

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Application for a)	
Retail Malt Beverage (RMB))	
License by:)	FINAL
)	FINDINGS OF FACT,
Franklin Enterprises, Inc.)	CONCLUSIONS OF LAW,
dba THE JACK ROOM)	AND ORDER
1 Main Street)	
Troy, Oregon 97828)	OLCC-84-L-021
- - - - -)	
Wallowa County)	

A hearing in the above matter was held on the 30th day of August, 1984, in Troy, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was represented by Kimberlee Collins, Attorney at Law, Portland, Oregon. The Commission was not represented by legal counsel.

On February 19, 1985, the Commission considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and applicable statutes and regulations. Pursuant to this review, the Commission enters the following:

BACKGROUND

Applicant seeks a Retail Malt Beverage (RMB) license at THE JACK ROOM in Troy, Oregon. Troy is an unincorporated town located in Northeast Oregon, approximately seven miles south of the Washington border.

Applicant's premises will seat approximately 35 to 40. It will operate as both a restaurant and a tavern. Applicant also proposes to license an outdoor area surrounding the premises.

This area is approximately 100 feet by 200 feet and will be enclosed by a six-foot fence.

The property on which the premises is located also contains nine cabins, six RV spaces, a gas station, and corrals for hunters' horses and mules.

ISSUES

I. The Staff asserts that there are sufficient licensed premises in the locality. ORS 471.295(1), OAR 845-05-030(1).

II. The Staff asserts that public opinion weighs against the granting of the license. OAR 845-05-035.

III. The Staff asserts that the licensing of this premises would not be in the best interest of the community because of illegal activities or a recent history of altercations, noisy conduct or other disturbances in or around the premises. OAR 845-05-025(10).

I. SUFFICIENT OUTLETS

The following criteria will weigh against issuing a license:

(1) There are sufficient licensed premises in the locality set out in the application, or the granting of a license in the locality set out in the application is not demanded by public interest or convenience. Factors such as declining or static population, business or industrial development in the applicant's community, or by decreasing sales or patronage at other similarly licensed outlets in that community may be considered. For purposes of this section, the applicant's community will be a 10-mile radius for dispenser licenses and a two-mile radius for other licenses, unless the applicant establishes that a substantial portion of the patronage of the premises is or would be from a larger or smaller area. OAR 845-05-030(1).

Findings of Fact

1. Applicant's proposed premises will be located in Troy, which is unincorporated. Approximately 15 to 20 people live in the immediate town area, and approximately 50 live in the outlying areas.

2. Applicant intends that the premises will be part of a resort complex which will be used by hunters, fishers, hikers, and other visitors to the Troy area. Most of these visitors will come from other areas of Wallowa County and other parts of Northeast Oregon and Southeast Washington.

3. A resort holding a Retail Malt Beverage license was located on the property now owned by Applicant until destroyed by a fire approximately four years ago.

4. The population of Wallowa County declined from 7,390 to 7,330 during a one-year period from 1982 to 1983.

Conclusions of Law

Applicant claims that the premises will serve various types of visitors from Northeastern Oregon and Southeastern Washington. Thus, the relevant area for consideration under this criterion is a much larger area than the immediate Troy area. The Staff claims that the static or slightly declining population of Wallowa County provides evidence of sufficient premises in the area. This evidence is entitled to some weight. However, Applicant has shown that the premises will serve hunters, fishermen and other transient visitors. That fact makes population not necessarily the key consideration.

The Staff appears to acknowledge that there is merit in Applicant's claim that the premises would meet some need. In the "Refusal Letter," the Staff noted that Applicant had provided information about the suitability of the County and of Troy for economic development. The letter then states, "The information persuaded Staff that the area could support additional licenses, however, Staff was not persuaded that your application is the most suitable for this location." This statement is contradictory to the Staff's assertion that the area has sufficient licensed premises. The staff presented no evidence relating to the question of the "suitability" to the area of this application or any other application.

The Commission concludes that Staff has not carried its burden of showing that the area has sufficient licensed premises and that this criterion is therefore not a basis for denying the application.

II. PUBLIC OPINION

The Commission may refuse to issue or renew a license if it determines that public opinion weighs against the issuance of a license. Interested persons may express their support for or opposition to the issuance of a particular license by petition or letter timely received at the Commission offices, or by personal appearance and testimony at a Commission hearing, if any. Such public opinion will be evaluated in light of the reasons expressed and the extent to which the persons expressing it are likely to be affected by the issuance of the license. Greater weight will be given to opinions of persons residing, working or owning a business within a one-mile radius of the proposed premises. The number of persons expressing support or opposition will not, in and of itself, be

controlling. Arguments concerning matters which are primarily within the control of the city or county government, and which were raised, or reasonably should have been raised, before the governing body of the city or county when it was considering its recommendation, may be given lesser weight by the Commission if the governing body's recommendation is inconsistent with the argument. OAR 845-05-035.

Findings of Fact

5. Troy is unincorporated. Exact population figures are therefore unavailable. Estimates of the population in the town and in the area ranged from 15 to 20 "in town" and 45 to 70 in the Troy area.

6. Nine people testified at the OLCC hearing in opposition to the license. All are residents of the Troy area. One is the owner of the existing RMB premises in Troy, another is an employee of the existing premises, and another is married to an employee of the existing premises.

7. The Commission received seven letters in opposition to the granting of the license. All are from people living in the Troy area. Three are from people who testified at the OLCC hearing.

8. The Commission also received a petition in opposition to the granting of the license. Thirty-five of the signatures are from people who did not testify at the hearing or submit a letter. Approximately 28 of the signers have Troy area addresses.

9. The Wallowa County Court conducted a public hearing in Troy in July 2, 1984, on this matter. Nine people testified

at the meeting in opposition to the license. All but one of the nine either submitted a letter to the OLCC or testified at the OLCC hearing.

10. Those who testified at the OLCC hearing in opposition to the license or who wrote letters in opposition expressed several concerns. Almost all expressed fear that Applicant will reintroduce something like the three day "Troy Days" celebration which occurred in Troy each summer from about 1977 through 1980. Its focal point was a resort then existing on the property Applicant proposes to be licensed in this matter. The resort involved has since burned down. Applicant was not involved in that resort or in Troy Days.

Extensive testimony and other evidence establishes that the "Troy Days" celebration was detrimental to the residents of Troy. It brought into the area as many as 1,000 to 2,000 people from outside. There were many instances of unruly behavior, drunkenness, theft, drug use, vandalism, and threats to local residents. Local residents were disturbed until late at night by loud music and revelry. Many of the protestors expressed their belief that the Applicant in this matter has indicated his intention of reviving this disruptive festival. Dennis Franklin, principal in the Applicant corporation, was not present at the hearing because he was in Alaska. However, through an affidavit and through representations of his attorney, Mr. Franklin indicated that he does not intend to revive

the infamous Troy Days celebration. He expressed the willingness to have a condition placed upon the license that "There will be no outdoor live music on my premises."

The protestors also expressed a more general concern that any substantial influx of tourists or visitors would be detrimental to the area because of its isolation, absence of facilities for visitors, poor roads, and remoteness from law enforcement and medical facilities.

Many of the protestors also expressed a general feeling that the one licensed premises in Troy, the Little River Inn, is sufficient to satisfy the need in the area.

Some of the protestors also expressed the view that Mr. Franklin has shown disdain for the local people and has had problems with other regulatory agencies in connection with his proposed resort.

11. Troy is located near the Grande Ronde River in Northeastern Oregon. It is very isolated. All roads leading into Troy are unpaved. The nearest towns of any size are Wallowa, 37 miles over unpaved roads, Enterprise, which is approximately 55 road miles away (16 of the miles are over unpaved roads), and Lewiston, Idaho, approximately 55 miles away (16 of those are over unpaved roads). There is no regular law enforcement in Troy and no tourist facilities other than Applicant's premises and the restaurant/tavern services provided by the Little River Inn.

12. Troy is something of a focal point for hunting, fishing, hiking and backpacking. There is also some potential for mining in the area.

13. Three people testified in support of the application at the OLCC hearing in Troy. One is the manager of the premises. The other two expressed the view that competition is beneficial and that the principles of free enterprise should be taken into account.

14. Applicant submitted a petition supporting the granting of the license. The petition states, in part, "We believe the re-opening of the Troy resort complex will be of benefit to the area." The petition is signed by 147 people. All gave Wallowa County addresses, but none gave Troy area addresses.

15. At the Wallowa County Court public meeting on this matter, seven people testified in favor of the application. Two are from the Troy area. The County Court recommended that the license be granted.

