

DOCKET NO. 592231

IN RE CLUB 34
ORIGINAL APPLICATION N & PE

HUNT COUNTY, TEXAS
(SOAH DOCKET NO. 458-01-1962)

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 3rd day of May, 2001, 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 and adjourned on March 2, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 9, 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 by the parties.

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.

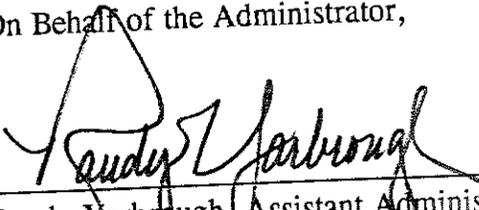
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Respondent's Original Application for Permits N & PE is herein **DENIED**.

This Order will become final and enforceable on May 24, 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 3rd day of May, 2001.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Tanya A. Cooper
Administrative Law Judge
State Office of Administrative Hearings
Fort Worth, Texas
VIA FACSIMILE (817) 377-3706

Lee Salas
ATTORNEY FOR RESPONDENT
1715 Avenue K, Suite 203
Plano, Texas 75074
CERTIFIED MAIL NO. 7000 1530 0003 1927 4064

Club 34
RESPONDENT
4915 Highway 34 South
Greenville, Texas 75402
CERTIFIED MAIL NO. 7000 1530 0003 1927 4071

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Dallas District Office

DOCKET NO. 458-01-1962

TEXAS ALCOHOLIC BEVERAGE
COMMISSION, PETITIONER

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BEFORE THE

V.

STATE OFFICE OF

CLUB 34,
APPLICANT
(TABC CASE NO. 592231)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Club 34 (Applicant or Club 34) is an unincorporated association of persons seeking a Private Club Registration Permit and a Beverage Cartage Permit for a premises to be located at 4915 Highway 34 South, Greenville, Hunt County, Texas, from the Texas Alcoholic Beverage Commission (the Commission). The Commission's staff (Staff) is opposed to the application because it alleges that Applicant made false or incorrect statements within its application. Also during the application process, Staff received protests to this application from local elected officials, individual residents of the area near where the proposed premises is to be located, and other concerned citizens asserting that the permits should be denied for safety, peace, and general public welfare concerns. This proposal for decision recommends the permits be denied.

I. PROCEDURAL HISTORY

On August 2, 2000, Applicant filed an original application for a Private Club Registration Permit¹ and a Beverage Cartage Permit.² The premises for which this application is sought is located at 4915 Highway 34 South, Greenville, Hunt County,

¹ Pursuant to §32.01 of the Texas Alcoholic Beverage Code, "[a] private club registration permit authorizes alcoholic beverages belonging to members of the club to be:

- (1) stored, possessed, and mixed on the club premises; and
- (2) served for on-premises consumption only to members of the club and their families and guests, by drink or in sealed, unsealed, or broken containers of any legal size."

² Pursuant to §44.01 of the Texas Alcoholic Beverage Code, "[a] beverage cartage permit authorizes the holder of a mixed beverage or private club registration permit to transfer alcoholic beverages from the place of purchase to the licensed premises as provided in this code."

Texas. Protests to the application were filed by county officials, residents near the proposed premises, and other interested citizens with the Commission's Staff requesting that the application be denied due to concerns relating to traffic safety and the unreasonable noise created from the premises during its operation in the past.

Additionally, Staff opposes issuance of these permits alleging that Applicant made numerous incorrect statements on the application that were material to the application. Staff contends that Applicant has been unwilling to accept responsibility for these statements being contained within the application.

Staff issued a notice of hearing on February 9, 2001, informing all parties a hearing would be held on the application, as required by § 2001.052 of the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001. The hearing was held on March 2, 2001, in Greenville, Texas, before Tanya Cooper, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). Staff appeared and was represented by Timothy E. Griffith, Commission Staff Attorney. Applicant appeared through its president, Angel W. Martinez, and was represented by counsel, Lee Salas. The hearing was concluded on that day. The record closed on March 30, 2001, after the parties were provided an opportunity to submit written materials in support of their respective positions, including proposed findings of facts and conclusions of law.

II. JURISDICTION

The Commission has jurisdiction and authority over this matter pursuant to Chapter 5 and §§ 6.01, and 11.61 of the Texas Alcoholic Beverage Code (the Code). TEX. ALCO. BEV. CODE ANN. § 1.01 *et seq.* The State Office of Administrative Hearings has authority to conduct a hearing in this matter and make recommendations to the Commission, including the issuance of a proposal for decision containing findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 2003 and § 5.43 of the Code.

III. DISCUSSION

A. Applicable Law

The Commission or its administrator may refuse to issue an original permit if an applicant fails to answer or falsely or incorrectly answers a question in an application. TEX. ALCO. BEV. CODE ANN. § 11.46(a). The statutory foundation for the protest made to this application is § 11.46(a)(8) of the Code, which provides:

The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exist:

(8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, peace, morals, and safety of the people and on the public sense of decency.

B. Public Comment

Over twenty members of the public attended the hearing offering their comments regarding the application both for and against the application. Several persons opposed to the application cited safety and preservation of the public peace as concerns regarding the application. Persons speaking in favor of the application cited issues associated with reasonable use of private property. One person speaking in favor of the application noted the premises would be closest to his residence and that he did not object to its operation.

C. Evidence

1. **Physical Setting.** The proposed location for Club 34 is 4915 Highway 34 South, Greenville, Hunt County, Texas. This business is situated on a rural tract of land in an unincorporated portion of the county. One residence is nearby, but other homes are scattered in the vicinity of Club 34. Another licensed premises, the Elks Club, is also near to the proposed premises.

The building for the proposed premises is large containing 10,000 square feet. From the photographs admitted into evidence, there is off-road parking for the premises. The location has previously been operated as a "teen" club; and most recently, as a "BYOB" establishment for adult patrons.

Highway 34 is a busy roadway extending south from Greenville to Quinlan. It is a paved, two-lane road with a center left-turn lane. The roadway has ample improved shoulders alongside the traffic lanes in the portion of roadway in front of Club 34. There are numerous side roads intersecting the Highway 34 in this area.

2. **The Staff's Evidence.** The Staff is opposed to issuance of the requested permits. Upon receiving this application, Staff conducted an investigation of its contents. This investigation was conducted by Agent Benny Brothers. During the course of Agent Brothers' investigation, a protest was received.

Agent Brothers testified at the hearing. He has been employed by the Texas Alcoholic Beverage Commission for approximately twelve years. During that time, he has investigated numerous permit applications.

Two areas of concern were raised in protest letters to the Commission's Staff: noise and traffic safety. Agent Brothers stated that he had investigated these

concerns. He testified that Highway 34 is a heavily traveled roadway with a speed limit between 65 and 70 miles per hour. He found that numerous complaints regarding noise had been received by the Hunt County Sheriff's Office while the business had been operated as the "Teen Club." At the conclusion of his investigation in this instance, he stated that he had determined there was sufficient evidence to warrant a protest of this application.

Agent Brothers also discussed the application's contents during his testimony. From his review of the application, he determined that material misstatements had been contained in the original application.

Applicant did not make any response to Question 10I.³ in the original application. This is a significant and material section of any application, in Agent Brother's opinion, because it addresses the financial stability of a licensed premises. Agent Brothers stated that the financial backing of any premises is a concern of the Commission and therefore, a need exists to establish this information with certainty during the application process. After the application was initially submitted to Agent Brothers, Applicant filed affidavits concerning the response to Question 10I. seeking to amend the responses. In the first affidavit, "0" was listed as the total amount of investment for the business. Subsequently, this response was changed to show that \$2,750.00 was received from membership fees and \$1,173.00 was received from Angel Martinez, Applicant's President.

The response to Question 10K.⁴ was incorrect, in Agent Brothers' opinion. The response to Question 10K. indicated that Applicant owned the furniture, fixtures, and equipment in the licensed premises, yet no amount of investment had been disclosed in Question 10I. for acquisition of a property. The response to Question 10K. was later changed by an affidavit executed by Mr. Martinez showing that all equipment, furniture, and fixtures were owned by him, rather than Club 34.

Information provided in response to Question N7E.⁵ was also incorrect, according to Agent Brothers. As Agent Brothers examined Applicant's bank account records submitted with the application, he saw that Maria E. Martinez was listed as an officer, Secretary, for Applicant. Mrs. Martinez had executed bank signature cards for Club 34 on September 25, 2000, representing herself as Club 34's Secretary. However, Agent Brothers determined that she was not nominated or elected to that office until November 10, 2000, subsequent to her completion of the banking documents. This information was obtained when Mr. Martinez again sought to correct

³ Question 10I. reads as follows: What is the amount of total investment for this business?

⁴ Question 10K. reads as follows: Do you own the furniture, fixtures and equipment at the proposed licensed location? If 'NO', state from whom leased and payment involved.

⁵ Question N7E. requires listing each officer of the private club, including their address, date of birth, title, and driver's license number.

the information provided on Club 34's initial application through a supplemental affidavit.

Agent Brothers acknowledged that some defects in an initial application may be corrected at a later time by affidavit. In this instance, however, he stated that some items could not be corrected, such as the chronology of events in establishing the private club's officers and bank accounts. Further, this application contained numerous incorrect statements that were material to the application. Viewing this application on a cumulative basis, Agent Brothers determined that the application and attempts to revise it should not be allowed.

Agent Brothers confirmed that Applicant had used a licensing service to assist in preparing its application. Agent Brothers said that he maintains a list of service providers which he makes available upon request to any applicant, but that he does not recommend any one service over other providers to an applicant. Applicant in this instance had contracted with Cathy Ward to assist in this process. Ms. Ward's business, Triangle Business Services, is included on the list of service providers utilized by Agent Brothers. Agent Brothers stressed, however, that an application is the responsibility of any applicant, not the licensing service provider. It is an applicant for a license or permit issued by the Commission, not the service provider, that is required to acknowledge under oath that all statements provided in an application are true and correct. Thus in this instance, Agent Brothers felt that all the incorrect statements on Club 34's application were the responsibility of Angel W. Martinez, President of Applicant, rather than Ms. Ward.

Marco Robles, a former Hunt County Sheriff's detective and resident near the proposed premises testified next. He had worked at the business providing security when it had been operated as the "Teen Club." Mr. Robles stated that noise complaints had been received from the first weekend that the club had been open. He worked on the club's opening weekend and used ear protectors when at the establishment. Shortly after the first weekend's activities, he recommended to Hunt County's sheriff that deputies no longer be provided as security officers at the "Teen Club" because of the potential problems associated with minors at the club and safety issues.

Mr. Robles has also lived near the business for approximately four years. His home is approximately two-tenths of a mile from the premises. It can be seen from his home. He characterized the noise coming from the building as a "booming" sound which often disrupts his sleep. The noise occurs despite the building having no windows and the doors remaining closed at all times. According to Mr. Robles, this situation has occurred from when the club was opened for teenagers and continues now that the business is operating for adults as a "BYOB" establishment.

Diane Oats is employed by both the City of Greenville and Hunt County as a health inspector. She had become concerned after seeing Club 34's advertisement

that ice was available with drink setups at the bar because no health permit had been applied for or issued to the premises. She stated that anyone serving open food products to the public is required to have a health permit. Since ice is generally served in an open container, she investigated the situation. She stated that she received little cooperation in her investigation from Club 34 personnel; however, she was eventually told that all ice served at Club 34 was sold to patrons in sealed bags. As a result of Ms. Oats' investigation, she determined that no health permit was required from Club 34 at this time. However, should Club 34's application for a private club be granted, a permit would become necessary at that point.

Cathy Ward is the owner of Triangle Business Services. She assisted Angel and Maria Martinez in preparing this application, but testified that all information included in the application had been obtained from them. While preparing Club 34's application, ten or fifteen meetings occurred between Ms. Ward and Mr. and Mrs. Martinez. Some information for the application was also obtain through telephone contacts.

Ms. Ward acknowledged that mistakes had been made during this application process. Because of the number of changes and alterations that had been made in this application, she recommended to Mr. Martinez that he withdraw it; however, Mr. Martinez had declined to do so.

Mark Rice appeared at the hearing testifying in opposition to the application. He resides approximately 4 miles from the proposed premises. He described hearing loud noise coming from the premises in the past while at another neighbor's home. However, his greatest concern was the heavy traffic currently using Highway 34 and the increased potential for accidents due to drunken driving that might occur if a permit for sales of alcoholic beverages is granted to Club 34.

Bryon Harding and Lance Simpson, Hunt County Sheriff's Office deputies, appeared and testified also in opposition to the permits. Each were familiar with the business known as the "Teen Club" and the operation of the establishment in its current format. Both deputies had responded to excessive noise complaints at the premises in the past, but neither had ever issued any citations or made arrests in connection with these complaints. The deputies reported that whenever Mr. Martinez was contacted regarding noise complaints, he was cooperative and would lower the music's volume.

In addition to witness testimony, Staff presented several exhibits. These included, among other things, the application filed by Applicant, seven protest letters from local county officials and citizens, photographs of the proposed premises, and the violation history of Angel Wilfredo Martinez d/b/a Angel's Beverage Center.

