

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

January 24, 2000

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

VIA CERTIFIED MAIL Z 283 051 897
Return Receipt Requested

RE: Docket No. 458-99-1574; Texas Alcoholic Beverage Commission vs. Robert Mark Johnson d/b/a Hazzards Sports Bar & Grill; (TABC Case No. 583968)

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 John Gamboa, Attorney for Respondent. For reasons discussed in the proposal, I recommend that Respondent's conduct surety bond be forfeited to the State.

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,

Jerry A. Garrett
Administrative Law Judge

JG:ds
Enclosure

xc: Shanee Woodbridge, State Office of Administrative Hearings, Austin, Texas - **Regular Mail**; Timothy Griffith, Staff Attorney, Texas Alcoholic Beverage Commission - **Regular Mail**; John Gamboa, Attorney for Respondent, 405 Parkview Drive, Fort Worth, Texas 76102-5816 - **CERTIFIED MAIL NO. Z 283 051 898, RETURN RECEIPT REQUESTED**

On August 20, 1997, Respondent executed a conduct surety bond for Hazzards Sports Bar and Grill, in the amount of \$10,000 as required by §11.11 of the Code. The terms of this bond provided:

This bond shall become effective on the date of the issuance of the above permit or license by the Texas Alcoholic Beverage Commission and shall remain in full force and effect until canceled, and thereafter provided, or until such permit or license and succeeding renewals of the permit or license have expired.

III. EVENTS LEADING TO THE REQUEST TO FORFEIT RESPONDENT'S CONDUCT SURETY BOND

On February 1, 1999, Respondent signed an "Agreement and Waiver of Hearing" in Docket Number 582200, regarding a violation of the Code. The Waiver Agreement stated that on or about January 9, 1998, Respondent, James Alex Vines, was finally convicted of a felony in violation of §11.61(b)(3) of the Code, which warrants the cancellation of the permit and license. The agreement contained the following language:

My name is Robert Mark Johnson, authorized to represent Respondent in the styled and numbered cause above. Respondent, without admitting the violation described herein occurred, waives hearing in the matter and accepts the penalty assessed. On or about January 9, 1998, Respondent, James Alex Vines, was finally convicted of a felony in violation of §11.61(b)(3) of the Code, which warrants the cancellation of the permit and license. Respondent agrees that the above-referenced permits and license be canceled for cause starting at 12:01 A.M. on the 17th day of March, 1999. Respondent declares his understanding of the terms of this **AGREEMENT** and accepts the penalty assessed for this violation.

As a result of the waiver agreement, the Commission Administrator entered a Waiver Order on February 4, 1999. The Waiver Order provided that the violation, as stated, did occur. Further, the Order adopted the above described waiver of hearing and assessed the penalty of Canceled for Cause against Respondent's permit and license beginning at 12:01 A.M. on the 17th day of March, 1999.

IV. APPLICABLE LAW AND ANALYSIS

The Commission may revoke or suspend a permit, if the holder violates a provision of the Code or a rule of the Commission. TEX. ALCO. BEV. CODE ANN. § 6.01(Vernon 2000). The terms "Permittee" and "Licensee" mean a person who is the holder of a permit or license provided for in the Code, or an agent, servant, or employee of that person, TEX. ALCO. BEV. CODE ANN. §§ 1.04(11) and 1.04(16)(Vernon 2000). The provisions of 16 TEX. ADMIN. CODE §33.24(j) governs forfeiture of a conduct surety bond, and states that the Commission may seek forfeiture when a license or permit has been canceled for cause where the licensee or permittee has violated Section 11.61(b)(3) of the Code.

When posting a conduct surety bond, the permit or license holder must agree not to violate a Texas law relating to alcoholic beverages, or a Commission rule. The holder must also agree that

the amount of the bond shall be paid to the state if the permit is revoked, or, on final adjudication, that the holder violated a provision of the Code. The Commission's rule at 16 TEX. ADMIN. CODE. §33.24 also applies and requires forfeiture upon cancellation, where the licensee or permittee had violated §11.61(b)(3) of the Code.

Clearly, by the terms of the Agreement and Waiver of Hearing executed by Mr. Johnson, Mr. Vines had been convicted of a felony in violation of §11.61(b)(3) of the Code. Because of this agreement, a Waiver Order was issued by the Commission canceling Respondent's permit and license. As a result of these events, forfeiture of Respondent's surety bond is required.

V. FINDINGS OF FACT

1. On October 24, 1997, the Commission issued a Wine and Beer Retailer's Permit No. BG-421457 and a Retail Dealer's On Premise Late Hours License No. BL-421458, to Respondent for the premises known as Hazzards Sports Bar & Grill, at 3701 Williams Road, Fort Worth, Tarrant County, Texas; and issued renewals of the permit and license on October 24, 1998.
2. On August 20, 1997, Respondent executed a conduct surety bond doing business as Hazzards Sports Bar & Grill for \$10,000 as required by §11.11 of the Code. By the terms of this bond, it was effective on the initial issuance date of Respondent's Wine and Beer Retailer's permit BG-421457 and Retail Dealer's on Premise Late Hours License BL-421458, and their subsequent renewals on October 24, 1998.
3. On February 1, 1999, Respondent signed an "Agreement and Waiver of Hearing" regarding one violation of the Code. By signing the waiver agreement, Respondent did not deny that: on or about January 9, 1998, Respondent, James Alex Vines, was finally convicted of a felony in violation of §11.61 (b)(3) of the Code.
4. On February 4, 1999, the Commission Administrator entered a Waiver Order finding Respondent violated §11.61(b)(3) of the Code, a final adjudication.
5. Respondent violated §11.61 (b)(3) of the Code.
6. Commission Staff seeks forfeiture of Respondent's surety bond because of events described in Findings of Fact No. 1 - 5.
7. On August 20, 1999 and September 28, 1999, proper and timely notice of hearing was provided to the parties and a hearing was convened on November 22, 1999 at the State Office of Administrative Hearings, 2100 North Main Street, Suite 10, Fort Worth, Tarrant County, Texas, pursuant to these notices; the record was closed in this case on January 15, 2000.

PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Subchapter B of Chapter 5, TEX. ALCO. BEV. CODE ANN. (Vernon 2000).
2. The State Office of Administrative Hearings has jurisdiction over the 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. §§ 2003.021(b) and 2003.042(6) (Vernon 2000).

3. As referenced in Findings of Fact No. 7, the parties received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 (Vernon 2000).
4. Based upon Findings of Fact Nos. 1 and 2, Respondent held a Wine and Beer Retailer's Permit No. BG-421457 and a Retail Dealer's on Premise Late Hours License No. BL-421458, and posted a conduct surety bond in accordance with the requirements set forth in 16 TEX. ADMIN. CODE § 33.24 and TEX. ALCO. BEV. CODE ANN. § 11.11 (Vernon 1999 and Vernon 2000).
5. Based upon Findings of Fact Nos. 3 - 5, Respondent violated §11.61(b)(3) of the TEX. ALCO. BEV. CODE ANN. (Vernon 2000), by violating a Commission rule and law of the State of Texas relating to alcoholic beverages while holding a Wine and Beer Retailer's Permit No. BG-421457 and a Retail Dealer's on Premise Late Hours License No. BL-421458, issued by the Commission.
6. Based on Findings of Fact No. 3 - 5, the conduct surety bond executed by Respondent should be forfeited to the State.

Signed this the 24th day of January, 2000.


Jerry A. Garrett
Presiding Administrative Law Judge