Conclusions of Law

The Commission concludes that public opinion weighs against this application. The evidence establishes that approximately 40 residents of the Troy area expressed opposition to this license. Although sheer numbers are not the determining factor, the fact that more than half of the approximately 50 to 70 residents of the area have expressed opposition is of considerable significance, particularly as only approximately five local residents have expressed support for the application. Most of the support has come from people who

live in towns 40 to 50 miles away from Applicant's premises. It is clear that those expressing opposition will be much more significantly affected than those expressing support.

It is also concluded that the reasons expressed for the opposition are not without some substance. Even if it is assumed that Applicant does not intend to reinstitute something like the disruptive Troy Days celebrations of the past, it is nevertheless his intent to encourage a substantial influx of visitors to Troy. His operation, in fact, would appear to depend upon patronage by significant numbers of people from outside Troy. The evidence is overwhelming that Troy is so small and so isolated that the gathering of many people from outside the area could present a significant disruption to local residents. It appears, in other words, that the opposition of many local residents is not based upon pure xenophobia, but upon a reasonable feeling that Troy cannot accommodate the type of business proposed by Applicant without significant problems to local residents. The condition which Applicant proposed in an effort to reduce the concerns of the local residents (See Finding of Fact 10) would not, in the Commission's view, necessarily eliminate the possibility of real problems developing as a result of an influx of visitors.

The Commission notes that the Wallowa County Court recommended favorably on this matter after conducting a public hearing in Troy. Nevertheless, in this particular case the Commission concludes that the evidence that public opinion weighs

against the application is so substantial as to overcome the significance of that recommendation.

III. ILLEGAL ACTIVITIES OR RECENT HISTORY OF NOISY CONDUCT

The following criteria will be given sufficient consideration so that a license will not be issued unless good cause which outweighs the criteria involved is shown by the applicant:

. . .

(10) The licensing of the premises would not be in the best interests of the community because of illegal activities or a recent history of altercations, noisy conduct or other disturbances in or around the premises under the applicant's or other's ownership or control. OAR 845-05-025(10).

Findings of Fact

16. Applicant's premises is located on property which previously contained a resort which held a Retail Malt Beverage license.

17. Each summer from 1977 to 1980 a three-day celebration called "Troy Days" was held at the old resort.

18. Some of the people who came to the Troy Days celebrations committed illegal activities, such as theft and vandalism, in and around Troy.

19. There were altercations, noisy conduct and other disturbances in and around the old resort premises during Troy Days celebrations.

20. On Memorial Day Weekend, 1984, Applicant permitted a band to play on the proposed premises. The band played until late at night, disturbing some residents of Troy.

Conclusions of Law

The Commission concludes that this criterion has not been established as a basis for denying the application. There is evidence that illegal activities occurred during the Troy Days celebrations in the past. However, the evidence is not specific enough to establish that these illegal activities occurred in the premises or in close enough proximity to be reasonably considered to be "around" the premises.

Furthermore, the evidence does not establish that there is a "recent history" of noisy conduct or other disturbances. Troy Days celebrations ceased four years ago. This is not recent enough, in the Commission's opinion, to fit within this criterion. The only other evidence regarding a recent history of noisy conduct or disturbances involves Memorial Day Weekend in 1984. According to the evidence, a band played on Applicant's premises, with his permission, until late at night, thereby disturbing the local residents. The Commission believes, however, that the word "history" implies a course of conduct or course of events. Thus, it is necessary to prove more than one instance. For these reasons, the Commission concludes that it has not been established that there has been a recent history of such activities.

The Commission concludes that this criterion is not a basis for denying the application.

ULTIMATE CONCLUSIONS OF LAW

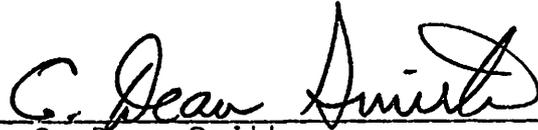
The application should be denied because public opinion weighs against the granting of the license. OAR 845-05-035.

FINAL ORDER

It is hereby ordered that the application for a Retail Malt Beverage license by Franklin Enterprises, Inc., in the trade name The Jack Room, 1 Main Street, Troy, Oregon 97828, be DENIED.

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

Dated this 25th day of February, 1985.



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.