State Office of Administrative Hearings

Shelia Bailey Taylor
Chief Administrative Law Judge

November 12, 1999

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

Certified Mail No. Z252560466

RE: Docket No. 458-99-1502; Texas Alcoholic Beverage Commission vs. Ronnie Darilyn Jones d/b/a R.D's Place Lounge (TABC Case No. 584146)

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 Gayle Gordon, Legal Director for Texas Alcoholic Beverage Commission and to Gerald Lopez Attorney for Respondent.

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,

Louis R. Lopez
Administrative Law Judge

LRL:et
Enclosure
xc: Shanee Woodbridge, Docket Clerk, State Office of Administrative Hearing -REGULAR MAIL
Gayle Gordon, Legal Director, Texas Alcoholic Beverage Commission -CERTIFIED MAIL NO Z 252 560 467
Gerald Lopez, Atty. - CERTIFIED MAIL NO Z 133 586 729, RETURN RECEIPT REQUESTED

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LEGAL DIVISION

Willows Office Complex
9434 Viscount, Suite 102 ◆ El Paso, Texas 79925
(915) 595-0052 Fax (915) 595-0362

DOCKET NO. 458-99-1502
(TABC NO. 584146)

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
VS.	§	
	§	OF
RONNIE DARILYN JONES dba R.D.'s PLACE LOUNGE PERMIT NO. BG-304676 LICENSE NO. BL-411548 ECTOR COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The TEXAS ALCOHOLIC BEVERAGE COMMISSION (TABC), Petitioner, brought this action against RONNIE DARILYN JONES dba R.D.'s PLACE LOUNGE, Respondent, to suspend its permits and licenses for violations of the Texas Alcoholic Beverage Code [hereinafter Code]. The Petitioner requested cancellation of Respondent's permits. This proposal recommends cancellation.

On October 6, 1999, a hearing was held in Midland, Texas before an administrative law judge with the State Office of Administrative Hearings. The parties had no objection on jurisdiction and stipulated that the requirements for proper notice of hearing had been met.

Discussion

A. Evidence

TABC's legal basis for asking for cancellation of Respondent's permits was that Respondent violated Code Section 104.01(9) when she possessed cocaine inside her bar, R.D.'s Place Lounge. Code Section 104.01(9) prohibits a retail beer seller from "possession of a narcotic or . . . permitting a person on the licensed premises to do so."

TABC called as witnesses the following members of the Odessa Police Department: Sergeant Jesse Duarte, Detective Maureen Fletcher, and Corporal Jordan Medrano. It also called TABC Lieutenant Dyer Lightfoot. Respondent did not call any witnesses.

On March 19, 1999, several members of the Odessa Police Department entered R.D.'s Place Lounge. They had earlier obtained a search warrant to enter the trailer home of Respondent Ronnie Darilyn Jones on information that narcotics were being sold there. The trailer was located behind the bar. It was obtained as the result of a Crime Stoppers' tip to the department as well as additional investigation by an undercover person. The officers did not have any arrest warrants for anyone, only a search warrant solely for entry

into the trailer home.

After entering, the police found the door to the restroom locked. After kicking the door open, the officers found the Respondent inside the restroom. Officer Maureen Fletcher then asked Ms. Jones if she had any drugs in her possession. Respondent handed Fletcher a small package of paper from her watch pocket. There was white powder in the paper. Diane Dolores Johnson was working that evening as a bartender. She also had a package containing white powder in her watch pocket and handed it to Fletcher.

No Miranda warning was given to either Ms. Jones or Ms. Johnson before they were asked if they had any drugs in their possession. Up to that point, the officers had not arrested anyone and had found no reason to arrest anyone on the premises. Lieutenant Lightfoot testified that the people in the bar were free to leave after the officers entered and were walking through the bar.

Upon receiving the packages from the ladies, Fletcher immediately handed both packages to Sergeant Vickery for inventory purposes. He in turn handed the packets to Officer Jordan Medrano who was in charge of testing for drugs. He testified he had analyzed between 200 and 300 samples of drugs in his career. He positively stated that the powder was cocaine. A patron of the bar was found with cocaine in his jacket pocket.

B. Analysis

Respondent did not dispute the facts to which the Odessa police officers testified. Her contention was that the police asking her and her bartender whether they had drugs in their possession was improper without a warning under the Miranda doctrine. There was no dispute that the officers could not enter the bar. It is a public location of a state-regulated business and can be entered whenever it is open for business.

A Miranda warning does not have to be given to a person being questioned if the person is not under arrest, which means that a person is not free to leave. In this case, there is every indication that the police officers had no reason or intent to arrest Ms. Jones and Ms. Johnson before they asked them whether they had narcotics. They did not have any arrest warrants to serve. They had a search warrant for the trailer home, but without any evidence, they had no reason to arrest anyone before finding narcotics in the possession of the two ladies. The officers were not required to give any Miranda warnings to the ladies. There was no evidence that the officers had grounds on any other basis to arrest the ladies at that time. In the end, the only arrests made was for narcotics.

