

SOAH DOCKET NO. 458-02-0756

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
VS.	§	
	§	
	§	OF
RENEWAL APPLICATION OF	§	
EMERSON JONES VANCE	§	
D/B/A VANCE'S RESTAURANT & BAR	§	
BEXAR COUNTY, TEXAS	§	
(TABC CASE NO. 594398)	§	ADMINISTRATIVE HEARINGS

**ORDER**

**CAME ON FOR CONSIDERATION** this 28th day of February, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Cyrena Benson. The hearing convened on October 23, 2001, and the record was closed on November 27, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 31, 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 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. MB-472098 & LB-472099 are hereby **SUSPENDED**.

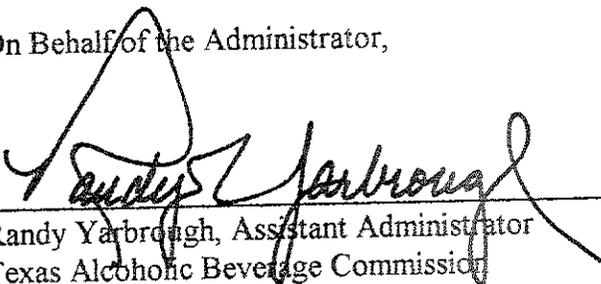
**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of \$4,500.00 on or before the 1st day of May, 2002, all rights and privileges under the above described permits will be **SUSPENDED for a period of thirty (30) days, beginning at 12:01 A.M. on the 8th day of May, 2002.**

**This Order will become final and enforceable on March 21, 2000, 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 28th day of February, 2002.**

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/yt

Administrative Law Judge  
State Office of Administrative Hearings  
San Antonio, Texas  
**VIA FACSIMILE: (210) 308-6854**

Lawrence Letchford  
**ATTORNEY FOR RESPONDENT**  
19315 Fm. 2252, Suite 310  
Garden Ridge, Tx 78206  
**VIA FACSIMILE: (801) 659-4915**

Dewey A. Brackin  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
San Antonio District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 594398

REGISTER NUMBER:

NAME: Emerson Jones Vance

TRADENAME: Vance's Restaurant & Bar

ADDRESS: 111 Daniel Road, San Antonio, Bexar County, Texas 78220-2115

DATE DUE: May 1, 2002

PERMITS OR LICENSES: MB-472098 & LB-472099

AMOUNT OF PENALTY: \$4,500.00

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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 1<sup>ST</sup> DAY OF MAY, 2002, 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.

\_\_\_\_\_  
Signature of Responsible Party

\_\_\_\_\_  
Street Address P.O. Box No.

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Area Code/Telephone No.

DOCKET NO. 458-01-3584

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
V.	§	OF
	§	
EMERSON JONES VANCE	§	
D/B/A VANCE'S RESTAURANT & BAR	§	
PERMIT NO. MB-472098 & LB-472099	§	
BEXAR COUNTY, TEXAS	§	
(TABC CASE NO. 594398)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (Staff) brought this disciplinary action against Emerson Jones Vance d/b/a Vance's Restaurant & Bar (Respondent), alleging that Respondent's agent or employee exposed or permitted the exposure of a person's genitalia in violation of the Texas Alcoholic Beverage Code (Code). Staff further alleged that Respondent, or his agent or employee, engaged in or permitted an act of sexual contact intended to arouse or gratify sexual desires in violation of the Code. Staff requested that Respondent's permit be suspended. The Administrative Law Judge (ALJ) recommends a fifteen day suspension for each violation and that Respondent be given an opportunity to pay a civil penalty in lieu of suspension in the amount of \$4500.00.

**I. Jurisdiction, Notice, and Procedural History**

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are set out in the proposed findings of fact and conclusions of law, without further discussion here.

State Office of Administrative Hearings ALJ Cyrena Benson convened the hearing in this matter on October 23, 2001, in the San Antonio office of the State Office of Administrative Hearings, 10300 Heritage Blvd., Suite 250, San Antonio, Bexar County, Texas. Staff was represented by Dewey Brackin. Respondent was represented by Lawrence Letchford, Attorney. Staff and Respondent introduced testimony. No exhibits were admitted into evidence. The record was closed on November 27, 2001. No additional evidence was submitted.

**II. Legal Standard**

TABC is authorized to suspend for not more than 60 days or cancel a permit or license, pursuant to §61.71(a)(1) of the Code, if a licensee or permittee violates the Code. In this case, violations of Code provisions §§11.61(b)(2), 104.01(2) and 104.01(6) are alleged.

