

DOCKET NO. 458-02-1551

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

BEFORE THE STATE OFFICE

VS.

LONGVIEW TEX N.P. INC.  
D/B/A GRAHAM CENTRAL STATION  
GREGG COUNTY, TEXAS  
(TABC CASE NO. 593752)

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OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought suspension of the permits held by Longview Tex N.P. Inc. d/b/a Graham Central Station (Respondent) because of a breach of the peace which occurred on Respondent's premises. The Administrative Law Judge (ALJ) recommends suspension of the permits, or alternatively, imposition of a civil penalty.

**I. PROCEDURAL HISTORY & JURISDICTION**

Notice and jurisdiction were not contested in this proceeding. Those matters are set out in the findings of fact and conclusions of law without further discussion.

On July 29, 2002, a hearing was convened before ALJ Robert F. Jones Jr., at 3323 South Southwest Loop 323, Tyler, Texas. Staff was represented by Dewey A. Brackin, Staff Attorney. Respondent was represented by its counsel David Moore, and appeared through its officers. The record closed on July 29, 2002.

**II. DISCUSSION**

**A. Applicable Law**

The Texas Alcoholic Beverage Commission (TABC) may cancel or suspend Respondent's permits if it finds that a breach of the peace has occurred on the licensed premises, that the breach of the peace was not beyond the control of the Respondent, and that the breach resulted from Respondent's improper supervision of persons permitted to be on the licensed premises. TEX. ALCO. BEV. CODE (the Code) §§ 28.11, 32.17(a)(8), & 32.24.

**B. Evidence**

Respondent's licensed premises (hereafter referred to as Graham Central) are located at 1016 McCann Road, Longview, Gregg County, Texas. Respondent holds private-club-registration permit N-461939, private-club-late-hours permit NL-461940, and beverage-cartage permit PE-461941. On

January 21, 2001,<sup>1</sup> Russell Muckelroy, a patron at Graham Central, was assaulted by two other patrons of the establishment. Shonna Singleton, Sarah Bryan, Charles Cavitt, and Larry Ledford were present at Graham Central that night. They and Mr. Muckelroy testified at the hearing.

### 1. The Sports Page Incident

Mr. Muckelroy was a bartender at an establishment called The Sports Page, located in the Longview area. On the Thursday before the assault, Mr. Muckelroy had an encounter with one Lena Breaux. Both Mr. Muckelroy and Ms. Breaux were intoxicated, and happened to occupy and use the Sports Page mens' room at the same time. Remarks, some of them off-color, were publicly exchanged between the two. Mr. Muckelroy gave the incident no further thought, but Ms. Breaux was embarrassed and believed she was owed an apology by Mr. Muckelroy.

### 2. Graham Central's Geography

Graham Central has three bars located around a large dance floor. The bars are called "A" Bar, "B" Bar, and "C" Bar. "A" Bar runs along the wall containing the entrance doors. "B" Bar runs along the wall perpendicular to and to the left of "A" Bar. "C" Bar runs along the wall perpendicular to and to the right of "A" Bar. A disc jockey's booth is located between "A" Bar and "C" Bar. Shonna Singleton was bartending in "A" Bar. Sarah Bryan was bartending in "C" Bar. Charles Cavitt, Graham Central's manager that night, and Larry Ledford, an armed security guard, spoke to Mr. Muckelroy in the general area of the disc jockey's booth.

### 3. The "A" Bar Incident

Mr. Muckelroy went to Graham Central on the evening of January 21, 2001. He had argued with his wife earlier concerning his leaving the house, and had stopped at another establishment and drank some beer prior to arriving at Graham Central. Mr. Muckelroy testified he "made his rounds," *i.e.*, walking around Graham Central greeting friends and acquaintances at the three bars. He returned to "A" Bar, and ordered a drink from Ms. Singleton.

Mr. Muckelroy stated that Ms. Breaux and her ex-husband, Andy Breaux, confronted him as he was standing at the bar. Ms. Breaux demanded an apology for the Sports Page incident. Mr. Muckelroy declined to apologize, and explained his version of the event to Mr. Breaux. After a brief conference between the Breauxs, Mr. Breaux demanded that Mr. Muckelroy apologize. Mr. Muckelroy again declined. He testified that Mr. Breaux became aggressive and threatening. Mr. Breaux put down his drink to free his hands, and adopted what Mr. Muckelroy believed was a fighting posture. Mr. Muckelroy took refuge in the well of the bar and asked Ms. Singleton to call security. According to Mr. Muckelroy, Ms. Singleton used a radio to summon a guard. He stated that

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<sup>1</sup> The parties described January 21, 2001, as a Saturday. In fact, January 21 was a Sunday. The ALJ assumes, based upon the testimony, that the events leading up to the assault occurred on January 20, and that the assault itself was on late January 20 or early January 21, and was reported to the police on January 21. For convenience the events will be described as occurring on January 21.

the Breauxs moved away from the "A" Bar area. Mr. Muckelroy did not remain at "A" Bar for the security guard to arrive; instead he went to the disc jockey's booth to talk to the manager, Mr. Cavitt.

Ms. Singleton described her recollection of the night as "vague." She stated that Mr. Muckelroy did approach her and told her another man was attempting to start a fight with him. She only recalled that there was some unspecific "problem" between Mr. Muckelroy and the other man. She did not know the name of the other man, but described him as wearing a plaid shirt. She did contact a security guard. Contrary to Mr. Muckelroy's testimony, she stated the guard was close at hand, and she waved him over to "A" Bar. According to Ms. Singleton, she pointed out the man in the plaid shirt and requested the security guard expel the man or take care of the problem. She stated that Mr. Muckelroy left the "A" Bar area as she was summoning the guard. She recalled that the security guard approached the man in the plaid shirt and spoke to him. She did not know what transpired between the guard and the man, but assumed the guard had exercised his judgment and taken care of the problem.

#### 4. The Muckelroy and Cavitt Conversation

As indicated above, Mr. Muckelroy left the "A" Bar area as Ms. Singleton was summoning the guard. Mr. Muckelroy testified that he saw Mr. Cavitt, the Graham Central manager. Mr. Cavitt was standing by the disc jockey's booth.

Mr. Muckelroy testified he told Mr. Cavitt that the Breauxs were giving him a hard time, and that they needed to leave Graham Central. Mr. Muckelroy stated he pointed out the Breauxs to Mr. Cavitt, and that Mr. Cavitt spotlighted them with a flashlight. Mr. Cavitt then told him to go to another area of Graham Central. Mr. Muckelroy went to "B" Bar.

Mr. Cavitt testified that Mr. Muckelroy approached him at the disc jockey's booth. Mr. Cavitt stated that Mr. Muckelroy described the Breauxs to him. Mr. Cavitt asserted that he and Mr. Muckelroy attempted to locate the Breauxs but were unable to do so, and that Mr. Muckelroy stated, "They are leaving. They are going out the door." Mr. Cavitt denied that he spotlighted the Breauxs using a flashlight. He belittled the idea that he could have effectively "spotlighted" anyone with a flashlight, explaining that its beam was not focused as a laser pointer. Mr. Cavitt testified he told Mr. Muckelroy that if Mr. Muckelroy saw the Breauxs he should find Mr. Cavitt, or a security guard, but not to get into a confrontation.

Mr. Ledford testified he heard the conversation between Mr. Cavitt and Mr. Muckelroy. Mr. Ledford corroborated Mr. Cavitt's version. Mr. Ledford remembered Mr. Muckelroy stating "I guess they [the Breauxs] left."

#### 5. The Page to the Disc Jockey's Booth

Mr. Muckelroy left Mr. Cavitt at the disc jockey's booth and went to "B" Bar, walking past the "C" Bar and around the dance floor. He testified that about five minutes later he was paged, by

name, over the Graham Central loudspeaker system to return to the disc jockey's booth.<sup>2</sup> He retraced his steps from "B" Bar to the booth. When he arrived he was confronted by Ms. Breaux. He testified she was yelling and demanding an apology. Mr. Muckelroy stated he moved to place a security guard between him and Ms. Breaux. He indicated he told the security guard to "get these people out of here." He then moved to "C" Bar, followed by the Breauxs.

Ms. Bryan heard the page and observed Mr. Breaux confronting Mr. Muckelroy. She did not see Mr. Muckelroy place a security guard between himself and Ms. Breaux. She did not think the confrontation was serious. She acknowledged that Mr. Muckelroy was a friend, and because of that fact, pointed the confrontation out to a security guard and requested that he keep an eye on the two. According to Ms. Bryan, the security guard said "Okay" but did nothing more than watch for a short time, and then leave to make his rounds.

#### 6. The Assault

The confrontation between Mr. Muckelroy and Ms. Breaux continued at "C" Bar. Mr. Muckelroy testified that Ms. Breaux began "flicking" the bill of the baseball cap he was wearing. He stated that Ms. Breaux was pushing against him, and that Mr. Breaux was standing nearby. He testified he asked Ms. Breaux to stop, and for Mr. Breaux to control Ms. Breaux. He stated a security guard was standing four or five feet away. Mr. Muckelroy pushed Ms. Breaux's hand away, and in response Mr. Breaux began a scuffle with him. The scuffle escalated into a fight between Mr. Muckelroy and Mr. Breaux. Ms. Breaux began to kick Mr. Muckelroy from the side. He turned and pushed her away, and was struck in the mouth and face with a beer bottle. He did not see Mr. Breaux strike him with the bottle. Mr. Muckelroy suffered a split lip, loss of teeth, and a black eye, and fell to the floor.

Ms. Bryan did not see the actual start of the scuffle, but did witness Ms. Breaux "flicking" Mr. Muckelroy's cap. She stated, however, that she thought that action occurred at the disc jockey's booth. Ms. Bryan believed Mr. Breaux threw a beer bottle at Mr. Muckelroy which broke when it struck his face.

Mr. Ledford testified he was not the security guard which Mr. Muckelroy alleged was placed between himself and Ms. Breaux, nor was he the security guard to whom Ms. Bryan spoke. He stated he saw the fight start from a position in front of the disc jockey's booth. He ran to the fight, got Mr. Muckelroy off the floor, and took him out of Graham Central.

#### 7. The Credibility of the Witnesses

The testimony in this case is contradictory on some details. Some time has passed after the incident and each witness's version of the events has become set. Ms. Singleton described her recollection as vague. Mr. Muckelroy was admittedly drinking that night. Mr. Ledford's testimony was for the most part general, as according to him, he did not witness any of the pivotal events. Mr.

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<sup>2</sup> Mr. Cavitt and Mr. Ledford denied hearing the page.

Muckelroy's claim that a police officer ignored the yelling match he described at the disc jockey's booth is not believable. Mr. Cavitt's and Mr. Ledford's testimony that they did not hear the page for Mr. Muckelroy to return to the disc jockey's booth is also difficult to believe. Even Ms. Bryan, the most credible and persuasive witness, had gaps in her memory.

The above notwithstanding, Mr. Muckelroy's testimony is generally corroborated by the other witnesses. He did have a confrontation with the Breauxs at "A" Bar, it was reported to Graham Central's security, he did make his problem known to Graham Central's management, he was summoned to a second confrontation by Graham Central's disc jockey, the second confrontation at the booth did occur, Ms. Breaux went farther than mere verbal exchanges and commenced the physical aspect of the confrontation, and a fight occurred between Mr. Muckelroy and the Breauxs.

### C. The Parties' Contentions

The Staff emphasizes that the warnings of a problem at Graham Central occurred not just once but several times. The Staff asserts that since the employees of Graham Central did not communicate with each other, nothing was done, and in the end Mr. Muckelroy was assaulted. The Staff noted that this was an aggravated breach of the peace, because a weapon (a beer bottle) was used to injure Mr. Muckelroy. The Staff recommended that Respondent's permits be suspended for 45 to 60 days, or that alternatively, Respondent pay a civil penalty of \$1,000.00 for each day of the proposed suspension.

Respondent notes that this is not a case of strict or absolute liability on Graham Central's part. Respondent argues that fights happen in bars, and that the question is whether Respondent takes steps to try to prevent fights. Respondent points out it hired armed security guards (who were certified peace officers) to keep its premises peaceable. Respondent notes that it has no prior history of fights. Respondent noted that when Mr. Muckelroy complained to Ms. Singleton about the Breauxs, she contacted security. Mr. Muckelroy left, and did not wait for security to appear. Respondent argues that if he had waited for security, one or both of the parties might have been ejected from Graham Central. Respondent argues that Mr. Muckelroy bore some responsibility for what "he did or didn't do." Respondent urges that Graham Central's employees did everything they could based upon what Mr. Muckelroy told them.

### D. Analysis, Conclusion, and Recommendation

#### 1. Did a breach of the peace occur at Graham Central?

A "breach of the peace" is defined by common law. *Turner v. State*, 901 S.W.2d 767, 770(Tex.Ct.App. - Houston [14th Dist.] 1995).

The term "breach of the peace" is generic, and includes all violations of the public peace and order, or decorum; in other words, it signifies the offense of disturbing the public peace or tranquility enjoyed by the citizens of a community; a disturbance of the public tranquility by any act or conduct inciting to violence or tending to provoke or excite others to break the peace; a disturbance of public order by an act of violence

or by an act likely to produce violence, or which, by causing consternation and alarm disturbs the peace and quiet of the community. By "peace," as used in this connection, is meant the tranquility enjoyed by the citizens of a municipality or a community where good order reigns among its members....

The offense may consist of acts of public turbulence or indecorum in violation of the common peace and quiet, of an invasion of the security and protection which the laws afford to every citizen, or of acts such as tend to excite violent resentment or to provoke or excite others to break the peace. Actual or threatened violence is an essential element of a breach of the peace. Either one is sufficient to constitute the offense. Accordingly, where means which cause disquiet and disorder, and which threaten danger and disaster to the community, are used, it amounts to a breach of the peace, although no actual personal violence is employed. Where the incitement of terror or fear of personal violence is a necessary element, the conduct or language of a wrongdoer must be of a character to induce such a condition in a person of ordinary firmness.

*Woods v. State*, 213 S.W.2d 685, 687 (Tex. Crim. App. 1948). Whether an act or acts constitute a breach of the peace is determined on a case by case basis. *Turner* at 770.

The initial confrontation between Mr. Muckelroy and the Breauxs, during which Mr. Muckelroy took refuge in "A" Bar and requested Ms. Singleton to summon security was a "breach of the peace." According to Mr. Muckelroy, Mr. Breaux took an aggressive stance, and emptied his hands preparatory to what Mr. Muckelroy believed was an attack. The confrontation in front of the disc jockey's booth between Mr. Muckelroy and Ms. Breaux verged on a breach of the peace. Mr. Muckelroy's meeting again with the Breauxs after they had disappeared, and the fact they had him paged, gave rise to Mr. Muckelroy's renewed apprehension. The episode in which Ms. Breaux "flicked" Mr. Muckelroy's cap was a breach of the peace. Clearly, her "flicking" the cap was intended to provoke Mr. Muckelroy. Unquestionably, the final fight and assault by bottle on Mr. Muckelroy were breaches of the peace.

2. Were these breaches of the peace not beyond the control of the Respondent?

The initial incident at the "A" Bar occurred without warning. After that incident, the subsequent confrontations were within the control of Respondent. As Respondent asserted, it hired certified peace officers as armed, uniformed security guards. Mr. Cavitt stated that at least three and as many as six security guards were working on that night. The evidence also demonstrated that Graham Central has a larger number of persons circulating on the floor, looking after the tables. Respondent thus had a sizeable force of persons available to quell any chance of disturbance between Mr. Muckelroy and the Breauxs, if they had been utilized.