Additionally, the Miranda doctrine is inapplicable to the use of statements of accused persons in civil hearings. If a person makes an incriminating statement to a police officer without being given a Miranda warning, the doctrine holds that, under the Fifth Amendment, the statement cannot be used against the person in a criminal prosecution. The protection does not extend to prohibit the use of the statement in a civil suit or hearing such as this administrative proceeding.

Respondent possessed cocaine in her lounge, and it is very likely that she possessed it with the intent to distribute it. The Odessa police had obtained reliable information that she sold narcotics out of her home. It is also very likely that she condoned her bartender Diane Johnson to sell cocaine in her bar. Intentionally abusing her license to sell alcoholic beverages by using the opportunity to commit the felony of possessing and probably selling cocaine in her lounge calls for nothing less than the cancellation of her license.

C. Recommendation

It is recommended that Respondent's permit and license be canceled.

FINDINGS OF FACT

1. Ronnie Darilyn Jones dba R.D.'s Place Lounge, is located at 7409 Andrew Highway, Odessa, Ector County, Texas. She was issued Wine and Beer Retailer's Permit BG-304676 on January 24, 1995 and Retail Dealer's On-Premise Late Hours License BL-411543 on April 24, 1997 by the Texas Alcoholic Beverage Commission (TABC), which have been regularly renewed. As a permittee of TABC, Respondent is subject to the provisions of the Code.

2. On October 6, 1999, a hearing was held before Administrative Law Judge Louis Lopez in the Midland City Hall, Council Chambers, 300 North Loraine, Midland, Texas. The Petitioner was represented by attorney Gayle Gordon. The Respondent was represented by attorney Gerald Lopez. Evidence was received and the hearing was closed on the same day. The parties stipulated that the requirements for proper notice of hearing had been met.

3. On March 19, 1999, several members of the Odessa Police Department entered R.D.'s Place Lounge. The officers did not have any arrest warrants for anyone.

4. Respondent Ronnie Darilyn Jones locked herself inside a restroom, and the officers had to kick the door down.

5. Odessa Police Officer Maureen Fletcher asked Respondent if she had any drugs in her possession.

6. Respondent took a small package of paper from her watch pocket and gave it to Fletcher. There was white powder in the paper.

7. Diane Dolores Johnson was working as a bartender. Officer Fletcher asked her if she had any drugs in her possession. Johnson also had a package containing white powder in her watch pocket and handed it to Fletcher.

8. No Miranda warning was given to either Ms. Jones or Ms. Johnson before they were asked if they had any drugs in their possession.

9. Up to the point when the question was asked, the officers had not arrested anyone and had found no reason to arrest anyone on the premises. Everyone in the bar had been free to leave.

10. Respondent and her bartender, Diane Johnson, could have left up until the point when they handed over the packages of white powder, if they had so desired.

11. Fletcher handed both of the packages she received from the ladies to Sergeant Vickery for inventory purposes.

12. Vickery handed the packets to Officer Jordan Medrano who was in charge of testing substances for drugs and who had performed drug tests at least 200 times before this occasion.

13. Each of the packages containing white powder possessed by Respondent and by Johnson was cocaine.

14. A patron of the bar was found with cocaine in his jacket pocket.

CONCLUSIONS OF LAW

The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to any or all of the following: Texas Alcoholic Beverage Code [Code] Sections 5.31--5.44, 6.01, 11.61, and 61.71.

2. Service of proper notice of the hearing was made on Respondent pursuant to Code Section 11.63 and the Administrative Procedure Act, Texas Government Code Sections 2001.051 and 2001.052.

3. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding pursuant to Code Section 5.43(a) and Texas Government Code Chapter 2003.

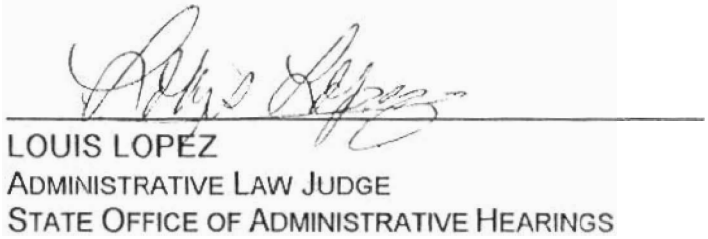
4. Based on the foregoing Findings of Fact, Respondent's rights under Miranda law were not violated when she was asked if she had drugs.

5. Based on the foregoing Findings of Fact, Respondent Ronnie Darilyn Jones violated Code Section 104.1(9) when she possessed cocaine inside R.D.'s Place Lounge.

6. Based on the foregoing Findings of Fact, Respondent Ronnie Darilyn Jones violated Code Section 104.1(9) when her employee, Diane Dolores Johnson, possessed cocaine inside R.D.'s Place Lounge.

7. Based on the foregoing Findings of Fact and Conclusion of Law, it is recommended that TABC cancel Respondent's permit and license.

SIGNED this 10th day of November, 1999.



LOUIS LOPEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS