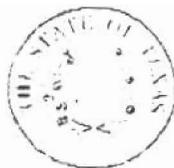


State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

June 23, 1999

Doync Bailey
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive, Suite 160
Austin, Texas 78731

CERTIFIED MAIL,
RETURN RECEIPT
Z 208 573 097

RE: Docket No. 458-99-0903; Texas Alcoholic Beverage Commission vs. George's Country Club, Inc.
d/b/a Club Panchanga (TABC Case No. 583601)

Dear Mr. Bailey:

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 Timothy Griffith, attorney for Texas Alcoholic Beverage Commission, and to George's Country Club, Inc. d/b/a Club Pachanga, respondent. For reasons discussed in the proposal, I recommend cancellation of Club Pachanga's Mixed Beverage Permit, MB-253382, and Mixed Beverage Late Hours Permit, LB-253383.

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,

Robert F. Jones, Jr.
Administrative Law Judge

RJ:ds

Enclosure

cc: Rommel Corro, Docket Clerk, State Office of Administrative Hearing - **CMRR# Z 208 573 099**
Timothy Griffith, Staff Attorney, Texas Alcoholic Beverage Commission - **CMRR# Z 208 573 098**
George's Country Club, d/b/a Club Pachanga, 2051 W. NW Highway, Suite 50, Dallas, Texas 75220 - **CMRR# Z 208 573 101**

The Vinnedge Building
2100 N. Main Street, Suite 10 ♦ Fort Worth, Texas 76106
(817) 626-0003 Fax (817) 626-7448

DOCKET NO. 458-99-0903

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
GEORGE'S COUNTRY CLUB, INC. D/B/A CLUB PACHANGA PERMITS NOS. MB-253382, LB-253383 DALLAS COUNTY, TEXAS (TABC CASE NO. 583601)	§ § § § §	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (Staff) brought this disciplinary action against George's Country Club, Inc. d/b/a Club Pachanga alleging (1) that Respondent, through its employees, was in possession of twenty-eight bottles of deleterious alcoholic beverages on the licensed premises, and (2) that Respondent, through its employees, was in possession on the licensed premises of six empty bottles once containing distilled spirits without invalidated serially numbered identification stamps, both violations of the Texas Alcoholic Beverage Code (Code). Staff requested that Respondent's permit and license be canceled. This proposal finds that the allegations against Respondent are true. The Administrative Law Judge (ALJ) recommends cancellation of Respondent's permits.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under §§ 11.61(b)(2) & (9), and 28.09, TEX. ALCO. BEV. CODE. The State Office of Administrative Hearings (SOAH) 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, under §2003.021, TEX. GOV'T CODE. There were no contested issues of notice or jurisdiction in this proceeding.

On May 24, 1999; the Staff issued its Notice of Hearing, admitted into evidence as Petitioner's Exhibit Number 1. The notice was directed to George's Country Club, Inc. d/b/a Club Pachanga (Club Pachanga) at its licensed premises located at 2051 West Northwest Highway, Suite 50, Dallas, Dallas County, Texas. According to the certificate of service, the notice was served by certified mail, return receipt requested. As of the date of the hearing, the Staff had not received proof of delivery of the notice in the form of a return receipt "green card." The ALJ presumes that Club Pachanga

The Staff also attempted to contact Club Pachanga by telephone on May 12, 1999, at the two telephone numbers for Club Pachanga the Staff had in its files, namely (214) 444-8888, and (972)

received the Notice on May 31, 1999. See 1 TEX. ADMIN. CODE § 155.25(d)(3). On June 15, 1999, a hearing convened before ALJ Robert F. Jones Jr., SOAH, at 6300 Forest Park Road, Suite B-230, Dallas, Dallas County, Texas. Staff was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent failed to appear. Because the hearing proceeded on a default basis, the Staff's factual allegations are deemed admitted as true. Further, evidence was received from the Staff on that date. The record was closed on June 15, 1999.

LEGAL STANDARDS AND APPLICABLE LAW

TABC is authorized under § 11.61(b)(2) of the Code to cancel a permit if it is found that the permittee has violated a provision of the Code during the existence of the permit. § 11.61(b)(9) authorizes cancellation of a permit if it is found that the permittee has supplied impure or otherwise deleterious beverages on the licensed premises. Under § 1.04(11), "permittee" means "an agent, servant, or employee" of the permittee. § 28.09(a) of the Code requires the holder of a mixed beverage permit or any person employed by the holder, who "empties a bottle containing distilled spirits . . . [to] immediately after emptying the bottle invalidate the identification stamp on the bottle in the manner prescribed by rule or regulation of the commission or administrator. Under TABC Rule, 16 TEX. ADMIN. CODE § 41.72 (a), "the invalidation of identification stamps required by § 28.09 of the Alcoholic Beverage Code shall be done by mutilating the stamp." "Mutilate" means to "scratch, cut, tear, or abrade in a manner which inflicts obvious and substantial damage to the stamp but does not totally remove or obliterate the stamp." 16 TEX. ADMIN. CODE § 41.72(b).

EVIDENCE AND PARTIES' CONTENTIONS

The Staff's Exhibit 2 proved that Respondent was issued Mixed Beverage Permit, MB-253382, and Mixed Beverage Late Hours Permit, LB-253383. The permits were issued on July 27, 1998. The permits were issued to George's Country Club, Inc. d/b/a Club Pachanga (Club Pachanga). Club Pachanga's licensed premises was located at 2051 West Northwest Highway, Suite 50, Dallas, Dallas County, Texas. Staff alleged that Respondent, through its employees, was in possession of twenty-eight bottles of deleterious alcoholic beverages on the licensed premises, and that Respondent, through its employees, was in possession on the licensed premises of six empty bottles once containing distilled spirits without invalidated serially numbered identification stamps.

On February 12, 1999, TABC Enforcement Agent Fred Oden visited Club Pachanga. While inspecting the premises, Oden discovered twenty-eight opened bottles of alcoholic beverages, kept on shelves in the premises, or in a garbage can being used for storage. The beverages were contaminated with fly larvae, fly eggs, in some instances pieces of white string, and other unidentified flotsam. Oden spoke

to one Gabi Chahine, who identified himself as the manager of Club Pachanga. Chahine told Oden that customers were served out of the contaminated bottles. Oden testified this practice constituted a serious health hazard. Oden found a further six bottles in the garbage can. These bottles were empty. The six bottles had at one time contained distilled spirits. Oden testified none of the six bottles' serially numbered identification stamps had been invalidated by mutilation, and were completely intact.

ANALYSIS

1. Deleterious Beverages

The Staff's evidence shows that the twenty-eight bottles contained "deleterious beverages." The Code does not define "deleterious beverages." A substance is "deleterious" if it is harmful in a subtle or unexpected way.² Agent Oden's opinion of the harmful nature of the beverages aside, consumers do not expect to drink alcoholic beverages containing fly larvae or eggs, or pieces of string. Club Pachanga was in possession of twenty-eight bottles of deleterious alcoholic beverages.

2. Intact Stamps

The Staff's evidence shows that six empty bottles that once had contained distilled spirits which were found on the premises had intact serially numbered identification stamps. Club Pachanga was in possession of those bottles.

Staff requested the cancellation of Respondent's permits for the violations. § 28.09(d), TEX. ALCO. BEV. CODE, establishes that the "holder of a mixed beverage permit who is found in possession of an empty distilled spirits bottle which contained distilled spirits . . . and on which the identification stamp has not been invalidated in accordance with this section commits a separate offense for each bottle so possessed." The Staff has proved seven violations of the Code on the part of Club Pachanga.

RECOMMENDATION

The ALJ recommends that Mixed Beverage Permit, MB-253382, and Mixed Beverage Late Hours Permit, LB-253383, held by George's Country Club, Inc. d/b/a Club Pachanga be canceled.

Any other requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly set forth below, should be denied.

FINDINGS OF FACT

1. George's Country Club, Inc. d/b/a Club Pachanga (Club Pachanga) was issued Mixed Beverage Permit, MB-253382, and Mixed Beverage Late Hours Permit, LB-253383, on July 27, 1998.
2. Club Pachanga's licensed premises were located at 2051 West Northwest Highway, Suite 50, Dallas, Dallas County, Texas.
3. On February 12, 1999, Club Pachanga, through its employees, was in possession of twenty-eight bottles of deleterious alcoholic beverages on the licensed premises.
4. On February 12, 1999, Club Pachanga, through its employees, was in possession on the licensed premises of six empty bottles once containing distilled spirits without invalidated serially numbered identification stamps.
5. On May 24, 1999, the Staff issued its Notice of Hearing directed to Club Pachanga at its licensed premises located at 2051 West Northwest Highway, Suite 50, Dallas, Dallas County, Texas. Club Pachanga is presumed to have received the notice on May 31, 1999.
6. On June 15, 1999, a hearing convened before ALJ Robert F. Jones Jr., SOAH, at 6300 Forest Park Road, Suite B-230, Dallas, Dallas County, Texas. Staff was represented at the hearing by Timothy E. Griffith, TABC Staff Attorney. Respondent failed to appear.

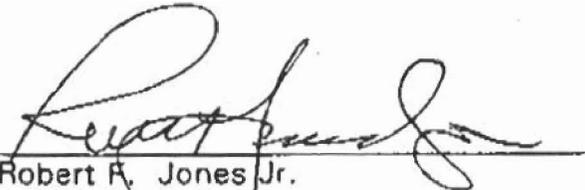
CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under §§ 11.61(b)(2) & (9), and 28.09, TEX. ALCO. BEV. CODE.
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 §2003.021, TEX. GOV'T CODE.
3. Respondent received adequate notice of the proceedings and hearing, pursuant to § 2001.052, TEX. GOV'T CODE., and 1 TEX. ADMIN. CODE §§ 155.25(d)(3) and 155.27.
4. Based on Findings of Fact Nos. 1, 2, and 3, George's Country Club, Inc. d/b/a Club Pachanga (Club Pachanga) violated § 11.61(b)(9), TEX. ALCO. BEV. CODE.
5. Based on Findings of Fact Nos. 1, 2, and 4, and § 28.09(d), TEX. ALCO. BEV. CODE, Club Pachanga violated §§ 11.61(b)(2) and 28.09(a), TEX.

ALCO. BEV. CODE, six times.

6. Based on Conclusions of Law No. 4 and 5, Club Pachanga's Mixed Beverage Permit, MB-253382, and Mixed Beverage Late Hours Permit, LB-253383, should be canceled.

SIGNED this 23rd day of June, 1999.



Robert F. Jones Jr.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Post Office Box 13127, Austin, Texas 78711-3127 (512) 206-3333
Collin County Outpost
1710 N. Mc Donald #5, Mc Kinney, Texas 75069 (972) 547-5099
FAX: (972) 547-5093
<http://www.tabc.state.tx.us>

Doyle Bailey, Administrator

FACSIMILE TRANSMISSION

DATE 6-25-99

TO: ~~XXXXXXXXXXXX~~ Peggy Hernandez

C/O: ~~XXXXXXXXXXXX~~ TABC LEGAL

Fax Number _____

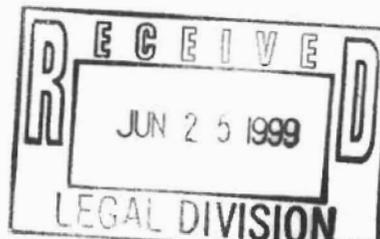
NUMBER OF PAGES (Including Coversheet): seven

From: TEG.

AT: Texas Alcoholic Beverage Commission
Enforcement Division
Collin County Outpost/McKinney, TX
Phone (972) 547-5099 Fax (972) 547-5093

COMMENTS: CLUB PACHANGA:

HOWS THIS FOR FAST.



IF YOU DO NOT RECEIVE THE NUMBER OF PAGES INDICATED, CONTACT BY TELEPHONE AS SOON AS POSSIBLE.