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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)
Application for a)
Package Store (PS))
License by:)

Scotty Joe Ritner)
Terry Lewis Ritner)
MAIN-STOP MINI-MARKET)
100 E. Main Street)
John Day, Oregon 97845)
- - - - -)
Grant County)

FINAL)
FINDINGS OF FACT,)
CONCLUSIONS OF LAW,)
AND ORDER)

A hearing in the above matter was held on the 19th day of August, 1982, in John Day, Oregon, before Hearings Examiner Douglas Crumme'. The Applicants appeared in person and were represented by Donald Costello, Attorney at Law, Sisters, Oregon. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to 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. Scotty Ritner and Terry Ritner have applied for a Package Store (PS) license at the MAIN-STOP MINI-MARKET, 100 E. Main Street, John Day, Oregon.

2. The Commission's Licensing Committee has recommended that the Applicants' application be refused, citing the following: ORS 471.295(1) (not demanded by public interest or convenience); OAR 845-05-035 (public opinion); ORS 471.295(4)(d)

(applicant has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony); and OAR 845-05-030(4) (there is a final order of a court or administrative agency in a criminal or civil proceeding finding a failure to comply with the liquor laws of this state). (Commission's Exhibit E.)

3. The Main-Stop Mini-Market is located on the southeast corner of the intersection of Highways 26 and 395 at the traffic light in the middle of John Day.

4. The proposed outlet was formerly a gasoline and service station. The Applicants have converted the premises to a convenience grocery store and gasoline station. The conversion to a grocery store was not completed until 1982. A Package Store license has not previously been issued at the premises.

5. Applicants Scott and Terry Ritner are brothers. Terry Ritner is 35 years old. Scott Ritner is 33 years old. The Applicants came to John Day in 1980 from California where they operated a tree service business for 14 years.

6. The Main-Stop Mini-Market has 750 square feet of floor space available for grocery items. The business presently has \$17,000 worth of grocery inventory. In addition, the premises has three electronic game machines. These machines are on the opposite side of the check-out counter from the grocery shelves and from the coolers where beer would be stored.

7. The Applicants operate the Main-Stop Mini-Market themselves with the help of their wives and several employees.

Scott Ritner and his wife customarily work the morning shift until 2:00 p.m. Terry Ritner and his wife work the late shift from 2:00 p.m. until closing at 11:00 p.m. The husbands usually work outside on the gas pumps and the wives usually work inside behind the check out counter.

8. Guilty verdicts were entered in the Deschutes County Circuit Court against Applicant Scott Ritner on March 17, 1982 and on April 1, 1982 for furnishing alcohol to minors. (Applicants' Exhibit Nos. 3 and 4.) The Hearings Examiner takes official notice that judgment orders convicting Scott Ritner for these charges were entered on November 18, 1982. As a result of these convictions, Mr. Ritner was sentenced to the following: one year probation; 30 days suspended jail sentence each case concurrent; \$200 fine each case; 200 hours of community service each case concurrent; five days jail sentence each case concurrent.

9. Applicant Scott Ritner filed an appeal dated December 17, 1982 on his March 17, 1982 and April 1, 1982 convictions for furnishing alcohol to minors. (Applicants' Exhibit No. 12.) The Deschutes County Circuit Court has stayed execution of sentence pending resolution of the issues raised on appeal. (Applicants' Exhibit No. 14.) The Deschutes County Circuit Court has also ordered that upon resolution of the appeal, the community service portion of the sentences will be modified to 80 hours each case in accordance with ORS 137.129(2) rather

than the original sentence of 200 hours each case. (Applicants' Exhibit No. 13.)

10. The Commission has received letters in opposition to the issuance of a PS license to the Applicants from the following:

Hugh K. Cole, Jr., Attorney at Law
Judy L. Current
Candace Bahrenburg, Counselor, Grant County Juvenile Department
Donna M. Krausse, Administrator, Blue Mountain Hospital District
C. J. Lino, Principal, Grant Union High School

11. In addition to letters of opposition, the Commission received testimony in opposition to the Applicants' application from Allan Obye, Karen Sue Obye, Samuel J. Palmer, Margaret Cole, and Hugh K. Cole, Jr.

12. Hugh K. Cole, Jr. is the John Day City Attorney. Additionally, Mr. Cole is legal counsel to the Blue Mountain Community Hospital and to the local John Day area School District.

13. Objectors who testified at the Commission's hearing or who wrote letters to the Commission cited the following for their opposition to the Applicants' application:

- a. Minors frequent the Main-Stop Mini-Market.
- b. There is no need in the community for an additional Package Store outlet.
- c. The demand for packaged beer and wine to go in the evening hours is adequately met by Retail Malt Beverage licensees.
- d. Two guilty verdicts have been issued against Applicant Scott Ritner in the Deschutes County Circuit Court on charges of furnishing alcohol to minors.

