

## CRIMPING – An Introduction

- The word crimping comes from the Dutch word for a holding pen for fish.
- Crimping involved extending credit to the person, letting them run up the tab until they couldn't pay, except by going to sea. The crimp would get paid out of an advance against the new sailor's pay.
- Often involved getting the sailor drunk, slipping them a drug so they'd pass out. Wake up on board.
- Sailors were regarded as second class citizens. 13<sup>th</sup> Amendment had prohibited involuntary servitude. But 1897 US Supreme Court ruled the 13<sup>th</sup> amendment effectively did not apply to merchant sailors, ruling essentially that they were not fit to be entrusted with the full rights of citizens. (get case)
- During legislative efforts to end crimping, Andrew Furuseth, president of the International Seamen's Union of America, testified that Portland has always been known as the "greatest crimping den in America."
- Ultimately, crimping or shanghai'ing was made a federal crime in the Seamen's Act of 1915.
- But by that time, the practice had largely died out as lightly staffed steamships came to replace labor-intensive schooners and other ships, thus removing the demand for able bodied seamen.

## Prostitution Laws

### THEN

***Prior to 1891/1892, Portland was three separate cities: Portland, East Portland, and Albina. Each city had its own set of ordinances in effect before they were combined.***

### PORTLAND

Ordinance Number 3983, October 13, 1883

AN ORDINANCE CONCERNING OFFENSES AND DISORDERLY CONDUCT

*The City of Portland does ordain as follows: . . .*

#### **Soliciting for purposes of prostitution – penalty**

Section 30 – Any person or persons who shall solicit any person to visit or enter any house of ill-fame, or bawdy-house, or any house or place for purposes of lewdness or prostitution, shall upon conviction thereof before the Police Court, be fined not less than five dollars nor more than twenty dollars.

(Original version, Ordinance 228, passed August 3, 1865)

Ordinance Number 4710, November 5, 1885

AN ORDINANCE TO PREVENT AND SUPPRESS BAWDY HOUSES AND PLACES WHERE FORNICATION IS ENACTED, AND TO PUNISH KEEPERS, INMATES, AND FREQUENTERS THEREOF

*The City of Portland does ordain as follows:*

#### **Bawdy houses unlawful**

Section 1. It shall be unlawful for any person or persons to open, set up, or keep within the corporate limits of the City of Portland, any bawdy house or house or place where fornication is enacted, or to frequent, reside in, or become an inmate thereof.

#### **Keepers of, how punished**

Section 2. Any person who shall open up, set up, keep or maintain within the corporate limits of the City of Portland any bawdy house, or house or place where fornication is enacted, or knowingly aid or assist in setting up, keeping or maintaining the same, shall, upon conviction thereof before the Police Judge, be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or in default of the payment of such fine, by imprisonment in the city jail not less than ten days nor more than ninety days.

#### **Frequenters or inmates of – how punished**

Section 3. Any person who shall, within the corporate limits of the City of Portland, frequent, reside in, or become an inmate of a bawdy house, or house or place where fornication is enacted, shall, upon conviction thereof before the Police Judge, be punished by a fine of not less than ten dollars nor more than

one hundred dollars, or in default of the payment of such fine, by imprisonment in the city jail not less than five days nor more than fifty days.

### **Common fame competent evidence**

Section 4. In all cases of prosecution under this ordinance, common fame shall be competent evidence in support of the complaint, and every house or place used or occupied for the purposes of prostitution, fornication, or lewdness, shall be taken and deemed to be a bawdy house within the meaning of this ordinance, in any prosecution against any person or persons for violating the provisions of this ordinance.

### **Acts offensive to the public – how punished**

Section 5. Any person who shall, within the corporate limits of the City of Portland, stand, or sit at, or in or near any door, window, or place in any such bawdy house or place so as to be observed by passers-by, or who shall, by any sign, token, or motion, while in such house or place, attract the attention of passers-by, or who shall be or remain at or in any door, window or place in any such bawdy house or place in such condition as to attract the attention of persons passing along the street, or who shall be or remain at or in any door, window or place in any such bawdy house or place in such condition, attitude or dress as to be or become offensive to public decency, shall, upon conviction thereof before the Police Judge, be punished by a fine of not less than ten dollars nor more than one hundred dollars, or in default of the payment of such fine, by imprisonment in the city jail not less than five days nor more than fifty days.

### **Enforcement**

Section 6. It shall be the duty of the Chief of Police and all policemen to institute prosecutions for the violation of this ordinance whenever he shall have reasonable cause to believe that any person or persons have been guilty of a violation of the same.

### **Repeal**

Section 7. Ordinance No. 2996, entitled "An ordinance to suppress bawdy houses and for the punishment of the inmates thereof, approved February 4, 1881," is hereby repealed.

## **EAST PORTLAND**

Ordinance 606, August 19, 1887

CONCERNING OFFENSES AND UNLAWFUL PRACTICES

(Original version, Ordinance 3, passed November 7, 1870)

## **ALBINA**

Ordinance 2, March 7, 1887

CONCERNING OFFENSES AND DISORDERLY CONDUCT

***In 1891/1892, Portland, East Portland, and Albina incorporated into one city, Portland. The Portland ordinances regarding prostitution appear to have***

***remained effective for the combined city of Portland. The Charter for the combined city of Portland authorized the city council to prevent and punish prostitution.***

CHARTER OF THE CITY OF PORTLAND, 1891/1892

Section 37 – The Council has power and authority within the City of Portland: . . .

Subsection 6 – To prevent and suppress gaming and gambling houses, or places where any game in which chance predominates is played for anything of value, and to punish any person who engages in such game, or keeps or frequents such house; **to prevent and suppress bawdy houses or places where fornication is practiced, and to punish any keeper, inmate, or frequenter thereof;** to prevent and suppress opium smoking and houses or places kept therefor, and to punish any keeper of such house or place, or person who smokes therein or frequents the same.

Source: The laws and ordinances of the City of Portland, Oregon, available at <http://books.google.com/books?id=z9FOAAAAYAAJ&pg=PA1107&lpg=PA1107&dq=1870+portland+oregon+city+ordinances&source=bl&ots=YEB-geQQu0&sig=7zaOCeq7D9HJ7abddmpiBNHS0yE&hl=en&sa=X&ei=cmA8VOMVKcPeoATLx4GIBg&ved=0CC4Q6AEwAw#v=onepage&q=1870%20portland%20oregon%20city%20ordinances&f=false>

**NOW**

***Oregon state law and the Portland City Code prohibit prostitution.***

**ORS Chapter 167**

**PROSTITUTION AND RELATED OFFENSES**

**167.002 Definitions for ORS 167.002 to 167.027.** As used in ORS 167.002 to 167.027, unless the context requires otherwise:

- (1) "Place of prostitution" means any place where prostitution is practiced.
- (2) "Prostitute" means a male or female person who engages in sexual conduct or sexual contact for a fee.
- (3) "Prostitution enterprise" means an arrangement whereby two or more prostitutes are organized to conduct prostitution activities.
- (4) "Sexual conduct" means sexual intercourse or deviate sexual intercourse.
- (5) "Sexual contact" means any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party. [1971 c.743 §249; 1973 c.699 §5]

**167.007 Prostitution.** (1) A person commits the crime of prostitution if the person engages in, or offers or agrees to engage in, sexual conduct or sexual contact in return for a fee.

(2) Prostitution is a Class A misdemeanor. [1971 c.743 §250; 1973 c.52 §1; 1973 c.699 §6; 2011 c.151 §1]

**167.008 Patronizing a prostitute.** (1) A person commits the crime of patronizing a prostitute if the person pays, or offers or agrees to pay, a fee to engage in sexual conduct or sexual contact.

(2) Patronizing a prostitute is a Class A misdemeanor. [2011 c.151 §3; 2013 c.720 §2]

**167.012 Promoting prostitution.** (1) A person commits the crime of promoting prostitution if, with intent to promote prostitution, the person knowingly:

(a) Owns, controls, manages, supervises or otherwise maintains a place of prostitution or a prostitution enterprise; or

(b) Induces or causes a person to engage in prostitution or to remain in a place of prostitution; or

(c) Receives or agrees to receive money or other property, other than as a prostitute being compensated for personally rendered prostitution services, pursuant to an agreement or understanding that the money or other property is derived from a prostitution activity; or

(d) Engages in any conduct that institutes, aids or facilitates an act or enterprise of prostitution.

(2) Promoting prostitution is a Class C felony. [1971 c.743 §251]

**167.017 Compelling prostitution.** (1) A person commits the crime of compelling prostitution if the person knowingly:

(a) Uses force or intimidation to compel another to engage in prostitution or attempted prostitution;

(b) Induces or causes a person under 18 years of age to engage in prostitution;

(c) Aids or facilitates the commission of prostitution or attempted prostitution by a person under 18 years of age; or

(d) Induces or causes the spouse, child or stepchild of the person to engage in prostitution.

(2) Compelling prostitution is a Class B felony.

(3) In a prosecution under subsection (1)(b) or (c) of this section, the state is not required to prove that the defendant knew the other person was under 18 years of age and it is no defense that the defendant did not know the person's age or that the defendant reasonably believed the person to be older than 18 years of age. [1971 c.743 §252; 2011 c.334 §1; 2013 c.271 §1]

**167.027 Evidence required to show place of prostitution.** (1) On the issue of whether a place is a place of prostitution as defined in ORS 167.002, its general repute and repute of persons who reside in or frequent the place shall be competent evidence.

(2) Notwithstanding ORS 136.655, in any prosecution under ORS 167.012 and 167.017, spouses are competent and compellable witnesses for or against either party. [1971 c.743 §254]

## **Portland City Code**

### **Chapter 14A.40 Interference With Persons And Sexual Misconduct**

#### **14A.40.010 Interfering with Privacy.**

A. It is unlawful for any person to look through a window, transom, or door into the dwelling of another with the intent to interfere with the privacy of an occupant.

B. As used in this Section, "dwelling" includes a building or part of a building in which a person temporarily lodges.

#### **14A.40.020 Offensive Physical Contact Prohibited.**

A. No person shall cause or attempt to cause another person reasonably to apprehend that they will be subjected to any offensive physical contact either to their person or to personal property in their immediate possession.

B. Violation of this Section is subject to a maximum \$500 fine and/or 10 days in jail.

1. In lieu of the penalty provided for above, a judge may sentence a person found in violation of this Section to community service for such period as is provided for misdemeanors pursuant to ORS 137.126 to ORS 137.129.

#### **14A.40.030 Indecent Exposure.**

It is unlawful for any person to expose his or her genitalia while in a public place or place visible from a public place, if the public place is open or available to persons of the opposite sex.

#### **14A.40.040 Loitering to Solicit Prostitution.**

A. For the purposes of this Section, the following definitions apply:

1. Prostitution: engaging in, offering, or agreeing to engage in sexual conduct or sexual contact in return for a fee or paying, offering, or agreeing to pay a fee to engage in sexual conduct or sexual contact.
2. Sexual Conduct: sexual intercourse or deviate sexual intercourse.
3. Sexual Contact: any touching of one person's sexual organs or other intimate parts, used with the intention of touching another person not married to the actor, for the purpose of arousing or gratifying the sexual desire of either party.

B. It is unlawful for any person to loiter in or near any street or public place in a manner and under circumstances manifesting the purpose of inducing, enticing, soliciting, or procuring another to commit an act of prostitution. Among the circumstances which may be considered in determining whether such purpose is manifested are that the person repeatedly contacts, stops or attempts to stop

pedestrians, or repeatedly stops or attempts to stop motor vehicle operators or passengers by hailing them or gesturing to them.

**14A.40.050 Unlawful Prostitution Procurement Activities.**

A. As used in this Section, "prostitution" means that unlawful conduct defined in Section 14.A40.040 of this Code. As used in this Section, "prostitution procurement activity" means any conduct by any person that constitutes a substantial step in furtherance of an act of prostitution. Such activity includes, but is not limited to, lingering in or near any street or public place, repeatedly circling an area in a motor vehicle, or repeatedly beckoning to, contacting, or attempting to stop pedestrians or motor vehicle operators.

B. It is unlawful for any person to engage in any prostitution procurement activity with an intent to induce, entice, solicit, procure, locate, or contact another person to commit an act of prostitution.

Chapter 14A.110 Prohibited Conduct

**14A.110.230 Sexual Activity.**

No person shall engage in sexual conduct as defined under ORS 167.060, including, but not limited to, the physical manipulation or touching of a person's sex organs through a person's clothing in an act of apparent sexual stimulation or gratification.

## Regulation of Alcohol - the State Takes Over

Since the time of Portland's rowdy past, with rogue tax collectors and mid-river tax havens, the State of Oregon has largely, but not completely pre-empted the regulatory and taxation space previously used by local government to generate revenue and control alcohol related activity. Alcoholic beverages, including distilled spirits, wine, malt beverages and cider are all part of a comprehensive legislative scheme set forth in ORS Chapters 471 to 474 which covers manufacture, sale, transport and most everything else related to alcoholic beverages.

A few selected statutes are attached that show the source of the authority and the limitations put on city and county government with respect to the regulation of alcohol. Most relevant to the presentation today is ORS 473.190, which is set out in full:

**ORS 473.190 State has exclusive right to tax liquor.** No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the production, sale, mixing, serving, transporting, delivering or handling of malt or other alcoholic liquors.

