

# OREGON LIQUOR CONTROL COMMISSION MINUTES

February 12, 2009

Thursday, February 12, 2009

9:00 A.M. The Commissioners present were Lindy Fisker, Christine Lewandowski and Bob Rice and Chairman Phil Lang. Others present were Executive Director Steve Pharo, Deputy Director Rudy Williams and members of staff.

**Minutes** – Commissioner Lewandowski moved to approve the minutes of the January 13 Commission Meeting. Passed 4/0.

## **PUBLIC FORUM**

- David Adelsheim and Jesse Lyon came forward to discuss the rule petition submitted to comment on the rule petition submitted by the Oregon Winegrowers Association to address concerns about processing the exemption from Privilege Tax for small Oregon wineries. Chairman Lang asked Assistant Attorney General Lynn Rosik to confirm her previous interpretation about the petition. AAG Rosik said that the rule that has been proposed goes beyond what is authorized by statute. She said that there may be another rule, and the Commission may adopt rules as long as they are consistent with statute. Chairman Lang added that the petition did not qualify as an emergency and the petition needed to run its course in the rulemaking process. Mr. Adelsheim asked if the rule mentioned by AAG Rosik would come up further in the rulemaking process. AAG Rosik said that it is always in the Commission's discretion to proceed with rulemaking based on a petition and the time to consider whether to move forward with this rulemaking hasn't come yet. She noted there are different ways that the winegrowers can communicate with staff whether through a rule petition or other procedures to have other rules presented, but if they want the specific waiver they ask for in this rule, there would need to be a change to the statute, and since the legislature is in session, that could happen. Mr. Adelsheim asked if he could work with staff to craft a rule that would address the concerns they brought forward to be addressed in the petition and they would appreciate direction from the commissioners that would allow staff to work with them to craft something that would meet the requirement of legal counsel and would conform to the legislation. Chairman Lang asked AAG Rosik if she thought the statute allowed that to be done to accomplish that goal. AAG Rosik said that the Commission has plenary rulemaking authority in the area to the extent that the rules conform with statute, how we chose to do that is between the Commission and the staff. She thought that staff may have some response to what may be a better process at this point but there is a pending rule petition with a particular rule in it. Mr. Adelsheim said they could withdraw their petition if necessary. Commissioner Rice asked Mr. Adelsheim if they were also working in a parallel process to address the legislature to work on the statute in question. Mr. Adelsheim said that they could go to the legislature, but they were concerned that taking a tax issue before them would not be a good idea. Executive Director Pharo echoed Commissioner Rice's comment, not that we couldn't try to do what we could via rulemaking, but that there needs to be a corresponding parallel path through the legislative process in the event we are unable to achieve the goal via rulemaking; there is still a legislative option to fix their concerns. Jesse Lyon said there is a whole host of

issues that need to be clarified in this area and they would be happy to work with staff as needed. None of the other people signed up to speak about this issue felt they had anything to add to the testimony provided.

- Nicholas Yannariello of the Hawthorne Theater came forward to address any concerns that the Commissioners may have about his establishment and let them know that he is very diligent in working with the neighborhood association. A couple of neighbors had contacted Commissioners and said they were planning to attend this meeting to further express their concerns to Commissioners, but the neighbors did not appear.
- Brian McMahon- Expressed an interest in establishing a liquor store in the Damascus area and was attending the meeting to help understand how OLCC worked.

Chairman Lang asked staff if there were further comments on the privilege tax issue brought forward by the Oregon Winegrowers Association. Executive Director Pharo said staff is happy to work on the issue, but based on what he is hearing, the options are rather limited. Administrative Policy and Process Director Judith Bracanovich came forward and said that it is always possible to do things by rule as long as they are in the statute. Without changing one or two statutes, she does not believe we can get to where they want to go. There are two barriers: the release from bond and the meaning of sale. This isn't only about annual reporting, without statute change we are unable to read a different taxable moment. Chairman Lang asked if there is a problem with compliance on this. Financial Services Director Michael O'Connor came forward and said that there are 20 or 30 out of 400 having issues with compliance currently but they are not done reviewing the info. Commissioner Rice asked if we agreed with Mr. Adelsheim's assessment that not many wineries have tax to pay because they are under the gallonage and whether the process is as purposeless as has been characterized, and, if so, if we could do more to work with them to find a solution. Mr. O'Connor said that it is all a fundamental issue of when the tax is assessed. In the statute, at the point the wine is withdrawn from federal bond, the tax is assessed. The timing of when that wine is withdrawn from bond and when the wine is ultimately sold could be in different periods. Staff considers the easiest solution is to leave it in bond during that time at which point there is no tax due on it anyway. From a workload standpoint, this issue does not add any additional work to what we are doing currently. Executive Director Pharo commented on the need to have the legislature clarify the issue.

## **COMPLIANCE**

Anna Davis, Administrative Process Program presented.

There were 3 settlement agreements; Nye Street Station, 7-Eleven Store #2363-21907c, and Blue Sage Café of Lake Oswego. Commissioner Fisker asked about the three day reduction in sanction on the last two items: the first item with respect to the age verification equipment which wasn't being used and the second item which involved three staff in the violation. She asked why we would offer a reduction when there is such a blatant disregard for the Commission's authority. Ms. Davis said that the standard 30% reduction helps to settle cases thus reducing the commission's potential hearings costs. Commissioner Lewandowski moved to ratify the 3 settlement agreements. Passed 4/0.

## **LICENSE MATTERS**

Dan Croy, Administrative Process Program presented.

**Bridgetown Beerhouse**- N Shaver, Portland. New Outlet, off-premises. Applicant Michael Waite appeared before the Commissioners. Commissioner Lewandowski

expressed concerns about the city and their refusal to amend their recommendation even though the information on which they based their recommendation was found to be inaccurate. She hopes that they will in the future send a representative or a memo to commissioners to acknowledge the fact that they had inaccurate information for their initial recommendation. Commissioner Rice moved to grant the license and advised the applicant that in future communications with the commission, he error on the side of full disclosure. Passed 4/0.

**Service Permit Refusals-** There were 4 service permit refusals before the Commissioners for ratification. Commissioner Fisker moved to ratify the service permit refusals under tabs A. Passed 4/0.

Executive Director Pharo asked Commissioner Lewandowski to clarify her request about notifying the local government. She said she would like some sort of documentation or representative to acknowledge that the information was accurate. Ms Bracanovich came forward and discussed that in this circumstance it would be difficult to comply with her request. Commissioner Fisker suggested that we send a letter to the local government and include a copy to the commissioners recording this type of action, to help contain within our records why our agency has gone against their recommendation.

**RULES**

Jennifer Huntsman, rules coordinator, presented.

**INITIAL ACTION**

OAR 845-007-0025 Advertising Signs on Licensed Premises

This rule limits each licensed premises to only four alcoholic beverage signs that are visible from the outside. Based on a recommendation from the Business Partners Joint Steering Committee, staff recommends repealing this rule. OAR 845-007-0020 (Restrictions) would still prohibit the promotion of drink specials outside the premises.

Commissioner Rice moved to initiate rulemaking to repeal OAR 845-007-0025 and hold a rulemaking hearing at staff's discretion. Passed 4/0.

**RETAIL SERVICES**

Jim MacAlistaire, Retail Services Director, presented

**Agency Contract Renewals**

Eight agents' contracts are up for renewal, 7 for 5 years and one for ten years.

Proposed renewals for 5 years:

Agent	Agency#	Location	Contract Expiration
Russell Kelley	1185	Portland, Uptown	8/4/09
Billie Lynch	1190	Veneta	8/15/09
Robert Garriety	1139	Portland, Barbur	9/26/09
Mae McGinnis	1005	Enterprise	9/29/09
Donald Shipley	1109	Harrisburg	10/31/09
Marjorie Frazier	1057	Gold Beach	12/09/09
Debra Scott	1059	Vale	12/21/09

Proposed renewal for 10 years:

Steve Brown	1091	Lincoln City, North	9/19/09
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Commissioner Fisker moved to ratify the 7 contract renewals for 5 years and the one contract renewal for 10 years as recommended. Passed 4/0.

**Relocation of A-1067, The Dalles**

Agent Mark Freeman is requesting approval to relocate A-1067, The Dalles from 1008 West Sixth Street to 430 Mt. Hood St.

Commissioner Lewandowski moved to approve the relocation. Passed 4/0.

Commissioner Fisker asked Mr. MacAlistaire about the gentleman who testified in Public Forum and if there is any update in the Damascus area. Mr. MacAlistaire said staff has been talking with Mr. McMahon and are looking at the area. Commissioner Lewandowski asked Mr. MacAlistaire if there has been an increase in liquor store robberies over the past few months. He thinks there have been three in the past few months and noted that there has been a marked increase. Commissioner Lewandowski asked that he keep the Commissioners informed of all robberies.

**ADMINISTRATION**

Tom Erwin, Government Affairs and Communications Director presented a series of bills for an update and to ask for their consideration to take an agency position.

