *Id.* at 15.

[279] According to Miller's address to the opening of the 1933 Legislature, his proposal for a beverage control commission was "modeled after the commission proposed by Mr. Fosdick and Scott of New York City in a book titled *Toward Liquor Control*." *See generally* RAYMOND B. FOSDICK AND ALBERT L. SCOTT, TOWARD LIQUOR CONTROL (1933). The foreword was written by John D. Rockefeller, Jr., a major Teton County landowner at the time, who funded the Fosdick-Scott work.

[280] *See Committee Named on Liquor Control*, WYO. ST. TRIB., Sept. 1, 1933, at 5 (naming "District Judge V. J. Tidball, Laramie; the Rt. Rev. Patrick McGovern, bishop of the Catholic diocese of Cheyenne; F. S. Burrage, Laramie publisher; Mrs. A. C. Meloney, president of the state Federation of Women's Clubs; Dr. W. A. Steffin, Sheridan; R. R. Rose, Casper attorney and former district judge; Grant Taggart of Cowley representing the Church of Latter Day Saints; J. N. Bayless, Rock Springs superintendent of the Union Pacific Coal Company; R. J. Hofmann, Cheyenne grain dealer; the Rev. I. B. Wood, Methodist minister in Cheyenne; Mrs. Minnie A. Warren, Riverton housewife; D. P. B. Marshall, Sheridan attorney and president of the Sheridan Press; Mrs. T. S. Taliaferro, Jr., Rock Springs, former president of the State Federation of Women's Clubs; J. F. Minnick, Casper printer and union labor representative; Blake Cassidy, Gillette druggist").

[281] *Wyoming's Liquor Committee Not to Meet Until Rockefeller Reports Completed on Oct. 20*, WYO. EAGLE, Oct. 13, 1933, at 1.

[282] *Id.*

of" the liquor.[283] It was universally acknowledged, however, that the Advisory Committee's advice would have no immediate impact. Repeal in Wyoming would be "impossible . . . until March 1935 because the legislature meets then, unless there is a special session called."[284]

Wyoming Attorney General Ray E. Lee advised Miller that state agencies could exclusively handle liquor distribution—it would not be in violation of any constitutional section.[285] The special session of the 1933 Legislature reaffirmed legal sale of 3.2 beer, but continued prohibition of other liquors.[286] It permitted malt beverage sales of 3.2% alcohol or less, set up the rules of where beer and ale service could occur within a licensed building, and allowed for private clubs and railroads to serve beer.[287] The act placed licensing authority with city councils and, in the case of establishments outside of cities, with county commissions.

Senate Joint Resolution 3, 1933 constitutional amendment passed on November 6, 1934, by a vote of 71,126 for and 22,404 against from the total vote cast of 96,593.[288] Governor Miller declared the amendment in force on December 1, 1934, by executive proclamation. At last, Prohibition repeal—state and federal—was formally in place. The repeal made Wyoming officially "wet" again for the first time since 1919.

V. STATE MONOPOLY OF LIQUOR

Most lawmakers and many members of the public did not want a return to the era of the saloon. Even many "wets" believed that, prior to Prohibition, saloons promoted crime and corruption. Such activities probably induced some of the overwhelming support for passage of the 18th Amendment. Liquor, now

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[283] *Id.*

[284] *Id.*

[285] *Attorney General Says State Can Control Liquor Business*, WYO. EAGLE, Nov. 3, 1933, at 1.

[286] 1933 Wyo. Special Sess. Laws 66. The act prohibited sale of beer "where public dancing is permitted" (section 5); licenses granted by county commissioners (section 5); $100 license fee (section 4); hotels, restaurants, private clubs, railroads, grocery stores, but only those doing business for at least one year prior to passage of the act (section 3); a 3-cents-per-gallon tax applied (section 9); no sale to anyone under twenty-one (section 6) or to "habitual drunkard[s]" (section 19). *Id.* at 67–69, 71.

[287] The act also set license fees ($100 annually for retailers serving on premise only, $10 for clubs, and $25 annually for "retail grocers" who intended to sell beer and ale for consumption off-premise). *Id.* at 67. Section 3 designated the businesses/clubs who could seek licenses, section 4 set license fees, section 5 set rules for retailers outside town limits, section 6 stipulated the legal age for consumption at twenty-one years old, and section 9 set up a tax rate of 3 cents per gallon to be paid to the state. *Id.* at 67–69.

[288] S.J.R. Res. 3, 22d Leg., 1933 Wyo. Sess. Laws 178. Constitutional Amendments in Wyoming only pass if the amendment gains at least one-half plus one of all votes cast in the election. In other words, not voting equals a "no" vote.

that it was legal again, needed careful regulation to ensure that abuses from the past would not recur. Consequently, the 1935 Legislature authorized creation of the Wyoming Liquor Commission (the Commission), consisting of the governor, secretary of state, and state treasurer.[289] Legislation made the state the sole wholesaler of liquors in the state[290] and stipulated that retail licenses would be allocated on the formula of one license for each 500 people counted in the 1930 census with an additional license for any portion above 500.[291]

Some commentators believed it was a mistake to make the state the sole purveyor of liquor. As the editor of the *Wyoming Tribune* wrote:

