BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the Proposed Suspension of the Retail Malt Beverage (RMB) License held by: Heck and Beckley Investment, Inc. HUNT PUB TAVERN 1027 SW Morrison Portland, Oregon 97205 - - - - - - - - - - - - - - - Multnomah County	)	FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

A hearing in the above matter was held on the 2nd day of May, 1984, in Portland, Oregon, before Hearings Examiner Douglas Crumme'. The Licensee appeared in person and was represented by Alan Coogan, Attorney at Law, Portland, Oregon. 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 June 5, 1984.

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

RECORD OF VIOLATIONS
WITHIN PREVIOUS TWO YEARS

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. Heck & Beckley Investment, Inc. held a Retail Malt Beverage (RMB) license at the Hunt Pub Tavern, 1027 SW

Morrison, Portland, Oregon at all dates relevant to the findings of fact below.

2. The Licensee violated the provisions listed below, as evidenced by the Licensee's admission to the occurrence of the charges issued against the Licensee by the Commission's Enforcement Division. The charges were as follows:

> Violation of ORS 471.315(1)(g) in that on or about February 9, 1984 at approximately 9:30 p.m., your employee who was identified as Mark Todd Lohr, for whose acts you are held responsible pursuant to OAR Chapter 845-06-025, knowingly sold alcoholic liquor to a person under the age of 21 years.
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> Violation of OAR Chapter 845-06-035(2)(a) in that, on or about the aforesaid date and time your employee permitted persons under the age of 21 years to consume alcoholic liquor upon your licensed premises.
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> Violation of OAR Chapter 845-06-035(2)(b) in that, on or about the aforesaid date and time your employee permitted persons under the age of 21 years to enter and remain upon your licensed premises.
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> Violation of ORS 471.130(1) in that on or about the aforesaid date and time, before selling or serving alcoholic liquor to a person about whom there was reasonable doubt of such person being 21 years of age, your employee failed to check identification and failed to take a S-246 card.
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> (Commission's Exhibit A.)

The Licensee appeared for the sole purpose of offering evidence in mitigation of the charges. The Findings concerning the evidence presented on mitigation are set forth below.

3. The Licensee has not been found in violation of the Commission's rules and regulations at the Hunt Pub Tavern during the last 3-1/2 years.

4. The Commission's Enforcement Division contacted Darrel Heck on August 23, 1983, and issued verbal instructions concerning a complaint received of minors being served at the Hunt Pub Tavern. (Commission's Exhibit B.)

5. The Commission's Enforcement Division contacted the Licensee on December 9, 1983, and issued verbal instructions regarding minors and drinking on duty following the receipt of four complaints from anonymous males during the previous several days.

6. The Licensee let go two bartenders and a third quit following an incident in late November, 1983. Shortly after that, the Hunt Pub Tavern began receiving harrassing and threatening phone calls. One of the former bartenders was involved in the calls. One of the former bartenders was also involved in at least one of the complaints made to the Commission in early December, 1983.

7. The Licensee had relinquished the Hunt Pub Tavern back to the former owner as of March 31, 1984. The Licensee no longer operates or has an interest in the business.

8. The Licensee's employee involved in the charges of February 9, 1984, Mark Lohr, left employment at the Hunt Pub Tavern by mutual agreement later in February, 1984.

9. The Licensee had conversations about the charges with representatives of the Commission's Staff prior to the hearing. The Licensee understood from these conversations that there was a possibility of a reduced penalty because of the

facts involved. However, the record does not show that the Enforcement Staff at any time made a commitment to the Licensee that the Licensee would receive a lesser penalty than that prescribed under the Commission's penalty scheduled rule, OAR 845-06-200.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Licensee admitted to the violations of ORS 471.315(1)(g) (knowing sale to minor), OAR 845-06-035(2)(a) (permitted minors to consume on licensed premises), OAR 845-06-035(2)(b) (permitted minors to enter or remain on a portion of licensed premises posted off-limits to minors), and ORS 471.130(1) (failure to check identification or take a Statement of Age card). Based upon this admission, the Commission concludes the violations occurred.

ULTIMATE CONCLUSIONS OF LAW

> When there has been a violation of ORS Chapter 471 or 472, or any rule adopted thereunder, upon any premises licensed by the Commission, the Commission may revoke or suspend either the service permit of the employee who violated the law or rule or the license of the licensee upon whose premises the violation occurred, or both the permit and the license. ORS 471.385(3).

1. The Commission may cancel or suspend the Licensee's license or impose a fine in lieu thereof for the violations noted in the Conclusions of Law above.

The record does not indicate mitigation of the penalty in this case. The one possible argument in favor of mitigation is that the Licensee has a good record of compliance with Commission's rules and regulations during the 3-1/2 years prior to

the instant matter. Balanced against this, however, the Licensee was warned by the Commission concerning violations involving minors on August 23, 1983 and December 9, 1983. Although the complaints that led to the December 9, 1983 warnings may have been false reports made by former employees seeking revenge, the instructions that the Enforcement Division gave the Licensee on that date should have put the Licensee on notice concerning the rules involving minors. The Commission notes that the penalty proposed by the Enforcement Staff, a seven-day suspension or $455 fine, is consistent with the penalty for a first violation of the charges under the Commission's penalty schedule rule, OAR 845-06-200. If the Licensee had had other violations within the two years previous to February 9, 1984, the penalty schedule rule would provide for a much higher penalty than that proposed by the staff in this case. Thus, the Licensees good prior good record has already been taken into account in the penalty proposed by the Enforcement Division. No other convincing ground for mitigation was shown.

FINAL ORDER

It is hereby ordered that the Licensee, formerly doing business as the Hunt Pub Tavern, 1027 SW Morrison, Portland, Oregon, be SUSPENDED for seven (7) days or that a fine of $455 be paid in lieu of said 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 25th day of June, 1984.

Douglas Crumme'
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.