

BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

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

LEONARD L. MOORE  
10315 SE 82nd, No. 3  
Portland, Oregon 97266  
- - - - -  
Multnomah County

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)  
) FINAL  
) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW,  
) AND ORDER  
)  
) OLCC-84-SP-002  
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A hearing in the above matter was held on the 19th day of July, 1984, in Portland, Oregon, before Hearings Examiner Douglas Crumme'. The Applicant 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 August 29, 1984.

No Exceptions were filed to the Proposed Order within the fifteen (15) day period specified in OAR 845-03-050.

Now, therefore, the Commission hereby adopts the Proposed Order of the Hearings Examiner as the Final Order of the Commission, and enters the following:

ISSUES

The Commission's staff proposes refusal of Mr. Moore's application under ORS 471.380(1) on the grounds that Mr. Moore is in the habit of using alcoholic beverages or controlled substances to excess. (Commission's Exhibit C.)

Mr. Moore disputed this conclusion.

I. HABIT OF USING ALCOHOL TO EXCESS

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

(1) That the applicant is in the habit of using alcoholic beverages or controlled substances to excess. ORS 471.380.

Findings of Fact

1. Leonard Moore has been convicted of the following:

<u>OFFENSE</u>	<u>DATE</u>
DUII	Nov 26, 1969
2nd DUII	Dec 11, 1974
Reckless Driving	Apr 28, 1976
Refused Breath Test	Sep 14, 1976
DUII	Nov 03, 1976
DUII	Feb 28, 1977
2nd DUII	Feb 28, 1978
3rd DUII	Nov 03, 1979
Open Container	Apr 27, 1981
Refused Breath Test	Apr 01, 1982
DUII	Nov 02, 1982
Refused Breath Test	Mar 05, 1984

(Commission's Exhibit A.)

2. Mr. Moore held Package Store licenses from the Commission from 1969 through 1975 at three Moore's Food Centers locations. Mr. Moore was found in violation of the Commission's rules only once during this period. This violation was for issuing an NSF check to a beer and wine wholesaler in payment for beer and wine.

3. Mr. Moore worked for Albertson's from 1962 through 1969. The Commission takes official notice that Albertson's operates a chain of grocery stores holding PS licenses. Mr.

Moore was not found in violation of any of the Commission's rules and regulations during his employment with Albertson's.

4. Mr. Moore worked under a service permit from the Commission at Lenny's Steak House in Bend from 1977 to 1979. Mr. Moore was the manager of the premises. In this capacity he cooked, served liquor and performed other duties. Mr. Moore was not found to be in violation of any of the Commission's rules during his work at Lenny's. Mr. Moore's service permit expired in approximately 1981 or 1982.

5. Mr. Moore participated in an alcoholic treatment program at Raleigh Hills Hospital in 1979. He later participated in the "Project Stop" alcoholic treatment program under court direction in 1981 or 1982.

6. Mr. Moore's primary occupation is driving a truck. He seeks a service permit to work part-time during the winters as a bartender at the Hidden Tavern. Mr. Moore worked under his service permit application as a bartender at the Hidden Tavern from February 1984 through April 23, 1984, until the Commission's staff proposed refusal of his permit application.

#### Discussion

a. There was a DUII charge pending against Mr. Moore on the date of his July 19, 1984 hearing before the Commission. This matter is set for trial in October 1984. The Commission has entered no findings with respect to this item and has not considered it in making a recommendation in this case because no conviction has occurred.

b. Commission Inspector James Rogers conducted an interview with Mr. Moore concerning his service permit application on April 9, 1984. During the interview, Mr. Rogers detected a moderate odor of alcoholic beverages when Mr. Moore spoke. Mr. Rogers asked Mr. Moore if he had consumed any alcohol prior to the interview. Mr. Moore answered, "no." A few minutes later, however, Mr. Moore admitted he had consumed beer while waiting for the bus just prior to the interview.

The Staff did not cite "false statements" under ORS 471.380(2) as a refusal grounds. Furthermore, a false statement about one particular drink does not tend to show a habit of excessive alcohol use. Therefore, the Staff appeared to offer the evidence of the false statement for the purpose of impeaching Mr. Moore's credibility. However, a witness may not generally be impeached by extrinsic evidence of specific conduct, such as one particular statement made outside the hearing that might be true or false. State v. Brown 297 Or App 404, 443, \_\_\_\_ P2d \_\_\_\_, (1984); ORS 40.350(2). Therefore the Commission did not give weight to this incident in assessing Mr. Moore's credibility.

#### Conclusions of Law

The evidence indicates that Mr. Moore is in the habit of using alcoholic beverages to excess. He has 11 liquor law convictions between 1969 and 1984. Seven of these convictions are for driving under the influence. The length of Mr. Moore's conviction record is clearly sufficient to establish a habit of

using alcohol to excess. His participation in alcoholic treatment programs does not appear to have solved the problem because liquor convictions have occurred after his participation in the programs.

Mr. Moore argued that his lack of violations as a licensee and permittee of the Commission in the past shows he has successfully restricted his excessive use of alcohol to non-work hours. He argued that this should overcome any evidence of a habit of using alcohol to excess as a refusal ground. However, this argument is not well taken. The same lapses in judgment and control that are associated with Mr. Moore's excessive use of alcohol that led to his convictions are likely to handicap his ability to follow the liquor laws and to restrict his excessive use of alcohol to non-work hours. The record does not contain sufficient evidence to allow the Commission to conclude that Mr. Moore's habit of excessive alcohol use would not spill over to his work under a service permit.

In light of these considerations, Mr. Moore's application should be refused under ORS 471.380(1).

FINAL ORDER

It is hereby ordered that the application by Leonard L. Moore, 10315 SE 82nd, No. 3, Portland, Oregon, for a service permit be DENIED.

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

Dated this 21st day of September, 1984.

  
Douglas Crumme  
Douglas Crumme  
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.