



liquor or controlled substances) and ORS 471.295(4)(g) (poor record of compliance with alcoholic liquor laws and regulations).

3. Applicant has been convicted in State courts of the following statutory violations:

1972	Criminal drug promotion
1973	Public intoxication
1976	DUIL
1976	DUIL
1981	Possession of marijuana

4. While licensed by the OLCC Applicant was found to have committed the following violations:

1976	Minor entering/remaining	\$275 Fine
1980	Consumption by minor	\$200 Fine
1980	Late renewal	Letter of Warning
1980	NSF Check	Letter of Warning
1981	NSF Check	\$325 Fine
1982	Unauthorized liquor brought upon premises	\$325 Fine

5. Following his 1976 DUIL convictions, Applicant underwent medical treatment for alcohol abuse.

6. In 1978 Applicant was one of a group of individuals applying to be added as partners to an existing license. The City of Portland submitted a copy of its license investigation report on the application to the OLCC License Division. The report contained information that Applicant had been convicted of DUIL and traffic offenses.

7. Before the City's report reached the Commission the application had been returned to Applicant because it was incomplete. There is no evidence it was ever re-submitted by Applicant.

## DISCUSSION

Applicant argued that OAR 845-05-025(b), which is one of the bases of denial by the Commission, is an unauthorized exercise of regulatory power. The rule reads as follows:

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

. . .

(6) Court or medical records indicate that the applicant has a record of abuse of alcoholic liquor or controlled substances.

Applicant contends that this rule was adopted to implement ORS 471.295(4)(a), which authorizes the Commission to refuse a license if an applicant "[i]s in the habit of using alcoholic beverages, habit-forming drugs or controlled substances to excess." He argues that the rule, which bases denial on "a record" of alcohol or drug use, exceeds the legislative grant of authority in the statute, which requires a finding that an applicant has a present use, and is therefore ultra vires and unenforceable.

The Commission argued that the rule is meant to implement ORS 471.295(1), not 471.295(4)(a). ORS 471.295(1) reads as follows:

The Commission may refuse to license any applicant if it has reasonable ground to believe any of the following to be true:

(1) That there are sufficient licensed premises in the locality set out in the application, or that the granting of a license in the locality set out in the application is not demanded by public interest or convenience.

The above statute on its face presents a refusal criterion related solely to premises location; it has no bearing on applicants' personal habits or histories.

The Commission also argued that ORS 471.295(4)(a) does not preempt the Commission's authority to adopt OAR 845-05-025(6), and cited for this proposition Taylor's Coffee Shop, Inc. v. OLCC, 28 Or App. 701 (1977). The facts there were that the Commission had a statute (ORS 472.315(1)(d)) which authorized license cancellation or suspension when a licensee "[m]aintains a . . . insanitary establishment;" its then-rule (OAR 845-10-075(3)) prohibited a licensee to "permit or suffer any insanitary conditions" (emphasis added). The court had in previous cases defined "maintaining" to require more than one instance of the proscribed behavior. However, the court in Taylor's Coffee Shop, supra, approved a license suspension for a single occurrence, based on 845-10-075(3), stating that the OLCC was not precluded from adopting a rule which varied from the standard contained in the statute the rule is meant to implement. The court also cited ORS 471.030, which requires liberal construction of the Liquor Control Act, and noted that the

OLCC was not prohibited by statute from "filling in the interstices" of the Liquor Control Act. Because the Commission concludes below that the criterion in 845-05-025(6) is outweighed, it is unnecessary to determine whether Taylor's Coffee Shop is apposite, or to determine the impact on Taylor's Coffee Shop of the opinion in Springfield Education Assn. v. Springfield School District, 290 Or 217 (1979).

Applicant also argued that the Commission had been aware since 1978 that he had been convicted of alcohol-related offenses and had continued to renew his license annually, and that therefore it should be estopped from using those grounds to deny the application. The Commission argues that there is no evidence that anyone in a decision-making position was ever aware of applicant's convictions until recently, when Applicant requested a change to corporate status and submitted complete license application forms which disclosed his background. The Commission agrees that knowledge by Commission staff decision-makers, or staff who had a duty to communicate such knowledge to others, was not established by Applicant. Thus an estopped theory is inapposite in this case.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

. . . .  
(6) Court or medical records indicate that the applicant has a record of abuse of alcoholic liquor or controlled substances. OAR 845-05-025(6).

Between 1973 and 1976 Applicant was convicted of three alcohol-related offenses. In 1972 and 1981 he was convicted of offenses involving controlled substances. However, the remoteness of time of these offenses, and the fact that Applicant was successfully treated for alcohol abuse, indicates that Applicant has overcome his difficulties with alcohol and controlled substances. The Commission concludes that good cause exists which outweighs this criterion.

2. The Commission may refuse to license any applicant if it has reasonable ground to believe any of the following to be true:

. . . .

(4) that the applicant:

. . . .

(g) did not have a good record of compliance with the alcoholic liquor laws of this state and the rules of the Commission when previously licensed. ORS 471.295(4)(g).

In view of the above disposition of Applicant's convictions, the Commission concludes that the particular violations of OLCC rules which occurred over 12 years do not constitute a poor record of compliance.

#### ULTIMATE CONCLUSIONS OF LAW

The Commission concludes there are no grounds justifying non-renewal of the license.

FINAL ORDER

It is hereby ordered that the application for renewal of a Retail Malt Beverage (RMB) license by Robert D. Hoblit at Family Zoo Tavern, 820 SW Oak Street, Portland, Oregon, be GRANTED upon payment of appropriate license fees to the Commission.

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

Dated this 27th day of July, 1984.



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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.