

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

TOP CROP, LLC
d/b/a TOP CROP

2946 1st AVENUE S
SEATTLE, WA 98134-1820

APPLICANT

LICENSE APPLICATION NO. 413553
UBI: 603-097-844-001-0003

LCB NO. M-25,247
OAH NO. 01-2015-LCB-00003

FINAL ORDER OF THE BOARD

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

1. The Licensing Division of the Liquor Control Board issued a Statement of Intent to Deny Marijuana License dated July 24, 2014, asserting that the Applicant failed to submit required documents to include a signed Retail Pre-Screen Information form, a signed Personal/Criminal History Statement and a valid and/or signed letter of intent to lease or purchase from property owner or designee. Licensing also determined that the Applicant's proposed location was within 967 feet from ASI Music-Vend Distributing Company located at 2710 1st Avenue South in Seattle, Washington.

2. The Applicant timely submitted a request for a hearing.

3. On March 27, 2015, a hearing was held before Administrative Law Judge Terry A. Schuh with the Office of Administrative Hearings.

4. At the hearing, the Applicant Michael Olson represented himself. Assistant Attorney General Kim O'Neal represented the Licensing Division of the Board.

5. On May 14, 2015, Administrative Law Judge Terry A. Schuh issued an Initial Order, affirming the decision to deny the Applicant's license application as expressed in the Statement of Intent to Deny Marijuana License.

6. No Petition for Review was received.

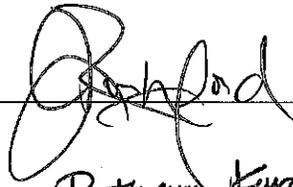
7. The entire record in this proceeding was presented to the Board for final decision, and the Board having fully considered said record and being fully advised in the premises;

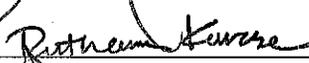
NOW, THEREFORE, IT IS HEREBY ORDERED that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Initial Order are, AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Final Order of the Board;

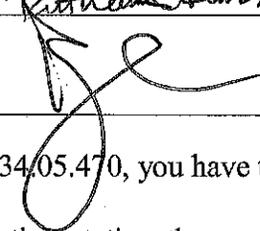
IT IS HEREBY FURTHER ORDERED that Marijuana Retailer license application number 413553 for Top Crop LLC d/b/a Top Crop is DENIED.

DATED at Olympia, Washington this 14th day of July, 2015.

WASHINGTON STATE LIQUOR CONTROL BOARD







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 Mary M. Tennyson, Senior 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).



Washington State
Liquor Control Board

July 15, 2015

Michael Olson
Top Crop LLC
d/b/a Top Crop
26626 170th Ave SE
Covington, WA 98042-5820

Kim O'Neal, AAG
GCE Division, Office of Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

RE: FINAL ORDER OF THE BOARD
APPLICANT: Top Crop LLC
TRADE NAME: Top Crop
LOCATION: 2946 1st Ave S, Seattle, WA 98134-1820
LICENSE APPLICATION NO. 413553
LCB HEARING NO. M-25,247
OAH NO. 01-2015-LCB-00003
UBI: 603-097-844-001-0003

Dear Parties:

Please find the enclosed Final Order of the Board and Declaration of Service by Mail in the above-referenced matter.

If you have any questions, please contact me at (360) 664-1602.

Sincerely,

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Becky Smith, Licensing Director, WSLCB
Frank O'Dell, Licensing Supervisor, WLSCB
Linda Thompson, Licensing Adjudications Coordinator, WSLCB

WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

TOP CROP LLC
d/b/a TOP CROP
2946 1ST AVE S
SEATTLE, WA 98134-1820

APPLICANT

LCB NO. M-25,247
OAH NO. 01-2015-LCB-00003

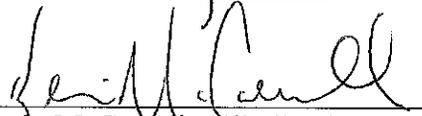
DECLARATION OF SERVICE BY
MAIL

LICENSE APPLICATION NO. 413553

I certify that I caused a copy of the FINAL ORDER OF THE BOARD in the above-referenced matter to be served on all parties or their counsel of record by US Mail Postage Prepaid via Consolidated Mail Service for applicants and licensees, by electronic mail for WSLCB offices, and Campus Mail via Consolidated Mail Services for state offices on the date below to:

MICHAEL OLSON TOP CROP LLC d/b/a TOP CROP 26626 170 TH AVE SE COVINGTON, WA 98042-5820	OFFICE OF THE ATTORNEY GENERAL MAIL STOP 40100, GCE DIVISION KIM O'NEAL, ASSISTANT ATTORNEY GENERAL
MICHAEL OLSON TOP CROP LLC d/b/a TOP CROP 2946 1ST AVE S SEATTLE, WA 98134-1820	

DATED this 15th day of July, 2015, at Olympia, Washington.


Kevin McCarroll, Adjudicative Proceedings Coordinator

RECEIVED

MAY 26 2015

Liquor Control Board
Board Administration

WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS

In the matter of:

Michael Olson dba Top Crop LLC dba Top
Crop,

Location Address:
2946 – 1st Avenue South
Seattle, WA 98134-1820,

Applicant.

License Application No. 413553
UBI No. 603 097 844 001 0003

Docket No. 01-2015-LCB-00003

INITIAL ORDER

Agency: Liquor Control Board
Program: Marijuana Licensing
Agency No. M-25,247

1. ISSUES PRESENTED

1.1 Whether the Applicant failed to submit a signed retail pre-screen information form, a signed personal/criminal history statement, a valid and/or signed letter of intent to lease or purchase from the property owner or designee and/or any other document required under the authority granted in RCW 69.50.331(1) and/or WAC 314-55-020; if so, whether the Liquor Control Board was correct to deny the Applicant's application for a marijuana retailer license based on that failure.

1.2 Whether the Applicant's proposed location is within 1000 feet of an entity listed in RCW 69.50.331(8) and/or WAC 314-55-050(10); if so, whether the Liquor Control Board was correct to deny the Applicant's application for a marijuana retailer license based on that proximity.

2. ORDER SUMMARY

2.1 The Applicant failed to submit a signed retail pre-screen information form, failed to sign the personal/criminal history statement, and failed to submit a valid, signed letter of intent to lease or purchase from the property owner or designee. Accordingly, the Liquor Control Board was correct to deny the Applicant's application for a marijuana retailer license based on that failure, under RCW 69.50.331(1) and WAC 314-55-020.

2.2 The Applicant's proposed location is within 1000 feet of an entity listed in RCW 69.50.331(8) and/or WAC 314-55-050(10). Accordingly, the Liquor Control Board was

correct to deny the Applicant's application for a marijuana retailer license based on that proximity.

3. HEARING

- 3.1 Hearing Date: March 27, 2015
- 3.2 Administrative Law Judge: Terry A. Schuh
- 3.3 Applicant: Michael Olson dba Top Crop LLC dba Top Crop
 - 3.3.1 Representative: Michael Olson, pro se
- 3.4 Agency: Liquor Control Board
 - 3.4.1 Representative: Kim O'Neal, Senior Counsel, Attorney General's Office
 - 3.4.2 Witness: Frank O'Dell, Marijuana Supervisor, Liquor Control Board
- 3.5 Exhibits: The administrative law judge admitted exhibits 1 through 11 and A through S.
- 3.6 Observer: Caroline Sun-Widow attended the evidentiary hearing as an observer.

4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

4.1 On July 24, 2014, the Liquor Control Board (LCB) issued to the Applicant, Michael Olson dba Top Crop LLC dba Top Crop (Mr. Olson) a Statement of Intent to Deny Marijuana License. Ex. 2.

4.2 On August 11, 2014, Mr. Olson filed a Request for Hearing. Ex. 5.

Retail Pre-Screen Information Form and Personal/Criminal History Form

4.3 As a part of the license application process, Mr. Olson timely submitted to LCB a Retail Pre-screen Information Form and a Personal/Criminal History Form and other materials. Ex. 8; Testimony of O'Dell; Testimony of Olson.

4.4 On the Retail Pre-screen Information Form, the applicant must initial to certify that the listed location address is the address selected for entry into the lottery. Ex. 8, p. 19. The Retail Pre-screen Information Form submitted by Mr. Olson did not include his initials on that certification. Ex. 8, p. 19.

4.5 On the Retail Pre-screen Information Form, the applicant must sign a statement that failure to provide all required documentation may result in his or her application being administratively withdrawn. Ex. 8, p. 19. The Retail Pre-screen Information Form submitted by Mr. Olson did not include his signature to that statement. Ex. 8, p. 19.

4.6 On the Personal/Criminal History Form, the applicant must sign a statement certifying that his or her answers and statements are accurate and complete, that inaccurate and/or incomplete answers can result in denial of a license, and that authorized LCB to investigate the applicant's criminal history, financial records, and other necessary sources. Ex. 8, p. 22. The Personal/Criminal History Form submitted by Mr. Olson did not include his signature to that statement. Ex. 8, p. 22.

4.7 Staff at LCB confirmed that it received Mr. Olson's pre-screen submission but staff did not review that submission for completeness until after the time for submitting had passed. Testimony of O'Dell. LCB did not review any submission for completeness until after the submission deadline had passed. Testimony of O'Dell. This was because LCB did not have sufficient staff to review all of the submissions before the deadline and it would have been unfair to review only some. Testimony of O'Dell.

4.8 Mr. Olson struggled with using the on-line submission system employed by LCB but he did not consider using any of the alternatives offered by LCB. Testimony of Olson.

4.9 Mr. Olson believed that he signed and initialed as instructed before he submitted his pre-screen materials. Testimony of Olson. Moreover, he kept copies. Testimony of Olson. However, he has never reviewed the copies and did not submit them as evidence in this matter. Testimony of Olson. Accordingly, although I am persuaded that Mr. Olson intended to sign and initial and believed that he did so, he nevertheless failed to do so.

4.10 Mr. Olson's failure to sign and initial the pre-screen documents was one of the bases for which LCB issued the Statement of Intent to Deny Marijuana License. Ex. 2.

Proposed marijuana retail location

4.11 LCB did not require applicants to produce a lease for the premises of their proposed marijuana retail location until after LCB had granted a license. Testimony of O'Dell. However, LCB received in excess of two thousand applications for 334 marijuana retail locations. Testimony of O'Dell. Further, many applicants listed locations that were clearly disqualifying. Testimony of O'Dell. These, and related, circumstances persuaded LCB that it could not efficiently and timely investigate and process applications unless applicants proposed locations that were reasonably likely to qualify. Testimony of O'Dell. Moreover, applicants who had been particularly diligent in identifying a proposed location complained that it was unfair to allow less diligent applicants to participate on equal footing in the lottery. Testimony of O'Dell. Therefore, LCB designed the pre-screen process in part to address those concerns. Testimony of O'Dell. Applicants were allowed to change locations from those proposed in their applications, and in fact could change locations as often as they wished, until the 30-day pre-screen process closed. Testimony of O'Dell. Moreover, applicants did not have to spend money and obligate themselves to a purchase or lease unless they chose to do so. Testimony of O'Dell.

4.12 However, as part of the pre-screen submission, applicants were required to identify a specific proposed location for the marijuana retail license for which they had applied. Ex. 8, p. 19.

4.13 Further, to demonstrate commitment to that location, applicants were required to submit one of four documents regarding that location: a Real Estate Purchase and Sale Agreement signed by the buyer and the seller; a real estate closing statement; a signed lease agreement; or a letter of intent to lease signed by the property owner. Ex. 8, p. 19.

4.14 This requirement amended the instructions LCB provided to citizens at workshops prior to the application window in late 2013. Testimony of O'Dell. However, LCB publicized this change. Testimony of O'Dell; see Ex. 10.

4.15 Mr. Olson did not want to sign a lease prematurely and he could not persuade the property owner to sign a letter of intent to lease. Testimony of Olson.

4.16 Mr. Olson did not understand that he could change his proposed location before and during the 30-day pre-screen window. Testimony of Olson.

4.17 So Mr. Olson did not submit any of the documents listed in paragraph 4.13 above with his submission. Ex. 8; Testimony of O'Dell; Testimony of Olson.

1000-foot Buffer

4.18 The location Mr. Olson proposed for license application number 413553, at issue here, was 2946 - 1st Ave. S., Seattle, WA 98134. Ex. 8, p. 19.

4.19 The parties dispute how far Mr. Olson's proposed location is from ASI Music-Vend Distributing Company, located at 2710 1st Ave. S., Seattle, WA 98134. LCB staff measured the proximity as 967 feet. Testimony of O'Dell; Ex. 8, p. 49. Mr. Olson measured the proximity as 1052 feet. Testimony of Olson; Ex. S, p. 1. Mr. Olson used Google Earth to measure the proximity. Testimony of Olson; Ex. S, p. 1. LCB used a GIS system that employs both software and data developed for this specific purpose. Testimony of O'Dell. I find LCB's measurement to be more credible because LCB's measurement flowed from a tool designed for this purpose whereas Mr. Olson's measurement flowed from a tool not so specifically designed. Thus, I find that Mr. Olson's proposed location is 967 feet from ASI Music-Vend Distributing Company.

5. CONCLUSIONS OF LAW

Based on the facts above, I make the following conclusions:

Jurisdiction

5.1 I have jurisdiction over the persons and subject matter of this case under RCW 69.50.334, Chapter 34.05 RCW, Chapter 34.12 RCW, and WAC 314-55-070.

Mr. Olson's failure to sign pre-screen documents constituted a basis for LCB to deny his application for a marijuana retailer license

5.2 LCB may submit a criminal history information check to the Washington State Patrol regarding a license applicant. RCW 69.50.331(1).

5.3 "Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application may be administratively closed or denial of the application will be sought." WAC 314-55-020(12).

5.4 LCB may deny a marijuana application for “[f]ailure . . . to submit information or documentation requested by the board during the application process” WAC 314-55-050(2) (in pertinent part).

5.5 Here, LCB sought information from Mr. Olson, certified by his signature, so that it could determine whether he qualified for the marijuana retailer license for which he applied. By failing to sign the forms he completed, Mr. Olson submitted information that was not certified and effectively denied LCB permission to investigate and confirm his criminal history. Mr. Olson argued that his failure to sign was an error, an error caused by the defective computerized process for submission, and an error amplified by LCB’s failure to review his submissions and inform him of any deficiencies. I am persuaded that Mr. Olson’s failure to sign was an error. I am persuaded that Mr. Olson was confused by the pre-screen process and that his confusion was reasonable. I am persuaded that, if Mr. Olson had been timely informed by LCB that his submission was not signed, he would have timely corrected that deficiency. Nevertheless, I am not persuaded the LCB is responsible for Mr. Olson’s failure to properly submit his pre-screen documents or to timely rectify that failure. Had Mr. Olson reviewed the copies he printed and saved, he likely would have observed that his signature was missing. He could have signed a copy and mailed it in. Mr. Olson was responsible for submitting completely the pre-screen documents. He failed to do so. LCB had authority to request the information it sought and to expect it to be submitted certified. Accordingly, based on the authority recited above, LCB was correct to close Mr. Olson’s application and deny him a license.

Mr. Olson’s failure to submit evidence that he was purchasing, leasing, or intending to lease the location he proposed for licensure constituted a basis for LCB to deny his application for a marijuana retailer license

5.6 The legislature directed LCB to adopt rules “that establish the procedures and criteria necessary to implement” licensing of marijuana retailers. RCW 69.50.345(1) (in pertinent part).

5.7 “For the purposes of considering any application for a license to . . . sell marijuana, . . . the board . . . may inquire into all matters in connection with the construction and operation of the premises.” RCW 69.50.331(1).

5.8 “The board may inquire and request documents regarding all matters in connection with the marijuana license application.” WAC 314-55-020.

5.9 "Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application may be administratively closed or denial of the application will be sought." WAC 314-55-020(12).

5.10 "Every marijuana retailer's license shall be issued in the name of the applicant [and] shall specify the location of the retail outlet the licensee intends to operate . . ." RCW 69.50.325(3) (in pertinent part).

5.11 The board shall notify local authority of every application for a marijuana license so that local authority can object if it wishes to do so. RCW 69.50.331(7).

5.12. "The state liquor control board shall not issue a license for any premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older." RCW 69.50.331(8).

5.13 The foregoing illustrates that location was key to investigating a marijuana retailer application and determining whether to grant or deny a license. The purpose of the lottery was to reduce and prioritize investigations. The purpose of the pre-screen submission was to better assure that lottery "winners" were likely to have met certain basic criteria, again to reduce and prioritize investigations. To be licensed, one had to have a qualifying location. It was reasonable for LCB to design the pre-screen and lottery process to complement that basic criterion. Therefore, LCB required the applicant to establish during the pre-screen process that the applicant owned or leased the location the applicant proposed for licensure, or at least had made preliminary arrangements likely to result in a lease. The letter of intent represented a lesser criterion than the applicant would ultimately have to meet. Mr. Olson was unable to negotiate either a lease or a letter of intent to lease. Mr. Olson argued that the pre-screen process requirement as to location differed from what was expected of the applicant when he chose to file an application and pay the non-refundable application fee. Specifically, originally, the applicant did not have to produce a lease until LCB granted a license to the applicant. Moreover, he argued, he did not understand that he could change the location he originally applied for and that he could not change the location once the pre-screen window closed. The pre-screen process did not alter what Mr. Olson ultimately had to do regarding a retail location. However, it did accelerate it somewhat: He had to make a final choice sooner; he had to at least demonstrate that the owner of the property was willing to negotiate a lease with him. Nevertheless, these circumstances applied equally to all applicants, and they were publicized, generally as well as specifically to each applicant. Thus, I hold that LCB's requirements in this

regard were lawful and apt and that Mr. Olson's failure to comply by submitting either proof of purchase or lease or by submitting a letter of intent to lease constituted a basis for LCB to deny his license application.

Mr. Olson's proposed location was within 1000 feet of a restricted entity which constituted a basis for LCB to deny his application for a marijuana retailer license

5.14 "The state liquor control board shall not issue a license for any premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons age twenty-one years or older." RCW 69.50.331(8).

5.15 "The board shall not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any of the following entities . . . : . . . any game arcade (where admission is not restricted to persons age twenty-one or older)." WAC 314-55-050(10)(h) (in pertinent part).

5.16 ASI Music-Vend Distributing Company is within 1000 feet of Mr. Olson's proposed location. Thus, LCB shall not issue Mr. Olson a marijuana retailer license for this location.

In summary

5.17 For the reasons recited above, LCB's decision to deny Mr. Olson's application for a marijuana retailer license was correct and should be affirmed.

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6. INITIAL ORDER

The Liquor Control Board's decision to deny application number 413553 for a marijuana retailer license, filed by Michael Olson dba Top Crop LLC dba Top Crop, as expressed

in the Statement of Intent to Deny Marijuana License dated July 24, 2014, is
AFFIRMED.

Dated: May 14, 2015.



Terry A. Schuh
Senior Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

Petition for Review of Initial Order: Either the licensee or permit holder or the assistant attorney general may file a petition for the 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, WAC 10-08-211 and WAC 314-42-095.

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 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 ten (10) 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 314-42-095(2)(b). Copies of the reply must be mailed to all other parties and their representatives at the time the reply is filed.

Mail the petition for review of initial order to:

Washington State Liquor Control Board
Attention: Kevin McCarroll
P.O. Box 43076
Olympia, Washington 98504-3076

Final Order and Additional Appeal Rights: The administrative record, the initial order, any petitions for review, and any replies filed by the parties will be circulated to the board members for review. WAC 314-42-095(3).

Following this review, the board will enter a final order. WAC 314-42-095(4). Within ten days of the service of a final order, any party may file a petition for reconsideration with the board, 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 (Washington Administrative Procedure Act).

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that today I served a copy of this document, by placing it in the mail with postage prepaid, addressed to the following parties of record:

Michael Olson
d/b/a Top Crop LLC
26626 170th Avenue SE
Covington, WA 98042-5820

Appellant

Kim O'Neal
Assistant Attorney General
PO Box 40100
Olympia, WA 98504-0100

Assistant Attorney General

Kevin McCarroll
Adjudicative Proceedings Coordinator
P.O. Box 43076
Olympia, WA 98504-3076

Agency Contact

Becky Smith
Licensing Manger
P.O. Box 43098
Olympia, WA 98504-3098

Agency Contact

Dated May 19, 2015, at Olympia, Washington.
(DATE OF MAILING)

Jamie Marshall

Representative
Office of Administrative Hearings
2420 Bristol Court SW
Olympia, WA 98502