

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
SOON S. KIM DBA	§	
STAR KARAOKE MUSIC	§	
ORIGINAL APPLICATION	§	
DALLAS COUNTY, TEXAS	§	
(TABC CASE NO. 579429)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (Staff) brought this action seeking denial of applications for a Private Club Registration Permit, Private Club Late Hours Permit, Beverage Cartage Permit, and Food and Beverage Certificate, submitted by Soon S. Kim, DBA Star Karaoke Music (Respondent). The Staff contested the application, alleging that agents, servants or employees of Respondent had possessed alcoholic beverages in a dry area with intent to sell them at the premises location in violation of §101.31, Texas Alcoholic Beverage Code (Code). This proposal recommends denial of the application.

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.

The hearing in this matter was convened on September 19, 1998, at the offices of the State Office of Administrative Hearings in Dallas, Dallas County, Texas. The Staff of the Commission was represented by its counsel, Dewey Brackin. The Respondent was represented by its President, Soon S. Kim.

II. THE ALLEGATIONS AND APPLICABLE STATUTORY PROVISIONS

The Staff alleged that, Respondent, after applying for the Permits and Certificates noted above, and prior to the application having been acted upon, possessed alcoholic beverages in a dry area with the intent to sell same at the premises sought to be licensed. Section 101.32 of the Code makes possession of more than one quart of liquor or 24 cans of beer in a dry area prima facie evidence of possession with intent to sell. Section 11.49 includes vehicles within the term "premises." It is a violation of §101.31 of the Code, to possess with intent to sell an alcoholic beverage in a dry area. Further, pursuant to §11.46 (a)(3) of the Code, an application may be denied for such a violation.

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III. EVIDENCE AND DISCUSSION

The Staff's documentary evidence (TABC No. 1 and No. 2), consists of Respondent's applications, dated March 26, 1998, together with a map of the premises sought to be licensed. Testimony at the hearing revealed that on or about March 26, 1998, Respondent applied to the Commission for Private Club Registration, Private Club Late Hours, and Beverage Cartage Permits and a Food and Beverage Certificate, the proposed business premises being located at 11311 Stemmons Freeway, No. 1, Dallas, Dallas County, Texas, (the Premises). This location is in a dry area. On April 12, 1998, in response to a complaint alleging sale of alcoholic beverages in a dry area, agents for the Commission inspected the Premises. The agents arrived at approximately 2:30 a.m.. Upon entering the Premises, the agents observed a young male and female behind the bar, several cans of beer, and several people consuming beer. The female bartender was 16 years of age. Upon looking in the refrigerator, the agents found 84 cans of beer (Miller Lite, Coors Light, and Budweiser). The beer was contained in 12-pack soft drink cartons which were arranged so that the top layer contained three soft drinks, while all the layers beneath them contained beer. The agents also found one 750 ml. and one 375 ml. bottle of Crown Royal Liquor, which totaled more than one quart of liquor. The 16-year old female told the agents that her mother was the owner of the Premises. The agents obtained permission to search the Respondent's vehicle which was parked next to the proposed business premises, and there found an additional 88 cans of beer. The beer and whiskey were seized, the vehicle impounded, and an uncle of the 16-year old came to take custody of her.

Respondent acknowledged that the evidence presented by the Staff was correct and that she had made a mistake but asked for leniency in order to try to make a living.

IV. SANCTIONS AND RECOMMENDATIONS

As described in the Findings of Fact, Respondent violated the Code by possessing alcoholic beverages in a dry area with the intent to sell same. In this case, the Commission recommended denial of the original applications. The Administrative Law Judge agrees with the Commission's recommendation. The fact that the violations occurred prior to permits being issued is an indication that similar or more serious violations would likely occur if the applications were approved and the Respondent allowed to legally open business. The violations were blatant and were acknowledged by Respondent.

V. FINDINGS OF FACT

1. Soon S. Kim DBA Star Karaoke Music is an original applicant for a Private Club Registration Permit, Private Club Late Hours Permit, Beverage Cartage Permit and Food and Beverage Certificate.
2. The applications were filed on March 26, 1998.
3. Location of the proposed business premises (Premises) is 11311 Stemmons Freeway, No. 1, Dallas, Dallas County, Texas.
4. The location noted in Finding No. 3 is in a dry area. MED -

5. Notice of hearing was sent to Respondent by the Commission on August 6, 1998, by certified mail, stating that a hearing would be held on the allegations discussed herein on September 18, 1998, at the Dallas offices of the State Office of Administrative Hearings. Respondent timely received the notice of hearing and both parties appeared at the hearing as scheduled and testimony was received from each of them.
6. On or about April 12, 1998, Respondent was in possession of 170 cans of beer and 1125 ml of liquor at the Premises.
7. Respondent admitted the violations alleged in the notice of hearing.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Title 2, Chapter 5, Subchapter B of the Code and Section 61.71(a)(1) of the Code.
2. The State Office of Administrative Hearings has jurisdiction in this proceeding, including authority to issue a Proposal for Decision, pursuant to TEX. GOV'T CODE ANN. Chapter 2003 (Vernon 1999).
3. Notice of the hearing was proper and was provided pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN Chapter 2001 (Vernon 1999).
4. Based on Findings of Fact numbers 3, 4, 6 and 7, on or about April 12, 1998, Respondent, its agent, servant or employee did on the Premises sought to be licensed possess alcoholic beverages in a dry area with the intent to sell same in violation of Section 101.31 of the Code.
5. The Commission is authorized to deny the above referenced Alcoholic Beverage Application pursuant to §11.46(a)(3) of the Code.
6. Based upon the above findings and conclusions, Respondent's application should be denied.

SIGNED THIS 26th day of February, 1999


Mark S. Richards
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS