

**DOCKET NO. 589153**

IN RE HUMMER'S INC.	§	BEFORE THE
D/B/A HUMMER'S	§	
PERMIT NOS. MB154933, LB154934,	§	
PE154944	§	TEXAS ALCOHOLIC
	§	
POTTER COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-1792)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 29th day of May 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge B.L. Phillips. The hearing convened and adjourned April 9, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 4, 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. MB154933, LB154934, and PE154944 shall be **SUSPENDED**.

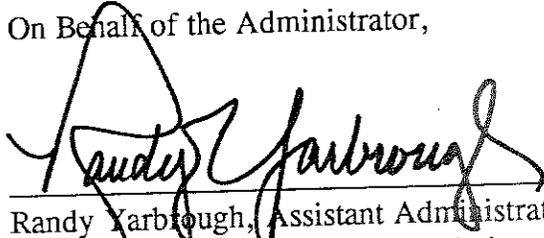
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the **29th day of August, 2001**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of ten (10) days, beginning at **12:01 A.M. on the 5th day of September, 2001**.

This Order will become final and enforceable on **June 19, 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 29th day of May, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

CB/bc

The Honorable B. L. Phillips  
Administrative Law Judge  
State Office of Administrative Hearings  
Lubbock, Texas  
**VIA FACSIMILE (806) 792-0149**

Ted Sanders, President  
Hummer's Inc.  
d/b/a Hummer's  
**RESPONDENT**  
2600 Paramount, Bldg. B, Suite 2  
Amarillo, Texas 79109  
**CERTIFIED MAIL NO. 7000 1530 0002 0152 6851**

Christopher Burnett  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Amarillo District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 589153

REGISTER NUMBER:

NAME: HUMMER'S INC.

TRADENAME: HUMMER'S

ADDRESS: 2600 Paramount, Bldg. B, Suite 2, Amarillo, Texas 79109

DATE DUE: August 29, 2001

PERMITS OR LICENSES: MB154933, LB154934, PE154944

AMOUNT OF PENALTY: \$1,500.00

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 \_\_\_\_ TH DAY OF \_\_\_\_\_ 200\_\_, 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.

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
	§	
VS.	§	OF
	§	
HUMMER'S INC.	§	
D/B/A HUMMER'S	§	
PERMIT NOS. MB-154933, LB-154934	§	
& PE-154944	§	
POTTER COUNTY, TEXAS	§	
(TABC CASE NO. 589153)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (Staff or Commission) initiated this action against Hummer's Inc. dba Hummer's (Respondent) for allegedly permitting an employee to be intoxicated while on the licensed premises. Staff recommended Respondent's permits be suspended for ten days or that a civil penalty of one hundred and fifty dollars per day be assessed against Respondent. Based on the evidence, the Administrative Law Judge (ALJ) finds that Petitioner did prove by a preponderance of the evidence that Respondent permitted an employee to be intoxicated while on the licensed premises. Respondent's permits should be suspended accordingly or the civil penalty be paid.

**I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION**

The hearing on this matter convened on April 9, 2001, before ALJ B. L. Phillips, at the Justice of the Peace Courtroom, Amarillo, Potter County, Texas. Staff was represented by Christopher Burnett, Assistant Attorney General. Mr. Ted Sanders, President of Hummer's, Inc, appeared for Respondent and represented himself. The record closed on April 9, 2001.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.



## II. DISCUSSION

### A. Testimony.

The parties to this case stipulated to the violation which Petitioner alleged occurred by agreeing that Respondent's employee, Autumn Ward, was intoxicated while on the licensed premises on May 7, 2000. Pursuant to the stipulation, Respondent agreed that he had violated TEX. ALCO. BEV. CODE § 11.61(b)(13).

**Ted Sanders, President, Hummer's Inc.** Sanders testified that his employee, Autumn Ward, left work on the night in question and went out drinking at another establishment. She returned to the licensed premises around 2 o'clock in the morning to get her car but was too intoxicated to drive. She was let into the licensed premises for the purpose of securing a ride home so that she would not have to drive in an intoxicated state. It was then that the TABC agents found her intoxicated on the licensed premises and arrested her. Sanders stated that, while this was a violation of the Code, it was also the prudent thing to do rather than let Ward drive home in an intoxicated state.

