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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Package Store)	
License by:)	FINAL
)	FINDINGS OF FACT,
Southland Corporation)	CONCLUSIONS OF LAW,
7-ELEVEN FOOD STORE)	AND ORDER
36 SW Arthur)	
Portland, Oregon 97201)	OLCC-84-L-014
- - - - -)	
Multnomah County)	

A hearing in this matter was held on July 18, 1984, and September 4, 1984, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared and was represented by James K. Neill, Jr., Attorney at Law, Portland. The Commission was not represented by legal counsel.

On May 28, 1985, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and Response to Exceptions. Based on this review, the Commission makes the following:

BACKGROUND

Applicant seeks a Package Store license for a 7-Eleven Store to be located on the southeast corner of SW First and Arthur in Portland. Arthur Street is a busy four lane street at this location. The area is just south of downtown Portland. The store site presently contains an automobile rental agency. It is just outside the northern boundary of the Lair Hill Historic District. Gasoline sales will also be made at the premises.

REQUEST FOR A VIEW

At the hearing, Applicant requested that the Commissioners have a "view" of the proposed site. Neither the Commission's Staff nor James Davis, party, objected to this proposal.

The Commission denied the request, however, because of the impracticability of attempting to view all proposed licensed premises.

ISSUES

I. The staff claims that Applicant has not overcome the objections of Kesser Israel Synagogue, which is located within 500 feet of Applicant's premises. OAR 845-05-025(2)(b).

II. The staff claims that public opinion weighs against the license. OAR 845-05-035.

I. THE CHURCH OBJECTION

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

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(2) Written opposition to the granting of the license, stating the reasons for the opposition, by a person having control of:

(a) A pre-elementary, elementary or secondary school;

(b) A church;

(c) A hospital, nursing facility or convalescent home; or

(d) A park, including amusement park, playground or recreational facility, if such facility is located within 500 feet of the proposed outlet in an urban or suburban

area or within 1500 feet in a rural area. Good cause which outweighs such written opposition may include, but is not limited to, other licensed premises being located within the same distance of the opposing facility or the opposing facility beginning operation at a time when the subject premises were licensed. OAR 845-05-025(2)(a)(b)(c)(d).

FINDINGS OF FACT

1. Kesser Israel Synagogue is located at the corner of SW Second and Meade. It is approximately two blocks from Applicant's proposed location and is within 500 feet of that location.

2. The Kesser Israel congregation sent a letter and a petition to the OLCC expressing opposition to the granting of the license. The letter states:

"We members of the Cong. Kesser Israel, do not want another liquor outlet in this neighborhood. We are trying once again to see that this neighborhood will once again become a vital neighborhood. We will use our energies to see that this healthy pattern continues.

We want a neighborhood where people can live and worship in peace and quiet. We have many young boys and girls who come to our place of worship, and we do not want any drunken element around."

The petition states:

"We, the undersigned, request that the Oregon Liquor Control Commission and the City of Portland, Do Not approve nor grant a Package Store license to the Southland Corp., dba 7-Eleven Stores, to sell beer and wine at the corporations proposed new store site at SW First and Arthur Sts. Portland, Oregon because we strongly object to the corporations (sic) policy of selling beer and wine after 9 p.m. until 2 a.m. in our neighborhood."

The petition and letter were signed by a total of 19 members of the congregation.

3. Regular services are held at the synagogue on Friday night, Saturday morning, and Sunday morning. Average attendance at the Friday night service is approximately 25 to 30; at the Saturday morning service, 35 to 45; at the Sunday morning service, 30 to 42. Services are also held on nine major Jewish holidays. Meetings are also held at the synagogue. Two weddings and three to five bar mitzvahs were held at the synagogue last year. Members of the congregation may also go to the synagogue on occasion in remembrance of deceased family members and friends. Attendance on major Jewish holidays may be considerably more than the average for regular services noted above.

4. The synagogue is Orthodox. Practitioners of Orthodox Judaism are obligated, if they are able, to walk to services on the Sabbath, which begins at sundown Friday and ends at sundown Saturday, and on holidays. Approximately 15 or 16 members of this congregation regularly walk to the Friday night or Saturday morning services. Some may walk by the site of the proposed 7-Eleven.

5. During the summer, when the sun sets very late, members of the congregation may leave the synagogue after the Friday service at 10:00 p.m. or so.

6. The congregation has a total of 130 to 150 members.

7. Approximately three to four years ago, two men who had been drinking in the area broke into the synagogue and destroyed many things.

8. In the recent past, two men who were drunk engaged in a fight outside the synagogue.

9. The President of the congregation indicated that he fears that patrons of the proposed 7-Eleven Store will harass or attack members of the congregation on their way to or from services. He also indicated that he fears that patrons of the store might come to the synagogue and vandalize it or cause problems for the members.

Conclusions of Law

Objections from the congregation were presented in three ways: The petition, the letter, and the testimony of the President. The petition refers only to sales of beer and wine after 9 p.m. The letter refers to "peace and quiet" and to concern about a "drunken element" being present in the neighborhood because of the store.

The testimony of the President of the congregation is perhaps a more complete and detailed statement of the concerns of the congregation. He referred generally to the fact that it is a "very nice neighborhood" and to his concern about people getting drunk. His specific concerns relating to the synagogue itself seem to center on two possibilities: That 7-Eleven patrons might harass or assault members of the congregation walking to and from services and might present a danger to the synagogue itself.

These concerns, then, are based on a belief that there is a likelihood that patrons of the 7-Eleven Store would break the law and behave in an antisocial manner. There is little or no hard evidence to support this concern. The President did refer to two incidents: Vandalism at the synagogue approximately three or four years ago involving people who had been drinking and a recent fight involving two drunk men in the street near the synagogue. Otherwise, the concerns seem to be based upon an assumption regarding the nature of patrons of 7-Eleven Stores, or of convenience stores in general. They may also be based upon the fact that transients have been known to frequent underpasses near this neighborhood, upon the proximity of Lair Hill Park (one block from the synagogue), which may attract troublemakers, upon the fact that many of the patrons will come from outside the neighborhood, and upon the fact that beer and wine sales will be made late at night.

These concerns involve an assumption that 7-Eleven patrons will engage in criminal acts toward the members of the congregation or toward the synagogue itself. That is a large assumption. To be credible, it needs to be reasonably supported by the entire factual context. Although it would not be reasonable to expect absolute scientific proof, the evidence must indicate that the assumption is not largely speculation.

In this case, the underlying assumption is not supported sufficiently to make it persuasive as a basis for denying the license. That is not to say that the concerns are specious.

The two incidents mentioned by the President of the Congregation are indeed a cause for concern. But nothing about them suggests that 7-Eleven patrons are likely to engage in harassment of individual members of the congregation or are likely to damage the synagogue itself. Similarly, the concerns relating to the late hours of beer and wine sales, the presence of transients in areas near the neighborhood, and the fact that a significant proportion of store patrons will probably come from outside the neighborhood are understandable concerns. However, they are not sufficient to lead to a conclusion that the store will present an actual threat to the synagogue or the members of the congregation, particularly as there are several other aspects of the application which reduce the possibility that the evils envisioned by the synagogue will become fact.

The first is the nature of the license itself. It is a Package Store license, which does not, of course, permit drinking on the premises. Furthermore, it is unlawful for the store to sell beer or wine to a visibly intoxicated person. There is absolutely nothing to suggest that 7-Eleven management or employees will tend to violate this law. Thus, the nature of the license and the law itself make it unlikely that patrons will come out of the premises inebriated and bent on trouble.

The concern of the congregation that individual members will be subject to assault or harassment as they walk to services is balanced by the fact that, in general, members will be walking to and from the synagogue only on one night a week,

Friday. The Friday night service is over, according to the evidence, by no later than about 10 p.m., even in the summer when the sun sets late. Of course, members may walk to and from the synagogue on other nights to attend various meetings or irregular services. Nevertheless, the pattern of the services decreases the likelihood of the type of harassment envisioned by the congregation.

It is further noted that the possibility that the synagogue itself would be subject to violation by 7-Eleven patrons is lessened by the fact that the synagogue is two blocks from the premises on a different street. It is also noted that the Applicant has agreed not to have video games in the premises. Assuming, for the sake of argument, that the presence of such games increases the likelihood of loitering by those inclined toward lawless behavior, their absence decreases the potential for the kinds of problems feared by the synagogue. It is also noted that Applicant provides employees with a rather impressive training program relating to the prevention of illegal sales of alcohol (see Finding of Fact 30 below). This fact indicates an earnest desire on the part of Applicant to avoid those types of sales which are more likely than normal sales to result in antisocial behavior by patrons.

It should also be noted that Slim's Grocery, a PS licensee, is closer to the synagogue than is Applicant's proposed location. Under the criterion, that fact is a specific basis for finding good cause to overcome the objection of the synagogue. In this case, Slim's early closing hour (8 p.m.) may

reduce its potential impact upon the synagogue and thus lessen the significance of its proximity to the synagogue. There is, however, no absolute guarantee that the hours at Slim's will always remain as they are now. In any event, it is closer and that fact is a specific basis for a finding of good cause to overcome the objection.

The Commission concludes that good cause for overcoming the objection of the synagogue has been established because it has not been shown that the granting of the license will have an adverse effect upon the functioning of the synagogue¹ and because an existing PS licensee is nearer to the synagogue than is Applicant's proposed location.

II. PUBLIC OPINION

The Commission may refuse to issue or renew a license if it determines that public opinion weighs against the issuance of a license. Interested persons may express their support for or opposition to the issuance of a particular license by petition or letter timely received at the Commission offices, or by personal appearance and testimony at a Commission hearing, if any. Such public opinion will be evaluated in light of the reasons expressed and the extent to which the persons expressing it are likely to be affected by the issuance of the license. Greater weight will be given to opinions of persons residing, working or owning a business within a one-

¹ The Commission's Final Orders in Waylon and Willie's (June 1983), Mill Creek General Store (January 1983), and The Corbett Cow (June 1984), make the actual effect of the proposed premises on the church a key test under this criterion.

mile radius of the proposed premises. The number of persons expressing support or opposition will not, in and of itself, be controlling. Arguments concerning matters which are primarily within the control of the city or county government, and which were raised, or reasonably should have been raised, before the governing body of the city or county when it was considering its recommendation, may be given lesser weight by the Commission if the governing body's recommendation is inconsistent with the argument. OAR 845-05-035.

FINDINGS OF FACT

10. Applicant's premises is to be located on the southeast corner of the intersection of SW First Street and SW Arthur Street in Portland. The proposed location presently contains a rental car agency. Commercial enterprises have operated at this location since at least 1935. The location is zoned C-2, Retail Uses. The 7-Eleven Store is appropriate for the zoning.

11. The following enterprises are located on the three other corners of this intersection: On the southwest corner is a gas station; on the northwest corner is a multi-story new office building, the Duniway Center; on the northeast corner is a building housing the La Grand Industrial Supply Company.

12. SW Arthur Street is a main east-west thoroughfare at this location. A traffic survey conducted by the City of Portland in 1981 noted a total of approximately 32,000 cars passing this intersection on Arthur Street during a 24 hour period.

13. SW First Avenue runs north-south. To the north of this intersection it is a main thoroughfare leading to the

downtown area of Portland. Several high-rise condominiums and apartments are located on SW First north of the intersection. The nearest to the intersection is approximately 0.25 miles away. The others are approximately one-half to one mile from the intersection.

14. To the south of the intersection, SW First has more the character of a side street and leads into a primarily residential area known as Lair Hill. The traffic survey referred to above revealed a count of approximately 7,400 automobiles on SW First Avenue at this intersection in a 24 hour period.

