

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Package Store (PS))	
License held by:)	FINAL
)	FINDINGS OF FACT,
Nita J. Harris)	CONCLUSIONS OF LAW,
dba OAK HILLS GROCERY)	AND ORDER
4791 SE Thiessen)	
Milwaukie, Oregon 97222)	OLCC-85-V-030
-----)	
Clackamas County)	

A hearing in this matter was held on July 11, 1985, in Portland, Oregon, before Hearings Examiner Jill Thompson. A reconvened hearing was held in this matter on October 9, 1985. The Licensee appeared, and was not represented by legal counsel. The Commission was not represented by legal counsel.

The presiding officer considered the record of the hearing and the applicable law, and issued an Amended Proposed Order dated October 17, 1985.

No Exceptions to the Amended Proposed Order were filed within the 15 day period specified in OAR 845-03-050.

The Commission adopts the Amended Proposed Order as the Final Order of the Commission, and enters the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Nita J. Harris has held a PS license at all times relevant to this matter.
2. OLCC staff charges that the Licensee has violated ORS 471.315(1)(g) (selling to a minor) or, in the alternative,

ORS 471.410 (making available to a minor).¹ OLCC staff also charges Licensee with violation of ORS 471.130(1) (failed to check identification).

3. Licensee does not contest that violations of ORS 471.315(1)(g) and ORS 471.130(1) occurred on May 17, 1985. Licensee agrees that Licensee's employee knowingly sold alcoholic beverages to a person under the age of 21 years. Licensee further agrees that her employee sold alcoholic liquor to a person about whom there was a reasonable doubt of his having attained 21 years of age without first seeking identification or having an S-146 card filled out for this person.

4. Licensee agrees that a fair penalty for the violations of ORS 471.310(1) and ORS 471.315(1)(g) is a three-day suspension of her Package Store license or a \$195 fine instead of this suspension.

5. Enforcement Division agrees that a three-day suspension or a \$195 fine instead of this suspension is an appropriate penalty under all the circumstances of this case.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. SALE TO A MINOR

The commission may cancel or suspend any license, or impose a monetary penalty in

¹ Because of the disposition made of this matter, it is unnecessary to consider the alternative charge.

lieu of or in addition to suspension as provided by ORS 471.322, if it finds or has reasonable ground to believe any of the following to be true:

(1) That the licensee:

.....
(g) Knowingly has sold alcoholic liquor to persons under 21 years of age or to persons visibly intoxicated at the time of sale. ORS 471.315(1)(g).

On May 17, 1985, Licensee's employee knowingly sold alcoholic liquor to a person under the age of 21 years. Licensee is responsible for the acts of her employee in this matter.
OAR 845-06-025.

II. FAILURE TO SECURE IDENTIFICATION

All licensees and permittees of the commission, before selling or serving alcoholic liquor to any person about whom there is any reasonable doubt of the person's 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 to the person under ORS 482.900. However, if the person has no motor vehicle operator's license or an identification card, the permittee or licensee shall require such person to make a written statement of age and furnish evidence of the person's true age and identity. ORS 471.130(1).

On May 17, 1985, Licensee's employee failed to check identification and to secure information for an S-146 card for a person about whom there was reasonable doubt of his attaining 21 years of age before selling alcoholic liquor to this

person. Licensee is responsible for the acts of her employee in this matter. OAR 845-06-025.

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 any of the following to be true:

(1) That the licensee:

(a) Has violated any provision of this chapter or any rule of the commission adopted pursuant thereto. ORS 471.315(1)(a).

Licensee has violated ORS 471.315(1)(g) and ORS 471.310(1). The alternative charge brought under ORS 471.410(2) should be dismissed. A fair and appropriate penalty in this matter is a three-day suspension of the Package Store license or a \$195 fine instead of this suspension.

FINAL ORDER

It is ordered that the Package Store license held by Nita J. Harris, at the Oak Hills Grocery, 4791 SE Thiessen, Milwaukie, Oregon 97222, be SUSPENDED for three days, or that Licensee pay a \$195 fine instead of serving this suspension.

It is further ordered that the alternative charge made under ORS 471.410(2) be DISMISSED.

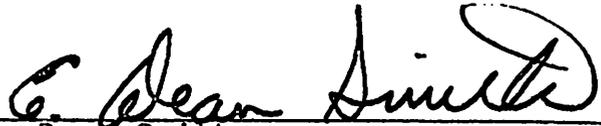
It is further ordered that notice of this action, including the reasons for it, be given as provided by law.

If you choose to pay the fine it must be paid within 10 days of the date of this Order, otherwise the suspension must be served.

Dated this 19th day of November, 1985.



Janice Krem
Director
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.

If you choose to pay the fine it must be paid within 10
of the date of this order, otherwise the suspension will

Dated this 15th day of November, 1955.

[Signature]

F. Dean Smith
Administrator
OREGON LIQUOR CONTROL COMMISSION

[Signature]

Director
Hearings Division

NOTICE: You are entitled to judicial review of this order.
Judicial Review may be obtained by filing a petition
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order. Judicial Review is pursuant to the provisions
of ORS Chapter 183.