

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Proposed Suspension of the)	
Wholesale Malt Beverage and Wine (WMBW))	
License held by:)	FINAL
)	FINDINGS OF FACT,
Clark Distributing Company, Inc.)	CONCLUSIONS OF LAW,
CLARK DISTRIBUTING COMPANY)	AND ORDER
1660 Salem Industrial Drive NE)	
Salem, Oregon 97303)	
-----)	
Marion County)	

A hearing in the above matter was held on the 17th day of October, 1983, in Salem, Oregon, before Hearings Examiner Allen R. Scott. 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 January 24, 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:

FINDINGS OF FACT

1. Licensee has held a Wholesale Malt Beverage & Wine (WMBW) license at all times relevant to these Findings of Fact.

2. Licensee has been charged with violation of ORS 471.305 and ORS 471.405(1) (delivery to an unlicensed premises).

3. On approximately July 25, 1983, Terry King entered into discussions with employees or officers of Licensee regarding the purchase of beer for a benefit concert for the Muscular Dystrophy Association.

4. Licensee agreed to sell 33 kegs of beer to those in charge of the concert. Licensee was to provide the kegs of beer in a trailer which Licensee would rent to the purchasers.

5. On August 5, 1983, Mr. King and others involved with the concert went to Licensee's premises and purchased the beer. An employee of Licensee then towed the trailer containing the kegs of beer to the Skyline Towers Ranch, where the concert was to be held. Licensee's primary motivation in towing the trailer carrying the beer was to prevent damage to the trailer as the people involved in the concert did not have proper towing equipment.

6. The concert occurred at the Skyline Towers Ranch on August 5, 1983. The Commission had not issued a license to those putting on the concert. Those attending paid a \$5.00 fee at the gate and then were served beer without further payment.

7. Licensee's employees were aware that no license had been issued for the concert.

DISCUSSION

Licensees acknowledge that they were aware that the concert organizers did not have a license from the OLCC. They expressed general concern that the law regarding delivery by

wholesalers is unclear. However, the Commission notes that the requirement that wholesalers deliver only to licensed premises does not seem to present any ambiguity in this case.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. A Brewery or a Wholesale Malt Beverage and Wine licensee shall deliver malt beverages only to or on a licensed premises. ORS 471.305.

No person shall peddle or deliver alcoholic liquor to or at any place where, without a license, alcoholic liquor is sold or offered for sale. ORS 471.405(1).

The evidence establishes that employees of Licensee delivered beer, a malt beverage, to a place for which a license from the OLCC had not been issued. The beer was then sold to patrons. Licensee thus is in violation of both statutes.

ULTIMATE CONCLUSIONS OF LAW

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 that the licensee has violated any provision of this chapter or any rule of the Commission adopted pursuant thereto. ORS 471.315(1)(a).

The Commission concludes that Licensee violated ORS 471.305 and ORS 471.405(1).

FINAL ORDER

It is hereby ordered that the Wholesale Malt Beverage and Wine (WMBW) license held by Clark Distributing Company, Inc. in the trade name Clark Distributing Company, 1660 Salem Industrial Drive NE, Salem, Oregon 97303, be SUSPENDED for five (5) days or that Licensee pay a fine of \$325 in lieu of the 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 8th day of February, 1984.

Allen R. Scott
Allen R. Scott
Hearings Examiner
Hearings Division

William A. Thomas for C. Dean Smith
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.