

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)
Proposed Suspension of the)
Retail Malt Beverage (RMB))
License held by:)
)
Gerald and Rosa Lee Grimm)
PASTIME TAVERN)
1200 12th Street)
Sweet Home, Oregon 97386)
- - - - -)
Linn County)

FINAL
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

A hearing in the above matter was held on the 27th day of April, 1984, in Albany, Oregon, before Hearings Examiner Douglas Crumme'. The Licensees were represented by Brian Jackson, Attorney at Law, Albany. The Commission was not represented by legal counsel.

RECORD OF PREVIOUS VIOLATIONS

NONE.

On October 22, 1984, the Commission considered the record of the hearing, the applicable law and regulations, the Proposed Order of the Hearings Examiner, and Exceptions to the Proposed Order of the Hearings Examiner. Being fully advised, the Commission makes the following:

FINDINGS OF FACT

1. Gerald and Rosa Lee Grimm have held a Retail Malt Beverage (RMB) license at PASTIME TAVERN, 1200 12th Street, Sweet Home, Oregon, at all dates relevant to the Findings of Fact below.

2. The Commission's staff has charged the Licensees with the violation of:

- a. ORS 471.315(g) (knowing sale to minor).
- b. OAR 845-06-035(2)(a) (permitted minor to consume on licensed premises).
- c. OAR 845-06-035(2)(b) (permitted minor to enter or remain).
- d. ORS 471.130(1) (failed to check identification).

(Commission's Exhibit A.)

3. The events described below occurred during the evening of August 21, 1983 and the early morning of August 22, 1983 unless otherwise noted.

4. Licensee Rosa Grimm was alone on duty in the Pastime after 7:00 p.m.

5. James A. Rook, Jr. was 16 years old on August 21, 1983.

6. James A. Rook, Jr. appeared under 21 years of age on August 21, 1983 due to his youthful facial features and general appearance.

7. The Commission takes official notice that on August 21 and 22, 1983, the Pastime Tavern held a No. I minor posting under OAR 845-06-040(3)(a). A No. I minor posting forbids minors on the licensed premises.

8. The only witnesses at the hearing to testify that James Rook, Jr. entered, remained, purchased and consumed alcohol in the Pastime in a manner that would constitute a violation were James Rook, Jr., his father James Rook, Sr. and Robert Rook (the uncle of James, Jr. and the brother of James, Sr.). The Commission finds that these witnesses were not

credible, as set forth in the "Discussion" below. Therefore, there was not substantial evidence to support the charges.

DISCUSSION

There were several factors that established the Rooks' were not credible witnesses. First, the three Rooks (James Jr., James Sr. and Robert) were drinking on the night in question. James A. Rook, Jr. was quite intoxicated by the time the police came. Second, the vehicle that James Rook, Sr. was driving was involved in some suspicious activity on the evening in question. A tool box belonging to a Sweet Home resident was stolen and discovered in Mr. Rook's pickup. The Rooks did not appear to testify truthfully concerning this particular matter. Third, James A. Rook, Sr.'s dispute with the Grimms establishes a motive for the Rooks to lie because of ill will towards Mr. Grimm. Fourth, James A. Rook, Jr. made some statements to the Cottage Grove police on August 22, 1983 that were inconsistent with his testimony at the hearing. On August 22, Mr. Rook told the police he had had one beer and had been in the Pastime just a little while. In contrast, at the hearing, Mr. Rook testified that he was in the Pastime for two or three hours and had consumed a number of beers. Finally, there were other conflicts between the testimony of the three Rooks.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission may cancel or suspend any license if it finds or has a reasonable ground to believe that the licensee, or his or its agent, employee or representative, has knowingly sold alcoholic liquor to a

person(s) under the age of 21 years. ORS 471.315(1)(g). The requirement of "knowledge" is satisfied where there is a reasonable ground to believe that the seller knew the purchaser of alcoholic liquor was under the age of 21 years. Plaid Pantries, Inc. v. OLCC, 16 Or. App. 199, 203 (1974).

The record does not show that the Licensees violated ORS 471.315(1)(g) in the case of 16-year-old James A. Rook, Jr. in the Pastime on the evening of August 21, 1983 and the early morning of August 22, 1983.

2. No licensee or permittee employed by such licensee shall permit a minor, whether or not accompanied by a parent or guardian, to consume any alcoholic beverage upon the licensed premises, whether or not the alcoholic beverage is given to the minor by a parent, guardian or spouse of legal age. OAR 845-06-035(2)(a).

The record does not show that the Licensees violated OAR 845-06-035(2)(a) in the case of 16-year-old James A. Rook, Jr. on the evening of August 21, 1983 and the early morning of August 22, 1983.

3. No licensee or permittee employed by such licensee shall permit a minor, whether or not accompanied by a parent or guardian, to enter or remain upon the licensed premises, or a portion of the licensed premises that has been posted by the Commission as provided by Rule 845-06-040 as being prohibited to the use of minors, except as provided by Sections (3) and (4) of this rule. OAR 845-06-035(2)(b).

The record does not show that the Licensees violated OAR 845-06-035(2)(b) on the evening of August 21, 1983 and the early morning of August 22, 1983 in the case of 16-year-old James A. Rook, Jr.

4. All licensees, and their agents, representatives and employees, and all service permittees of the Commission, before selling or serving alcoholic liquor to any person about whom there is any reasonable doubt of the persons having reached 21 years of age, shall require such person to produce the person's motor vehicle operator's license or if the license does not bear a photograph of the operator, then an identification card issued by the Oregon Department of Motor Vehicles pursuant to ORS 482.900, et seq. However, if the person has no motor vehicle operator's license or identification card, the licensee, or his agent, representative or employee, or the service permittee shall require such person to make a written statement of age and furnish evidence of the person's true age and identity. Licensees, permittees and employees of licensees must examine all documents submitted as evidence of age and identity by persons of questionable age, shall be responsible for accurately recording the information from any such documents on statement of age forms, and shall refuse to sell or serve any alcoholic liquor to any person offering any altered, erased or falsely represented document of age and identification. ORS 471.130(1), and OAR 845-06-035(5).

The record did not show that Licensees violated ORS 471.130(1) on the evening of August 21, 1983 and the early morning of August 22, 1983 in the case of 16-year-old James A. Rook, Jr.

ULTIMATE CONCLUSIONS OF LAW

1. When there has been a violation of ORS Chapter 471 or 472, or any rule adopted thereunder, upon any premises licensed by the Commission, the Commission may revoke or suspend either the service permit of the employee who violated the law or rule or the license of the licensee upon whose premises the violation occurred, or both the permit and the license. ORS 471.385(3).

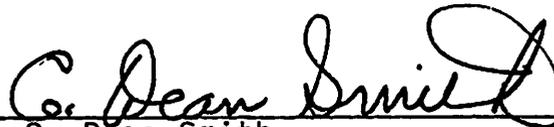
The charges against the Licensees for the violation of ORS 471.315(1)(g) (knowing sale to a minor), OAR 845-06-035(2)(a) (permitted minor to consume on licensed premises), OAR 845-06-035(2)(b) (permitted minor to enter or remain on licensed premises), and ORS 471.130(1) (failure to ask for identification or take Statement of Age) should be dismissed, as noted in the Conclusions of Law above.

FINAL ORDER

It is hereby ordered that the charges set forth in Finding of Fact No. 2 above against Gerald and Rosa Grimm at Pastime Tavern, 1200 12th Street, Sweet Home, Oregon, be DISMISSED.

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

Dated this 26th day of October, 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.