

BEFORE THE LIQUOR CONTROL COMMISSION
OF THE STATE OF OREGON

I certify the foregoing
to be a true and correct
copy of the original

JP

In the Matter of the)	FINAL
Retail Malt Beverage (RMB))	FINDINGS OF FACT,
License held by:)	CONCLUSIONS OF LAW,
)	AND ORDER
John Masepohl)	
dba PUB TAVERN)	OLCC-87-V-016
22506 Highway 126)	
Noti, Oregon 97461)	
- - - - -)	
Lane County)	

A hearing was held in the above matter on August 11, 1987, in Eugene, Oregon, before Hearings Examiner Torquil R. Olson. Licensee did not attend the hearing. Licensee's attorney, Douglas Melevin, also did not attend the hearing. The Commission was represented by Frank Mussell, assistant attorney general.

The Hearings Examiner considered the record of the hearing and the applicable law, and issued a Proposed Order dated October 9, 1987.

No Exceptions to the Proposed Order were filed within the 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:

WITNESSES

FOR THE COMMISSION: Gary Sandstrom, OLCC inspector.

FOR THE LICENSEE: None.

1 ISSUES

2 I. Whether the Licensee is in default for failure to
3 appear at the hearing. OAR 845-03-030.

4 II. Whether the evidence presented at the hearing shows
5 the Licensee committed the violations alleged in the Notice of
6 Proposed License Cancellation.

7 It is alleged that the Licensee or his employees sold, or
8 made available, alcoholic beverages to two minors.
9 ORS 471.315(1)(g); ORS 471.410(2). It is also alleged that the
10 Licensee or his employees allowed the minors to enter or
11 remain, and consume alcoholic beverages, on the licensed premi-
12 ses. OAR 845-06-035(2)(a) and (b). It is further alleged that
13 the Licensee employed two minors and permitted two employees to
14 serve alcoholic beverages without valid service permits.
15 OAR 845-06-035(4)(b);¹ ORS 471.360(1)(b).

16 Finally, the Commission alleged that the Licensee drank
17 alcoholic beverages while on duty, served alcoholic beverages
18 during prohibited hours, and permitted patrons to bring and
19 consume distilled spirits on the RMB-licensed premises.
20 OAR 845-06-045(1); OAR 845-06-030(1); OAR 845-06-050.

21 III. Whether the evidence presented at the hearing shows
22 that cancellation of the RMB license is the appropriate penalty.

23

24

25 ¹This was renumbered OAR 845-06-035(2)(b) on July 1, 1986.

26 / / / / /

1 I. DEFAULT FOR FAILURE TO APPEAR

2 When a party has been given an opportunity
3 and fails to request a hearing within a
4 specified time, or having requested a hear-
5 ing, fails to appear at the specified time
6 and place, the Commission shall, based upon
 a prima facie case made on the record of
 the Commission, enter an order stating the
 matters before it supporting the action of
 the Commission. OAR 845-03-030.

7 Findings of Fact

8 1. John Masepohl has been the single licensee at the Pub
9 Tavern, 22506 Highway 126, Noti, Oregon, since he repossessed
10 the premises in September 1985. John Masepohl and Patricia
11 Masepohl were divorced prior to his reacquiring the premises.

12 2. On May 13, 1987, the Commission mailed the Licensee a
13 Notice of Proposed License Cancellation. The notice alleged
14 violation of the statutes and administrative rules listed in
15 the "Issues" section.

16 3. On June 1, 1987, Licensee's attorney, on behalf of
17 Licensee Masepohl, requested a contested case hearing.

18 4. The Commission sent attorney Melevin, by certified
19 mail, notice of the correct hearing time, date, and place.

20 5. On August 10, 1987, Licensee's attorney contacted
21 Frank Mussell, assistant attorney general, and told him that
22 neither he nor Mr. Masepohl would attend the hearing.

23 6. Attorney Melevin's office was contacted by the Hear-
24 ings Examiner in the afternoon of August 10, and again approx-
25 imately one-half hour prior to the scheduled start of the

26 / / / / /

1 hearing. Attorney Melevin was not available during those con-
2 tacts. The Hearings Examiner left a message with attorney
3 Melevin's office that the contested case hearing would proceed
4 as scheduled.

