

BEFORE THE LIQUOR CONTROL COMMISSION  
OF THE STATE OF OREGON

In the Matter of the	)	
Application for Renewal of	)	
a Dispenser Class A (DA)	)	
License by:	)	FINAL
	)	FINDINGS OF FACT,
Lowell's Lounge, Inc.	)	CONCLUSIONS OF LAW,
LOWELL'S	)	AND ORDER
5144 NE Union Avenue	)	
Portland, Oregon	)	
- - - - -	)	
Multnomah County	)	

A hearing in the above matter was held on the 9th day of May, 1983 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 Proposed Order of the Hearings Examiner was presented for consideration at the Commission's August 23, 1983 meeting. Pursuant to the Commission's direction, the hearing was reopened on September 7, 1983. The Applicant was represented at the reopened hearing by Rod Kirkpatrick, Attorney at Law, Portland, Oregon. The Commission was represented by Arnold Silver, Assistant Attorney General, Portland, Oregon. The hearing was continued on the motion of the Applicant.

The hearing was reconvened on November 18, 1983 in Portland, before Hearings Examiner Crumme'. The Applicant was represented by Mr. Kirkpatrick. The Commission was represented by Mr. Silver. The record of the hearing was held open to receive additional documentary evidence from the Applicant.

On October 22, 1984 the Commission considered the record of the hearing, the Proposed Order of the Hearings Examiner, and applicable statutes and regulations. Pursuant to this review, the Commission enters the following:

FINDINGS OF FACT

1. Lowell's Lounge, Inc. has applied for renewal of a Dispenser Class A (DA) license at LOWELL'S, 5144 NE Union Avenue, Portland, Oregon.

2. The Applicant's DA license at Lowell's expired on December 31, 1982. The Commission has granted the Applicant authority to continue operating under a DA license at Lowell's pending a resolution of the Applicant's request for a hearing on the renewal application.

3. The Commission's Licensing Staff has recommended that the Applicant's DA renewal application be denied, citing the following:

- a. OAR 845-05-025(4) (applicant seeks a DA license and has less than or is unable reasonably to project at least 25 percent ratio of food sales to gross sales of food and alcoholic liquor).
- b. OAR 845-08-015(5) (failure to make serious and substantial effort to emphasize food service).

(Commission's Exhibit B.)

4. The Applicant's recent operating history has been as follows:

January, 1982 through  
July, 1982

Closed due to fire

August, 1982 through  
November 11, 1982

Generally open from  
11:00 a.m. to 2:30 a.m.

January 12, 1983 through  
July 19, 1983

Voluntary closure

July 19, 1983 through  
November 18, 1983 hearing

Open from 7:00 a.m.  
to 2:30 a.m.

5. The Applicant indicated an interest at its May 9, 1983 hearing in reopening Lowell's for business if allowed by the Commission. The Applicant had a potential buyer for the business as of May 9, 1983 and wanted to reopen to show that Lowell's can be operated successfully. The Applicant owes about \$10,000 worth of debts at Lowell's. The Applicant's immediate goal is to operate the business at a profit so that these debts can be cleared up.

6. The sales at Lowell's in 1982 were as follows:

<u>Month</u>	<u>Actual Sales</u>			<u>Percentage of Food Sales to Total Sales</u>
	<u>Food Sales</u>	<u>Liquor Sales</u>	<u>Total Sales</u>	
<u>1982</u>				
Sep	\$548.96	\$3,046.00	\$3,594.96	15.3
Oct	729.00	3,722.00	4,451.00	16.4
Nov 1-11	497.00	2,426.00	2,993.00	16.6

7. The Applicant reopened Lowell's in July, 1983. The Applicant's sales since reopening have been as follows:

<u>Month</u>	<u>Actual Sales *</u>			<u>Percentage of Food to Total Sales</u>
	<u>Food Sales</u>	<u>Liquor Sales</u>	<u>Total Sales</u>	
<u>1983</u>				
Jul 19-Aug 13	\$5,341.00	\$14,492.00	\$19,833.00	26.9
Sep	5,680.41	18,143.68	23,824.09	23.8
Oct	8,645.80	25,864.40	34,510.20	25.1

\* The September and October sales figures include the amounts from the "wine, misc. and snacks" column on Exhibit No. 2-1 broken up 25 percent food and 75 percent wine as per the testimony of Johnette Jackson.

