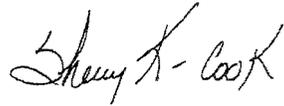




**IT IS THEREFORE ORDERED** that Respondent's Mixed Beverage Permit No. MB716365, and the associated Mixed Beverage Late Hours and Beverage Cartage Permits, are hereby **CANCELLED**.

**This Order will become final and enforceable on the 29th day of July, 2014, unless a Motion for Rehearing is filed by the 28th day of July, 2014.**

**SIGNED** this the 2nd day of July, 2014, at Austin, Texas.



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Sherry K-Cook, Executive Director  
Texas Alcoholic Beverage Commission

#### **CERTIFICATE OF SERVICE**

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 2nd day of July, 2014.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Sarah G. Ramos  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street, Suite 502  
Austin, Texas 78701  
**VIA FACSIMILE: (512) 322-2061**

Party Ranch LLC  
d/b/a Party Ranch  
**RESPONDENT**  
5233 Christoval Rd.  
San Angelo, Texas 76904  
***VIA FIRST CLASS MAIL, CMRRR #70120470000133008408***

Catherine Chamblee and John W. Sedberry  
**ATTORNEYS FOR PETITIONER**  
TABC Legal Division  
***VIA E-MAIL:***  
***[catherine.chamblee@tabc.state.tx.us](mailto:catherine.chamblee@tabc.state.tx.us)***  
***[john.sedberry@tabc.state.tx.us](mailto:john.sedberry@tabc.state.tx.us)***



Respondent has been cited for the prior violations of “breach of the peace/failure to report” on May 29, 2009, and sale of an alcoholic beverage to an intoxicated person on June 6, 2009.<sup>2</sup>

In the second amended notice of hearing, Staff alleged the following new violations:

- November 21, 2012 – **sale to an intoxicated person**, in violation of Texas Alcoholic Beverage Code (Code) § 11.61(b)(14) and operation of business in a manner that warrants cancellation based on the **general welfare, health, peace, morals, and safety of the people** and on the public sense of decency, in violation of Code § 11.61(b)(7);
- December 10, 2013 – **sale to a minor and allowing another minor to possess or consume alcohol** on the premises, in violation of Code §§ 11.61(b)(2) and 106.13;
- January 19, 2013 until March 9, 2013, **sale to a habitual drunkard or intoxicated or insane person**, in violation of Code §§ 11.61(b)(2) and 101.63(a);
- March 9, 2013– **sale to intoxicated person**, in violation of Code § 11.61(b)(14);
- January 17, 2014– **sale to intoxicated person**, in violation of Code § 11.61(b)(14); and
- from November 12, 2012 until the present, operation of its business as a **common nuisance**, in violation of Code § 81.005.

This Proposal for Decision discusses the incident involving minors and then addresses the others issues.

## **B. Sale and Provision of Alcohol to Minors on December 10, 2013**

### **1. Evidence**

On December 10, 2013, TABC agents went to the Party Ranch for an inspection. They quickly noticed two youthful looking girls, one of whom had a 12-ounce Dos Equis longneck beer. The minor with the beer was sitting directly in front of Samantha Turner, the general manager and bartender on duty, and the minor was not accompanied by a parent, guardian, or spouse. She told Agent Shuddell Lindsey that she had consumed alcoholic beverages several times at the Party Ranch. She also said Ms. Turner knew she was a minor.<sup>3</sup> On the same

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<sup>2</sup> Staff Ex. 3.

<sup>3</sup> Staff Ex. 44 at 280-281.

evening, another minor told Agent Lindsey that she had consumed whiskey that Ms. Turner had offered and then provided to her.<sup>4</sup>

Ms. Turner admitted to Agent Lindsey that she had served the beer to the first minor and had placed four shots of whiskey on the bar in front of the other minor.<sup>5</sup> However, she also said she was seller-server certified and showed Agent Lindsey policies that the Party Ranch had posted. The policies prohibited employees from serving minors.<sup>6</sup> At the hearing, Ms. Turner testified that she did not ask the minors for identification because she had seen them at the Party Ranch on previous occasions and assumed they were not minors.

## 2. Analysis

A minor may possess an alcoholic beverage under certain circumstances, including when the minor is in the visible presence of a parent or guardian,<sup>7</sup> but a minor may not consume an alcoholic beverage on licensed premises.<sup>8</sup> The evidence clearly supports a finding that Ms. Turner sold the beer to the first minor and provided whiskey to the second minor when no parent or guardian was present with them.

Based on the violations, the Commission or Administrator may suspend or cancel Respondent's permit if Respondent acted with criminal negligence.<sup>9</sup> A permittee acts with criminal negligence when the permittee should have been aware of a substantial and justifiable risk that the circumstances exist or the result will occur. The failure to perceive the risk must constitute a gross deviation from the care an ordinary person would have exercised under the same circumstances.<sup>10</sup>

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<sup>4</sup> Staff Ex. 44 at 283 and Staff Ex. 53.