5 7. Neither the Licensee nor his attorney appeared at the
6 hearing, or presented any evidence or argument.

7 Conclusions of Law

8 OAR 845-03-030 provides that when a party has requested a
9 hearing but fails to appear at the specified time and place,
10 the Commission shall issue an order in the matter based upon
11 the prima facie case made on the record of the hearing.

12 The record shows that the Licensee requested a hearing and
13 that he received sufficient notice of the date, time, and place
14 of the hearing. Licensee failed to appear at the hearing.
15 Thus, the Licensee is in default, and the Commission shall
16 enter an order based upon the evidence presented at the hear-
17 ing. Dale Weslie Cobb, OLCC-87-SP-009, September 1987.

18 II. EVIDENCE PRESENTED

19 Findings of Fact

20 8. From September 1985 until August 1986, Greg Larion
21 was a customer at the Pub Tavern. On several occasions between
22 November 1985 and June 1986, he and Sheri Suttle drank alco-
23 holic beverages together at the premises.

24 9. Ms. Suttle was never asked for identification.

25 10. Ms. Suttle was born August 22, 1968. She was 19
26 years old during the period she was a customer of the tavern.

1 11. Licensee Masepohl admitted that he knew Dawn Newman
2 was under 21. Licensee Masepohl knew Sheri Suttle was a
3 minor. On several occasions prior to March 1987, when Dawn
4 Newman became 21 years of age, Brian Hughes and Mark McGrath
5 observed minor Suttle and minor Newman drinking alcoholic bev-
6 erages at the premises.

7 12. The Pub Tavern had a No. I minor posting which pro-
8 hibits access to the premises by minors.

9 13. Beth Meyers admitted to Inspector Sandstrom that she
10 worked at the Pub Tavern from September 1985 until March 1987.
11 She worked seven days a week in the summer, and weekends only
12 in the winter. Beth Meyers was a minor born on November 24,
13 1968. She was paid \$40 every two weeks for cleaning the
14 tavern. The tavern was usually, but not always, closed during
15 her cleaning visits.

16 14. In late 1985 and early 1986, Greg Larion, Brian
17 Hughes, Mark McGrath, Eric Krueger, Julie Shankle, and Dennis
18 Thorpe all observed Dawn Newman working in the tavern either as
19 a bartender or as a cook.

20 15. Licensee Masepohl did not know that employment of
21 minors was prohibited in a tavern. He told Inspector Sandstrom
22 that he knew minors could not serve alcohol, but he did not
23 know they were not allowed to clean and cook.

24 16. On February 20, 1987, between 10 p.m. and 11 p.m.,
25 Inspectors Tew and Syron observed Licensee Masepohl consume two
26 bottles of beer while on duty as a bartender.

1 17. Brian Hughes, Mark McGrath, Julie Shankle, and Dennis
2 Thorpe have all observed Licensee Masepohl consume alcoholic
3 beverages while on duty.

4 18. Licensee Masepohl admitted that he drank while he was
5 on duty.

6 19. Greg Larion, Brian Hughes, and Mark McGrath attended
7 several parties at the Pub Tavern where alcoholic beverages
8 were served after 2:30 a.m.

9 20. Julie Shankle heard stories about the many after-
10 hours parties at the Pub Tavern; however, she never attended
11 any of the parties.

12 21. Licensee Masepohl would sometimes consume alcoholic
13 beverages at the tavern after 2:30 a.m. with his girlfriend.

14 22. On February 20, 1987, Licensee Masepohl showed
15 Inspectors Tew and Syron a photo album. The album had a sec-
16 tion entitled "After Hours." The photos showed customers par-
17 tying in the tavern. The photos also showed openly displayed
18 distilled liquor bottles.

19 23. Greg Larion, Brian Hughes, Mark McGrath, and Dennis
20 Thorpe observed Dawn Newman serving alcoholic beverages at the
21 tavern.

22 24. Dawn Newman filled out an application for a service
23 permit. The Commission did not receive a completed application.

24 25. Patricia Masepohl, former wife of Licensee Masepohl,
25 served alcoholic beverages at the tavern from February 8, 1987,
26 until February 21, 1987.

1 26. Patricia Masepohl does not have a valid service
2 permit.

3 27. Licensee Masepohl told Inspector Sandstrom that his
4 ex-wife did not need a service permit because he thought her
5 name was on the license.

