

DOCKET NO. 589724

IN RE STANDARD LEE HODGES	§	BEFORE THE
D/B/A U.T.B. UNDER BRIDGE	§	
ENTERTAINMENT	§	
PERMIT NOS. MB424209, LB424210,	§	
CB424211, PE424212	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-2850)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 20th day of November 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Michael J. Borkland. The hearing convened and adjourned on June 29, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 25, 2001. 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.

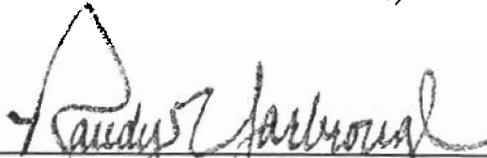
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permits MB424209, LB424210, CB424211 and PE424212 are hereby **GRANTED**.

This Order will become final and enforceable on December 11, 2001, 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 20th day of November , 2001.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Randy Yarbrough", written over a horizontal line.

Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Michael J. Borkland
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

Michael P. Kelly
ATTORNEY FOR RESPONDENT
1700 Commerce Street, Suite 1700
Dallas, Texas 75201
VIA FACSIMILE (214) 855-1449 and
CERTIFIED MAIL NO. 7000 1530 0003 1929 0071

Standard Lee Hodges
d/b/a U.T.B. Under Bridge Entertainment
RESPONDENT
5610 S. Lamar St.
Dallas, Texas 75215
CERTIFIED MAIL NO. 7000 1530 0003 1929 0088

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

SOAH DOCKET NO. 458-01-2850

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

VS.

**STANDARD LEE HODGES
D/B/A U.T.B. UNDER BRIDGE
ENTERTAINMENT
PERMIT NO. MB-424209, LB-424210
CB-424211, PE-424212
DALLAS COUNTY, TEXAS
(TABC CASE NO. ~~581054~~
589724)**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff or TABC) initiated this action against Standard Lee Hodges d/b/a U.T.B. Under Bridge Entertainment (Respondent) seeking to deny the Respondent's application for renewal of Mixed Beverage Permit MB-424209, Mixed Beverage Late Hours Permit LB-424210, Caterer's Permit CB-424211, and Beverage Cartage Permit PE-424212. Staff recommended that the application be denied due to the Respondent not being qualified or suitable to hold a license or permit pursuant to TEX. ALCO. BEV. CODE ANN. (Code) § 109.532, and that the denial is mandatory pursuant to § 69.06 of the Code. The Administrative Law Judge (ALJ) does not agree with Staff and recommends the application for renewal of the permits be granted.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

On June 29, 2001, a hearing was convened before ALJ Mark S. Richards, at the offices of the State Office of Administrative Hearings, 6333 Forest Park Road, Suite 150A, Dallas, Dallas County, Texas. Timothy Griffith, staff attorney, appeared and represented staff. Respondent appeared and was represented by Michael P. Kelly, attorney at law. The record was closed at the conclusion of the hearing.

Thereafter, the ALJ reopened the record and requested briefs from the parties regarding § 69.06 of the Code. The record closed on September 12, 2001, following the filing of the requested post-hearing briefs by all parties. The file was then assigned to ALJ Michael J. Borkland for the preparation of the proposal for decision.

II. DISCUSSION

1. Legal Standards.

TABC denied renewal of the permits because the Respondent was convicted of the offense of unlawfully carrying a weapon, a Class A misdemeanor.¹ Punishment assessed was 90 days confinement in jail and a fine of \$650.00 following a trial. The case was affirmed on appeal. Jail time was suspended and the Respondent was placed on community supervision for 12 months from April 7, 2000, to April 7, 2001.

TABC may deny renewal of a license or permit if it determines that a previous criminal conviction or deferred adjudication indicates that the applicant is not qualified or suitable for a license or permit.² Deferred adjudication for any firearm or weapons offense may indicate that an applicant is not qualified or suitable to hold a permit or license unless three years have elapsed since the termination of a sentence parole, or probation served by the applicant.³ TABC shall refuse to issue a renewal if it finds that three years has not elapsed since the termination of a sentence, parole, or probation served by an applicant for an offense involving firearms or a deadly weapon.⁴

2. Staff's Evidence.

Staff presented documentary evidence consisting of five exhibits:

TABC Exhibit 1 is a letter to the Respondent's attorney dated June 6, 2001, enclosing TABC's Request for Admissions, Interrogatories, Requests for Production, and Notice of Hearing. It was admitted without objection.

TABC Exhibit 2 is the Notice of Hearing, which was admitted without objection..

TABC Exhibit 3 is TABC's requests for Admissions, Interrogatories and Production and a copy of the opinion of the Dallas Court of Appeals Cause No. 05-98-01213-CR, Standard Lee Hodges v. State of Texas.

¹ TEX. PEN. CODE ANN. § 46.02.

² Code § 109.532 (b).

³ 16 TEX. ADMIN. CODE § 33.1.

⁴ Code § 69.06 (c).

TABC Exhibit 4 is the Respondent's Answers and Objections to TABC's Admissions, Interrogatories and Request for Production. The Respondent admitted that he was convicted of unlawfully carrying a weapon; that his punishment was 90 day in jail and assessment of a \$650.00 fine; that he was placed on community supervision; and that his conviction was a final conviction.

TABC Exhibit 5 is the Respondent's records from TABC files, including permits, violation descriptions, an order and waiver agreement assessing a \$750 penalty for a cash law violation, and renewal applications dated March 3, 2000 and March 22, 2001.

3. Respondent's Evidence.

The Respondent admitted the details set forth above but took the position that a denial of the application was not mandatory; that U.T.B. Under Bridge Entertainment (UTB) is his entire livelihood; that cancellation or refusal to renew is not warranted and too harsh; and that he should receive no more than a 10 day suspension.

Standard Lee Hodges is a 1985 graduate of Grambling University. He served in the U.S. Army Reserves, and was a police officer in several cities, including Dallas from 1986 to 1991. He admitted to being arrested and convicted for carrying a firearm without a permit. Mr. Hodges stated that he possessed the gun because he often carried large sums of money. He admitted that he was in an area known for drugs and prostitution twice on the evening he was arrested because he was looking for his sister, a drug addict.

UTB is a dance hall. Mr. Hodges stated that it is not a topless bar, but that it does have go-go dancers. UTB is Mr. Hodges' sole means of support and losing the permits would ruin him financially. He testified that the conviction for unlawfully carrying a weapon is his only conviction, and that he briefly operated another establishment, which may be the source of some of the violations recorded by TABC in Exhibit 5. Mr. Hodges also testified that he is active in the Oak Cliff community, supporting youth programs with money, uniforms and time.

4. Argument and Analysis.

Staff argues that Code § 69.06 is mandatory and prohibits permit renewal for applicants who have final convictions for offenses involving firearms, while the Respondent argues that § 69.06 is not applicable to this proceeding. The Respondent argues that Code § 109.532 (b) and TABC Rule 33.1 should be applied in making the determination. Both of the latter provisions cited by the Respondent have directive language in stating that a final conviction may result in denial of a renewal application or may indicate disqualification or suitability to hold a license or permit.

Code § 69.06 applies to renewal applications for licenses. Mr. Hodges applied for renewal of four different permits held for the operation of his club. Subtitle A of Title 3 of the Code pertains to permits, while Subtitle B of Title 3 pertains to licenses. Code § 69.06 is in Subtitle B of the Code and is not applicable to this proceeding. Additionally, it was not pled in the Notice of Hearing.

Code § 109.532 and TABC Rule 33.1⁵ provide that TABC may deny a renewal application of a permit if a previous criminal conviction indicates that the applicant is not qualified or suitable to hold a permit.

Respondent's only conviction is the firearm conviction discussed above. He has successfully completed his term of probation. Additionally, the Respondent's sole final adjudication with TABC is for a cash law violation.⁶ The Club is also Mr. Hodges' sole means of support, and it is commendable that he aids a community youth program with financial donations, uniforms, and time.

Staff based its case on the firearm conviction with the belief that denial of application renewal is mandatory. Staff's belief is misplaced. Staff has not shown that the Respondent is either disqualified or not suitable to hold a permit. TABC should renew the Respondent's permits.⁷

III. PROPOSED FINDINGS OF FACT

1. On March 24, 1998, the Commission issued Mixed Beverage Permit Number MB-424209, Mixed Beverage Late Hours Permit Number LB-424210, Caterer's Permit Number CB-424211 and Beverage Cartage Permit Number PE-424212 to Respondent Standard Lee Hodges, doing business as U.T.B. Under Bridge Entertainment, 5610 S. Lamar Street, Dallas, Dallas County, Texas, and those Permits were renewed until the March 2001 renewal application was submitted.
2. On June 8, 2001, the Respondent received proper and timely notice of the hearing.
3. The hearing was convened on June 29, 2001 at the offices of the State Office of Administrative Hearings in Dallas, Dallas County, Texas, and after briefs were filed, the record was closed on September 12, 2001. The Commission was represented by its attorney, Mr. Timothy Griffith, and the Respondent by his attorney, Mr. Michael P. Kelly.
4. The Respondent was convicted of the misdemeanor offense of unlawfully carrying a weapon in Dallas, Dallas County, Texas, in Cause No. 05-98-01213-CR, Standard Lee Hodges v. The State of Texas.
5. Punishment was assessed at 90 days confinement and a \$650.00 fine. The Respondent was placed on community supervision for one year and was discharged on April 7, 2001.

⁵ 16 TAC 33.1

⁶ The Respondent wrote an insufficient funds check to a beer distributor in the amount of \$45.50. The check was dishonored because the Internal Revenue Service had frozen the Respondent's bank account.

⁷ Staff did not suggest a period of suspension or a fine as alternative sanctions, and none is, therefore, recommended by the ALJ.

The Respondent was assessed a \$750.00 fine by TABC for a cash law violation consisting of a dishonored check in the amount of \$45.50.

7. Respondent has contributed to the community by working with and providing funds for a youth group.
8. Standard Lee Hodges is the sole owner of U.T.B. Under Bridge Entertainment.
9. U.T.B. Under Bridge Entertainment is Respondent's sole source of income.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 11.61 (b) (2).
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.
3. Notice of hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.
4. Based on Findings of Fact Nos. 4 - 9, Respondent was not shown to be unqualified or unsuitable for permit renewal pursuant to TEX. ALCO. BEV. CODE ANN. § 109.532 (b) (1).
5. Based on Conclusion of Law No. 4, Respondent's renewal application for the permits referred to in Finding of Fact No. 1 should be granted.

Issued this 25th day of October 2001.



MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS