BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the Application for a Package Store License by:	)	FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
Dathol and Mildred Powell dba PARKWAY MARKET 3000 Stewart Parkway Roseburg, Oregon 97470	)	OLCC-85-L-033
Douglas County	)	

A hearing in this matter was held on October 11, 1985, in Roseburg, Oregon, before Hearings Examiner Allen R. Scott. The Applicants appeared and were not represented by legal counsel. The Commission was represented by legal counsel.

On December 23, 1985, the Commission considered the record of the hearing, the applicable law, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and Response to Exceptions. Based on this review, the Commission makes the following:

ISSUES

I. The staff asserts that the application should be denied because the Commission has received written opposition from a church. OAR 845-05-025(2)(a).

II. The staff asserts that the application should be denied because the Commission has received written opposition from a school. OAR 845-05-025(2)(b).

III. The staff asserts that the license should be denied because public opinion weighs against the issuance of the license. OAR 845-05-035.

I. CHURCH OBJECTION

> 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:
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> . . . . .
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> (2) Written opposition to the granting of the license, stating the reasons for the opposition, by a person having control of:
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> (a) A pre-elementary, elementary or secondary school;
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> (b) A church;
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> (c) A hospital, nursing facility or convalescent home; or
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> (d) A park, including amusement park, playground or recreational facility, if such facility is located within 500 feet of the proposed outlet in an urban or suburban area or within 1500 feet in a rural area. Good cause which outweighs such written opposition may include, but is not limited to, other licensed premises being located within the same distance of the opposing facility or the opposing facility beginning operation at a time when the subject premises were licensed. OAR 845-05-025(2)(a)(b)(c)(d).

FINDINGS OF FACT

1. Applicants seek a Package Store license at Parkway Market in Roseburg.

2. Applicants have operated the store without a license since July 1985.

3. Applicants' store is located in the northern part of the City of Roseburg, away from the downtown area.

4. The Applicants' store is located at the intersection of Stewart Parkway and Broad Street. The two streets form a

Y-shaped configuration at this location, with Broad Street extending north and south and Stewart Parkway extending west from Broad Street. Applicants' premises is to the east of the intersection slightly north of the point where the two roads join. The store is a 1,200 square foot building attached to the north side of a 15,000 square foot professional office building.

5. To the southwest of the intersection is the First Church of the Nazarene. The church property abuts the Stewart Parkway-Broad Street intersection. The church itself is set back from the road.

6. The store is thus across the intersection from the church. The distance from the store to the edge of the church property is 253 feet. The distance from the store to the church building is 450 feet.

7. The areas to the south of the Applicants' premises and to the west along Stewart Parkway are zoned for commercial and industrial use. The area along Stewart Parkway is a major development area in Roseburg. Across Stewart Parkway from the church, and just northwest of the intersection described above, is a U.S. Forest Service building. To the immediate west of the church is a K-Mart store and across Stewart Parkway from the K-Mart is the Mercy Medical Center.

8. To the north of Applicants' premises along Broad Street and streets adjoining it is a residential area in which approximately 400 families live. Applicants' patronage comes primarily from this area.

9. The First Church of the Nazarene, noted above, has objected to the issuance of a Package Store license at Applicants' store. The church's reasons are stated in a letter from the Senior Pastor to the OLCC. The reasons may be summarized as follows:

(1) That the store entrance is visible.

(2) That the store will create traffic problems.

(3) That transients may come onto the church grounds to consume liquor purchased at the store. Also, that hitchhikers from Interstate 5, which is located behind the building in which Applicants' store is located, will be drawn to the store and will come onto the church grounds.

(4) That the K-Mart store directly to the west of the church property, which has a Package Store license, serves the needs of the community.

10. The church has Sunday morning and evening service, Wednesday service, and meetings of various kinds throughout the week.

11. The church grounds extend to the south of the church building. Some of the area to the south is rather secluded, with a creek running through it. A large metal building is also located on the church grounds. Part of the church's concern is that store patrons will drink in the secluded areas and present a threat to members of the congregation.

12. The K-Mart directly to the west of the church is approximately the same distance from the church as is Applicants' premises. It received a Package Store license

approximately three years ago. The church did not object to issuance of the license. The rear of the K-Mart premises is toward the church and the front of the store therefore cannot be seen from the church grounds. The K-Mart also does not have coolers and thus does not sell cold beer.

13. Applicants' present hours of operation are from about 7 a.m. to about 8 p.m. Applicants intend to extend the hours to 9 p.m. if the license is granted. Applicants have no plans to extend operation beyond 9 p.m., but did not commit themselves to permanently closing at that time.

14. The owner of the building complex in which Applicants' premises is located employs a security service to check the building twice a night at varying times.

15. The nearest Package Store premises to Applicants' store, other than the K-Mart, is a 7-Eleven store approximately 0.75 miles to the southwest.

16. The Roseburg City Council considered this application and recommended that the license be granted. The City Council gave notice to the public through newspaper notices and posted notices. No one from the church appeared in objection.

Conclusions of Law

The evidence establishes that a church within 500 feet of Applicants' premises has objected to the granting of the license and that the church has stated reasons for its opposition. Many church members also testified at the OLCC hearing in opposition to the license and several wrote letters to the OLCC expressing their opposition. The reasons expressed in the

oral testimony and the letters do not differ in any significant way from the reasons stated by the Senior Pastor in the letter noted above.

The Commission concludes that this criterion should not be a basis for denying the application. The Commission has ruled that opposition by a church may be a basis for denying a license only if the license objected to would have an actual adverse effect upon the functioning of the church. Southland Corporation, 7-Eleven Food Store, OLCC-84-L-014, May 1985. Waylon and Willie's, June 1983; Donald and Elean McDougal, Mill Creek General Store, January 1983. In this case, the evidence does not establish that the granting of this license will have any significant adverse effect on the church.

One of the objections expressed by the church is its claim that the license would increase traffic on Stewart Parkway and cause problems for those coming and going from the church. The evidence indicates that Stewart Parkway is a major thoroughfare and does have traffic problems. However, the evidence does not indicate that the granting of a license to the store will significantly affect the traffic problem. It was noted, first, that the store is not a large operation, containing only 1,200 square feet. The number of patrons coming to the store at any given time is not likely to be so large as to substantially increase traffic problems on the road.

It is also noted that Applicants' business will come primarily from those living to the north of the store along and near to Broad Street. People coming to the store along Broad

Street and returning to their homes would not travel on Stewart Parkway. In short, the evidence does not establish that the license would increase traffic to the extent that the operation of the church would be significantly affected. It is also noted that although Interstate 5 passes behind the store, there is no exit from the freeway at this point and highway travelers thus cannot be expected to significantly increase the traffic problem by leaving the freeway to visit the market.

The church also objected on the basis that transients and hitchhikers would be attracted to the store and would come to the school grounds to drink beer or wine, creating litter problems or even danger to church patrons. This fear seems based primarily upon two factors: the proximity of Interstate 5 and the fact that the church has substantial grounds, including some secluded areas to the south, which might be an attractive place for drinking and criminal activity by store patrons.

The Commission believes, however, that these fears are not based upon significant evidence. The concern regarding hitchhikers seems to be founded upon the notion that hitchhikers on Interstate 5 would leave the freeway and walk over private land between the freeway and the store, going over or around fences, to get to the store. This does not seem to be a realistic fear. Applicants offered convincing testimony, in fact, that police do not view the area in which Applicants' store is located as a particular trouble spot for vagrants or hitchhikers. The general concern of the church that undesirable people who patronize the store will use the church grounds for drinking

and criminal activity, thereby endangering the church members, is also based upon speculation. The Commission has concluded that opposition to a license based upon mere speculation that patrons will engage in criminal activity is not to be given significant weight. 7-Eleven, supra. The Commission thus concludes that, while these concerns of the church are obviously sincere, they do not provide a basis for denying the application.

The church also objects to the license because the store is visible from the church and the church grounds. This objection apparently is based simply upon the fact that members of the church do not like to see people purchasing alcoholic liquor. Evidence was offered that many members of the church are opposed on religious grounds to the use of alcoholic beverages. The Commission believes, however, that the sight of people purchasing alcoholic beverages, although offensive to church members, cannot reasonably be said to be something which would have a significant effect upon the operation of the church. In any event, the distance even from the nearest point of the church grounds to the store, 273 feet, would seem to preclude any close observation of beer or wine in the act of being purchased or being carried from the store.

The evidence also establishes that another package store licensee, the K-Mart store, is about the same distance from the church as is Applicants' premises. Under the criterion noted above, the existence of such a license is a basis for a finding of good cause for overcoming a church objection. In this case,

the church notes that the K-Mart carries only warm beer and wine and, second, that its entrance is on the opposite side of the store from the church. While these factors may make the K-Mart license of less significance to the church than it might otherwise be, this existing license is nevertheless a basis for finding good cause to overcome the objection.

Applicants also presented evidence, primarily through petitions, that there is significant support for the granting of the license, particularly among those living to the north of the store along and near Broad Street. Applicants presented convincing testimony that their primary source of business is this area to the north. The evidence also indicates that the nearest Package Store licensee, except for the K-Mart store, is three-quarters of a mile to the southwest. There is thus a basis for a finding of good cause in terms of convenience to the people who live in the area.

For the reasons noted above, the Commission concludes that the Applicants have established good cause for overcoming the opposition of the church.

II. SCHOOL OPPOSITION

> 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:
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> . . . . .
>
> (2) Written opposition to the granting of the license, stating the reasons for the opposition, by a person having control of:

(a) A pre-elementary, elementary or secondary school;

(b) A church;

(c) A hospital, nursing facility or convalescent home; or

(d) A park, including amusement park, playground or recreational facility, if such facility is located within 500 feet of the proposed outlet in an urban or suburban area or within 1500 feet in a rural area. Good cause which outweighs such written opposition may include, but is not limited to, other licensed premises being located within the same distance of the opposing facility or the opposing facility beginning operation at a time when the subject premises were licensed.
OAR 845-05-025(2)(a)(b)(c)(d).

Findings of Fact

17. The Umpqua Valley Christian School (also known as the Nazarene School of Roseburg) is located in the Nazarene Church referred to in Section I above.

18. The school has classes for children from kindergarten through high school and presently enrolls 175 students. In addition, there are approximately ten day-care students.

19. The school has expressed opposition to the granting of the license in a letter addressed to the Commission. The reasons stated may be summarized as follows:

(1) The influence of liquor on children at the school. The children, according to the letter, "are not receiving any direct or indirect exposure nor do their parents want such exposure to take place."

(2) Drivers already under the influence of alcohol will be attracted to the store and will make additional purchases,

creating a hazard for students who are walking or biking to school.

(3) The license will attract unsavory persons to the vicinity, increasing the threat of kidnapping.

(4) Customers from the store will drink beer in the parking lot of the school and will litter the parking lot.

(5) Issuance of the license would establish a precedent.

(6) The church may expand its building toward this corner of the property, putting the school facilities even closer to the store.

(7) There is no need for this license, given the existence of the K-Mart nearby.

20. Students frequently return to the school from sporting events late in the evening.

21. Few students walk or ride bicycles to school. Most live outside the immediate area of the school, including many in towns around the Roseburg area.

22. Children at the school sometimes play unsupervised before school in the area in front of the church.

Conclusions of Law

The evidence establishes that a school within 500 feet has objected to the application and has stated its reasons. Witnesses at the OLCC hearing reiterated the reasons stated in the letter.

The Commission concludes that this criterion should not be a basis for denying the application. Although the Commission has not specifically ruled so, the Commission believes that the

same sort of test applied to objections from a church may reasonably be applied to objections from a school: that a license will be denied only if it is likely to have an adverse effect on the functioning of the school.[1]

The first reason advanced by the school, that the granting of the license would result in the children of the school being exposed to alcohol, is based not on any concern expressed that children from the school might purchase alcohol at the store but upon the view that they or their parents did not want them to even observe purchases. It should be noted that the distance from the school grounds to the store indicates that the actual observations of purchases is unlikely, although the children certainly might see someone carrying beer or wine from the store. It should also be noted that whatever they would see would be no different from what anyone entering nearly every grocery store in the state would observe. The evidence indicates that some of the concern about exposure was based upon a religious precept opposing the use of alcoholic beverages. The Commission does not believe that this can form the basis for denial of the license.

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[1] In Robert W. Lindell, Corbett Cow, June 1984, the Commission denied the license based upon its likely actual effect upon the school and community. The evidence indicated that the nearby school had a problem with teenage drinking and that such a problem existed in the community as a whole. The evidence further established that the store in question would be a focal point for minors attempting to purchase alcoholic beverages. No claims of this sort were made in this case.

The second and third reasons expressed for opposition by the school, that drunk drivers will make additional purchases or that unsavory people who patronize the store will provide a threat to the school children, are based upon speculation that the store operators or their patrons will engage in criminal activity. While it is impossible to rule this out in any case, the Commission has ruled, in connection with church opposition, that concerns based upon speculation as to criminal activity are not a basis for denial of an application. 7-Eleven, supra. The Commission believes that the same reasoning can reasonably be used here. There is no reason to believe that Applicants in this case will behave in an illegal manner or that their patrons will be given to criminal behavior.

The school's objection that granting this license will set a precedent is not sound. The Commission is entitled to consider every application individually and the granting of the this license will not preclude denial in any other case in which a basis for denial exists.

The school's objection based upon the fact that the church may some day build a building closer to the store is too speculative to be the basis for denial of an application.

The school also expressed concern that patrons from the store would use the parking lot of the church as a drinking place and would leave litter. While no one can discount this as a possibility, there is no reason to think that it would be a particular problem in this case. The Commission does not

believe that it should be the basis for denial of the application.

The school's argument that there is no need for the package store license, given the existence of the K-Mart store nearby, points up the fact that the K-Mart store is about the same distance from the school as is Applicants' premises. Under that criterion, that fact provides a basis for finding good cause for overcoming the school's opposition. In any event, applicants have provided evidence, noted in Section I above, that there is a need in the area for a license close to the large residential area north of Applicants' store.

The Commission concludes that Applicants have established good cause for overcoming this objection and that this criterion should therefore not be the basis for denying this application.

III. 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

23. The Douglas County Christian School wrote a letter opposing the license. The letter indicates that the school was writing on behalf of the Umpqua Valley Christian School, whose opposition is discussed in Section II above.

24. The superintendent of the Roseburg Public School District wrote a letter to the Commission indicating that although the Board had not considered this matter, it had in the past opposed similar applications involving public schools and that he believed it would support the denial in this case. He states no reason for the Board's assumed opposition.

25. Approximately 100 people appeared at the OLCC hearing in this matter. Nearly all indicated, through the testimony of spokespersons, that they objected. Nearly all, however, objected as members of the Church or as participants in the Umpqua Valley Christian School housed in the Church.

26. The Commission has received a petition containing 84 names opposing the application. The petition indicates, however, that the opposition is based upon the proximity of the application to the Nazarene Church. Of the 84 people signing, seven live within one mile of the Applicants' premises. The petition stated no reason for opposition.

27. Applicants have offered a petition containing 93 signatures of those supporting the application. Each lives, works, or owns a business within one mile of the premises. Applicants presented another petition containing 93 signatures of those supporting the application. The petition does not specifically state that each lives within one mile; however, Applicants offered convincing testimony that most if not all do live within one mile. Applicants presented a third petition containing 150 signatures of those supporting the application. No addresses are included. None of the petitions states specific reasons for the support.

Conclusions of Law

The Commission concludes that it has not been shown that public opinion weighs against the granting of the license. Most of the opposition to the license was made on behalf of either the church or the school. Although those expressing opposition are, obviously, members of the public, their objections centered on the proximity of the church and school to the store. Those matters have been discussed in Sections I and II above. The Commission believes they should not be the basis for denial of the license for the reasons stated above. It is also noted that few of those expressing opposition on behalf of the school or church live, work, or own a business within one mile.

On the other hand, Applicants presented signatures of 186 supporters who, for the most part if not unanimously, live, work, or own a business within one mile of the premises. While the petitions do not contain a specific reason for support, the

Commission concludes that this showing of support at least offsets the expressions of negative public opinion presented in the hearing.

To the extent the reasons for opposition may be separable from the reasons expressed in connection with the proximity of the church and school, they do not provide a basis for denying the application. Some testimony centered on the presence of a Little League baseball field on the church grounds. However, no one from the Little League expressed opposition. The Commission believes that this cannot form the basis for denial. Some people expressed a general concern about traffic which might be generated by the store. The Commission, for reasons discussed in Section I above, concludes that the effect of the license upon traffic is not likely to be heavy. Furthermore, the question of the impact of the premises on traffic is something that might reasonably be thought to be within the particular knowledge of the City of Roseburg. The city recommended grant of the application. No one appeared in opposition to the license although the City gave proper notice of its consideration of the matter.

Some people expressed general concern about the effects of alcohol. There is no showing, however, that the granting of this license is likely to result in illegal activities on the part of the store owners or patrons. The concern is thus too speculative to provide a basis for denying the application. 7-Eleven Food Store, supra.

The Commission concludes that it has not been shown that public opinion weighs against the granting of this license.

ULTIMATE CONCLUSIONS OF LAW

The application should be granted because applicant has shown good cause to overcome opposition from a church and from a school, and because public opinion does not weigh against the granting of the license. OAR 845-05-025(2)(a)(b); OAR 845-05-035.

FINAL ORDER

The Commission orders that the application for a Package Store license by Dathol and Mildred Powell under the trade name Parkway Market, 3000 Stewart Parkway, Roseburg, Oregon be GRANTED upon payment of appropriate license fees to the Commission.

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

Dated this 31st day of December, 1985.

Mailed this 3rd day of January, 1986

Eleanor S. Sargent
Processing Assistant
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.