

findings of fact.

2. Licensees have been charged with a violation of OAR 845-06-035(2)(a) (employee permitted a minor to consume alcoholic liquor on the premises), OAR 845-06-035(2)(b) (employee permitted a minor to enter and remain), and ORS 471.130(1) (no S-146).

3. On November 13, 1983, at approximately 6:30 p.m., Marcell Rivers entered Doc Holliday's Pub with a man over the age of 21 years. Ms. Rivers was born on April 29, 1967, and was therefore 16 years of age on this date.

4. Ms. Rivers and her companion went to the bar and ordered a pitcher of beer from Russell Zeits, bartender on duty. Mr. Zeits served the beer to them, along with two glasses, and accepted payment from Ms. Rivers' companion.

5. Ms. Rivers and her companion then went to a table 10 or 15 feet from the bar, where Ms. Rivers consumed beer from the pitcher.

6. Ms. Rivers and her companion remained on the premises for approximately one and one-half hours. During this time, she drank more beer from a second pitcher purchased from Russell Zeits, bartender on duty.

7. Ms. Rivers is five-feet-five-inches in height and weighed approximately 135 pounds at the time of this incident. She was dressed in a dress and high heels and wore a moderate amount of makeup.

DISCUSSION

Licensees raise two matters in defense or mitigation.

1. Licensee claims that Ms. Rivers had shown false identification in Doc Holliday's on a prior occasion. However, Licensee presented no convincing evidence to support this claim. The only evidence offered was the somewhat vague and unpersuasive testimony of one employee that he had seen some kind of "good" identification in the past. On the other hand, Ms. Rivers denied ever having produced false identification in this establishment, although she admitted having shown false identification in other premises in the past. The Commission concludes that the Licensee has not established that Ms. Rivers produced false identification at DOC HOLLIDAY'S in the past, or, even if she did, that it was acceptable identification. It should be noted, in any event, that the employee on duty on the night involved in this hearing did not claim that he ever observed any false identification produced by Ms. Rivers. He claimed only that he assumed that other employees had checked her in the past.

The Commission concludes that Licensee has not established a good defense relating to false identification.

2. Licensee's second defense is that Ms. Rivers appeared to be 21 years of age on the night in question. The evidence indicates that, prior to the incident at Doc Holliday's, or shortly thereafter, Ms. Rivers had successfully entered five licensed premises and consumed alcoholic liquor on approximately ten occasions. These incidents occurred beginning when she was not quite 15 years of age. She was asked for identification only on approximately two of these occasions.

Licensee also offered interesting evidence relating to an experiment involving Ms. Rivers. The experiment was conducted as follows: Ms. Rivers and an investigator employed by Licensee's attorney entered the following ten licensed premises in the Portland area, two of which are taverns, and eight of which are dispenser outlets: Horse Brass Pub; Steamers Lounge; Sylvia's; Rheinlander; Thunderbird at the Coliseum; Digger O'Dell's; East Bank Saloon; J.T. Barringer's; The Fish Place; and Jazz de Opus. They took seats at a table in the tavern or in the lounge area of the dispenser outlet. When approached by a waiter or bartender, they each ordered a beer or a glass of wine. In only one premises, Steamers, did the serving person request identification from Ms. Rivers, upon which she and the investigator left. At the other nine premises, no one asked Ms. Rivers for identification and the beer or wine was served to her and to the investigator. The investigator then paid for the beer or wine, received a receipt, and both immediately left the premises. Neither consumed any of the beer or wine. During the experiment, Ms. Rivers had on the same dress that she had worn on the night she was at Doc Holliday's. She also wore approximately the same makeup. The investigator involved is a man 28 years old who works as an investigator while attending law school. Her companion on the visit to Doc Holliday's was also a man who appeared to be well over the age of 21 years.

The Commission concludes that the test conditions were reasonably similar to those involved in Ms. River's visit to Doc Holliday's. This experiment and Ms. Rivers' success in

getting into licensed premises before the Doc Holliday's incident are good evidence that she is able to appear considerably older than her actual age of 16 and that she may, in fact, appear to be 21 to many people who might be expected to be concerned about her age.

