

DOCKET NO. 581841

IN RE R.B.L. TEX-MEX LOUNGE, INC.	§	BEFORE THE
D/B/A TEX MEX LOUNGE	§	
PERMIT NOS. MB-226884, LB-242633,	§	
& PE-226886	§	TEXAS ALCOHOLIC
	§	
HIDALGO COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-0507)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 17th day of November 1999, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Edel P. Ruiseco. The hearing convened on May 17, 1999 and adjourned May 17, 1999. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 14, 1999. This Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge Proposal For Decision and incorporates those Findings of Fact and Order, as if such were fully set out and separately stated herein. A and Conclusions of Law, submitted by any party, which are not denied.

IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Code and 16 TAC §31.1, of the Commission Rules, that Permit N and PE-226886 is herein **SUSPENDED** for ten (10) days beginning on February 17, 2000, a penalty of \$5,000.00 is paid by February 17, 2000.

This Order will become final and enforceable on December 1, 2000 for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties indicated below.

Z 473 037 E57

US Postal Service
Receipt for Certified Mail
 No Insurance Coverage Provided
 Do not use for International Mail (See reverse)

Sent to	Juan E. Gonzalez	
Street Number	D# 581841	
Post Office, State, & ZIP Code	R.B.L. Tex-Mex Lounge	
Postage	\$	
Certified Fee		
Special Delivery Fee		
Restricted Delivery Fee		
Return Receipt Showing to Whom & Date Delivered		
Return Receipt Showing to Whom, Date, & Addressee's Address		
TOTAL Postage & Fees	\$	
Postmark or Date	1-3-00	

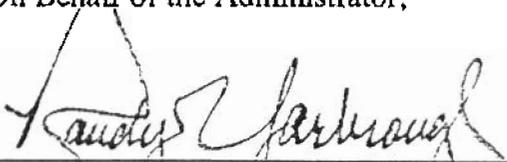
ORD

PS Form 3800, April 1995

WITNESS MY HAND AND SEAL OF OFFICE on this the ____ day of November, 1999.

On Behalf of the Administrator,




Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Edel P. Ruiseco
Administrative Law Judge
State Office of Administrative Hearings
1225 Agnes Street, Ste. 102
Corpus Christi, Texas 78401
VIA FACSIMILE (361) 884-5427

Shanee Woodbridge, Docket Clerk
State Office of Administrative Hearings
300 West 15th Street, Suite 504
Austin, Texas 78701
VIA FACSIMILE (512) 475-4994

Juan E. Gonzalez
ATTORNEY FOR RESPONDENT
420 W. University Dr.
Edinburg, Texas 78539
CERTIFIED MAIL/RRR NO. Z 473 038 669

Christopher Burnett
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
McAllen District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 581841

REGISTER NUMBER:

NAME: R.B.L. TEX-MEX LOUNGE, INC.

TRADENAME: TEX MEX LOUNGE

ADDRESS: Int N/E Corner Owassa Road and Jackson Road, Edinburg, Texas 78539

DATE DUE: February 17, 2000

PERMITS OR LICENSES: MB-226884, LB-242633 & PE-226886

AMOUNT OF PENALTY: \$5,000.00

Amount remitted \$ _____ Date remitted _____

If you wish to pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 17TH DAY OF FEBRUARY 2000, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

**TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711**

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

October 18, 1999

Doyle Bailey
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

Via Certified Mail
P 906 424 110

RE: Docket No. 458-99-0507; Texas Alcoholic Beverage Commission vs. R.B.L. TEX-MEX LOUNGE, INC. d/b/a TEX MEX LOUNGE (TABC Case No. 581841)

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 Andrew Del Cueto attorney for Texas Alcoholic Beverage Commission, and to Juan E. Gonzalez attorney for R.B.L TEX -MEX Lounge Inc. d/b/a TEX-MEX Lounge . For reasons discussed in the proposal, I recommend a civil penalty of ten(10) days suspension.

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.

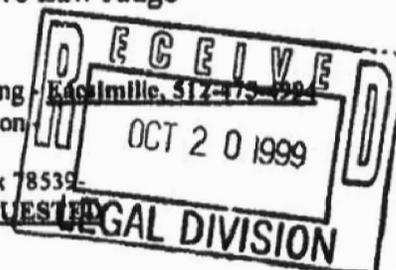
Sincerely,

A handwritten signature in black ink, appearing to read "Edel P. Ruiseco".

Edel P. Ruiseco
Administrative Law Judge

EPR:mar
Enclosure

cc: Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearing
Andrew Del Cueto, Staff Attorney, Texas Alcoholic Beverage Commission
Certified Mail No. P 906 424 111 Return Receipt Requested
Juan E. Gonzalez, Attorney at Law, 420 W. University Dr., Edinburg, Tx 78539
CERTIFIED MAIL NO. P 906 424 112, RETURN RECEIPT REQUESTED



DOCKET NO. 458-99-0507

TEXAS ALCOHOL BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
VS.	§	OF
R.B.L. TEX-MEX LOUNGE, INC. D/B/A TEX-MEX LOUNGE	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Petitioner, Texas Alcoholic Beverage Commission (TABC), through its Staff, seeks to cancel mixed beverage permits held by R.B.L. TEX-MEX LOUNGE, INC., d/b/a Tex-Mex Lounge (Respondent). Staff alleged that Respondent, on October 25, 1998, permitted employees to engage in prostitution and an employee made sexual contact with the intent to gratify sexual desires. Finding the Petitioner failed to prove that employees of Respondent solicited prostitution or engaged in lewd conduct, but Petitioner proved that an employee of Respondent engaged in sexual contact, for which this proposal recommends a civil penalty of ten (10) days suspension.

REASONS FOR RECOMMENDATION

The hearing for this case was convened before Administrative Law Judge Edel P. Ruiseco (ALJ) on May 17, 1999. Andrew del Cueto, Esq., an Assistant Attorney General, represented TABC. The hearing was conducted in McAllen, Texas, and Juan E. Gonzalez, Esq., represented Respondent. The hearing was closed the same day. The parties were allowed until July 31, 1999, to provide proposed findings of fact or briefs, on which date the record was closed.

The parties agreed that the State Office of Administrative Hearings (SOAH) had jurisdiction of the subject matter; that venue was proper in McAllen, Hidalgo County, Texas; and that the parties received notice of the allegations and hearing date.

As outlined in the Findings of Fact, the testimony of the TABC Enforcement Agents Art Munsell and Sonia Salinas; and respondent's witnesses, Maria Dalila Campos (Dalila), Melchor Cepeda, and Robert Garza, all support the ALJ's recommendation.

Respondent strongly disputed the allegations of the Petitioner, that employees engaged in prostitution, lewd conduct and made sexual contact with a patron. The basis for the allegations is a short visit to Respondent's premises, where the agent arrived October 25th, between 1:45-50 a.m., and left before the 2:00 a.m. closing.

The primary dispute was the activities of the Agent on the licensed premises during the time the Agent remained on the premises. The Agent admitted that he entered right before closing, and explained that he was delayed because they had arrested many violators at another location. Agent did not specifically recall the time he entered (about 1:45-50 a.m.), left (before closing-2:00 a.m.), or the time spent regarding each alleged violation. Agent stated he observed the following violations and did these acts during the time inside the premises. Agent entered and saw several bouncers but was not asked to pay an entrance fee; looked over the premises and saw about 25 customers; selected and sat at a table near the bar, but went to the bar for a drink after failing to be waited upon; while at the bar saw a dancer (Natalie) pull a patron's head into her breasts and "crotch" area while dancing on stage; asked another dancer (Tiger) for a table dance and chit-chatted with her for a few minutes but was rejected because she had to go on stage; returned to his table, and was approached by another dancer (Dalila) for a table dance; he agreed and followed her upstairs (two levels) to the loft area where he sat on a sofa; he watched Dalila undress, had one or two table dances, and propositioned and negotiated with Dalila for sex; Agent then described where he was staying, gave his room number and arranged for a meeting with her at 2:15 a.m.; then left the premises - all in less than 15 minutes. There was no corroboration, the allegations were disputed, and there were no witnesses except the parties involved.

Agent testified that, during the table dance, Dalila rubbed her breasts in his face and on his penis and genitalia, and danced provocatively, which was, he opined, to sexually arouse him. Agent then asked Dalila if she dated (testifying that 'dating' is a euphemism for sexual intercourse), and she responded affirmatively. Agent then asked the cost, and Dalila allegedly responded, \$150 for a dance and \$300 for everything else. Agent testified he then asked what "everything else" meant and was allegedly told sexual activity in coarse and vulgar language. Agent explained that he had room 122 at the Best Western motel in Weslaco on Highway 83, and arranged to meet her at 2:15 a.m.

Dalila denied telling the Agent she would perform sexual acts, admitted telling him that she charged \$150 for private parties, denied stating that she would charge \$300 for anything let alone sex, and was greatly offended by the words attributed to her by the Agent. Dalila adamantly denied agreeing to perform any sexual act, and appeared genuinely insulted by the crude language used to describe specific sex acts. She stated she never uses those words, and further that she never used such vulgarity, not even with her boyfriend.

As to the sexual contact alleged, Dalila admitted that her hair may have touched Agent's genitalia and she may have put her hands on his thighs, but denied that she took his head and placed it between her breasts or grabbed his penis. She further testified that she has not been charged with the crime of prostitution, and didn't even know that's what the allegation was until recently told by the manager.

Agent's view of the stage and participants, from about 10 feet away, was insufficient to show that there had been sexual contact with the genitalia when Natalie placed a patron's head between her legs.

No testimony was offered to describe how the law defines, nor what the public construes as, *lewd, immoral, or offensive to public decency*, and the words have long been held to be unconstitutionally vague, *Wishnow v. State*, 704 S.W.2nd 425 (Tex.App. 14Dist. Houston, 1985).

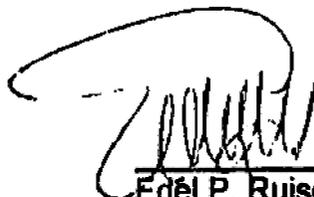
FINDINGS OF FACT

1. R.B.L. Tex-Mex Lounge, Inc., doing business as Tex-Mex Lounge, RR2, Box 689, Edinburg, Hidalgo County, Texas, was issued a Mixed Beverage Permit, MB226884, a Mixed Beverage Late Hours Permit, LB226885, and a Beverage Cartage Permit PE226886 on December 21, 1997.
2. On January 7, 1999, TABC's Staff sent notice of the hearing to Respondent at its address of record, RR2, Box 689, Edinburg, Texas 78539, and an amended notice of hearing was sent on May 6, 1999.
3. The hearing convened on May 17, 1999. Both parties were present and represented by counsel.
4. On October 25, 1998, TABC agent Art Munsell (Agent) was assigned to inspect the licensed premises in an undercover capacity. TABC agent Sonia Salinas acted as the arresting agent, for any violations that occurred.
5. On October 25, 1998:
 - a. Agent entered Respondent's premises at about 1:50 a.m.
 - b. Agent walked to a table, sat down, and when not waited upon, walked to the bar and ordered a beer.
 - c. Agent was served a beer and he observed the first dancer pull a patron's head into her breasts and crotch area, which he deemed to be lewd conduct.
 - d. Agent contacted a second dancer and asked for a table dance, which was refused because the dancer was scheduled to dance the next song.
 - e. Agent made contact with a third dancer, later identified as Dalila, and asked for a table dance.
 - f. Agent followed Dalila upstairs to a loft area where a table dance was conducted.
 - g. During the table dance Dalila touched Agent's genitalia with intent to arouse and gratify Agent.
 - h. After the table dance, Agent initiated a conversation regarding dating and sexual conduct, asked Dalila for a date, and left the building.
7. Dalila did not offer or agree to perform the sexual acts described by the Agent.
8. Dalila did not engage in acts of lewd conduct which were immoral, or which were offensive to public decency, on October 25, 1998.

CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §106.14 (Vernon 1998).
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 1998).
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. The Respondent did not violate §43.02(a)(1), 11.61(b)(7) and 104.01(6) of the Code, but Respondent did violate §11.61(b)(2) of the Code.
5. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's permits should be suspended for ten (10) days.

SIGNED this 14th day of October, 1999.



Edél P. Ruiseco, ALJ, Corpus Christi
State Office of Administrative Hearings