

BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Alleged Violations of:	)	
	)	FINAL
Michael and Joyce Carter	)	FINDINGS OF FACT,
Package Store (PS) Licensees	)	CONCLUSIONS OF LAW,
dba THREE OAKS RESTAURANT	)	AND ORDER
6801 Rogue River Highway	)	
Grants Pass, Oregon 97526	)	
-----	)	
Josephine County	)	

A hearing in the above matter was held on the 24th day of May, 1984, in Grants Pass, Oregon, before Hearings Examiner Douglas Crumme'. The Licensees appeared in person and were 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 June 26, 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. Michael and Joyce Carter have held a Package Store (PS) license or a Letter of Authority from the Commission to

operate under a Package Store license at the THREE OAKS RESTAURANT, 6801 Rogue River Highway, Grants Pass, Oregon at all dates relevant to the findings below.

2. Commission's Enforcement Division has charged the Licensees with the violation of:

- a. ORS 471.405(1) (sold alcoholic liquor in a manner other than license permits); and
- b. ORS 471.260(1) (PS licensees shall not permit the consumption of alcoholic liquor upon their licensed premises).

3. Mr. and Mrs. Carter obtained license application packets for PS and Retail Malt Beverage (RMB) licenses for the Three Oaks in July, 1983. They completed their PS application, including obtaining a favorable endorsement from Jackson County, and were issued their Letter of Authority for the PS license on July 28, 1983. However, problems developed in obtaining county approval for the RMB application. Final county approval of the RMB application was never given. Consequently, an RMB license was never issued to the Licensees.

4. The license privileges of PS and RMB licenses were explained to the Licensees by the Commission's License Division in July, 1983. The Licensees understood at that time that a PS license did not allow the consumption of alcoholic liquor upon the licensed premises.

5. The Licensees operated The Three Oaks as a restaurant after opening in July, 1983.

6. In November, 1983 the Licensees began featuring a European night on Saturdays and served patrons a carafe of wine

with their meals. There was no extra charge for the wine beyond the regular meal price. Until February 21, 1984, the Licensees did not serve beer or wine for on-premises consumption except during the European night dinners.

7. On February 21, 1984, the Licensees began offering wine for consumption on the licensed premises at lunch and dinner during the weekdays in addition to the European night dinner on Saturdays.

8. A Commission Enforcement Division Inspector visited the Three Oaks on February 21, 1984 and determined the Licensees were serving alcoholic beverages for consumption on the licensed premises in violation of their PS license privileges. Two female customers were drinking glasses of wine on the premises when the Inspector arrived. The Inspector advised the Licensees they must stop. The Licensees complied with the Inspector's instructions.

9. The problem that developed in July, 1983 in obtaining Jackson County approval of an RMB license at the Three Oaks Restaurant concerned whether the Three Oaks would be allowed as a non-conforming use under county regulations. In order to pursue gaining approval of the Three Oaks as a nonconforming use, Mr. and Mrs. Carter needed to make an application to the county with a \$200 fee. Mr. and Mrs. Carter did not have \$200 available and did not pursue the county process.

10. Mr. and Mrs. Carter began serving wine for on-premises consumption in November, 1983 without an RMB license because of the difficulties they had encountered in obtaining

Jackson County approval of an RMB license and because of the Carter's desire to test the feasibility of an RMB-licensed operation.

11. Jackson County has determined that replacement of the existing septic system would be necessary for the county to approve the operation of the Three Oaks as the Carter's propose under an RMB license. Rather than pursue county approval, the Licensees' landlord has determined not to make the septic improvements. The Carters therefore planned to close the Three Oaks on May 27, 1984.

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).

A package store licensee shall allow the retail sale of certain specified types of alcoholic liquor in sealed packages. Package store licensees shall not permit the consumption of alcoholic liquor on their licensed premises unless such licensee holds another license that permits such consumption. ORS 471.260(1).

The Licensees violated ORS 471.260(1) by permitting the consumption of alcoholic liquor upon their licensed premises at the Saturday European night dinners from November, 1983 through February 18, 1984 and at lunch on February 21, 1984.

Further, the Licensees violated ORS 471.405(1) by selling alcohol on those dates for consumption on the licensed premises. Selling for consumption on the licensed premises constitutes selling in a manner other than a PS license permits because on-premises consumption at a PS premises is forbidden under ORS 471.260(1).

For purposes of ORS 471.405(1), a sale would be deemed to have occurred even where the wine is included with the meal at no extra charge, because patrons are required to purchase a meal as a condition to receipt of a carafe of wine.

#### ULTIMATE CONCLUSIONS OF LAW

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 Commission may cancel or suspend the Licensees' license for the violations of ORS 471.405(1) (sold alcoholic liquor in a manner other than license permits) and ORS 471.260(1) (package store licensee permitted consumption of alcohol on licensed premises).

The Commission's Enforcement Staff has proposed a fine alone with no suspension alternative as a penalty in this matter because "the alleged violation appears to have been deliberate, has gone on for a considerable period of time, and the suspension of your package store license would probably be meaningless . . . ." The evidence bore out that the violation was deliberate and continuing. Further, although a suspension would not be meaningless, the Licensees' planned closure of the premises means that a suspension would work less of a hardship on them than a fine.

The Licensees argued at the hearing that the \$650 fine proposed by the staff was excessive given the facts involved.

The Commission notes, however, that a \$650 fine is specified under the Commission's penalty schedule rule, OAR 845-06-200(5), for a first violation of ORS 471.405(1). The fact that the violation was deliberate and continued for a matter of months argues against mitigation of the penalty prescribed in the schedule.

FINAL ORDER

It is hereby ordered that Michael and Joyce Carter, Package Store (PS) Licensees at THREE OAKS RESTAURANT, 6801 Rogue River Highway, Grants Pass, Oregon, pay a fine of \$650 for the violations of ORS 471.405(1) and ORS 471.260(1).

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

The fine must be paid within ten (10) days of the date of this Order.

Dated this 16th day of July, 1984

  
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Douglas Crumme  
Hearings Examiner  
Hearings Division

  
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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.