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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:	)	
	)	FINAL
Percy G. Mollgaard	)	FINDINGS OF FACT,
EVE'S WINE SHOPPE,	)	CONCLUSIONS OF LAW,
OLCC AGENCY 1017	)	AND ORDER
3320 Commercial Street SE	)	
Salem, OR 97302	)	
- - - - -	)	
Marion County	)	

A hearing in the above matter was held on the 22nd day of March, 1983, in Salem, Oregon, before Hearings Examiner Jill Thompson. The Applicant appeared in person and was not represented by legal counsel. The Commission was 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. Applicant is the agent for OLCC AGENCY 1017, which is an exclusive agency. Applicant's contract with the OLCC expires November 1, 1989.
2. Applicant applied in October, 1981 for a Package Store (PS) license, to be utilized on the agency premises.
3. On December 9, 1982, Commission staff recommended the application be denied based on OAR 845-05-020(6), which prohibits granting PS licenses to exclusive agencies.

4. The agency's 1982 gross sales were approximately \$2,000,000.

5. Applicant's wife currently holds a PS license which she operates at EVE'S WINE SHOPPE immediately adjacent to Applicant's agency, separated from it by only a party wall. Applicant's request is that he be co-licensed with his wife on the existing PS license; if Applicant is granted a PS license his wife intends to withdraw as a licensee.

6. If the license is granted the Applicant will remove the wall separating the wine store from the agency.

#### DISCUSSION

The Applicant argued that the Commission's rule prohibiting exclusive retail sales agents from being granted PS licenses discriminates unfairly against exclusive agents. Challenges to the validity of agency rules are not properly raised in a contested case proceeding. The Commission must presume the Commission's rules are valid in a contested case hearing, which is a procedure whereby controverted facts are heard. The Commission also presumes Applicant's arguments were raised and deliberated prior to adoption of the rule. Arguments attacking the policy or validity of a rule do not constitute controverted facts. Other channels exist for obtaining agency or judicial review of the rule.

#### ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Criteria precluding issuing a license. The following criteria shall preclude issuing a license:

. . .

(6) The applicant is a retail sales agent of the Commission with a contract for an exclusive agency, or seeks to exercise the privileges of the license in the premises of an exclusive sales agent. OAR 845-05-020.

The Applicant is an exclusive retail sales agent of the OLCC, and seeks to utilize a PS license on the agency premises.

2. (1) A retail sales agent with a contract for an exclusive agency is prohibited from selling, giving away, or otherwise making available in an agency store any item which is not designated in this rule as "related" to the sale of alcoholic liquors.

(2) Related items include the following:

(a) Ice and mixers;

(b) Foods such as olives, onions, and cherries which are used in drinks;

(c) Bartender's guides, shakers, strainers, mixing spoons, swizzle sticks, and similar paraphernalia used in the preparation of drinks;

(d) Glassware, coasters, straws, napkins, and other such items associated with the drinking of alcoholic liquors;

(e) Items such as chewing gum, breath mints, and tobacco products.

(3) A retail sales agent with a contract for an exclusive agency shall not conduct any wholesale business, nor any other business not authorized by statute or by rule of the Commission, out of the agency store. OAR 845-15-045.

Sales of beer and wine permitted by a PS license are not "related items" allowed to be sold by exclusive retail sales agents.

ULTIMATE CONCLUSIONS OF LAW

Mr. Mollgaard's application is precluded by the standards contained in OAR 845-05-020 and 845-15-045 as he is an exclusive retail sales agent of the OLCC, seeking to sell items not related to the sale of alcoholic liquor.

FINAL ORDER

It is hereby ordered that the application for a Package Store (PS) license by Percy G. Mollgaard at Eve's Wine Shoppe and OLCC Agency 1017, 3320 Commercial Street SE, Salem, Oregon, be DENIED.

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

Dated this 23rd day of May, 1983.



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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.