<sup>5</sup> Staff Ex. 44 at 283.

<sup>6</sup> Staff Ex. 44 at 283-284.

<sup>7</sup> Code § 106.05.

<sup>8</sup> Code § 106.04.

<sup>9</sup> Code § 106.13.

<sup>10</sup> Tex. Penal Code § 6.03(d).

In this case, the ALJ finds that Respondent acted with criminal negligence in selling and providing alcohol to the minors. Ms. Turner was Respondent's general manager, but she had never checked the minors' identification. Agent Lindsey immediately noticed how young the girls appeared to be, and given their youthful appearance, it was unreasonable for Ms. Turner to assume they were 21 years of age or older. Ms. Turner's failure to perceive the risk was a gross deviation from the care an ordinary person would have exercised under the same circumstances.

Code § 106.14 states that the actions of an employee who sells or serves alcohol to a minor are not attributable to the permittee if:

- the permittee required its employees to attend a Commission-approved seller training program;
- the employee has actually attended such a training program; and
- the permittee did not directly or indirectly encourage the employee to violate the law.

The ALJ finds that Ms. Turner's actions should be attributed to Respondent for two reasons. First, there was no evidence that Respondent required its employees to attend the seller training program; indeed, Respondent had bartenders who had not attended the training. In addition, the minors previously had been allowed to consume alcohol on the premises, which indicates that Respondent directly or indirectly encouraged the sale or provision of alcohol to them. Therefore, the Commission may cancel or suspend Respondent's permit for these violations.

### **C. Sale to Intoxicated Person on November 21, 2012**

#### **1. Evidence**

Staff alleged that the Party Ranch served an intoxicated person, Carl Bevers, on November 21, 2012. After Mr. Bevers left the Party Ranch that day, he had an automobile accident in which he was severely injured and his girlfriend, Teresa Gartrell, was killed.

On the day of the incident, Mr. Bevers met co-workers at Buffalo Wild Wings. Mr. Bevers' supervisor, David Dudley, was with the group, and at the hearing, he testified that Mr. Bevers drank part of a beer at Buffalo Wild Wings. Then, the group went in different vehicles to the Party Ranch. At 8:14 p.m., Ms. Gartrell posted a message on Facebook, stating that she was having fun with her boyfriend, Carl Bevers, at the Party Ranch.<sup>11</sup>

Mr. Dudley saw Mr. Bevers drink at least one 24-ounce beer and one shot at the Party Ranch. The two men played pool, but they were not always together in the bar. Mr. Bevers went to a different area of the premises to sing karaoke while Mr. Dudley stayed near the pool table. In Mr. Dudley's written statement, he said Mr. Bevers tended to "get louder and talk more when he [was] intoxicated."<sup>12</sup>

James Allen Grizzard, a co-worker of Mr. Bevers, was with the group that went to the Party Ranch. In a written statement, Mr. Grizzard said Mr. Bevers had three or four draft beers and two or three shots of whiskey there.<sup>13</sup>

No Party Ranch videos of Mr. Bevers were available,<sup>14</sup> but Mr. Grizzard made a video on his cell phone as Mr. Bevers was singing karaoke.<sup>15</sup> In the video, Mr. Bevers is standing on a stage; he does not fall, but his movements are not smooth and his balance does not appear to be steady. As he "sings," he mumbles a mixture of words and intermittently shouts, "I want to be a cowboy, baby!"<sup>16</sup>

Ms. Turner was employed as the head bartender and manager at the Party Ranch on November 21, 2012. She said Mr. Bevers and Ms. Gartrell came into the bar about 8:30 p.m., and she was their server. She remembered that Mr. Bevers was drinking 24-ounce Budweiser

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<sup>11</sup> Staff Ex. 10.

<sup>12</sup> Staff Ex. 8.

<sup>13</sup> Staff Ex. 9.

<sup>14</sup> Staff Ex. 3 at 3.

<sup>15</sup> Staff Ex. 17.

<sup>16</sup> Staff Ex. 17.

beers and had one shot of whiskey. Mr. Dudley bought one of those beers for him, and Ms. Gartrell came to the bar to get the other drinks.

In Ms. Turner's written statement, completed about a month after the incident, she said Mr. Bevers and Ms. Gartrell seemed "happy and carefree." She said Mr. Bevers had a 24-ounce draft and Ms. Gartrell had a bottle of Budweiser beer. She also said Ms. Gartrell paid for most of the drinks with money that Ms. Bevers gave her.<sup>17</sup>

TABC Agent Marcos Guajardo testified that he spoke with several persons who had been at the Party Ranch on November 21, 2012, and he heard various opinions about the number of beverages Mr. Bevers had consumed. However, the witnesses agreed that Mr. Bevers had beers and whiskey shots.

Sometime after Mr. Bevers sang karaoke, he left the Party Ranch. Mr. Dudley looked for him at 10:30 pm. but did not find him; he also sent a text message to Mr. Bevers but received no response.

Robert Harris testified that, on November 21, 2012, he was driving on a San Angelo roadway when a vehicle passed him on the right-hand side. Mr. Harris later learned that Mr. Bevers was driving the other vehicle. Mr. Harris was traveling the speed limit, 45 miles per hour, but Mr. Bevers was driving much faster than that. Mr. Harris then saw Mr. Bevers' vehicle run a red light. Mr. Harris turned left but saw a cloud of dirt rise behind him. He drove to where the dirt was rising and saw that the vehicle Mr. Bevers had been driving had struck another vehicle. Both vehicles had extensive damage.

Ms. Gartrell was killed in the accident,<sup>18</sup> and Mr. Bevers sustained a fractured pelvis. San Angelo Police Department (SAPD) Officer Jeff Fisher was dispatched to the scene of the accident and determined Mr. Bevers had been driving and Ms. Gartrell had been his passenger. Officer Fisher saw no empty alcohol cans in Mr. Bevers' vehicle.

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<sup>17</sup> Staff Ex. 7.

<sup>18</sup> As reflected in the autopsy report, Ms. Gartrell's death was caused by blunt head and neck trauma. Staff Ex. 5.

The lead paramedic who spoke with Mr. Bevers said he “smelled of alcohol,” and Mr. Bevers told the paramedic that he had been drinking “a lot.”<sup>19</sup>

SAPD Officer Antonio Aguilar testified that the accident occurred at 11:08 p.m. on the route from the Party Ranch to where Mr. Bevers and Ms. Gartrell lived. He found no evidence that they had stopped after leaving the Party Ranch.<sup>20</sup>

Mr. Bevers’ blood was drawn at 12:35 a.m. on November 22, 2012, and his blood alcohol content (BAC) was 0.199 grams of alcohol per 100 milliliters of blood.<sup>21</sup> Ms. Gartrell’s blood alcohol content was 0.882.<sup>22</sup>

Department of Public Safety (DPS) Forensic Analyst Marissa Silva analyzed the blood drawn from Mr. Bevers. Using her knowledge of retrograde extrapolation, she said Mr. Bevers would have had a BAC of 0.23 when he left the bar. She said half of the population begins to show signs of intoxication with a BAC of 0.04. In Ms. Silva’s opinion, Mr. Bevers would have demonstrated signs of intoxication before he left the Party Ranch.

## 2. Analysis

Respondent’s permit may be cancelled if Respondent sold or delivered an alcoholic beverage to an intoxicated person<sup>23</sup> or conducted business in a manner that warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.<sup>24</sup>

The evidence proved that Respondent served an intoxicated person on the premises.

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<sup>19</sup> Staff Ex. 6, affidavit of Paramedic Walter T. Noel.

<sup>20</sup> Staff Ex. 3 at 12.

<sup>21</sup> The DPS alcohol content laboratory report is included in Staff Ex. 4.

<sup>22</sup> Staff Ex. 3, Agent Guajardo’s written report.

<sup>23</sup> Code § 11.61(b)(14).

<sup>24</sup> Code § 11.61(b)(7).

Mr. Bevers was at the Party Ranch for about two hours and had consumed only part of a beer before he arrived. No alcoholic beverage bottles were found in his vehicle. Thus, it is clear Mr. Bevers received most of the alcohol that he drank that evening at the Party Ranch. Given Mr. Bevers high BAC, he was intoxicated on the premises when he was served alcohol. Although he did not perform the karaoke until shortly before he left, Ms. Silva's testimony indicated he would have demonstrated signs of intoxication long before he was on the karaoke stage. In addition, Ms. Turner would have had to sell Ms. Gartrell a large number of drinks within the two hours for Mr. Bevers to have more than twice the legal limit of alcohol for driving.

Ms. Turner said she gave the drinks to Ms. Gartrell and did not serve Mr. Bevers directly. In part, it was for this lack of oversight that Staff alleged a place or manner violation. The ALJ agrees that by giving drinks to Ms. Gartrell, Respondent did not conduct its business as a reasonable person would have. Had Respondent's employees been interacting with Mr. Bevers throughout the evening, they would have known that he had become intoxicated. Given that Respondent was prohibited from serving intoxicated persons, Respondent should have served persons in a way that allowed employees to monitor the condition of their customers. This omission by the Party Ranch endangered the general welfare and safety not only of Mr. Bevers and Ms. Gartrell, but also of the public.

#### **D. Sale to Intoxicated Person on March 9, 2013**

##### **1. Evidence**

Staff alleged that the Party Ranch sold an alcoholic beverage to Malcolm McBurnett when he was intoxicated on March 9, 2013. Mr. McBurnett's actions after he left the Party Ranch on that day led to the death of a 30-year-old man, Donald John Dipietro. The primary events were recorded on the Party Ranch's video system and were not contested.<sup>25</sup>

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<sup>25</sup> Staff Exs. 54, 55.

Mr. McBurnett arrived at the Party Ranch at 5:02 p.m. He walked stiffly as he entered, sat at on a stool at the bar, and did not move from there until he left. The video recordings did not record his voice, but Mr. McBurnett sat directly across the bar from Ms. Turner. She served him 12-ounce longneck bottles of Lone Star Beers at 5:05 p.m., 5:24 p.m., and 6:06 p.m.

At 7:19 p.m., Mr. McBurnett upended his last beer and left the bar. He went to his truck that was parked directly outside the building and just a few feet from Christoval Road. The driver's side door of his truck would not open, but more than once, Mr. McBurnett tried to get inside the vehicle from that door. He staggered when walking and held onto his truck for support.<sup>26</sup> Mr. McBurnett could not start the vehicle and opened the hood. He re-entered the Party Ranch and brought out another patron, Allen Lee Schmidt, to assist him. Mr. Schmidt used his vehicle to push Mr. McBurnett's truck into the roadway; the truck was perpendicular to the flow of traffic and blocked the eastbound lane of travel.<sup>27</sup> It was dark outside. No one, including Mr. McBurnett, was trying to stop traffic on the roadway.<sup>28</sup>

At about 7:32 p.m., Mr. Dipietro, who was driving east on a motorcycle, struck Mr. McBurnett's truck and was killed.<sup>29</sup> Mr. Dipietro's death certificate shows that he died as a result of blunt force injuries to the head and torso.<sup>30</sup> His toxicology report had no toxicological findings of significance.<sup>31</sup>

SAPD Officer Jason Chegwidden was called to the scene. He observed that Mr. McBurnett's truck did not have its lights on, but Mr. Dipietro's motorcycle's lights were on. Officer Chegwidden performed field sobriety tests on Mr. McBurnett at about 8:05 p.m. Mr. McBurnett had slurred speech, bloodshot eyes, and the odor of alcohol on his breath. He

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<sup>26</sup> Staff Ex. 55.

<sup>27</sup> Staff Ex. 25(a) shows how Mr. McBurnett's truck was parked and the result of the impact between the truck and Mr. Dipietro's motorcycle (images 6-12, 17-20, 49-50, 62-65, and 71), the skid marks from Mr. Dipietro's motorcycle (images 22, 26, 53-58), and the proximity of the crash scene to the Party Ranch (images 60-61).

<sup>28</sup> Staff Exs. 23, 24.

<sup>29</sup> Staff Ex. 20 at 74-75.

<sup>30</sup> Staff Ex. 40.

<sup>31</sup> Staff Ex. 40.

also had six clues on the horizontal gaze nystagmus test (HGN) test and six clues on walk-and-turn test.

Mr. McBurnett's blood was drawn at 9:32 p.m. and test results showed a BAC of 0.127 grams of alcohol per 100 milliliters of blood.<sup>32</sup> DPS analyst Ms. Silva testified that an adult eliminates alcohol at an average rate of 0.02 grams of alcohol per hour, which is equivalent to one 12-ounce light beer an hour. Ms. Turner served Mr. McBurnett his last beer at the Party Ranch at 6:06 p.m., and his blood was drawn 3.5 hours later. Based on these facts, Ms. Silva stated that when the Party Ranch served Mr. McBurnett the last beer, his BAC was about 0.16 grams of alcohol per 100 milliliters of blood.

TABC Agent Clinton Scitern recorded an interview with Mr. Schmidt, the man who had helped Mr. McBurnett push his truck into the roadway. Mr. Schmidt recalled that Mr. McBurnett smelled like alcohol when he came into the Party Ranch on March 9, 2013, and he bought drinks for some people. Ms. Turner, the bartender, told him to make sure he had enough for a cab ride home because the Party Ranch had paid for a cab ride for him before. In addition, Mr. Schmidt said Mr. McBurnett asked for a Red Hook beer, which Mr. Schmidt referred to as a "high-powered beer," and Ms. Turner asked him, "Why don't you just have a Lone Star?"<sup>33</sup> Mr. Schmidt said Mr. McBurnett's speech was slurred, but Mr. Schmidt said he is not from Texas and could not tell whether Mr. McBurnett's slurred speech was due to intoxication or was normal for an older Texas man.<sup>34</sup>

Ms. Turner testified and also stated in her written statements that, two nights before the incident on March 9, 2013, she had paid for a cab to take Mr. McBurnett home. On March 9, 2013, Mr. McBurnett bought a round of drinks for about six people, and Ms. Turner asked him if he still had money for a cab. Ms. Turner said she had refused to serve him one or two times before that but did not refuse to serve him on March 9, 2013, because he did not seem

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<sup>32</sup> Staff Ex. 31.

<sup>33</sup> Staff Ex. 30.

<sup>34</sup> Staff Ex. 30.

intoxicated to her. In statements that Ms. Turner wrote on March 9 and 21, 2013, she said Mr. McBurnett did not seem intoxicated and told her he was not driving.<sup>35</sup>

Agent Scitem testified that Ms. Turner was within arm's reach of Mr. McBurnett as he sat at the bar. In Agent Scitem's opinion, Ms. Turner should have realized Mr. McBurnett was intoxicated because of their close physical proximity to each other.

## **2. Analysis**

The Code prohibits the sale, service, or delivery of an alcoholic beverage to an intoxicated person.<sup>36</sup> The evidence supports a finding that Ms. Turner served Mr. McBurnett when he was intoxicated. She served him three 12-ounce beers in one hour as he sat on the bar stool. When she served his last beer, his BAC was 0.16. Mr. McBurnett was within arms' reach of Ms. Turner. He smelled of alcohol when he entered the bar and had slurred speech, and Ms. Turner should have noticed these clues of intoxication.

### **E. Did the Party Ranch Sell Alcohol to a Habitual Drunkard?**

#### **1. Evidence**

Staff also alleged that Respondent, with criminal negligence, sold alcoholic beverages to Mr. McBurnett between January 19, 2013, and March 9, 2013, even though Respondent knew he was a habitual drunkard.

#### **2. Background on Mr. McBurnett**

On November 15, 2012, SAPD Officer Jeremy Cannady arrested Mr. McBurnett for public intoxication at a Denny's restaurant in San Angelo, Texas. According to Officer Cannady's police report, Mr. McBurnett picked up a hitchhiker, Calvin Hester, earlier that same

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<sup>35</sup> Staff Exs. 21, 22.

<sup>36</sup> Code § 11.61(b)(14).

evening. Mr. Hester said that Mr. McBurnett had asked him to drive because Mr. McBurnett realized he was drunk. Mr. Hester drove Mr. McBurnett to the Party Ranch where he consumed two or three beers and two or three shots of liquor. At the Denny's restaurant, Officer Cannady observed that Mr. McBurnett had an overpowering odor of an alcoholic beverage on his breath; had red, glossy eyes; loudly stated a racial slur at another diner at the restaurant; swayed as he stood and was unsteady on his feet as he walked; on the HGN test, in both eyes, lacked smooth pursuit, had distinct and sustained nystagmus at maximum deviation, and had nystagmus onset prior to 45 degrees. However, there was no evidence of how Mr. McBurnett acted when he was at the Party Ranch or whether the management or employees knew that Mr. McBurnett had been arrested.

Sherry Schoonover was a customer at the Party Ranch on January 19, 2013, and saw Mr. McBurnett come into the bar drunk and try to get served.<sup>37</sup> The bartender told him to leave, but he became angry. The bartender called for Mr. Lawson, the owner, who told Mr. McBurnett that he could not be served and needed to leave. Although Mr. McBurnett "acted like he was going to leave,"<sup>38</sup> he came in through a back door and sat by a fire near where Ms. Schoonover was sitting. She said he bragged to her about having brought in a bottle of vodka and told her that he was going to play his harmonica for her.<sup>39</sup> He went toward the stage where someone was singing and, as he got halfway up the stairs to the stage, fell backward, hit his head on the concrete floor, and lost consciousness.<sup>40</sup> Mr. Lawson called for emergency assistance.<sup>41</sup>

An emergency vehicle came and took Mr. McBurnett to a hospital where he was diagnosed as having a subdural hematoma.<sup>42</sup> When he was admitted to the hospital, his BAC was 0.187 grams of alcohol per 100 milliliters of blood.<sup>43</sup>

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<sup>37</sup> Ms. Schoonover's written statement is Staff Ex. 37.

<sup>38</sup> Staff Ex. 37 at 1-2.

<sup>39</sup> Staff Ex. 37 at 2.

<sup>40</sup> Staff Ex. 34 at 109, 119.

<sup>41</sup> Staff Ex. 36.

<sup>42</sup> Staff Ex. 34 at 111.

<sup>43</sup> Staff Ex. 35.

Staff alleged that after this event, Respondent should have known Mr. McBurnett was a habitual drunkard and should not have allowed him on the premises. Ms. Schoonover wrote in her statement that the Party Ranch had asked Mr. McBurnett several times not to come back, but he still came back.<sup>44</sup>

In a statement given to a TABC agent, Mr. Schmidt said Mr. McBurnett smelled like alcohol every time he came into the bar, and Mr. Schmidt thought Mr. McBurnett had been banned from the Party Ranch.<sup>45</sup>

Agent Scitern concluded that almost everyone who frequented the Party Ranch knew Mr. McBurnett was a habitual drunkard. He defined a “habitual drunkard” as one who is compelled to consume alcohol even when faced with potential criminal charges and drinks every day, even when doing so interferes with daily life.

Agent Scitern recorded an interview with Mr. McBurnett on March 13, 2013. Mr. McBurnett said he had nothing to drink before arriving at the Party Ranch the evening of the accident, March 9, 2013. He also said he had never been banned from the Party Ranch, the employees “watch everything,” and he had never seen them serve an intoxicated person.<sup>46</sup>

Mr. Lawson said the Party Ranch had no way to know Mr. McBurnett was a habitual drunkard.

### **3. Analysis**

There was insufficient evidence to demonstrate that Respondent knew Mr. McBurnett was a habitual drunkard. A penal statute codified in the Alcoholic Beverage Code, Code § 101.63, states that a person commits an offense if the person with criminal negligence sells an alcoholic beverage to a habitual drunkard or an intoxicated or insane person. The Code describes

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<sup>44</sup> Staff Ex. 37 at 3.

<sup>45</sup> Staff Ex. 30.

<sup>46</sup> Staff Ex. 29.

the violation as a misdemeanor punishable by a fine of not less than \$100 or more than \$500, by confinement in jail for not more than one year, or by both.<sup>47</sup> Thus, it appears that the legislature indicated a preference for the statute to be considered a penal statute because it classified the violation as a misdemeanor and provided for punishment by confinement in jail. Criminal statutes outside the Penal Code must be construed strictly, with any doubt resolved in favor of the accused.<sup>48</sup> Because the statute regarding a habitual drunkard is penal in nature, it must be construed strictly and doubts must be resolved in Respondent's favor.

Agent Scitern testified that a habitual drunkard is a person who is compelled to consume alcohol regardless of potential criminal charges. Officer Cannady arrested Mr. McBurnett on November 15, 2012, for public intoxication, purportedly after he had been drinking at the Party Ranch. However, there is no evidence that Respondent knew about the arrest, and the record does not demonstrate how Mr. McBurnett acted when he was at the Party Ranch that day. One could argue that after Mr. McBurnett was refused service, re-entered the Party Ranch through the back door, and subsequently fell on January 19, 2013, the Party Ranch should have known Mr. McBurnett was a habitual drunkard. But there was no evidence that Mr. McBurnett had acted intoxicated on the premises between January 19 and March 9, 2013. Ms. Schoonover and Mr. Schmidt offered hearsay statements implying that Mr. McBurnett was not allowed in the bar. But their statements could have been based on gossip rather than on facts. Therefore, the record in this case does not establish that the Party Ranch knew Mr. McBurnett was a habitual drunkard.

**F. Sale to Intoxicated Person on January 17, 2014**

Agent Lindsey went to the Party Ranch to perform a priority inspection on January 17, 2014. Candace Campbell was the bartender at the time, and she had not completed seller-server training. Agent Lindsey noticed a patron who was drinking a beer but was obviously intoxicated. The patron's balance was severely impaired while standing and walking. The patron finished the beer he was drinking and ordered another, which Ms. Campbell gave to him.

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<sup>47</sup> The fine and time of imprisonment are increased for a second offense, but there was no evidence of a second offense.

<sup>48</sup> *Rhine v State*, 297 S.W.3d 301, Tex. Crim. App. (2009).

Agent Lindsey took the patron outside where he told Agent Lindsey that he was drunk when he arrived at the Party Ranch and had consumed four or five beers on the premises. The patron could not recite the alphabet and on a portable breath test, had a result that showed a BAC of about 0.25 grams of alcohol per 210 liters of breath.

Respondent presented no evidence to contradict Agent Lindsey's testimony, and the evidence supports a finding that Respondent sold an alcoholic beverage to the intoxicated patron on January 17, 2014.

**G. Were the Party Ranch Premises a Public Nuisance?**

A Code provision provides for suspension or cancellation of a permit if Respondent has used the licensed premises in a manner that constitutes a common nuisance.<sup>49</sup> In Code § 81.001, a common nuisance is described as that which is defined by Code § 101.70 or Civil Practices and Remedies Code § 125.001. Alcoholic Beverage Code § 101.70 defines a common nuisance as a place where alcoholic beverages are sold in violation of that Code and under circumstances contrary to the Code's purposes. The Civil Practices and Remedies Code section refers to § 125.0015 for the actual definition. That definition states, "[a] person who maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance . . . ." The activities listed include crimes such as reckless discharge of a firearm, prostitution, gambling, delivery of a controlled substance, sexual assault, and employing a minor at a sexually oriented business.

TABC Sargent Steven Carnes testified that the Party Ranch presents a public safety concern because of the number and seriousness of the violations. In addition, he said that monitoring the Party Ranch has drained TABC's enforcement manpower in the area, and the premises have become a nuisance.

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<sup>49</sup> Code § 81.005.

The ALJ was not convinced that Respondent conducted its business as a common nuisance, primarily because no evidence proved the violations of law mentioned in the Civil Practices and Remedies Code definition. Additionally, while it is true that Respondent violated alcoholic beverage laws, the evidence does not show that Respondent engaged in criminal activity, particularly because Respondent made some attempts to comply with the law, such as when the bartender refused to serve Mr. McBurnett on the night that he fell. Therefore, Respondent did not operate its business as a common nuisance

#### **H. Appropriate Penalty**

Staff argued that, based on Respondent's previous violations and the violations proven in this case, Respondent's permit should be cancelled. In Mr. Lawson's closing statement, he said he has chosen to close the Party Ranch and does not intend not have an alcoholic beverage license in the future.

The ALJ recommends that Respondent's permit be cancelled. In summary, the evidence supports a finding that Respondent sold an alcoholic beverage to a minor, provided alcohol to another minor, sold alcoholic beverages to Mr. Bevers and Mr. McBurnett when they were intoxicated, and even after the tragedies that resulted from those sales, Respondent sold alcoholic beverages to an obviously intoxicated person on January 17, 2014. Respondent's permit could be cancelled for any one of the violations. Given the number and serious nature of the violations, the ALJ recommends that Respondent permit be cancelled.

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

1. Party Ranch, LLC d/b/a Party Ranch (Party Ranch or Respondent) is located at 5233 Christoval Road in San Angelo, Texas, and holds mixed beverage, beverage cartage, and mixed beverage late hours permit MB716365.
2. Respondent has been cited for prior violations for a "breach of the peace/failure to report" on May 29, 2009, and for sale of an alcoholic beverage to an intoxicated person on June 6, 2009.

3. Staff of the Texas Commission on Alcoholic Beverages (Commission) issued notices of hearing, alleging multiple violations of the Texas Alcoholic Beverage Code (Code). The notices were sent on November 14, 2013, January 17, 2014, and January 22, 2014.
4. The notices stated the time, place, and nature of the hearing; legal authority and jurisdiction under which the hearing was to be held; statutes and rules involved; and matters asserted.
5. The hearing on the merits convened on February 5, 2014, at 124 W. Beauregard Avenue in San Angelo, Texas. Staff attorneys Catherine Chamblee and John Sedberry represented Staff, and Tracy Lawson, Respondent's sole owner, appeared *pro se*. The record closed at the conclusion of the hearing.

**Sale to a Minor and Allowing a Minor to Possess or Consume Alcohol on the Premises (December 10, 2013)**

6. On December 10, 2013, Samantha Turner, Respondent's bartender and general manager, served a beer to one minor girl and provided whiskey shots for another minor girl.
7. The girls were youthful looking and were sitting directly in front of Ms. Turner.
8. Ms. Turner did not check the girls' identification; instead, she assumed they were of age because they had been served alcohol at the Party Ranch on previous occasions.
9. No parent, guardian, or spouse was present with the minor girls.
10. Ms. Turner was seller-server certified and the Party Ranch had posted policies against serving minors; however, the Party Ranch indirectly encouraged the sale of alcohol to the minors because it had served alcohol to them on previous occasions and its general manager had never checked the minors' identification cards.

**Sale to an Intoxicated Person and Operation of Business in a Manner that Warrants Cancellation Based on the General Welfare, etc. (November 21, 2012)**

11. Carl Bevers was a patron at the Party Ranch on November 21, 2012, from about 8:14 p.m. until about 10:22 p.m.
12. Ms. Turner, the Party Ranch's general manager and bartender, sold a number of alcoholic beverages to Mr. Bevers' girlfriend, Teresa Gartrell, and Ms. Turner knew many of the beverages were for Mr. Bevers.
13. Mr. Bevers drank a number of beers and whiskey shots.
14. Mr. Bevers was on the karaoke stage for at least one song.
15. During the time the song played, Mr. Bevers mumbled a mixture of words and intermittently shouted in a loud voice, "I want to be a cowboy, baby!"

16. After Mr. Bevers and Ms. Gartrell left the Party Ranch, he drove over the speed limit and ran a red light.
17. The vehicle Mr. Bevers was driving collided with another vehicle.
18. Ms. Gartrell was killed in the collision, and Mr. Bevers was seriously injured.
19. Mr. Bevers blood was drawn at 12:35 a.m. on November 22, 2012, and his blood alcohol content (BAC) was 0.199 grams of alcohol per 100 milliliters of blood.
20. Mr. Bevers would have had a BAC of 0.23 when he left the Party Ranch.
21. Half of the population begins to show signs of intoxication with a BAC of 0.04.
22. Mr. Bevers would have demonstrated signs of intoxication before he was last served alcohol at the Party Ranch.
23. Before serving alcohol to patrons, the Party Ranch did not monitor them to determine whether they had become intoxicated on the premises.

**Sale to Intoxicated Person (March 9, 2013)**

24. On March 9, 2013, Malcolm McBurnett arrived at the Party Ranch at 5:02 p.m.
  25. Mr. McBurnett walked stiffly as he entered, sat at on a stool at the bar, and did not move from there until he left.
  26. When Mr. McBurnett entered the Party Ranch, he had slurred speech and smelled of alcohol.
  27. Mr. McBurnett sat directly across the bar from Ms. Turner, and she served him 12-ounce longneck bottles of Lone Star Beers at 5:05 p.m., 5:24 p.m., and 6:06 p.m.
  28. At 7:19 p.m., Mr. McBurnett upended his last beer and left the bar. He went to his truck that was parked directly outside the building and just a few feet from Christoval Road.
  29. The driver's side door of Mr. McBurnett's truck would not open, but more than once, he tried to get inside the vehicle from that door. He staggered when walking and held onto his truck for support.
  30. Mr. McBurnett could not start the vehicle and opened the hood. He re-entered the Party Ranch and brought another patron, Allen Lee Schmidt, outside to assist him.
  31. Mr. Schmidt used his vehicle to push Mr. McBurnett's white truck into the roadway; the truck was perpendicular to the flow of traffic and blocking the eastbound lane of travel.
  32. It was dark outside, and no one attempted to stop traffic on the roadway.
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33. At about 7:32 p.m., Donald John Dipietro, who was driving his motorcycle east, struck Mr. McBurnett's truck and was killed.
34. Mr. McBurnett's truck lights were not on.
35. Mr. McBurnett's blood was drawn at 9:32 p.m., and tests results showed a BAC of 0.127 grams of alcohol per 100 milliliters of blood.
36. An adult eliminates alcohol at an average rate of 0.02 grams of alcohol per hour, which is equivalent to one 12-ounce light beer an hour.
37. Ms. Turner served Mr. McBurnett his last beer at the Party Ranch at 6:06 p.m., and his blood was drawn 3.5 hours later.
38. When Ms. Turner served Mr. McBurnett his last beer, his BAC was about 0.16 grams of alcohol per 100 milliliters of blood.
39. Field sobriety tests were performed on Mr. McBurnett at about 8:05 p.m., and he had slurred speech, bloodshot eyes, and the odor of alcohol on his breath.
40. Ms. Turner should have realized Mr. McBurnett was intoxicated when she served him his last beer.

**Sale to Intoxicated Person (January 17, 2014)**

41. On January 17, 2014, the bartender on duty at the Party Ranch had not completed seller-server training.
42. A patron that evening was obviously intoxicated, and this was evident because his balance was severely impaired while he was standing and walking.
43. Although the patron was obviously intoxicated, the bartender gave him another beer.
44. The patron considered himself to have been drunk when he arrived at the Party Ranch and had consumed four or five beers on the premises.
45. The patron could not recite the alphabet and on a portable breath test, had a result that showed a BAC of about 0.25 grams of alcohol per 210 liters of breath.

**IV. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this case pursuant to Code ch. 5 and § 11.61.
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2. The State Office of Administrative Hearings has 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 Code § 5.43 and Tex. Gov't Code ch. 2003.
3. Respondent received notice of the hearing, pursuant to Tex. Gov't Code §§ 2001.051, 2001.052.
4. Respondent sold an alcoholic beverage to a minor and permitted another minor to consume alcoholic beverages on the premises on December 10, 2013, and thus violated Code §§ 11.61(b)(2) and 106.13.
5. On November 21, 2012, Respondent operated its business in a manner that warrants cancellation of its permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. Code § 11.61(b)(7).
6. Respondent sold alcoholic beverages to intoxicated persons on November 21, 2012; March 9, 2013; and January 17, 2014, and thus violated Code § 11.61(b)(14).
7. Respondent's permit should be cancelled. Code § 11.61(b)(7).

**SIGNED April 2, 2014.**



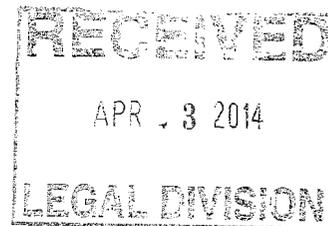
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**SARAH G. RAMOS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge



April 2, 2014

Sherry Cook  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

VIA INTERAGENCY MAIL

**RE: SOAH Docket No. 458-14-0948; *In the Matter of Party Ranch, LLC*  
*d/b/a Party Ranch***

Dear Ms. Cook:

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 § 155.507(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in cursive script that reads "Sarah G. Ramos".

**SARAH G. RAMOS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

SGR/vg  
Enclosure

xc Catherine Chamblee and John Sedberry, Staff Attorneys, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL  
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL  
Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL  
Tracy Lawson, Owner, Party Ranch, LLC d/b/a Party Ranch, 5233 Christoval Rd., San Angelo, TX 76904 - VIA REGULAR MAIL

