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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)
Application for Renewal)
of a Package Store (PS))
License by:)
)
Lee R. and Etta S. Hale)
WAPATO STORE)
Route 3, Box 494)
Gaston, Oregon 97119)
- - - - -)
Yamhill County)

FINAL
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

A hearing in the above matter was held on the 5th day of July, 1983, in McMinnville, Oregon, before Hearings Examiner Allen R. Scott. The Applicants appeared in person and were not represented by legal counsel. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and the entirety of the Criteria for the Issuance and Maintenance of Licenses and applicable statutes and regulations, enters the following:

FINDINGS OF FACT

1. Licensees have held a Package Store (PS) license at all times relevant to these Findings of Fact.
2. The Commission's Staff has recommended that the application for renewal be denied based upon OAR 845-05-025(1) (negative recommendation by Yamhill County).
3. Licensees' license expired March 31, 1983.

4. On March 16, 1983, Yamhill County Commission voted to recommend that the renewal be refused.

5. The minutes of the County Commission meeting state the basis for the recommendation as follows:

"Investigation by Yamhill County Sheriff's Office has shown that Mr. Hale has a criminal record including two felony convictions for crimes involving moral turpitude, Sheriff's investigation produced evidence that Mr. Hale lacks good moral character (Mr. Hale made a misstatement of fact to a Yamhill County Sheriff's investigator) and charges are pending in Yamhill District Court against Mr. Hale for resisting arrest stemming from a recent incident occurring at the Wapato Store."

6. The Secretary to the Board of County Commissioners of Yamhill County, in a letter to the OLCC dated May 16, 1983, stated as follows, in pertinent part:

"In the case of the applications of the Hales for Wapato Store, and all of the liquor license renewal applications for that matter, no formal notice of the proposed action of the Board is mailed to the applicants for the reason that no decision is made until that time. As far as I know, the Hales were aware that the applications were to be heard in each session in which they were considered."

7. In fact, Applicants did not know of the meeting and were not present.

8. Applicant Lee Hale was convicted of "Obtaining Money and Property by False Pretenses," served a period of incarceration, and was discharged from custody in July, 1966.

9. Applicant claims to have been convicted of no other felonies or misdemeanors.

10. Applicant Lee Hale denies making a false statement to a Yamhill County Sheriff's investigator.

11. The Commission sent notice to Yamhill County of the OLCC hearing on this matter. No one from Yamhill County appeared at the hearing.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

An adverse recommendation by the governing body of the appropriate city or county, after due consideration. The recommendation may be disregarded by the Commission if the body has failed to give to the applicant and to interested members of the public both reasonable notice of the proceedings at which the application was considered and reasonable opportunity to be heard. OAR 845-05-025(1).

The evidence establishes that the Yamhill County Commission recommended that this application for renewal be denied.

The evidence indicates, however, that Applicants had no notice of the County Commission meeting. The letter from the Board to the Commission noted above in Finding of Fact 6 acknowledges that no formal notice was mailed to them. There was no basis indicated for the assumption made by the secretary in the letter that the Applicants "were aware" that the application was to be considered. Applicants denied having any knowledge.

There is no basis for disregarding their testimony on that matter.

Applicants also asserted that the factual basis stated by the Board for the recommendation for denial was erroneous in two particulars: that Lee Hale had been convicted of two felonies and that he made a false statement to the Sheriff's Office investigator. Mr. Hale acknowledged one felony conviction but denied any other. He also asserted that the supposed false statement made by him was his statement to the investigator that he had had only one felony conviction. It is the Commission's conclusion that the record indicates that Applicants were not given reasonable notice of the proceedings and, therefore, they were also not afforded a reasonable opportunity to be heard. This criterion thus is not a basis for denying the application.

ULTIMATE CONCLUSIONS OF LAW

Although the Yamhill County Commission has recommended that the license not be renewed, it should nevertheless be renewed because Applicants were not given reasonable notice of the proceedings at which the application was considered and reasonable opportunity to be heard.

FINAL ORDER

It is hereby ordered that the application for renewal of a Package Store (PS) license by Lee R. and Etta S. Hale in the trade name WAPATO STORE, Route 3, Box 494, Gaston, Oregon 97119, be GRANTED.

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

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 January, 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.