15. The Lair Hill neighborhood was a "hippie" enclave during the 1960's, with a significant incidence of drug trafficking. It has become more stable in recent years, however. Part of the neighborhood is designated as the Lair Hill Historic District. Applicant's premises is just outside the northern boundary of the Historic District.

16. On January 30, 1985, the License Division of the OLCC conducted an Area Survey to determine public opinion in the immediate neighborhood of the proposed premises. The area surveyed has SW Front Avenue as its eastern boundary, SW Barbur Boulevard as its western boundary, and SW Woods as its southern boundary. To the north, the survey included the two office buildings directly across Arthur from the proposed 7-Eleven site but went no farther north. The total area surveyed was approximately 16 square blocks.

17. The OLCC employees making the survey attempted to contact in person each household and each business within the area surveyed. Where they were unable to make personal contact, they left mail-in forms. One response was accepted from each household and each business. Of a total of 87 businesses and households, 74 responded to the survey either in person or by mail.

18. The most important findings of the survey are as follows:

OVERALL RESPONSE

<u>Number of Responses</u>			
<u>Supports</u>	<u>Objects</u>	<u>No Opinion</u>	<u>Total</u>
30	26	18	74

RESIDENCES

<u>Number of Responses</u>			
<u>Supports</u>	<u>Objects</u>	<u>No Opinion</u>	<u>Total</u>
21	22	10	53

BUSINESSES

<u>Number of Responses</u>			
<u>Supports</u>	<u>Objects</u>	<u>No Opinion</u>	<u>Total</u>
9	4	8	21

19. At the OLCC hearings on this matter, 11 people testified in opposition to the granting of this license. Letters were admitted into the record from nine opponents, four of whom were among the 11 testifying.

20. Three petitions in opposition to the license were admitted into the record. One, containing 36 names, states as follows:

"We, the undersigned, request that the Oregon Liquor Control Commission and the City of Portland Do Not approve nor grant a Package Store License to the Southland Corp., dba 7-Eleven Stores, to sell beer and wine at the Corporations proposed new store site at SW First and Arthur Sts., Portland, Oregon because we strongly object to the Corporations policy of selling beer and wine after 9:00 p.m. until 2:00 a.m. every day in our neighborhood."

Signatures on another petition were gathered at Slim's Grocery, a PS licensee located approximately 1 1/2 blocks from Applicant's proposed premises. The owners of Slim's Grocery, Albert and Esther Schulhaus, are among the objectors to the granting of the license. The petition contains 30 names. It states:

"We the undersigned are against the granting of the beer and wine license to the Southland Corporation's 7/Eleven store at the corner of S. W. First and Arthur."

Signatures on a third petition, or "survey," were gathered at the Ross Island Grocery, a PS licensee located approximately 1/2 mile to the southeast of the proposed 7-Eleven site. The document states as follows:

"Southland Corporation's proposed 7-11 Store to be located at SW First and Arthur has caused quite a controversy in the area. The OLCC has denied a beer and wine license so Southland Corporation is appealing. Personally, I don't feel it would hurt the Ross Island Grocery much, so I have not been involved in this issue until now. I would like a true evaluation of neighborhood opinion which will be of great

value to the people trying to decide. Please sign below and give your true opinion so you can help in this decision. Thanks. Gary."

The "Gary" referred to is apparently Gary Bechley, owner of the Ross Island Grocery. The survey provides space for those signing to check one of three choices: "Want 7-Eleven at First and Arthur," "Do not want 7-Eleven," or "No opinion." The survey contains approximately 180 signatures. Only approximately six people listed an address. One person checked the box "Want 7-Eleven at First and Arthur." Three people checked the box "No opinion." The remainder checked the box "Do not want 7-Eleven."

