

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Proposed Suspension of the)	
Retail Malt Beverage)	
License held by:)	FINAL
)	FINDINGS OF FACT,
James H. Funk)	CONCLUSIONS OF LAW,
CITY LIMITS SALOON)	AND ORDER
2045 S. Pacific Highway W.)	
McMinnville, Oregon 97128)	
- - - - -)	
Yamhill County)	

A hearing in the above matter was held on the 31st day of May, 1984, in McMinnville, Oregon, before Hearings Examiner Allen R. Scott. The Licensee appeared in person and was not represented by legal counsel. The Commission was not represented by legal counsel.

The Hearings Examiner, having considered the record of the hearing, the applicable law and regulations and being fully advised, issued a Proposed Order dated August 29, 1984.

No Exceptions were filed to the Proposed Order within the fifteen (15) day period specified in OAR 845-03-050.

RECORD OF PREVIOUS VIOLATIONS

NONE.

Now, therefore, the Commission hereby adopts the Proposed Order of the Hearings Examiner as the Final Order of the Commission, and enters the following:

FINDINGS OF FACT

1. Licensee has held a Retail Malt Beverage license at the CITY LIMITS SALOON at all times relevant to these Findings of Fact.

2. Licensee has been charged with violation of ORS 471.360(1)(b) (employee without valid service permit on January 27, 1984), and ORS 471.375(1) (failure to immediately transmit application for service permit on January 25, 1984).

3. On January 27, 1984, at approximately 10:50 p.m., Kenneth Holdredge was on duty as a bartender at the City Limits Saloon. Mr. Holdredge took orders for drinks and served beer and wine to be consumed in the premises.

4. Mr. Holdredge did not have a service permit at this time nor had he filed an application for a service permit.

5. Mr. Holdredge worked at the premises on January 20, January 21, and January 27, 1984.

6. Craig Stegman was employed as a manager at the City Limits Saloon on January 27, 1984. He took orders for drinks and served beer for consumption on the premises on this date.

7. Mr. Stegman had completed an application for a service permit on January 25, 1984, but had not mailed it to the Commission.

8. Mr. Stegman had been working as a manager at the premises since October, 1983.

9. Licensee James Funk held licenses at several Gaffers Pubs for several years and had a good record of compliance.

DISCUSSION

Manager Craig Stegman claimed at the hearing that he had sent in an application for a service permit in October, 1983, when he began working at the City Limits Saloon. He testified that the application had been returned two or three months

later because it had not been properly completed. He claimed further that he had then resubmitted it around the first of 1984, but had never received a service permit. He then, on January 25, 1984, completed another application but failed to send it in.

Evidence at the hearing indicates that Commission employes checked Commission files and found no record of Mr. Stegman's claimed earlier application. In any event, he admitted that he had not mailed the January 25, 1984, application to the Commission as of January 27, 1984, the date that the OLCC inspectors had observed him serving beer on the premises.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. No licensee of the Commission shall permit any person to mix, sell or serve any alcoholic liquor for consumption on licensed premises unless such person has a valid service permit issued by the Commission. ORS 471.360(1)(b).

The evidence establishes that Licensee permitted Kenneth Holdredge to sell and serve alcoholic liquor for consumption in the City Limits Saloon on January 27, 1984, although Mr. Holdredge did not have a service permit issued by the Commission at that time and although he had not sent an application for a service permit to the Commission as of this time.

Licensee stated in defense that many new employees are tried out as bartenders but do not ultimately prove to be suitable as bartenders. By requiring that all people who serve or sell alcoholic beverages immediately apply for a service permit, the Commission, according to Licensee, is causing unsuitable people to get service permits.

As the law is clear in requiring those who serve alcoholic beverages to have service permits, the Commission does not regard this defense as valid.

The Commission concludes that the Licensee has violated this provision.

2. Any person who has not had a permit refused or revoked or whose permit is not under suspension can mix, sell or serve alcoholic liquor for consumption on the licensed premises if the person prepares in duplicate an application for a service permit prior to mixing, selling or serving any alcoholic liquor for consumption on the licensed premises. The licensee shall endorse and immediately transmit the application to the Commission with the fee required by subsection (2) of this section. ORS 471.375(1).

The evidence establishes that Craig R. Stegman sold and served alcoholic liquor for consumption on the licensed premises of the City Limits Saloon on January 27, 1984, and that a copy of his application for a service permit, completed on January 25, 1984, had not been transmitted to the Commission as of January 27, 1984.

The Commission concludes that the Licensee has violated this provision.

ULTIMATE CONCLUSIONS OF LAW

The Commission may cancel or suspend any license, or impose a monetary penalty in lieu of or in addition to suspension as provided by ORS 471.322, if it finds or has reasonable ground to believe that the licensee has violated any provision of this chapter or any rule of the Commission adopted pursuant thereto. ORS 471.315(1)(a).

The Commission concludes the Licensee has violated ORS 471.360(1)(b) and ORS 471.375(1).

FINAL ORDER

It is hereby proposed that the Retail Malt Beverage license held by James H. Funk in the trade name City Limits Saloon; 2045 South Pacific Highway W.; McMinnville, Oregon 97128, be SUSPENDED for seven (7) days or that Licensee pay a fine of \$455 in lieu of the suspension.

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

If you choose to pay the fine it must be paid within ten (10) days of the date of this Order, otherwise the suspension must be served.

Dated this 28th day of September, 1984.



Allen R. Scott
Hearings Examiner
Hearings Division



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.