

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Retail Malt Beverage (RMB))	
License by:)	FINAL
)	FINDINGS OF FACT,
North Portland Aerie #3426 F.O.E.)	CONCLUSIONS OF LAW,
NORTH PORTLAND EAGLES #3426)	AND ORDER
8401 N. Ivanhoe)	
Portland, Oregon 97203)	
- - - - -)	
Multnomah County)	

A hearing in the above matter was held on the 26th day of January, 1983, 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. The Commission having considered the record of the hearing, 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. Applicant seeks a Retail Malt Beverage (RMB) license for NORTH PORTLAND EAGLES #3426. The premises is presently unlicensed.
2. The Commission's Staff has recommended that the application be denied based upon OAR 845-05-020(2) (written opposition from an elementary school or a church) and OAR 845-05-035 (public opinion weighs against the license).
3. Applicant's premises is a fraternal organization currently having 214 paid-up members and 155 members in a Ladies

Auxiliary. It has been located at the present location since 1980.

4. Applicant has had special licenses of various kinds on many occasions at this present location.

5. The St. Johns Assembly of God Church is located across the street from Applicant's premises. The Pastor of the Church, Eugene Slape, has expressed written opposition to the granting of the license. Pastor Slape cites the fact that the functions of the Lodge coincide with activities of children at the Church, possible parking problems, and the negative effect of alcohol upon the lives of many people today.

6. The James John Elementary School is located approximately two blocks from Applicant's premises. Thomas D. Pickett, Principal of the School, initially expressed opposition to the granting of the license for the following reasons:

"Another opportunity for purchase of Malt Beverage in St. Johns.

For consumption off the licensed premises.

Close proximity to James John Elementary School."

7. At the time of the hearing, however, a letter from Mr. Pickett was introduced indicating an alteration in his view. The letter states, in pertinent part:

"In my discussions with representatives of the Liquor Control Commission and members of the North Portland Eagles, I have been made aware of the following facts:

1) The applicants intend to sell only to members on Eagle premises;

- 2) Members will not be able to purchase for consumption off the premises, and;
- 3) The hours in which the North Portland Eagles will be operating their liquor license will be after normal school hours at James John.

The above clarification reduces my concern and opposition toward the Retail Malt Beverage liquor license for North Portland Eagles."

8. In addition to letters from the Church and School, the Commission has received six other letters in opposition to the granting of the license from those who live or have a business nearby. The opponents generally cite the following bases for opposition: enough outlets in the area, possible parking problems, and the proximity of the Church and School to the premises.

9. Two opponents of the license appeared at the hearing and testified. One owns a business approximately one-half block away. He cited possible parking problems. The other was a representative of the St. Johns Assembly of God Church referred to above. He cited the same reasons noted by Pastor Slape.

10. The activities at the Eagles Lodge are as follows. Bingo games occur on Sunday and Tuesday night from 7:00 p.m. to 10:30 p.m. No alcohol will be served at these functions. On Wednesdays, the Lodge has a dinner from 6:30 p.m. to 8:00 p.m. Music continues until 10:00 p.m. On three Thursday evenings a month, the regular meeting of the Lodge occurs. The meeting lasts only about two hours. No alcohol is served during the

meeting. Applicant would expect to serve alcohol after the meeting for an indefinite period of time. On Saturday, a regular dance is held from 9:00 p.m. to 1:00 a.m. This is the function at which the largest number of people are present, approximately 75 to 130. Applicant has had Seasonal Dispenser licenses for this function for the past three years. There have been no complaints from neighbors or any violations of laws or rules.

11. Lodge functions occur only rarely during the day. Twice a year, the Lodge holds a garage sale during the day and a convention is held at the premises approximately once every two years. Applicant stated that it had no intention of selling alcoholic beverages during the day if the license is granted.

12. The nearest licensed premises to Applicant's building are as follows: Safeway Store (PS), 2-1/2 blocks north; Dad's Restaurant and Lounge (DA), 2-1/2 blocks west; Nick's Place (RMB), 4-1/2 blocks east; Wishing Well (DA), 5 blocks west.

13. The Safeway Store noted in the preceding Finding of Fact is closer to the St. Johns Assembly of God Church than is Applicant's premises.

14. There is a parking lot behind Applicant's premises. Another lot is located across the street. Applicant received permission from the prior owner of this lot across the street for use by members. The present owner has expressed no objection to the continued use of this lot.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Written opposition to the granting of the license, stating reasons for the opposition by a person having control of an elementary school or a church, if such facility is located within 500 feet of the proposed outlet in an urban or suburban area. OAR 845-05-025(2).

The evidence establishes that the Pastor of the St. Johns Assembly of God Church, which is located within 500 feet of the proposed outlet, expressed an opposition to the granting of the license. The Commission nevertheless concludes that this criterion should not be a basis for denying the license in this situation. The fact that the premises is a fraternal organization which will sell only to members and guests, the fact that the sale of alcohol will be limited to the evening hours, and the fact that the use of the license will not be extensive even on those evenings when it is in use, all indicate that the license will have little if any effect on the congregation of the Church. For this reason, the Commission concludes that the Church's opposition should not cause the license to be denied.

The Principal of the nearby Elementary School also expressed initial opposition to the license. His later letter, although somewhat ambiguous in that it does not actually withdraw the opposition but states rather that his concern has been "reduced", appears to the Commission to be intended to be an indication that the School no longer is opposed provided the

understandings stated in the letter are in fact true. It is also noted that another licensed premises, a Safeway Store, is closer to the School than is Applicant's premises. For these reasons, the Commission concludes that the initial opposition of the School should not be a basis for denying the license.

2. 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 opinion of persons residing, working or owning a business within a one-mile radius of the proposed premise. The number of persons expressing support or opposition will not, in and of itself, be controlling. OAR 845-05-035.

The evidence establishes that several people living and working within one mile of the premises are opposed to the granting of the license. The Commission, however, does not feel that the license should be denied for this reason. The evidence indicates that the effect of the license upon those in the area will be very small. That is, the type of operation involved, the limited hours that the license will be used, the acceptance by Applicant of a no "off-premises" sale condition, and the private nature of the organization all indicate that the license will not have a significant negative impact upon those in the area. The evidence also indicates that parking should not become any more of a problem than it may already be.

ULTIMATE CONCLUSIONS OF LAW

Although a nearby Church has expressed opposition and although there is some general opposition among members of the community, the license should be granted because the actual operation of the licensed premises will have little if any negative effect upon the Church or those living or working in the area. OAR 845-05-025(2); and OAR 845-05-035.

FINAL ORDER

It is hereby ordered that the application for a Retail Malt Beverage (RMB) license by North Portland Aerie #3426 F.O.E. in the trade name North Portland Eagles #3426, 8401 N. Ivanhoe, Portland, Oregon 97203, be GRANTED, subject to the following conditions:

1. That sales and service of alcoholic beverages be limited to members and guests;
2. That there be no sale of alcoholic beverages for off-premises consumption.

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

Dated this 28th day of March, 1983.



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.