For your information

The Oregon Liquor Control Commission has:

X Amended
___ Adopted
___ Repealed

OAR 845-003-0331

Effective: 08/19/16

Note: Bold and underlined = new text; strikethrough and italics = deleted text

845-003-0331
Employee Representation at Contested Case Hearings

(1) The Commission's goal in contested case hearings is to have a full and accurate record upon which the Commissioners can make the best decision. To help ensure a full record, employees are allowed to represent the Commission in certain contested case hearings. The employee representative's role is to represent the Commission in a way that supports objective fact finding and encourages an open, fair, and efficient process.

(2) As authorized by the Attorney General pursuant to ORS 183.452, Commission employees may appear and participate on behalf of the Commission in the following types of contested case hearings:

Commission employee may represent the Commission in contested case hearings in the following classes of cases:

(a) Violations of OLCC statutes or rules described in ORS Chapters 471 and 473, statutes related to the Oregon Bottle Bill in ORS Chapter 459A, 474.115, 459.992, and OAR Chapter 845;

(b) License or service permit applications and denial, non-renewal, suspension, revocation or cancellation of licenses or service permits;

(c) Retail Sales Agent Agreement violations or disputes, except for suspensions or terminations;

(d) Privilege Tax disputes under ORS 473.060(4); and

(e) Applications for certificates of approval (ORS 471.244 and 471.251), wine self-distribution permits (471.274), direct shipper permits (471.282), and importation permits and open purchase orders (471.404(1)(e) and 471.730(8)), and suspension, revocation, or cancellation of these endorsements.

(a) The grant or denial of a new or renewed license, permit, certification, endorsement, approval or other authorization applied for or requested under ORS Chapters 459A, 471, 473, 475B and OAR Chapter 845;

(b) A withdrawal, suspension, revocation, cancellation, civil penalty or other sanction pursuant to ORS Chapter 471, ORS Chapter 473, ORS Chapter 475B, ORS 459A.700 to ORS 459A.740, or OAR Chapter 845;

(c) A violation or dispute based on a retail sales agent agreement or a distillery retail outlet agent agreement; and,
(d) Privilege Tax disputes under ORS 473.060(4).

(3)(2) The employee representative’s responsibilities include, but are not limited to:
(a) Presenting evidence;
(b) Asking questions of all witnesses;
(c) Presenting information about the facts, and advocating for staff’s the Commission’s
position surrounding the facts;
(d) Presenting information on how the facts apply to the statutes or rules directly related
the issues in the contested case;
(e) Presenting information comparing Commission actions in similar situations;
(f) Presenting information about the literal meaning of the statutes or rules that apply to
the issues in the contested case; and
(g) Presenting information about the admissibility of evidence or the correctness of
procedures being followed.

(4)(3) The employee representative may not make legal arguments. "Legal arguments" include arguments on:
(a) The jurisdiction of the Liquor Control Commission to hear the contested case;
(b) The constitutionality of a statute or rule or the application of a constitutional
requirement to the Liquor Control Commission; and
(c) The application of court precedent to the facts of the particular contested case proceeding.

(5) When an employee represents the Commission in a contested case hearing, the
administrative law judge will advise the employee representative of the way in which
objections may be made. This advice is of a procedural nature and does not change
applicable law on waiver or the duty to make timely objections. If the objections involve
legal argument, the administrative law judge will provide reasonable opportunity for the
employee representative to consult legal counsel and permit legal counsel to file written
legal argument within a reasonable time after the conclusion of the hearing.

(4) When the Commission determines it is necessary to consult with the Attorney
General's office, an administrative law judge will provide a reasonable period of
time for an agency representative to consult with the Attorney General's office
and to obtain either written or oral legal argument.

Stat. Auth.: ORS 183.341(2), 183.452, & 471.730(5) & (6), & 475B.025(2)(d)
Stats. Implemented: ORS 183.341(2) & 183.452

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