

WHAT OTHER THINGS ARE IMPORTANT?

Other things that both an applicant and a protestant should know about protests include the following:

- ★ The agency cannot deny a license or a permit purely on the basis that a protest has been filed.
- ★ The fact that a particular business location had problems under prior ownership or management does not mean that the license or permit will not be issued to an unrelated applicant at the same location.
- ★ If a protest is set for a hearing, a new license will not be issued until a judgement is rendered. However, if the protest is on an existing place of business, it cannot be closed down until final judgement is rendered in the case.

Sometimes local government decisions may have an impact on the licensing process. For instance, if local licenses designed to control sexually oriented businesses, dance halls, or other types of businesses have been approved and the local government states the establishment is in compliance, it is difficult for the TABC to deny a license or permit based on the grounds that the place and manner in which the business operates is detrimental to the public.

Occasionally, an applicant and a protestant are able to meet and work out their differences in a mutually agreeable manner. For example, an applicant may agree to put up a privacy fence between properties or insulate the building to cut down on noise. These arrangements can save money, make for better neighbors, and eliminate legal battles. The arrangements, however, may not be enforceable by the TABC since they are agreements between two private parties.

WHERE, HOW, AND WHEN WILL THE HEARING BE HELD?

The hearing will be held, when possible, as close to the county in which the premises of the business is located. The protesting party will be notified at least ten (10) days in advance of the time and place of the hearing. The hearing will be held according to the rules of the Texas Administrative Procedures Act, (V.T.C.A., Government Code, §2001 et seq.). A copy of the statute is available in your local county law library.

WHO WILL HEAR THE PROTEST?

For a permit, a judge designated by the State Office of Administrative Hearings will inform all parties of the time, date, and location for the hearing. The judge will handle all pre-trial matters, make rulings as necessary and conduct the final hearing on its own merits.

For a license, the county judge of the county in which the license is located, acting as an administrative law judge, will hold the hearing in the same manner as for permits.

INFORMATION

For more information, please contact your local TABC office or write to P.O. Box 13127, Austin, Texas 78711. In addition, you may access the agency's web site at www.tabc.state.tx.us. To report a violation of the Texas Alcoholic Beverage Code, please call toll free:

1-888-THE-TABC (voice/TDD).

The Texas Alcoholic Beverage Commission is an Equal Opportunity Employer. The Texas Alcoholic Beverage Commission does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in employment or the provision of services.

Revised 09/02

PROTESTS



**A guide to
commonly asked
questions about
protests**

WHAT IS A PROTEST?

The Texas Alcoholic Beverage Code, in Section 6.01 (b), provides for the privilege of operating businesses that manufacture, distribute, sell and serve alcoholic beverages. Sections 11.31-11.61 and Sections 61.39-61.51 of the Code define some of the conditions that are required for a person to obtain a license or a permit. The Code also provides opportunities for citizens and government officials to object to the issuance of a license or permit. The agency calls this process a *protest*.

Most of the grounds for refusal or denial of a license or a permit can be determined by the Texas Alcoholic Beverage Commission as part of the application process. If legal grounds exist and are found during that process, the applicant may be disqualified.

Some grounds exist for refusal or denial that are subject to interpretation on the basis of the facts involved. Sections 11.46(a)(8), 11.61(b)(7), 61.43(9), and 61.71(a)(17) of the Code provide for protests based on facts which show that the manner in which the business is operated or the place the business is located is detrimental to the health, safety and welfare of the public. These sections of the Code generate the most numerous and complex cases.

Protests may be filed for original applications (new businesses) and existing licenses or permits. Each license and permit is renewed annually and the renewal may be protested in the same manner as an original license or permit. When the agency proposes to deny the renewal of a license or permit, the business is allowed by law to continue to operate through the hearing process until the order resulting from the hearing becomes final and enforceable.

WHAT INFORMATION IS NEEDED?

The protesting party must submit a sworn statement to the TABC identifying the applicant (by name, trade name, location of premises sought to be licensed, and type of license or permit sought) and requesting that the Administrator refuse to approve the application for a stated legal ground, or grounds. If the protesting party does not know all the specific information about the applicant, then the protesting party must submit enough information so that the applicant may be identified.

The protesting party must attach to the sworn statement specific facts and circumstances that substantiate the legal grounds for refusal of the license or permit, the Alcoholic Beverage Code section which applies, and any other documentation pertaining to the petition. Examples of this documentation may be:

- ★ Police or administrative violation records which indicate the applicant has not conducted business in keeping with the Texas Alcoholic Beverage Code or the laws of the State of Texas.
- ★ Governmental records or certified documents that show, for example, that the applicant conducted business in a place or manner which was detrimental to the health, safety and welfare of the public.
- ★ Texas Department of Public Safety traffic accident records that show the business location is in a dangerous traffic area.

WHAT ROLE DOES THE TABC PLAY?

The TABC's job is not to take sides but to ensure that applicants meet all qualifications to obtain the license or permit, and to protect the health, safety and welfare of the people of the State as outlined in the Alcoholic Beverage Code.

When the TABC receives a protest, it is handled as a complaint. It is logged into the agency complaint tracking system and assigned to a local agent to investigate. The agent's responsibility is to gather as much factual information as possible. This factual information is the type of information which can be documented as fact and used in a hearing. The agent then forwards the investigation to the TABC Legal Department in Austin. The investigation may or may not include a recommendation.

If an investigation reveals that legal grounds exist, the Legal Department makes the decision to go forward with the protest and schedule a hearing. Sometimes, after the investigation, the agency does not find any grounds for denial. In those cases, the agency attempts to settle the differences, if possible, or may recommend that the protest not go forward and be dismissed for lack of legal grounds.

