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BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Proposed Suspension of the)	
Retail Malt Beverage (RMB))	
License held by:)	FINAL
)	FINDINGS OF FACT,
David Loyal Doud)	CONCLUSIONS OF LAW,
WHOA TAVERN)	AND ORDER
P.O. Box 1713)	
Klamath Falls, Oregon 97601)	OLCC-84-V-017
- - - - -)	
Klamath County)	

A hearing in the above matter was held on the 10th day of August, 1984, in Klamath Falls, Oregon, before Hearings Examiner Douglas Crumme'. The Licensee appeared in person and was 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 11, 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. David L. Doud has held a Retail Malt Beverage (RMB) license at the WHOA TAVERN, s/s of Highway 66, Keno, Oregon, at all times relevant to the Findings of Fact below.

2. The Commission's Enforcement Division has charged the Licensee with the following:

- a. OAR 845-06-035(2)(a) (permitted persons under the age of 21 years to consume alcoholic beverages on licensed premises).
- b. OAR 845-06-035(2)(b) (permitted persons under the age of 21 years to enter or remain upon licensed premises).

3. The Whoa Tavern held a No. I minor posting on April 27, 1984. A No. I minor posting prohibits minors from a licensed premises. OAR 845-06-040(3)(a).

4. Stephanie MacPhee was born on May 1, 1967. She was 16 years of age on April 27, 1984.

5. Regi Jean Marie Hall was born on September 25, 1967. She was 16 years of age on April 27, 1984.

6. Stephanie MacPhee and Regi Hall left school at about 11:00 a.m. on April 27, 1984. They obtained some beer and drove around that afternoon.

7. At about 2:30 p.m., Ms. MacPhee and Ms. Hall stopped at the Whoa Tavern to use the restrooms. They had consumed about two beers each before going into the Whoa Tavern. They walked into the Whoa Tavern with containers of beer.

8. As Ms. MacPhee and Ms. Hall walked through the tavern towards the restrooms, Licensee David Doud spotted them and advised them that they could not enter the premises with their own beer.

9. After using the restrooms, Ms. MacPhee and Ms. Hall asked Mr. Doud if he would like to look at Ms. MacPhee's new

car. Mr. Doud went outside the premises with them and looked briefly at their car. Mr. Doud then re-entered the premises.

10. While preparing to leave from the parking area at the Whoa Tavern, Ms. MacPhee and Ms. Hall encountered three loggers, who asked them if they would like to come inside the tavern. The two ladies accepted and entered the tavern with the loggers.

11. Ms. MacPhee and Ms. Hall were in the Whoa Tavern with the three loggers from approximately 2:45 p.m. until 4:00 p.m. While on the premises, they sat at a table and drank beer, they played pool and they played shuffleboard. All these areas were easily visible to Mr. Doud from his position behind the bar.

12. Ms. MacPhee and Ms. Hall each consumed about three or four beers in the Whoa Tavern between 2:45 p.m. and 4:00 p.m. Ms. Hall purchased the second round of beers from Mr. Doud at the bar. As Ms. Hall was about to return to her table with the beers, Mr. Doud said "wait a minute." Mr. Doud thereupon opened the beers for Ms. Hall.

13. On at least one occasion, Mr. Doud picked up bottles and cleaned off the table at which Ms. MacPhee and Ms. Hall were sitting.

14. Ms. MacPhee and Ms. Hall used the restroom several times between 2:45 p.m. and 4:00 p.m. In walking to the restroom, they walked directly past the portion of the bar where Mr. Doud was stationed.

15. Ms. MacPhee talked with Mr. Doud for five or ten minutes shortly before they left at about 4:00 p.m.

16. Mr. Doud did not ask Ms. MacPhee or Ms. Hall their ages and did not ask them for identification while they were in the premises on April 27, 1984. They made no statements concerning their ages to Mr. Doud on this date.

17. Ms. MacPhee and Ms. Hall had met Mr. Doud on one prior occasion, about a month before April 27, 1984. On this occasion, Mr. Doud picked up the two women and gave them a ride in his car. During the ride, Ms. MacPhee made the statement to Mr. Doud that she was 21 years of age and that Ms. Hall was her younger sister. The two women displayed no identification to Mr. Doud on this occasion.

18. Ms. MacPhee and Ms. Hall are both about five-feet-seven-inches tall. They both appeared approximately their true ages of 16 on April 27, 1984 due to their facial features and statures.

19. Mr. Doud was the only employee on duty in the Whoa Tavern on April 27, 1984.

20. There were about 12 or 13 patrons at the Whoa Tavern between 2:45 p.m. and 4:00 p.m. on April 27, 1984.

21. Mr. Doud was drinking beer in the Whoa Tavern while on duty between 2:45 p.m. and 4:00 p.m. on April 27, 1984. He was under the influence of alcohol during this time.

DISCUSSION

There was a conflict between the testimony presented in the Licensee's behalf versus the testimony of Ms. MacPhee and

Ms. Hall concerning Ms. MacPhee's and Ms. Hall's presence in the Whoa Tavern between 2:45 p.m. and 4:00 p.m.

Mr. Doud and Wanda Speck, who testified she was at the Whoa Tavern during the time in question, stated they did not see Ms. MacPhee and Ms. Hall in the premises between 2:45 p.m. and 4:00 p.m.

Ms. MacPhee and Ms. Hall, on the other hand, testified as set forth in the Findings of Fact above.

The Hearings Examiner accepted the testimony of Ms. MacPhee and Ms. Hall. They both appeared to testify truthfully. Ms. MacPhee and Ms. Hall offered a relatively detailed account of the inside of the Whoa Tavern and their activities there that would have been difficult to fabricate if they had not spent an hour and 15 minutes in the premises as they testified.

Mr. Doud was consuming beer during the period in question and his judgment may have been impaired as far as allowing the two young women into the premises. Mr. Doud's demeanor and manner of testimony did not appear credible.

Mr. Doud's witness, Wanda Speck, testified that she did not observe Ms. MacPhee and Ms. Hall come back inside the premises at 2:45 p.m. but testified it was possible the two young women could have returned without Ms. Speck noticing. The Hearings Examiner found Ms. Speck's testimony to be equivocal enough to be of insufficient weight to overcome the testimony of Ms. MacPhee and Ms. Hall.

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 Licensee violated OAR 845-06-035(2)(a) in the case of Stephanie MacPhee and Regi Hall on April 27, 1984. Licensee Doud permitted Ms. MacPhee and Ms. Hall to consume three or four beers on the premises over a period of one hour and 15 minutes. Mr. Doud had a clear view of the two women while they were on the premises. Ms. Hall purchased one of the rounds of beer from Mr. Doud at the bar. The two women appeared well under 21 years of age. They presented no identification representing themselves to be other than their true ages.

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 Licensee violated OAR 845-06-035(2)(b) with respect to Stephanie MacPhee and Regi Hall on April 27, 1984. The Licensee permitted the two young women to enter and remain in the Whoa Tavern for approximately one hour and 15 minutes. The Whoa Tavern has a minor posting forbidding minors from the premises. The Licensee had ample opportunity to observe the

presence of the two young women throughout the time they were there. The two young women appeared well under 21 years of age and should have been asked for identification or asked to leave. The Licensee did neither.

ULTIMATE CONCLUSIONS OF LAW

When there has been a violation of ORS Chapter 471 or 472, or any rule adopted thereunder, upon any premises licensed by the Commission, the Commission may revoke or suspend either the service permit of the employee who violated the law or rule or the license of the licensee upon whose premises the violation occurred, or both the permit and the license. ORS 471.385(3).

The Commission may cancel or suspend the Licensee's RMB license for the violations of OAR 845-06-035(2)(a) (permitted minors to consume on licensed premises) and OAR 845-06-035(2)(b) (permitted minors to enter or remain).

The record indicates no mitigating factors in this matter.

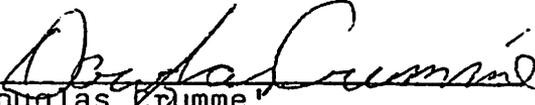
FINAL ORDER

It is hereby ordered that the Retail Malt Beverage (RMB) license held by David L. Doud at the Whoa Tavern, s/s of Highway 66, Keno, Oregon, be SUSPENDED for five (5) days or that a fine of \$325 be paid in lieu of said 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 17th day of October, 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.