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BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Application for a	)	
Dispenser Class A (DA)	)	
License by:	)	FINAL
	)	FINDINGS OF FACT,
Rolaine's Cantina, Inc.	)	CONCLUSIONS OF LAW,
ROLAINE'S CANTINA	)	AND ORDER
785 SE Third Street	)	
Bend, Oregon 97702	)	
- - - - -	)	
Deschutes County	)	

A hearing in the above matter was held on the 2nd day of June, 1983, in Bend, Oregon, before Hearings Examiner Douglas Crumme'. The Applicant appeared in person and was represented by Lawrence Erwin, Attorney at Law, Bend, Oregon. The Commission was not represented by legal counsel. The Commission having considered the record of the hearing, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and the entirety of the Criteria for the Issuance and Maintenance of Licenses and applicable statutes and regulations, enters the following:

FINDINGS OF FACT

1. Rolaine's Cantina, Inc. seeks a Dispenser Class A (DA) license at ROLAINE'S CANTINA, 785 SE Third Street, Bend, Oregon. The Licensee presently holds a Restaurant (R) license from the Commission at Rolaine's Cantina.

2. The Commission's Regulatory Staff has recommended that the Applicant's application be refused, citing the following:

- a. ORS 472.160(1) (sufficient licensed premises in the locality set out in the application and not demanded by public interest or convenience).

- b. OAR 845-05-040(1) and OAR 845-05-040(3)(f) (comparison of applicant's premises with existing dispenser outlets re: services, facilities and economic benefit).
- c. OAR 845-05-040(2)(c) (sufficient licensed premises).
- d. OAR 845-05-040(2)(b) (uniqueness).
- e. ORS 472.110(4) (quota).
- f. Battle Creek Golf Course, Inc. v. OLCC, 21 Or. App. 179, 183-84, 534 P2d 204 (1975).
- g. ORS 472.114 (preference may be given where applicant located in incorporated area with population of less than 25,000 and which has seating for 100 or fewer patrons).

3. Rolaine's Cantina is located on Highway 97 in South Bend. Rolaine's is south of the railroad underpass on Highway 97.

4. The Applicant opened the premises as Rolaine's on June 22, 1977.

5. The Applicant has invested \$240,000 excluding equipment in Rolaine's since going into business there in 1977.

6. The design on Rolaine's business is Spanish, with trowled plaster exterior walls and a red-tile roof.

7. Rolaine's presently has a front dining room with seating for 30 and a rear dining room with seating for 55. The premises does not presently have a lounge or bar.

8. If granted a DA license at Rolaine's, the Applicant proposes to construct a new lounge addition to the premises. The lounge will be separated from the remainder of the premises by walls and doors. The lounge would have seating for 61 persons.

9. The estimated cost of the Applicant's proposed new lounge is \$150,000. Tentative financing for the addition has been committed by the Western Bank. (Applicant's Exhibit No. 15.)

10. The Applicant attempts to maintain a family atmosphere at Rolaine's. There are no pool tables or game machines. There is no live music with dancing. Only background music is played at the premises. The Applicant may offer strolling Mariachi musicians if issued a DA license.

11. The interior of Rolaine's is decorated with paintings, furnishings and plants consistent with the Spanish theme of the business.

12. The Applicant's present hours of operation are from 11:00 a.m. to 11:00 p.m. on Monday, Wednesday, Thursday and Friday. The business is open from noon until 10:00 p.m. on Saturday. The business is open from noon until 9:00 p.m. on Sunday. If a DA license were issued at Rolaine's, the Applicant would extend the closing hour of the business until 11:00 p.m. and would be open seven days a week instead of six.

13. Rolaine's is open for lunch and dinner. The dinner menu includes appetizers, combination plates, ala carte dishes, and Mexican specialty entrees. The Applicant's combination plates and specialty entrees include the following:

Combinations

Beef taco, cheese enchilada and tamale	\$5.60
Beef taco, tamale chili relleno	5.60
Beef taco, cheese enchilada, chili relleno	5.60
Cheese enchilada, chili relleno, tamale	5.60
Chili relleno, beef tostada	5.90

Beef tostada, beef and bean burrito	5.90
Chili relleno, beef enchilada	4.75
Chili relleno, beef and been ourrito	4.75
Beef and bean burrito, cheese enchilada, beef taco	5.60
Beef and bean burrito, cheese encnilada	4.75

Mexican Specialties

Beef steak jalisco	6.75
Steak picado	6.50
Steak ranchero	6.50
Pollo almendrado	6.50
Pescado en almendrada	6.50
Spanish omelete with flour tortillas	4.25
Huevos rancheros	3.75

The Applicant's ala carte dinner items include five tacos, four tostadas, six enchiladas, two types of tamales, chili relleno, ranchero relleno, and eight burritos.

14. The Applicant's recent actual sales have been as follows:

<u>MONTH/YEAR</u>	<u>ACTUAL SALES</u>		
	<u>FOOD</u>	<u>BEER/WINE</u>	<u>TOTAL SALES</u>
Jun, 1982	\$19,454.00	\$3,460.00	\$22,914.00
Jul, 1982	21,034.00	4,006.00	25,040.00
Aug, 1982	21,078.00	3,866.00	24,944.00
Sep, 1982 - (closed 2 weeks)	10,020.00	1,740.00	11,760.00
Oct, 1982	19,803.00	4,056.00	23,859.00
Nov, 1982	16,257.00	3,449.00	19,706.00
Dec, 1982	21,698.00	4,763.00	26,461.00
Jan, 1983	19,307.00	3,732.00	23,039.00
Feb, 1983	18,700.00	3,710.00	22,410.00
Mar, 1983	22,092.00	4,365.00	26,457.00
Apr, 1983	20,235.00	3,826.00	24,061.00
May, 1983	<u>17,773.00</u>	<u>3,487.00</u>	<u>21,260.00</u>
AVERAGE	\$18,954.25	\$3,705.00	\$22,659.25

15. The Applicant projects average monthly food sales of \$29,034, liquor sales of \$15,083 and total sales of \$44,117

with the receipt of a DA license. The bases for this projection include the Applicant's proposal to remain open the seventh day, the Applicant's proposal to extend its closing hours, the Applicant's proposal to remain open for two weeks when Rolaine's was previously closed for vacation, the Applicant's proposed new lounge, and an anticipated increase in sales as a result of the draw that distilled beverages are expected to have. (Applicant's Exhibit No. 10.)

16. Dispenser outlets in the following areas have recently experienced the average monthly sales indicated:

<u>AREA</u>	<u>FOOD SALES</u>	<u>TOTAL FOOD AND ALCOHOLIC BEVERAGE SALES</u>
City of Bend	\$29,058	\$43,430
Deschutes County	31,818	46,208
Rolaine's (actual)	18,954	22,659
Rolaine's (projected)	29,034	44,117

17. The following areas contain the populations and numbers of dispenser outlets indicated below:

<u>AREA</u>	<u>POPULATION</u>	<u>POPULATION DIVIDED BY 2,000</u>	<u>ISSUED</u>		
			<u>DA</u>	<u>DB</u>	<u>DC</u>
City of Bend	17,800	8.90	17	2	2
Deschutes County	64,350	32.2	39	3	3

18. The nearest dispenser outlets to Rolaine's Cantina are as follows:

<u>OUTLET</u>	<u>TYPE OF LICENSE</u>	<u>DISTANCE &amp; DIRECTION FROM ROLAINES</u>
* Eyvette's Eating & Gathering Place	DA	Across street south
Hong Kong Restaurant	DA	2 blocks north
China Ranch	DA	2 blocks south

<u>OUTLET</u>	<u>TYPE OF LICENSE</u>	<u>DISTANCE &amp; DIRECTION FROM ROLAINE'S</u>
Kayo's Good Foods & Spirits	DA	1.6 miles south

\* Eyvette's closed for business approximately two weeks prior to the Applicant's June 2, 1983 hearing.

19. The nearest dispenser outlets to Rolaine's with Mexican menus are as follows:

<u>OUTLET</u>	<u>DISTANCE &amp; DIRECTION FROM ROLAINE'S</u>
Mexicali Rose	2 miles north
Casa de Ricardo	15 miles south
El Juan	24 miles north

20. There are two restaurants with Retail Malt Beverage licenses and Mexican menus that are located in Bend in addition to Rolaine's Cantina.

21. The Mexicali Rose is a DA-licensed Mexican-menu restaurant two miles north of Rolaine's Cantina. Mexicali Rose has a higher-priced menu than Rolaine's. Mexicali Rose tends to cater more to skiers and singles as compared to the family orientation at Rolaine's. Mexicali Rose plays rock-and-roll background music as opposed to the Mexican background music at Rolaine's. Mexicali Rose does not have any facilities for groups other than one table that seats ten persons.

