

**BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD**

IN THE MATTER OF:

ESK CORPORATION  
d/b/a ROAD RUNNER GAS & GROCERY  
1101 COLLEGE STREET # 42  
LACEY, WA 98503-5739

LICENSEE

LICENSE NO. 364743

LCB NO. 22,858

OAH NO. 2008-LCB-0059

FINAL ORDER OF THE BOARD

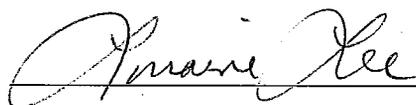
The above entitled matter coming on regularly before the Board, and it appearing that:

1. An administrative hearing was held on April 2, 2009 at the licensee's timely request.
2. The Liquor Control Board's Complaint dated December 23, 2008 alleged that on June 13, 2008 the above-named licensee, or an employee thereof, sold, gave, and/or otherwise supplied liquor to a person under the age of twenty-one (21), in violation of RCW 66.44.270(1).
3. At the hearing, the Education and Enforcement Division of the Board was represented by Assistant Attorney General Ruth E. Ammons and the Licensee was represented by Eric Kim, Manager.
4. On June 2, 2009 Administrative Law Judge James D. Stanford entered his Findings of Fact, Conclusions of Law and Initial Order in this matter which sustained the Complaint.
5. No petitions for review were filed by the parties.
6. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises; NOW THEREFORE; IT IS HEREBY ORDERED that that the Administrative Law Judge's Findings of

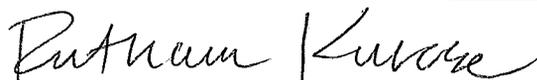
Fact, Conclusions of Law and Initial Order heretofore made and entered in this matter be, and the same hereby are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board and that the liquor license privileges granted to ESK Corporation d/b/a Road Runner Gas & Grocery located at 1101 College Street #42 in Lacey, Washington, License Number 364743, are hereby suspended for a term of thirty (30) days. Suspension will begin at 10:00 a.m. on Tuesday, July 7, 2009 until 10:00 a.m. on Thursday, August 6, 2009. Failure to comply with the terms of this order will result in further disciplinary action.

DATED at Olympia, Washington this 25<sup>th</sup> day of June, 2009.

WASHINGTON STATE LIQUOR CONTROL BOARD



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Reconsideration. Pursuant to RCW 34.05.470, you have ten (10) days from the mailing of this Order to file a petition for reconsideration stating the specific grounds on which relief is requested. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing or delivering it directly to the Washington State Liquor Control Board, Attn: Kevin McCarroll, 3000 Pacific Avenue Southeast, PO Box 43076, Olympia, WA 98504-3076, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board's office. RCW 34.05.010(6). A copy shall also be sent to Martha P. Lantz, Assistant Attorney General, 1125 Washington St. SE, P.O. Box 40110, Olympia, WA 98504-0110. A timely petition for reconsideration is deemed to be denied if, within twenty (20)

days from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which it will act on the petition. An order denying reconsideration is not subject to judicial review. RCW 34.05.470(5). The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Stay of Effectiveness. The filing of a petition for reconsideration does not stay the effectiveness of this Order. The Board has determined not to consider a petition to stay the effectiveness of this Order. Any such request should be made in connection with a petition for judicial review under chapter 34.05 RCW and RCW 34.05.550.

Judicial Review. Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

JUN 03 2009

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE WASHINGTON STATE LIQUOR CONTROL BOARD

**LIQUOR CONTROL BOARD  
BOARD ADMINISTRATION**

IN THE MATTER OF THE HEARING OF )	
ESK CORPORATION )	OAH No. 2008-LCB-0059
d/b/a ROAD RUNNER GAS & GROCERY )	LCB No. 22,858
1101 COLLEGE STREET #42 )	FINDINGS OF FACT,
LACEY WA 98503 )	CONCLUSIONS OF LAW
)	AND INITIAL ORDER
)	
LICENSEE )	
)	
LICENSE NO. 364743-1R )	
_____ )	

STATEMENT OF THE CASE

Pursuant to notice duly given, an administrative hearing was held before James D. Stanford, duly appointed administrative law judge, in the Liquor Control Board Enforcement Office, 921 Lakeridge Way SW, Suite 301, Olympia, Washington, on the 2nd day of April, 2009, in the matter of the suspension of the liquor license of ESK Corporation, doing business as the Road Runner Gas & Grocery, liquor license 364743-1R.

The Liquor Control Board (board) was represented by Ruth E. Ammons, assistant attorney general. ESK Corporation, LLC, was represented by Eric Kim, manager.

Predicated upon a report by the Lacey Police Department, the board, pursuant to the Washington State Liquor Act, RCW 66.24.010(3), and the revised rules and regulations of the board, WAC 314-29-010(3)(c), caused a complaint under the date of December 23, 2008, to be issued against ESK Corporation, LLC, which alleged as follows:

On or about June 13 2008, the above-named Licensee, or employee thereof, sold, gave and/or otherwise supplied liquor to a person under the age of twenty-one (21), contrary to RCW 66.44.270(1).

The parties were duly notified of the time and the place of the proceedings. There were fourteen exhibits admitted and testimony offered by four witnesses.

The administrative law judge, having considered the entire record in this proceeding, including the arguments of the respective representatives, now enters the following findings of fact:

#### FINDINGS OF FACT

1. ESK Corporation, LLC (licensee) is the holder of a grocery store, beer and wine liquor license, number 364743-1F, issued by the board and does now and did on June 13, 2008, control and was responsible for the premises known as Road Runner Gas & Grocery, located at 1101 College Street, Lacey, Washington.

2. The Lacey Police Department regularly conducts compliance checks wherein an investigative aide who are under the age of twenty-one years attempts to make controlled purchases of liquor at licensed premises. Each of these operations is supervised by a commissioned police officer. If a licensee, or agent thereof, sells liquor to the underage investigative aide during the compliance check, the board is notified and may issue an administrative violation notice.

3. The money with which the investigative aide purchases the liquor is provided by the Lacey Police Department. The underage investigative aide is allowed to keep his or her valid personal card of identification or driver's license. If the underage person is asked his or her age, the person is allowed to state that they are over the age of twenty-one years. If the underage person is asked for a card of identification, he or she must produce his or her valid card of identification or driver's license.

4. On June 13, 2008, the Lacey Police Department conducted compliance checks at various licensed premises at 1101 College Street #42, Lacey, Washington. The compliance checks were supervised by officer Alica Howard of the Lacey Police Department. Also present at the compliance checks was sergeant Barns of the Lacey Police Department. The underage community service officer who accompanied the police officers during June 13, 2008, the compliance checks was Ashley Haase, born June 9, 1988. At the time of the compliance checks, Ashley Haase, who was dressed casually in T-shirt and Jeans, had the general appearance of a female at or near her chronological age of twenty years.

5. On June 13, 2008, at approximately 6:17 p.m., Ashley Haase entered the Road Runner Gas & Grocery at 4418 6th Avenue SE, Lacey, Washington, while wearing casual clothing. Officer Howard, who was also in plain clothing, entered the Road Runner Gas & Grocery immediately after the underage operative entered. There were no other customers in the store as the officer and operative entered. Ashley Haase went to the cooler in the store where liquor was stored for sale to the public. Ashley Haase obtained one six pack of Smirnoff Ice Strawberry, a fruit drink that contains five percent alcohol. Ashley Haase took the six pack of Smirnoff Ice to the checkout counter that was being attended by Elizabeth L. Biles, an employee of the store. Ashley Haase placed the six

pack of Smirnoff Ice onto the counter and, at Elizabeth Biles request, her recently issued intermediate license that clearly showed her date of birth as June 9, 1988, and a recital "AGE 18 ON 06-09-06." The driver's license was in the vertical format indicating that the holder was under the age of twenty-one when the license was issued. Elizabeth L. Biles had a point of sale computer, a machine that will inform the clerk making the sale whether the customer is of sufficient age to purchase alcohol when a birth date or other age identification information is entered, adjacent to her cash register, and she entered some data from card of identification into the computer before completing the sale. After having entered the data and looked at the results, Elizabeth Biles took the money (\$20) from Ashley Haase, gave the purchaser change, and placed the six pack into a shopping bag. Ashley Haase left the store with the six pack of Smirnoff Ice Strawberry.

6. After the sale of the six pack of Smirnoff Ice Strawberry had been completed, officer Alica Howard contacted Elizabeth L. Biles, displayed her badge and identified herself as a police officer. Officer Howard explained the violation of the liquor laws that had just occurred because she just sold alcohol to and underage person. Elizabeth L. Biles admitted the sale, but stated that she was confused because she was new to the state. Immediately after the sale had been completed, she checked an informative date sticker on her counter and realized that she had just made a sale to a person under the age of twenty-one years, but the purchaser was leaving and the clerk made no effort to stop or call to her. Officer issued the clerk a criminal citation for having made the sale of alcohol to an underage person.

7. Liquor enforcement officer Sathith Eiku reviewed the violation record of the licensee maintained by the board. The violation record revealed that the licensee had previously sold liquor to a person under the age of twenty-one years. In May 2008, a four day suspension was imposed on the store for an earlier sale to an underage person. At that time, Eric Kim stated that he should not be responsible for the sales made by his employees. Officer Ekiu explained the law to Eric Kim and his wife and offered to give training to them and their employees, but never had a response. Officer Ekiu also received notice of the June 13, 2008, violation from the Lacey Police Department and served the licensee with a administrative violation notice for this violation. Officer Ekiu also advised the licensee of the availability of the Responsible Liquor Sales course of training at the board offices.

8. Eric Kim testified that he has been in the grocery store, beer and wine sales business for approximately twelve years. Eric Kim initially had a store in Vancouver, Washington, for a period of approximately ten years without any problems with the board. Eric Kim took over the Road Runner Gas and Grocery in February 2007. Eric Kim has his store open from 5:30 a.m. until 11:30 p.m. During most of this period, Eric Kim maintained two employees, but he currently has only one employee as business is slow.

9. After having moved to the Lacey store, the licensee has had three violations for selling to underage persons. The first violation on September 21, 2007, for which he paid a \$350.00 fine. The second violation occurred on March 14, 2008, for which he sustained a four day suspension. The third violation occurred on June 13, 2008, and is the subject of this proceeding.

From the foregoing findings of fact, the administrative law judge now enters the following conclusions of law:

### CONCLUSIONS OF LAW

1. The Washington State Liquor Control Board has jurisdiction over the licensees, ESK Corporation, LLC, who are the holders of a spirits, beer, and wine restaurant liquor license issued by the board pursuant to chapter 66.24 RCW and is subject to the provisions of RCW 66.24.010. The undersigned administrative law judge has jurisdiction to hear and initially determine this matter. RCW 34.12.030(1) and WAC 314-29-010(4)(e).

2. It is well established in this state that each licensee takes his or her liquor license subject to the continuing regulation, supervision, and jurisdiction of the board which includes the power to suspend, cancel or not renew the license. *Jow Sin Quan v. State Liquor Control Board*, 69 Wn.2d 373, 382, 418 P.2d 424 (1966). There is no natural or fundamental right to sell liquor. *Randles v. State Liquor Control Board*, 33 Wn.2d 688, 694, 206 P.2d 322 (1949). Under the rules adopted in this state, liquor licensees are responsible for the operation of their licensed premises in compliance with the liquor laws and rules of the board. Any violations committed or permitted by trainees or employees will be treated by the board as violations committed or permitted by the licensee. WAC 314-11-015(1)(a). The licensee is clearly responsible for the activities of their trainees as well as employees on the licensed premises. Licensees have the responsibility to control their conduct and the conduct of employees and patrons on the premises at all times. WAC 314-11-015(3).

3. It is unlawful for any retail licensee to give, sell, or otherwise supply liquor to any person under the age of twenty-one years. RCW 66.44.270(1). No retail licensee shall give or otherwise supply liquor to any person under the age of twenty-one years, for either his/her own use or for the use of his/her parent or any other person. WAC 314-16-150(1).

4. Smirnoff Ice Strawberry is liquor. RCW 66.04.010(1) and (25).

5. The licensee, acting through his sales clerk, Elizabeth Biles, violated the provisions of RCW 66.44.270(1) and WAC 314-16-150(1) having sold, given or otherwise supplied liquor to a person under the age of twenty-one years.

6. The Liquor Control Board may, in its discretion, suspend or cancel the liquor license and all rights of the licensees to keep and sell liquor thereunder, if a licensee has violated the provisions of RCW 66.44.270(1). RCW 66.24.010(3).

7. The sale of liquor to a person under the age of twenty-one years is considered a group one (1) public safety violation. WAC 314-29-020. The evidence clearly establishes that Ashley Haase was directly contacted by sales clerk, Elizabeth Biles, of the licensee prior to being sold an alcoholic beverage. WAC 314-12-340. The sales clerk transacted the sale after viewing a valid card of identification that was presented to her and after entering data from the that valid card of identification into a point of sale computer.

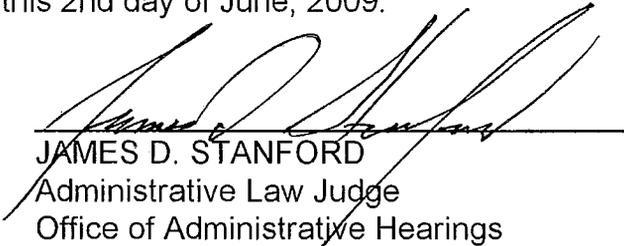
8. For a third violation of RCW 66.44.270(1) in a period of two years, the standard penalty is a thirty (30) day liquor license suspension with no monetary option. WAC 314-15-029(2)(a). In the public interest, this is the sanction that will be imposed.

From the foregoing conclusions of law, NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED That the board's complaint be sustained and that the liquor license privileges granted to ESK Corporation, LLC, doing business as the Road Runner Gas & Grocery, license 364743-1R, be and the same is hereby suspended for a term of thirty (30) days.

DATED at Lacey, Washington, this 2nd day of June, 2009.



JAMES D. STANFORD

Administrative Law Judge

Office of Administrative Hearings

NOTICE TO THE PARTIES

Either the licensee or permit holder or the assistant attorney general may file a petition for review of the initial order with the liquor control board within twenty (20) days of the date of service of the initial order. RCW 34.05.464 and WAC 10-08-211, 314-29-010(4)(b) and 314-42-080(1).

The petition for review must:

- (i) Specify the portions of the initial order to which exception is taken;

- (ii) Refer to the evidence of record which is relied upon to support the petition; and
- (iii) Be filed with the liquor control board and within twenty (20) days of the date of service of the initial order.

A copy of the petition for review must be mailed to all of the other parties and their representatives at the time the petition is filed. Within (10) ten days after service of the petition for review, any of the other parties may file a response to that petition with the liquor control board. WAC 314-42-080(3). Copies of the reply must be mailed to all other parties and their representatives at the time the reply is filed.

The administrative record, the initial order, and any exceptions filed by the parties will be circulated to the board members for review. WAC 314-29-010(4)(c).

Following this review, the board will enter a final order WAC 314-29-010(4)(d). Within ten days of the service of a final order, any party may file a petition for reconsideration, stating the specific grounds upon which relief is requested. RCW 34.05.470 and WAC 10-08-215.

The final decision of the board is appealable to the Superior Court under the provisions of RCW 34.05.510 through 34.05.598.

Copy mailed to:

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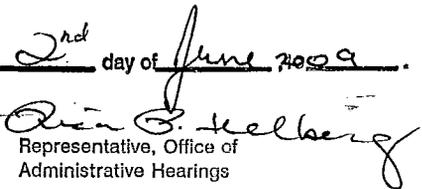
STATE OF WASHINGTON )

COUNTY OF THURSTON )

) ss.  
 )

I hereby certify that I have this day served a copy of this document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent.

Dated at Olympia, Washington, this 2<sup>nd</sup> day of June 2009.

  
 Representative, Office of  
 Administrative Hearings