

2. Licensees have been charged with violation of OAR 845-06-010(4) (permitted a person to obtain an interest in the business without prior approval), and OAR 845-06-105(1) (premises closed since September 1, 1983, without notice to the Commission within two weeks).

3. In April 1983, Licensees agreed to sell the Crane Supply and Tavern business to James L. and Melveta Seely.

4. On April 11, 1983, pursuant to a contract, the Seelys took over the tavern and store. They operated it throughout the summer of 1983, until September 10, 1983. During this period they exercised full control over the business and had the right to retain all profits.

5. Prior to August 29, 1983, neither Licensees nor the Seelys made application to the Commission for a Change of Ownership.

6. On August 29, 1983, the Seelys contacted an OLCC inspector in Baker. He informed them that they could not continue to sell beer and wine under the license issued to Licensees.

7. The Seelys stopped selling beer and wine as of August 30, 1983.

8. On Approximately September 10, 1983, the Seelys vacated the premises.

9. Licensees were aware that the Seelys had closed the premises. They were working in a town some distance away, however, and did not reopen the store.

10. On September 21, 1983, an OLCC liquor control officer told Licensees that they were required to notify the OLCC if the premises was to remain closed.

11. Licensees did not notify the Commission in writing of the closure until December, 1983.

12. Licensees obtained their license at this premises in 1979 and had operated without violation prior to this matter.

13. The store remained closed as of the date of the hearing.

DISCUSSION

1. The evidence indicates that Licensees conveyed the real property involved in this matter to Catherine Skinner, mother of Licensee Linda McHargue, in 1979. The Commission was not notified of that transaction. However, there is no evidence that Mrs. Skinner actually obtained an interest in the business because of that real estate transaction. In any event, Licensees were not charged with any violation relating to that transaction.

2. Following the hearing in this matter, the Hearings Division received a letter from a person who did not appear at the hearing. This letter was apparently solicited by Melveta Seely, one of the people who had operated the store without notification to the Commission in the summer of 1983. In accordance with ORS 183.145(4) (relating to ex parte communications), the Commission sent a copy of this letter to Licensees and offered them the opportunity to rebut this communication. Licensees sent a written rebuttal.

As there is no way to judge the credibility of the writer of this letter or the reliability of the statements made in it, the Commission does not regard the letter as being evidence

worthy of consideration and thus disregards it and Licensee's rebuttal in preparing the proposed order.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. During the term of the license, no person shall obtain an interest in the business covered by the license without prior approval of the Commission. This applies to any significant interest in the business whether or not such interest is specifically described in other sections of this rule. OAR 845-06-010(6).

This was the wording of the regulation at the time of the events involved in this matter. The regulation was amended effective October 1, 1983. The substance of the subsection quoted above now is contained in subsection (4).

The evidence establishes that between April 11, 1983, and September 10, 1983, Mr. and Mrs. Seely were entitled to receive any profits from the business. Under subsection (3) of this rule, the right to receive profits is "an interest in the licensed business". The evidence further establishes that the Seelys' interest in the business was not approved by the Commission. Licensees were thus in violation of subsection (6) of the rule.

Licensees claim that sometime after the Seelys took over the business, Supervisor Robert Koch of the OLCC informed Licensees and the Seelys that the Seelys could operate "under the license" of Licensees if Licensees and the Seelys "pretended" that the Seelys were merely employees of Licensees. Supervisor Koch testified that he did not recall such a conversation and that in no event would he have advised Licensees that they could avoid the effect of the rule through a subterfuge. The

Commission believes Mr. Koch's testimony and concludes that this conversation did not take place, at least not as Licensees and the Seelys state.

The Commission's "Penalty Schedule" (OAR 845-06-200), lists "cancellation" as the penalty for failure to "notify prior to complete change of ownership." The Commission concludes that Licensees are guilty of such failure and that cancellation is thus the appropriate penalty.

2. When a licensed premises is closed for more than two weeks, licensee shall notify the Commission in writing of the closure, the reason for the closure, and the estimated date of reopening. The notice shall be given within two weeks after the closure begins. OAR 845-06-015(1).

The evidence establishes that the licensed premises was closed approximately September 10, 1983, and has remained closed since that time. Licensees did not notify the Commission in writing of the closure, the reasons, and the estimated date of reopening until December, 1983.

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).

Commission concludes the Licensees violated OAR 845-06-010(6) (failure to notify the Commission of Change of Ownership) and OAR 845-06-105(1) (failure to notify the Commission of closure).

FINAL ORDER

It is hereby ordered that the Retail Malt Beverage (RMB) license held by Joseph and Linda McHargue in the trade name CRANE SUPPLY AND TAVERN, Star Route Highway 78, Burns, Oregon 97720, be CANCELLED.

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

Dated this 25th day of June, 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.