On the other hand, the police officers who observed her and her companion outside of Doc Holliday's as they drove away from the premises testified that she appeared to be about 18 or 19 years of age to them. At the hearing, Ms. Rivers appeared to be approximately 18 years of age to the Commission. However, she was dressed more casually than she was at Doc Holliday's and, of course, the Commission was aware prior to the hearing that she was under the age of 21 years. Furthermore, the Commission, in contrast to the bartenders, had a good opportunity to observe her manner of speaking, which is definitely not that of a person 21 years of age or older. These factors make her appearance at the hearing less important than the other evidence offered. Nevertheless, the police officers' testimony, the Commission's observation, and the evidence that employes at some licensed premises have requested identification from Ms. Rivers combine to indicate that there was reasonable doubt that she was over the age of 21 years on the date in question. The charges should thus be sustained. However, Ms. Rivers' ability to look much older than her actual age does provide some mitigation.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. No licensee or permittee employed by such licensee shall permit a minor, whether or not accompanied by a parent or guardian, to consume any alcoholic beverage upon the licensed premises, whether or not the alcoholic beverage is given to the minor by a parent, guardian or spouse of legal age. OAR 845-06-035(2)(a).

The record establishes that on November 13, 1983, at the approximate time of 6:30 p.m., an employee on duty at Doc Holliday's permitted Michelle Rivers, a person under the age of 21 years, to consume beer, an alcoholic beverage.

2. No licensee or permittee employed by such licensee shall permit a minor, whether or not accompanied by a parent or guardian, to enter or remain upon the licensed premises, or a portion of the licensed premises that has been posted by the Commission as provided by Rule 845-06-040 as being prohibited to the use of minors, except as provided by Sections (3) and (4) of this rule. OAR 845-06-035(2)(b).

The record establishes that on November 13, 1983, an employee of Doc Holliday's permitted Michelle Rivers, a person under the age of 21 years, to enter the premises and to remain therein for approximately one and one-half hours.

3. All licensees, and their agents, representatives and employees, and all service permittees of the Commission, before selling or serving alcoholic liquor to any person about whom there is any reasonable doubt of the persons having reached 21 years of age, shall require such person to produce the person's motor vehicle operator's license or if the license does not bear a photograph of the operator, then an identification card issued by the Oregon Department of Motor Vehicles pursuant to ORS 482.900, et seq. However, if the person has no motor vehicle operator's license or identification card, the licensee, or his agent,

representative or employee, or the service permittee shall require such person to make a written statement of age and furnish evidence of the person's true age and identity. Licensees, permittees and employees of licensees must examine all documents submitted as evidence of age and identity by persons of questionable age, shall be responsible for accurately recording the information from any such documents on statement of age forms, and shall refuse to sell or serve any alcoholic liquor to any person offering any altered, erased or falsely represented document of age and identification. ORS 471.130(1), and OAR 845-06-035(5).

On November 13, 1983, at the approximate time of 6:30 p.m., an employee at Doc Holliday's served beer, an alcoholic beverage, to Michelle Rivers, a person under the age of 21 years, although there was reasonable doubt that she had reached the age of 21 years.

The Commission may cancel or suspend any license, or impose a monetary penalty in lieu of or in addition to suspension as provided by ORS 471.322, if it finds or has reasonable ground to believe that the licensee has violated any provision of this chapter or any rule of the Commission adopted pursuant thereto. ORS 471.315(1)(a).

The Commission concludes the Licensees violated OAR 845-06-035(2)(a), (2)(b), and ORS 471.130(1).

The Commission concludes that the factors noted in the Discussion above provide mitigation to the charges.

FINAL ORDER

It is hereby ordered that the Retail Malt Beverage (RMB) license held by Donald and Michiko Acock, in the trade name Doc Holliday's Pub, 1320 Main Street, Oregon City, Oregon 97045, be

SUSPENDED for thirty (30) days or the Licensees pay a fine of \$1,950 in lieu of the suspension.

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

If you choose to pay the fine it must be paid within ten (10) days of the date of this Order, otherwise the suspension must be served.

Dated this 27th day of August, 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.