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BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Proposed Suspension of the	)	
Package Store (PS)	)	
License held by:	)	FINAL
	)	FINDINGS OF FACT,
Robert C. and Dolores M. Wester	)	CONCLUSIONS OF LAW,
KWIK GAS AND MART	)	AND ORDER
1015 Pacific Avenue	)	
Tillamook, Oregon 97141	)	
-----	)	
Tillamook County	)	

A hearing in the above matter was held on the 11th day of April, 1984, in Tillamook, Oregon, before Hearings Examiner Jill Thompson. The Licensees appeared in person and were 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 July 19, 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. At all times relevant to the facts herein, Robert C. & Dolores M. Wester held a Package Store (PS) license at KWIK GAS AND MART, 1015 Pacific Avenue, Tillamook, Oregon.

2. Licensees have been charged by the Commission with violation of ORS 471.315(1)(g) (sale to a minor) and 471.130(1) (failure to check ID or take statement of age).

3. On February 17, 1984, at about 7:25 p.m., Licensees' clerk sold a half-case of beer to Richard Jenks.

4. At the time of the sale, Jenks was 18 years old; his date of birth is November 15, 1965. At the hearing of this matter, Jenks appeared to be 19 or 20 years old.

5. Licensees' clerk did not request identification from Jenks. Instead, she asked him, "You are 21, aren't you?". Jenks responded that his date of birth was November 15, 1962 (which would have made him 21), and the clerk sold him the beer.

6. Inspector Hutton viewed the transaction. He cited Jenks with being a minor in possession and the clerk with sale to a minor; each either pled or was found guilty at their Justice Court hearings.

7. Neither Licensee was on the premises.

8. The clerk who sold the beer to Jenks had recently been told that because of a glaucoma condition she would eventually lose her sight. She was 63 years old at the time of the sale. She resigned her employment with the Licensees following issuance of the citation and notice of violation. She had worked as a clerk for Licensees for three years, and prior to this sale had been extremely vigilant about requiring proper ID.

9. Licensees require each of their employees to read an OLCC publication containing statutes and rules pertaining to Licensees. Hand-printed on the front of this publication are

the statements "Please read immediately," and "Accept only Oreg. Driver License with picture for I.D." Attached to the booklet is a sheet of paper carrying instructions to read the booklet and initial the paper. Due to the age and previous handling of the publication, it is obvious that the statements quoted above were not written immediately following the notice of violation. A year ago Licensees fired an employee whom they discovered had sold an alcoholic beverage to a minor.

#### DISCUSSION

Licensees did not contest that the violations had occurred. They are anxious to conform to OLCC statutes and rules, and feel they make every effort they can to communicate their concern to their employees. Nevertheless, they feel the proposed penalty (seven (7) days/\$455) is too high for their first violation in the five years they've been licensed, particularly considering that their employee's behavior was uncharacteristic due to her medical condition.

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

1. The Commission may cancel or suspend any license if it finds or has a reasonable ground to believe that the licensee has knowingly sold alcoholic liquor to persons under the age of 21 years. ORS 471.315(1)(g). The requirement of "knowledge" is satisfied where there is a reasonable ground to believe that the seller knew the purchaser of alcoholic liquor was under the age of 21 years. Plaid Pantries, Inc. v. OLCC, 16 Or. App. 199, 203 (1974).

Licensees' employee sold beer, an alcoholic liquor, to Richard Jenks, a minor. Jenks appears to be less than 21 years

of age, which is reasonable ground for the clerk to have believed he was under 21. Additionally, she inquired as to his age, which suggests that she doubted whether he was an adult.

2. All licensees and permittees of the commission, before selling or serving alcoholic liquor to any person about whom there is any reasonable doubt of the person's having reached 21 years of age, shall require such person to produce the person's motor vehicle operator's license or if the license does not bear a photograph of the operator, then an identification card issued to the person under ORS 482.900. However, if the person has no motor vehicle operator's license or an identification card, the permittee or licensee shall require such person to make a written statement of age and furnish evidence of the person's true age and identity. ORS 471.130(1).

Licensees' clerk sold alcoholic liquor to a minor, about whose majority there was reasonable doubt, without requiring proper identification.

#### ULTIMATE CONCLUSIONS OF LAW

Licensees' employee violated ORS 471.315(1)(g) (sale to a minor) and ORS 471.130(1) (failure to require ID). The circumstances noted in Findings of Fact 8 and 9 provide a basis for some, but not substantial, mitigation. Although Licensees' commitment to operating above the law is commendable, they should have taken steps to ensure that their employees' personal concerns did not affect their performance.

FINAL ORDER

It is hereby ordered that the Package Store (PS) license held by Robert C. & Dolores M. Wester at Kwik Gas and Mart, 1015 Pacific Avenue, Tillamook, Oregon, be SUSPENDED for five (5) days or that Licensees pay a \$325 fine in lieu of suspension.

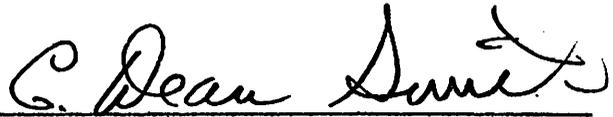
It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

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 8th day of August, 1984.



Jill Thompson  
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.