

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 2, 1999

DOYNE BAILEY
ADMINISTRATOR
TEXAS ALCOHOLIC BEVERAGE COMMISSION
5806 MESA DRIVE, SUITE 160
AUSTIN, TEXAS 78731

VIA CERTIFIED MAIL P 332 127 522
RETURNED RECEIPT REQUESTED

RE: Docket No. 458-99-0427; Texas Alcoholic Beverage Commission vs. Just Joking Incorporated
d/b/a Just Joking Comedy Cafe (Permit Nos. MB-405520 & LB-405521) (TABC Case No. 582088)

Dear Mr. Bailey:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Gayle Gordon, attorney for Texas Alcoholic Beverage Commission, and to Just Joking Incorporated, for Just Joking Comedy Cafe. For reasons discussed in the proposal, based on the foregoing Findings of Fact and Conclusions of Law, the Mixed Beverage Permit MB-405520, and Mixed Beverage Late Hours Permit MB-405521 issued to Just Joking Incorporated, doing business as Just Joking Comedy Cafe, 9344 Richmond Avenue, Houston, Harris County, Texas should be suspended for 10 days.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

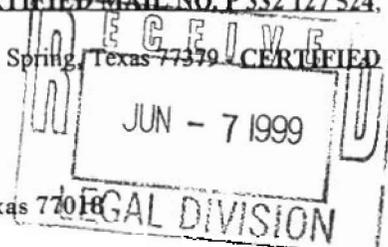
A handwritten signature in black ink, appearing to read "Rex A. Shaver".

Rex A. Shaver
Administrative Law Judge

RAS:cj
Enclosure: 1

xc: Rommel Corro, Docket Clerk, State Office of Administrative Hearing - REGULAR U.S. MAIL
Gayle Gordon, Staff Attorney, Texas Alcoholic Beverage Commission - CERTIFIED MAIL NO. P 332 127 524,
RETURN RECEIPT REQUESTED
Just Joking Incorporated, d/b/a Just Joking Comedy Cafe, 17307 Klee Circle, Spring, Texas 77379 - CERTIFIED
MAIL NO. P 622 053 348, RETURN RECEIPT REQUESTED

North Loop Office Park
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018
(713) 957-0010 Fax (713) 812-1001



DOCKET NO. 458-99-0427

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

V.S.

**JUST JOKING INCORPORATED
D/B/A JUST JOKING COMEDY CAFE
PERMIT NOS. MB-405520 & LB-405521
HARRIS COUNTY, TEXAS
(TABC CASE NO. 582088)**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission brought this enforcement action against Just Joking Incorporated d/b/a Just Joking Comedy Cafe (the Permittee) because the Permittee, its agent, servant or employee gave a check for \$ 128.40 to Houston Distributing Ltd. of Houston, Texas. On or about August 18, 1998, the check was returned by Drawee, Wells Fargo Bank, of Houston, Texas for insufficient funds, in violation of the TEX. ALCO. BEV. CODE ANN. §61.73(b) (V.T.C.A.1998). The Permittee made no appearance. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that the license be suspended for a period of 10 days.

I. Procedural History, Notice, and Jurisdiction

Because the hearing proceeded on a default basis, procedural history, notice, and jurisdiction are addressed in the findings of fact and conclusions of law without further discussion in the text of this proposal.

II. Evidence and Applicable Statutory Provisions

TEX. ALCO. BEV. CODE ANN. §61.73 (b) (Vernon 1998) authorizes the Commission to cancel or suspend a license for not more than 60 days if it is found, after notice and hearing, that the Licensee gave a check, as maker or endorser, as full or partial payment for beer which is dishonored when presented for payment.

The staff attorney introduced the affidavit of Brian L. Guenther, Licensing Department Director, into evidence, (Exhibit TABC 2) that the Mixed Beverage Permit, MB-405520, and Mixed Beverage Late Hours Permit MB-405521 were issued to Just Joking Incorporated, doing business as, Just Joking Comedy Cafe, 9344 Richmond Avenue, Houston, Harris County, Texas, by the Texas Alcoholic Beverage Commission. The mailing address of the Permittee is 17307 Klee Cr., Spring, Texas 77379.

The staff attorney introduced Notice of Hearing to the Permittee, (Exhibit TABC 1) showing that the notice was sent to the Permittee's last known address as shown on the referring agency's record 17307 Klee Cr., Spring, Texas 77379, with no showing of actual receipt.

III. Recommendation

Because the Licensee gave a check, as maker or endorser, as full or partial payment for beer which was dishonored when presented for payment the license should be suspended for a period of ten days.

IV. PROPOSED FINDINGS OF FACT

1. Just Joking Incorporated, doing business as, Just Joking Comedy Cafe, 9344 Richmond Avenue Houston, Harris County, Texas, was issued Mixed Beverage Permit, MB-405520, and Mixed Beverage Late Hours Permit MB-405521 by the Texas Alcoholic Beverage Commission.
2. On March 9, 1999, the staff of the Texas Alcoholic Beverage Commission (Staff) sent a notice of hearing regarding alleged violations of the Texas Alcoholic Beverage Code to the Permittee at 17307 Klee Cr., Spring, Texas 77379, its address of record, by certified mail, return receipt requested.
3. Notice of hearing to the Permittee was shown by proof that the notice was sent to the Permittee's last known address as shown on the referring agency's record with no showing of actual receipt.
4. The Texas Alcoholic Beverage Commission Rules, 16 Texas Admin. Code § 37.7 authorizes service of the notice of hearing by sending it to the Permittee's last known address as shown by the agency's records.
5. There was credible evidence by way of Notice of Hearing (Exhibit TABC-1) that the notice of hearing was sent by certified mail, return receipt requested, to the Permittee's last known address on the agency's records.
6. The hearing on the merits was held on March 29, 1999, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Clyde Burlison. The Permittee did not appear and was not represented at the hearing.

V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 61.71 (Vernon 1997).
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003 (Vernon 1997).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 1998).
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 Tex. Admin. Code §155.55.

5. The Permittee has violated TEX. ALCO. BEV. CODE ANN. §61.73 (b) (Vernon 1998) in that the Permittee gave a check, as maker or endorser, as full or partial payment for beer which is dishonored when presented for payment.
6. Based on the foregoing Findings of Fact and Conclusions of Law, the Mixed Beverage Permit, MB-405520, and Mixed Beverage Late Hours Permit MB-405521 issued to Just Joking Incorporated, doing business as, Just Joking Comedy Cafe, 9344 Richmond Avenue, Houston, Harris County, Texas, should be suspended for 10 days.

SIGNED this 2nd day of June, 1999.

A handwritten signature in black ink, appearing to read 'Rex A. Shaver', written over a horizontal line.

REX A. SHAVER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS