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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Dispenser Class A (DA))	
License by:)	FINAL
)	FINDINGS OF FACT,
Food Management Control, Inc.)	CONCLUSIONS OF LAW,
MT. HOOD COMMUNITY COLLEGE)	AND ORDER
26000 SE Stark Street)	
Gresham, Oregon 97030)	
- - - - -)	
Multnomah County)	

A hearing in the above matter was held on the 9th day of January, 1984, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was not represented by legal counsel. The Commission was not represented by legal counsel.

On April 23, 1984 the Commission considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and applicable statutes and regulations. Pursuant to this review, the Commission enters the following:

FINDINGS OF FACT

1. Applicant seeks a Dispenser Class A (DA) license in the trade name MT. HOOD COMMUNITY COLLEGE.

2. The Commission's staff has recommended that the license be refused based on OAR 845-05-030(1) (sufficient licensed premises in the locality), OAR 845-05-020(3), 845-08-020 (open less than five days per week), 845-05-040(1),

845-05-040(3)(f) (lesser sales and services), ORS 472.110(4) (quota).

3. Applicant provides food service to Mt. Hood Community College on a contract basis.

4. Applicant seeks the license for use in serving banquets and meetings. The license would be used in dining areas and other rooms in various buildings on the campus. The license is not sought for use in the general dining service provided by Applicant. Applicant will not have a bar or lounge.

5. Applicant predicts that the license would be used approximately two or three times a month initially, although frequency of use might increase in the future.

6. Applicant's intention is to serve primarily groups whose meetings or gatherings are too large to be accommodated at any of the existing DA outlets in Gresham, none of which seats more than approximately 100 people. Many of these groups now go to the Portland Airport or to downtown Portland for their gatherings.

7. In the past year or so, approximately six groups have obtained Special liquor licenses of some sort for meetings or other gatherings held at the College. Among the groups involved have been the Gresham Chamber of Commerce, the Gresham Rotary, the Gresham Soroptimists, Gresham School District, and the Parkrose Chamber of Commerce. In addition, the Mt. Hood

Jazz Festival was held in 1982 and 1983 at Mt. Hood Community College, operating under a Special license.

8. If the DA license were granted, service of alcoholic beverages would occur only with the approval of the College Board. The Board has tended to approve the use of liquor in the past only for non-profit, service groups.

9. The Mt. Hood Community College Board supports the application. The Board's support is in part the result of the fact that groups wishing to provide alcoholic liquor at functions on the college campus have been unhappy about having to obtain a Special license.

10. Applicant provides catered breakfasts, lunches and dinners. The breakfast and lunch menus contain traditional food. The dinner menu also contains basically typical "American" food, with both "sit down" and buffet dinners provided.

11. Applicant's food sales at the cafeterias on campus average about \$27,000 per month. Monthly sales during the main school year are higher, however. Applicant provided no estimate of the anticipated sales at the various functions at which the DA license would be used.

12. Multnomah County has a population of approximately 564,500. It presently has 379 DA and DB licenses in operation.

13. The City of Gresham, with a population of 34,375, has 11 DA and DB licenses in operation.

14. The Commission has approximately 60 DA licenses available for issuance throughout the state.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The existence of sufficient licensed premises in the locality set out in an application shall weigh against granting the application. For purposes of this section, the applicant's community will be a 10-mile radius for dispenser licenses and a two-mile radius for other licenses, unless the applicant establishes that a substantial portion of the patronage of the premises is or would be from a larger or smaller area. OAR 845-05-030(1).

No evidence was offered as to the number of premises within 10 miles of Applicant's premises. There is thus no factual basis for concluding that this criterion provides a reason for denying the application. Another regulation, OAR 845-05-040(2)(c), states that the existence of more than one Dispenser outlet per 2,000 population in the community is prima facie evidence that the community is "adequately served." However, as that rule is a different rule from the one cited above and as it is not clear that "adequate service" is the same concept as "sufficient licensed premises," the relevance of OAR 845-05-040(2)(c) is questionable. In any event, the evidence indicates that the City of Gresham has substantially fewer DA and DB licenses than one per 2,000 population. Furthermore, Applicant's intended use of this license is so different from the normal use that the general question of "sufficiency" of licensed premises seems irrelevant. Applicant has also shown

that the existing premises in the area generally are not able to house the kind of event that applicant seeks to host.

The Commission concludes that this criterion is not a basis for denying the license.

2. The following criterion shall preclude issuing a license:

The applicant seeks a Dispenser Class A or Class C license and will not be open to the general public as required by ORS 472.010(3) and to the extent required by rules of the Commission. OAR 845-05-020(3)

Premises licensed with a Dispenser Class A or Dispenser Class C license shall be open for business serving the general public a minimum of five days per week, during the normal hours the business is open, unless excused from the requirement by the Commission. OAR 845-08-020.

Applicant's operation will not have any definite hours of operation. It will be open only when serving a particular group at a meeting, banquet or other gathering which has received the approval of the College Board. It is reasonable to conclude, therefore, that the premises will not be open to the "general public" at any time. In any event, the license will not be in operation five days a week on a regular basis. Applicant's proposed operation thus is in conflict with the quoted rules.

3. Unfavorable consideration may be given to an applicant if the applicant's premises will provide lesser services, facilities and economic benefit to the area or to the general public, as indicated by actual or reasonably projected number of patrons

served, seating capacity, banquet facilities, hours of operation, number of employees, extent of investment in facilities, amenities, or other such characteristics. Gross sales figures may be used as a basis for determining the number of patrons served. OAR 845-05-040(3)(f).

Applicant provided no estimate of food or liquor sales at the functions for which the license is sought. However, given the fact that the functions involved may occur only two or three times a month, it must be inferred that average monthly sales will be substantially below the average sales in the county and city. Furthermore, the hours of operation will be very limited in comparison with most DA outlets. The Commission therefore concludes that Applicant will provide lesser services than do existing premises and that this criterion provides a basis for denying the application.

4. The total number of DA licenses issued shall not exceed one for each 2,000 population. ORS 472.110(4).

This statute limits the total number of DA licenses available for issuance. As the Commission has not exhausted this "quota," the statute does not provide a basis for denial.

ULTIMATE CONCLUSIONS OF LAW

Although Applicant would provide service to some large groups if the license were granted, the license should be denied because Applicant's premises will provide lesser services than do existing premises and because the license will not be available to the general public at least five days a week. OAR 845-05-020(3), 845-08-020, and 845-05-040(3)(f).

FINAL ORDER

It is hereby ordered that the application for a Dispenser Class A license by Food Management Control Inc., in the trade name Mt. Hood Community College, 26000 SE Stark Street, Gresham, Oregon 97030, be DENIED.

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

Dated this 24th day of April, 1984.



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.