OLCC sponsored bills:

Bill #	Summary	Last Actions
HB 2246	Providing alcohol to minor	Not yet had a hearing, up for a hearing on 2/16
HB 2247	Liquor Liability Insurance	Had a do pass on 2/6; 2 <sup>nd</sup> reading on 2/10. Most likely will go to floor soon.
HB 2248	Responsible Vendor Program	Proposed an amendment at hearing yesterday to add additional license types to who can be included in the program
HB 2249	False Statement by Service Permittee	Received a do pass on 2/9
HB 2250	Distillery Housekeeping	Work session scheduled on 2/16, just waiting for a FIS.
HB 2251	Indorsement of Service Permits	do pass on 2/6, 2 <sup>nd</sup> reading on 2/10
HB 5027	OLCC Budget	Budget bill scheduled for a hearing on 2/27 and public hearing on 3/2
SB 133	Knowing	No hearing yet
SB 134	Clarification of authority of Inspectors	No hearing yet
SB 135	Certificate of Approval for Import of Distilled Spirits	Public hearing held, some concerns expressed by industry and also support from other areas.
SB 136	Shortens length of Service permits	Work session held on February 9

**Summary of Other Bills**

Bill #	Summary	Last Actions	Commission Position
HB 2184	Bottle Bill Amendments	Hearing scheduled for 2/19.	neutral
HB 2237	Increases penalties	Hearing scheduled for	support

	for DUII if person has .15 or more BAC (GAC on DUII)	2/9	
HB 2238	Increases time person is ineligible to receive hardship permit if they refused breath test (GAC on DUII)	Hearing scheduled for 2/9	Support
HB 2381	5%of OLCC Gross revenues directed to Oregon Criminal Justice Commission Account.	No hearings scheduled, referred to judiciary.	Neutral
HB 2425	Modifies elements of felony driving	No hearings scheduled, referred to judiciary	Bring back from more information
HB 2426	Minimum fines for DUII w/ BAC over .20	No hearings scheduled, referred to judiciary	Bring back for more information
HB 2427	Person commits offense of refusal if refuses to take test for intoxicants	No hearings scheduled, referred to judiciary	Bring back for more information
HB 2428	Increases penalty for assault in 3 <sup>rd</sup> degree if DUII	No hearings scheduled, referred to judiciary	Bring back for more information
HB 2461	Beer tax	Hearing scheduled for 2/23	Neutral
SB 208	Suspends driving privileges of person 15-21 years is suspended if minor issued citation for MIP	No hearings scheduled, referred to judiciary (Attorney General's Task Force on Underage Drinking)	Support
SB 227	Increases penalty for knowingly furnishing to minor.	No hearings scheduled, referred to judiciary. (Attorney General's Task Force on Underage Drinking)	Neutral
SB 231	Allows school board to request suspension of student's driving privileges if possessing, using or delivering alcohol or under influence of alcohol	No hearings scheduled, referred to Education & General Government. (Attorney General's Task Force on Underage Drinking)	Support
SB 279	Requires licensee to check id of all people	No hearings scheduled, referred to Business &	Neutral

	attempting to purchase alcohol	Transportation	
HB 2541	Requires licensee to check id of all people attempting to purchase alcohol	No hearings scheduled, referred to judiciary with subsequent referral to ways & means	Neutral

Reciprocity between states for alcohol service permits- Deputy Director Williams came forward to update Commissioners on the work he is doing to identify ways to make other state's service permits valid in our state. He has been working with Washington and Idaho on the issue. He hopes this can address such issues as college students needing a summer job when they are home, or employees working at a large event for an out of state employer. He also shared work he has done with Washington on developing a server training video much like the one we developed with the Department of Transportation. Commissioner Lewandowski commented that she is very excited about this sees the benefits for servers. Commissioner Rice asked about the sanctioning process for out of state permittees. Deputy Director Williams said it will work much like an out of state driver license, they would be sanctioned here, but the fine could follow them to their home state. The details are still being developed.

**CONTESTED CASE HEARINGS**

Judith Bracanovich, Administrative Process Division, presented.

**Felicia L. Webb**- OLCC -08-SPR-040. A proposed order was issued on June 19, 2008. Ms. Webb did not appear staff rested on their comments as they were only a request to correct a date in the record.

Recessed to deliberate contested case items: 10:50 a.m.  
Reconvened: 11:00 a.m.

**DECISIONS ON CONTESED CASES**

**Felicia L. Webb**

Commissioner Lewandowski moved to amend the proposed order per the list that will accompany the minutes and adopt the amended order as the final order. Passed 4/0.

**Jennifer A. Willis**

Commissioner Rice moved to adopt the proposed order as the final order. Passed 4/0.  
Adjourned: 11:05 .am.

\_\_\_\_\_/s/\_\_\_\_\_  
Phil Lang, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
Lindy Fisker, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Christine Lewandowski, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
**Bob Rice, Commissioner**

\_\_\_\_\_/s/\_\_\_\_\_  
**Stephen A. Pharo, Executive Director  
and Secretary to the Commissioners**