

DOCKET NO. 458-99-0308

TEXAS ALCOHOLIC BEVERAGE § BEFORE THE STATE OFFICE  
COMMISSION §  
§  
§  
VS. § OF  
§  
THE SPORTS ZONE, INC. §  
D/B/A THE SPORTS ZONE & CAFE §  
PERMIT NOS. MB-268781, LB-268782 §  
& PE-268783 §  
LUBBOCK COUNTY, TEXAS §  
(TABC CASE NO. 580735) § ADMINISTRATIVE HEARINGS

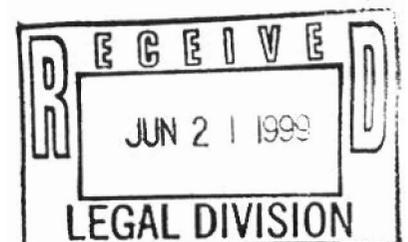
**PROPOSAL FOR DECISION**

I. Statement of the Case

The staff of the Texas Alcoholic Beverage Commission (Staff) brought this action against The Sports Zone, Inc., d/b/a The Sports Zone & Cafe (Respondent) to establish that the criteria for the forfeiture of Respondent's conduct surety bond had been met under the Texas Alcoholic Beverage Code (Code) and the Texas Alcoholic Beverage Commission Rules. This Proposal finds that the criteria for forfeiture have been met and that the Commission may forfeit the Respondent's conduct surety bond. A hearing on Staff's allegations commenced on June 10, 1999 and concluded the same day. Gayle Gordon, an attorney with the Commission's Legal Section, represented Staff and appeared by telephone. Respondent did not appear and was not represented at the hearing. After taking the evidence, Staff moved for a default judgment pursuant to 1 Tex. Admin. Code section 155.55. Because the hearing proceeded on a default basis, Staff's factual allegations are deemed admitted as true; therefore, the Administrative Law Judge (ALJ) has incorporated those allegations found in the notice of hearing attached to this Proposal for Decision into the Findings of Fact without discussing the evidence.

II. Findings of Fact

1. On March 15, 1999 the Staff issued a notice of hearing to Respondent advising Respondent of a hearing on allegations that Respondent was found to have committed three violations of the Code since September 1, 1995, that the violations have been finally adjudicated and that Respondent has forfeited the full amount of its conduct surety bond.



2. Staff sent the notice of hearing to Respondent at its record address by certified mail return receipt requested on March 15, 1999.
3. The complaint and notice of hearing included the information and language required by Tex. Gov't Code Ann. sections 2001.052 and 2001.054 and 1 Tex. Admin. Code section 155.55.
4. Respondent received the notice of hearing on March 17, 1999 as evidenced by the signed return receipt returned to the Commission on March 22, 1999.
5. On May 17, 1999 the hearing was continued to June 10, 1999 by an Order Resetting Date For Hearing issued by the ALJ.
6. The State Office of Administrative Hearings (SOAH) sent the Order Resetting Date For Hearing to Respondent at its record address by certified mail return receipt requested on May 17, 1999 and again on May 19, 1999.
7. Both orders were returned to SOAH undelivered with the second having the designation placed on it by the US Post Office "Forward Time Exp Rtn to Send".
8. Respondent did not appear and was not represented at the hearing held on June 10, 1999.
9. Respondent holds Mixed Beverage Permit MB-268781, Mixed Beverage Late Hours Permit LB-268782 and Beverage Cartage Permit PE-268783 for the premises known as The Sports Zone & Cafe, 2812 4th Street "B", Lubbock Lubbock County, Texas with a mailing address of 804 Main, Lubbock, Texas 79401-3418.
10. Respondent was found previously to have committed three violations of the Code since September 1, 1995.

### III. Conclusions of Law

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Tex. Alco. Bev. Code Ann. Subchapter B of Chapter 5, Sections 6.01, 11.11 and 61.13 of the Texas Alcoholic Beverage Code and 16 Texas Administrative Code Section 33.24.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to Tex. Gov't Code Ann. ch. 2001.

3. Proper and timely notice of hearing was attempted to be delivered to Respondent pursuant to Tex. Gov't Code Ann. ch. 2001 and 1 Tex. Admin. Code section 155.55.
4. The allegation contained in Section I of the notice of hearing, a copy of which is attached to the Proposal for Decision, is deemed admitted to be true pursuant to 1 Tex. Admin. Code Ann. section 155.55.
5. Under 16 Texas Administrative Code Section 33.24(j), a permittee is subject to forfeiture of its conduct surety bond if a final adjudication has been made that the permittee has committed three violations of the Code since September 1, 1995.
6. Based on the foregoing Respondent's conduct surety bond may be forfeited.

SIGNED this 18th day of June, 1999.



