

TABC DOCKET NO. 587384

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION, <b>Petitioner and Protestant</b>	§	
LARRY AND PAT THOMAS AND PANAMA	§	
HISTORIC HOMEOWNER'S ASSOCIATION,	§	
<b>Protestants</b>	§	
	§	
VS.	§	
	§	
ORIGINAL APPLICATION OF	§	ALCOHOLIC
JOHN I. GLENN	§	
D/B/A CLUB STRAND MB, LB, <b>Respondent</b>	§	
GALVESTON COUNTY, TEXAS	§	
<b>(SOAH DOCKET NO. 458-09-6129)</b>	§	BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

The matter is before the Administrator, Texas Alcoholic Beverage Commission for review, consideration and entry of the final agency decision.

After proper notice was given, this case was heard by Administrative Law Judge Rex A. Shaver. The hearing convened on October 16, 2009 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 December 10, 2009. The 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. No exceptions were filed. Petitioner filed a Motion to Modify the Proposal for Decision. No reply was filed to Petitioner's Motion to Modify.

**It is Ordered** that the Findings of Fact and Conclusions of Law made and entered into the Proposal for Decision by the Administrative Law Judge are adopted, without change by the Administrator as the Findings of Fact and Conclusions of Law of the Texas Alcoholic Beverage Commission.

**IT IS THEREFORE ORDERED** that the Petitioner's Motion to Modify PFD is denied.

**IT IS FUTHER ORDER** that the Original Application of John I. Glenn d/b/a Club Strand for the issuance of a Mixed Beverage Permit and Mixed Beverage Late Hours Permit be **GRANTED**.

This is a Final Order of the Commission. The terms of this Order will be enforced without further notice to the Respondent on June 28, 2010, unless a Motion for Rehearing is filed before that date.

SIGNED May 26, 2010.

  
 \_\_\_\_\_  
 Sherry K-Cook, Assistant Administrator  
 Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the agency order in the above matter was provided to each party in the manner indicated below on June 3, 2010.



Texas Alcoholic Beverage Commission

Hon. Rex A. Shaver  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
2020 N. Loop West, Suite 111  
Houston, Texas 77018  
**VIA FACSIMILE: (713) 812-1001**

John I. Glenn  
d/b/a Club Strand  
**RESPONDENT**  
2413 Strand  
Galveston, Texas 77550  
**VIA U. S. FIRST CLASS MAIL**

Larry and Pat Thomas  
**PROTESTANTS**  
903 Murphy  
Friendswood, Texas 77546  
**VIA U. S. FIRST CLASS MAIL**

Carlos Garza  
**PROTESTANT ATTORNEY**  
2401 N. Logan, Suite E  
Texas City, Texas 77590  
**VIA U.S. FIRST CLASS MAIL**

Panama Historic Homeowner's Association  
Attn: Mary Jo Naschke  
**PROTESTANT**  
202 Rosenberg, #102  
Galveston, Texas 77550  
***VIA U. S. FIRST CLASS MAIL***

Ramona M. Perry  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Enforcement Division

# State Office of Administrative Hearings

Cathleen Parsley  
Chief Administrative Law Judge

December 10, 2009

Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

**VIA REGULAR MAIL**

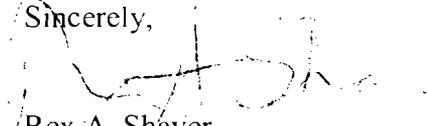
**RE: Docket No. 458-09-6129; Texas Alcoholic Beverage Commission vs. John I. Glenn d/b/a Club Strand**

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,



Rex A. Shaver  
Administrative Law Judge

RAS:mr  
Enclosure

cc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**  
Ramona Perry, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W. 20<sup>th</sup> Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL**  
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**  
Carlos Garza, Attorney at Law, 2401 N. Logan, Suite E, Texas City, Texas 77590 -**VIA REGULAR MAIL**  
Panama Historic Homeowner's Association, Mary Jo Nasehke, Protestant, 202 Rosenberg #202, Galveston, Texas 77550 - **VIA REGULAR MAIL**  
Larry and Pat Thomas, Protestants, 903 Murphy, Friendswood, Texas 77546 - **VIA REGULAR MAIL**



On August 24, 2009, Petitioner issued its amended notice of hearing, directed to Respondent. On October 16, 2009, a hearing convened before SOAH ALJ Rex A. Shaver at the offices of the State Office of Administrative Hearings, 2020 N. Loop West, Suite 111, Houston, Harris County, Texas. Petitioner was represented at the hearing by Ramona Perry, Staff Attorney. Protestants Larry and Pat Thomas did not appear. Matt Miller, a member of the Panama Historic Homeowner Association appeared. Respondent was present and was represented at the hearing by Carlos Garza, attorney. The record closed on October 16, 2009.

## II. DISCUSSION

### A. Applicable Law

Petitioner challenges Respondent's original application for a Mixed Beverage Permit and Mixed Beverage Late Hours Permit on the basis of §11.46(a) (6), and (8) of the Texas Alcoholic Beverage Code (Code) which provide:

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

(6) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad; . . .

(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. Evidence

#### 1. Petitioner's Evidence

##### a. Delores Glenn

Delores Glenn testified that she is the sister of the Respondent, John Ivan Glenn. She said that she had observed Respondent to be intoxicated on several occasions. She believes that

Respondent is an alcoholic. That Respondent becomes angry and abusive when intoxicated. She alleged that Respondent beats his wife, Teresa Glenn. Ms. Glenn was aware that Respondent had been arrested for driving while intoxicated, a violation concerning a hand gun, and domestic violence.

Ms. Glenn testified that she had been in the construction business with Respondent. At the time of the hearing she was engaged in a lawsuit against Respondent concerning the dissolution of that partnership and the distribution of equipment and other assets. She testified that a temporary injunction had been issued against Respondent in that matter. Based upon her experience with Respondent, she did not believe “he would do things the right way” if granted the requested permits by TABC.

On cross-examination Ms. Glenn confirmed that she has also been known as Ellen Singleton, Ellen McAllister and Ellen Achenbeck. She admitted that she had criminal convictions for forgery, a bad check and fraud of the government. One conviction was for a felony. The witness testified that she and Respondent have disliked each other all their lives.

**b. William R. Chatham, TABC Agent**

Agent Chatham testified that in response to the protests to the Respondent’s application, he was assigned the task of investigating Respondent’s criminal history. His investigation uncovered some misdemeanors, including two D.W.I. charges. One was not prosecuted and the other was disposed of as a lesser charge. Agent Chatham found a handgun charge, however the final outcome or conviction was unknown. He also found a felony indictment for theft and a family violence charge against the Respondent. The felony theft matter was pending, and the family violence charge was not prosecuted after the alleged victim signed an affidavit of non-prosecution. Mr. Chatham did not identify any felony convictions against Respondent.

**c. Matt Miller**

Mr. Miller a member of the Panama Historic Homeowners Association testified. His home is located at 202 25<sup>th</sup> Street, next to 2413 Strand, Galveston, Texas, the address for which the Respondent has requested permits. Mr. Miller is concerned that having another club in the neighborhood will increase late night activity, loud music and police calls to the neighborhood. He stated that there are four TABC permitted businesses in the 2400 block of Strand. He was aware that the City of Galveston Specific Use Permit had placed restrictions on live music and parking and added requirements for security on the premises.

**d. Teresa Diane Glenn**

Mrs. Glenn is the wife of the Respondent. She has resided with him since May of 2009 at 2413 Strand in a residence above the location for which the permits are being sought. She identified police photographs (TABC Exhibit 10, 1-21) as being true and accurate depictions of her injuries and loss of blood on April 12, 2009. She explained that due to hurricane damage she and the Respondent were living in a travel trailer on Galveston Island. She fell in the travel trailer and hit her head on the corner of a table. The head wound bled profusely, and she and her husband were unable to stop the bleeding. Because of hurricane damage there was no emergency room open on the island. Her husband drove her to the mainland hoping to find an emergency room to help with the bleeding. When they reached the mainland, they stopped at a service station so Respondent could call for an ambulance. She was taken by ambulance to hospital on the mainland.

Mrs. Glenn testified that the law officers repeatedly told her that they knew that someone had caused her injury by striking her with a gun. She told them that she did not know what happened. Mrs. Glenn denied telling any officer that Respondent had hit her with a gun. She stated that she refused to lie about what happened, and she signed an affidavit of non-prosecution.

## **2. Respondent's Evidence**

### **a. John Ivan Glenn**

Mr. Glenn testified is the Respondent and applicant for the permits subject to the protests in this case. He lives at 2413 Strand, Galveston, Texas, the location for which the permits are requested. He said that he has never been convicted of a felony. He was issued a concealed handgun permit in March of 2009. He pointed out that he had to have a background check in order to have that license.

## **C. Discussion and Recommendation**

Petitioner protested the permits on two grounds: the applicant's reputation was of bad moral character, and the manner and location in which the club would be operated would not be in keeping with the general welfare of the community. After considering the evidence, the ALJ concludes that Petitioner did not present sufficient evidence upon which to deny the permits.

### **1. Character and Reputation of Applicant**

According to §11.46(a)(6) of the Code, the Commission may deny a permit if "the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad". Petitioner provided no evidence as to Respondent's reputation in the community. Ms. Glenn testified as to her dislike of Respondent but not as to his reputation in the community in which he resides. Petitioner submitted the testimony of Agent Chatham concerning arrest reports, offense reports, and indictments of Respondent. There was no testimony or other evidence that Respondent had been convicted of any felony or a misdemeanor involving moral turpitude. There was no evidence of the Respondent's reputation, good or bad, in the community where he resides.

## **2. Protection of Community's General Welfare, Morals, and Public Decency**

Finally, Petitioner seeks denial of the permit under §11.46(a)(8) of the Code which provides that the Commission may deny a permit if "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." Petitioner's notice of hearing does not specifically address how Respondent's manner or place of operation would have a detrimental effect on the community. While the witness, Mr. Miller, testified about his general fears concerning the future operation of the business he gave no specific facts in support of these fears. He gave no testimony concerning the Respondent or that the place or manner in which Respondent may operate the premises would be contrary to the general welfare, peace, morals and safety and on the public sense of decency.

Based upon the testimony and evidence presented at this hearing ALJ can not conclude that the place and manner in which Respondent may conduct business warrants refusal of the permits based on the general welfare, peace, morals, and safety of the people and on the public sense of decency.

### **III. FINDINGS OF FACT**

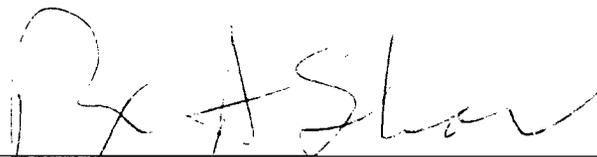
1. John I. Glenn d/b/a Club Strand filed an original application with the Texas Alcoholic Beverage Commission (TABC, Petitioner) for a Mixed Beverage Permit and Mixed Beverage Late Hours Permit for the premises located at 2413 Strand, Galveston, Galveston County, Texas.
2. Petitioner protested the application asserting that the application should be denied based upon the manner and place in which the club would be operated, and that applicant is not of good moral character.
3. On August 24, 2009, Petitioner sent a notice of hearing by certified mail, return receipt requested, to Respondent's mailing address as listed in the Commission's records, informing Respondent of the date, time, and place of the hearing, the statutes and rules involved, and the legal authorities under which the hearing was to be held.

4. The hearing on the merits convened October 16, 2009, at SOAH offices, 2020 N. Loop West, Suite 111 Houston, Harris County, Texas, before ALJ Rex Shaver. Petitioner was represented at the hearing by Ramona Perry, Staff Attorney. Matt Miller, a member of the Panama Historic Homeowner Association, appeared. Respondent was present and represented at the hearing by Carlos Garza, attorney. The record closed on that same day.
5. There was insufficient evidence that John Ivan Glenn is of bad moral character or that his reputation in the community is bad.
6. There was insufficient evidence that Respondent had been convicted of any felony or crime involving moral turpitude.
7. The City of Galveston has permitted the use of these premises as a "Tavern" and has reduced the possibilities of conflict with other businesses or residences by placing restrictions on the time, place and, type of music, parking facilities, and security.
8. There was no evidence that the place or manner in which Respondent will conduct business merits refusal based on the general welfare, health, peace, morals, safety, or the public sense of decency.

#### IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.46.
2. SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, 1 TAC § 155.55 and 16 TAC § 37.3.
4. There is insufficient evidence to deny the permits on the basis of moral character as described in TEX. ALCO. BEV. CODE ANN. § 11.46(a)(6).
5. The place or manner in which Respondent proposes to conduct its business does not warrant the refusal of the permits based upon the general welfare, health, peace, morals, and safety of the people, or the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8)
6. Respondent's original application for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit should be granted.

SIGNED December 10<sup>th</sup>, 2009.

A handwritten signature in black ink, appearing to read "Rex A. Shaver". The signature is written in a cursive style with a large initial "R".

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**REX A. SHAVER**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**