

SOAH DOCKET NO. 458-04-3462

IN RE PERTEX INTERPRISE INC.	§	BEFORE THE TEXAS
D/B/A KRYSTAL'S MART	§	
PERMIT NO. BQ426394	§	
	§	ALCOHOLIC
	§	
WICHITA COUNTY, TEXAS	§	
(TABC DOCKET NO. 601561)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 23rd day of August, 2004, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Phyllis Cranz. The hearing convened on June 24, 2004 and adjourned July 15, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 23, 2004. The Proposal For Decision, attached hereto as Exhibit "A", 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 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 Number BQ426394 is hereby **CANCELED FOR CAUSE**.

This Order will become final and enforceable on SEPTEMBER 13, 2004, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED on this the 23rd day of August, 2004, at Austin, Texas.

On Behalf of the Administrator,

A handwritten signature in black ink, appearing to read "Jeannene Fox", is written over a horizontal line.

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

/vr

Hon. Phyllis Cranz
Administrative Law Judge
State Office of Administrative Hearings
Fort Worth , Texas
VIA FAX (817) 377-3706

Pertex Interprise Inc.
RESPONDENT
d/b/a Krystal's Mart
701 N. Eastside Dr.
Wichita Falls, Tx. 76304
CERTIFIED MAIL/RRR NO. 7000 1530 0003 1902 6182

Gayle Gordon
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Fort Worth District Office

DOCKET NO. 458-04-3462

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner**

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BEFORE THE STATE OFFICE

V.

OF

**PERTEX INTERPRISE, INC.
D/B/A KRYSTAL'S MART
PERMIT NO. BQ426394
WICHITA COUNTY, TEXAS
(TABC CASE NO. 604923),
Respondent**

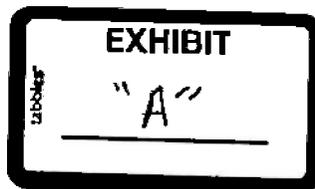
ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Pertex Interprises, Inc. d/b/a Krysta's Mart (Respondent). Petitioner sought cancellation of Respondent's permit alleging Respondent failed to pay delinquent ad valorem taxes. For the reasons discussed in this proposal, the Administrative law Judge (ALJ) recommends that Respondent's permit be canceled.

I. PROCEDURAL HISTORY

Respondent was sent written notice dated July 18, 2002, that it had been placed on the delinquent tax roll of Wichita County, Texas, and all subsequent taxing entities for which Wichita County collects. On May 1, 2003, Respondent requested a hearing to contest this status. On March 4, 2004, Petitioner issued its Notice of Hearing, directed to Respondent's address of record, 701 N. Eastside Drive, Wichita Falls, Texas 76304, via certified mail, return receipt requested. The Notice of Hearing contained a statement of time, place, and nature of the hearing, a statement of the legal authority and jurisdiction under which the hearing was to be held, a reference to the particular sections of the statutes and rules involved, and a short, plain statement of the matters asserted as required by TEX. GOV'T CODE ANN. § 2001.052. The hearing was held on June 24, 2004, at the Fort Worth field office of the State Office of Administrative Hearings



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PROPOSAL FOR DECISION

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(SOAH), 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas, before Phyllis Crazz, an Administrative Law Judge (ALJ). TABC staff appeared by video conference and was represented by Gayle Gordon, TABC Staff Attorney. Respondent was represented by Reza Vafaiyana, President, Pertex Interprises, Inc.. There were no challenges to the notice of hearing, jurisdiction, or venue. The case was heard at the same time as SOAH Docket No. 458-04-3461, TABC vs. Pertex Interprises, Inc. d/b/a Krystal's Mart (TABC 604923). The hearing concluded on June 24, 2004, and the record closed on July 15, 2004.

II. JURISDICTION

TABC has jurisdiction and authority over this matter pursuant to Subchapter B, TEX. ALCO. BEV. CODE ANN., Chapter 5, §§ 6.01, 11.61, and 61.36 (b) and (d). SOAH has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, under TEX. GOV'T CODE ANN., ch. 2001.

III. DISCUSSION

A. Applicable Law

TABC is authorized under TEX. ALCO. BEV. CODE ANN. § 61.36(b) and (d) to cancel Respondent's permits for the retail sale or service of alcoholic beverages if Respondent has not paid delinquent ad valorem taxes due on the permitted premises to any taxing authority in the county of the premises or has not paid fees.¹

¹Pursuant to §61.36 (b) of the Texas Alcoholic Beverage Code:

The commission or administrator may cancel a license if it finds the licensee has not paid a fee levied under this section. A licensee who sells an alcoholic beverage without first having paid a fee levied under this section commits a misdemeanor punishable by a fine of not less than \$10 nor more than \$200.

Pursuant to §61.36 (d) of the Texas Alcoholic Beverage Code:

The commission or administrator may cancel or deny a permit for the retail sale

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PROPOSAL FOR DECISION

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B. Evidence

TABC staff alleged that Respondent is the holder of a Wine and Beer Retailer's Off-Premises Permit issued by TABC. Respondent did not dispute this allegation. Permit records contained in TABC "Exhibit 1" establish that a Wine and Beer Retailer's Off-Premises Permit, BQ-426394 was issued to Pertex Interprise Inc., doing business as Krystal's Mart, 701 N. Eastside Drive, Wichita Falls, Wichita County, Texas on February 6, 1998.

TABC staff alleged that Respondent failed to pay delinquent ad valorem taxes to Wichita County, City of Wichita Falls, and Wichita Falls Independent School District. In support of that allegation, TABC staff offered a properly sworn affidavit of Clay Glasgow, custodian of the tax records of Wichita County, City of Wichita Falls, and Wichita Falls Independent School District, which was dated February 27, 2004 (TABC "Exhibit 2"), and another affidavit from Clay Glasgow dated June 24, 2004 (TABC Exhibit 3"). The total amount of past due ad valorem taxes as of February 27, 2004 was \$8,290.45. The Respondent offered a document entitled "Order for Tax Warrant" dated May 3, 2004, which was admitted without objection (Respondent's "Exhibit 1") and testified that his bank account had been seized. The total amount of past due ad valorem taxes as of June 24, 2004, was \$7,341.88.

Respondent testified that he was in a dispute concerning the amount with the Wichita County taxing authority and was suing the governmental entities in federal court on an unrelated matter but did not provide

or service of alcoholic beverages, including a permit held by the holder of a food and beverage certificate, if it finds that the permit holder or applicant has not paid delinquent ad valorem taxes due on that permitted premises or due from a business operated on that premises to any taxing authority in the county of the premises. For purposes of this subsection, a permit holder or applicant is presumed delinquent in the payment of taxes due if they permit holder or applicant:

- (1) is placed on a delinquent tax roll prepared under Section 33.03 Tax Code;
- (2) has received a notice of delinquency under Section 33.04 Tax Code; and
- (3) has not made payment required under Section 42.08, Tax Code.

any documentary evidence to support his testimony.

Because no evidence was presented that the Respondent had not paid a fee as described in § 61.36 (b) of the Texas Alcoholic Beverage Code, the ALJ will consider the allegation concerning delinquent ad valorem taxes.

C. Analysis, Conclusion, and Recommendation

The relevant facts are clear and undisputed. Respondent holds a Wine and Beer Retailer's Off-Premises Permit, BQ-426394. The Respondent had received notice of the delinquency, been placed on the delinquent tax roll, and an order for tax warrant has been issued. Respondent has not paid delinquent ad valorem taxes for the permitted premises in Wichita County, Texas, in violation of §61.36 (d) of the Texas Alcoholic Beverage Code. The ALJ recommends that Respondent's Wine and Beer Retailer's Off-Premises Permit be canceled.

IV. PROPOSED FINDINGS OF FACT

1. Pertex Interprise Inc., doing business as Krystal's Mart (Respondent) holds a Wine and Beer Retailer's Off-Premises Permit, BQ-426394, issued on February 6, 1998, by the Texas Alcoholic Beverage Commission.
2. Respondent's permits were issued for the premises located at 701 N. Eastside Drive, Wichita Falls, Wichita County, Texas.
3. Respondent did not pay delinquent ad valorem taxes to Wichita County, Texas, City of Wichita Falls, and Wichita Falls Independent School District.
4. Respondent has been placed on a delinquent tax roll.
5. Respondent received notice of this delinquency.
6. Respondent is the subject of an Order for Tax Warrant issued by the 89th District Court of Wichita County, Texas.

7. On March 4, 2004, Petitioner issued its Notice of Hearing to Respondent at its address of record, 701 N. Eastside Drive, Wichita Falls, Texas, 76304.
8. On June 24, 2004, a hearing convened before ALJ Phyllis Cranz at the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented by Gayle Gordon, TABC Staff Attorney, appearing via video conference. Respondent appeared through its representative, Reza Vafaiyana.

V. PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Chapter 5, §§ 6.01, 11.61, and 61.36 (b) and (d).
2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, under TEX. GOV'T CODE ANN., ch. 2001.
3. Respondent received proper notice of hearing.
4. Based upon Findings of Fact Numbers 3 thru 7, Respondent violated TEX. ALCO. BEV. CODE ANN. § 61.36 (d) warranting cancellation of his permit.
5. Based upon the foregoing Findings of Fact and Conclusions of Law, Respondent's Wine and Beer Retailer's Off-Premise Permit, BQ-426394 should be canceled.

ISSUED ON THE 23RD DAY OF JULY, 2004.



PHYLLIS CRANZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd.
Ft. Worth, Texas 76116
Phone (817) 731-1733
Fax (817) 377-3706

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: Pertex Interprise Inc. d/b/a Krystal's Mart

DOCKET NUMBER: 458-04-3461

AGENCY CASE NO:

Gayle Gordon
Attorney
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
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Ph: 512/206-3490
Fax: 512-206-3498

AGENCY COUNSEL
BY FAX

Pertex Interprise Inc.
d/b/a Krystal's Mart
701 N. Eastside Drive
Wichita Falls, Texas 76304
Ph: 940/723-0207
Fax: 940/723-0207

RESPONDENT
BY MAIL and FAX

July 26, 2004

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

July 26, 2004

Alan Steen, Administrator
Texas Alcoholic Beverage Commission

VIA FACSIMILE
512/206-3498

Gayle Gordon, Staff Attorney
Texas Alcoholic Beverage Commission

VIA FACSIMILE
512/206-3498

Pertex Interprise, Inc. d/b/a Krystal's Mart
701 N. Eastelde Drive
Wichita Falls, Texas 76304

VIA FACSIMILE & REGULAR MAIL
940-723-0207

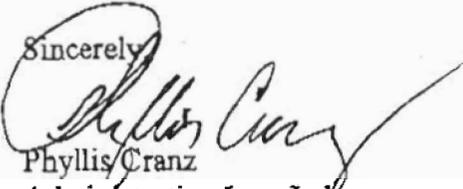
RE: **Docket No. 458-04-3462; Texas Alcoholic Beverage Commission vs Pertex Interprise, Inc. d/b/a Krystal's Mart (TABC No. 604923)**

Dear Mr. Steen:

Enclosed please find a Proposal for Decision in the above-referenced cause for the consideration of the Texas Alcoholic Beverage Commission. Copies of the proposal are being sent to Gayle Gordon, attorney for Texas Alcoholic Beverage Commission, Reza Vafiayana, Respondent. The Staff of the Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Pertex Interprise, Inc. d/b/a Krystal Mart (Respondent). Petitioner sought cancellation of Respondent's permit alleging Respondent failed to pay delinquent ad valorem taxes. For the reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends that the Respondent's permit be canceled.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the **State Office of Administrative Hearings**. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,



Phyllis Cranz

Administrative Law Judge