Notwithstanding the broad language of this statute, it did not completely deprive cities and counties of revenue from the sale of alcohol such as through an income tax. *See Portland Distributing Co. v. Dept. of Revenue*, 307 Or 94 (1988). To ensure compliance with this regulatory and tax scheme, the State reserved the right to inspect licensed premises at any time. In short, a waiver of 4<sup>th</sup> Amendment protection was required to participate in this highly regulated but profitable industry. *See Eddies Supper Club, Inc. v. Oregon Liquor Control Commission*, 23 Or App 493 (1975). The statute allowing inspection was repealed in 1995. 1995 Or Laws Ch.301 sec. 74.

## GENERAL PROVISIONS

**471.001 Definitions for ORS chapters 471 and 473.** As used in this chapter and ORS chapter 473:

(1) "Alcoholic beverage" and "alcoholic liquor" mean any liquid or solid containing more than one-half of one percent alcohol by volume and capable of being consumed by a human being.

(2) "Commercial establishment" means a place of business:

(a) Where food is cooked and served;

(b) That has kitchen facilities adequate for the preparation and serving of meals;

(c) That has dining facilities adequate for the serving and consumption of meals; and

(d) That:

(A) If not a for-profit private club, serves meals to the general public; or

(B) If a for-profit private club, serves meals to the club's members and guests and complies with any minimum membership and food service requirements established by Oregon Liquor Control Commission rules.

(3) "Commission" means the Oregon Liquor Control Commission.

(4) "Distilled liquor" means any alcoholic beverage other than a wine, cider or malt beverage. "Distilled liquor" includes distilled spirits.

(5) "Licensee" means any person holding a license issued under this chapter.

(6) "Liquor enforcement inspector" means a full-time employee of the commission who is authorized to act as an agent of the commission in conducting inspections or investigations, making arrests and seizures, aiding in prosecutions for offenses, issuing citations for violations, and otherwise enforcing this chapter, ORS 474.005 to 474.095 and 474.115, commission rules and any other statutes the commission considers related to alcoholic liquor.

(7)(a) "Malt beverage" means an alcoholic beverage obtained by the fermentation of grain that contains not more than 14 percent alcohol by volume.

(b) "Malt beverage" includes:

(A) Beer, ale, porter, stout and similar alcoholic beverages containing not more than 14 percent alcohol by volume;

(B) Malt beverages containing six percent or less alcohol by volume and that contain at least 51 percent alcohol by volume obtained by the fermentation of grain, as long as not more than 49 percent of the beverage's overall alcohol content is obtained

from flavors and other added nonbeverage ingredients containing alcohol; and

(C) Malt beverages containing more than six percent alcohol by volume that derive not more than 1.5 percent of the beverage's overall alcohol content by volume from flavors and other added nonbeverage ingredients containing alcohol.

(c) "Malt beverage" does not include cider or an alcoholic beverage obtained primarily by fermentation of rice, such as sake.

(8) "Manufacturer" means every person who produces, brews, ferments, manufactures or blends an alcoholic beverage within this state or who imports or causes to be imported into this state an alcoholic beverage for sale or distribution within the state.

(9) "Permittee" means a person holding a permit issued under ORS 471.360 to 471.390.

(10) "Premises" or "licensed premises" means a location licensed under this chapter and includes all enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where patrons are permitted to be present. "Premises" or "licensed premises" includes areas outside of a building that the commission has specifically designated as approved for alcoholic beverage service or consumption.

(11) "Wine" means any fermented vinous liquor or fruit juice, or other fermented beverage fit for beverage purposes that is not a malt beverage, containing more than one-half of one percent of alcohol by volume and not more than 21 percent of alcohol by volume. "Wine" includes fortified wine. "Wine" does not include cider. [1995 c.301 §2; 1999 c.351 §42; 2005 c.100 §1; 2010 c.33 §1; 2012 c.54 §1]

471.005 [Amended by 1965 c.280 §1; repealed by 1995 c.301 §33]

471.010 [Amended by 1979 c.236 §5; repealed by 1995 c.301 §33]

471.015 [Amended by 1975 c.207 §1; 1979 c.236 §6; repealed by 1995 c.301 §33]

471.017 [1975 c.207 §4; 1995 c.301 §53; repealed by 1999 c.351 §13 (471.159 enacted in lieu of 471.017)]

471.020 [Repealed by 1979 c.264 §14]

471.022 [1979 c.264 §3; 1995 c.301 §13; repealed by 1999 c.351 §41]

**471.023 "Cider" defined.** For the purposes of this chapter, "cider" means an alcoholic beverage made from the fermentation of the juice of apples or pears that contains not more than seven percent of alcohol by volume, including, but not limited to, flavored, sparkling or carbonated cider. [1999 c.351 §66; 2007 c.45 §1]

471.025 [Repealed by 1995 c.301 §7 (471.406 enacted in lieu of 471.025)]

**471.027 Short title.** This chapter and ORS 474.105 and 474.115 shall be known and may be cited as the "Liquor Control Act." [Amended by 1965 c.165, §1]

**471.030 Purpose of Liquor Control Act.**

(1) The Liquor Control Act shall be liberally construed so as:

(a) To prevent the recurrence of abuses associated with saloons or resorts for the consumption of alcoholic beverages.

(b) To eliminate the evils of unlicensed and unlawful manufacture, selling and disposing of such beverages and to promote temperance in the use and consumption of alcoholic beverages.

(c) To protect the safety, welfare, health, peace and morals of the people of the state.

(2) Consistent with subsection (1) of this section, it is the policy of this state to encourage the development of all Oregon industry.

**471.035 Certain products excepted from liquor laws.** No provision of the Liquor Control Act shall, by reason only that such product contains alcoholic liquor, prevent the sale of any perfume, lotion, tincture, varnish, dressing fluid, extracts, acid vinegar, or of any official medicinal or pharmaceutical preparations, or of any patent or proprietary medicine intended solely for medicinal purposes.

**471.037 Homemade beer, wine and fermented fruit juice exemption from liquor laws.** (1) As used in this section and ORS 471.268:

(a)(A) "Financial consideration" except as provided in subparagraph (B) of this paragraph, means value that is given or received directly or indirectly through sales, barter, trade, fees, charges, dues, contributions or donations.

(B) "Financial consideration" does not mean any of the following:

(i) A tax deduction or credit for donating beer, wine or fermented fruit juice to a non-profit organization.

(ii) An event admission charge or club or organization dues, if the amount of the admission charge or dues is independent of the amount of alcoholic beverages to be provided or consumed at the event or through club or organization activities.

(iii) A prize awarded at a state or county fair or other organized judging, tasting, exhibition, contest or competition at which consumption of a submitted beer, wine or fermented fruit juice is without charge and only by the entrants, submitters, judges, exhibitors, contestants or competitors.

(iv) Homemade beers, wines or fermented fruit juices made by other persons.

(v) Beer, wine or fermented fruit juice ingredients.

(vi) Wages and salaries paid by an educational organization for teaching brewing, winemaking, fermentation science or fermentation processes.

(b) "Homemade" means made for non-commercial purposes.

(c) "Noncommercial" means not dependent or conditioned upon the provision or receipt of financial consideration.

(2) Except as provided in subsection (3) of this section, the Liquor Control Act does not apply to the following:

(a) The making of homemade beer, wine or fermented fruit juice, if the total of beer, wine and fermented fruit juice produced during a calendar year does not exceed:

(A) One hundred gallons in a household having one person who is 21 years of age or older; or

(B) Two hundred gallons in a household having two or more persons who are 21 years of age or older.

(b) The keeping, storage or transportation of homemade beer, wine or fermented fruit juice.

(c) The possession of mash, wort or wash, for the purpose of making homemade beer, wine or fermented fruit juice.

(d) Except as provided in ORS 471.268, the noncommercial consumption at any location of homemade beer, wine or fermented fruit juice.

(3) Subsection (2) of this section does not exempt any person from ORS 471.410, 471.430 or 471.432. [2011 c.12 §2]

**471.038 Nonbeverage food products.** (1) Nonbeverage food products described in subsection (6) of this section may be sold at retail by any holder of a license issued by the Oregon Liquor Control Commission that authorizes the sale of alcoholic liquor at retail, or in any store operated by the commission under the provisions of ORS 471.750. Any nonbeverage food product containing more than one-half of one percent of alcohol by volume must be clearly labeled to reflect the alcohol content of the product and clearly labeled on the front of the package to indicate that the product may not be sold to persons under 21 years of age.

(2) Except as provided by this section, sales of nonbeverage food products described in subsection (6) of this section are subject to all provisions of this chapter, including the prohibitions on sales to persons under 21

letters of credit recognized by the State Treasurer or negotiable securities of a character approved by the State Treasurer. The deposit is to be made in a bank or trust company for the benefit of the commission. Interest on deposited funds or securities shall accrue to the depositor. [Formerly 471.210; 2007 c.637 §1; 2007 c.651 §5a]

**471.157 Licenses issuable.** The licenses described in this chapter may be issued by the Oregon Liquor Control Commission, subject to its regulations and restrictions and the provisions of the Liquor Control Act. [Formerly 471.215; 2013 c.537 §1]

**471.159 Enclosure of licensed premises.** (1) The Oregon Liquor Control Commission may not license a location that does not have defined boundaries.

(2) A licensed premises need not be enclosed by a wall, fence or other structure, but the commission may require that any licensed premises be enclosed as a condition of issuing or renewing a license.

(3) Except as provided in ORS 471.182, the commission may not license premises that are mobile. [1999 c.351 §14 (enacted in lieu of 471.017)]

**471.162 Exemptions from license requirement.** (1) Hospitals, sanitariums, convalescent homes, rest homes, retirement homes and facilities for the care of the elderly that have been licensed or registered by the state may sell and serve alcoholic beverages to patients, inmates and residents, and to bona fide visitors and guests of patients, inmates and residents, without a license issued under this chapter. Facilities authorized to sell and serve alcoholic beverages without a license under this subsection may not sell or serve alcoholic beverages after 10 p.m. except upon a physician's prescription.

(2) A person who operates a private residence that is not a boarding house but that accommodates transient guests for a limited duration may sell and serve wine, malt beverages, and cider to registered overnight guests without a license. Facilities authorized to sell and serve alcoholic beverages without a license under this subsection must have six or fewer guest units.

(3) A person who is an employee or agent of the holder of a license issued under this chapter that authorizes wholesale distribution of alcoholic beverages may, on behalf of the licensee, sell alcoholic beverages in factory-sealed containers to retail licensees and wholesalers.

(4) A pharmacist licensed under the laws of this state may sell alcoholic beverages without a license. Pharmacists may only sell alcoholic beverages under the provisions of

this section if the alcoholic beverages are drugs as defined in ORS 689.005. A pharmacist may sell alcoholic beverages under the provisions of this subsection pursuant to a prescription, in containers of not more than one quart capacity.

(5) A wine collector, or the agent of a wine collector, may sell wine in factory-sealed containers at auction without a license. Any wine sold under this subsection must have been held by the collector for at least a six-month period. A wine collector must receive written approval from the Oregon Liquor Control Commission before conducting a sale under this subsection. No more than one sale in a 12-month period may be conducted by a wine collector under the provisions of this subsection.

(6) A nonprofit or charitable organization registered in this state may sell wine, malt beverages and cider, and a total of not more than four liters of distilled liquor, in factory-sealed containers at an auction or through a raffle without a license. The organization must receive written approval from the commission before conducting an auction or raffle under this subsection. The organization may conduct no more than one auction or raffle under this subsection in a 12-month period. The auction or raffle may not have a duration of more than one day. The organization may sell under this subsection wine, malt beverages, cider and distilled liquor purchased by or donated to the organization. The purchased or donated wine, malt beverages, cider and distilled liquor must be imported into this state by the commission or be manufactured in or imported into this state under a brewery, brewery-public house, distillery, grower sales privilege, winery or wholesale malt beverage and wine license.

(7) A manufacturer may sell proprietary or patent medicines, perfumes, lotions, flavoring extracts, medicinal tinctures and other preparations unfit for beverage purposes without a license. [1999 c.351 §10; 2012 c.16 §1]

#### (Authority of Cities and Counties)

**471.164 Authority of cities and counties over establishments that offer entertainment or serve alcoholic beverages.** (1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that offer entertainment or serve alcoholic beverages if the city or county makes specific findings that the establishment would cause adverse effects to occur.

(2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes

and Constitution of this state. [Formerly 471.213]

**471.166 Local government recommendations on license issuance and renewal; rules; fees.** (1) The Oregon Liquor Control Commission may require that every applicant for issuance or renewal of a license under this chapter acquire a written recommendation from the governing body of the county if the place of business of the applicant is outside an incorporated city, and from the city council if the place of business of the applicant is within an incorporated city. The commission may take such written recommendation into consideration before granting or refusing the license.

(2) If the commission requires that an applicant for issuance of a new license acquire the written recommendation of a local government, the applicant must give notice to the local government when an application is made for issuance of the license. If the local government files a favorable recommendation with the commission within 45 days after the notice is given, the commission shall proceed with consideration of the application. The commission shall proceed with consideration of the application as though the local government had made a favorable recommendation unless, within 45 days after notice is given to the local government:

(a) The local government files an unfavorable recommendation with the commission with a statement of the grounds for the unfavorable recommendation; or

(b) The local government files a request for additional time with the commission that sets forth the reason additional time is needed by the local government, a statement that the local government is considering making an unfavorable recommendation on the application; and the specific grounds on which the local government is considering making an unfavorable recommendation.

(3) If the commission requires that an applicant for renewal of a license acquire the written recommendation of a local government under this section, the commission shall give notice to the local government when an application is due for renewal of the license. If the local government files a favorable recommendation with the commission within 60 days after the notice is given, the commission shall proceed with consideration of the application. The commission shall proceed with consideration of the application as though the local government had made a favorable recommendation unless within 60 days after notice is given to the local government:

(a) The local government files an unfavorable recommendation with the commis-

sion with a statement of the grounds for the unfavorable recommendation; or

(b) The local government files a request for additional time with the commission that sets forth the reason additional time is needed by the local government, a statement that the local government is considering making an unfavorable recommendation on the application; and the specific grounds on which the local government is considering making an unfavorable recommendation.

(4) The commission shall suspend consideration of an application subject to this section for a reasonable period of time if a local government requests additional time under subsection (2)(b) or (3)(b) of this section and the grounds given by the local government are valid grounds for an unfavorable determination under this chapter or rules adopted by the commission. The commission shall by rule establish the period of time that shall be granted to a local government pursuant to a request under subsections (2)(b) and (3)(b) of this section.

(5) The commission shall by rule establish valid grounds for unfavorable recommendations by local governments under this section. Valid grounds established by the commission under this section for an unfavorable recommendation by a local government must be limited to those grounds considered by the commission in making an unfavorable determination on a license application.

(6) A person filing an application for issuance or renewal of a license that is subject to this section must remit to the local government the fees established under subsections (7) and (8) of this section. The commission shall give notice to the applicant for license renewal of the amount of the fees and the name of the local government collecting the fees. The commission is not responsible for collecting the fees charged by the local government or for ensuring that the fees have been paid. An applicant for a license renewal shall certify in the application form filed with the commission that the applicant has paid any fees required under this section.

(7) An applicant required to seek a written recommendation from a local government must pay an application fee to the local government, in an amount determined by the governing body of the city or county, for each application for a license. The application fee established by a local government under this subsection may not exceed \$25.

(8) After public notice and hearing, the governing body of a city or county may adopt an ordinance, rule or resolution prescribing licensing guidelines to be followed in making recommendations on license applications un-

alcoholic products regulated by the commission. All such fixtures, equipment or furnishings must be identified by the retail licensee as being furnished by a licensed manufacturer or wholesaler. [1995 c.301 §80]

**471.401 Purchase of alcoholic liquor advertising space or time from retail licensee.** (1) Notwithstanding any other provision of this chapter, a manufacturer or wholesaler of alcoholic liquor may purchase advertising space or time from a licensee authorized to sell alcoholic liquors at retail if the retail licensee:

(a) Holds a full or limited on-premises sales license and has on the licensed premises at least one room or area for which the maximum occupancy approved by the State Fire Marshal or a governmental subdivision granted an exemption under ORS 476.030 is 3,000 or more persons;

(b) Holds a full or limited on-premises sales license and the licensed premises is owned by the United States Government or a public body as defined in ORS 174.109;

(c) Holds a full or limited on-premises sales license and is a foreign corporation or nonprofit corporation, both as defined in ORS 65.001, that possesses a certificate of authorization or certificate of existence issued under ORS 65.027; or

(d) Holds a temporary sales license and is an entity described in ORS 471.190 (3)(a), (c) or (d).

(2) A manufacturer or wholesaler may purchase advertising space or time under this section only in connection with events to be held on the licensed premises.

(3) A retail licensee that sells advertising space or time under this section must serve other brands of distilled liquors, malt beverages, cider or wine in addition to the brand manufactured or sold by the manufacturer or wholesaler purchasing advertising space or time.

(4) A purchase of advertising space or time under the provisions of this section must be made by written agreement. [1995 c.51 §2; 1999 c.351 §71; 2011 c.173 §1; 2013 c.537 §8]

**471.402 Sample tastings authorized.** The holder of a brewery license issued under ORS 471.220, a winery license issued under ORS 471.223, a grower sales privilege license issued under ORS 471.227, a brewery-public house license issued under ORS 471.200, a warehouse license issued under ORS 471.242 or a manufacturer certificate of approval issued under ORS 471.244 may provide or pay for sample tastings of wine, cider or malt beverages for the public on premises licensed under a full or limited on-premises sales license or under an off-premises sales license. [1995 c.58 §4; 1999 c.351 §33]

Note: 471.402 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 471 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## PROHIBITIONS RELATING TO LIQUOR

**471.403 License required to produce alcoholic liquor; exception.** (1) Except as provided in this section, a person may not brew, ferment, distill, blend or rectify any alcoholic liquor unless licensed so to do by the Oregon Liquor Control Commission.

(2) The holder of a brewery-public house license or a brewery license may allow patrons to brew malt beverages not to exceed 14 percent alcoholic content by volume if the brewing is conducted under the direct supervision of the licensee or employees of the licensee. Malt beverages produced under this subsection may not be sold by the patron.

(3) The holder of a winery license may allow patrons to make wine if the winemaking is conducted under the direct supervision of the licensee or employees of the licensee. Wine produced under this subsection may not be sold by the patron.

(4) A person may make homemade beer, wine and fermented fruit juice as authorized under ORS 471.037. A person may provide assistance to another in making the homemade beer, wine or fermented fruit juice, if the person does not receive financial consideration as defined in ORS 471.037 for providing the assistance. [Formerly 471.205; 2007 c.414 §1; 2011 c.12 §4]

**471.404 Importing liquor without license prohibited; exceptions; fee.** (1) Alcoholic liquor may not be imported into this state by any person other than a holder of a brewery, winery, distillery or wholesaler's license, except as follows:

(a) Alcoholic liquor ordered by and en route to the Oregon Liquor Control Commission, under a certificate of approval issued by the commission.

(b) Wines for sacramental purposes according to rules adopted by the commission.

(c) Alcoholic liquor that is in transit on a common carrier to a destination outside Oregon.

(d) Alcoholic liquor coming into Oregon on a common carrier according to orders placed by a licensed brewery, winery or wholesaler.

(e) Grain and ethyl alcohol for scientific, pharmaceutical, manufacturing, mechanical or industrial use, under a certificate of approval issued by the commission.

(f) Wine or cider that is sold and transported by the holder of a wine self-

distribution permit to a retail licensee that has the endorsement described in ORS 471.274 (5).

(g) Wine or cider shipped directly to a resident of this state under a direct shipper permit issued pursuant to ORS 471.282.

(2) The commission may require importers of alcoholic liquor to pay a reasonable handling fee based on the quantity and type of alcoholic liquor being imported. [Formerly 471.335; 2007 c.651 §6; 2007 c.854 §3; 2009 c.240 §3]

**471.405 Prohibited sales, purchases, possession, transportation, importation or solicitation in general; forfeiture upon conviction.** (1) No person shall peddle or deliver alcoholic beverages to, or at any place, where, without a license, alcoholic beverages are sold or offered for sale. No licensee shall sell or offer for sale any alcoholic beverage in a manner, or to a person, other than the license permits the licensee to sell.

(2) No person shall purchase, possess, transport or import, except for sacramental purposes, an alcoholic beverage unless it is procured from or through the Oregon Liquor Control Commission, except as provided otherwise in the Liquor Control Act.

(3) No person, not licensed under the Liquor Control Act shall sell, solicit, take orders for or peddle alcoholic beverages.

(4) Notwithstanding the provisions of subsection (2) of this section, an individual entering the state may have in possession an amount not to exceed four liters (135.2 fluid ounces) of distilled liquor, two cases of wine or cider (620 fluid ounces) and two cases of malt beverages (576 fluid ounces). These quantities of alcoholic beverages are exempt from fees collected by the commission.

(5) Upon conviction for unlawfully purchasing or importing alcoholic beverages into this state, the person convicted shall forfeit to the commission the alcoholic beverage so purchased or imported. The commission shall thereupon seize the forfeited beverage and it shall then become the commission's property. [Amended by 1953 c.120 §6; 1974 c.4 §5; 1981 c.600 §1; 1985 c.592 §2; 1987 c.608 §11; 1995 c.301 §19; 1999 c.351 §72]

**471.406 Activities covered by prohibitions on sale of alcoholic beverages.** Any prohibition on the sale of alcoholic beverages provided for in this chapter includes:

(1) Soliciting orders for alcoholic beverages or receiving orders for alcoholic beverages.

(2) Keeping alcoholic beverages for sale or exposing alcoholic beverages for sale.

(3) Delivering alcoholic beverages for value or in any way other than purely gratuitously.

(4) Peddling alcoholic beverages.

(5) Keeping alcoholic beverages with intent to sell.

(6) Trafficking in alcoholic beverages.

(7) For any consideration, promised or obtained, directly or indirectly, or under any pretext or by any means, procuring alcoholic beverages, or allowing alcoholic beverages to be procured, for any other person. [1995 c.301 §8 (enacted in lieu of 471.025); 1999 c.351 §57]

**471.407 Offer of alcoholic beverages as inducement to make purchases.** Except as specifically provided in this chapter, a person who owns, operates or controls a business establishment that sells food or beverages for consumption at the establishment or that offers entertainment to the public for consideration may not provide alcoholic beverages to members of the public for consumption at the establishment, without regard to whether the beverages are offered on a purely gratuitous basis, if:

(1) The alcoholic beverages are offered for the purpose of inducing members of the public to purchase food or beverages or to pay for entertainment; and

(2) The person providing the alcoholic beverages does not hold a license issued under this chapter that authorizes the retail sale of alcoholic beverages. [1999 c.646 §8; 2001 c.104 §214]

**471.408 Alcoholic liquor may not be given as prize; exception.** (1) Except as otherwise provided in this section, alcoholic liquor may not be given as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind.

(2) A nonprofit or charitable organization registered in this state may auction or raffle alcoholic liquor, as provided under ORS 471.162 (6) and may deliver or arrange for delivery of the alcoholic liquor to the residence of the successful bidder or raffle winner.

(3) A charitable, fraternal or religious organization may offer alcoholic liquor as a prize, premium or consideration in a contest of chance described in ORS 167.117 (7)(b) or conducted as part of a Monte Carlo event as defined in ORS 167.117.

(4) An auction is not a lottery, contest, game of chance or skill or competition for purposes of this section. [1995 c.363 §2; 1997 c.191 §1; 1997 c.867 §25; 2013 c.150 §1]

**471.410 Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property; mandatory minimum penalties.** (1) A person may not sell, give or otherwise make

**H**

Supreme Court of Oregon,  
 En Banc.<sup>FN\*</sup>

PORTLAND DISTRIBUTING COMPANY, Appel-  
 lant,  
 v.  
 DEPARTMENT OF REVENUE, State of Oregon,  
 Respondent.

OTC 2541; SC S34551.

FN\* Lent, J., retired September 30, 1988.

Argued and Submitted April 5, 1988.

Decided Nov. 8, 1988.

After paying deficiency assessed by Department of Revenue for failure of beer distributor to pay county business income tax, distributor brought action for refund of deficiency. The Tax Court, Carl N. Byers, J., denied distributor's motion for summary judgment and upheld deficiency assessment, and distributor appealed. The Supreme Court, Campbell, J., held that statute providing that no county or city shall impose any fee or tax in connection with production, sale, mixing, serving, transporting, delivering or handling of malt or other alcoholic liquors did not prohibit assessment of tax on beer distributor's net income from sale of beer pursuant to county business income tax which assessed tax on net income of each person doing business within county.

Affirmed.

West Headnotes

**[1] Intoxicating Liquors 223 ↗11**

223 Intoxicating Liquors  
 223I Power to Control Traffic  
 223k9 Delegation of Powers  
 223k11 k. Concurrent and Conflicting  
 Regulations by State and Municipality. Most Cited  
 Cases

For purpose of statute stating that no county or city shall impose any fee or tax relating to alcoholic beverages "including" occupation taxes, privilege taxes and inspection fees, term "including" was not limited to taxes listed, and was enacted so that statute would apply to all types of taxes without regard to label given tax or purpose for imposing tax. ORS 473.190.

**[2] Intoxicating Liquors 223 ↗11**

223 Intoxicating Liquors  
 223I Power to Control Traffic  
 223k9 Delegation of Powers  
 223k11 k. Concurrent and Conflicting  
 Regulations by State and Municipality. Most Cited  
 Cases

For purpose of statute stating that no county or city shall impose any fee or tax in connection with production, sale, mixing, serving, transporting, delivering or handling of malt or other alcoholic liquors, assessment of income tax on distributor's net income from sale of beer pursuant to county tax on net income of each person doing business in county did not violate statute as it was not imposed "in connection with" production, sale, mixing, serving, transporting, delivering or handling of malt or other alcoholic beverages. ORS 473.190.