- e. License issuance would worsen the significant teenage drinking problem in John Day because of the Main-Stop Mini-Market's comparatively late operating hours and numerous teenage customers.
- f. The belief that Applicant Scott Ritner is not trustworthy or has not adequately demonstrated reform since the incident that resulted in two guilty verdicts against him for furnishing alcohol to minors.
- g. The Main-Stop Mini-Market is located at a relatively congested intersection. License issuance may lead to increased traffic and cause traffic problems.

14. The Commission has received a letter in support of the Applicants' application from Richard W. Johnston, Intermountain Title Company and President Elect, John Day Kiwanis Club.

15. The following persons testified in support of license issuance at the Applicants' August 17, 1982 hearing:

Ray Schneibel, Owner, Antique Cafe & Loft; Co-owner,
John Day Fun Center

William Robert Walker, Sr. Officer, John Day Police
Department

Michael Negus

Isabel Negus

Richard Johnston, Owner, Intermountain Title and Es-
crow; Co-owner, John Day Fun Center

Alfred Cotham, Partner, Strawberry Mountain Realty

Terry Lyons, Broker, The Real Estate Store

Lynn Prise, Manager, C.P. National Electric Company;
President, John Day Chamber of Commerce

Dwayne Balcom, Rancher

Dennis Dahl, Agent, The Real Estate Store; Rancher

Greg Jackson, Texaco Distributor

Leonard Trafton, next door neighbor of Scott Ritner

John Gardner, Gardner Enterprises, Inc. (Wholesale
Malt Beverage and Wine licensee)

Calvin Hill, former Texaco Distributor

Terry Ritner

Debbie Ritner

Scott Ritner

Marian Ritner

16. Witnesses who testified in support of license issuance cited the following reasons:

- a. Supporters believe the Applicants operate the Main-Stop Mini-Market in a businesslike manner. Supporters believe that the Main-Stop Mini-Market is well-supervised and under proper control.
- b. The Applicants' operating hours at the Main-Stop Mini-Market until 11:00 p.m. would be a convenience for the community. Some individuals do not care to purchase beer or wine in Retail Malt Beverage-licensed taverns late in the evening.
- c. The Applicants' late operating hours help draw persons to the downtown John Day business district.
- d. Supporters variously testified that Scott and Terry Ritner are honest, hard working, respectable, trustworthy, straight-forward, decent and honorable.
- e. Supporters believe that Applicant Scott Ritner would be particularly careful to avoid selling alcohol to minors given the circumstances that led to the two guilty verdicts against him for furnishing alcohol to minors.

17. The John Day Chamber of Commerce has voted to support the issuance of a Package Store license to the Applicants. The record does not show whether the Chamber members were aware of court verdicts against Applicant Scott Ritner for furnishing alcohol to minors at the time the Chamber members voted their support.

18. The John Day City Council considered the Applicants' application at its April 13, 1982 meeting. At that meeting, the Council voted five in support of license issuance, one against, and one abstaining. No objectors appeared at the Council's April 13, 1982 meeting.

19. The John Day City Council reconsidered the Ritners' PS license application at the Council's September 14, 1982 meeting. The Council discussed the Ritners' application at length. The Council considered the verdicts against Applicant Scott Ritner for furnishing alcoholic beverages to minors. There were no objectors at the September 14, 1982 meeting. At the September 14, 1982 meeting, the Council voted to reaffirm its April 13, 1982 recommendation that the PS license be granted. The vote was three in support of license issuance, none voting against, and three abstaining.

One of the Council members who abstained at the September 14, 1982 meeting explained that he did so due to religious beliefs and would do so on any license application. Another of the members who abstained stated he felt much as the member who abstained for religious beliefs. This member historically

votes no on all liquor license applications. The third member who abstained gave no reason for his vote. (Applicants' Exhibit 8.)

20. The nearest licensed outlets to the Main-Stop Mini-Market are as follows:

<u>OUTLET</u>	<u>TYPE OF LICENSE</u>	<u>DISTANCE AND DIRECTION FROM MAIN-STOP MINI-MARKET</u>
Corral Pastime	RMB	Across Street
Grub Steak Mining Company	DA	Across Street
Grizzly Bear Pizza	RMB	.05 miles west
John Day Sunset Inn	DA	0.25 miles west

21. The nearest PS outlets to the Main-Stop Mini-Market are approximately 1/2 to 3/4 miles distant.

22. The charges against Applicant Scott Ritner for furnishing alcohol to minors involved two cases of beer that Mr. Ritner purchased and left in the refrigerator at Ritner Brothers Texaco before he went home on June 13, 1981. Later on in the evening, after they were finished with work at the station, two of the Applicants' employees, Michael Waldron and Arthur Steelman, took some of the beer from the premises. Mr. Waldron was 16 years old and Mr. Steelman was 15 years old on June 13, 1981.

23. Michael Waldron and Hugh Cole, Jr. (the son of objector Hugh K. Cole, Jr.) joined up and were driving around together drinking on the evening of June 13, 1981. The two youths died as a result of a one car accident at about 3:00 a.m. on June 14, 1981 on Highway 395 south of John Day.

24. Objector Hugh Cole, Jr. objects to the Ritners' PS license application in part because of his belief that Scott Ritner's furnishing alcoholic beverages to minors Michael Waldron and Arthur Steelman on the evening of June 13, 1981 was a material contributing factor in the death of Mr. Cole's son on June 14, 1981.

25. The estate of Hugh Cole, Jr. is asserting a civil claim against Scott Ritner. A demand has been made. A lawsuit has not been filed.

26. Charges against Scott Ritner for criminally negligent homicide in connection with the furnishing of alcoholic beverages to Michael Waldron on June 13, 1981 were dismissed in the Deschutes County Circuit Court on August 18, 1982.

27. The Applicants customarily kept beer in their refrigerator at Ritner Brothers Texaco before the business was changed to the Main-Stop Mini-Market.

28. Samuel Palmer was an acquaintance of minors Michael Waldron and Arthur Steelman when the latter two were employed at Ritner Brothers Texaco prior to June 13, 1981. Mr. Palmer occasionally visited Mr. Waldron and Mr. Steelman at the station. Over a three-week period, Mr. Palmer observed two times on one day and one time a second day when Mr. Waldron and Mr. Steelman openly drank beer at the station when the Ritners were gone. Mr. Waldron and Mr. Steelman exhibited no apparent fear of the Ritners returning to the station and putting a stop to their beer drinking.

29. The Main-Stop Mini-Market's patrons are mostly adults during the morning. More young persons patronize the store during the afternoon and evening after school and sporting events. Young persons are frequently at the premises in the afternoon and evening.

30. Sometimes the friends of the Applicants' teenage employees have visited with the teenage employees during their working hours. At the date of their August 19, 1982 hearing, the Applicants employed one minor part-time, 16-year old Andy Hansen.

31. The John Day Fun Center is a game arcade located one block from the Main-Stop Mini-Market. The Fun Center has 14 video games, two pool tables, an air hockey game, a soccer game, and a juke box. The Fun Center is open from noon until 10:00 p.m. during weeknights and until midnight on Friday and Saturday nights. An average of eight to ten persons per hour visit the Fun Center. The Fun Center is primarily patronized by children and teenagers.

32. Teenage drinking of alcoholic beverages is widespread in Grant County. Much of the teenage drinking occurs after 9:00 p.m.

33. Aside from his convictions for furnishing alcohol to minors described above, Scott Ritner has not had any criminal convictions.

34. Scott Ritner volunteered 200 hours of his time for community service in a local drug and alcohol abuse education

program. Mr. Ritner volunteered for participation in the program in the summer of 1982, well before the November 18, 1982 sentence of the Deschutes County Circuit that included 200 hours of community service. In his volunteer program, Mr. Ritner will give educational talks to John Day area youths on drug and alcohol abuse. Mr. Ritner had completed 13 hours in this volunteer program as of January 21, 1983.

35. Applicant Terry Ritner has pledged to the Grant County District Attorney, the John Day Police Chief and other local officials that the Applicants will be extremely diligent in enforcing the Oregon Liquor Control Commission's rules and regulations if the Applicants are issued a Package Store license at the Main-Stop Mini-Market. Terry Ritner has pledged that the Applicants would make every effort to check youthful-appearing persons for proper identification and to avoid selling alcoholic beverages to adults buying for minors.

36. A number of the Applicants' customers have expressed an interest in buying beer and wine at the Main-Stop Mini-Market.

37. Hugh K. Cole, Jr. and Margaret Cole hosted one high school graduation party and observed another high school graduation party where alcoholic beverages were served to minors. At these parties, the car keys were taken from the minors and the minors spent the night at the site of the party to avoid drinking and driving. On another occasion, one of Cole's minor children served wine to other minors at the Cole's home without the Cole's knowledge.

DISCUSSION

The record does not show that an application in the alternative has been filed by Terry Ritner alone or by Terry Ritner with individuals other than his brother Scott Ritner.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission may refuse to issue or renew a license if it determines that public opinion weighs against the issuance of a license. Interested persons may express their support for or opposition to the issuance of a particular license by petition or letter timely received at the Commission offices, or by personal appearance and testimony at a Commission hearing, if any. Such public opinion will be evaluated in light of the reasons expressed and the extent to which the persons expressing it are likely to be affected by the issuance of the license. Greater weight will be given to opinion of persons residing, working or owning a business within a one-mile radius of the proposed premise. The number of persons expressing support or opposition will not, in and of itself, be controlling. OAR 845-05-035.

