

WSR 83-04-017

ADOPTED RULES

LIQUOR CONTROL BOARD

[Order 118, Resolution No. 127—Filed January 26, 1983]

Be it resolved by the Washington State Liquor Control Board, acting at Capital Plaza Building, 1025 East Union, Olympia, WA, that it does adopt the annexed rules relating to liquor vendors, chapter 314-37 WAC and liquor vendors in Indian county—Appointment of tribal liquor vendors—Qualifications, WAC 314-37-010.

This action is taken pursuant to Notice No. WSR 83-01-123 filed with the code reviser on December 22, 1982. These rules shall take effect thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).

This rule is promulgated under the general rule-making authority of the Washington State Liquor Control Board as authorized in RCW 66.08.030 and 66.08.050(2).

The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW), and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

APPROVED AND ADOPTED January 26, 1983.

By Robert D. Hannah
Chairman

Chapter 314-37 WAC
LIQUOR VENDORS

WAC
314-37-010 LIQUOR SALES IN INDIAN
COUNTRY—APPOINTMENT
OF TRIBAL LIQUOR VEN-
DORS—QUALIFICATIONS.

NEW SECTION

WAC 314-37-010 LIQUOR SALES IN INDIAN COUNTRY—APPOINTMENT OF TRIBAL LIQUOR VENDORS—QUALIFICATIONS. (1) The Washington state liquor control board deems it necessary and advisable to adopt this rule for the following reasons:

(a) The decision of the Federal 9th Circuit Court of Appeals in the case of Rice v. Rehner (filed June 8, 1982) has established that the state of Washington has no licensing jurisdiction over tribal liquor sales in Indian country and that those sales, when made in conformity with federal law, are subject to the exclusive jurisdiction of the tribe.

(b) Notwithstanding the decision in Rice v. Rehner, the State Court of Appeals in State v. Aukeen District Court has held that it still remains contrary to state law for non-tribal purchasers of Indian liquor to remove that liquor from the reservation and into the state of

Washington in those instances where the tribal liquor sellers are not authorized by the board to sell liquor to those non-tribal purchasers. Substantial expense has been incurred by the board's enforcement division in arresting and prosecuting non-tribal purchasers of liquor sold by tribal outlets in Indian country.

(c) The board has negotiated a settlement of pending litigation with certain Indian tribes, which settlement provides for recovery by the state of state tax on tribal liquor sold to non-tribal purchasers provided that those sales are authorized by the board under RCW 66.08.050(2) through the appointment of qualifying Indian tribes as liquor vendors.

(2) Accordingly, pursuant to RCW 66.08.050(2), the Washington state liquor control board will appoint qualifying Indian tribes, which have entered into negotiated business agreements with the board, as liquor vendors for the purpose of sales to individuals who intend to remove the liquor from the reservation. The status of liquor vendor will authorize them to sell liquor by the bottle under the following conditions:

(a) The tribe must have in force a tribal ordinance governing liquor sales, which ordinance must have been certified by the Secretary of the Interior and published in the Federal Register.

(b) The tribe must purchase all of its spirituous liquor for resale in Indian country from the board at a negotiated price which will cover the board's cost of acquisition, transportation, and handling, and the taxes imposed by RCW 82.08.150. PROVIDED: That a quota of liquor will be sold by the board each year to the tribe without the payment of taxes, which quota shall be negotiated between the Board and the qualified Tribes and approved by the Department of Revenue.

(c) The tribe must purchase beer and wine only from the board or from board licensed manufacturers or wholesalers.

(d) The tribe must make all liquor sales in Indian country in conformity with federal law and must conform to state law insofar as state law is made applicable to such sales by federal law. The tribe may make sales of liquor by the bottle to such persons, firms or corporations as may be sold liquor from a state liquor store except that the tribe will not be authorized to sell liquor to any state licensed retail liquor licensees.

(e) The tribe shall collect and remit to the state department of revenue the retail sales tax imposed by RCW 82.08.020 on retail sales of beer and wine to non-tribal members.

(f) "Indian country" as used herein shall have the meaning ascribed to it in Title 18 U.S.C. § 1154 as of the date of promulgation of this rule.

(3) Should a tribe which has been appointed as a liquor vendor pursuant to this section fail to comply with all the above enumerated conditions, which shall be construed as continuing requirements to maintain the status of liquor vendor, the appointment of that tribe as a liquor vendor may be revoked by the board.