

EJP

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Proposed Suspension of the)	
Dispenser Class A (DA))	
License held by:	)	FINAL
	)	FINDINGS OF FACT,
Richard C. &	)	CONCLUSIONS OF LAW,
Marlene I. Watkins	)	AND ORDER
dba THE PALACE)	
260 N. Broadway	)	OLCC-85-V-007
Burns, Oregon 97720)	
- - - - -)	
Harney County)	

A hearing in this matter was held on March 14, 1985, in Burns, Oregon, before Hearings Examiner Jill Thompson. The Licensees appeared and were not represented by legal counsel. The Commission was not represented by legal counsel.

The Hearings Examiner considered the record of the hearing and the applicable law, and issued a Proposed Order dated April 16, 1985..

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

The Commission adopts the Proposed Order of the Hearings Examiner as the Final Order of the Commission, and enters the following:

FINDINGS OF FACT

1. At all times relevant to the facts herein Richard and Marlene Watkins held a Dispenser Class A (DA) license at The Palace, 260 North Broadway, Burns, Oregon.

2. Commission staff has charged Licensees with violation of OAR 845-06-035(2)(a) (permitted a minor to consume) and OAR 845-06-035(2)(b) (permitted minor to enter and remain).

3. On November 30, 1984 Rick Wilbanks entered The Palace about 10:30 p.m. His date of birth is September 12, 1964; on November 30, 1984 he was 20 years old.

4. At the time of the hearing on this matter Wilbanks appeared to be 18 or 19. He did not appear any older in photos of him taken December 1, 1984.

5. Wilbanks entered with an adult friend and went to a table in the lounge area, which has a #2 posting (no minors permitted). He remained on the premises until about 2:15 a.m. He was never requested to produce identification.

6. While on the premises Wilbanks drank between six and eight bottles of beer. He did not directly order or pay for any of the beer, but obtained it from other people who would order it at the bar.

7. While Wilbanks was on the premises he played pool, danced and sat at a table and at the bar. Licensee Richard Watkins was on duty behind the bar that night. Two service permittees were also on duty, one behind the bar and one serving tables.

8. The Licensee and permittees testified they did not see Wilbanks during the approximate 3-1/2-hour period he was in The Palace lounge. Wilbanks testified that while he was seated

at a table he sat with his back to the bar and averted his head if a waitress was in the area so she wouldn't see his face. He stayed at the bar long enough to consume two beers, and was standing or seated facing the bar, about five feet from Licensee. While Wilbanks was at the bar Licensee did not look directly at him.

9. Licensees' procedure for screening out minors is that whomever is on duty behind the bar is to check patrons coming in the entrance or seated at the bar, and the table-area service permittees check the patrons they serve.

10. Wilbanks went to four bars in Idaho, where the drinking age is 19, in October 1984. Two of these bars checked his ID.

11. Licensees were found to have violated four of the Commission's statutes and rules concerning minors in October 1984.

DISCUSSION

The investigation of this case was initially conducted by the Burns Police Department based on comments made by Wilbanks in a public place which were overheard by Officer Pfaff. The police agreed not to cite Wilbanks for being a minor in possession if he would write and sign a statement describing his activity in The Palace. He did so. At the hearing of this matter Licensee questioned the propriety of the police making such an agreement, and the reliability of a statement taken under such circumstances.

There is evidence that the statement merely elaborated an experience which Wilbanks had already freely described to a companion; it was wholly circumstantial that Officer Pfaff overheard Wilbanks' comments. At the hearing Wilbanks testified about the events of November 30-December 1, 1984 in The Palace and about conditions under which he gave the statement. His testimony was credible. There is no evidence that the police acted improperly or violated past practice with regard to situations of this nature.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. No licensee, permittee, or employee of a licensee shall permit a minor:

(a) To consume any alcoholic beverage upon the licensed premises, whether or not the alcoholic beverage is given to the minor by his/her parent, legal guardian or spouse of legal age. OAR 845-06-035(2)(a).

Licensees permitted Rick Wilbanks, a minor, to consume beer, an alcoholic beverage, upon their licensed premises. Wilbanks' youthful appearance provided reasonable ground to believe he was less than 21 years old. Plaid Pantries, Inc., v. OLCC, 16 Or App 199 (1974).

2. No licensee, permittee, or employee of a licensee shall permit a minor:

.

(b) To enter or remain upon the licensed premises, or any 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).

Licensees permitted Rick Wilbanks, a minor, to enter and remain in an area of their premises which had been posted as prohibited to minors. Wilbanks' youthful appearance provided reasonable ground to believe he was less than 21. Plaid Pantries, Inc., v. OLCC, 16 Or App 199 (1974).

ULTIMATE CONCLUSIONS OF LAW

Licensees violated OAR 845-06-035(2)(a) (permitted a minor to consume) and OAR 845-06-035(2)(b) (permitted a minor to enter and remain). There are no mitigating circumstances in this case. Licensees and their employees have the responsibility to ensure that minors do not enter certain areas of their premises or consume alcohol. The fact that no one noticed Wilbanks does not satisfy this responsibility; licensees are obliged to take more affirmative steps to discover the apparent age of their patrons than were employed by Licensees in this case. Because of the Commission order finding violations involving minors approximately five weeks before the incidents in this case Licensees should have had a heightened awareness of the need to guard against prohibited use of their premises by minors.

FINAL ORDER

The Commission orders that the Dispenser Class A (DA) license held by Richard C. and Marlene I. Watkins at The

Palace, 260 N. Broadway, Burns, Oregon, be SUSPENDED for ten (10) days or that Licensees pay a \$650 fine in lieu of suspension.

It is further ordered that notice of this action, including the reasons for it, 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 15th day of May, 1985.



Jill Thompson
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.

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Proposed Suspension of the)	
Dispenser Class A (DA))	
License held by:)	
)	
Richard C. and Marlene I. Watkins	)	FINAL
dba THE PALACE	)	FINDINGS OF FACT,
260 N. Broadway	)	CONCLUSIONS OF LAW,
Burns, Oregon 97720	)	AND ORDER
)	
AND)	
)	
Gary Altnow	)	OLCC-84-V-008
SERVICE PERMITTEE	)	OLCC-84-V-015
Box 896)	
Hines, Oregon 97911)	
- - - - -)	
Harney County)	

A hearing in the above matter was held on the 27th day of June, 1984, in Burns, Oregon, before Hearings Examiner Jill Thompson. The Licensees and Permittee appeared in person and were not represented by legal counsel. The Commission was not represented by legal counsel.

The Hearings Examiner, having considered the record of the hearing, the applicable law and regulations and being fully advised, issued a Proposed Order dated September 27, 1984.

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

RECORD OF PREVIOUS VIOLATIONS

NONE.

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. At all times relevant to the facts herein, Richard C. and Marlene I. Watkins held a Dispenser Class A (DA) license, and Gary Altnow was a service permittee, at THE PALACE, 260 N. Broadway, Burns, Oregon.

2. The Commission has charged Licensees with violation of ORS 472.180(8) (sale to a minor), OAR 845-06-035(2)(b) (permitting minor to enter/remain), OAR 845-06-035(2)(a) (permitting minor to consume), ORS 471.130(1) (failure to check ID or take statement of age) and OAR 845-06-045(1) (employee under influence of alcoholic liquor while on duty). Permittee has been charged with violation of OAR 845-06-045(1) (under influence of alcoholic liquor while on duty).

3. On February 3, 1984, Mark Oltman entered The Palace about 12:30 a.m. with a friend. Licensee Richard Watkins was tending bar. Oltman and his friend went to the bar and each ordered an alcoholic beverage from Watkins. Oltman remained on the premises for at least an hour, and ordered and was served a total of four drinks from Watkins.

4. On February 3, 1984, Oltman was 19; his date of birth is May 26, 1964. At the hearing of these violations he appeared to be 17 years old.

5. Oltman lives in Burns and often drives to Idaho, where the legal drinking age is 19. He is often asked to show age identification in Idaho bars. He had never been to The Palace before February 3, 1984.

6. Oltman was not asked for identification at any time while he was in The Palace, nor was he required to complete a statement of age form.

7. Watkins cannot recall whether Oltman was in this premises February 3, 1984.

8. On April 10, 1984, at about 10:40 p.m., Licensee's employee Gary Altnow phoned the Burns Police Department and requested an ambulance for an apparently ill patron. Officer Botefur and Reserve Officer Skiens responded to the call. When they arrived at the premises Altnow was on duty behind the bar. Both officers thought he was visibly intoxicated because his speech was slurred, his movements appeared to be uncoordinated and his eyes were red and watery.

9. Botefur and Skiens had been at the police station when Altnow's call came in. They heard the dispatcher ask Altnow to repeat his statements several times because the dispatcher could not understand him.

10. Altnow has high blood pressure and occasional gout problems. He takes a prescribed medication, Wytensin, for his blood pressure. Drowsiness and dizziness are among the side effects of Wytensin noted by the manufacturer in its descriptive literature.

11. At the hearing of this matter Altnow's eyes appeared red and slightly watery; his enunciation was rather poor but understandable. He has been nicknamed "Lightning" or "Speed" for a number of years because of his extremely slow physical pace and movement.

12. The night of April 10, 1984, Altnow's appearance, manner and behavior were no different than usual.

DISCUSSION

Licensees called as a witness a minor employee who does not serve drinks. She testified that she frequently goes to a bar owned by Mark Oltman's father, located about three miles from Burns. She testified that she is frequently served alcoholic liquor there and has never been asked for identification. She produced photocopies of two cancelled checks made out to that premises, on one of which is the entry "Drinks." Because there is no way of knowing when that entry was made the photocopies are not particularly useful as corroboration. Even if they were, and assuming without deciding that she was illegally served by the minor's father at a different premises, those possibilities have no relevance to the issues in this case because they do not prove or disprove any of the charges.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The commission may cancel or suspend any license granted, or impose a monetary penalty in lieu of or in addition to suspension as provided by ORS 472.187, if it finds:

. . .

(8) That the licensee knowingly has sold alcoholic liquor to persons under 21 years of age or to persons visibly intoxicated at the time of sale. ORS 472.180(8).

Licensee Richard Watkins sold alcoholic liquor to Mark Oltman, a minor who appeared to be less than 21 years old. The conclusion that Oltman appeared to be under 21 is supported by

his very youthful appearance at the hearing and by the fact that he is often checked for ID at Idaho bars, where the legal drinking age is 19. His youthful appearance was reasonable ground to believe he was under 21, which establishes that the sale was knowing. Plaid Pantries, Inc. v. OLCC, 16 Or App 199 (1974).

2. No licensee, permittee, or employee of a licensee shall permit a minor:

(a) To consume any alcoholic beverage upon the licensed premises, whether or not the alcoholic beverage is given to the minor by his/her parent, legal guardian or spouse of legal age;

(b) To enter or remain upon the licensed premises, or any 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)(a)(b).

Licensee Richard Watkins permitted Mark Oltman, a minor, to consume alcoholic beverages and to enter and remain on licensed premises for at least one hour.

3. All licensees and permittees of the commission, before selling or serving alcoholic liquor to any person about whom there is any reasonable doubt of the person's 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 to the person under ORS 482.900. However, if the person has no motor vehicle operator's license or an identification card, the permittee or licensee shall require such person to make a written statement of age and furnish evidence of the person's true age and identity. ORS 471.130(1).

Licensee Richard Watkins sold and served alcoholic liquor to a minor, Mark Oltman, without first requiring age identification or completion of a Statement of Age form. Oltman's youthful appearance provided reasonable doubt that he was 21 years old.

4. No licensee, and no manager, operator, bartender, waiter, or other agent of a licensee, shall consume, either on the licensed premises or elsewhere, or be under the influence of, alcoholic liquor during the hours he or she is on duty. For the purposes of this section, a permittee or other employe or agent will be deemed to be on duty from the time he or she first comes on duty until the time he or she goes off duty at the end of the shift, including coffee and meal breaks. This section shall not apply to any person who holds an agent's or salesman's license and who does not operate a delivery vehicle, or to any person who works on the premises as an entertainer only. OAR 845-06-045(1).

The evidence does not support a conclusion that permittee Gary Altnow was under the influence of alcoholic liquor while he was on duty April 10, 1984. There is no evidence that anyone saw him consume or smelled alcoholic liquor on his person. There is substantial evidence that his physical characteristics and behavior were the result of medication and natural orientation. The Commission concludes Altnow was not under the influence of alcoholic liquor while on duty April 10, 1984.

ULTIMATE CONCLUSIONS OF LAW

Licensees violated ORS 472.180(8) (sale to a minor), OAR 845-06-035(2)(a) and (b) (permitted a minor to consume, enter and remain) and ORS 471.130(1) (failed to check ID or take statement of age form).

FINAL ORDER

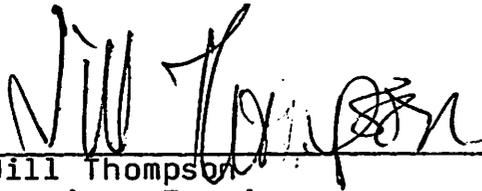
It is hereby ordered that the Dispenser Class A (DA) license held by Richard C. and Marlene I. Watkins at The Palace, 260 N. Broadway, Burns, Oregon, be SUSPENDED for seven (7) days or that Licensees pay a \$455 fine in lieu of suspension.

It is further ordered that the charges against Licensees and Permittee Gary Altnow of violating OAR 845-06-045(1) (employee under influence of alcoholic liquor while on duty) be DISMISSED.

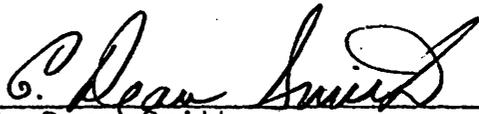
It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

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 24th day of October, 1984.



Jill Thompson
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.