

DOCKET NO. 587696

IN RE NEW RED ONION CLUB

PERMIT NOS. N-047183, NL055323,
PE194500

DALLAS COUNTY, TEXAS
(SOAH DOCKET NO. 458-01-2792)

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 22nd day of August 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert F. Jones, Jr. The hearing convened and adjourned on July 10, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 27, 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 Permit Nos. N-047183, NL055323, and PE194500 will be **CANCELED FOR CAUSE**.

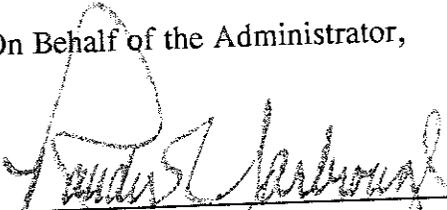
IT IS FURTHER ORDERED that all rights and privileges under the above described permits are hereby **CANCELLED FOR CAUSE**.

This Order will become final and enforceable on September 12, 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 22nd day of August 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Robert F. Jones, Jr.
Administrative Law Judge
State Office of Administrative Hearings
Fort Worth, Texas
VIA FACSIMILE (817) 377-3706

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ATTORNEY FOR RESPONDENT
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RESPONDENT
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CERTIFIED MAIL NO. 7000 1530 0002 0413 3445

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

DOCKET NO. 458-01-2792

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE STATE OFFICE

VS.

OF

NEW RED ONION CLUB
DALLAS COUNTY, TEXAS
(TABC CASE NO. 587696)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought cancellation of the permits held by New Red Onion Club (Respondent) because Respondent violated several provisions of the Texas Alcoholic Beverage Code. This proposal finds that the Staff's allegations are true and the Administrative Law Judge (ALJ) recommends the permits be canceled.

I. PROCEDURAL HISTORY

On February 29, 2001, Staff sent Respondent written notice of its intent to cancel Respondent's permits because of Respondent's alleged violations of the Texas Alcoholic Beverage Code (the Code). This matter was referred to the State Office of Administrative Hearings (SOAH). On July 10, 2001, a public hearing was convened before ALJ Robert F. Jones Jr., at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the Texas Alcoholic Beverage Commission's (TABC) Legal Division. Respondent failed to appear. The record was closed on July 10, 2001.

II. DISCUSSION

A. Notice

The Staff served its First Amended Notice of Hearing (the NOH) on Respondent's counsel of record on June 27, 2001. The NOH was personally served on Respondent's counsel by TABC Lieutenant David Alexander. It was filed with SOAH by facsimile transmission on the same day. The NOH contains a "disclosure, in 10-point, bold-face type, of the fact that upon failure of the party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default." 1 TEX. ADMIN. CODE § 155.55(c).

The NOH alleged Respondent had violated the Code in several specified instances. It informed the Respondent of the time, place, and nature of the hearing on the allegations. The NOH made reference to the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and included a short, plain statement of the matters asserted. TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 2001).

B. Jurisdictional Facts

Respondent is a private club. Its licensed premise is located at 3211½ Forest Lane, Garland, Dallas County, Texas. The TABC has issued private club registration permit N 047183, private club late hours permit NL 055323, and beverage cartage permit PE 194500 to Respondent.

The ALJ recommends Respondent's permits be canceled for the reasons set out below.

III. PROPOSED FINDINGS OF FACT

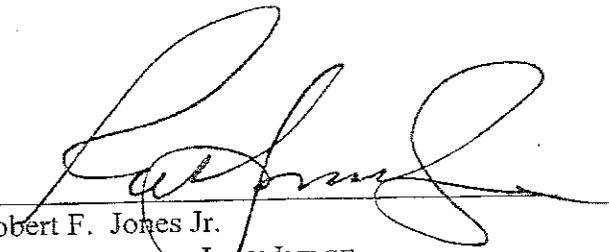
1. The New Red Onion Club (Respondent) is a private club and its licensed premise is located at 3211½ Forest Lane, Garland, Dallas County, Texas.
2. The Texas Alcoholic Beverage Commission (TABC) has issued private club registration permit N 047183, private club late hours permit NL 055323, and beverage cartage permit PE 194500 to Respondent.
3. On February 29, 2001, Staff sent Respondent written notice of its intent to cancel Respondent's permits because of Respondent's alleged violations of the Texas Alcoholic Beverage Code (the Code).
4. On June 27, 2001, the Staff served its First Amended Notice of Hearing (the NOH) on Respondent by personal service on Respondent's counsel of record.
5. The NOH contained a disclosure, in 10-point, bold-faced type, of the fact that upon failure of the Respondent to appear at the hearing, "the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default."
6. The NOH alleged Respondent had violated the Code in several specified instances. It informed the Respondent the hearing would be held on July 10, 2001, at 10:00 a.m. at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. The NOH made reference to the legal authority and jurisdiction under which the hearing was to be held, referenced the particular sections of the statutes and rules involved, and included a short, plain statement of the matters asserted.
7. On July 10, 2001, a public hearing was convened before ALJ Robert F. Jones Jr., at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the Texas Alcoholic Beverage Commission's (TABC) Legal Division. Respondent failed to appear. The record was closed on July 10, 2001.
8. On May 25, 1999, Respondent's agent, servant or employee was intoxicated on the licensed premises.

9. On May 25, 1999, Respondent's agent, servant or employee possessed impure or deleterious beverages on the licensed premises.
10. On May 25, 1999, Respondent's agent, servant or employee possessed or permitted another to possess on the licensed premises distilled spirits in a container not bearing a serially numbered identification stamp.
11. Respondent's agent, servant or employee made a false or misleading statement in connection with its original or renewal application, either in the formal application itself or in any other written instrument relating to the application.
12. Respondent's has engaged in a device, scheme or plan which surrenders control of the employees, premises or business of the Respondent to persons other than the Respondent, and /or which has resulted in the unauthorized use of the Respondent's permits.

IV. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code).
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2001).
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 2001).
4. The factual allegations in the NOH are deemed admitted. 1 TEX. ADMIN. CODE § 155.55(c).
5. Based on Finding No. 8, Respondent violated § 11.61(b)(13) of the Code.
6. Based on Finding No. 9, Respondent violated §§ 11.61(b)(2),(9) & 32.17(a)(8) of the Code.
7. Based on Finding No. 10, Respondent violated §§ 11.61(b)(2) & 32.20 of the Code.
8. Based on Finding No. 11, Respondent violated § 11.61(b)(4) of the Code.
9. Based on Finding No. 12, Respondent violated §§ 109.53, 11.05, & 11.61(b)(2) of the Code.
10. Based on the foregoing findings and conclusions, Respondent's permits should be canceled. §§ 11.61(b), 32.17(a)(8).

SIGNED July 27, 2001.



Robert F. Jones Jr.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS