

BEFORE THE WASHINGTON STATE LIQUOR CONTROL BOARD

IN THE MATTER OF:

WHITESTONE WINERY, INC
d/b/a WHITESTONE WINERY
111 S CEDAR ST
SPOKANE, WA 99201-6825

LICENSEE

LICENSE NO. 404249-6D
AVN 6D0100E

LCB NO. 23,696
OAH NO. 2010-LCB-0052

FINAL ORDER OF THE BOARD

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

1. The Liquor Control Board issued a complaint dated August 13, 2010, alleging that on April 10, 2010, the above-named Licensee, or employee(s) thereof, gave, sold, and/or supplied liquor to a person(s) under the age of twenty-one (21) contrary to RCW 66.44.270 and WAC 314-11-020(1).
2. The Licensee made a timely request for a hearing.
3. A hearing took place on March 8, 2011 before an administrative law judge with the Office of Administrative Hearings.
4. Whitestone Winery, Inc. d/b/a Whitestone Winery, Licensee herein, appeared and was represented by Walter J. Haig II, President. The Education and Enforcement Division of the Board was represented by Assistant Attorney General Brian J. Considine.
5. On March 28, 2011, Administrative Law Judge David G. Hansen entered his Findings of Fact, Conclusions of Law and Initial Order sustaining the complaint.
6. The Licensee filed a timely Petition for Review on April 4, 2011. The Enforcement Division contacted the Board and indicated it intended to file a Reply to the Petition for Review, but

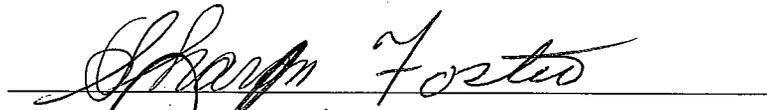
wanted a copy of the recording of the hearing. On April 5, 2011, the Board issued an Order Granting Enforcement's Motion to Extend Filing Time for Reply to Petition for Review, extending the time for filing until 10 days after the copy of the recording was provided to counsel for Enforcement. On May 6, 2011, Enforcement filed a Reply to Licensee's Petition for Review, requesting the Board affirm the Initial Order and sustain the Complaint.

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 Findings of Fact, Conclusions of Law and Initial Order for case 23,696 is adopted.

IT IS HEREBY FURTHER ORDERED that the Complaint filed in case 23,696 is sustained. Because the applicable monetary penalty of \$750.00 was received from the Licensee on April 5, 2011, no additional penalty is due on this matter.

DATED at Olympia, Washington this 21 day of May, 2011.

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**

May 25, 2011

Whitestone Winery, Inc.
d/b/a Whitestone Winery
42399 Jump Canyon Rd
Creston, WA 99117-9739

Brian Considine, AAG
GCE Division, Office of Attorney General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100

RE: FINAL ORDER OF THE BOARD
LICENSEE: Whitestone Winery, Inc.
TRADE NAME: Whitestone Winery
LOCATION: 111 S Cedar St, Spokane, WA 99201
LICENSE NO. 404249-6D
ADMINISTRATIVE VIOLATION NOTICE NO: 6D0100E
LCB HEARING NO. 23,696
OAH DOCKET NO. 2010-LCB-0052
UBI: 602 069 547 001 0004

Dear Parties:

Enclosed please find a Declaration of Service by Mail and a copy of the order in the above captioned matter.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin McCarroll".

Kevin McCarroll
Adjudicative Proceedings Coordinator

Enclosures (2)

cc: Spokane Enforcement and Education Division, WSLCB
Amber Harris, WSLCB

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3 **WASHINGTON STATE LIQUOR CONTROL BOARD**

4 IN THE MATTER OF:

5 WHITESTONE WINERY, INC.
6 d/b/a WHITESTONE WINERY
7 111 S CEDAR ST
8 SPOKANE, WA 99201

LCB NO. 23,696
OAH NO. 2010-LCB-0052

DECLARATION OF SERVICE BY
MAIL

9 LICENSEE

10 LICENSE 404249-6D
11 AVN NO. 6D0100E

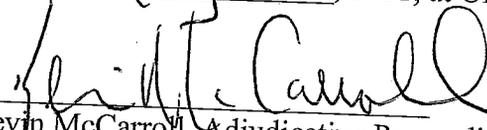
12 I certify that I caused a copy of the FINAL ORDER OF THE BOARD in the above-
13 referenced matter to be served on all parties or their counsel of record by US Mail Postage
14 Prepaid via Consolidated Mail Service for Licensees; by Campus Mail for the Office of
15 Attorney General, on the date below to:

16 WHITESTONE WINERY, INC.
17 d/b/a WHITESTONE WINERY
18 42399 JUMP CANYON RD
19 CRESTON, WA 99117-9739

BRIAN CONSIDINE, ASSISTANT ATTORNEY
GENERAL, GCE DIVISION
OFFICE OF THE ATTORNEY GENERAL
MAIL STOP 40100

20 WHITESTONE WINERY, INC.
21 d/b/a WHITESTONE WINERY
22 111 S CEDAR ST
23 SPOKANE, WA 99201-6825

24 DATED this 25th day of May, 2011, at Olympia, Washington.

25 
26 Kevin McCarroll, Adjudicative Proceedings Coordinator

DECLARATION OF SERVICE BY
MAIL

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

MAILED
MAR 28 2011
Office of Administrative Hearings
Spokane

IN THE MATTER OF THE HEARING OF:

OAH NO. 2010-LCB-0052

Whitestone Winery, Inc. d/b/a
Whitestone Winery
111 South Cedar Street
Spokane, WA 99201

CASE NO. 23,696

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND INITIAL ORDER**

LICENSEE

LICENSE NO. 404249
AVN No. 6D0100E

David G. Hansen, Administrative Law Judge, ALJ herein, held a hearing in the above referenced matter on Tuesday, March 8, 2011. The Washington State Liquor Control Board's Education and Enforcement Division, Enforcement herein, appeared and was represented by Brian J. Considine, Assistant Attorney General. Whitestone Winery, Inc., d/b/a/ Whitestone Winery, Licensee herein, appeared and was represented by Walter J. Haig II, President.

Enforcement's Exhibits 1-10 were admitted into the record. The following witnesses testified at hearing: Officer Jeremy Wissing; Investigative Aid [REDACTED]; Investigative Aid [REDACTED]; Officer Russell McCabe; and, Walter J. Haig II.

STATEMENT OF THE CASE

On April 22, 2010, Enforcement served the Licensee with an Administrative Violation Notice, AVN herein, alleging that Licensee sold or served liquor to minors on April 10, 2010. The AVN Cited WAC 314-11-020(1) and imposed a penalty of a five day suspension or a \$500.00 monetary penalty in lieu of suspension. On April 25, 2010, licensee requested a formal administrative hearing. Licensee's request was received by Enforcement on April 29, 2010.

On August 13, 2010, Enforcement issued a formal Complaint to Licensee alleging "That on or about April 10, 2010, the above-named Licensee, or an employee(s) thereof, gave, sold, and/or supplied liquor to a person(s) under the age of twenty-one (21), contrary to RCW 66.44.270 and WAC 314-11-020(1)." Enforcement submitted a request for assignment an ALJ to the Office of Administrative Hearings on August 18, 2010.

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APR 27 2011

LIQUOR CONTROL BOARD
BOARD ADMINISTRATION

Based on the record presented the undersigned ALJ makes the following Findings of Fact:

FINDINGS OF FACT

1. On Saturday, April 10, 2010, Officers Russ McCabe and Jeremy Wissing, along with Investigative Aids [REDACTED] and [REDACTED] conducted alcohol compliance checks in the Spokane area. Compliance checks generally consist of investigative aides aged 18 to 20 attempting to purchase or obtain liquor or tobacco using their real identification, ID herein. These aides are accompanied by Enforcement officers. [REDACTED] date of birth is March 3, 1992, making her 18 years of age at the time. [REDACTED] date of birth is April 29, 1991, making him age 18 at the time.
2. Licensee maintains and operates a wine tasting room located at 111 S. Cedar Street in Spokane.
3. At approximately 2:45 pm on April 10, 2010, Officer Wissing entered Licensee's wine tasting facility. Shortly thereafter [REDACTED] and [REDACTED] entered the premises. Licensee had one employee on duty at that time, Theadora Thompson, Employee herein. Upon approaching the wine bar Employee asked [REDACTED] and [REDACTED] for ID. [REDACTED] and [REDACTED] presented Employee with their valid ID. Exhibit 4 p. 2 and Exhibit 5 p. 2. Each ID was formatted in the portrait style, thereby making it obvious that the presenters were not yet 21 years of age.
4. After looking at each ID, Employee returned the cards to [REDACTED] and [REDACTED]. Employee placed an empty wine glasses in front of [REDACTED] and [REDACTED] into which she poured wine from a bottle of 2006 Whitestone Merlot. [REDACTED] and [REDACTED] took possession of the glasses containing the merlot and moved to a different part of the premises.
5. Officer Wissing, having observed the above described incident, identified himself to Employee as an officer with the Liquor Control Board and advised her that she had failed a compliance check. Officer Wissing then questioned Employee about why she had furnished alcohol to minors. She alleged that she had tried to compute their ages in her head but became 'flustered' because she generally serves patrons that are 30 years of age or older. Employee was cited for furnishing alcohol to a minor.
6. At hearing Licensee contended that Licensee could not be held accountable for the actions of Employee.

Based upon the above Findings of Fact, the following Conclusions of Law are entered:

CONCLUSIONS OF LAW

1. As a holder of a retail liquor license, Whitestone Winery, Inc., dba Whitestone Winery, is subject to the jurisdiction of the Washington State Liquor Control Board,

Board herein. The Board has the authority, pursuant to RCW 66.24.010, to suspend or cancel a license so long as the Licensee is afforded an opportunity for a hearing in accordance with RCW 66.08.150. Licensee was provided a proper hearing in this matter. WAC 314-11-015 holds Licensees responsible for the operation of their premises in compliance with liquor laws and rules. "Any violations committed or permitted by employees will be treated by the board as violations committed or permitted by the licensee." WAC 314-11-015(1) (a). Licensees are also responsible to control the conduct of their employees. "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).

2. The provisions of RCW 66.44.270(1) are applicable and provide in relevant part as follows:

"It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control."

3. Licensees and employees are prohibited from supplying liquor to any person under the age of twenty-one years. WAC 314-11-020(1).

4. The record before the undersigned clearly establishes that on April 10, 2010, an employee of Licensee supplied merlot wine, a product containing alcohol, to two individuals, both under the age of twenty-one (21) years. The underage individuals did in fact provide true and correct ID confirming their true date of birth and age. Licensee's employee nonetheless served the alcoholic beverage to underage individuals. Enforcement has established, by the requisite burden of proof, that Licensee, through the actions of Employee, violated the provisions of RCW 66.44.270 and WAC 314-11-020(1). Contrary to Licensee's assertion, Licensee is responsible for the action of its employees.

5. The Board has the authority to establish an appropriate penalty as a matter of its discretion. Under the provisions of RCW 66.24.010, the Board has the authority to suspend the Licensee's liquor license. The Board has adopted as rules a set of penalty guidelines which apply to certain "groups" or types of violations. WAC 314-29-015 through -040. The Board retains broad discretion to impose different penalties based upon the existence of aggravating or mitigating circumstances. WAC 314-29-015(4).

6. Group 1 violations are considered the most serious because they present a direct threat to public safety. WAC 314-29-020. Group 1 violations involve the sale or service of alcohol to persons under the age of twenty-one. The regulation establishes penalty guidelines under an escalating penalty scheme based upon the existence of any prior violations that Licensee may have incurred within a prior two-year period. Enforcement presented no evidence that Licensee had any other violations within a two-year period prior to April 2010.

7. The penalty guideline for a first violation of RCW 66.44.270 and WAC 314-11-020(1) is a five-day suspension of the Licensee's liquor license, or a civil monetary penalty option in the amount of \$500.00.

8. In the matter of penalties, the role of the ALJ is to draw the Board's attention to those aggravating or mitigating factors which the Board may wish to consider in deciding whether to deviate from the penalty guidelines established by law. Examples of mitigating or aggravating circumstances are set forth at WAC 314-29-015(4). In the case at hand, Licensee presented no evidence of mitigating circumstances. Indeed, Licensee argued that, contrary to the clear and unequivocal language of the regulations, that Licensee was not responsible for the conduct of its employee. This lack of understanding of Licensee's responsibilities is disconcerting. Possession of a liquor license is a privilege, not a right, and maintenance of that privilege and the economic benefits that flow therefrom are dependent upon compliance with the duly enacted rules and regulations of the Board. The undersigned accordingly finds Licensee's failure to understand its responsibilities and obligations as a liquor license holder to be an aggravating circumstance. It is therefore the undersigned's recommendation that Licensee be subject to a seven (7) day suspension of its liquor license, or in lieu thereof, a civil monetary penalty in the amount of \$750.00.

NOW THEREFORE,

INITIAL ORDER

IT IS HEREBY ORDERED That the Board's Complaint in this matter be SUSTAINED. On a date to be established by the Board's Final Order, the license privileges of Whitestone Winery, Inc., dba Whitestone Winery, under License No. 424249, shall be suspended for a period of seven (7) days. In lieu of a license suspension, the Licensee may pay a civil monetary penalty in the amount of five-hundred dollars (\$750.00).

DATED at Spokane, Washington, this 20th day of March 2011.



David G. Hansen
Administrative Law Judge
Washington State
Office of Administrative Hearings
221 N. Wall Street, Suite 540
Spokane, WA 99201
(509) 456-3975
(800) 366-0955 Toll Free
(509) 456-3997

NOTICE TO 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, 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 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 314-42-095(2) (a) and (b). 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, 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).
Address for filing petition with the board: Washington State Liquor Control Board,
Attention: Kevin McCarroll, 3000 Pacific Avenue, PO Box 43076, Olympia, Washington
98504-3076