Section 104.01(2) of the Code provides that no licensee, nor his agent or employee, may engage in conduct which is lewd, immoral, or offensive to public decency, including the exposure of a person or permitting a person to expose his person.

Section 104.01(6) of the Code provides that no licensee, nor his agent or employee, may engage in conduct on the premises which is lewd, immoral, or offensive to public decency, including permitting lewd or vulgar entertainment or acts.

The standard of proof required to establish a violation is that required in a civil case: the preponderance of the evidence. The trier of fact must ask, if weighing all the evidence, the party with the burden of proof has shown by 51% of the evidence that the alleged violation occurred. Staff bears the burden of proof to show any alleged violations occurred.

When suspension of a permit or a license is authorized, the permittee must be given an opportunity to pay a civil penalty in lieu of suspending the permit. The amount may not be less than \$150 nor more than \$25,000 for each day the permit was to have been suspended. If the penalty is not paid before the sixth day after the permittee is notified of the amount, the permittee loses the opportunity to pay it, and the permit's suspension shall be imposed. In determining the amount of the penalty, Texas Alcoholic Beverage Commission is directed to consider the economic impact a suspension would have on the permittee. [See Code §11.64.]

### **III. Evidence**

Staff alleged that Respondent's agent or employee engaged in sexual contact with a customer during a "table dance" and also during this dance, Respondent's agent or employee exposed her anus to the customer. In support of these allegations, Staff presented the testimony of Texas Alcoholic Beverage Commission Agent Mike Hodges.

On March 10, 2001, Agent Hodges was on the licensed premises, Vance's Restaurant and Bar, to investigate complaints which had been received concerning the establishment. When he first arrived, Agent Hodges was attempting to locate the manager to discuss the complaints. However, almost immediately he saw two dancers dancing for a customer in a fairly well lit area. He saw one of the dancers, later identified as Christina Esqueda, step up on the chair that the customer was sitting in. She stood with one foot on the chair between the customer's legs and had her other leg over the customer's shoulder. Ms. Esqueda then grabbed the customer's face and put it in her pelvic/pubic region. The customer then began licking Ms. Esqueda in her genital area over her costume, which the agent stated was approximately a one inch wide strip of material. Ms. Esqueda never pushed the customer away or took any evasive action when this was occurring. This continued for a few minutes and then Ms. Esqueda stepped down from the chair and continued dancing in front of the customer. While dancing, Ms. Esqueda bent over and grabbed her buttocks, exposing her anus to the customer. Agent Hodges testified that Ms. Esqueda did this several times and that her "G-string" did not cover her anus. The agent was approximately three feet away from the customer when these acts occurred.

When the dance was over, Agent Hodges contacted the manager on duty and asked him if he had seen what had happened. The manager stated he had and that he would get the owner. When Mr. Vance arrived he said that he had talked to his dancers about this before. Agent Hodges then contacted Ms. Esqueda. She did not deny her actions and told him that other girls did it. Other agents then arrived and the customer and Ms. Esqueda were arrested.

Respondent presented the testimony of two witnesses, Ms. Esqueda and the Respondent Mr.

Emerson Vance. Ms. Esqueda testified she had been working for Mr. Vance for about six months. She met Agent Hodges for the first time that night of March 10, 2001. The agent approached her after she finished dancing for the customer and told her she had been “grinding” the customer. Ms. Esqueda testified the customer was seated in a chair and that she danced in front of him. She never climbed on the chair and her feet remained on the ground the entire dance. She did turn around in front of the customer while dancing, but she was far away from the customer at that point. She described the outfit she was wearing to dance as a two-piece outfit with a shirt top and a skirt bottom that had a “T-back” underneath. She took the skirt off while she danced for the customer. She stated the outfit covered her entire genital area and the bottom is approximately five inches wide in front and then three to four inches wide in the back. She stated she never allowed any contact with the customer. Ms. Esqueda testified she was charged with sexual lewdness which was then reduced to disorderly conduct. Ms. Esqueda pled no contest to the disorderly conduct.

Respondent’s testimony began with a description of his establishment as a bar with dancers. He does not have a sexually oriented business license. Mr. Vance requires dancers to wear garments on their bottoms that fully cover their genital area. He described the bottoms he requires the dancers to wear as bikini bottoms and that they are sufficient to cover a dancer’s anus. On the date in question, Mr. Vance was in his office and saw, via a remote camera, the agent come in. There are numerous cameras placed throughout the establishment. Mr. Vance came out of his office and the agent was already standing at the lap dance area. The lap dance area is a separate area of the bar which is divided by beads which can be seen through. There are no cameras in the lap dance area. According to Mr. Vance, the agent was standing facing him, and that they were both on one side of the beads while Ms. Esqueda and the customer were on the other. Mr. Vance saw Ms. Esqueda dancing for the customer and stated that her feet stayed on the ground and the customer’s hands stayed in his lap. He saw no contact between the customer and Ms. Esqueda.

Mr. Vance testified that it was his belief that Agent Hodges became offended when Ms. Esqueda did not stop dancing when he entered. Mr. Vance stated that most of the dancers stop dancing when agents come in, and it in his opinion Agent Hodges was offended because Ms. Esqueda continued her dance. When asked why he stood with Agent Hodges and watched the dance instead of approaching the agent, Mr. Vance stated he did not want to interrupt what the agent was doing.

#### **IV. Analysis**

The ALJ concludes that Staff has met its burden of proving the issues by a preponderance of the evidence. The agent’s testimony regarding the events is clear and credible. Ms. Esqueda’s testimony was unconvincing and it appeared she needed to be led on many of her answers. Mr. Vance’s version of events is equally not credible.

The entire testimony regarding the establishment’s video cameras is illogical. Mr. Vance testified that there are cameras placed throughout the bar, but that there are none on the sectioned-off area where private dances are performed. He also testified that he makes sure his dancers wear the appropriate clothing and that no touching occurs between dancers and customers. It is suspect that the only portion of the bar not covered by cameras is where private dances occur. If there is no illegal activity occurring during these private dances, there should be no reason why this area is not also equipped with a camera.

## V. Proposed Findings Of Fact

1. Emerson Jones Vance, d/b/a Vance's Restaurant & Bar (Respondent) holds a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit MB-472098 and LB-472099, for the premises located at 111 Daniel Road, San Antonio, Bexar County, Texas.
2. On August 20, 2001, Respondent was provided with notice of hearing. A hearing was convened before the State Office of Administrative Hearings on October 23, 2001. Both parties appeared and evidence was received. No challenges to the sufficiency of notice or jurisdiction were made by either party. The record was closed on November 27, 2001.
3. On March 10, 2001, Agent Mike Hodges made a visit to Vance's Restaurant & Bar.
4. While there, Agent Hodges observed a dancer by the name of Christina Esqueda perform a dance for a customer.
5. While dancing, Ms. Esqueda allowed a customer to lick her genital area over her costume.
6. During the same dance, Ms. Esqueda bent over and exposed her anus to the customer.

## CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. Ch 5 and §§6.01, 61.71, 101.64 and 104.01(5).
2. The State Office of Administrative Hearings had jurisdiction over all matters relating 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. Ch 2003.
3. Respondent received adequate notice of the hearing.
4. Based on the above Findings of Fact, Respondent's employee engaged in conduct which was lewd, immoral, or offensive to public decency by exposing her person in violation of TEX. ALCO. BEV. CODE ANN. §§104.01(2) and 11.61(b)(2).
5. Based on the above Findings of Fact, Respondent's employee engaged in conduct which was lewd, immoral, or offensive to public decency by performing a lewd or vulgar act, specifically, an act of sexual contact intended to arouse or gratify sexual desires in violation of TEX. ALCO. BEV. CODE ANN. §§104.01(6) and 11.61(b)(2).
6. Based on the above Findings of Fact and Conclusion of Law number 4, Respondent's Mixed Beverage Permit MB-472098 and Mixed Beverage Late Hours Permit LB-472099, should be suspended for fifteen days.
7. Based on the above Findings of Fact and Conclusion of Law number 5, Respondent's Mixed Beverage Permit MB-472098 and Mixed Beverage Late Hours Permit LB-472099, should be suspended for fifteen days.

8. Based on the foregoing Findings of Fact and Conclusions of Law, and pursuant to TEX. ALCO. BEV. CODE ANN. §11.61, Respondent should be permitted to pay a civil penalty of \$4500.00 in lieu of the suspension of his license.

SIGNED this 31<sup>st</sup> day of January, 2002.



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CYRENA BENSON  
Administrative Law Judge  
STATE OFFICE OF ADMINISTRATIVE HEARINGS