(Commission's Exhibit I and  
Applicant's Exhibit No. 2-1.)

8. The Applicant's cost of food supplies in September, 1983 was \$2,794.85. The cost of food in October, 1983 was \$3,948.80. (Applicant's Exhibit No. 2-1.)

The Applicant's available receipts showing cost of food supplies for the period from July 19 to August 13, 1983 documented food purchases of only \$411. However, the Applicant believes that some of the receipts for food purchases during this period are missing. The Applicant suspects that an employee who left Lowell's on bad terms may have taken some of these records.

9. The Licensee was found in violation of the Commission's food service regulations on the following dates:

RECORD OF PREVIOUS VIOLATIONS

<u>Date</u>	<u>Offense</u>	<u>Disposition</u>
7/26/78 and 8/3/78	Failure to provide required food service	\$600 fine paid
2/22/79	Failure to provide required food service	Letter of Warning
12/30/81	Failure to provide required food service	14-day suspension

10. Lowell's menu between July, 1982 and January, 1983 and since reopening in July, 1983 has included the following items:

DINNERS

Pork Chops	\$1.95
Fresh Fried Chicken	2.25
Ground Round Steak	1.95
Steak Sandwich	2.25
Roast Beef Dinner	2.50

All Above Orders Include  
Salad, Mashed Potatoes, Hot Roll and Coffee  
Fries 25¢ Extra

SANDWICHES

Hamburger Deluxe	1.25
Cheeseburger	1.35
Ham	1.40
Bacon, Lettuce and Tomato	1.35
Club House	2.00
Roast Beef	1.25
Hot Turkey	1.75
Hot Beef	1.75
French Dip	2.00
Ham and Egg	1.35
Bacon and Egg	1.25

All Above Orders Include Salad

Fries	.75
Homemade Chili	1.25
Soup of the Day	.40

DAILY MERCHANT SPECIAL \$1.95

SEAFOOD

Fish and Chips	1.95
Fried Prawns	1.95

Above Orders Include Salad, French Fries and Coffee

DESSERT

Shakes	.65
Ice Cream	.35
Floats	.65
Sundaes	.65
Pie	.50

BREAKFAST  
Served Anytime

#1	3 Eggs, Ham, Bacon or Sausage, 3 Hot Cakes, Coffee	1.95
#2	3 Eggs, Ham, Bacon or Sausage, Hash Browns, Coffee	1.95
#3	Stack O'Cakes, One Egg, Ham, Bacon or Sausage	1.95

SIDE ORDERS

2 Eggs, Any Style	.40
Short Stack	.60
Bacon or Sausage	.75
Ham	.85
Hash Browns	.35
Toast	.35
French Toast	1.00

<u>OMELETTES</u>	
Plain	1.25
Cheese	1.50
Ham and Cheese	1.95
Western	2.10

<u>BEVERAGES</u>	
Coffee	.25
Milk	.30
Hot Chocolate	.50

<u>JUICE</u>	
Grapefruit	\$ .50
Orange	.50
Tomato	.50

In addition to the above, Lowell's featured lunch and dinner specials when open in 1982. Lowell's has also offered specials since reopening in July, 1983. Among the new specials featured since reopening have been pork and beef ribs, available individually for \$1.00. The individual ribs have proved a popular item.

11. The Licensee rebuilt Lowell's after the January, 1982 fire the same as the premises had been before the fire. The premises has separate dining and lounge areas. As of November 18, 1983, the dining room had seating for about 45 persons. The lounge had seating for about 85 persons.

12. After reopening in July, 1983, the Applicant added seating capacity for 15 persons in the lounge and 15 persons in the dining room over the seating in the premises in 1982.

13. When Lowell's was operating during 1982, the Licensee offered disco dancing in his lounge on Thursday, Friday and Saturday evenings. The disco music began at 9:00 p.m. or 9:30 p.m. During the remainder of the week patrons had the opportunity to dance to the jukebox songs.

14. Lowell's was burglarized two times after reopening at the end of July, 1982. The first burglary resulted in a loss of about \$2,700. The second burglary resulted in a loss of about \$1,500. The losses incurred from these burglaries hampered the Licensee's efforts to stock the premises and get the business going again.

15. The Commission issued a DA license to Arthur Cox at the Eldorado Club on April 23, 1982. The Eldorado Club is located approximately one block from Lowell's. Competition from the Eldorado Club had an adverse impact on food sales and the business at Lowell's.

16. Since reopening in the summer of 1983, the Applicant has been opening in the morning at 7:00 a.m. This is an earlier opening hour than several of the nearest DA outlets to Lowell's. This early opening hour has been successful in giving Lowell's a head start in attracting morning food patrons from the neighborhood.

17. The Applicant has been offering free coffee in the morning at Lowell's. This promotion has been successful in attracting additional food customers.

18. Since reopening in July, 1983, the Applicant has installed new exterior lighting and employed two persons to help with security. These steps have improved overall security and appear to be a factor in drawing patrons to Lowell's.

19. Since reopening in July, 1983, the Applicant has made an effort to offer the full menu at all hours with the exception of ribs, which are available from 4:00 p.m. to 1:30 a.m.

20. The Applicant normally has staff on duty at all hours to prepare the menu at Lowell's. Two employees work at the premises in the evening along with Mr. Jackson.

21. Undercover Commission Enforcement Inspector Larry Peck walked into the dining room at Lowell's at 6:10 p.m. on September 6, 1983. Mr. Peck sat down at the food service counter and asked for a menu. Mr. Peck was told that the business did not have a menu and had run out of specials. Mr. Peck was told that all he could get was a hamburger. Mr. Peck asked about a sign out in front of the premises that advertised barbecued food. Mr. Peck was again told that only hamburgers were available.

22. The patrons at Lowell's have historically been almost entirely Blacks.

23. The national unemployment rate for Blacks was recently 22 percent, as evidenced by the testimony of Thomas Kennedy, Jr., DA licensee at Geneva's in Northeast Portland and a Program Manager with the Portland Development Commission.

24. High unemployment in Northeast Portland among the Black residents living near Lowell's has an effect on these persons' willingness and ability to spend money to eat at a restaurant, as evidenced by the testimony of Thomas Kennedy, Jr.

25. Many Blacks that go out for an evening's entertainment at a bar in Northeast Portland frequently do not begin their evening until quite late, after they have eaten dinner. If these individuals eat at a restaurant, they frequently seek to obtain a meal at a fast food restaurant.

26. A number of the DA outlets in Northeast Portland near Lowell's appear to be having difficulty attracting food patrons.

27. The Applicant has occasionally advertised the availability of food at Lowell's. Advertising efforts have included placing a menu readerboard outside the premises and the distribution of a handbill promoting Lowell's as a restaurant with food service.

28. The Applicant's President Lowell Jackson did not believe at the time of his May 9, 1983 hearing that it would be possible to attain a 25 percent ratio of food sales to total food and alcoholic beverage sales at Lowell's. Mr. Jackson held this belief because of the difficult economic straits of many of his patrons and because of his patrons' habit of beginning their evenings quite late and eating either at home before they go to Lowell's or at a fast food establishment after Lowell's closes. Mr. Jackson believed, however, that the food sales at Lowell's could be raised by some factor with license renewal.

29. Mary Yokum is a real estate broker. Ms. Yokum has been involved in the sale of approximately 200 liquor-licensed clubs over the past 20 years. Ms. Yokum was forced to repossess a DA-licensed premises at 15th and Killingsworth, about one mile from Lowell's, in 1971. Ms. Yokum operated the premises for eight months. Ms. Yokum had to work very hard to attract food patrons at the premises. However, she did maintain a 25 percent food sales level during the eight months of her operation. She believes she would have been able to continue

maintaining a 25 percent food sales level through the exercise of vigorous efforts.

