

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the)	
Proposed Suspension of the)	
Dispenser Class A)	
License held by:)	FINAL
)	FINDINGS OF FACT,
Hazelhuhn Investment Co.)	CONCLUSIONS OF LAW,
dba CATTLE KATE'S)	AND ORDER
1929 Main Street)	
Baker, Oregon 97814)	OLCC-84-V-034
- - - - -)	
Baker County)	

A hearing in the above matter was held on the 4th day of December, 1984, in Baker, Oregon, before Hearings Examiner Allen R. Scott. 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 January 29, 1985.

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. Licensee has held a Dispenser Class A license at CATTLE KATE'S at all times relevant to this matter.

2. Licensee has been charged with violation of ORS 472.180(8), ORS 471.410(2) (employee knowingly sold, gave, or made available alcoholic liquor to a minor), OAR 845-06-035(2)(a) (employee permitted a minor to consume alcoholic liquor), and OAR 845-06-035(2)(b) (an employee permitted a minor to remain on the premises).

3. On September 21, 1984, Tammy Wenke, Cindy Relaford, and Misty Kidd went to Cattle Kate's. Ms. Wenke was 23 years of age. Ms. Relaford was born on December 1, 1968, and was therefore 15 years of age. Ms. Kidd was born on August 16, 1968, and was therefore 16 years of age.

4. Before the three entered the premises, Ms. Wenke gave her Oregon Motor Vehicle Identification Card to Ms. Relaford to use as identification.

5. The three women then entered Cattle Kate's at approximately 11:55 p.m. They went first to the restaurant portion of the premises. This area also contains a bar. It has a No. IV posting, which permits minors to be present while eating between 7:00 a.m. and 9:00 p.m.

6. Ms. Relaford went to the bar and, without being asked, showed Ms. Wenke's identification to the bartender. The bartender examined it in Ms. Relaford's hand at a distance of approximately two or three feet. She then sold a bottle of beer to Ms. Relaford.

7. Ms. Relaford then took her beer to a table at which Ms. Wenke and other people were sitting. Misty Kidd was seated on the floor, partially underneath the corner of the table. An employee came to the table on one occasion to pick up empty glasses while Ms. Kidd was seated on the floor.

8. Ms. Relaford then consumed the beer she had purchased and perhaps one other at this table. After approximately one hour, she went upstairs to the pool area, which has a No. II posting prohibiting the entry of minors. She remained in the pool room for approximately one hour, during which time she consumed several other beers purchased for her by other patrons. She became quite intoxicated. She left the premises at 2:00 a.m.

9. Meanwhile, Misty Kidd remained downstairs for a few minutes after Ms. Relaford had gone to the pool room. Ms. Kidd then left the premises at approximately 1:00 a.m. She had been in the restaurant/bar area for approximately one hour. She did not consume any alcoholic beverages on the premises. She was not asked for identification while on the premises.

10. Cindy Relaford is five feet, three inches in height and weighs approximately 145 pounds. She was dressed in pants and a shirt. She has long blonde hair and was wearing a substantial amount of makeup on this night. She appeared to be approximately 15 to 17 years of age. The Motor Vehicle Identification Card that Ms. Relaford showed on the premises contains the photograph of Tammy Wenke. The photograph does not

resemble Ms. Relaford. It lists the date of birth of the possessor as March 22, 1961; the owner of the card would therefore have been 23 years of age on the date of this incident.

11. Misty Kidd was wearing jeans and a shirt on this occasion. She appeared to be approximately 16 to 18 years of age.

12. Corporate Officer Harold Hazelhuhn has been licensed at two other premises in Oregon: A dispenser outlet in Farewell Bend from 1971 to 1978 and Grady's Tavern from 1971 to 1978. He has been licensed at Cattle Kate's since June of 1984. He has received no citations at any of these premises prior to the one involved in this hearing.

13. OLCC Liquor Control Officer William Alexander testified that Mr. Hazelhuhn has always been cooperative and has always tried to do his best. Mr. Hazelhuhn was not in the premises at the time of the incident described above.

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).

No one other than the person's parent or guardian shall sell, give or otherwise make available any alcoholic liquor to a person under the age of 21 years. A person violates this subsection who sells, gives or otherwise makes available alcoholic liquor

to a person with the knowledge that the person to whom the liquor is made available will violate this subsection.
ORS 471.410(2).

The evidence establishes that on September 21, 1984, at approximately 11:55 p.m., an employee of Cattle Kate's sold alcoholic liquor to Cindy Relaford, a person under the age of 21 years. Ms. Relaford appeared to be approximately 15 or 16 years of age. There was thus reasonable doubt that she had reached the age of 21 years. The sale was therefore knowingly made.

It is also concluded that the identification that Ms. Relaford showed to the bartender does not constitute a defense in this matter. The photograph on the card does not resemble Ms. Relaford to any significant degree. Furthermore, the birth date on the card is that of a person 23 years of age. Ms. Relaford does not appear to be close to that age.

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. OAR 845-06-035(2)(a).

The evidence establishes that employees of Cattle Kate's permitted Cindy Relaford, a person under the age of 21 years, to consume alcoholic liquor upon the licensed premises on September 21, 1984, at approximately 11:55 p.m. and thereafter until approximately 2:00 a.m. on September 22, 1984.

3. 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).

The evidence establishes that on September 21, 1984, at approximately 11:55 p.m., employees of Cattle Kate's permitted Cindy Relaford and Misty Kidd, both under the age of 21 years, to enter portions of the licensed premises that are forbidden to the use of minors. Ms. Kidd remained on the premises for approximately one hour. Ms. Relaford remained on the premises for approximately two hours.

ULTIMATE CONCLUSIONS OF LAW

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 that Licensee has violated ORS 472.180(8), ORS 471.410(2), OAR 845-06-035(2)(a) and OAR 845-06-035(2)(b).

Licensee asks that the penalty be reduced because this is his first violation. However, under the Commission's penalty schedule, the proposed penalty is appropriate for a first violation of the statutes and regulations involved in this matter. Licensee's good record of compliance and the favorable view held of his cooperativeness and his earnestness in

attempting to obey the laws might provide some basis for mitigation in some cases. However, the violations in this matter appear to be rather flagrant and the Commission concludes that no mitigation is called for.

FINAL ORDER

It is hereby ordered that the Dispenser Class A license held by Hazelhuhn Investment Company in the trade name Cattle Kate's, 1929 Main Street, Baker, Oregon 97814 be SUSPENDED for seven (7) days or that Licensee pay a fine of \$455 in lieu of the suspension.

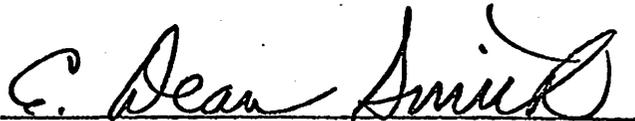
It is further ordered that due notice of such action, stating the reasons therefor, be given as provided by law.

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 26th day of February, 1985.



Allen R. Scott
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.

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