3. The Applicant's Evidence. Terry McLain, Deputy Chief of Police for the City of Quinlan, testified in favor of Applicant's permits. He has also worked at the proposed premises when it was operated as the "Teen Club."

Deputy Chief McLain stated that intoxicated persons were on the roadways and would continue to be there regardless of whether Applicant's permits were granted. In his opinion, Mr. and Mrs. Martinez had operated the "Teen Club" in an appropriate manner. No citations had been received during the operation of the club. No arrests had been made at the business. Mr. and Mrs. Martinez were proactive in stopping any threat of violence before it would get out of control. Deputy Chief McLain acknowledged that occasionally a complaint would be made about the music being too loud. In these instances, he stated that Mr. Martinez would turn the music down.

Charles Ussery testified next. He and his mother reside next door to the proposed premises and have lived there since the business was first opened as the "Teen Club." Mr. Ussery stated that he was not aware of any excessive noise being created at the business. He acknowledged that on occasion there would be noise in the area, but sources of the noise were not from the activities at the proposed premises. Noise, in Mr. Ussery's opinion, was coming from teenagers congregating on another county road across from his house; the Elks Club, also located a short distance from his home; and a race track approximately five miles away.

Mr. Ussery agreed that Highway 34 is heavily traveled, as demonstrated by the roadway having been widened twice. However, he did not feel that the traffic was any more hazardous there than on any other roadways, stating that "traffic is everywhere."

Maria Martinez testified that she and her husband, Angel Martinez, began the business, "Teen Club," at 4915 Highway 34 South and operated it for approximately eight or ten months on Friday and Saturday nights. They had maintained a safe place in her opinion, even installing metal detectors and using professional noise level sensors.

According to Mrs. Martinez, although traffic is heavy during the day on Highway 34, it is much lighter at the hours when the business is being operated. She had not observed any accidents on the road.

Mrs. Martinez stated that she and her husband had operated another licensed premises in Plano for a considerable time. During that time, there were no problems with the Commission. As a result, she was surprised when questions arose regarding this application.

When questioned about the current application's contents, Mrs. Martinez stated that she and Mr. Martinez relied on Cathy Ward to prepare the document. Mrs. Martinez recalled that Ms. Ward telephoned her several times with questions about the

application. Mrs. Martinez stated that she had only reviewed the completed application for a few seconds before signing it.

Angel Martinez, President of Club 34, stated that he contacted Agent Brothers in June 2000 regarding a private club application. He said Agent Brothers had advised him to contact Triangle Business Services for assistance in the application process because its owner, Ms. Ward, was experienced in completing these type of applications. Mr. Martinez went to Ms. Ward and retained her to complete the application.

Ms. Ward contacted Mr. Martinez when the application was returned. She informed him that eleven mistakes were found in the original application. Mr. Martinez testified that he did not sign the initial application knowing that any of these mistakes existed.

Mr. Martinez said he and Mrs. Martinez had operated the "Teen Club" for ten months after selling their alcoholic beverage sales business in Plano. The Plano business, "Angel's Beverage Center," was operated by them for ten years. "Teen Club" was closed after business declined. The business declined, in Mr. Martinez's opinion, because he had lowered the music's volume.

The sound system at Club 34 cost \$20,000 to install. Mr. Martinez checks the music level using a decibel reader and stated that 85 decibels is a permitted volume. When the "Teen Club" first opened, he also thought the music was too loud because it hurt his ears. But he did not believe that his business was currently the source of noise in the vicinity, citing that stock car racing at the track on Highway 1903 created more noise. Mr. Martinez pointed out that noise complaints had been made even on occasions when he was not operating the club, but had allowed Harvest Bible Church to use his building for church services. To date, Mr. Martinez said that he has not received any citations or been arrested for any complaints associated with noise from the premises.

Mr. Martinez currently operates the premises from 7:00 p.m. until 12:00 a.m. on Fridays. On Saturday, the business opens at 7:00 p.m. and closes at 1:00 a.m. on Sunday morning. He agreed that traffic was heavy on Highway 34 during the daytime, but at night when his business is operating, there is less traffic. The road is safer now that it has been widened; improved shoulders and a left-turn lane have increased its safety, in Mr. Martinez's opinion.

Two exhibits were offered by Applicant. A photograph of the premises and its relationship to Mr. Ussery's property was admitted, along with incident reports from the Hunt County Sheriff's Department relating to noise disturbance complaints.

D. Analysis, Conclusion, and Recommendation

1. **Public Safety and Welfare Issues.** All of the persons offering public comment to the ALJ and the witnesses testifying at the hearing showed sincerity and conviction in the way they expressed their opinions. It is admirable that so many members of a community would take an active role in seeking to safeguard the public welfare; applications for alcoholic beverage permits and licenses certainly merit such intense scrutiny. Based on the evidence, however, the ALJ concludes that the Staff failed to demonstrate that the issuance of the requested permits would be inconsistent with the public's safety or contrary to the public's general welfare.

The ALJ recognizes there is considerable traffic on Highway 34. The volume of traffic is likely responsible for the past improvements that have been made to the roadway. Currently, the roadway is paved with a designated left-turn lane and wide, improved shoulders. No evidence was produced to establish that this roadway is more dangerous than any other similarly situated roadway. Applicant has been operating a business at this location on Highway 34 since 1999. It is not likely that Applicant's new business format would substantially increase traffic on the roadway during the two evenings per week it is operated than has existed since 1999.

The ALJ recognizes persons may fear that drivers on Highway 34 will pose a potentially greater danger because of their ability to consume alcoholic beverage and possibly become intoxicated at Applicant's premises. Although the occurrence of even a single collision or incidence of DWI on public roadway is not acceptable, the ALJ was not persuaded that the sale and consumption of alcohol subject to the provisions of the Texas Alcoholic Beverage Code and Commission's regulatory authority on the premises of Club 34 would be inconsistent with the public's safety. From the evidence presented, the ALJ believes that the public's interests would be better served if the premises were operated under the scrutiny of the Commission.

Currently, the business is lawfully operated with patrons being allowed bring their own alcoholic beverages into the premises. The level of alcoholic beverage consumed by any person at the business is not monitored or controlled by anyone associated with the business' operation. This would not be the case if Club 34 were a Commission-licensed premises.

Any licensee or permittee of the Commission may be held responsible and accountable for instances where patrons over-consume alcoholic beverages or for other instances of misconduct that might arise on the premises. This responsibility may be enforced by various means. Operators of Commission-licensed premises must exercise proper control over patrons and avoid serving alcoholic beverage to anyone that is intoxicated because to fail to do so can result in potential financial loss to the permit or license holders.

Excessive noise attributed to past operation of the business was a major concern voiced by some neighbors of the proposed premises. Whether noise is excessive is a question that, in the absence of objective evidence such as decibel readings, is subjective and individualized. The closest neighbor did not offer any objections or complaints to the business' past operation, while other nearby residents have made complaints to appropriate local law enforcement agencies after having been disturbed by the activities at the club. Upon investigation of these complaints by law enforcement officers, no citations have been issued or arrests made of anyone operating the business. This leads the ALJ to conclude that those officers did not deem any noise produced at the premises to be sufficiently excessive to warrant enforcement action at the time they were present and observing the business in its operation. Accordingly, the ALJ was not persuaded that noise was excessively made from the proposed premises in the past to a degree to warrant denial of this application.

2. Application Issues. The ALJ, however, does find that Applicant failed to answer questions and made incorrect statements in its application that warrant denial of this application. Applicant, even when employing assistance from a licensing service to complete an application, is ultimately responsible for the application's contents.

During the testimony of Angel Martinez and Maria Martinez, each attempted to shift responsibility for the application's contents, saying reliance had been placed on Agent Brothers and Cathy Ward in preparing the current application. However, Applicant's president, Angel W. Martinez, should have been aware of the importance of providing accurate information to the Commission, having previously held another license issued by the Commission for Angel's Beverage Center in Plano, Texas.

Mr. and Mrs. Martinez operated Angel's Beverage Center for ten years. The original license for that premises was issued by the Commission on January 12, 1988. Although Angel's Beverage Center was operated for off-premises consumption of alcoholic beverages, which differs from the present private club registration permit, Mr. and Mrs. Martinez could not be considered as unfamiliar with the Commission's regulatory processes. They certainly would possess greater familiarity with matters associated with licensed premises operations than a person engaging in the sale of alcoholic beverages for the first time.

During the operation of Angel's Beverage Center, problems were noted in record keeping and compliance with the Commission's regulations. Cash and credit violations were listed on the violation history for that premises. Outdoor advertising and sales to minors violations were also included, which is contrary to the assertions by Ms. Martinez that no problems had ever existed with the Commission during the operation of Angel's Beverage Center.

In this instance, Applicant failed to properly respond to numerous questions regarding the private club's operations, persons of authority and accountability, and financial structure. These questions are all material to the current application because they related to the Commission's ability to properly evaluate this application. Further, the chronology of events in selecting officers, establishing bank accounts, and executing documents indicate that proper management for a private club was not being observed by Mr. and Mrs. Martinez from the outset in this endeavor.

Based upon the evidence and this analysis, the application of Club 34 for a Private Club Registration Permit and a Beverage Cartage Permit fails to meet the Commission's requirements. Accordingly, the application should be denied.

IV. FINDINGS OF FACT

1. Club 34 (Applicant or Club 34) filed an original application with the Texas Alcoholic Beverage Commission (the Commission) for a Private Club Registration Permit and a Beverage Cartage Permit for a premises located at 4915 Highway 34 South, Greenville, Hunt County, Texas.
2. Protests to the application were filed by nearby residents, elected officials, and other interested citizens with the Commission's Staff asserting that the application should be denied due to traffic safety issues and the general detrimental impact the premises' operation would have on the public, particularly due to excessive noise that had been created from the business in the past.
3. On February 9, 2001, the Commission's Staff issued a notice of hearing notifying all parties that a hearing would be held on the application and informing the parties of the time, place, and nature of the hearing.
4. The hearing was held on March 2, 2001, in Greenville, Hunt County, Texas, before Tanya Cooper, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). The Commission's Staff appeared and was represented by Timothy E. Griffith, Staff Attorney. Applicant appeared through its President, Angel W. Martinez, and was represented by counsel, Lee Salas. The hearing concluded on that date. The record was closed on March 30, 2001, after the parties were provided with an opportunity to file written briefs and proposed findings of facts and conclusions of law in support of their positions.
5. Club 34 is located on a rural tract of land on Highway 34 with substantial open area surrounding it. There are a few residences and one other licensed premises, the Elks Club, in the area near the proposed licensed premises in an unincorporated area of Hunt County, Texas.

6. Highway 34 is a busy roadway leading south from Greenville to Quinlan. It is a paved two-lane road with a designated left-turn lane and improved shoulders; no evidence was produced to establish that this area was more dangerous than any other similar roadway.
7. Several residents near the proposed premises have complained to local law enforcement officials regarding excessive noise being created during the business' operation in the past.
8. These complaints have been investigated by law enforcement officers, but citations not have been issued and no arrests have been made as a result of these complaints.
9. Charles Ussery and his mother live nearest the premises. Their residence is within several yards of the premises, but they have not been disturbed by any noise from the business and expressed no complaints regarding the premises' operation.
10. Applicant utilized a licensing preparation service provided by Cathy Ward's business, Triangle Business Services, to submit the current application for a private club registration permit and beverage cartage permit.
11. Ms. Ward completed this application with information that she obtained from Angel Martinez and Maria Martinez.
12. When the application was returned to Commission's Staff, numerous errors were noted including questions that were not responded to or answered with incorrect information.
13. Mr. Martinez attempted to correct these errors by filing affidavits supplying additional or corrected information.
14. The initial responses that were not properly completed or answered were to questions that related to the private club's organization and financial solvency.
 - Applicant did not answer the question on the application asking about the total amount of investment for the business.
 - Applicant incorrectly answered the question inquiring about the ownership of the furniture, fixtures, and equipment in the premises.
 - Applicant's records revealed that Mrs. Martinez was acting as an officer of the club in banking matters without having been nominated or elected to any office.

15. The deficiencies in the application were too numerous and material for correction by affidavit which is sometimes allowed for minor corrections and should result in this application's denial.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. Chapter 5 and §§ 6.01 and 11.61. TEX ALCO. BEV. CODE ANN. § 1.01 *et seq.*
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting 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. Chapter 2003.
3. Notice of the 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. 5 - 9, a preponderance of the evidence shows that issuance of the requested permits will not adversely affect the safety of the public, nor will it adversely affect the general welfare, peace, or morals of the people or violate the public sense of decency, pursuant to TEX. ALCO. BEV. CODE ANN. §11.46(a)(8).
5. Based on Findings of Fact Nos. 10 - 15, a preponderance of the evidence shows that Applicant failed to answer or falsely or incorrectly answered questions in an original or renewal application, contrary to TEX. ALCO. BEV. CODE ANN. § 11.46(a)(4).
6. Based on Findings of Fact Nos. 10 - 15 and Conclusion of Law No. 5, the application of Club 34 for a Private Club Registration Permit and Beverage Cartage Permit should be denied.

Signed this 9th day of April, 2001.


TANYA COOPER

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS