

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)
Application for a)
Manager Dispenser Class A (DA))
Premises by:) FINAL
) FINDINGS OF FACT,
NORMA MAE GALLAGHER) CONCLUSIONS OF LAW,
THE CRAB POT) AND ORDER
185 Highway 101)
Warrenton, OR 97146)
- - - - -)
Clatsop County)

A hearing in the above matter was held on the 4th day of October, 1983, in Astoria, Oregon, before Hearings Examiner Allen R. Scott. The Applicant appeared in person and was represented by Ken Eiler, Attorney at Law. 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. Applicant NORMA MAE GALLAGHER seeks to be appointed as a Manager at The Crab Pot, a premises holding a Dispenser Class A (DA) license.

2. The Commission's Staff has recommended that the application be refused based upon ORS 472.160(4)(d) (applicant convicted of violating alcoholic liquor laws and convicted of a felony), ORS 472.160(4)(g) (did not have a good record of compliance with alcoholic liquor laws when previously licensed),

OAR 845-05-025(6) (record of abuse of intoxicating liquor), and
ORS 472.160(4)(b) (made false statements to the Commission).

3. Applicant Norma Gallagher was licensed by the Commission in the past as follows:

Toot's Tavern (RMØ)	Portland	3/60 to 11/62
Barlow Trail Lodge (DA)	US 26	8/61 to 1/62
The Iron Horse (DA)	Portland	4/71 to 5/72
T-T Branding Iron (DA)	Portland	9/72 to 8/75

4. Commission records indicate that Applicant had the following violations while a licensee:

<u>DATE</u>	<u>VIOLATION</u>	<u>DISPOSITION</u>
<u>1961</u>		
March	NSF checks	Verbal Warning
June	NSF checks	Letter of Warning
August	Maintained noisy, lewd, disorderly premises; Permitted VIP to remain	Seven day Suspension
October	NSF check	Verbal Warning
<u>1962</u>		
June	NSF check	Five day Suspension
<u>1972</u>		
June	After hours; Served VIP	\$500 fine
<u>1973</u>		
November	False representation to the Commission	\$100 Fine
August	Permitted intoxicated person to enter or remain	Verbal Warning
September	Licensee DUIL, reduced to reckless driving	Verbal Warning
<u>1974</u>		
October	No food service	\$200 Fine

5. On her application to be appointed Manager, Applicant listed only one drunk driving conviction.

6. Applicant has been convicted of drunk driving on three occasions: 1966, 1978, 1980. The last conviction was for an instance that occurred in 1977.

7. The 1977 and 1978 instances of drunk driving occurred when Applicant was drinking heavily as a result of the death of her daughter.

8. In June, 1981, Applicant was convicted of the felony of Driving While Suspended or Revoked. She was fined \$500 and placed on probation for three years.

9. Applicant's parole officer wrote a letter in which she stated:

"I am writing at the request of the above named individual. Mrs. Gallagher was supervised by our office for a conviction of Felony DWS/R from 6-29-81 until her early termination on 5-6-83. During that time, she experienced no violations of probation and was most cooperative with this office. She was regularly employed, maintained stable residence, paid Court Ordered financial obligations per agreed payment schedule and has not reoffended since release from supervision."

10. On September, 1980, Applicant was convicted of a violation of a city ordinance relating to harassment. The incident involved an altercation with a person at a tavern. Applicant had been drinking at the time. Applicant was fined \$53.00 as a result of this conviction.

11. During 1980 and 1981, Applicant received counseling from the Clatsop County Mental Health Center relating to the use of alcohol. Her counselor has written a letter stating:

"Ms. Gallagher was originally seen on 6-24-80 in initial assessment. She had

come to the clinic to receive a recommendation for an occupational permit. She was seen very sporadically (8-5-80, 10-14-80, 11-18-80) with no appointments rescheduled after 11-18-80.

"On 7-7-81, she was again referred to the clinic, this time by Adult Probation and Parole. She became involved in individual counseling at that time and was seen for six sessions.

"On 11-4-81, Ms. Gallagher was successfully completed from the program."

12. Applicant has held a service permit with the Commission since 1961. It has never been suspended or revoked.

13. Applicant has spent most of the past 20 or more years working in taverns or bars. She presently works in various functions at The Crab Pot in Warrenton. She seeks to be the Manager of the premises.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission may refuse to license an applicant if it has reasonable grounds to believe that the applicant has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony. ORS 472.160(4)(d).

The evidence establishes that Applicant has been convicted on three occasions for drunk driving. These convictions are violations of alcoholic liquor laws of Oregon. The evidence also establishes that Applicant has been convicted of a felony, Driving While Suspended or Revoked.

