

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,
M.C. Distributors, Inc.	)	CONCLUSIONS OF LAW,
M.C. DISTRIBUTORS	)	AND ORDER
13990 Fir Street	)	
Oregon City, Oregon 97045	)	
- - - - -	)	
Clackamas County	)	

A hearing in the above matter was held on the 11th day of August, 1983, in Portland, Oregon, before Hearings Examiner Allen R. Scott. The Licensee appeared in person and was represented by James K. Neill, Jr., Attorney at Law, Portland. The Commission was not represented by legal counsel.

RECORD OF PREVIOUS VIOLATIONS

<u>DATE</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
March, 1982	Selling liquor in manner other than license permits; False statement; Restrictions to premises described in license	\$975 fine

The Commission having considered the record of the hearing, the applicable law and regulations, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and now being fully advised, makes the following:

FINDINGS OF FACT

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

2. Licensee has been charged with violation of ORS 471.405(1) (sold wine off the dock in quantities of less than five gallons).

3. On December 11, 1981, Licensee sold less than five gallons of wine to the sister of the owner. She is not a licensee of the Commission.

4. On December 2, 1981, Licensee sold less than five gallons of wine to a person known as "McKee." McKee is not a licensee of the Commission.

5. On 31 other occasions during December 1981 and January 1982, Licensee sold less than five gallons of wine to employees of Licensee.

6. Approximately one half of the employees involved in these sales are holders of Salesman's licenses. The other half hold Driver's Permits.

#### ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. No licensee shall sell or offer for sale any alcoholic liquor in a manner, or to a person, other than the license permits the licensee to sell. ORS 471.405(1).

As a holder of a Wholesale Malt Beverage and Wine license, Licensee's sales are governed by ORS 471.235(1), which states, in pertinent part:

"A wholesale malt beverage and wine licensee shall allow the importation, storage, transportation, wholesale sale and distribution to licensees of the Commission, and the export of wine of alcoholic content not in excess of 21 percent of alcohol by volume, and malt beverages containing not more than eight percent of alcohol by weight, and the importation and sale to the commission and the export of

wine of alcoholic content in excess of 21 percent of alcohol by volume. No such licensee shall sell any alcoholic liquor for consumption upon the licensed premises. However, a Wholesale Malt Beverage and Wine licensee may sell naturally fermented wine containing not more than 21 percent of alcohol by volume in quantities of not less than five gallons or more than 55 gallons at any one time to consumers for consumption not on the licensed premises."

The evidence establishes that in December 1981, Licensee sold less than five gallons of wine to two individuals who were not licensees of the Commission, the corporate owner's sister and a person known as McKee. Licensee was in violation of the above statutes because of those sales.

The other 31 instances present a different question. The evidence indicates that approximately half the employees to whom the sales were made hold Salesman's licenses and the other half hold Driver's Permits. Licensee argues that these people are thus licensees of the Commission and Licensee may therefore sell them wine in quantities of less than five gallons.

The Commission concludes that Licensee's argument is correct with respect to holders of Salesman's licenses. Such people are licensees of the Commission. The statute quoted above does not qualify the term "licensees" in any fashion. There is nothing else in the quoted statute which excludes Salesman's licensees from the coverage of the statute.

Licensee argues, correctly in the Commission's view, that the "intent" of the statute is not material. The general rule, as Licensee notes, is that "legislative intent" and other rules of interpretation of statutes are not relevant unless there is

an ambiguity in the portion of the statute involved. In the absence of an ambiguity, the statute is to be merely applied to the facts. In this situation, the phrase "licensees of the Commission" is clear on this face and there is thus no basis for interpreting it in a manner which excludes Salesman's licensees. The Commission therefore concludes that the sales to the Salesman's licensees are not in violation of the statutes.

With respect to the holders of Driver's Permits, however, the Commission concludes that the fact that the word "permit" is used rather than "license" indicates a intent to make a distinction between the two privileges. Thus, those who hold "permits" are not, in the Commission's view, "licensees." Sales to them in quantities of less than five gallons were therefore in violation of the statute.

#### 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 471.405(1) and ORS 471.235(1) during December 1981 and January 1982, by selling wine in quantities of less than five gallons to two members of the public and to approximately 15 employees who hold Driver's Permits.

The Commission does not believe that sufficient aggravation exists under these circumstances to enhance the penalty beyond the penalty schedule.

FINAL ORDER

It is hereby ordered that Wholesale Malt Beverage and Wine (WMBW) license held by M.C. Distributors, Inc. in the trade name M.C. DISTRIBUTORS, 13990 Fir Street, Oregon City, Oregon 97045, be SUSPENDED for five (5) days or that Licensee pay a fine of \$200 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 28th day of February, 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.