The main issues raised by supporters of and objectors to the Applicants' application concerned public demand, the effect of license issuance on the availability of alcohol to minors, and the character of Applicant Scott Ritner.

With respect to demand, the evidence established some individuals who prefer to buy beer and wine late in the evening at a store such as the Main-Stop Mini-Market rather than at a tavern. No PS outlet in Grant County is presently open past 9:00 p.m. The Applicants would sell beer and wine until 11:00 p.m. The Applicants would consequently serve a segment

of demand not being met in the community. Thus, public opinion in support of the application based on demand seems well founded.

Public opposition based on the local teenage drinking problem has some merit. The fact that the Applicants would be the only store open past 9:00 p.m. means that minors would have one more outlet and two more hours to try to obtain beer and wine. A number of minors patronize the Main-Stop Mini-Market to make convenience food purchases or to play the three video games. The John Day Fun Center, a game arcade one block away, also draws minors to the area.

The strongest concern of objectors and supporters appeared to be the character of Applicant Scott Ritner. Objectors pointed to the two guilty verdicts entered against Scott Ritner for furnishing alcohol to minors in June, 1981. The supporters are personally familiar with Scott Ritner. The supporters believe that Scott Ritner is of good character and should be licensed. Fourteen supporters were identified from the record versus nine opponents. Thus, public opinion is split on the issue of Scott Ritner's character.

In considering the various issues raised pro and con, public opinion is decidedly mixed. Public opinion then has not been shown to conclusively weigh either for or against the application under OAR 845-05-035.

2. The Commission may refuse to license any applicant if it has reasonable grounds to believe that the applicant has been convicted

of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony. ORS 471.295(4)(d).

The following criteria will weigh against issuing a license:

. . . .

(4) There is a final order of a court or administrative agency in a criminal or civil proceeding finding a failure to comply with the liquor laws of this or any other state by the applicant or by any officer, director, or owner of more than 10 percent of the voting stock or a corporate applicant, or any general partner, or any limited partner whose investment commitment is more than 10 percent of the total investment commitment of a limited partnership. OAR 845-05-030(4).

Applicant Scott Ritner has two convictions relevant to ORS 471.295(4)(d) and OAR 845-05-030(4). These are the convictions for furnishing alcoholic beverages to Michael Waldron and Arthur Steelman on June 13, 1981.

ORS 471.295(4)(d) and OAR 845-05-030(4) are not an absolute bar to license issuance. ORS 471.295(4)(d) provides that the Commission may refuse license issuance. OAR 845-05-030(4) provides that convictions under Oregon alcoholic liquor laws will weigh against license issuance.

The Commission may examine then whether good cause has been shown for license issuance in the face of the two convictions.

Evidence tending to show good cause for license issuance includes the 14 witnesses who testified in support of Scott

Ritner's good character, Scott Ritner's lack of any other convictions relevant under ORS 471.295(4)(d) and OAR 845-05-030(4), and the Applicants' vow to local officials and to the Commission to vigorously enforce the liquor laws under a PS license. Another factor weighing towards good cause is that Scott Ritner primarily works in the morning and outside on the gas pumps. Thus, Scott Ritner would not normally be behind the counter in the store in the evening when minors might be most likely to try to buy alcoholic beverages.

A primary goal of the Commission in applying ORS 471.295(4)(d) and OAR 845-05-030(4) should be to protect the health and safety of the public by refusing liquor licenses where there is sufficient question whether the applicant will, in all cases without exception, follow the liquor laws. ORS 471.030(1)(c).

Given all the circumstances, sufficient time appears to have passed since the incidents leading to Scott Ritner's convictions to allow the Commission to find good cause for license issuance. ORS 471.295(4)(d) and OAR 845-05-030(4).

ULTIMATE CONCLUSIONS OF LAW

The application by Scott and Terry Ritner for a Package Store license at the Main-Stop Mini-Market is demanded by the public interest and convenience and the application should be granted under ORS 471.295(4)(d) and OAR 845-05-030(4) because good cause has been shown to overcome Applicant Scott Ritner's two 1982 convictions for furnishing alcohol to minors as noted.

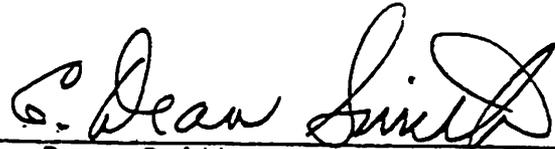
in Ultimate Findings of Fact and Conclusions of Law No. 2 above. ORS 471.295(1).

FINAL ORDER

It is hereby ordered that the application for a Package Store (PS) license by Scott and Terry Ritner at the Main-Stop Mini-Market, 100 E. Main Street, John Day, Oregon, be GRANTED.

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

Dated this 28th day of March, 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.