

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

In the Matter of the
Application for a
Service Permit by:

Timothy L. McClure

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) FINAL
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND ORDER
)
) OLCC-85-SP-004
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A hearing in this matter was held on February 4, 1985, and March 7, 1985, in Portland, Oregon, Oregon, before Hearings Examiner Allen R. Scott. The Applicant was present on February 4, 1985, but made no appearance on March 7, 1985. Applicant was 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 May 13, 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:

ISSUES

I. The Staff asserts that the service permit should be denied because Applicant made false statements to the Commission in the permit application. ORS 471.380(2).

II. The Staff asserts that the permit should be denied because Applicant has been convicted of violating the alcoholic beverage laws of Oregon or has been convicted of a felony. ORS 471.380(4).

I. FALSE STATEMENT

The commission may refuse to grant a service permit if it has reasonable grounds to believe any of the following to be true:

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(2) That the applicant has made false statements to the commission in the permit application. ORS 471.380(2).

Findings of Fact

1. On July 8, 1984, Applicant signed an application for a service permit. Question 4a is as follows: "Have you ever been convicted of, or sentenced, put on probation, or forfeited bail for, any crime, violation, or infraction of any law? (Include traffic violations with a fine or bail of \$50.00 or more.) LIST ALL." Applicant answered "yes" to this question and listed one offense: "Buying and selling stolen property."

2. Question 4b is as follows: "Are there presently pending against you any criminal charges, violations or infractions of the law? LIST ALL." Applicant answered "no" to this question.

3. As of the date of the application, Applicant had been convicted of the following:

<u>Offense</u>	<u>Date</u>	<u>Disposition</u>
DUII	4-22-72	90 days Suspension
Burglary I	3-31-83	5 years probation

4. Applicant's entry on the application form of the conviction for "buying and selling stolen property" refers to the Burglary I conviction.

5. On March 16, 1984, Applicant was stopped by Multnomah County Sheriff's Officers while driving. He told the officers his name was "Eric Lee Carpenter." Charges of drunk driving and open container were subsequently brought against Mr. Carpenter.

6. On October 4, 1984, after realizing that Applicant had given a false name, Sheriff's Officers arrested Applicant. He was then charged with DUII, Open Container, Misuse of License, and Operating Motor Vehicle in Violation of a Court Order.

Conclusions of Law

Applicant gave a false answer to question 4a on the form in that he did not list his 1972 DUII conviction. His explanation at the hearing was that it occurred so many years ago that he did not feel he needed to list it. He gave no explanation for his supposed belief. The Commission concludes that he made a false answer with respect to question 4a.

The Staff asserts that Applicant's answer to question 4b, relating to pending charges, was also false. The evidence

indicates that Mr. McClure signed the application on July 8, 1984, after the March 16, 1984, incident. The original charges resulting from the March 16, 1984, incident were filed in the name "Eric Lee Carpenter" because of Applicant's representation of himself as Mr. Carpenter. However, Mr. McClure was in fact the person charged, although in the wrong name. Therefore, there were charges pending against Timothy Lee McClure at the time he filled out his application. Consequently, his answer to question 4b, relating to pending convictions, was a false statement.

The Commission concludes that this statute provides a basis for denying the application.

II. CONVICTIONS OF VIOLATIONS OF ALCOHOLIC BEVERAGE LAWS
OR OF FELONIES

The commission may refuse to grant a service permit if it has reasonable grounds to believe any of the following to be true:

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(4) That the applicant has been convicted of violating any of the alcoholic liquor laws of this state, general or local, or has been convicted at any time of a felony. ORS 471.380(4).

Findings of Fact

7. Applicant was convicted of drunk driving on April 22, 1972. He was convicted of drunk driving on January 29, 1985. He was also convicted of "Open Alcoholic Container in Vehicle" on January 29, 1985.

8. Applicant was convicted of Burglary I on March 31, 1982, a felony.

Conclusions of Law

Applicant's two drunk driving convictions and the open container conviction are violations of the alcohol beverage laws of Oregon. It should be noted that the second drunk driving conviction and the open container conviction occurred after Applicant's application and after the Staff had denied the service permit. Nevertheless, the Commission believes that it is not improper to consider them in this matter. Applicant acknowledged the convictions at the hearing and had the opportunity to explain or otherwise account for them. His claim that it was not he who was stopped by police on March 16, 1984, is not credible. Thus, consideration of these matters does not unfairly prejudice Applicant. The evidence also establishes that Applicant was convicted of a felony in 1983.

The Commission concludes that these convictions provide a basis under the statute for denying the service permit.

ULTIMATE CONCLUSIONS OF LAW

The service permit should be denied because Applicant made a false statement in his service permit application and because Applicant has been convicted of violations of the alcoholic beverage laws of Oregon and has been convicted of a felony. ORS 471.380(2)(4).

FINAL ORDER

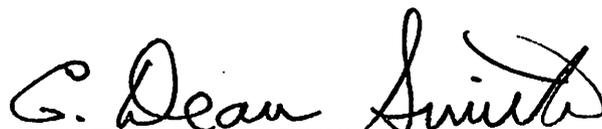
The Commission orders that the application for a service permit by Timothy L. McClure be DENIED.

It is further ordered that notice of this action, including the reasons for it, be given as provided by law.

Dated this 11th day of June, 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.