

Grants Pass, Oregon at all times relevant to the Findings of Fact below.

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

- a. ORS 471.315(1)(g) (knowing sale to a minor).
- b. ORS 471.130(1) (failed to check identification or take statement of age before selling alcoholic liquor to a person about whom there was reasonable doubt of being 21 years of age).

3. James Lowery was born on June 27, 1963. Mr. Lowery was 20 years old on October 7, 1983.

4. James Lowery appeared under 21 years of age on October 7, 1983 because of his youthful facial features and small youthful stature.

5. James Lowery purchased one-half case of Blitz beer in the Town & Country Market at 6:00 p.m. on October 7, 1983. The clerk that made the sale was Joyce Schilz.

6. Clerk Joyce Schilz did not ask James Lowery for identification, did not ask his age, and did not ask him to sign a Statement of Age form at the time of the sale of the Blitz beer described above.

7. The Commission's Inspectors brought Mr. Lowery back into the store for Clerk Schilz to view. Licensee Ronald Nunn later arrived at the store and also viewed Mr. Lowery. Both Clerk Schilz and Mr. Nunn agreed that Mr. Lowery's appearance caused them to doubt that he was 21 years of age.

8. Clerk Schilz did not check Mr. Lowery at the time of the sale because of the number of people in line at the check-out counter and the fact that she was busy, as evidenced by Ms. Schilz' statement to the Commission's Inspectors.

9. Joyce Schilz had worked part-time for the Licensees for only two or three weeks as of October 7, 1983.

10. An employee with about four years of experience was on duty along with Joyce Schilz at the time of the sale of Blitz beer to Mr. Lowery at 6:00 p.m. on October 7, 1983.

11. The Licensee has instructed his manager to instruct all new employees concerning procedures for checking identification of persons purchasing beer who appear to be under 21 years of age. The Licensee does not specifically know, however, whether such instructions were given to Joyce Schilz.

12. Robert M. Burrows, former District Attorney of Josephine County, and M.J. Fanning, Josephine County Sheriff, have submitted letters to the Commission attesting to Mr. Nunn's good character and morals. (Licensees' Exhibit Nos. 1 and 2.)

13. The Licensees have had a PS license at the Town & Country Market for ten years. The Licensees have also held another PS license in the Grants Pass area for about eight years and held a Retail Malt Beverage license in the area in the past. The Licensees have never been found in violation by the Commission for sale of alcohol to a minor at any of these licensed premises.

DISCUSSION

1. The Commission served a subpoena on James Lowery to compel his attendance at the Licensees' February 16, 1984, hearing before the Commission. The subpoena stated the correct time, date and place of the hearing. Mr. Lowery failed to appear.

2. Licensee Ronald Nunn testified that he requested a hearing because he thought the charges were that he personally made a willful sale to someone he knew to be under 21 years of age.

Mr. Nunn wants the Commission to know that that would be totally against his philosophy and he would not personally make a knowing sale to a minor.

The Commission notes that the charges in this case arise out of the Licensees' responsibility for the acts of their employee, clerk Joyce Schilz. There was no allegation or evidence that the Licensees personally participated in the sale.

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 Commission concludes the Licensees' violated ORS 471.315(1)(g) through clerk Joyce Schilz's sale of beer to

James Lowery at 6:00 p.m. on October 7, 1983. There is reasonable ground to believe that Ms. Schilz knew Mr. Lowery was under 21 years at the time of the sale because Mr. Lowery appeared under 21 years due to his youthful facial features and youthful stature. Thus, Mr. Lowery's appearance would have informed Ms. Schilz of Mr. Lowery's age.

2. 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 Licensees' clerk violated ORS 471.310(1) through the sale of beer to minor James Lowery at 6:00 p.m. on October 7, 1983. There was reasonable doubt that Mr. Lowery had reached 21 years of age due to his youthful facial features and his

youthful stature. Therefore, he should have been checked for identification.

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' PS license for the violations of ORS 471.315(1)(g) (knowing sale to a minor) and ORS 471.130(1) (failure to check identification or take statement of age) noted in the Conclusions of Law above.

These violations are mitigated by Findings of Fact Nos. 11 and 13. The Licensees have procedures for instructing new employees about the requirement of checking for identification and has a commendable record of compliance.

FINAL ORDER

It is hereby ordered that the Package Store (PS) license held by Ronald and Marsha Nunn at the Town & Country Market, 2482 Williams Highway, Grants Pass, Oregon, be SUSPENDED for five (5) days or that a fine of \$325 be paid in lieu of said suspension.

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

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

Dated this 30th day of May, 1984.

Douglas Crumme
Douglas Crumme
Hearings Examiner
Hearings Division

William A. Thomas for C. Dean Smith
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.