For example, as a result of the "A" bar incident, a security guard was placed in contact with the Breauxs, and Mr. Muckelroy was in contact with Mr. Cavitt and Mr. Ledford. Yet Mr. Cavitt and Mr. Ledford did not see the Breauxs talking to the security guard, and the guard talking to the Breauxs did not contact his manager. Mr. Muckelroy was sent on his way by Mr. Cavitt with the

admonition not to get into trouble. A fair inference is that the Breauxs received a similar warning.

Five minutes later Mr. Muckelroy was paged over Respondent's loudspeakers to come to the disc jockey's booth. Undisputedly, the confrontation renewed. Mr. Cavitt and Mr. Ledford were on notice of Mr. Muckelroy's fears. Their unexplained failure to note and react to the page allowed the confrontation to grow. Ms. Bryan pointed out the confrontation to a security guard, who apparently not having knowledge of the earlier problem, merely observed Mr. Muckelroy and Ms. Breaux and did nothing.

3. Did these breaches of the peace result from Respondent's improper supervision of persons permitted to be in Graham Central?

If Mr. Muckelroy is to be completely believed, he alerted Graham Central to his problem three times before the fight ensued. Discounting his claim of placing a security guard between himself and Ms. Breaux, and his claim that a security guard was standing a few feet away at "C" Bar as the situation escalated, it is undisputed that he contacted Ms. Singleton and Mr. Cavitt. Aside from telling Mr. Muckelroy to stay out of trouble, Mr. Cavitt and the other employees did not carry out their duty to supervise Mr. Muckelroy. The mere presence of armed security guards did not stop the first or any subsequent confrontation between the parties. Supervision should be proactive and not merely reactive.

4. What sanction is appropriate?

A. General

The TABC may cancel or suspend Respondent's permits for a breach of the peace. §§ 28.11, 32.17(a)(8), & 32.24 of the Code. Generally, if the TABC is authorized to suspend a license under the Code, it is required to give the permittee an opportunity to pay a civil penalty instead. § 11.64(a) of the Code. If, however, the basis for suspension is a violation of § 28.11 of the Code, the case must be examined to determine if the Respondent will be allowed to pay a civil penalty. *Id.*; 16 TEX. ADMIN. CODE (TAC) § 37.61(a)(3). The TABC must determine what type of permit is in question and whether the sale of alcoholic beverages "constitutes the primary or partial source" of the permittee's business. *Id.* § 37.61(b)(1). The type of violation must be considered, *Id.* § 37.61(b)(2), and the permittee's past record. *Id.* § 37.61(b)(3). The TABC must also consider "aggravating or ameliorating circumstances" such as whether the permittee acted intentionally or recklessly, the "number, kind and frequency" of the permittee's violations, whether any person was killed or injured as a result of the violation, and whether the "character and nature" of the permittee's operation "are reasonably calculated to avoid violations." *Id.* § 37.61(c).

Under the TABC's "standard penalty chart" a violation of § 28.11 of the Code involving "a simple breach of the peace with no serious bodily injury or deadly weapon involved" calls for a suspension of 10 to 15 days for a first offense. A violation of § 28.11 of the Code involving "an aggravated breach of the peace with a serious bodily injury or involving a deadly weapon" calls for a suspension of 45 to 60 days for a first offense. *See* 16 TAC § 37.60.

A civil penalty should have an economic impact similar to what suspension would have on the Respondent. "The amount of the civil penalty may not be less than \$150 or more than \$25,000 for each day the permit or license was to have been suspended." § 11.64(a) of the Code.

B. Should Respondent have the opportunity to pay a penalty?

- Respondent holds private-club-registration permit N-461939, private-club-late-hours permit NL-461940, and beverage-cartage permit PE-461941.
- The sale of alcoholic beverages constitutes the primary source of Respondent's business.
- Respondent committed a "health, safety and welfare violation."
- Respondent has no past record of breaches of the peace, and has only one other violation.
- Respondent did not act intentionally or recklessly.
- Respondent's violations are few and infrequent, but both have been serious.
- Mr. Muckelroy was injured as a result of Respondent's violation.
- The "character and nature" of the Respondent's operation is "reasonably calculated to avoid violations," because Respondent does employ armed security guards.

Respondent should be allowed to pay a penalty as an alternative to suspension, as recommended by the Staff.

C. Was this an aggravated breach of the peace?

The standard penalty chart draws a distinction between a "simple" and an "aggravated" breach based upon whether there was "serious bodily injury or deadly weapon involved (as defined in the Texas Penal Code)." 16 TAC § 37.60. The Penal Code defines a "deadly weapon" as "anything that in the manner of its use or intended use is capable of causing death or serious bodily injury." TEX. PEN. CODE ANN. § 1.07(17)(B)(Vernon 2002). "Bodily injury" means "physical pain, illness, or any impairment of physical condition." *Id.* § 1.07(8). "Serious bodily injury" means "bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." *Id.* § 1.07(46).

Mr. Muckelroy was struck in the mouth and face with a beer bottle. He suffered a split lip, loss of teeth, and a black eye. Under the circumstances, the beer bottle was used as a deadly weapon. It caused serious permanent disfigurement to Mr. Muckelroy. This was an aggravated breach of the peace.

D. What length of suspension is appropriate?

The standard penalty chart prescribes a minimum suspension of 45 days, and a maximum of 60 days. The Staff indicated it had no objection to the minimum 45 day suspension, which the ALJ finds is appropriate. The facts do not present any "mitigating circumstances" in the occurrence of the violation that would allow a deviation from the standard penalty chart. 16 TAC § 37.60(f).

E. What civil penalty would have an economic impact similar to the suspension?

As noted, the minimum penalty is \$150 per day, and the maximum is \$25,000 per day. The Staff recommended a penalty of \$1,000 per day. During the hearing, Mr. Cavitt was asked what the daily income of Graham Central was, but could not answer the question. The evidence indicated that (on weekends) Graham Central might have between 1,000 and 1,400 patrons a day. Graham Central has three bars with at least nine cash registers. The Staff argued that a dollar a patron a day would be a minimum measure of the economic impact of the suspension. Respondent disputed Staff's \$1,000 per day in argument, but offered no evidence of the actual impact of a suspension. Respondent's officers were present at the hearing and could have testified as to the economic impact of a 45 day suspension on Respondent. The ALJ infers that Respondent's failure to offer evidence on the economic impact of a suspension meant that the impact would be more than \$1,000 per day. The ALJ finds that a penalty of \$1,000 per day for each of the 45 days of the proposed suspension would have an economic impact similar to what suspension would have on the Respondent.

5. Recommendation

The ALJ recommends that the TABC find that Respondent violated the Code and impose a suspension of Respondent's permits for 45 days, or an alternative penalty of \$45,000.

III. FINDINGS OF FACT

1. Respondent's licensed premises (hereafter referred to as Graham Central) are located at 1016 McCann Road, Longview, Gregg County, Texas.
2. Respondent holds private-club-registration permit N-461939, private-club-late-hours permit NL-461940, and beverage-cartage permit PE-461941.
3. Graham Central has three bars located around a large dance floor. The bars are called "A" Bar, "B" Bar, and "C" Bar. "A" Bar runs along the wall containing the entrance doors. "B" Bar runs along the wall perpendicular to and to the left of "A" Bar. "C" Bar runs along the wall perpendicular to and to the right of "A" Bar. A disc jockey's booth is located between "A" Bar and "C" Bar.
4. On January 21, 2001, Russell Muckelroy, a patron at Graham Central, was assaulted by two other patrons of the establishment.