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B.L. PHILLIPS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 458-99-0308

TEXAS ALCOHOLIC BEVERAGE COMMISSION § BEFORE THE STATE OFFICE  
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VS. §  
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THE SPORTS ZONE, INC. § OF  
D/B/A THE SPORTS ZONE & CAFE §  
PERMIT NOS. MB-268781, LB-268782 §  
& PE-268783 §  
LUBBOCK COUNTY, TEXAS §  
(TABC CASE NO. 580735) § ADMINISTRATIVE HEARINGS

NOTICE OF HEARING

The Sports Zone, Inc., Respondent, is the holder of a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit and a Beverage Cartage Permit, issued by the Texas Alcoholic Beverage Commission ("Commission"), for the premises known as The Sports Zone & Cafe located at 2812 4th Street 'B', Lubbock, Lubbock County, Texas 79401-3448. A violation of the Texas Alcoholic Beverage Code, TEX. ALCO. BEV. CODE ANN. § 1.01 et seq. (V.T.C.A. 1996) ("Code") and/or the Texas Alcoholic Beverage Commission Rules, 16 TAC § 31.1 et seq. (West 1996) ("Rules") is alleged.

The Texas Alcoholic Beverage Commission, Petitioner, would show:

I.

By Order of the Commission, the above listed permit or license was canceled, or the Permittee or Licensee was found to have committed three violations of the Alcoholic Beverage Code since September 1, 1995. The cancellation or violations have been finally adjudicated. Pursuant to Section 11.11 and/or 61.13 of the Code and Section 33.24 of the Rules, Respondent has forfeited the full amount of its conduct surety bond.

The authority, jurisdiction, and procedure for this hearing are found in Subchapter B of Chapter 5, Sections 6.01, 11.61, and/or 61.71; 11.11 and/or 61.13 of the Texas Alcoholic Beverage Code; and Section 33.24 of the Rules.

On April 22, 1999 at 1:00 p.m., a hearing will be held by the State Office of Administrative Hearings, location and judge will be specified later, to determine whether the above allegation is true. If the allegation numbered above is found to be true, the conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to certificates of deposit and letters of credit), will be forfeited.

Petitioner's Ex. 1

You may appear at the hearing and have witnesses present to testify on your behalf. You have the right to be represented by counsel or you may waive this right and represent yourself. If you or your attorney desire any other information concerning this hearing, please contact the Commission representative whose signature appears below.

If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default.

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services such as interpreters, readers, large print or braille, are requested to contact the State Office of Administrative Hearings.

ADMINISTRATOR, TEXAS ALCOHOLIC  
BEVERAGE COMMISSION

BY:



Gayle Gordon  
State Bar No. 08202500  
TABC Legal Section  
5806 Mesa Drive, Suite 160  
Telephone: (512) 206-3496  
Fax: (512) 206-3498

CERTIFICATE OF SERVICE

I, Gayle Gordon, do hereby certify that true and correct copies of the foregoing Notice of Hearing has been served upon the parties listed below, in the manner indicated, on this the 15th day of March, 1999.



Gayle Gordon  
TABC Legal Division

KGG/pah

Rommel Corro  
 State Office of Administrative Hearings  
 300 West 15th Street, Suite 504  
 Austin, Texas 78701  
 Via Facsimile (512) 475-4994

The Sports Zone, Inc.  
 d/b/a The Sports Zone & Cafe  
**RESPONDENT**  
 804 Main  
 Lubbock, Texas 79401-3418  
**Certified Mail/RRR No. P 419 583 260**

Licensing Division  
 Lubbock District Office

P 419 583 260

|  |  |   |  |
|--|--|---|--|
| <b>SENDER:</b><br>■ Complete items 1 and/or 2 for additional services.<br>■ Complete items 3, 4a, and 4b<br>■ Print your name and address on the reverse of this form so that we can return this card to you.<br>■ Attach this form to the front of the mailpiece, or on the back if space does not permit.<br>■ Write "Return Receipt Requested" on the mailpiece below the article number<br>■ The Return Receipt will show to whom the article was delivered and the date delivered |  | I also wish to receive the following services (for an extra fee):<br>1. <input type="checkbox"/> Addressee's Address<br>2. <input type="checkbox"/> Restricted Delivery<br>Consult postmaster for fee   |  |
| 3. Article Addressed to:<br><br>The Sports Zone, Inc.<br>d/b/a The Sports Zone & Cafe<br>804 Main<br>Lubbock, Texas 79401-3418<br>Received By: (Print Name)  |  | 4a. Article Number<br>P 419 583 260<br><br>4b. Service Type<br><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified<br><input type="checkbox"/> Express Mail <input type="checkbox"/> Insured<br><input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> COD |  |
| 6. Signature (Addressee or Agent)<br>X Michelle DeWitt   |  | 7. Date of Delivery<br>3-17-99 S Matthes<br>8. Addressee's Address (Only if requested and fee is paid)  |  |

US Postal Service  
**Receipt for Certified Mail**

No Insurance Coverage Provided  
 Do not use for International Mail (See reverse)

|   |    |
|---|----|
| Sender  |    |
| Sports Zone, Inc  |    |
| Street Number   |    |
| Lubbock   |    |
| Post Office, State, & ZIP Code                              |    |
| DN# 580735  |    |
| Postage   | \$ |
| Certified Fee   |    |
| Special Delivery Fee  |    |
| Restricted Delivery Fee                                     |    |
| Return Receipt Showing to Whom & Date Delivered             |    |
| Return Receipt Showing to Whom, Date, & Addressee's Address |    |
| TOTAL Postage & Fees  | \$ |
| Postmark or Date  |    |

PS Form 3800, April 1995

3/16/99

NOK

is your RETURN ADDRESS

Thank you for using Return Receipt Service.