

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Proposed Suspension of the)	
Package Store (PS))	FINAL
License held by:)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Christos G. Kissas)	AND ORDER
TOM'S GROCERY)	
1239 SW Morrison Street)	OLCC-84-V-018
Portland, Oregon)	
-----)	
Multnomah County)	

A hearing in the above matter was held on the 24th day of August, 1984, in Portland, Oregon, before Hearings Examiner Douglas Crumme'. The Licensee appeared in person and was 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 November 14, 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:

1. Christos G. Kissas held a Package Store (PS) license at TOM'S GROCERY, 1239 SW Morrison, Portland, Oregon, on April 23, 1984.

2. The Commission's Enforcement Staff has charged the Licensee with the violation of the following:

- a. ORS 471.315(1)(g) and ORS 471.410(2) (knowing sales to minors).
- b. ORS 471.130(1) (failed to check identification or take Statement of Age where reasonable doubt existed that buyers of alcohol were 21 years of age).

3. James Patrick Dooney was born on April 15, 1968. Mr. Dooney was 16 years of age on April 23, 1984.

4. James Patrick Dooney appeared under 21 years of age on April 23, 1984 because of his youthful facial features.

5. David Jensen was born on November 25, 1967. Mr. Jensen was 16 years of age on April 23, 1984.

6. David Jensen appeared under 21 years of age on April 23, 1984, because of his youthful facial features and general appearance.

7. James Patrick Dooney, David Jensen and David Hopkins walked to Tom's Grocery from High School at about 11:30 a.m. on April 23, 1984. Mr. Hopkins waited outside while Mr. Dooney and Mr. Jensen went inside.

8. Once inside the premises, Mr. Dooney and Mr. Jensen contacted Tom's Grocery clerk Dimitrios Kissas in the back of the store near the beer coolers. Mr. Jensen asked Mr. Kissas if they could purchase some beer. Mr. Kissas said "later," indicating reluctance because of other patrons in the store. Mr. Kissas then changed his mind. He obtained three quart-sized bottles of beer and placed them in a sack. He gave the sack to Mr. Dooney in the rear of the store. Mr. Dooney walked

out of the store with the sack while Mr. Jensen paid Mr. Kissas for the beer in the rear of the store.

9. Mr. Kissas did not ask either Mr. Dooney or Mr. Jensen their ages or ask for their identification. They made no statements concerning their ages. Mr. Kissas did not require the two boys to fill out Statement of Age cards at the time of the sale.

10. Mr. Dooney, Mr. Jensen and Mr. Hopkins were apprehended with their beer by Lincoln High School officials. The OLCC was contacted. An OLCC Inspector returned to the store with Mr. Dooney and Mr. Jensen at about 12:30 p.m. that same day. Clerk Dimitrios Kissas denied the sale.

11. Licensee Christos Kissas was on the licensed premises when the Inspector returned to the premises with Mr. Dooney and Mr. Jensen at 12:30 p.m.

12. The Commission Enforcement Inspector gave instructions to the Licensee and the Licensee's employees about the rules pertaining to sales to minors.

13. Licensee Christos Kissas has a second job and only visits Tom's Grocery about one hour per day. Licensee Kissas was not at Tom's Grocery during the sales described above.

14. The Licensee had instructed Dimitrios Kissas about precautions to take to avoid selling alcoholic beverages to minors.

15. The Licensee eventually fired Dimitrios Kissas, in part due to the sales described above on April 23, 1984, after

the Licensee learned Dimitrios had participated in later sales of a similar nature.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. 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 any of the following to be true:

(1) That the licensee:

. . .

(g) Knowingly has sold alcoholic liquor to persons under 21 years of age or to persons visibly intoxicated at the time of sale. ORS 471.315(1)(g).

The requirement of "knowledge" may be imputed to a licensee through the knowledge of an employee. Taylor's Coffee Shop, Inc. v. OLCC, 28 Or App 701, 706, 560 P2d 693 (1977), OAR 845-06-025. The requirement of "knowledge" is satisfied where there is 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, 17 Or App 199, 203, 517 P2d 1192 (1974). The Licensee may be held in violation of ORS 471.315(1)(g) in the case of the sale of alcoholic beverages to Mr. Dooney and Mr. Jensen on April 23, 1984. There is reasonable ground to believe Licensee's employee Dimitrios Kissas knew Mr. Dooney and Mr. Jensen were under 21 years of age because they appeared under 21 years of age. A violation therefore occurred.

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).

Licensee violated ORS 471.130(1) in the case of the sale of alcoholic beverages to Mr. Dooney and Mr. Jensen on April 23, 1984. There was reasonable doubt that Mr. Dooney and Mr. Jensen had reached 21 years of age because they appeared under 21 years of age. They therefore should have been asked for identification or to fill out a statement of age form under ORS 471.130(1). This was not done. A violation therefore occurred.

ULTIMATE CONCLUSIONS OF LAW

1. When there has been a violation of ORS Chapter 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).

The Commission may cancel or suspend the Licensee's license for the violations of ORS 471.315(1)(g) (knowing sale to minor) and ORS 471.130(1) (failure to check identification) as noted in the Conclusions of Law above.

The penalty in this matter should not be mitigated despite the Licensee's instructions to Dimitrios Kissas prior to the violation about precautions to take to avoid sales to minors.

The furtive nature of this sale, with the transaction occurring in the back of the store, indicates that clerk Dimitrios Kissas clearly knew that Mr. Dooney and Mr. Jensen were under 21 years of age and that it was unlawful to sell alcoholic beverages to them. This is, therefore, a flagrant violation and is not the sort that should be mitigated.

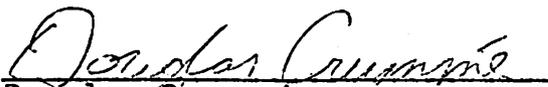
FINAL ORDER

It is hereby proposed that the Package Store license held by Christos Kissas at Tom's Grocery, 1239 SW Morrison Street, 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 12th day of December, 1984.


Douglas Drumme
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.