5. Mr. Muckelroy and Lena Breaux had a personal problem arising from an incident that did not occur at Graham Central.
6. Ms. Breaux and her ex-husband, Andy Breaux, confronted Mr. Muckelroy at Graham Central's "A" Bar.
7. Mr. Muckelroy believed Mr. Breaux was about to begin a fight.
8. Mr. Muckelroy reported his fear to Shonna Singleton, who was bartending in "A" Bar, and asked Ms. Singleton to call security.
9. Ms. Singleton contacted a security guard who was close at hand, pointed out Mr. Breaux, and requested the security guard expel the man or take care of the problem.
10. The security guard approached Mr. Breaux and spoke to him.
11. Mr. Muckelroy left the "A" Bar area as Ms. Singleton was summoning the guard, and contacted Mr. Cavitt, the Graham Central manager, who was standing by the disc jockey's booth.
12. Mr. Muckelroy told Mr. Cavitt the Breauxs were harassing him, and that they needed to leave Graham Central.
13. Mr. Muckelroy described the Breauxs to Mr. Cavitt, and they unsuccessfully attempted to locate the Breauxs.
14. Mr. Cavitt told Mr. Muckelroy that if Mr. Muckelroy saw the Breauxs again, he should find Mr. Cavitt or a security guard, but not to get into a confrontation.
15. Mr. Muckelroy left Mr. Cavitt at the disc jockey's booth and went to "B" Bar, walking past the "C" Bar and around the dance floor.
16. Five minutes after he left the booth, Mr. Muckelroy was paged, by name, over the Graham Central loudspeaker system to return to the disc jockey's booth.
17. Mr. Cavitt and Mr. Ledford, security guard, denied hearing the page. Sarah Bryan, bartending in "C" Bar, heard the page.
18. Mr. Muckelroy returned to the booth from "B" Bar, and when he arrived he was confronted by Ms. Breaux.
19. Ms. Breaux was yelling at Mr. Muckelroy and demanding an apology.
20. Ms. Bryan observed Mr. Breaux confronting Mr. Muckelroy.

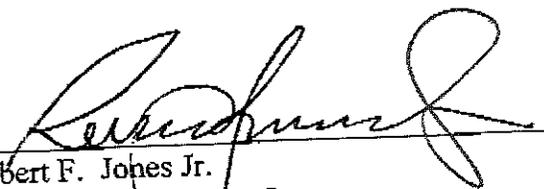
21. Ms. Bryan witnessed Ms. Breaux "flicking" the bill of the baseball cap Mr. Muckelroy was wearing.
22. Ms. Bryan pointed the confrontation out to a security guard and requested that he keep an eye on the two. The security guard did nothing more than watch the two, and then left.
23. Mr. Muckelroy moved to "C" Bar, followed by the Breauxs.
24. Ms. Breaux was pushing against Mr. Muckelroy, and continued to "flick" his cap. Mr. Breaux was standing nearby.
25. Mr. Muckelroy asked Ms. Breaux to stop, and asked Mr. Breaux to control Ms. Breaux.
26. Mr. Muckelroy pushed Ms. Breaux's hand away, and in response Mr. Breaux began a scuffle with him. The scuffle escalated into a fight between Mr. Muckelroy and Mr. Breaux.
27. Ms. Breaux began to kick Mr. Muckelroy from the side.
28. Mr. Muckelroy turned and pushed Ms. Breaux away, and was struck in the mouth and face with a beer bottle.
29. Mr. Muckelroy suffered a split lip, loss of teeth, and a black eye.
30. The security guard summoned by Ms. Singleton, Mr. Cavitt, Mr. Ledford, and the security guard notified by Ms. Bryan did not communicate with each other or other employees of Respondent concerning the confrontation between Mr. Muckelroy and the Breauxs.
31. The incidents leading up to the assault on Mr. Muckelroy, as set out in Findings 8 - 30, were within the control of Respondent's employees.
32. Respondent's employees failed to supervise Mr. Muckelroy and the Breauxs.
33. The sale of alcoholic beverages "constitutes the primary or partial source" of Respondent's business.
34. Respondent committed a "health, safety and welfare violation."
35. Respondent has no past record of breaches, and has only one other violation.
36. Respondent did not act intentionally or recklessly.
37. Respondent's violations are few and infrequent, but both have been serious.
38. Mr. Muckelroy was injured as a result of Respondent's violation.