30. Geneva's, a DA outlet in Northeast Portland, stays open after 2:30 a.m. for the service of food in an effort to meet the Commission's requirement for a 25 percent ratio of food to total food and alcoholic beverage sales.

31. Paul R. Fink is a patrolman with the Burglary Division of the Portland Police Bureau. Mr. Fink has known Lowell Jackson for ten years. Mr. Fink worked on the street in the neighborhood around Lowell's for five-and-one-half years up until about four-and-one-half years ago. Mr. Jackson was cooperative with the police and instructed his employees to cooperate with the police. Mr. Jackson has helped the police out on occasions when the police were at the premises for official purposes.

32. The Commission has received a letter from Raymond E. Gassner in support of the renewal of a DA license to Lowell's Lounge, Inc. Mr. Gassner's letter states as follows:

"On March 19, 1974 I sold the Old Silk Hat Lounge to Lowell's Lounge, Inc. by contract sale. As a result of a dispute, on August 24, 1983 I filed a complaint in Multnomah County requesting that I be appointed a receiver to manage and operate the business. Most recently, Lowell Jackson, the owner of Lowell's Lounge, Inc. and I have come to an agreement on terms and as a result I am dismissing my complaint.

Lowell's Lounge, Inc. again operated the premises beginning September 2, 1983.

It is my firm belief that the Dispenser Class "A" Liquor License should be preserved at that location. The business properly serves the neighborhood. There are very few competitors within the

area and the location has served the neighborhood for years. It is a primary social meeting place for the area and it is presently serving good food.

Lowell Jackson and Lowell's Lounge, Inc. have my complete support to retain the license. As part of my understanding with Mr. Jackson, I will be monitoring its business to assure that every effort is being made to improve its food sales and operate within all OLCC regulations.

The interest of all creditors including myself would be best served by making every effort to continue business at that location with a dispenser license. If the license is lost, I am afraid that many creditors including myself would be severely damaged.

Your cooperation and efforts on behalf of the licensee are greatly appreciated."

(Applicant's Exhibit No. 2-2.)

33. The Commission has received from Steve Louie a letter in support of the renewal of the DA license to Lowell's Lounge at Lowell's. Mr. Louie's letter states as follows:

"My family and I have been in the restaurant and lounge business for many years. We opened one of our establishments at 5144 N.E. Union Avenue in 1952 and sold it in 1974. I am the landlord of Mr. Jackson. I also own the Hi Hat in Tigard, Oregon.

I have found Mr. Jackson to be an honest man and an asset to the community. The fact that Mr. Jackson was born and raised a few blocks from the restaurant has played a significant role in making his business a success. Even with the problems he has been through this past year and a half, he has managed to reopen and do well.

I continue to have confidence in his ability to operate the business. Mr. Jackson and I have been able to work through the problems of the last eighteen (18) months. I know Mr. Jackson can and will operate the business successfully."

(Applicant's Exhibit No. 2-3.)

## DISCUSSION

1. The record of the Applicant's hearing was held open to receive a petition from the Portland Police in support of the renewal of a DA license to Lowell's Lounge at Lowell's. Such a petition was not received at the date of issuance of this Amended Proposed Order, however.

2. The sales for Lowell's for September and October, 1983 (see Finding of Fact No. 7) were evidenced by photocopies of the daily journal for Lowell's prepared by Johnette Jackson. The Licensee did not offer the underlying receipts to support the journal entry figures. The Commission did not offer any underlying documents to call the figures into question. Mrs. Jackson appeared to be a credible witness. The Commission accepts her testimony that the sales figures are accurate.

3. Mr. Jackson presented information at the Commission's August 23, 1983 meeting that Lowell's had reopened as of July 19, 1983. Mr. Jackson testified at the November 18, 1983 hearing, however, that Lowell's reopened in mid August. This discrepancy was not explored at the November 18, 1983 hearing. The Commission concludes the testimony concerning the mid August date must have been mistaken because the Licensee has sales records showing operations since July 19, 1983.

### ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The following criteria will be given sufficient consideration so that a license will not be issued unless good cause which outweighs the criteria involved is shown by the applicant:

....  
(4) The applicant seeks a Dispenser Class "A" license under ORS 472.110(2) and has less than or is unable reasonably to project at least 25 percent ratio of food sales to gross sales of food and alcoholic liquor. OAR 845-05-025(4).

Failure by a Class "A" Dispenser licensee to maintain at least a 25 percent ratio of food sales to gross sales of food and alcoholic liquor may be grounds for refusal to renew a license unless the licensee has fully complied with the requirements of this rule and adequately demonstrates that a serious and substantial effort has been made to emphasize food service. OAR 845-08-015(5).

The Applicant reopened Lowell's in July, 1983 with a fairly varied and reasonably-priced menu (see Finding of Fact No. 10) and achieved a food sales percentage between July and October, 1983 of between 23.8 percent and 26.9 percent. This was a significantly improved food sales percentage over 1982. Factors in attaining this increased food percentage appear to include the improved security at the business, the earlier 7:00 a.m. opening hour, the free coffee promotion, and the availability of individual pork and barbecued beef ribs for \$1.00. The Applicant has thus demonstrated an ability to achieve and maintain a 25 percent food sales percentage at the business.

The Applicant's food service efforts are called into some question by the fact that a visit by a Commission undercover Inspector to the premises on September 6, 1983 at 6:10 p.m. revealed that nothing other than a hamburger could be obtained at that time. One isolated incident however is not sufficient to

establish the general practice at the business since reopening, particularly in the face of the Licensee's sales figures.

The Commission attaches some importance to the opinion of former owners of the business and present creditors of Mr. Jackson that Mr. Jackson can run a successful business with credible food service at Lowell's. (See Findings of Fact Nos. 32 and 33.)

Since the Applicant has demonstrated the ability to maintain a 25 percent food sales percentage, the inquiry specified under OAR 845-08-015(5) concerning the Applicant's efforts to make a serious and substantial effort to emphasize food is not applicable.

The Commission concludes that the Applicant's license renewal application should be granted under OAR 845-05-025(4) and OAR 845-08-015(5).

#### ULTIMATE CONCLUSIONS OF LAW

The application by Lowell's Lounge, Inc. for renewal of a DA license at Lowell's is demanded by the public interest and convenience because the Applicant is likely to achieve and maintain a 25 percent ratio of food sales to total food and alcoholic beverage sales. ORS 472.160(1).

#### FINAL ORDER

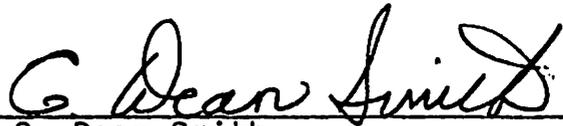
It is hereby ordered that the application by Lowell's Lounge, Inc. for renewal of a Dispenser Class A (DA) license at Lowell's, 5144 NE Union Avenue, Portland, Oregon, be GRANTED.

It is further ordered that the Licensee be warned regarding the record-keeping requirements under OAR 845-08-010 for

food and liquor purchases and sales.<sup>1</sup> The Licensee's records required under this regulation shall be evaluated for compliance at the time of the Licensee's next renewal application.

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

Dated this 26th day of October, 1984.



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.

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1 OAR 845-08-010 requires as follows:

(1) Each licensee holding a Dispenser Class "A" license shall keep the following records:

(a) A record of each purchase of alcoholic liquor, showing the date of purchase, the seller, the quantity purchased, and the price thereof;

(b) A record of all liquor sales;

(c) A record of cost of food stuffs purchased, together with invoices or other records of such purchases;

(d) A record of food sales for cash. Cash sales include money, credit cards, house charge accounts, hotel or motel billings subsequently paid in cash, or food stamps if authorized by appropriate governmental agency for food only. Items such as cover charges, non-edible products, or alcoholic liquor will not be included in this record.

(2) Such records shall be kept for a period of two years and shall be available for inspection by authorized representatives of the Commission at all times during business hours. Upon request of the Commission, a Dispenser Class "A" licensee shall submit monthly or quarterly reports of food and liquor sales.