

3. On August 16, 1983, Permittee Ingersoll was on duty at the Shilo West, a licensed premises in Astoria. He was the night manager in charge of the bar.

4. On the night of August 16, 1983, a patron in the premises, Robert Hadley, became involved in a dispute with a cocktail waitress regarding Mr. Hadley's smoking on the dance floor.

5. Permittee Ingersoll then became involved in a physical altercation with Mr. Hadley during which Permittee Ingersoll hit Mr. Hadley two or three times on the head with a club formed from the butt end of a pool cue stick. Mr. Hadley suffered deep gashes on his head. Permittee Ingersoll handcuffed Mr. Hadley while Mr. Hadley was lying on the floor and then called the police.

6. As a result of this incident, Permittee Ingersoll was convicted of Assault in the Second Degree, a class B felony. He was fined, sentenced to ten years in prison, with the sentence suspended upon service of one year in the county jail, and placed on five years probation.

7. When Permittee Ingersoll first applied for his service permit in 1980, he acknowledged on the application form that he had been convicted in 1980 of fourth degree assault in Grants Pass, Oregon. When the Commission's staff granted the application, they advised Mr. Ingersoll as follows:

"In considering your application the Commission expressed concern regarding your previous arrest history. This is to advise that future arrests may result in cancellation or suspension of the service permit."

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission may revoke or suspend a service permit, 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 grounds to believe that the permittee has been convicted of a felony. ORS 471.385(1)(b).

Service Permittee Ingersoll admitted the conviction. The violation of the statute is thus established. Sportservice Corp. v. OLCC, 15 Or App 226, 229, 515 P2d 731 (1974).

Permittee Ingersoll maintained that he is innocent of the criminal charge and indicated that he was in the process of appealing the conviction. He did not indicate the status of the appeal, nor did he request that the Commission delay consideration of this matter pending the appeal. It is his claim that he was acting to maintain order in the premises when he hit Mr. Hadley with a club. The OLCC hearing is not, of course, an occasion to retry the criminal matter; in any event, the appropriate witnesses were not present and it is not possible to develop a complete picture of the incident. The Commission does believe, nevertheless, based upon Permittee Ingersoll's testimony and the other evidence offered, that Permittee Ingersoll was attempting to do his duty as an employee during this incident. The conviction indicates, however, that the jury, which heard the case and considered all of the evidence, must have concluded that Mr. Ingersoll's actions were not legally justifiable. Given the gravity of the offense, the fact that it occurred while he was on duty at a licensed premises, and the fact that Mr. Ingersoll has a prior assault conviction and was

warned by the OLCC, the Commission concludes that Mr. Ingersoll's service permit should be cancelled.

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 Service Permittee Robert G. Ingersoll violated ORS 471.385(1)(b) (conviction of a felony).

FINAL ORDER

It is hereby ordered that the service permit held by Robert G. Ingersoll be CANCELLED.

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

Dated this 22nd day of May, 1984.

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Allen R. Scott
Hearings Examiner
Hearings Division

C. Dean Smith

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.