

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for Renewal of a)	
Retail Malt Beverage (RMB))	
License by:)	FINAL
Leonard L. and Myrna L. Chapman)	FINDINGS OF FACT,
HAPPY DAYS TAVERN)	CONCLUSIONS OF LAW,
3511 SE Belmont Street)	AND ORDER
Portland, Oregon 97214)	
- - - - -)	
Multnomah County)	

A hearing in the above matter was held on the 7th day of September, 1982, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicants appeared in person and were represented by George A. Haslett, Jr., Attorney at Law, Portland. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, and the entirety of the Criteria for the Issuance and Maintenance of Licenses and applicable statutes and regulations, enters the following:

FINDINGS OF FACT

1. Licensees have held a Retail Malt Beverage (RMB) license at the HAPPY DAYS TAVERN at all times relevant to these Findings of Fact. Licensees' license was due to expire on June 30, 1982.

2. The Commission's Staff has recommended that the license not be renewed based upon OAR 845-05-025(1) (adverse recommendation by local governing body).

3. On June 10, 1982, the Portland City Council voted to recommend that the license not be renewed.

4. The City Council cast its vote on this matter after hearing from one officer from the Portland Police Bureau and from Applicants Leonard and Myrna Chapman.

5. Applicants have held an RMB license at the Happy Days Tavern since May 18, 1980.

6. Applicants have cleaned up both the outside and the inside of the tavern since taking it over.

7. Applicants have had two OLCC violations while holding the license at the Happy Days Tavern. As a result of an incident occurring on May 14, 1981, in the Happy Days Tavern, Applicants paid a fine of \$910 based upon charges relating to lewd conduct and to an employee without a service permit. Applicants have recently been charged with an OLCC violation relating to the conviction of an employee for violation of the City of Portland's "topless" ordinance. Applicants have requested a hearing on this matter.

8. The above noted violations occurred in connection with topless dancing at the Happy Days Tavern. Such dancing occurs at the tavern six days a week presently. Applicants have taken steps to avoid repetition of the violations by hiring and firing the dancers themselves and by keeping a closer watch on the activities of the dancers.

9. Applicants have most of their savings tied up in the Happy Days Tavern.

10. Officer James A. Wood of the Portland Police Bureau testified that he was a regular beat officer for five years in the neighborhood in which the Happy Days Tavern is located. He

stated that Applicants cooperate with beat officers and have always done what the beat officers suggest. He testified that the operation of the Happy Days Tavern is superior to what it was prior to Applicants taking it over two-and-one-half years ago, primarily because Applicants have encouraged police officers to conduct "walk throughs" of the premises. Officer Wood testified that there are approximately five other taverns within a few blocks of the Happy Days Tavern. He further stated that the Happy Days Tavern is, in terms of orderliness of customers, cooperativeness of Licensees, and other matters of concern to the beat officers, superior to four of these and equal to the other.

11. Keith Bjorkman, who runs the Messenger Knife Grinding Company directly adjacent to the Happy Days Tavern, testified on behalf of Applicants. He stated that he visits the premises socially and occasionally has customers pick up items at the tavern when his business is not open. He testified that the Happy Days Tavern is improved over the prior operation.

12. William Lowry, who operates the Activity Awards Company, which is located approximately 100 feet from the Happy Days Tavern on the same side of the street, also testified on behalf of Applicants. He stated that he occasionally visits the Happy Days Tavern and takes customers into the premises. He has observed no problems in connection with the operation of the tavern."

DISCUSSION

The Administrative Regulation involved in this matter, quoted below in the Ultimate Findings of Fact and Conclusions

of Law section, indicates that whether the local governing body gave "due consideration" to the matter and gave members of the public a "reasonable opportunity to be heard" on the matter may be issues in this type of case. Licensees did not raise these as issues in the hearing. The Commission, nevertheless, feels that certain portions of the transcript of the Portland City Council meeting at which this matter was dealt with should be brought to the attention of the Commissioners for information purposes.

Prior to the beginning of the discussion of this matter by the Commissioners and Mayor, the following dialogue occurred:

"Lindberg: 'We have one other liquor license that has a controversy associated with it. How many people in the audience are here for the sludge item? How many people are here on the Happy Days Tavern? What I am going to suggest is that we deal with the Happy Days Tavern issue first, then deal with the sludge. A lot of people have flown in from other parts of the country to testify today, and even though we may not reach a decision I'd like to make sure they have their opportunity to testify. What I'm suggesting is, that we can't take the Happy Days Tavern thing and drag it out for the next hour or two.

Ivancie: We will put a 15-minute limit on it and we might have to continue it. Go ahead."

The Commission then heard a statement from Officer Frey of the Portland Police Bureau. Officer Frey cited various allegedly illegal incidents which had occurred at the Happy Days Tavern over a period of some months. During his statement, Officer Frey made the following comments:

"September 19, 1981, the DVD officers entered the tavern at 1045 hrs. in the evening and observed the bartender, who was a female bartender, leave her bar unattended, which is in violation of Administrative Rules. She went to the stage and was dancer [sic] there herself."

.....

"I would like to add one more note here. Last night the DVD officers were again in the Happy Days Tavern. We have no sex acts to report, however, the topless dancers were both under the age of 21 years. They did not belong to any theatrical agency. Mr. Chapman's statement was that he hires them, he pays them, and they are employees of the premises. This is also an illegal act."

The following dialogue also occurred:

"Ivancie: Yes, is the owner here? Is there anybody here from the neighborhood on this question?"

Lindberg: Mr. Mayor, I think that we ought to hear from the owner. I think based on the evidence we have there is hardly anything that people from the neighborhood could add. The reports were quite complete."

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The following criterion will be given sufficient consideration so that a license will not be issued unless good cause which outweighs the criterion involved is shown by the applicant:

An adverse recommendation by the governing body of the appropriate city or county, after due consideration. The recommendation may be disregarded by the Commission if the body has failed to give to the applicant and to interested members of the public both a reasonable notice of the proceedings at which the application was considered and reasonable opportunity to be heard. OAR 845-05-025(1).

The record establishes that the Portland City Council recommended to the Commission that the Retail Malt Beverage license held by Leonard L. and Myrna L. Chapman in the trade name Happy Days Tavern not be renewed. The evidence establishes that the recommendation was made after due consideration and that Applicants were given a reasonable opportunity to be heard. This criterion therefore establishes a basis for non-renewal of the license.

ULTIMATE CONCLUSIONS OF LAW

The license should not be renewed because the governing body of the appropriate city, after due consideration, recommended that the license not be renewed. OAR 845-05-025(1).

FINAL ORDER

It is hereby ordered that the application for renewal of the Retail Malt Beverage (RMB) license by Leonard L. and Myrna L. Chapman in the trade name Happy Days Tavern, 3511 SE Belmont Street, Portland, Oregon 97214, be DENIED.

It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

Dated this 24th day of January, 1983.



C. Dean Smith
Administrator
OREGON LIQUOR CONTROL COMMISSION

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a Petition for Review within 60 days from the service of this Order. Judicial Review is pursuant to the Provisions of ORS Chapter 183.