39. The character and nature of the Respondent's operation is reasonably calculated to avoid violations.
40. Graham Central might have between 1,000 and 1,400 patrons a day.
41. One dollar a patron a day, or \$1,000 a day, is a minimum measure of the economic impact of a suspension on Respondent.
42. On February 4, 2002, Staff issued a notice of hearing notifying all parties that a hearing would be held concerning Staff's allegations and informing the parties of the time, place, and nature of the hearing, of the legal authority and jurisdiction under which the hearing was to be held, giving reference to the particular sections of the statutes and rules involved, and including a short, plain statement of the matters asserted.
43. On July 29, 2002, a hearing was convened before ALJ Robert F. Jones Jr., at 3323 South Southwest Loop 323, Tyler, Texas. Staff was represented by Dewey A. Brackin, Staff Attorney. Respondent was represented by its counsel David Moore, and appeared through its officers. The record closed on July 29, 2002.

#### IV. 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 2002).
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 2002).
4. Based on the foregoing findings, a breach of the peace occurred on Respondent's licensed premises.
5. Based on the foregoing findings, the breach of the peace was not beyond the control of the Respondent.
6. Based on the foregoing findings, the breach resulted from Respondent's improper supervision of persons permitted to be on the licensed premises.
7. Based on the foregoing findings, the breach of the peace was aggravated by the use of a deadly weapon.
8. Based on the foregoing findings, Respondent should have the opportunity to pay a civil penalty.
9. Based on the foregoing findings and conclusions, Respondent's permits should be suspended for 45 days.
10. Based on the foregoing findings and conclusions, Respondent should be allowed to pay a civil penalty of \$45,000 as an alternative to suspension.

SIGNED September 4, 2002.

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

**DOCKET NO. 593752**

IN RE LONGVIEW TEX N.P., INC.	§	BEFORE THE
D/B/A GRAHAM CENTRAL STATION	§	
PERMIT NO. N-461939 & PE-461940	§	
	§	TEXAS ALCOHOLIC
	§	
GREGG COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-1551)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 4th day of November, 2002 , 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 on July 29, 2002, and adjourned the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on September 4, 2002. 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 exceptions have been filed by the Respondent; no replies were filed by the Petitioner.

The Acting 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 Acting 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-461939 & PE-461940 are hereby **SUSPENDED**.

**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of **\$45,000.00** on or before the **8th day of January, 2003**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **forty-five (45) days, beginning at 12:01 A.M. on the 15th day of January, 2003.**

**This Order will become final and enforceable on November 25, 2002**, 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 4th day of November, 2002.

On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/yt

The Honorable Robert F. Jones, Jr.  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE: (903) 534-7076**

Rex A. Nichols  
**ATTORNEY FOR RESPONDENT**  
P. O. Box 2623  
Longview, Texas 75606  
**VIA FACSIMILE: (903) 757-2287**

Dewey A. Brackin  
**ATTORNEY FOR PETITIONER**  
Legal Division, Texas Alcoholic Beverage Commission

Licensing Division

Longview District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 593752 REGISTER NUMBER:

NAME: Longview Tex N.P., Inc. TRADENAME: Graham Central Station

ADDRESS: 1016 McCann Road, Longview, Gregg County, Texas

DATE DUE: January 8, 2003

PERMITS OR LICENSES: N-461939 & PE-461940

AMOUNT OF PENALTY: \$\$45,000.00

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Amount remitted \$ \_\_\_\_\_ Date remitted \_\_\_\_\_

If you wish to a 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 8TH DAY OF JANUARY, 2003, 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

For Overnight Delivery: 5806 Mesa Drive, Austin, Texas, 78731

**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.

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Signature of Responsible Party

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Street Address

P.O. Box No.

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City

State

Zip Code

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Area Code/Telephone No.