

FINDINGS OF FACT

1. At all times relevant to the facts herein the Elks BPO Lodge #357 held a Dispenser Class B (DB) license at the ELKS CLUB, 2727 Centennial Drive, Eugene, Oregon.

2. The Commission has charged Licensee with violation of OAR 845-06-045(4) (permitting criminal activity of promoting gambling) and ORS 472.180(10) (misdemeanor conviction).

3. On September 26, 1983 Licensee was convicted in Lane County Circuit Court of promoting gambling in the second degree for gambling which occurred on Licensee's premises. It was sentenced to four years probation and \$14,000 in fine and assessment. It was further sentenced to a \$60,000 fine, which was suspended on the condition that Licensee comply with the terms of its probation.

4. In March 1981 Licensee was notified in writing, along with other fraternal organizations in the area, by the Eugene Police Department that it had received information about illegal gambling activity on the organizations' premises and that it intended to enforce state gambling laws. It enclosed copies of relevant statutes. The police commenced an investigation of illegal gambling in Eugene, which led to Licensee's conviction.

5. Promoting gambling in the second degree is a Class A misdemeanor. ORS 167.122.

DISCUSSION

At the hearing of these violations Licensee did not dispute the conviction, but argued that the proposed penalty (15 days/\$975) was too severe. It argued that its previous OLCC

violation had been negotiated down to a penalty of a Letter of Reprimand, and that the terms of the settlement were such that the current violation should not be treated as a second offense in terms of assessing a penalty.

The Commission notes that Licensee's attorney at this hearing did not represent Licensee during the negotiations for the prior violation, and had not seen a copy of the agreement between Licensee and the OLCC at the time he made the above argument. The agreement is dated August 8, 1983 and states that "[a] Letter of Reprimand constitutes a 'previous violation for purposes of OAR Chapter 845 Section 06-200'." OAR 845-06-200 contains the Commission's penalty schedule. The agreement does not contain any language indicating that a subsequent violation will be treated as a first violation.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. No licensee shall permit any gambling activity made unlawful by ORS 167.117 to 167.162, or any other criminal conduct, to occur on the licensed premises. A criminal conviction of the licensee or an employee of the licensee is required to establish a violation of this section by reason of unlawful gambling activity. A criminal conviction is not required to establish a violation of this section by reason of other criminal conduct, but conviction or acquittal on a related criminal charge may be considered in the hearing on a charge of violating this subsection. An employee of the Commission who observes or has other evidence of a gambling offense or other criminal conduct occurring on licensed premises shall report this information to the police agency having jurisdiction and render reasonable assistance, if requested, in further investigation and prosecution of the conduct. OAR 845-06-045(4).

Licensee was convicted of promoting gambling in the second degree, a Class A misdemeanor.

2. The Commission may cancel or suspend any license granted, or impose a monetary penalty in lieu of or in addition to suspension as provided by ORS 472.187, if it finds:

. . . .

(10) That the licensee, since the granting of the license, has been convicted of a felony or has been convicted of violating any of the liquor laws of this state, general or local, or has been convicted of any misdemeanor or violation of any municipal ordinance where such misdemeanor or violation of municipal ordinance was committed on the licensed premises. ORS 472.180(10).

Licensee was convicted of the misdemeanor of promoting gambling in the second degree; the gambling occurred on Licensee's premises.

ULTIMATE CONCLUSIONS OF LAW

The Licensee has violated both OAR 845-06-045(4) and ORS 472.180(10). The Commission's proposed penalty is for only the rule violation, and is at the second violation level. As the Eugene police had warned Licensee of its intentions prior to enforcing the statute, no mitigating circumstances are present.

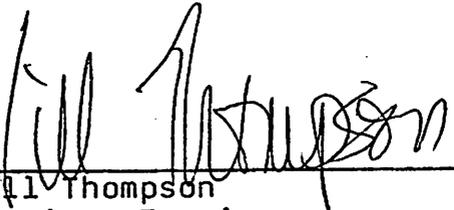
FINAL ORDER

It is hereby ordered that the Dispenser Class B (DB) license held by Elks BPO Lodge #357 at the ELKS CLUB, 2727 Centennial Drive, Eugene, Oregon, be SUSPENDED for fifteen (15) days or that Licensee pay a \$975 fine in lieu of 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 25th day of June, 1984.



Jill Thompson
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.