

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,
Dennis L. Heilig)	CONCLUSIONS OF LAW,
• PETTICOAT JUNCTION)	AND ORDER
1036 NW Hoyt)	
Portland, OR 97203)	
- - - - -)	
Multnomah County)	

A hearing in the above matter was held on the 19th day of April, 1983, in Portland, Oregon, before Hearings Examiner Jill Thompson. The Licensee appeared in person and was not represented by legal counsel. The Commission was represented by legal counsel.

RECORD OF PREVIOUS VIOLATIONS

NONE.

The Commission having considered the record of the hearing, the applicable law and regulations, the Proposed Order of the Hearings Examiner, Exceptions to the Proposed Order of the Hearings Examiner, and now being fully advised, makes the following:

FINDINGS OF FACT

1. Dennis Heilig held a Dispenser Class A (DA) license at PETTICOAT JUNCTION, 1036 NW Hoyt, Portland, Oregon, at the times mentioned herein.

2. On May 15, 1982 at about 2:50 a.m., Enforcement Division Inspectors Miller and Wilkerson observed through a window two women sitting at Licensee's bar drinking bottled beer. The

Inspectors knocked at the premises' door, identified themselves as OLCC employees and requested entry. They moved back to the window, shone flashlights on their OLCC ID cards, again requested entry and instructed the occupants inside to not remove the beer.

3. Licensee examined the inspectors and their identification through the window, stated he wasn't convinced they were from the OLCC, that he had had several burglaries on his premises, and that he intended to phone the police before admitting them. He was heard by Inspector Wilkerson.

4. A police car arrived in seven to ten minutes from the time the inspectors first demanded entry. Licensee admitted them as soon as the police arrived.

5. When the inspectors entered the premises the beer had disappeared. The two women, friends of the Licensee, were still at the bar. Licensee was present, as was Barry Dragoon, Licensee's bartender.

6. No one on the premises admitted knowing what happened to the beer which had been observed on the bar. Licensee stated at the hearing that he thinks Dragoon removed it, and acknowledged he is responsible for his employees' acts.

7. Licensee's bartender, Dragoon, did not have a valid service permit on May 15, 1982. The only permit in his possession at that time had expired July 30, 1977. Dragoon has been Licensee's bartender since sometime in 1979.

8. On June 3, 1982, Licensee was formally charged by the Commission with violating the following rules and statutes:

- a. OAR 845-06-030(1): serving, selling, dispensing or allowing consumption of alcohol during prohibited hours.
- b. OAR 845-06-045(5): intentional destruction, removal or concealment of potential evidence.
- c. OAR 845-06-045(6): refusal to promptly admit to the premises a Commission inspector upon a request to enter.
- d. ORS 471.360(1): allowing an employee to serve or sell alcoholic liquor without a valid service permit.

9. Licensee has been the victim of several burglaries over the past few years. He has reported them all to the Portland Police.

10. At Licensee's instruction on May 15 or 16, 1982, Draagoon applied for a service permit. It was granted.

11. Licensee admits that beer was consumed on his premises, in his presence, on May 15, 1982.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Except as provided by section (2) of this rule, alcoholic liquor may be sold, dispensed, served, consumed on, or removed from licensed premises only between the hours of 7:00 a.m. and 2:30 a.m. OAR 845-06-030(1).

Section (2) of rule 845-06-030 does not apply to this case.

Licensee allowed consumption of beer, an alcoholic liquor, on his premises between the hours of 2:30 a.m. and 7:00 a.m. on May 15, 1982.

2. No licensee shall intentionally destroy, damage, alter, remove or conceal potential evidence, or attempt to do so, or refuse to surrender evidence when lawfully requested to do so by an officer or inspector, or incite another person to do any of the above. OAR 845-06-045(5).

Each licensee may be held responsible for violation of any liquor control law or administrative rule or regulation of the Commission affecting his license privileges and for any act or omission of his servant, agent, employee, or representative in violation of any law, municipal ordinance, administrative rule, or regulation affecting his license privileges. OAR 845-06-025.

The two bottles of beer seen by the inspectors, which they ordered the Licensee to not remove, had disappeared when they entered the premises. The Licensee denies removing the evidence and postulates that it was done by his employee, Dragoon. Licensee acknowledges he is responsible for the acts of Dragoon.

3. No licensee, nor any employee of a licensee, shall refuse to promptly open a door to the licensed premises upon request of an officer or inspector of the Commission to enter the premises, when the licensee or employee knows or should know that such request is made by an officer or inspector of the Commission, and the officer or inspector has reason to believe that a violation of the liquor laws or administrative rules is occurring on the licensed premises. This provision shall not be construed to deny the Commission access at any reasonable time to any licensed premises. OAR 845-06-045(6).

The Licensee did not refuse to admit the OLCC inspectors. He announced to them, and was heard by one inspector to say, that he was regularly burglarized and intended to call the police. The fact that the inspectors waited for the police to arrive indicates they were aware they were not being refused entry. The police arrived in seven to ten minutes from the time the inspectors first demanded entry, and the Inspectors

were thereupon immediately admitted. Licensee has been frequently burglarized and had good cause to obtain the presence of the police, which is not an act he would choose were he attempting to avoid official scrutiny.

4. No licensee of the Commission shall permit any person to mix, sell or serve any alcoholic liquor for consumption on the licensed premises unless such person has a valid service permit issued by the Commission. ORS 471.360(1)(b).

Licensee's bartender, Barry Dragoon, did not possess a valid service permit on May 15, 1982.

ULTIMATE CONCLUSIONS OF LAW

The Commission concludes that Licensee violated OAR 845-06-030(1) (consumption of alcoholic liquor during prohibited hours), OAR 845-06-045(5) (removal of evidence by employee for whose acts licensee is responsible), and ORS 471.360(1)(b) (permitting an employee who lacked a valid service permit to mix, sell and serve alcoholic liquor). The Commission further concludes that Licensee did not violate OAR 845-06-045(6) (refusal to admit OLCC inspectors).

FINAL ORDER

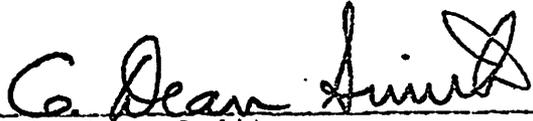
It is hereby ordered that the Dispenser Class A (DA) license held by Dennis L. Heilig in the trade name Petticoat Junction, 1036 NW Hoyt Street, Portland, Oregon, be SUSPENDED for thirteen (13) days for violation of OAR 845-06-030(1) (consumption of alcoholic liquor during prohibited hours), OAR 845-06-045(5) (removal of evidence by employee for whose acts licensee is responsible), and ORS 471.360(1)(b) (permitting an

employee who lacked a valid service permit to mix, sell and serve alcoholic liquor), or that Licensee pay a fine of \$829 in lieu of suspension. The proposed penalties are calculated pursuant to the formula contained in OAR 845-06-200(7).

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 18th day of July, 1983.



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.