

DOCKET NO. 583313

| | | |
|-------------------------------|---|---------------------|
| IN RE TEXAS FOODS, INC. | § | BEFORE THE |
| D/B/A TEXAS FOODS | § | |
| LICENSE NO. BF-411634 | § | |
| | § | TEXAS ALCOHOLIC |
| | § | |
| TARRANT COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-99-1572) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this 22nd day of November, 1999, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya A. Cooper. The hearing convened on October 7, 1999 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 18, 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, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that License No. BF-411634 is herein **SUSPENDED**.

IT IS THEREFORE ORDERED that unless the Respondent pays a civil penalty in the amount of \$750.00 on or before the 16th day of February, 2000, all rights and privileges under the above described permit will be **SUSPENDED** for a period of five, (5) days, beginning at 12:01 A.M. on the 23rd day of February, 2000.

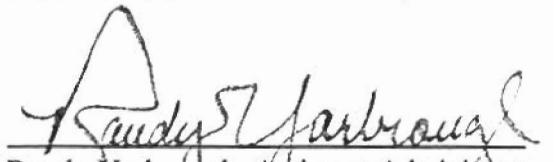
This Order will become final and enforceable on December 13, 1999, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

WITNESS MY HAND AND SEAL OF OFFICE on this the 22nd day of November, 1999.

On Behalf of the Administrator,




Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/pah

The Honorable Tanya A. Cooper
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 626-7448

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

Texas Foods, Inc.
RESPONDENT
d/b/a Texas Foods
1101 California Ln.
Arlington, Texas 76015-2406
CERTIFIED MAIL/RRR NO. Z 473 039 115

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Ft. Worth District Office
Compliance Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 583313

NAME: Texas Foods, Inc.

REGISTER NUMBER:

TRADENAME: Texas Foods

ADDRESS: 1101 California Lane

DATE DUE: February 16, 2000

PERMITS OR LICENSES: BF-411634

AMOUNT OF PENALTY: \$750.00

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 16TH 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.



**INTER-OFFICE COMMUNICATION
TEXAS ALCOHOLIC BEVERAGE COMMISSION**

November 16, 1999

TO: Gayle Gordon, Director of Legal

FROM: Randy Yarbrough, Assistant Administrator

SUBJECT: Docket No. 458-99-1572
TABC Case No. 583313
Texas Foods, Inc. d/b/a Texas Foods
Retailer's Dealers Off-Premise License (BF-411634)
Tarrant County, Texas

I have read the attached record of the above referenced case and find the following:

Based on the record, I concur with the finding of the Administrative Law Judge that the license at the above referenced location should be **SUSPENDED**. Please prepare an **ORDER** adopting the Proposal for Decision, suspending the License for a period of five (5) days unless a civil penalty in the amount of \$750.00 is paid in lieu of the suspension.

Please make a copy of this decision and submit it along with the order to the respective parties.

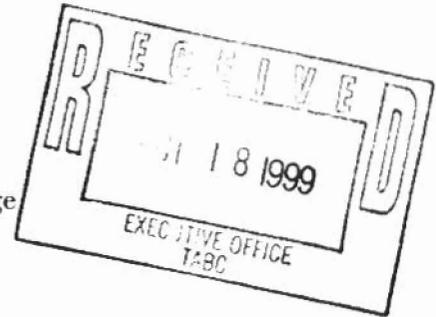
A handwritten signature in cursive script that reads "Randy Yarbrough". The signature is written in black ink on a white background.

RY

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



October 13, 1999

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

CERTIFIED MAIL,
RETURN RECEIPT
Z 283 051 821

RE: Docket No. 458-99-1572; Texas Alcoholic Beverage Commission vs. Teks Foods, Inc. d/b/a Teks Foods; TABC Case No. 583313

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 Timothy Griffith, attorney for Texas Alcoholic Beverage Commission, and to Texas Foods, Inc. Respondent. For reasons discussed in the proposal, Respondent paid for beer by checks that were dishonored for insufficient funds in violation of §61.73(b) of the Code, which warrants suspension of the license referenced in Finding of Fact 1 for five (5) days, or payment of a civil penalty in the amount of Seven Hundred Fifty Dollars (\$750.00).

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.

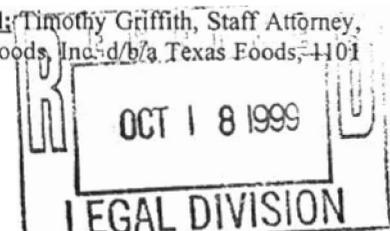
Sincerely,

A handwritten signature in cursive script, appearing to read "Tanya A. Cooper".

Tanya A. Cooper,
Administrative Law Judge

TC:ds
Enclosure

xc: Shanee Woodbridge, State Office of Administrative Hearing - **Regular Mail**; Timothy Griffith, Staff Attorney, Texas Alcoholic Beverage Commission - **CMRR# Z 283 051 822**; Texas Foods, Inc. d/b/a Texas Foods, 1101 California Lane, Arlington, Texas 76015- **CMRR # Z 283 051 823**



The Vinnedge Building
2100 N. Main Street, Suite 10 ♦ Fort Worth, Texas 76166
(817) 626-0003 Fax (817) 626-7448

DOCKET NO. 458-99-1572

| | | |
|------------------------|---|-------------------------|
| TEXAS ALCOHOLIC | § | BEFORE THE STATE OFFICE |
| BEVERAGE COMMISSION | § | |
| V. | § | |
| TEXAS FOODS, INC. | § | OF |
| D/B/A TEXAS FOODS | § | |
| BF-411634 | § | |
| (TABC CASE NO. 583313) | § | ADMINISTRATIVE HEARINGS |

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Commission) brought this enforcement action seeking suspension of the license held by Texas Foods, Inc., d/b/a Texas Foods (Respondent), because it paid for beer by a check that was dishonored for insufficient funds when presented for payment. A hearing was conducted; however, Respondent failed to attend. The Administrative Law Judge (ALJ) recommends that Respondent's license be suspended for five days or, in the alternative, that it pay a civil penalty of \$750.

I. PROCEDURAL HISTORY

On October 7, 1999, a hearing was convened before Tanya Cooper, Administrative Law Judge (ALJ), in the State Office of Administrative Hearings at the Vinnedge Building, 2100 N. Main Street, Suite 10, Fort Worth, Tarrant County, Texas. TABC Staff was represented by Timothy E. Griffith. Respondent failed to appear and was not represented by counsel. The hearing was concluded and the record closed on the same day.

TABC Staff presented several exhibits which were admitted into evidence. TABC Staff also moved to amend a typographical error contained within paragraph VII. of its Notice of Hearing (TABC's Exhibit 1). The ALJ granted the amendment to correct the date, August 12, 1999, as originally alleged, to its correct date, August 12, 1998. (Emphasis added.)

II. REASONS FOR PROPOSED DECISION

Because Respondent failed to appear at the hearing, and TABC Staff proved that Respondent had received appropriate notice of the hearing, all matters relating to jurisdiction, notice, the violation and recommended punishment are addressed in the Findings of Fact and Conclusions of Law sections of this proposal without discussion.

III. FINDINGS OF FACT

1. Texas Foods, Inc., d/b/a Texas Foods (Licensee), holds a Beer Retailer's Off-Premise License BF-411634 issued by the Texas Alcoholic Beverage Commission (Commission) for the premises located at 1101 California Lane, Arlington, Tarrant County, Texas.
2. On August 18, 1999, the Commission's Staff sent, by certified mail, a Notice of Hearing to Respondent, which contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the statutes and rules involved; and a statement of the matters asserted.

a. The Notice of Hearing was sent to Respondent at its mailing address of record, 1101 California Lane, Arlington, Tarrant County, Texas 76015-2406 by certified mail (No. 419 581 708), return receipt requested, and it was received at that address on August 20, 1999.

b. The Notice disclosed, in 10-point, bold-face type, that upon Respondent's failure to appear at the hearing the factual allegations in the Notice would be deemed as true, and the relief sought could be granted.

3. This hearing convened October 7, 1999, at 2100 N. Main Street, Suite 10, Fort Worth, Tarrant County, Texas, before Tanya Cooper, Administrative Law Judge (ALJ). Commission Staff was represented by Timothy E. Griffith, but Respondent failed to appear and was not represented by an attorney.
4. On or about June 11, 1998, Respondent gave a check for \$596.70 to Coors Distributing Co., of Fort Worth, Texas, in payment for beer, that was returned on or about June 16, 1998, by Drawee, Bank of America, of Arlington, Texas, for insufficient funds.
5. On or about July 29, 1998, Respondent gave a check for \$847.10 to Ben E. Keith Beers, of Fort Worth, Texas, in payment for beer, that was returned on or about August 6, 1998, by Drawee, Bank of America, of Arlington, Texas, for insufficient funds.
6. On or about August 12, 1998, Respondent gave a check for \$777.05 to Miller Distributing, of Fort Worth, Texas, in payment for beer, that was returned on or about August 27, 1998, by Drawee, Bank of America, of Arlington, Texas, for insufficient funds.
7. On or about December 9, 1998, Respondent gave a check for \$688.83 to Ben E. Keith Beers, of Fort Worth, Texas, in payment for beer, that was returned on or about December 21, 1998, by Drawee, Bank of America, of Arlington, Texas, for insufficient funds.
8. On or about February 17, 1999, Respondent gave a check for \$529.00 to Miller Distributing, of Fort Worth, Texas, in payment for beer, that was returned on or about February 23, 1999, by Drawee, Bank of America, of Arlington, Texas, for insufficient funds.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (the Code) ch. 5, §§6.01 and 61.71 (Vernon 1999).
2. The State Office of Administrative Hearings has jurisdiction to conduct the 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 1999).
3. As referenced in Finding of Fact 2, proper and timely notice of the conduct alleged, an opportunity to show compliance with the law, and of the hearing was served on Respondent, pursuant to the Code §61.71(a), TEX GOV'T CODE ANN. ch 2001 (Vernon 1999) and 1 TEX. ADMIN. CODE §§155.27 AND 155.55.

4. Based upon the foregoing, Respondent paid for beer by checks that were dishonored for insufficient funds in violation of §61.73(b) of the Code, which warrants suspension of the license referenced in Finding of Fact 1 for five days, or payment of a civil penalty in the amount of \$750.

SIGNED this 13th day of October, 1999.

A handwritten signature in cursive script, reading "Tanya Cooper", written over a horizontal line.

TANYA COOPER
Administrative Law Judge
State Office of Administrative Hearings