22. Casa de Ricardo, a dispenser outlet 15 miles south of Rolaine's, is located at Sunriver in the shopping mall.

23. Rolaine's holds banquets and serves groups in its upstairs dining room. The upstairs dining room is partially separated from the downstairs dining room. The upstairs dining

room can accommodate up to 76 persons for a banquet. The Applicant hosted approximately 10 groups for banquets in the upstairs dining room between December, 1982 and June, 1983.

24. The Applicant would plan to serve some daytime banquet groups in its proposed new lounge through the use of partitions placed to separate the group off from the remainder of the lounge.

25. Thirty-five persons have signed a petition indicating they are associated with groups that would like to have banquets or meetings at Rolaine's. (Applicant's Exhibit No. 7.)

26. 2,242 persons have signed a petition in support of the issuance of a Dispenser Class A license at Rolaine's. Approximately two-thirds of the petition signers reside in the Bend area. The remainder of the signers come from other cities in Central Oregon, from the Portland area, and from other states.

27. Between 1975 and 1981, Deschutes County has led Oregon counties in annual rates in several categories of population growth and economic growth. (Applicant's Exhibit No. 6.)

28. Rolaine's has a relatively stable patronage from local Deschutes County residents. Business increases somewhat in the winter, however, as a result of skiers visiting the area to ski at Mt. Bachelor.

29. The Commission has found tourism to be a factor in demand for dispenser license services in the Central Oregon area. See the Commission's Final Orders concerning the following businesses: La Cigale (June 21, 1982), Rip's Ranch House (April 19, 1982), and Mexicali Rose (November 12, 1980).

30. At the date of the Applicant's hearing, there were 59 DA and Dispenser Class B licenses available for issuance. On this same date, there were 25 DA and four DB license applications pending. The Commission takes official notice that an additional 25 DA licenses were authorized for issuance by the 1983 Oregon Legislature effective October 15, 1983. Senate Bill No. 4.

31. The Applicant expects that it may take more than six months to construct the proposed lounge for Rolaine's if the construction period enters into the winter season. The Applicant proposes to set up a temporary bar in the premises until the lounge is completed if a DA license is issued.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The existence of sufficient licensed premises in the locality set out in an application shall weigh against granting the application. For purposes of this section, the applicant's community will be a 10-mile radius for dispenser licenses and a two-mile radius for other licenses, unless the applicant establishes that a substantial portion of the patronage of the premises is or would be from a larger or smaller area. OAR 845-05-030(1).

The City of Bend and Deschutes County contain substantially more dispenser outlets than one per 2,000 population. The Commission has recognized tourism as a factor for dispenser services in Bend. Despite the tourism factor, however, the disproportionate number of dispenser outlets in Bend and Deschutes County in relation to the one per 2,000 population standard indicates sufficient licensed outlets in these areas and

weighs against issuance of a dispenser license at Rolaine's.  
OAR 845-05-040(2)(c).

2. An application for a DA license may be granted or denied on the basis of a comparison with existing DA licenses in the same city or county or a comparison with other pending dispenser's applications. OAR 845-05-040(1). Preference in licensing may be given to applicants providing greater economic benefit to the area or public as indicated by actual or reasonably projected number of patrons served, seating capacity, banquet facilities, hours of operation, number of employees, extent of investment in facilities, amenities, entertainment or such characteristics. Gross sales figures may be used as a basis for determining the number of patrons served. OAR 845-05-040(2)(a).

The Applicant has projected average monthly food sales of \$29,034 and average monthly total sales of \$44,117. The recent averages for the dispenser outlets in the City of Bend are \$29,058 food sales and \$43,430 total sales. The recent averages for dispenser outlets in Deschutes County are \$31,818 food sales and \$46,208 total sales.

The Applicant's projections appear reasonable given the Applicant's plans to add on a 61-seat lounge, to extend the closing hours to 11:00 p.m. each evening, to remain open a seventh day each week, and to forego the two-week vacation closure that had occurred in previous years. The Applicant's projected sales compare favorably with the existing averages in Bend and Deschutes then, indicating a preference for license issuance under OAR 845-05-040(2)(a).

3. Preference for issuance of a dispenser license will be given to applicants who provide dining service or atmosphere which is

unique or substantially different in quality, quantity or type from that offered by other licensees within a 20-mile radius as indicated by menu, decor and amenities, entertainment or other characteristics. OAR 845-05-040(2)(b).

Rolaine's is a Mexican-menu restaurant with a Spanish decor theme. There are 21 dispenser outlets in the City of Bend. There are two dispenser-licensed Mexican-menu restaurants within 20 miles of Rolaine's. The Mexicali Rose is located two miles to the north. The Casa de Ricardo is located 15 miles to the south in Sunriver. Mexicali Rose is not as family-oriented as Rolaine's. Although Rolaine's would not be unique then in comparison to existing dispenser outlets within 20 miles, Rolaine's menu and Spanish decor would be substantially different. Some preference for license issuance is therefore indicated under OAR 845-05-040(2)(b).

4. The number of dispenser licenses available to the Commission for issuance to DA and DB outlets is limited under ORS 472.110. Caution must be exercised in the review of this application then, in order to insure that only those dispenser license applicants most qualified to serve the public interest and convenience are issued the limited dispenser licenses available. There are, however, more dispenser licenses available for issuance to DA and DB outlets than the number of applications presently pending for such licenses. The existence of some factors showing a lack of preference for license issuance under some of the Commission's license criteria then should not preclude license issuance if the applicant shows sufficient preference factors under other of the license criteria. Battle Creek Golf Course, Inc. v. OLCC, 21 Or. App. 179, 183-84, 534 P2d 204 (1975); ORS 472.160(1).

5. ORS 472.114 states as follows:

(1) It is the finding of the Legislative Assembly that ORS 471.030(2) does not require the Commission consistently to grant licenses to applicants which have the potential to do a larger gross business than other applicants.

(2) It is the intention of the Legislative Assembly, that in issuing Class "A" and "C" licenses authorized under ORS 472.110 and 472.113, the Commission shall recognize the importance of issuing licenses to otherwise qualified applicants located in rural and unincorporated areas and in incorporated areas with populations of less than 25,000.

(3) It is the intent of the Legislative Assembly that the Commission shall recognize the importance in licensing applicants described in subsection 2 of this section to also recognize those having seating capacities for 100 or fewer patrons.

Rolaine's is located in Bend. Bend has a population of fewer than 25,000 persons. A preference for license issuance is therefore indicated at Rolaine's under OAR 845-05-040(2)(d) and ORS 472.114(2). It should be noted that preference would not be indicated under ORS 472.114(3) due to the Applicant's seating for fewer than 100 persons, because the Applicant is proposing to increase seating to approximately 146 through the addition of a 61-seat lounge.

#### ULTIMATE CONCLUSIONS OF LAW

The application for a Dispenser Class A license at Rolaine's Cantina is demanded by the public interest and convenience despite the relatively adequate number of dispenser outlets in Bend and in Deschutes County because the Applicant's relatively high likely sales and substantially different Mexican menu and Spanish decor indicate preference for license

issuance. Preference for license issuance is also shown by the fact that Rolaine's is located in an incorporated community with fewer than 25,000 persons. ORS 472.160.

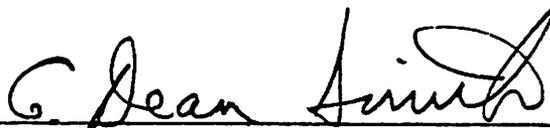
FINAL ORDER

It is hereby ordered that the application by Rolaine's Cantina, Inc. for a Dispenser Class A (DA) license at Rolaine's Cantina, 785 SE Third Street, Bend, Oregon, be GRANTED subject to the following conditions:

- a. Applicant must construct the proposed 61-seat separate lounge addition to Rolaine's in substantial conformance to the plan outlined at the Applicant's hearing prior to the exercise of dispenser's license privileges. (See Applicant's Exhibit No. 9.)
- b. The construction of the lounge must be completed within nine months of the date of the commitment of a DA license to the Applicant or the DA license committed will be withdrawn.

It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

Dated this 26th day of September, 1983.



C. Dean Smith  
Administrator  
OREGON LIQUOR CONTROL COMMISSION

NOTICE: You are entitled to Judicial Review of this Order. Judicial Review may be obtained by filing a Petition for Review within 60 days from the service of this Order. Judicial Review is pursuant to the Provisions of ORS Chapter 183.