21. Those who have expressed opposition to the license by the various means described in the Findings above have expressed several reasons for their opposition. The OLCC Staff survey noted in Findings of Fact 16 and 17 above revealed the following reasons for opposition (many of the respondents expressed more than one reason):

<u>Reason for Opposition</u>	<u>Frequency</u>
1. There are sufficient licensed premises in the area now.	16
2. A 7-Eleven Store would increase traffic problems.	13
3. A 7-Eleven Store would increase the potential for drunk drivers.	5
4. The store would not "fit in" with the neighborhood.	5
5. The store would increase transients and undesirables in the neighborhood.	5

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| 6. | Would encourage young people to "hang out" and to obtain alcohol illegally. | 4 |
| 7. | Would take away business from Slim's Market. | 3 |
| 8. | Would create a litter problem. | 2 |
| 9. | Store would have inadequate parking. | 2 |
| 10. | Sale of beer and wine after midnight would be harmful to neighborhood. | 1 |
| 11. | Would increase crime in the neighborhood. | 1 |
| 12. | Would increase noise. | 1 |
| 13. | Lack of commitment by Southland Corporation to the neighborhood. | 1 |
| 14. | The store would serve those outside the neighborhood. | 1 |
| 15. | Would increase vandalism. | 1 |
| 16. | Increased foot traffic in the neighborhood would result. | 1 |
| 17. | Too close to Tri-Met stop. | 1 |
| 18. | Too close to Children's Museum, YMCA, Church. | 1 |

22. The people who either testified in opposition to the license at the OLCC hearing or who wrote letters to the Commission stating opposition generally referred to many of the same reasons noted in the Finding of Fact above. However, they placed more emphasis on possible increases in crime in the area, on fear that the store would attract transients and other undesirable people to the neighborhood, on concerns that the store would generally act as a magnet for people from other parts of the city to come to the neighborhood, and concern that Lair Hill Park, which is located about four or five blocks from

the store site, would become a hangout for dangerous people as a result of the 7-Eleven Store. Some of the objectors expressed opposition to a "big corporation" opening a store in the area. Some of the protestors also noted that the Southland Corporation has been convicted of one or more felonies in another state.

23. The Corbett-Terwilliger-Lair Hill Planning Committee voted to oppose this license as did some residents of the area who attended a community meeting.

24. The Commission has received 35 letters in support of the application. All of those writing letters live, work, or own property within one mile of the proposed premises, most within much closer proximity, including two who live or own property adjacent to the proposed licensed premises. The supporters generally stress the idea that the 7-Eleven will be a convenience to them and that they do not view it as having a potential detrimental effect on the neighborhood.

25. Those individuals and businesses who expressed support for the application in the OLCC survey referred to in Findings of Fact 16 and 17 above expressed the following reasons (some people expressed more than one reason):

<u>Reason for Support</u>	<u>Frequency</u>
1. The store would be a convenience.	9
2. Present grocery store (Slim's) is unsatisfactory.	3
3. Neighborhood needs an outdoor paper stand.	2
4. Neighborhood is too "bare" now.	2

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|---|---|
| 5. Sale of alcohol will not a be a problem. | 1 |
| 6. Would like to see a stable long-term business in the area. | 1 |
| 7. Would like imported beer; none in area now. | 1 |
| 8. Businesses have a right to sell alcohol. | 1 |
| 9. Won't harm the appearance; one more license won't make any difference. | 1 |
| 10. Everyone should have access to beer and wine. | 1 |

26. The Portland City Council considered this matter at its March 29, 1984, meeting. The Council heard testimony from a number of opponents, most of whom also testified at the OLCC hearing or wrote letters concerning this matter. The Council also heard testimony from representatives of Applicant and considered written support for the application. The City Council's consideration of this matter took approximately 1 1/2 hours. The Council then voted five to zero to recommend that the application be granted.

27. The Resident Manager of a high-rise condominium approximately 0.25 miles north of the premises on First Avenue testified at the OLCC hearing that many of the residents of the 104 unit building have expressed general support for the presence in the area of a convenience store with around-the-clock sales. However, the residents involved did not express a specific desire for a Package Store license.

28. Southwest of Applicant's premises is Lair Hill Park. The nearest part of the park is slightly more than 500 feet

from Applicant's premises. The Children's Museum and Neighborhood House are also slightly more than 500 feet to the southwest of the premises.

29. The nearest PS licensee to Applicant's proposed location is Slim's Grocery, owned by Albert and Esther Schulhaus, located approximately 1 1/2 blocks away. It closes at 8 p.m. The Ross Island Grocery is located approximately 1/2 mile to the southeast of Applicant's premises. It closes at 10 p.m. Another PS licensee is located approximately 1/2 mile to the north in the Portland Center condominium area. It closes at 1 a.m. In addition to these premises, there are about three other Package Store licensees operating at night in the general downtown Portland area.

30. None of the Package Store licensees in the general area of the proposed 7-Eleven Store is open past 1 a.m.

31. The Southland Corporation provides three days of training for employees, including training in alcohol sales. In October 1984, the company began providing three hours of specialized training for employees and franchisees in the avoidance of prohibited alcohol sales. As of the date of the hearing, approximately 80 to 100 of the 150 7-Eleven Stores in Oregon have participated in the training. The program uses oral instruction, pamphlets, and video exercises to teach laws relating to alcohol sales, methods of detecting potential problems, and methods of refusing prohibited sales. Franchisees are not presently required to participate in the program; however, most have or will do so. This first phase of

the program will be followed by the mailing of educational materials relating to alcohol abuse to all junior high schools in the United States. The Southland Corporation also trains employees in the avoidance of robberies.

32. Applicant has agreed to design the 7-Eleven Store in a manner that fits the character of the Historic District. The design will be quite different from the typical 7-Eleven Store and will feature old bricks and an awning. This design will increase the construction costs by approximately 1/3 over the ordinary cost of construction of a 7-Eleven store. Applicant has also agreed to have no video games in the premises and to participate in a "Neighborhood Watch" with other merchants in the area.

33. Applicant has not proposed to limit hours of operation or hours of sale of beer and wine because it believes to do so would conflict with the corporate image it seeks to maintain and because it believes that the hours of operation and hours of sale of beer and wine will serve the public need.

Conclusions of Law

The criterion provides that the Commission may deny an application if public opinion weighs against the application. Thus, the burden is upon the Staff (and any other party seeking denial on this basis) to establish that public opinion does in fact weigh against the license. The criterion thus does not call for a weighing of opposition versus support, but requires, for denial of a license, a showing that opposition by the public is the prevailing viewpoint. The criterion further clearly

indicates that the determination of whether this burden has been met is not based merely upon a comparison of the number of those opposed to the number of those not opposed, but also upon an assessment of the reasons given and of the likelihood that those expressing a view will be affected by the license.

In this case, the best evidence, by far, of the numbers of people opposed or not opposed is provided by the Staff survey (see Findings of Fact 16 and 17). The Commission believes that it was well designed and well conducted and that it is the most reliable evidence of the sentiment among those most directly affected by the license. The area surveyed was not large, covering an area of approximately 16 square blocks, but the boundaries chosen logically define the area most significantly affected by the proposed license. Furthermore, the rate of participation among those in this area was very high, approaching 90 percent. Most important, the survey was impartial and professional.

The results of the survey are significant. They show that among those expressing a pro or con opinion, those supporting the application slightly outnumber those opposing the application. Furthermore, the "No Opinion" responses are significant. The criterion involved, as discussed above, does not call for a simple weighing of pro and con sentiment, but places the burden on a party wishing to base denial on the criterion to show that public opinion actually weighs against the application. Those expressing no opinion are not, by definition, against the granting of the license. Thus, the survey indicates that about 35

percent of the respondents are actually opposed to the granting of the liquor license. Sixty-five percent are not opposed.

Several other pieces of evidence relating to support and opposition were entered into the record. Opponents offered three petitions. One states only that the objection of the signers is based upon the fact that the 7-Eleven will sell beer and wine after 9 p.m. The other two petitions/surveys were taken in two grocery stores in the area: Slim's Grocery, located a block and one-half from the proposed premises and owned by one of the protestors; and the Ross Island Grocery, located approximately 1/2 mile away. Neither of these documents states any reason for opposition. Furthermore, the survey taken at the Ross Island Grocery contains the addresses of only a very small fraction of those signing the document. Under the criterion, which calls for an analysis of the reasons given and an assessment of the effect of the license upon those objecting, both of these petitions are thus of little significance. Applicant offered approximately 35 letters in support of the application from those living, working, or owning a business in the immediate area. Some of these letters are individually written communications detailing reasons for support; many, however, are basically form letters that are essentially like a petition.

The Commission concludes that the various petitions and letters noted above, given the absence of any statement of reasons in some, the lack of addresses in one, and the fact that all were procured by those having a stake in the matter, are

of much less significance in this matter than is the Staff survey noted above in determining the general sentiment among those in the area. Given the results of that survey, it cannot be concluded that public opinion, measured by sheer numbers, weighs against the granting of the license among the people most likely to be affected by the license.

The criterion, however, specifically requires that an analysis beyond mere numbers be made. It requires that the reasons be examined and that the effect of the license upon those expressing the opinion be considered.

The reasons stated by the opponents are noted above (Findings of Fact 21 and 22). It is not possible to set forth a precise hierarchy of importance among those reasons. However, some reasons were more commonly stated or stated with greater vehemence than others.

Some of the reasons fall within the category noted in the criterion as being within the control of the city and therefore entitled to less weight. Among these is the alleged traffic problem cited frequently by objectors. That is a matter within the particular knowledge and control of the city and it was presented at the City Council meeting at which the Council voted to recommend favorably on this application. Furthermore, the evidence indicates that the City does not view this locale as having a particular traffic problem. Allegations of inadequate parking, cited by two people in the survey, also would come within the particular control and knowledge of the city.

There is, in any event, no evidence that parking would in fact be inadequate.

Other reasons cited by some of the protestors do not relate to the liquor license itself, but more to the store as an enterprise. The OLCC has, of course, jurisdiction only over liquor licenses and not over the effect that the store itself would have on protestors. Some of the reasons that fit into this category are concern about the 24 hour operation of the store and concern that this store would not "fit in" to the neighborhood. A concern expressed by some participants in the survey that the store would take business away from Slim's Grocery would appear to relate to the general operation of the 7-Eleven Store more than to the liquor license. In any event, the Commission does not attempt to regulate competition among licensees. The potential problem of litter may relate in part to a liquor license, but is in fact more a function of the general store operation than of the liquor license itself.

Many of the reasons cited do, however, clearly relate to the liquor license. They must therefore be evaluated and the extent to which the protestors will be affected must be considered. The reason cited most frequently by participants in the Staff Survey was that there are sufficient licensed premises in the area now. The evidence indicates that the nearest store is about one and one-half blocks away. It closes by 8:00 or 8:30 p.m. in the evening. The next two nearest Package Store licensees are approximately 1/2 mile away. One of these closes

at 10 p.m., the other at 1 a.m. No other evidence supporting the idea that the area is served by sufficient licensed premises was offered. It is also noted that many of the people who expressed support for the application through letters and through the survey indicated that they would view the 7-Eleven as a convenient addition to the neighborhood. The Commission concludes that the evidence does not support a conclusion that there are "sufficient" licensed premises in the area.

The reasons stated most vigorously for opposition to the liquor license, particularly by those who testified, are of a somewhat different sort. They involve the view that the liquor license will increase crime, vandalism, liquor sales to minors, sales to drunks, and drunk driving, and that it will bring undesirables, including street people and transients, into the neighborhood. Many of these reasons involve the view that patrons of the 7-Eleven Store are likely to commit crimes and antisocial acts or that 7-Eleven employees or franchisees are likely to engage in prohibited and illegal sales to minors and drunks.

There is little or nothing in the record to support these views. It would, of course, be unreasonable to expect some kind of rigorous scientific proof. Nevertheless, as these reasons for objection involve an implicit (and sometimes explicit) view that 7-Eleven patrons or 7-Eleven employees or owners are unusually irresponsible or given to illegal and antisocial acts, some kind of evidence or persuasive argument is necessary before these reasons can be accepted as valid. To accept this

viewpoint as persuasive without any significant factual support would permit the denial of the license based upon speculation that the patrons or employees of this particular enterprise will behave in an illegal or antisocial behavior. The Commission concludes that the assumptions involved in these bases for objection are not supported by enough to take them out of the realm of speculation.

It should also be noted that the implications involved in many of the bases for opposition are offset rather effectively by Applicant's evidence that it provides extensive training in the legal and responsible sale of alcoholic liquor. Furthermore, if it is assumed that video games attract undesirable people, the concern relating to undesirables congregating in the store may be offset somewhat by the fact that Applicant has agreed not to have video games on the premises.

One other general basis for opposition should be noted. Some of the protestors expressed an obviously sincere concern that the 7-Eleven Store, and the PS license, will cause a deterioration in the "liveability" of the neighborhood. That concept is clearly a very subjective one. It does not appear to be something within the authority of the OLCC to regulate. In any event, it should be noted that the proposed site for this licensed premises is not in the middle of a residential area. It is on the edge of a residential area but is located on a thoroughly commercial intersection along a main thoroughfare. Those facts do not mean that the people living in the neighborhood will not be affected by the licensed premises, but

they do put into perspective the issue: Whether there is an unreasonable likelihood that this premises, if licensed, will negatively affect those who have expressed opposition to the license. The evidence does not establish such a likelihood. The Commission concludes that it has not been established that public opinion, analyzed in terms of the reasons for the opposition, weighs against the granting of this license.

One other matter might be mentioned. Many of the objectors expressed particular concern about Applicant's intention of selling beer and wine until 2:30 a.m. It might well be that one reasonable way of dealing with this whole matter is to limit the hours of sale to something earlier, such as 10 p.m. or midnight or 1 a.m. The Staff did not propose such a condition. The Commission considered this possibility but does not order such a restriction, for several reasons. First, no other Package Store licensee in the area is so limited. While it is true that none presently stays open past 1 a.m. and several close much earlier than that, they are not restricted to their present hours and, with changes in ownership or policies, any might extend its hours up to the legal limit of 2:30 a.m. As there is no showing that this 7-Eleven store, as contrasted to other stores in the area, should be subject to a restriction, it does not seem appropriate to apply such a restriction. Furthermore, the evidence indicates that, as things stand now, the later hour may be something of a convenience to people who will use the store. However, it is certainly possible that whatever problems might develop with any license are

more common late at night and that a restriction on hours may be attractive for that reason. However, the Commission concludes that there is no persuasive basis for singling out this Applicant for such a restriction.

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

ULTIMATE CONCLUSIONS OF LAW

The evidence establishes good cause for overcoming the opposition of a church located within 500 feet of the premises. Furthermore, the evidence does not establish that public opinion weighs against the granting of the license. No other reason was put forward as a basis for denying the license. It is, therefore, concluded that the application should be granted. OAR 845-05-025(2); OAR 845-05-035.

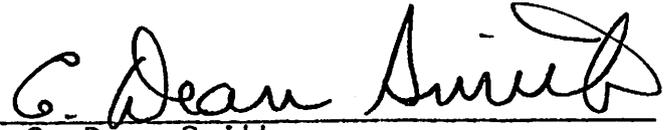
FINAL ORDER

The Commission orders that the application for a Package Store license by Southland Corporation in the trade name 7-Eleven Food Store, 36 SW Arthur, Portland, Oregon be GRANTED upon payment of appropriate license fees to the Commission, with the issuance of the license subject to the following conditions:

1. That the premises be built in accordance with the plans on file with the OLCC;
2. That Applicant provide a signed and dated lease agreement.
3. That the appropriate food inventory under OAR 845-05-025(a) be verified prior to license issuance.

It is further ordered that notice of this action, including the reasons for it, be given as provided by law.

Dated this 31st day of May, 1985.



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.