Applicant offered some explanation for these matters. She noted that the first of the drunk driving convictions was approximately 17 years ago. The other two arose out of driving instances which occurred close in time to a difficult period in

her life associated with her daughter's death. She noted that the Driving While Suspended felony conviction resulted from her failure to show financial responsibility. She claimed that it had resulted from a misunderstanding on her part. She also noted that she has at present a valid driver's license and that her probation as a result of the felony conviction was terminated early.

The Commission concludes that, although Applicant's explanation and the total circumstances reduce the impact of these convictions, they still provide a basis for denying the application.

2. The Commission may refuse to license an applicant if it has reasonable grounds to believe that the applicant did not have a good record of compliance with the alcoholic liquor laws of this state and the rules of the Commission when previously licensed. ORS 472.160(4)(g).

Applicant was licensed at various places in Oregon during two periods: 1960-1962 and 1971-1975. During the first period, which lasted less than two years, Applicant received two verbal warnings, one letter of warning and two suspensions, one for five days and one for seven days. Four of these matters related to the issuance of NSF checks to wholesalers. Applicant offered the explanation that her husband had become involved in a bad investment at this time and that as a result she experienced significant financial problems. The other matter was a violation involving noisy, lewd, disorderly premises and permitting a visibly intoxicated person to remain.

The second period was for approximately four years. Applicant received two verbal warnings and three fines during

this period. Applicant offered some explanation for one of these matters, which involved the failure to serve food. She explained that the person who had been leasing the restaurant portion of the premises left suddenly, leaving her without any means to prepare food. A ticket was issued the next day. She also explained that the charge involving serving an intoxicated person in 1972 involved herself rather than any member of the public.

The Commission notes that the number of violations appears to be fairly large given the rather short time the Applicant was licensed at the various premises. Although there does not appear to be any particular pattern of violations according to type, nor do any of the violations appear to have been regarded as extremely serious by the Commission, given the small penalties imposed, the record is such as to establish that the criterion quoted above is a basis for denying the license.

3. The following criterion will be given sufficient consideration so that a license will not be issued unless good cause which outweighs the criterion involved is shown by the applicant:

Court or medical records indicate that applicant has a record of abuse of alcoholic liquor or controlled substances. OAR 845-05-025(6).

The evidence establishes that Applicant has three convictions for drunk driving, with the most recent occurrence in 1978 (the 1980 conviction was for a 1977 incident). Applicant was convicted in 1980 of a violation of a city ordinance as a result of an altercation which was caused, in part, by drinking. Following this 1980 matter, Applicant participated in a

treatment program under the Clatsop County Mental Health Center. According to a letter from the Center, she "was successfully completed from the program." Applicant testified that she does not have a problem with alcohol, although she does drink. She also testified persuasively that any problems she has had in the past with respect to alcohol have not grown out of her work in bars and taverns.

The Commission concludes that Applicant has established good cause for overcoming the criterion involved.

4. The Commission may refuse to license any applicant if it has reasonable grounds to believe that the applicant has made false statements to the Commission. ORS 472.160(4)(b).

The evidence establishes that applicant listed only one drunk driving conviction on her application, whereas she has in fact had three such convictions. However, Applicant did list the Driving While Suspended felony conviction and another unrelated matter. She also wrote a letter to the Commission shortly after filing the application in which she acknowledged the 1980 harassment conviction. Applicant testified that she did not intend to deceive the Commission by failing to list the other drunk driving convictions. She did not have any particular explanation, however, as to why she did not list them. Nevertheless, the Commission believes that Applicant is aware enough of the Commission's procedures to know that listing one drunk driving conviction along with the other convictions would trigger an investigation which would reveal the other DUII convictions. The Commission therefore concludes that Applicant

did not intentionally mislead the Commission in these matters, and that therefore the alleged false representation should not be a basis for denial of the application.

ULTIMATE CONCLUSIONS OF LAW

Although Applicant has a poor record of compliance with the liquor laws and although Applicant has been convicted of a felony and of violations of alcoholic liquor laws, the application should nevertheless be granted because many of the incidents occurred several years in the past. ORS 472.160(4)(d), (4)(g).

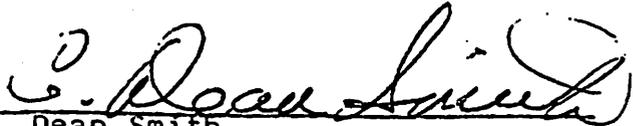
FINAL ORDER

It is hereby ordered that the application by Norma Mae Gallagher to be appointed as a Manager, Dispenser Class A (DA) premises be GRANTED, with the following conditions:

1. That if applicant is found to have violated any statute or regulation relating to the use of alcoholic liquors, the privilege of managing a dispenser premises will be revoked.

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

Dated this 27th day of February, 1984.



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.