[3] Intoxicating Liquors 223 ↪11

223 Intoxicating Liquors  
2231 Power to Control Traffic  
223k9 Delegation of Powers  
223k11 k. Concurrent and Conflicting  
Regulations by State and Municipality. Most Cited  
Cases

Statute providing that no county or city shall impose any fee or tax in connection with production, sale, mixing, serving, transporting, delivering or handling of malt or other alcoholic liquors, was intended to prohibit local regulation of alcohol and to prohibit localities from seizing upon commerce in alcohol as target of taxation, but did not intend to prohibit taxation applicable to all businesses which did not single out beer sales or did not impose tax dependent on engaging in business of selling beer. ORS 473.190.

**\*\*1189 \*95** Mark C. Rutzick, Portland, argued the cause and filed the briefs for appellant. With him on the briefs were Paul R. Romain, Douglas C. Blomgren, and Preston, Thorgrimson, Ellis & Holman, Portland.

Bonni C. Canary, Asst. Atty. Gen., Salem, argued the cause and filed the brief for respondent. With her on the brief was Dave Frohnmayer, Atty. Gen., Salem.

**\*96** CAMPBELL, Justice.

The issue is whether state law preempts a Multnomah County tax based on the plaintiff's net income from the sale of beer. We hold that the tax is not preempted.

Multnomah County assesses a Business Income Tax (MCBIT) on the net income of "each person doing business within Multnomah County." Mult County Code **\*\*1190** § 5.70.045. The purpose of the tax is to generate revenue for the county's general fund. *Id.* §§ 5.70.040; 5.70.045(C).

The plaintiff is a wholesale beer distributor doing business in Multnomah County. From 1982 through 1984, the plaintiff did not pay the county income tax on its income from distributing alcoholic beverages. The Department of Revenue assessed a deficiency based on that income.<sup>FN1</sup> After paying the deficiency, the plaintiff brought this suit for a refund.

FN1. The Department of Revenue is authorized to collect and enforce the MCBIT. *See* ORS 305.620(1); Mult County Code § 5.70.085.

Based on the parties' stipulated facts, the tax court denied the plaintiff's motion for summary judgment and upheld the deficiency assessment. *Portland Distributing Co. v. Dept. of Rev.*, 10 OTR 463 (1987) [available on WESTLAW, 1987 WL 16782]. We affirm.

The plaintiff argues that ORS 473.190 expressly preempts taxation of its income from distributing beer. ORS 473.190 provides:

"No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the production, sale, mixing, serving, transporting, delivering or handling of malt or other alcoholic liquors."

[1] The tax court held that ORS 473.190 preempts only taxes that are "regulatory in purpose." *Portland Distributing Co. v. Dept. of Rev.*, *supra*, 10 OTR at 466. Applying the maxim *ejusdem generis*, the court reasoned that the enumeration of taxes in ORS 473.190 limits the general phrase "any fee or tax." The court held that the legislature intended to preempt regulatory measures rather than revenue measures because **\*97** the statute includes examples of regulatory taxes only.<sup>FN2</sup> The court also noted that ORS

473.190 is part of the statutory scheme for regulating alcohol and that local revenue taxes do not interfere with alcohol regulation. *Id.* at 465–66. Although we agree that ORS 473.190 does not preempt the MCBIT, we disagree with the tax court's holding that the list of taxes in ORS 473.190 limits the scope of the statute.

FN2. Oregon courts have frequently classified taxes as either “regulatory” measures or “revenue” measures. Different legal consequences may arise depending on whether a tax is viewed as a regulatory measure or as a revenue measure. *See e.g., Terry v. City of Portland*, 204 Or. 478, 506, 269 P.2d 544, appeal dismissed 348 U.S. 979, 75 S.Ct. 571, 99 L.Ed. 762 (1955); *City of Beaverton v. Harris*, 3 Or.App. 541, 474 P.2d 771 (1970). This formalistic classification is often misleading. Taxes intended only to generate revenue may have a regulatory effect. Many taxes which are part of a regulatory scheme have the incidental effect of generating revenue. *See Klamath Falls v. Oregon Liquor Control Comm.*, 146 Or. 83, 95, 29 P.2d 564 (1934). Because we hold that the statute in question applies to all taxes, we need not address whether the regulation/revenue dichotomy has outlived its usefulness.

By using the word “including” in ORS 473.190, the legislature did not necessarily intend to limit the scope of “any fee or tax.” *See Premier Products Co. v. Cameron*, 240 Or. 123, 125, 400 P.2d 227 (1965). Before 1949, the statute did not mention specific taxes. OCLA 24–315. The list of taxes was added in 1949 after this court upheld a local privilege tax on businesses serving alcohol in *City of Coos Bay v. Eagles Lodge*, 179 Or. 83, 170 P.2d 389 (1946). Or Laws 1949, ch 445, § 16. This amendment is persuasive evidence of the correct interpretation of the amended statute. *See e.g., Kaiser Cement v. Tax Com.*, 250 Or. 374, 378–79, 443 P.2d 233 (1968).<sup>FN3</sup> If the 1949 legislature intended to limit the application of the

statute, it would not have amended the statute to include occupation taxes, privilege taxes and inspection fees, because this court had already determined \*\*1191 that the statute did not apply to such taxes. *See City of Coos Bay v. Eagles Lodge, supra*. It is more reasonable to conclude that the 1949 amendment was enacted so the statute would apply to all types of taxes without regard to the label given the tax or the purpose for imposing the tax.

FN3. The state argues that the legislature could have acted in the 1947 session if it intended to respond to the 1946 decision in *Coos Bay*. According to the state, the intervening session is evidence that the legislature was not responding to the *Coos Bay* decision. In light of the similarities between the wording of *Coos Bay* and the wording of the amendment, we find this argument unpersuasive. From the parties' joint submission of legislative history research, it appears that some members of the 1947 legislature attempted to delete the provision which is now ORS 473.190, which could have been a response to *Coos Bay*. The bill never became law.

\*98 [2] Although we hold that that ORS 473.190 applies to all types of local taxes, we affirm the decision of the tax court because we hold that the MCBIT is not imposed “in connection with the production, sale, mixing, serving, transporting, delivering or handling of malt or other alcoholic beverages.” ORS 473.190. In *City of Coos Bay v. Eagles Lodge, supra*, this court addressed the circumstances under which OCLA 24–315 (now ORS 473.190) would preempt local taxes:

“But before the court is justified in holding that an ordinance is invalid on that ground, it must appear that it is in direct conflict with some state law. No state law should be construed to deprive a city of the right to levy an occupation tax unless it is *clear and*

*unmistakable* that the legislature so intended by its enactment.” 179 Or. at 101, 170 P.2d 389 (emphasis added).

At the time, OCLA 24–315 proscribed taxes imposed in connection with the “production, sale, licensing or handling” of alcohol. Serving was not mentioned. The local tax was not imposed “in connection with” any of the activities because it was limited to businesses serving alcohol. There was no direct conflict with state law. *City of Coos Bay v. Eagles Lodge, supra*, 179 Or. at 101–102, 170 P.2d 389.

Unlike the taxpayer in *Coos Bay*, the taxpayer in this case is engaged in activities listed in ORS 473.190.<sup>FN4</sup> We must determine whether it is “clear and unmistakable” that the legislature intended the phrase “in connection with” to reach a business income tax on the net income from selling beer.

FN4. The plaintiff's distribution business includes selling alcoholic beverages. Stipulation of Fact No 2.

The legislature's choice of the phrase “in connection with” is significant. Other statutes proscribe local taxation imposed on certain business activities, *see* ORS 731.840(4), *former* ORS 317.065 (1973), and on the privilege of conducting certain business activities, *see* ORS 462.100, ORS 696.110(2). By employing the words “in connection with,” the legislature apparently intended to reach a larger group of local taxes than those taxes merely imposed on a particular business or activity. On the other hand, the legislature could have exempted the specified activities entirely if it intended to shield beer distributors from all local taxes. *Cf.* ORS 731.840(4) (“preempts the field” of taxing and regulating insurers).

\*99 “In connection with” is an ambiguous phrase that means a relationship or association. *See Webster's Third New International Dictionary* 481 (1971).<sup>FN5</sup>

Any relationship between selling beer and the imposition of the income tax is tenuous at best. The MCBIT is keyed to net income, not sales. *See* Mult County Code § 5.70.045. The sale of alcoholic beverages does not necessarily result in net income, and the tax may not apply even if the plaintiff engaged in the business of selling beer. The MCBIT is “in no way connected” with the privilege of engaging in the activity that generates the income. *Multnomah Kennel Club v. Dept. of Rev.*, 295 Or. 279, 287, 666 P.2d 1327 (1983). If the legislature intended to preempt local taxation of distributors, its use of the term “in connection with” is not “clear and unmistakable” evidence of that intent. *See City of Coos Bay v. Eagles Lodge, supra*.

FN5. “*In connection with* is a formula that everyone who prefers vigorous to flabby English will have as little to do with as he can. \* \* \* In the prevalent modern use, however, it is worn down into a mere compound preposition, with vagueness & pliability as its only merits.” Nicholson, *American–English Usage* 102 (1957).

When a statute is ambiguous, the policies underlying the statute aid in determining whether the statute applies. *E.g., Springfield Education Assn. v. School Dist.*, 290 Or. 217, 225–26, 621 P.2d 547 (1980). ORS 473.190 is part of a privilege tax imposed on certain distributors. *See* ORS 473.030, \*\*1192 473.040. Although the privilege tax may generate revenue, it is a part of the overall scheme to regulate alcohol and should be read in light of that purpose. *City of Coos Bay v. Eagles Lodge, supra*, 179 Or. at 98, 170 P.2d 389. *See also Klamath Falls v. Oregon Liquor Comm.*, 146 Or. 83, 95, 29 P.2d 564 (1934).

If, as the plaintiff would have us hold, the legislature intended ORS 473.190 to preempt taxes on the net income of businesses, the administrative burden on the taxpayer would be substantial. Calculating the amount of tax exempted under 473.190 would involve the difficult task of segregating the expenses at-

tributable to alcohol sales from expenses attributable to the sale of other goods, then subtracting that amount from the gross receipts from the sale of alcoholic beverages. Although such calculations are possible, the task would be difficult for businesses such as supermarkets where alcohol sales constitute a small portion of the business. A more reasonable conclusion is that the legislature did not \*100 intend its preemption measure to apply to generalized income taxes so as to impose such burdens on taxpayers and local agencies.

END OF DOCUMENT

[3] From our review of the legislature's purpose, it is clear that the legislature intended to prohibit local regulation of alcohol. *City of Coos Bay v. Eagles Lodge, supra*. We have stated that the legislature intended the words "in connection with" to reach taxes other than those imposed on the enumerated activities without preempting all local taxation of distributors. We also conclude that the legislature intended to prohibit localities from seizing upon commerce in alcohol as a target of taxation. This interpretation is consistent with the wording of ORS 473.190 and the legislative purpose for enacting the provision.

The MCBIT applies to all businesses. It does not single out beer sales, nor does the imposition of the tax depend on engaging in the business of selling beer. Imposition of the MCBIT is therefore not inconsistent with the wording or the policy of ORS 473.190. We hold that the MCBIT is not imposed in connection with any of the activities listed in ORS 473.190. ORS 473.190 does not preempt the MCBIT, and the plaintiff is not entitled to recover the deficiency assessment.

The decision of the tax court is affirmed.

Or., 1988.  
Portland Distributing Co. v. Department of Revenue  
307 Or. 94, 763 P.2d 1189

## The Women's Christian Temperance Movement (1874-1920)

The 1800's to the early 1900's was the era of the drunkard in Portland, Oregon. There was no social stigma attached to all but the most desperate levels of alcoholism. By the 1830's, concern about alcohol addiction and its effects on families began to grow. As a result, temperance movements began, spurred by need for reform. A whole class of individuals, middle-class women, who were not invited to the 'party', began to object to the alcoholism. The national Women's Christian Temperance Movement was formed in 1874 with the goal of improving conditions for women. In 1881, the first local group was formed in Portland, Oregon. The women worked to educate people about the dangers of alcohol and tried to pass laws prohibiting its sale.

Laura Francis Kelly, one of the crusaders, wrote a first-hand account about her experiences.

The saloon keeper received us cordially, ushering us into the card-room. As the song rose from trembling hearts: "Holy Spirit, faithful guide, Ever near the Christian's side," etc., the bar-room quickly filled with young men to whom the barkeeper freely dispensed his liquors. As we knelt in prayer, the clink of glasses well nigh drowned the petitions that rose from trembling lips. When the short service was over, the bar keeper invited us very pleasantly to "come again." Oh! how we hastened back to church and kindred spirits!

The ladies' presence initially created a huge business boom for the saloons and they were personally invited by the saloon owners to come by their establishments. However, that abruptly changed and the women were soon turned away by the saloon owners.

On April 7, 1874, Walter Moffett, the owner of the Webfoot Saloon, summoned Chief Lappeus, the Portland Chief Police (who was also a saloonkeeper) to arrest 15 protesting women. Chief Lappeus requested that the women leave; they declined and said they were just there to pray and sing. So, Chief Lappeus arrested them. The women stayed in the prison overnight. Judge Denny dismissed the complaint and declared that "standing on a public sidewalk singing hymns did not constitute disturbing the peace." However, some sources claim that the women were charged with inciting a riot.

Prohibition came to Oregon in 1916.

Wicked Portland: The Wild and Lusty Underworld of a Frontier Seaport Town. Finn, John J.D. 2012.