6 28. Greg Larion, Sheri Suttle, and Brian Hughes attended
7 a 1985-86 New Year's Eve party at the tavern where distilled
8 liquor was consumed. Greg Larion brought his own bottle of
9 Kahlua to the party and paid \$1.30 for a glass of milk for a
10 mixer.

11 Conclusions of Law

12 a. Sale to a Minor

13 The commission may cancel or suspend any
14 license, or impose a monetary penalty in
15 lieu of or in addition to suspension as
16 provided by ORS 471.322, if it finds or has
17 reasonable ground to believe any of the
18 following to be true:

19 (1) That the licensee:

20

21 (g) Knowingly has sold alcoholic liquor to
22 persons under 21 years of age or to persons
23 visibly intoxicated at the time of sale.
24 ORS 471.315(1)(g).

25 * * * * *

26 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 vio-
lates 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).

1 ORS 471.315(1)(g) provides that a licensee commits a vio-
2 lation if he knowingly sells alcoholic liquor to a person under
3 the age of 21 years. In the alternative, ORS 471.410(2) makes
4 it a violation to knowingly make alcoholic beverages available
5 to persons under 21 years of age. The requirement of "knowl-
6 edge" may be imputed to the licensee due to the knowledge of an
7 employee. Taylor's Coffee Shop v. OLCC, 28 Or App 701, 706,
8 560 P2d 693 (1977); OAR 845-06-025.

9 The record does not contain evidence that alcoholic bever-
10 ages were sold to minors Sheri Suttle and Dawn Newman; thus,
11 that charge cannot be sustained.² However, the Commission has
12 charged the Licensee, in the alternative, with making alcoholic
13 beverages available to minors in violation of ORS 471.410(2).

14 The evidence shows that on several occasions, between
15 September 1985 and August 1986, Licensee Masepohl or his
16 employees made alcoholic beverages available to both Dawn
17 Newman and Sheri Suttle when Licensee Masepohl knew of their
18 minor status. Licensee thus violated ORS 471.410(2).

19 b. Permitted Minors to Consume

20 No licensee, permittee, or licensee's
21 employee will permit a minor:

22 (a) To consume any alcoholic beverage on
23 licensed premises. OAR 845-06-035(2)(a).

24 ²A sale requires that a purchaser provide something of
25 value to the seller. This was not shown by the evidence.

26 / / / / /

1 A licensee violates OAR 845-06-035(2)(a) when he permits a
2 minor to consume alcoholic beverages on the licensed premises.
3 There must be sufficient time for the licensee or his employees
4 to detect the minor and determine the minor's true age.
5 Brandy's Restaurant and Lounge, OLCC-86-V-027, December 1986;
6 Murphy's Oyster Bar & Grill, OLCC-85-V-046, December 1985. The
7 Licensee had sufficient opportunity to detect the minors and
8 determine their age because, over a period of several months,
9 they regularly consumed alcoholic beverages at the premises.
10 Licensee violated OAR 845-06-035(2)(a) because he permitted
11 Sheri Suttle and Dawn Newman, both minors, to consume alcoholic
12 beverages at the premises on several occasions.

13 c. Permitted Minor to Enter and Remain

14 No licensee, permittee, or licensee's
15 employee will permit a minor:

16

17 (b) To be on licensed premises or an area
18 of the licensed premises prohibited to
19 minors, except as provided in ORS 471.430,
471.480, 471.482, 472.215, and this rule.
(OAR 845-06-040 defines prohibited premises
and areas.) OAR 845-06-035(2)(b).

20 Licensees violate OAR 845-06-035(2)(b) when they permit
21 minors in areas of the premises that are prohibited to minors.
22 There must be sufficient time for the licensees or their
23 employees to detect the minor and determine their age.
24 Murphy's Oyster Bar & Grill, supra, at 5.

25 In this case, Licensee Masepohl knew that Dawn Newman and
26 Sheri Suttle were minors. The premises has a No. I minor

1 posting which prohibits access to the entire premises by min-
2 ors. Sheri Suttle was on the licensed premises regularly over
3 a several-month period between November 1985 and June 1986.
4 Dawn Newman was on the licensed premises regularly between late
5 1985 and early 1986. Licensee, thus, permitted minors to enter
6 and remain on the premises in violation of OAR 845-06-035(2)(b).

7 d. Minor Employees

8 Minor employees may not work in licensed
9 premises which have a No. I minor posting,
10 as described in rule 845-06-040, or in por-
11 tions of licensed premises posted with a
12 No. II minor posting, as described in rule
13 845-06-040, except as provided in subsec-
14 tion (c), (d), (e) and (f) of this sec-
15 tion. OAR-845-06-035(4)(b).

16 * * * * *

17 No licensee, permittee, or licensee's
18 employee will permit a minor:

19

20 (b) To be on licensed premises or an area
21 of the licensed premises prohibited to min-
22 ors, except as provided in ORS 471.430,
23 471.480, 471.482, 472.215, and this rule.
24 (OAR 845-06-040 defines prohibited premises
25 and areas.) OAR 845-06-035(2)(b).³

26 In addition to prohibiting minors from entering and
27 remaining in a posted premises, OAR 845-06-035(2)(b) also pro-
28 hibits, with exceptions for vendors, contractors and enter-
29 tainers, access by minor employees in posted prohibited areas.

30 _____

31 ³OAR 845-06-035(4)(b) was amended and replaced by OAR 845-
32 06-035(2)(b) on July 1, 1986.

1 The minor posting rules, OAR 845-06-040, and the minor employee
2 exceptions contained in OAR 845-06-035, do not permit a licen-
3 see to use minor employees at a premises that has a No. I minor
4 posting.

5 The evidence in this case shows that Dawn Newman was
6 employed by Licensee Masepohl from October 1985 to April 1986.
7 The evidence also shows that Beth Meyers was employed by Licen-
8 see Masepohl from September 1985 to March 1987. The premises
9 has a No. I minor posting which does not permit use of minor
10 employees; thus, Licensee Masepohl violated OAR 845-06-
11 035(4)(b), and after July 1, 1986, OAR 845-06-035(2)(b).

12 e. Consumed Alcoholic Liquor While on Duty

13 No licensee, and no manager, operator, bar-
14 tender, waiter, or other employe or other
15 agent of a licensee, shall consume, either
16 on the licensed premises or elsewhere, or
17 be under the influence of, alcoholic liquor
18 during the hours he or she is on duty. For
19 the purposes of this section, a permittee
20 or other employe or agent will be deemed to
21 be on duty from the time he or she first
22 comes on duty until the time he or she goes
23 off duty at the end of the shift, including
24 coffee and meal breaks. This section shall
25 not apply to any person who holds an
26 agent's or salesman's license and who does
not operate a delivery vehicle, or to any
person who works on the premises as an
entertainer only. OAR 845-06-045(1).⁴

24 ⁴This rule was amended April 1, 1987.

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1 OAR 845-06-045(1) prohibits the consumption of alcoholic
2 beverages by a licensee while the licensee is on duty selling
3 or serving alcoholic beverages.

4 Inspectors Tew and Syron, Brian Hughes, Mark McGrath,
5 Julie Shankle, and Dennis Thorpe all observed Licensee Masepohl
6 consuming alcoholic beverages while on duty as a bartender at
7 the Pub Tavern. These observations were made on numerous
8 occasions between September 1985 and February 1987. On
9 February 20, 1987, while conducting an investigation at the
10 premises, Inspectors Tew and Syron observed Licensee Masepohl
11 drink alcoholic beverages while on duty.

12 Licensee violated the prohibition against drinking alco-
13 holic beverages while on duty at the licensed premises.

14 OAR 845-06-045(1).

15 f. After Hours Consumption

16 (1) Except as provided by section (2) of
17 this rule, and OAR 845-15-035, alcoholic
18 liquor may be sold, dispensed, served,
19 consumed on, or removed from licensed
20 premises only between the hours of 7 a.m.
21 and 2:30 a.m. OAR 845-06-030.

22 OAR 845-06-030 prohibits the consumption of alcoholic bev-
23 erages on a licensed premises between the hours of 2:30 a.m.
24 and 7:00 a.m.⁵

25 ⁵This rule was amended April 1, 1987. The substance of
26 the provision regarding after hours consumption of alcoholic
beverages was not changed.

1 Licensee Masepohl admitted to Inspector Sandstrom that he
2 drank after hours with his friends when the business was
3 closed. The Commission has previously held that consumption of
4 alcoholic beverages by friends, after hours, rather than the
5 general public, is not a defense to operating during prohibited
6 hours. The Amber Inn, OLCC-85-V-014, August 1985.

7 Other evidence in the record, such as the testimony of
8 Greg Larion, Brian Hughes, and Mark McGrath, indicate that many
9 after-hours parties were held at the premises when alcoholic
10 beverages were consumed by the Licensee.

11 Licensee Masepohl showed Inspectors Tew and Sandstrom a
12 photo album containing pictures taken at the premises. One
13 section of the album was titled "After Hours." In it were
14 photographs of people partying in the tavern. The photographs
15 also showed openly displayed distilled liquor bottles.

16 The evidence shows that alcoholic beverages were consumed
17 at the premises during prohibited hours. Licensee thus vio-
18 lated OAR 845-06-030.

19 g. Employees Lacked Service Permits

20 Except as otherwise provided in ORS 471.375:

21

22 (b) No licensee of the commission shall
23 permit any person to mix, sell or serve any
24 alcoholic liquor for consumption on
25 licensed premises unless such person has a
valid service permit issued by the commis-
sion. ORS 471.360(1)(b).

26 / / / / /

1 ORS 471.360(1)(b) prohibits a person from selling or serv-
2 ing alcoholic beverages without a valid service permit. A
3 licensee violates this statute where a bartender serves alco-
4 holic beverages without a service permit and without having
5 completed a service permit application. Sportsman Club, OLCC-
6 86-V-054, March 1987.

7 Dawn Newman served alcoholic beverages at the premises.
8 Dawn Newman does not possess a valid service permit, nor does
9 the evidence convincingly show that she had a pending service
10 permit application that would authorize service of alcoholic
11 beverages.

12 Patricia Masepohl also worked at the tavern serving alco-
13 holic beverages. She worked from February 8, 1987, until
14 February 21, 1987. Ms. Masepohl did not have a valid service
15 permit or a pending application.

16 Discussion

17 Licensee Masepohl told Inspector Sandstrom that he
18 believed that it was okay for Ms. Masepohl to serve alcoholic
19 beverages without a service permit because he thought her name
20 was on the liquor license. Licensee's comments are not cred-
21 ible. Licensee Masepohl repossessed the premises in September
22 1985. This was after his divorce from Patricia Masepohl.
23 Under these circumstances, it is not likely that he would
24 believe her name would be on the liquor license.

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1 Licensee violated ORS 471.375(1) because he employed Dawn
2 Newman and Patricia Masepohl as bartenders when they did not
3 have service permits or pending applications.

4 h. Unauthorized Alcoholic Beverages on Licensed Premises

5 No licensee of the Commission, nor any
6 agent or employee of such a licensee, shall
7 keep or knowingly permit to be kept,
8 brought, or consumed upon licensed premises
any alcoholic liquor not allowed to be sold
or served upon said premises.
OAR 845-06-050.

9 OAR 845-06-050 prohibits consumption of alcoholic bever-
10 ages on a licensed premises that a licensee is not authorized
11 by the terms of the license to sell or serve.⁶

12 Greg Larion, Sheri Suttle, and Brian Hughes attended a
13 1985-86 New Year's Eve party at the Pub Tavern. Distilled
14 liquor was brought on the premises and consumed at that party.
15 Licensee's RMB license does not authorize the sale or service
16 of distilled spirits; thus, Licensee violated OAR 845-06-050.

17 III. PENALTY

18 The commission may cancel or suspend any
19 license, or impose a monetary penalty in
20 lieu of or in addition to suspension as
provided by ORS 471.322, if it finds or has
reasonable ground to believe any of the
following to be true:

21 (1) That the licensee:
22
23
24

25 ⁶The provision was repealed July 1, 1986. The substance
of the provision is now included in OAR 845-06-045(8).
26 / / / / /

1 (a) Has violated any provision of this
2 chapter or any rule of the commission
3 adopted pursuant thereto.
ORS 471.315(1)(a).

4 Findings of Fact

5 29. The penalties prescribed in the penalty schedule for
6 the eight major violations shown by the Commission's prima
7 facie evidence range from a three-day suspension or \$195 fine
8 for violation of OAR 845-06-035(2)(b), to a seven-day suspen-
9 sion or a \$455 fine for violation of ORS 471.410(2).

10 30. Licensee has no prior violations that would enhance
11 the penalties prescribed in the penalty schedule to succeeding
12 levels.

13 31. The Licensee has sold the premises.

14 Conclusions of Law

15 The Commission's staff has proposed license cancellation
16 as a sanction for the eight violations committed by the Licen-
17 see. This is not the penalty prescribed under the Commission's
18 penalty schedule; however, the Commission's staff argued that
19 cancellation is appropriate because the violations are aggrava-
20 ted, and it is unlikely that the Commission could obtain Licen-
21 see's future compliance with the Commission's rules and
22 regulations.

23 The violations involved multiple incidents that occurred
24 on numerous separate occasions between September 1985 and March
25 1987. The incidents were not related in time and subject
26 / / / / /

1 matter and, thus, should not be merged for penalty purposes.
2 J.B.'s Paradise Room, OLCC-86-V-023, April 1987.

3 The evidence presented at the hearing shows that Licensee
4 Masepohl willfully committed numerous serious major violations
5 between September 1985 and March 1987. Because of the number
6 and severity of the violations, the Licensee's intent to commit
7 these violations, and because no evidence was offered to
8 explain why the RMB license should not be cancelled, cancella-
9 tion of the RMB license held by John Masepohl is the appropri-
10 ate sanction.

11 ULTIMATE CONCLUSIONS OF LAW

12 Licensee Masepohl is in default on the charges listed in
13 the notice of proposed license cancellation.

14 The Commission presented prima facie evidence on the rec-
15 ord supporting the allegations and proposed cancellation.
16 OAR 845-03-030.

17 The Commission established Licensee's violation of
18 ORS 471.410(2); OAR 845-06-035(2)(a) and (b); OAR 845-06-
19 035(4)(b) and (2)(b); OAR 845-06-045(1); OAR 845-06-030(1);
20 ORS 471.360(1)(b); and OAR 845-06-050. ORS 471.315(1)(g)
21 should be dismissed.

22 FINAL ORDER

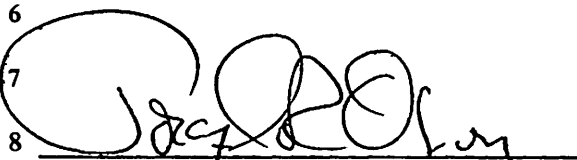
23 The Commission orders that John Masepohl, holder of an RMB
24 license at the Pub Tavern, 22506 Highway 126, Noti, Oregon, be
25 held in DEFAULT. ORS 471.315(1)(g) is DISMISSED.


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1 The Hearings Examiner further proposes that the RMB
2 license held by John Masepohl be CANCELLED.

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

5 Dated this 6th day of November, 1987.

6
7 
8 Torquil R. Olson
9 Hearings Examiner
10 Hearings Division


William A. Thomas
William A. Thomas
Administrator
OREGON LIQUOR CONTROL COMMISSION

11 Mailed this 6th day of November, 1987.

12 THIS ORDER IS EFFECTIVE 10 DAYS AFTER THE MAILING DATE.

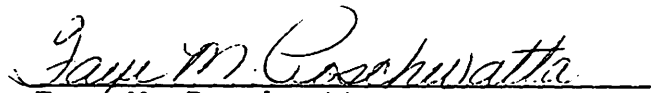
13 NOTICE: You are entitled to judicial review of this Order.
14 Judicial review may be obtained by filing a petition
15 for judicial review within 60 days from the service of
16 this Order. Judicial review is pursuant to the
17 provisions of ORS Chapter 183.
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CERTIFICATE OF SERVICE
OF TRUE COPY

I certify that on November 6, 1987, I served a true copy of the attached Order in PUB TAVERN, OLCC-87-V-016, by mailing it in a sealed envelope, with postage prepaid, at the United States Post Office in Portland, Oregon, addressed as follows:

Douglas L. Melevin
Attorney at Law
59 E 14th Avenue
Eugene, OR 97401

John W. Masepohl
c/o Douglas L. Melevin
59 E 14th Avenue
Eugene, OR 97401


Faye M. Poschwatta
Processing Specialist
Hearings Division
OREGON LIQUOR CONTROL COMMISSION