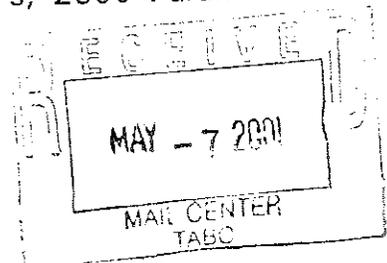
### B. Analysis.

Pursuant to TEX. ALCO. BEV. CODE § 11.61(b)(13), the Commission may suspend or cancel a permit if it is found that the permittee was intoxicated on the licensed premises. Section 1.04(11) defines a "Permittee" as a person who is the holder of the permit or an agent, servant, or employee of that person.

In this case, the parties stipulated that a violation of the Code had occurred on May 7, 2000 when Autumn Ward, the employee of the permittee, was on the licensed premises while intoxicated. The Court adopts the stipulation and finds that the facts set forth therein were proved by Petitioner. Respondent argued that the responsible action to take that night was to allow Ms. Ward to enter the licensed premises to wait for a ride rather than allow her to drive her vehicle home in an intoxicated state. While this is valid, it does not change the fact that a violation of a very clear and unambiguous Code provision occurred. Because of this finding, the Court finds that Respondent violated TEX. ALCO. BEV. CODE § 11.61(b)(13) and that the permits should be suspended or a civil fine paid.

## III. FINDINGS OF FACT

1. On September 23, 1983, the Texas Alcoholic Beverage Commission (the Commission) issued a Mixed Beverage Permit MB-154933, Mixed Beverage Late Hours Permit LB-154934 and Beverage Cartage Permit PE-154944 to Respondent for the premises known as Hummer's, 2600 Paramount 'B2', Amarillo, Potter County, Texas.

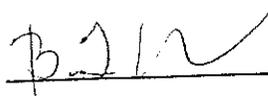


2. Respondent received proper and timely notice of the hearing from the staff for the Commission (Staff) in a notice of hearing dated June 29, 2000. The case was continued and reset for April 9, 2001 by Order of the Court.
3. The hearing was convened on April 9, 2001, at the Justice of the Peace Courtroom, 500 S. Fillmore, Amarillo, Potter County, Texas. Respondent appeared *pro se*. Christopher Burnett, Assistant Attorney General, represented Staff.
4. On May 7, 2000, Autumn Ward was an employee of Respondent.
5. On that date, Ward was intoxicated while on the licensed premises.

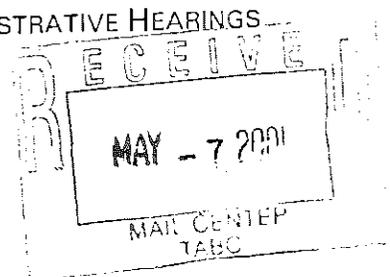
#### IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 11.61 (Vernon 2000).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this proceeding and to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 (Vernon 2000) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. Service of proper and timely notice of hearing was effected upon Respondent pursuant to TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000).
4. Based upon Finding of Facts Nos. 4-5, Respondent violated TEX. ALCO. BEV. CODE § 11.61(b)(13) by permitting an employee to be intoxicated while on the licensed premises.
5. Based on the foregoing, suspension of Respondent's Mixed Beverage Permit MB-154933, Mixed Beverage Late Hours Permit LB-154934 and Beverage Cartage Permit PE-154944 for a period of ten days is warranted.
7. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, Respondent should be permitted to pay a civil penalty of one hundred and fifty dollars for each day that the permits would be suspended.

SIGNED this 4<sup>th</sup> day of May, 2001.



B.L. PHILLIPS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



DISTRIBUTION LIST  
458-00-1792

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Attorney For Petitioner  
TABC Legal Section  
5806 Mesa Drive, Suite 160  
Austin, Texas 78731  
U.S. REGULAR MAIL

Ted Sanders, President  
Hummer's Inc.  
d/b/a Hummer's  
Respondant  
2600 Paramount, B2  
Amarillo, Texas 79109  
U.S. REGULAR MAIL