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[289] 1935 Wyo. Sess. Laws 172. The liquor provisions became Article 4 of Title 59, *Wyoming Supplement, 1940, to the 1931 Revised Statutes*. Initially, the law had been House Bill 77, introduced by revenue committee, p. 129, to create the Wyoming Liquor Commission; HB 78 to declare State policy on liquor sales and distribution. Both were introduced as Revenue Committee bills on the 15th day of the session, January 22, 1935. House Journal, 23d Leg. 129 (Wyo. 1935). The measure was heavily amended in committee as well as by both Houses. It initially passed the House by a vote of 44-9 with two absent on January 25. House Journal, *supra*, at 179. Voting "no" were J. Reuel Armstrong (Carbon), William E. Baehr (Sublette), A. H. Cordiner (Albany), Lyle L. Cornell (Converse), Herbert B. Fowler (Weston), Worth Garetson (Carbon), Harold M. Johnson (Carbon), Craig Lewis (Laramie), and Albert E. Nelson (Sweetwater). The bill went to a conference committee consisting of Senators E. C. Raymond, R. A. Keenan, and Edward T. Lazear and Reps. Herman F. Krueger, J. L. Wicks, and W. A. Norris. The conference committee reasserted the State Liquor Commission's role as sole wholesale distributor of intoxicating liquors by requesting that the House concur with the Senate's language. House Journal, *supra*, at 604. The report was adopted by a vote in the House of 42-13. Allen, P. F. Anderson, Farthing, Frison, Keith, and Pence joined Armstrong, Baehr, Cordiner, Cornell, Fowler, and Johnson in voting against the conference committee report. House Journal, *supra*, at 606. The initial bill, with Senate amendments, passed the Senate by a vote of 16-11. Senators Frank A. Barrett (Niobrara), Oscar Beck (Sublette), S. H. Black (Washakie), John J. Binney (Crook), William H. Cross (Converse), I. W. Dinsmore (Carbon), James M. Graham (Fremont), H. H. Horton (Albany), Edwin W. Spencer (Uinta), Thomas Thain (Johnson), and Wright voted against it. Senate Journal, 23d Leg. 352 (Wyo. 1935). On adoption of the conference committee report, only Bream voted against it, with three members absent. Senate Journal, *supra*, at 502. Most state commissions, many authorized by the Constitution, but others established by statute, included the five officials elected statewide: the governor, secretary of state, state treasurer, state auditor, and state superintendent of public instruction.

[290] There was opposition to having the state be the wholesaler of all liquors. Three members of the Law Enforcement Committee in the Senate, I. W. Dinsmore (Carbon), Thomas Thain (Johnson) and Earl Wright (Sweetwater), wrote a minority report protesting such actions. Senate Journal, 23d Leg. 310–11 (Wyo. 1935).

[291] Allocation was made to incorporated cities and towns on the theory that they had the officers in place who could enforce the regulations. It was not new to Wyoming legislative regulation of liquor. The 1909 Legislature stipulated that liquor licenses only could be awarded to incorporated towns. As the first woman elected to the Wyoming Legislature, Mary Bellamy, later told an interviewer, it was done specifically because incorporated towns had officials. Mary Bellamy Interview, Wyoming Pioneers Oral History Project (Jan. 9, 1948) (on file with the American Heritage Center, University of Wyoming in digital collections, Disc 3, Side A). Thus, it is not incidental that there was a spate of incorporations occurring among Wyoming towns in 1909. Mrs. Bellamy contended that the Union Pacific Railroad was grateful for the law because towns they controlled were not incorporated and they wanted no liquor sold in them.

> Bribery, questionable influences, personal and political favors, gifts and free distribution of liquor in large and small quantities, as a result of good fellowship or for other reasons, on the part of the state's army of custodians, salesmen, distributors and manufacturers seeking business, can no more be avoided than the rising and the setting of the sun.[292]

The paper urged Governor Miller to give full attention "to the best methods of supervising the retail end of the trade, so as to prevent a recurrence of the abuses which [sic] forced state prohibition on Wyoming, by an affirmative vote, in every county of the state."[293] The editor repeated the "dry" assertion that Prohibition had been popular in the state: "That vote, so nearly unanimous, by old-time cattlemen, sheepmen, coal men, oil men, railroad men, professional men, school men and women, of course, is proof positive that state prohibition, 15 years ago, was not the result of the efforts of rattle-brained reformers, radicals and church people only."[294]

The law laid out the broad outlines for liquor control, and granted the Commission some power to develop the specific rules for liquor sales, distribution, and enforcement of the state laws. But with respect to the requirements imposed on liquor retailers, there were many statutorily designated rules.[295] For instance, the law set opening and closing times:

> All persons licensed under this Act except Clubs and trains holding a Limited Retail Liquor License shall close the dispensing room and cease the sale of both alcoholic and malt liquors promptly at the hour of one o'clock A. M. each day and keep the same closed until six o'clock A. M. the same day except that such places shall close the dispensing room all day Sunday.[296]

In the "Equality State," the law stated: "[N]o female shall be employed in a room holding a Retail Liquor License."[297] Further, no gambling, no entertaining or dancing was allowed. "No lunches, meals or foods, of any kind or character shall

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[292] In a front page editorial, the *Wyoming State Tribune* came out against state distribution of liquor. Editorial, *Wyoming Should Not Go into Liquor Business*, WYO. ST. TRIB., Feb. 11, 1935, at 1. The editorial was quoted in other papers. *See, e.g.*, Editorial, *Wyoming Should Not Go into Liquor Business, Says Cheyenne Tribune*, WHEATLAND TIMES, Feb. 14, 1935, at 3.

[293] Editorial, *Wyoming Should Not Go into Liquor Business*, *supra* note 292.

[294] *Id.*

[295] The laws initially became Title 59, *Wyoming Supplement, 1940, to the 1931 Revised Statutes*. The statutes relating to liquor control became Title 53 in the *Wyoming Compiled Statutes, 1945*. The much more comprehensive statutory treatment of liquor in the 2011 Statutes is designated as Title 12. *See* WYO. STAT. ANN. §§ 12-1-101 to 12-10-101 (2011).

[296] 1935 Wyo. Sess. Laws 115.

[297] *Id.* at 116.

be served or sold in such room, provided, that the restrictions herein enumerated as to booths, furniture and food shall not apply to those holding a Limited Retail Liquor License . . . ."[298] Even the location of the retail store entrance was stipulated in the statute. The entrance must "open upon a main traveled street or highway."[299]

After the session, some legislators cited financial reasons when they were asked to defend their votes in favor of House Bill No. 77 that put the state into the wholesale liquor business. Senator S. Manning of Platte County repeated his opposition to repeal and support over the years for Prohibition. "I am supporting this bill not as a political issue," he said, "but as a business proposition for the state."[300]

Initially, the Commission met to hire staff for the newly created agency.[301] Wheatland attorney O. O. Natwick, serving just a few weeks as the state's land commissioner, was hired to head the liquor commission staff.[302] Formerly Platte County attorney, the forty-nine-year-old Wisconsin native had been a deputy state attorney general under Ray E. Lee for two years.[303] Louis Griffith, Sheridan manager of a Denver-based grocery firm, was named purchasing agent. Ed Landers, Natrona County Democratic chairman, who had begun his career as an oil worker and later directed relief administration in Casper, was selected as warehousing and distributing agent. He also had once served as mayor of

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[298] *Id.* Drug stores were exempted and continued to operate under Prohibition-era rules. *See* Charles A. Cooney, *Medicinal Liquor Law Restricts Profits*, LUSK HERALD, Jan. 4, 1934, at 2.

[299] 1935 Wyo. Sess. Laws 116.

[300] *S. Manning Defends His Vote on Bill 77*, WHEATLAND TIMES, Feb. 14, 1935, at 1 (internal quotation marks omitted). There was some speculation that liquor prices would go down if the state held the monopoly. "During the past year places selling liquor have charged 25¢ per drink. In former years the greatest prices exacted was 12½ per drink." *Welcome Saloons Back to the Town of Cody*, CODY ENTERPRISE, Apr. 3, 1935, at 1.

[301] Board Minutes, Wyo. Liquor Comm'n (Feb. 21, 1935) (on file with the Wyoming State Archives).

[302] *See Teetotalers to Direct State's Liquor Business*, WYO. EAGLE, Feb. 22, 1935, at 1 ("'We're not going to hire an official taster, either,' Natwick said. 'We'll let the chemists do all our testing.'").

[303] Natwick was a resident of Wheatland at the time of his appointment. *See O. O. Natwick Placed at Head of Wyoming Liquor Commission*, WHEATLAND TIMES, Feb. 28, 1935, at 1. He had been appointed land commissioner on January 9. Governor Miller announced his appointment to the liquor commission on February 28. *Id.* For his appointment as deputy attorney general, see *Oscar O. Natwick Named Deputy State At. General*, PLATTE COUNTY REC., Apr. 13, 1933, at 1. Natwick had practiced in Wheatland for twenty-four years as law partner with M. A. Kline. *See id.* He and his wife Louise were parents of three children: two teenaged daughters and a son in third grade. 1930 Census, Wheatland, Platte, Wyo., Roll 2623, 13A, Enumeration District 1.

Greybull.[304] The appointments were effective April 1, 1935, but Natwick began work immediately after his name was announced.[305]

In its fourth meeting, the Commission turned its attention to liquor distribution in neighboring states. Governor Leslie Miller reported on how Chicago, New York City, and Washington, D. C. handled the now-legal alcoholic beverages. Secretary of State Lester Hunt, State Treasurer J. Kirk Baldwin, and the newly hired Commission Director Natwick each offered to check other states.[306]

In the following meeting on March 11, Hunt, Baldwin, and Natwick described what they had found while visiting Montana, Oregon, Washington, and California. Natwick told a Wheatland newspaper that while "Wyoming is going to have an abundance of good liquor," there would be a limited variety.[307] "In some states we visited we found that the liquor commissions had tied up a lot of money needlessly and also had suffered considerable losses thru [sic] having tried to furnish a great number of brands of liquors and wines . . . ."[308] Natwick added "that by limiting its purchases to stocks for which the sale would be guaranteed, the state would assume no loss from liquor that could not be sold."[309]

The commission director "placed before the Commission a number of applications from cities and towns for additional retail liquor licenses."[310] After

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[304] The commission resolved that "all employees of the Wyoming Liquor Commission be required to deposit with the Director an undated letter of resignation, acceptable by the Director and the Commission at will." Board Minutes, Wyo. Liquor Comm'n (Feb. 23, 1935) (on file with the Wyoming State Archives). Additional commission hires were: Matt Smith of Cheyenne, Chief Accountant, salary of $175 per month; Robert F. Alexander of Casper, Bill Clerk, salary of $140 per month, hired in early March; and at a subsequent meeting, Blake Cassidy, Gillette, as Inspector at $150 per month; Thomas J. Carroll, Cheyenne, Superintendent of the Warehouse at $175 per month; Stanley Slizeski, Casper, Chief Warehouse Clerk, $160; Charles Durkee, Newcastle, Shipping Clerk, $150; Robert Alexander, Casper, Stock and Invoice Clerk, $140; J. W. Hawes, Laramie, Warehouseman, $120; John McCambridge, Lander, Warehouseman, $120; and Sterling Tustison, Evanston, Night Watchman, $120. Board Minutes, Wyo. Liquor Comm'n (Mar. 12, 1935) (on file with the Wyoming State Archives); Board Minutes, Wyo. Liquor Comm'n (Mar. 19, 1935) (on file with the Wyoming State Archives).

[305] Board Minutes, Wyo. Liquor Comm'n (Mar. 2, 1935) (on file with the Wyoming State Archives).

[306] Baldwin, a thirty-eight-year-old Wyoming native, had been circulation manager for the *Casper Tribune-Herald* prior to being appointed by the New Deal to head the state's office for construction of airports. For Baldwin's age, birthplace and other data, see 1930 Census, Casper, Natrona, Wyo., Roll 2624, 3A, Enumeration District 9. He and his wife Florence's last name is incorrectly indexed as "Beldin" due to poor handwriting by the census enumerator. For a brief biography of Baldwin, see WYOMING BLUE BOOK, supra note 123, at 142.

[307] *See Quality of Liquor and Not Variety to Be Aim of State*, WHEATLAND TIMES, Mar. 14, 1935, at 1.

[308] *Id.* (internal quotation marks omitted).

[309] *Id.*

[310] Board Minutes, Wyo. Liquor Comm'n (Mar. 12, 1935) (on file with the Wyoming State Archives).

some discussion, the Commission realized that the requests were premature because the law had not even taken effect: "[T]he Commission had no way of determining the necessity for such additional licenses until a fair trial is given the operation of the law after the same takes effect," the minutes noted.[311] The extraordinary interest in obtaining the licenses did indicate the huge potential profits many predicted from legal sales of liquor. Licenses, scarce with respect to the number of possible purchasers in some cities, would become very valuable assets for a relatively limited number of retail liquor merchants. At this early point, however, it is not clear that the Commission thought about future property interests that might accrue for license holders.

In 1935, when the state's economy remained weak, location of the main distribution point for all liquors in the state would be a prize for any Wyoming community. On March 13, the Commission heard arguments for location of the official liquor warehouse. Laramie, Casper, and Cheyenne officials made presentations. Baldwin, a former newspaper-advertising executive from Casper prior to his election in 1934, made the motion to place the warehouse in Cheyenne. The rest of the Commission unanimously supported Baldwin's motion.[312] In a subsequent meeting, the Commission agreed to lease the warehouse space on West 18th Street in a building owned by William Dubois.[313]

In the following meeting, just a week later, the Commission granted the first Wholesale Malt Liquor Licenses to ten wholesalers in six towns.[314] At the same time, the Commission granted twenty-nine "Licensed Pharmacist's Special Permits," awarded only to druggists who were authorized to dispense various forms of alcohol for medicinal purposes if the purchaser could provide a prescription for the purchase.[315] In some respects, these licenses simply continued federal

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[311] *Id.* See also a news report of the meeting, *Commission Not to Grant More Liquor Licenses*, ROCK SPRINGS ROCKET, Mar. 13, 1935, at 1.

[312] Board Minutes, Wyo. Liquor Comm'n (Mar. 13, 1935) (on file with the Wyoming State Archives).

[313] Board Minutes, Wyo. Liquor Comm'n (Mar. 20, 1935) (on file with the Wyoming State Archives).

[314] Board Minutes, Wyo. Liquor Comm'n (Mar. 27, 1935) (on file with the Wyoming State Archives). August Bertolina, Rock Springs; Carl A. Church, Church Warehouse, Sheridan; Corbett Beverage Co., Cheyenne; East Side Bottling Works, Cheyenne; George H. Eggert, Hiland; Hofmann and Rees, Cheyenne; John Lucas, Inc., Rock Springs; Mrs. Minnie Marcante, Kemmerer, William Martin, Kemmerer; and Pacific Fruit & Produce Company with offices in Casper, Laramie, Cheyenne and Rock Springs. *Id.* "No action could be taken on the informal application of Park Wholesale Company of Cody, who had remitted a draft for $250.00, as necessary application and affidavit had not been filed." *Id.*

[315] *Id.*

exemptions that throughout Prohibition had allowed alcohol to be dispensed for medicinal purposes.[316]

Because the agency was just getting organized, the Commission met again the following day.[317] This time, the Commission granted five additional wholesale licenses and seven more pharmacists' special licenses.[318] The Commission started to encounter problems coming from county commissioners and town councils during its April 1 meeting:

> Mr. Natwick read a letter which contained names of applicants for liquor licenses, who had been granted licenses by the County Commissioners. Several of these applicants had at various times in the past, been arrested for the sale of illegal liquor. Governor Miller suggest [sic] that Mr. Natwick wire the County Commissions asking their reason for the issuance of licenses to such persons. Mr. Baldwin suggested that the Commission refuse to approve the licenses issued to persons who had been convicted of felonies.[319]

Cities and counties throughout Wyoming issued retail licenses during March and April of 1935. The statute set out the procedures by which these licenses would be awarded to individuals.[320] While the Commission would award a total number of retail licenses based on the population for each community and county, it

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[316] Federal law always exempted sacramental wine from Prohibition bans. National Prohibition Act of Oct. 28, 1919 (Volstead Act), ch. 85, 41 Stat. 305 (1919), *repealed by* Liquor Law Repeal and Enforcement Act, ch. 740, 49 Stat. 872 (1935). As an example of a pharmacy selling liquor, see the advertisement for Buechner Drug and Jewelry Co. *Wheatland Times*, Mar. 28, 1935, at 3 ("Liquor Sale[:] Being required by the new state regulations to dispose of liquor stock we are offering our large line of liquers and wines at greatly reduced prices. . . . Liquor will be much higher when the new law goes into effecst [sic], so stock up NOW"). Quarts of wine, regularly priced at 85 cents, were selling for 53 cents; "Paul Garrett's Champagne," normally $1.95 was going for $1.19. *See id.*

[317] Board Minutes, Wyo. Liquor Comm'n (Mar. 28, 1935) (on file with the Wyoming State Archives).

[318] *Id.* The Commission met briefly the following day and granted two more wholesale licenses, one to Mrs. John Tripeny of Casper and the other to Frank Hammond of Basin. Board Minutes, Wyo. Liquor Comm'n (Mar. 29, 1935) (on file with the Wyoming State Archives). Three pharmacist's licenses were also granted in the Friday meeting. *Id.* In an unusual move, the Commission even met the following day, Saturday morning, and awarded wholesale licenses to Park Wholesale Co., Cody, and Walter Schultz Wholesale Grocery Co. in Casper. Board Minutes, Wyo. Liquor Comm'n (Mar. 30, 1935) (on file with the Wyoming State Archives) (the second of two separate meetings held on March 30).

[319] Board Minutes, Wyo. Liquor Comm'n (Apr. 1, 1935) (on file with the Wyoming State Archives). The Commission also issued the first set of railroad "licenses numbered 1 to 10" to the Union Pacific Railroad for "Trains No. 7, 8, 17, 18, 27, 28, 14, 21, 118, and 127." *Id.*

[320] 1935 Wyo. Sess. Laws 110–20.

would not determine who would receive any specific license. Town councils were empowered to award, renew, or cancel individual licenses within municipalities.[321] Similar power for county allocations went to the county commissioners. Each license was valid for one year unless revoked.[322] Individuals seeking licenses would fill out a form and pay an application fee,[323] which included the cost of publishing the application particulars in the local newspaper's legal pages, and file the application in a timely manner with either the town clerk or the county clerk.[324] The published notice would include the name of the applicant, an exact description of the proposed location, and the date the granting authority would consider the proposed license.[325]

Yellowstone National Park concessionaires had been selling beer since the summer of 1933. Federal law authorized sales of other liquor if the state allowed it. When Wyoming regulations finally permitted liquor by the drink in "cocktail rooms at hotels and lodges" in 1935, Yellowstone concessionaires prepared for the summer trade. "Workmen already have started the installation of cocktail rooms," the *Worland Grit* reported in June 1935, adding that Pryor and Hamilton retail stores inside the park could sell liquor, but "by the bottle only."[326]

Even though the population basis for license allocations appeared to be adequate for most places, the legislation gave the Commission the authority to grant additional licenses on application from cities and counties.[327] Within

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[321] "Incorporated cities and towns and counties within the State of Wyoming shall regulate, prohibit, or license the sale of alcoholic and/or malt beverages within this state under the provisions of this Act." 1935 Wyo. Sess. Laws 111.

[322] 1935 Wyo. Sess. Laws 114.

[323] Section 10 stipulated that the application fee for each retail liquor dealer could be set by the city or county at a minimum of $300 but not more than $1500. The money went into the town or county treasury. 1935 Wyo. Sess. Laws 114–15.

[324] Section 5 of the Statute set out the publication requirement for application. It required four consecutive weeks in newspaper of general circulation in a city or county. *See* 1935 Wyo. Sess. Laws 113 ("No license shall be issued until after the date set in the notice for hearing protests. Nor shall a license under this Act be issued if it shall appear at said hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely affected or that the purpose of this Act will not be carried out by the issuance of such license. Each applicant shall, at the time of filing his application, pay the clerk an amount sufficient to cover the costs of publishing notice.").

[325] 1935 Wyo. Sess. Laws 112–13.

[326] *Yellowstone Park Is to Have Liquor*, WORLAND GRIT, June 13, 1935, at 1. Clearly, population could not have been the basis for granting licenses to concessionaires in the Yellowstone, given that few people lived within its boundaries. Apparently, the park's concessionaires were treated the same as retail applicants outside of incorporated cities and towns.

[327] 1935 Wyo. Sess. Laws 112 ("Provided, however, that the town or city council of any incorporated town or city, or Board of County Commissioners of any county in the State of Wyoming, may make application to the Wyoming Liquor Commission for additional licenses to be granted in such city or town, or county, and the Wyoming Liquor Commission shall authorize such additional licenses as, after proper investigation and hearing, they may deem necessary.").

days of the Commission's creation, several Wyoming cities and counties were already making such requests. In fact, much of the Commission's time in the first six months of its existence went to determining whether it should grant such additional licenses for various cities and counties.

Requests for additional licenses correlate generally with Wyoming towns and counties where there had been the most reports of bootlegging and other liquor violations during the Prohibition years. Towns in Sweetwater, Lincoln, and Hot Springs counties were among the first to ask for more licenses, beyond those granted by statute, based on their 1930 populations.

In Rock Springs, twenty-six applicants sought licenses, eight more requests than there were licenses allocated to the city under the statute.[328] In the nearby town of South Superior, eight requests were filed.[329] When the Commission met on April 6, the towns of Kemmerer, Rock Springs, Dubois, and Riverton requested additional licenses beyond those authorized by the legislation.[330] After hearing representatives from Rock Springs, South Superior, Kemmerer, and two other towns, Pinedale and Big Piney, the Commission decided to conduct local hearings to analyze the requests and determine whether it would grant these towns additional licenses.[331] Thermopolis, Riverton, and Hudson also were asking for more licenses.[332] The following day, Worland, Powell, and Green River also made requests.

Governor Miller, State Treasurer Baldwin, and Commission Director Natwick conducted a hearing in Rock Springs on April 15, 1935, to hear arguments for additional licenses for towns in that area.[333] At the end of the hearing, the commissioners voted to grant one additional license to Green River and five additional licenses each to Rock Springs and South Superior.[334] The Commission, however, denied the requests from the Sublette County towns of

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[328] *26 Petitions on File in R. S. for Liquor Licenses*, ROCK SPRINGS ROCKET, Mar. 9, 1935, at 1.

[329] *Notice of Applications for Retail Liquor Licenses in the Town of South Superior*, ROCK SPRINGS ROCKET, Mar. 16, 1935, at 6.

[330] *See* Board Minutes, Wyo. Liquor Comm'n (Apr. 6, 1935) (on file with the Wyoming State Archives).

[331] *See* Board Minutes, Wyo. Liquor Comm'n (Apr. 9, 1935) (on file with the Wyoming State Archives).

[332] *See id.*

[333] *See* Board Minutes, Wyo. Liquor Comm'n (Apr. 15, 1935) (on file with the Wyoming State Archives).

[334] *See id.*

Big Piney and Pinedale.[335] The following day, the Commission reconvened for a hearing in Kemmerer, eventually granting six more licenses to that Lincoln County community.[336]

The Commission was busy with additional hearings the following week. On April 24, following a meeting in Riverton that morning, the Commission granted Riverton one additional license, but denied the applications for additional licenses from Dubois and Hudson.[337] Later in the day, after a Thermopolis hearing, that county seat of Hot Springs County, was granted four more retail liquor licenses.[338]

In some Wyoming towns, few residents showed any interest in applying for the available licenses. In Wheatland, the town council decided to set the license fee at $1000 per year.[339] "While Wheatland is allowed five liquor permits . . . under the state law," *Wheatland Times* editor Charles W. Hahn wrote, "it is the intention of te [sic] council according to Ben Bellis, Mayor, to hold the permits to two salloons [sic]."[340] The paper reported only two applicants for the available permits.[341]

In other locales, it became apparent almost immediately that the more licenses the Commission granted, the more competitive the liquor trade in that community would become. But even in places where liquor use was not particularly popular, those already holding licenses sought to limit the number.

In some respects, the Worland situation was typical. There, city officials awarded the four liquor licenses authorized to their town by the Commission. The task was easy because just four completed applications had been filed.[342] Five days later, however, the council met again and received applications for two more establishments. Anna Coutis and H. C. Howell were told that the town's

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[335] *See id.*

[336] *See* Board Minutes, Wyo. Liquor Comm'n (Apr. 16, 1935) (on file with the Wyoming State Archives). Minnie Marcante, who had applied for a wholesale malt liquor license, appeared with counsel to request reconsideration of an earlier commission denial of a license. *Id.*

[337] *See* Board Minutes, Wyo. Liquor Comm'n (Apr. 24, 1935) (Riverton meeting) (on file with the Wyoming State Archives).

[338] *See* Board Minutes, Wyo. Liquor Comm'n (Apr. 24, 1935) (Thermopolis meeting) (on file with the Wyoming State Archives).

[339] *Liquor Licenses in Wheatland is $1,000*, WHEATLAND TIMES, Mar. 7, 1935, at 1.

[340] *Id.*

[341] *Id.* The two applicants were listed as Jake Blankenship and Charles Nelson, both requesting application to operate the business from their present locations. *Id.*

[342] Town Council Minutes, Worland, Wyo. (Apr. 3, 1935) (on file with the Wyoming State Archives); *Town Council Issues Four Liquor Licenses*, WORLAND GRIT, Apr. 4, 1935, at 1 (stating four licenses were awarded to "Joe Myuskovich, Peter Mileski, John Hohenstein and N. Hodge . . . to resell liquor by the drink, and Read Drug Company to resell liquor in the package. . . . [taking] care of the allotment for the Town of Worland for sale of liquor, of four in all").

allocation of only four licenses had been granted during the previous meeting. Nonetheless, the council voted to request authority from the Wyoming Liquor Commission for licenses for the two additional applicants.[343]

For the first time under the law and anywhere in the state, previous license holders in Worland appeared before the Commission to argue against granting new licenses to would-be competitors. Just two commission members, Governor Miller and Treasurer Baldwin, conducted the hearing in Worland on April 25 where the exclusivity principle was articulated. Two earlier holders of liquor licenses hired Worland attorney George Bremer to argue that the Commission should not grant any more licenses because of the adverse impact it would have on existing licensees. Mayor H. B. Paris spoke in favor of granting two additional licenses to the town and town attorney Charles Harkin argued specifically for two applicants.

Miller seemed surprised that existing retail liquor dealers would want to shut out competitors by limiting licenses, at least in the early months of the Commission's deliberations.[344] The existing licensees in Worland claimed to be members of the Big Horn Liquor Dealers' Association.[345] To Governor Miller, such associations would be useful to the Commission. During a Liquor Commission meeting in early April, Governor Miller "suggested that . . . an association be formed by the firms holding retail licenses, which would undoubtedly help the Commission to enforce their laws."[346] At the conclusion of the hearing, the Commission voted to defer the Worland decision.[347]

Miller and his colleagues encountered a similar situation that same weekend when competitive concerns dominated the Commission's hearing in Buffalo. Existing license holders came to the April 27 hearing in force to oppose granting a new license to the Idelwilde Café. After recording numerous protests, the Commission tabled the request until a later meeting when members returned to Cheyenne.[348]

The Commission considered both the Worland and Buffalo cases on the following Monday. After that meeting, Natwick, writing for the board, sent a

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[343] Town Council Minutes, Worland, Wyo. (Apr. 8, 1935) (on file with the Wyoming State Archives).

[344] Board Minutes, Wyo. Liquor Comm'n (Apr. 25, 1935) (on file with the Wyoming State Archives).

[345] *Id.*

[346] Board Minutes, Wyo. Liquor Comm'n (Apr. 1, 1935) (on file with the Wyoming State Archives).

[347] *Id.*

[348] *See* Board Minutes, Wyo. Liquor Comm'n (Apr. 27, 1935) (on file with the Wyoming State Archives).

telegram to inform Worland officials that the Commission would allow the two additional licenses. The board also authorized the additional new license for Buffalo.[349] Immediately, the Worland council granted one of the licenses "to Mrs. Anna Coutis to be used in the Annex Bar; J. W. Bird is to be manager."[350]

During its first full month of deliberations, the Commission seemed willing to authorize additional licenses if local town councils requested them. However in the following month, the Commission received a flurry of requests and denied nearly all of them.[351] The record is silent as to the seeming change to greater parsimony, but given the opinions the commissioners heard from existing license holders in Worland and Buffalo, the vested interest in minimizing competition may have been on their minds. Throughout the remainder of the twentieth century and to the present, legislators and city councilors have remarked on the power of the retail liquor dealers' associations and holders of existing licenses with respect to license renewals and new awards.

Financially, the state's wholesale liquor monopoly started handing in healthy returns to the state treasury. During the first three months of operation, starting on April 1, 1935, the Commission's wholesale receipts were $114,474. The report listed gross profits from liquor sales of $61,176 making total gross revenues for the quarter of $139,661:[352] "By months, the net earnings were April, $33,250; May, $38,572; and June $41,651. The total operating expenses of the quarter are shown as $25,186."[353] By the second quarter, the state's liquor sales jumped to $380,722 and with the additional receipts from excise taxes and license and permit fees, $78,485 added to that total.[354] With legislative reluctance to adopt any tax increases and spending reduced to skeletal levels, this new source of income must have come as some relief to Miller and his administration.[355]

The Commission's regular May meetings were occupied with considering requests from various towns for additional licenses, but also considering other issues involving state regulation of liquor establishments. For instance, the Commission was asked to rule on whether radios ought to be allowed in retail

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[349] Board Minutes, Wyo. Liquor Comm'n (Apr. 29, 1935) (on file with the Wyoming State Archives). Powell withdrew its request for an additional license. *Id.*

[350] *Two Additional Liquor Licenses Granted Here*, WORLAND GRIT, May 2, 1935, at 1.

[351] A year later, Meeteetse was granted the additional license. Board Minutes, Wyo. Liquor Comm'n (June 9, 1936) (on file with the Wyoming State Archives).

[352] *See* REPORTS OF MONTH'S SALES, JULY, WYO. LIQUOR BD. (1935); *see also* Board Minutes, Wyo. Liquor Comm'n (July 21, 1935) (on file with the Wyoming State Archives).

[353] *Wyoming Liquor Board Reports Month's Sales*, WORLAND GRIT, July 25, 1935, at 3. The sales figures were included in a liquor commission press release sent to all Wyoming newspapers.

[354] REPORTS OF MONTH'S SALES, SEPTEMBER, WYO. LIQUOR BD. (1935).

[355] For legislative debates over taxation during the period, see Roberts, *supra* note 220, at *passim*.

liquor establishments. After extensive discussion, the commissioners concluded that radios would be allowed "and their use will not be considered unlawful unless their music is used for dancing in the bar room, or for some purpose which is unlawful."[356]

During the Commission's first two months of operation, it was concerned primarily with retail liquor sales. On May 28, attorneys representing Daniel Schikich asked the Commission if their client would be permitted to construct and operate a distillery in Wyoming: "The applicant was advised that it is the present policy of the Wyoming Liquor Commission not to grant any permission for distilleries in Wyoming."[357] The policy was to remain in effect for the rest of the century and beyond.[358]

Requests from tourist towns for additional licenses became more numerous as summer approached. The town clerk of Jackson, a man named Bark, requested special consideration for that resort town because "the Town of Jackson has a population of several hundred more people than shown by the last Federal census."[359] The Commission agreed with the rationale and granted Jackson another license.[360]

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[356] Board Minutes, Wyo. Liquor Comm'n (May 18, 1935) (on file with the Wyoming State Archives). Banning music from saloons had historical precedent. In August 1907, the Casper Town Council banished instrumental and vocal music from all saloons. Music interfered with the purpose of a saloon, which was to drink. The editor of the *Natrona County Tribune* wrote:

> This order was due to the request of a great many people. It was argued that when they were having a social drink they could not drink and keep time with the music and oftentimes they would have to forego their beverage and dance to the sweet strains from the piano and violin, and they did not want it that way, hence the order of the town council.

More Sidewalks, Less Music, NATRONA CNTY. TRIB., Aug. 21, 1907, at 1.

[357] Board Minutes, Wyo. Liquor Comm'n (May 18, 1935) (on file with the Wyoming State Archives). K. K. Steffenson of Salt Lake City and Thomas Hunter of Cheyenne represented Schikich. *Id.*

[358] The commission received other requests for distillery authorization. For instance, on July 27, 1937, B. O. Yowell of Arvada, Colorado, sought approval for a plan to build a distillery at Casper. "After hearing all of the information presented, the Commission was unanimously of the opinion that no need exists for a distillery in Wyoming, and that this is especially true, inasmuch as Mr. Yowell and his associates in the International Distillery are operating a distillery at Arvada, near Denver, Colorado." Board Minutes, Wyo. Liquor Comm'n (July 27, 1937) (on file with the Wyoming State Archives). The first distillery in Wyoming, Kolts Fine Spirits of Sheridan, founded by the Koltiska family, opened in April 2005. The firm made a 60-proof liqueur known as "Koltiska Original." The first bourbon distillery, Wyoming Whiskey, Inc., opened in 2009 in Kirby.

[359] Board Minutes, Wyo. Liquor Comm'n (May 22, 1935) (on file with the Wyoming State Archives).

[360] *Id.*

In late July, Worland's remaining license was awarded to Howell, the only other applicant.[361] Within weeks of awarding that additional license, officials from Worland requested an even more unusual exception. Two months prior to asking for another license, the Worland Town Council received a petition presented to it by J. W. Bird and others. The petitioners requested "the Town Council to apply to the Wyoming Liquor Commission for an additional Retail Liquor License, to be issued to Josefa Rivera."[362] Another petition, presented by H. B. Van Buskirk, asked that a similar license be issued to Y. Fonceca.[363] After discussing the two requests, the council passed a resolution:

> Whereas, it has come to the attention of the Town Council that because a large portion of the population of the Town of Worland, and vicinity, is made up of Spanish speaking people who are employed in beet fields adjacent to Worland, and whereas it is for the best interest of the community that a Retail Liquor Store be established in the Spanish Quarter of the city, where Spanish-speaking people could obtain liquor without mingling with the other races, therefore be it resolved by the Town Council of the Town of Worland that an application be made to the Wyoming Liquor Commission for permission to issue one additional retail liquor license.[364]

The Worland officials, in August 1935, told the Commission that it was unaware of any protest from earlier licensees, an issue that existed when the Commission met in Worland four months earlier. Consistent with its policy, the Commission filed notice that it would hold a hearing in September at which point "[a]ny person desiring to protest the allowance of such application for an additional license should file their protest in writing by the ninth day of September, 1935."[365] The official minutes for the September 18, 1935, meeting, tersely summarized the issue and the outcome:

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[361] *See* Advertisement, *Announcing the Opening of the Heidelberg Bar*, WORLAND GRIT, Aug. 1, 1935, at 5.

[362] Town Council Minutes, Worland, Wyo. (Aug. 7, 1935) (on file with the Wyoming State Archives).

[363] *Id.* The record contains several contradictions. For instance, a special meeting on April 17 appears already to have granted a license to Fonceca. Just two weeks later, however, his name appears owing $24.02 in back taxes. The property is listed as Lot 11, Block 8, Pulliam Addition (west of the railroad tracks from downtown Worland and two blocks south). *Notice of Sale of Real Property for Delinquent Taxes*, WORLAND GRIT, Aug. 22, 1935, at 6. Later, when Rivera's application finally came before the council, Fonceca was no longer an applicant, but Dionisio Cantu had applied for the license. Town Council Minutes, Worland, Wyo. (Nov. 4, 1936) (on file with the Wyoming State Archives).

[364] WORLAND, WYO., ORDINANCES, Book no. 3, at 332 (Aug. 7, 1935).

[365] *Notice*, WORLAND GRIT, Aug. 22, 1935, at 9.

> There was for consideration before the Board, the application of the Town of Worland for an additional liquor license that a liquor store might be opened for Spanish speaking or Mexican people. There was present, to represent the application of the Town of Worland, Alec B. King and Dan Egan, attorneys of Casper, Wyoming. The facts as represented to the Board were that the permanent Mexican population at Worland is four hundred, and during the beet season, reaches one thousand. The Mexicans are barred from the retail liquor stores now operating in Worland, and it further appears that the licensees in Worland had no objection to an additional license and the authority for issuing an additional license was therefore granted.[366]

The Worland council apparently did not immediately issue the new license to either of the two applicants, however. Finally, on November 4, 1936, more than a year after the council's formal request for the special license, the new ear-marked retail license was issued to Josefa Rivera.[367] The record does not indicate why Rivera's request was delayed for such a long time nor is there any hint as to why Rivera was awarded the license when another person, Dionicio Cantu, had filed a similar application and was denied.[368]

The issuance of Rivera's license, however, did not end the controversy surrounding Worland's "special license" for the "Spanish Quarter." When Mrs. Rivera sought to renew her license the following November, a local man, C. A. Brant and others protested its reissuance. The protesters claimed Rivera was violating the town ordinance and state liquor laws by serving food in the same room as she was dispensing alcohol. The town council voted to deny her license renewal.[369]

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[366] Board Minutes, Wyo. Liquor Comm'n (Sept. 18, 1935) (on file with the Wyoming State Archives).

[367] The Rivera application, dated October 4, 1937, was for lot 13, Block 11, Pulliam Addition, a location between Grace and Obie Sue, bounded on the east by the railroad tracks and the west by Vesta street and the city limits, i.e., across the railroad tracks west from the main downtown. *Notice of Application for Retail Liquor License*, WORLAND GRIT, Oct. 21, 1937, at 9.

[368] Town Council Minutes, Worland, Wyo. (Nov. 4, 1936) (on file with the Wyoming State Archives).

[369] Town Council Minutes, Worland, Wyo. (Nov. 3, 1937) (on file with the Wyoming State Archives) ("The application of Josefa Rivera for a retail liquor license was then present [sic] for consideration and a protest having been filed by C. A. Brant and others and the council having heard said applicant and said protestants and being fully advised in the premises it was moved by Councilman Rhodes that the application of Josefa Rivera for a retail liquor license be denied. Motion was seconded by Councilman Chenoweth, and the Motion was carried."). The record is unclear as to what happened to the license, but it was not awarded to another individual doing business in the "Spanish Quarter."

By 1936, liquor commission deliberations focused on renewals, as well as additional requests from cities and counties for more licenses.[370] The Commission also issued licenses for Union Pacific passenger trains, crossing through the state.[371] Much of the Commission's business was by now routine—renewals of annual licenses to wholesalers and pharmacists and occasional requests from agency staff to revoke licenses of violators of Commission rules.[372]

In 1937, the legislature passed an act naming the five elective state officials as members "of all state boards and commissions upon which two or more such officers [were then] serving."[373] The act applied to the liquor commission, placing it under all five elected officials.

At the end of the decade, Governor Miller lost re-election to a third term. When his successor, Nels Smith, took office, the new Republican majority on the Commission replaced O. O. Natwick, the first director, with Thomas McKinney.[374] The Commission, acting on the record from the first deliberations of the Commission in February 1935, voted to replace most employees.[375]

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[370] *See, e.g.*, Board Minutes, Wyo. Liquor Comm'n (Apr. 2, 1936) (on file with the Wyoming State Archives) ("Authority was granted to the City of Rock Springs to issue seven retail liquor licenses in addition to the statutory number.").

[371] Board Minutes, Wyo. Liquor Comm'n (Mar. 17, 1936) (on file with the Wyoming State Archives) ("Licenses were granted to Union Pacific trains as follows: Nos. 1, 2, 7, 8, 17, 18, 27, 28, 14, 21, 118, 127, 121, and 114, at $50.00 each.").

[372] Apparently, the commissioners met only for scheduled meetings. The special meetings reported in the minutes regularly during 1935 were not held in 1936. Further, tensions among the commissioners were apparent by mid-summer 1936, even though all three members were Democrats. Baldwin gained the ire of fellow Democrat Miller when he filed for the U. S. Senate nomination in 1936. Miller, who favored the nomination of H. H. Schwartz, the "machine party" candidate, opened an investigation of Baldwin's office during the week before the primary, alleging that Baldwin was using state funds to further his campaign. Miller claimed there were requests for an investigation of how Baldwin's office handled the workmen's compensation fund. "The so-called investigation by Gov. Miller is merely a political move at the last hour to stop my nomination," Baldwin replied. After defending the work of his agency, Baldwin added, "Reports reached me in Evanston Friday that Governor Miller was there about ten days ago urging my defeat and citizens were asked to support John D. Clark. The entire move on Gov. Miller's part is a political effort to beat me in this campaign." The newspaper article noted that the "stop Baldwin" movement "ha[d] become the outstanding feature of the Democratic primary campaign." *Governor Orders Probe of Funds*, TORRINGTON TELEGRAM, Aug. 13, 1936, at 1. Baldwin finished third in the primary that was won by Schwartz. Clark finished second with 6931 votes to Baldwin's 6508. *Carey-Barrett Win Nomination*, TORRINGTON TELEGRAM, Aug. 20, 1936, at 1.

[373] 1937 Wyo. Sess. Laws 82.

[374] WYOMING BLUE BOOK, *supra* note 123, at 157.

[375] The newly-constituted Commission relied on a rule passed by the predecessor Commission during a meeting in February 1935 allowing for removal of employees without cause. *See* Board Minutes, Wyo. Liquor Comm'n (Feb. 23, 1935) (on file with the Wyoming State Archives).

VI. CONCLUSION

Enforcement of prohibition laws in Wyoming did little to diminish alcohol consumption in many Wyoming counties. The state created its first statewide law enforcement agency specifically to deal with illegal alcohol. Not only was enforcement perceived to be ineffective, it was costly. Further, three of the five appointed directors of the agency were forced to resign or were removed amidst charges of corruption or negligent enforcement. During the fourteen-year period of Prohibition, the greatest number of county officials in Wyoming at any point in state history was removed from office either for failure to rigorously enforce the laws or for colluding with lawbreakers. By the end of the 1920s, most Wyomingites favored repeal of Prohibition laws.

Intent on eliminating the unregulated conditions that brought about lawlessness in the "saloon era" before Prohibition, policymakers in the 1930s blended state monopoly control over wholesale liquor distribution with privately owned locally licensed retail liquor package stores and bars. The State Liquor Commission, made up of the five statewide officials during much of its existence, administered distribution and allocated licenses based on population to cities and counties. Town councils and county commissioners were given the sole power to determine which retailers would receive the licenses as long as state application guidelines were followed. State law also set strict requirements for retail operations, but left some rule-making flexibility to cities and counties along with the enforcement power to withdraw licenses or not renew them if retailers were found in violation.

In the three-quarters of a century since Prohibition ended, removal of county officials for breaking any laws has been remarkably rare. Over the years, retail liquor dealers have become a significant lobby and licenses have gained proprietary rights probably not envisioned when the current liquor laws were passed. Nonetheless, with just a few alterations, the system developed in the middle 1930s remains in place in Wyoming in the twenty-first Century.