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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the Proposed)	
Change in Minor Posting of)	
the Dispenser Class A (DA))	
Licensed Premises of:)	FINAL
)	FINDINGS OF FACT,
Molatore's Motel, Inc.)	CONCLUSIONS OF LAW,
MOLATORE'S RESTAURANT)	AND ORDER
100 Main Street)	
Klamath Falls, Oregon 97601)	
- - - - -)	
Klamath County)	

A hearing in the above matter was held on the 14th day of March, 1984, in Klamath Falls, Oregon, before Hearings Examiner Douglas Crumme'. The Licensee appeared in person and was represented by Jerry Molatore, Attorney at Law, Klamath Falls. The Commission was not represented by legal counsel. The record was reopened to receive a stipulation from the Commission and the Licensee on July 30, 1984, concerning the new minor posting regulations that went into effect on July 1, 1984. See OAR 845-06-040.

The Hearings Examiner, having considered the record of the hearing, the applicable law and regulations and being fully advised, issued a Proposed Order dated August 16, 1984.

No Exceptions were filed to the Proposed Order within the fifteen (15) day period specified in OAR 845-03-050.

Now, therefore, the Commission hereby adopts the Proposed Order of the Hearings Examiner as the Final Order of the Commission, and enters the following:

FINDINGS OF FACT

1. Molatore's Motel, Inc. holds a Dispenser Class A (DA) license at MOLATORE'S RESTAURANT, 100 Main Street, Klamath Falls, Oregon. The Licensee has requested that the Commission relax the minor posting in Molatore's "Chess Room." The Commission has proposed that the Chess Room minor posting be made more restrictive.

2. The Chess Room has some areas that are for diners only and other areas where patrons are allowed to drink without dining.

Since 1967, the 18-seat back end of the room, which is for diners only, has held a No. IV posting from 11:00 a.m. to 10:00 p.m. A No. IV posting permits minors during meal hours. OAR 845-06-030(3)(d). Before 11:00 a.m. and after 10:00 p.m., the back end of the Chess Room contains a No. II posting under OAR 845-06-040(3)(b). A No. II posting forbids minors.

The front of the Chess Room holds a No. II posting at all hours. The front portion of the room includes seating for 18 persons at dining tables along the wall opposite the bar, for 30 persons at the bar, and at four cocktail tables in front of the bar. The bar and four cocktail tables are the only portion of the room designed for patrons who want to drink without dining. See Attachment "A" at the end of the Final Order below. Attachment "A" sets out the approximate floorplan at Molatore's.

3. The Licensee requests extension of the hours of the existing No. IV posting in the back of the Chess Room to

11:00 p.m. The Licensee also requests that the No. IV posting be expanded to the 18 dining seats along the wall opposite the bar, where the No. II posting is presently in effect.

4. The Commission's Enforcement Division staff has recommended that the Chess Room posting be changed entirely to a No. II, forbidding minors in all areas and at all hours. The staff bases its recommendation on the following:

- a. OAR 845-06-040(3)(b) (A No. II posting shall be placed in the lounge portion or in the bar area of premises which have a posting permitting minors for food service in the dining area).
- b. OAR 845-06-040(6)(a) (The No. IV posting could create a situation that is inconsistent with one of the purposes of minor postings set forth in OAR 845-06-040(6)(a)).
- c. OAR 845-06-040(1)(a) (Minor postings should maximize the opportunities for minors to dine in licensed premises while minimizing exposure of minors to environments where the primary activity is drinking).
- d. OAR 845-06-040(1)(b) (Minor postings should aid licensees in controlling the presence of minors on their premises).
- e. OAR 845-06-040(1)(d) (Minor postings should ensure that the purposes of the liquor control statutes and administrative rules are carried out).
- f. OAR 845-06-040(6)(g) (Area for which less restrictive posting is requested is not conducive to family dining).

5. The parties stipulated to the consideration of any of the Commission's minor posting rules that weigh in favor of the Licensee's position. The Commission finds that these include the following:

- a. OAR 845-06-040(5)(a) (The Licensee serves a substantial percent of food in comparison to alcoholic beverages).
- b. OAR 845-06-040(5)(b) (The area proposed for minor patronage is visually separated from any bar or other area where the primary activity is the consumption of alcoholic beverages).
- c. OAR 845-06-040(5)(c) (The area where less restricted posting is sought is conducive to family dining).
- d. OAR 845-06-040(5)(e) (Licensee has a good record of compliance with the liquor laws of this state).

6. The Licensee has requested extension of the hours, and expansion of the area of the No. IV posting in the No. IV area of Chess Room, to better accommodate family dining groups and to increase the area and hours where employees who are minors may serve alcoholic beverages under ORS 472.215(1)¹.

7. Many family groups dine in the Chess Room because it is Molatore's most formal dining area. With the present hours of the No. IV posting, the Licensee stops seating families with minors in the Chess Room after 9:00 p.m. in order to have those

¹ ORS 472.215(1) provides:

The holder of a dispenser's license issued under ORS 472.110 and 472.205 may employ persons 18, 19 and 20 years of age who may take orders for, serve and sell alcoholic liquor in any part of the licensed premises when that activity is incidental to the serving of food except in those areas classified by the commission as being prohibited to the use of minors. However, no person who is 18, 19 or 20 years of age shall be permitted to mix, pour or draw alcoholic liquor except when pouring is done as a service to the patron at the patron's table or drawing is done in a portion of the premises not prohibited to minors, in a premises with a restaurant license or premises licensed under ORS 472.110 or 472.205.

patrons out by 10:00 p.m. However, in the summer, particularly, many families staying at Molatore's 100-unit motel or other nearby motels travel late and do not come in for dinner before 9:00 p.m. These guests are often upset that they cannot eat in the Licensee's more formal dining area.

8. The dividers in the Chess Room provide some visual separation between the existing No. IV area to the back and the cocktail tables and lounge to the front. The divider on the bar-side of the room is about five feet high and six feet wide. The divider on the opposite wall is about four feet high and six feet wide. The space between the dividers is about 15 feet wide. See Attachment A.

9. There are no game machines in the Chess Room.

10. There is no live music or dancing in the Chess Room.

11. The dining tables in the Chess Room are set with tablecloths, place mats, cutlery, coffee cups, condiments and decorative oil lamps. The four cocktail tables are not set with these items.

12. The light in the Chess Room is dimmed somewhat in the evening, but is bright enough for patrons to comfortably see their menus and food.

13. The present No. IV area in the back of the Chess Room has a fireplace. This adds to the dining atmosphere there.

14. The entrees on the Chess Room dinner menu include the following:

Prime Rib	\$ 9.75
Top Sirloin Steak	8.75
T-bone Steak	10.50

Filet Mignon	10.50
Lamb Chops	8.95
Veal Cutlet	6.25
New York Steak	9.75
Chicken Cordon Bleu	6.95
Sauteed Shrimp	9.75
Fried Prawns	8.25
Seafood Plate	7.75
Steak and Lobster	18.75
Prime Rib Sandwich	7.25
Steak Sandwich	7.25
Cannelloni	6.95
Chicken Cacciatore	6.95
Lasagna	6.25
Veal Parmigiana	6.95
Spaghetti	5.50 - 6.25
Ravioli	6.25 - 6.50

(Licensee's Exhibit F.)

15. Molatore's coffee shop menu is used in the rest of the premises other than the Chess Room. The coffee shop menu has more sandwiches and light meals and less expensive entrees than the Chess Room dinner menu. (Licensee's Exhibit E.)

16. In 1983, the Chess Room had approximately \$60,000 in alcoholic beverage sales versus \$111,262.51 in food sales.

17. About one-third of alcohol sales in the Chess Room are to patrons who order food.

18. About 84 percent of the food sales in the Chess Room occur after 4:00 p.m.

19. The only violation that the Commission has cited Molatore's for in the last ten years was in 1983. This charge was for a minor waitress working and serving alcohol in a prohibited area.

20. Molatore's has a very quiet atmosphere. The premises does not have problems with loud or disorderly patrons.

21. The 18 seats at tables on the wall opposite the bar where the Licensee requests the No. IV posting be expanded have an unimpeded view of the bar.

DISCUSSION

1. Thirteen Molatore's patrons of varying backgrounds have signed form letters indicating their support of Molatore's No. IV minor posting. The letter states as follows:

"I am a patron of Molatores Restaurant, which is located in Klamath Falls, Oregon.

I have eaten meals with my family, including minor children, in the back portion of the Chess Room. I prefer eating in the back portion of the Chess Room to eating in the Dining Room.

In my opinion, the atmosphere of the Chess Room during meal hours is family oriented, and the emphasis is more upon the consumption of food than the consumption of alcoholic beverages.

I believe that the exposure of minors to an environment in which the primary activity is the consumption of alcoholic liquors is very slight or non-existent during the times when minors are permitted in the back portion of the Chess Room. I base my belief upon my own dining experiences in the Chess Room. The lack of exposure of minors to a principle activity of consumption of alcoholic liquors is caused by the partial Lounge area, by the practical separation of the dining and drinking areas by the employees of Molatores, by the fact that the cocktail tables and the dining tables are set up differently and by the attitudes of the patrons of Molatores that the Chess Room is generally a quiet area used more for dining than for consumption of alcoholic liquors.

I do not believe there are any adverse effects on minors who are allowed to eat in the back portion of the Chess Room, and I

support the attempts of Molatores Restaurant to maintain the Number 4 Minor Posting."

(Licensee's Exhibit D.)

2. The local Enforcement Inspector who has been in Klamath Falls for seven years recommended in favor of extending the hours of the existing No. IV area to 11:00 p.m. The Inspector did not favor extension of the No. IV posting to the 18 additional seats across from the bar.

The Licensee argued that the Commission should give consideration to the customs and practices, such as its No. IV posting, that seem to work in particular outlets in particular communities.

3. The Licensee would consider new partition arrangements to make the No. IV posting in the Chess Room acceptable if the Commission finds the existing partitions insufficient.

4. The Licensee presently has a No. IV posting in the back of the Chess Room rather than a No. IV-A posting. A No. IV posting allows minors for just one meal period. A No. IV-A posting allows minors for two meal periods. OAR 845-06-040(3)(d). A No. IV-A appears to be the appropriate posting for the Molatore's Chess Room because the Chess Room's hours cover lunch and dinner.

The Commission recommends that the existing No. IV posting be changed to a IV-A. This question appears to be a matter of terminology only. There are no distinctions between No. IV and No. IV-A postings other than the meal periods covered.

5. The Staff did not cite OAR 845-06-040(6)(b) and (6)(c) as refusal grounds, although the layout of the Chess Room suggests these criteria would apply. These criteria provide as follows:

(6) The following criteria may be grounds for denying a less restrictive or may be reasons for requiring a more restrictive minor posting:

. . . .

(b) Access to the less restricted area is only through an area where minors are not allowed.

(c) Access to restrooms requires that minors must pass through a restricted area of the premises.

The Commission has not considered these criteria as refusal grounds since they were not cited by the Staff.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The rules cited by the Commission's staff and those identified in the Licensee's favor (see Findings of Fact Nos. 4 and 5 above) essentially raise four issues:

- a. Maximizing the opportunity for minors to dine. OAR 845-06-040(1)(a).
- b. Conduciveness to family dining. OAR 845-06-040(6)(g), 845-06-040(5)(c).
- c. Adequate separation of minors from areas primarily used for drinking. OAR 845-06-040(1)(a), 845-06-040(5)(a), 845-06-040(5)(b).
- d. Sufficient control to prevent abuses and violations. OAR 845-06-040(1)(b), 845-06-040(1)(d), 845-06-040(5)(e).

EXTENSION OF EXISTING NO. IV POSTING BY ONE HOUR

a. The Licensee's request to extend by one hour (to 11:00 p.m.) the existing No. IV posting in the back end of the

Chess Room should be granted under the four issues set out above.

First, the extension to 11:00 p.m. of the existing No. IV would maximize the opportunity for minors to dine with their parents in the Licensee's most formal dining room. The menu in the Chess Room has a much more comprehensive set of dinner entrees than the coffee shop menu used in the rest of the premises. The Licensee employs several features in the Chess Room, such as tablecloths and a fireplace, that compliment the more formal atmosphere in the Chess Room. The Chess Room is a genuinely different dining experience at Molatore's that a No. IV posting enables minors to enjoy.

The extension of the No. IV posting by one hour to 11:00 p.m. would particularly increase the availability of the Chess Room to minors who arrive late with their families at Molatore's Motel and do not reach Molatore's Restaurant until after 9:00 p.m.

Second, the existing No. IV area is conducive to family dining. The existing No. IV area is used for dining only. The immediate atmosphere is that of a nice dining area. The menu has a comprehensive list of dinner entrees and certainly shows an emphasis on dining. Indeed, because of the formal nature of the dinner menu, it is unlikely that minors would eat in the Chess Room without their parents. The parents are in a good position to control their own children. The parents are also able to make their own determination about whether the Chess room is suitable for their children.

Third, although the present partitions do not provide adequate visual separation between the existing No. IV area and those portions of the Chess Room used primarily for drinking, the Licensee has agreed to put up different partitions to satisfy the Commission's concerns. Larger partitions would provide adequate visual separation.

The present partitions between the existing No. IV area and the cocktail tables and bar take up about 12 feet of the width between the two walls, to a height of four or five feet, leaving an open space between the back end of the room and the cocktail tables that is about 15 feet wide. This much of an open space provides minimal visual separation of the two areas. An increase in the height of the partitions to about five-and-one-half feet and an increase in the total width of the partitions to 17 feet, leaving a space in the middle of 10 feet, would provide adequate visual separation. Partitions of this size would be too high for most minors to look over to see drinkers sitting at the bar and cocktail tables and would visually separate nearly two-thirds of the space between the two areas.

A significant factor in the conclusion that the partitions described above would be adequate is the fact that 65 percent of the sales in the Chess Room are in food. Thus, although portions of the room are set aside for drinking, the primary activity in the room as a whole is the consumption of food.

Fourth, the extension by one hour of the existing No. IV posting should be allowed because there will be sufficient control to prevent abuses and violations. The Licensee has had only one violation in the past 10 years. This violation was for a minor employee working in a prohibited area. There have been no violations for sale or service to minors. The premises is quiet. There are no problems with loud or disorderly patrons. The existing No. IV area is used by diners only. There is no reason to believe this environment of orderly dining would change if the No. IV posting in part of the Chess Room were extended by one hour.

EXTENSION OF NO. IV POSTING TO 18 SEATS ACROSS FROM BAR

b. The Licensee's request to extend the No. IV posting to the 18 seats across from the bar should be denied because of the excessive visual exposure to the areas of the room used primarily for drinking. The proposed 18 seats are directly across from and have an unimpeded view of the bar and the four cocktail tables. The Licensee has not proposed to provide any visual separation between the two areas. It does not appear feasible to put partitions in. This request should therefore be denied. OAR 845-06-040(1)(a).

FINAL ORDER

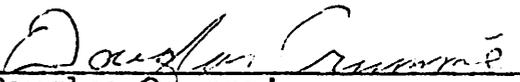
1. It is hereby ordered that the request to extend the existing No. IV-A minor posting in the back end of the Chess Room in Molatore's Restaurant to the hours of 11:00 a.m. to 11:00 p.m. be GRANTED, subject to the condition that the Licensee first expand the partitions between the two areas to a

height of five and one-half feet and to a total width of 17 feet.

2. It is further ordered that the request for a No. IV-A posting at the 18 dining tables across from the bar in the Chess Room be DENIED.

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

Dated this 21st day of September, 1984.


Douglas Crumme
Hearings Examiner
Hearings Division


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.

MOLATORE'S
(APPROXIMATE FLOOR PLAN)

