

DOCKET NO. 505329

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	ALCOHOLIC
DALLAS INDEPENDENT SCHOOL DISTRICT, Protestant	§	
	§	
	§	
VS.	§	
	§	
JUAN FRANCIS CASTILLEJA D/B/A OTRA PARTE NIGHT CLUB ORIGINAL APPLICATION MB/LB/PE DALLAS COUNTY, TEXAS (SOAH Docket No. 458-06-0124)	§	BEVERAGE COMMISSION

O R D E R

CAME ON FOR CONSIDERATION this 13th day of January 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Kyle J. Groves. The hearing convened on October 20, 2005 and adjourned the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 22, 2005. This 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, Transcripts, 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.

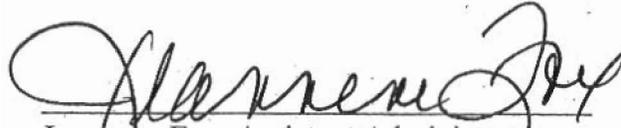
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application for MB, LB and PE is **GRANTED**.

This Order will become final and enforceable on February 2, 2006, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

SIGNED this 13th day of January 2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

Administrative Law Judge Kyle J. Groves
State Office of Administrative Hearings
VIA FAX (214) 956-8611

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Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Division

Licensing Division

Dallas District Office

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction, notice, or venue in this proceeding. Therefore, those matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

On October 20, 2005, a hearing convened at the State Office of Administrative Hearings (SOAH) in Dallas, Texas, before ALJ Kyle J. Groves. The applicant appeared *pro se*. Staff was represented by Timothy Griffith. The protestant was represented by Attorney Valerie Carrillo. The record closed on October 20, 2005.

II. LEGAL STANDARDS AND APPLICABLE LAW

The Protestants challenge the application on the basis of § 11.46(a)(8) of the Texas Alcoholic Beverage Code (Code). Section 11.46(a)(8) provides that a permit may be denied if the Commission has reasonable grounds to believe and finds that “the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, peace, morals, and safety of the people and on the public sense of decency.”

III. EVIDENCE

A. Background

Applicant seeks permits from the Commission to sell alcohol at an existing club. Applicant recently purchased the club. The previous owner did have permits to sell liquor on the premises. The protest arises from the fact that there is a school in close proximity to the club.

B. TABC Evidence

Although Petitioner did not take a formal position on the issue in this matter, it did present

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the evidence of TABC Agent Dale Shimpock. Mr. Shimpock testified that the club is 59 feet from the Cesar Chavez Learning School. He said there is a 300 feet distance requirement between schools and premises selling liquor, but this does not pertain to Respondent because he is purchasing an existing club. He also said the previous owner of the club had no violations.

C. Protestant's Evidence and Contentions

Jermauld Cobbs works for Protestant's Facility Planning Department. He testified that the distance from the property line of the school to the property line of the club is approximately 39 feet. He said the school is directly across the street from the school.

For the past two years, Jose Munoz has been the principal at the school. He testified the school is open from 7:30 a.m. to 4:30 p.m. In addition to the regular school hours, there are extra-curricular activities in the evening such as P.T.A. meetings. Mr. Munoz said there have been no problems with the exiting club. However, beer bottles and cigarette butts have been found in the area. He has a general concern for the welfare of the children attending the school because of the proximity of the club. The children attending the school range from four to 13 years of age. Mr. Munoz testified that the club has not been open the past two years.

Ana Maria Lisa Lugo is the parent of an eight year old and an 11 year old that attend the school. Ms. Lugo is also president of the P.T.A. She believes the club is just too close to the school. She is concerned that the club is a bad influence for the children.

C. Applicant's Evidence and Contentions

Juan Castilleja testified that the club has been open for the past two years. It is open from 8:00 p.m. to 2:00 a.m. on Friday, Saturday, and Monday. He said there were problems with day laborers loitering on the club property, but he has taken steps, including calling the police, to remove the day laborers. He testified that he desires to cooperate with the school to resolve any issues that may arise.

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Rita Cabello has been the assistant manager of the club since February, 2005. She testified the day laborers are still present on the club's property despite calling the police and taking legal action to have them removed.

IV. DISCUSSION

TABC did not take a formal position in this hearing. The Protestants are very concerned that the issuance of the permits would be dangerous for children attending the school. The Protestants presented evidence based on conjecture that the issuance of the permits would be a detriment to the area. There was no evidence presented that the existing club has in any way been harmful to the community. The testimony showed that there has not been any problems with the existing club. Mr. Munoz did not even know the club has been in operation.

The conclusion cannot be reached that granting the permit and certificate would create a business inconsistent with the existing area. The club has been operating for the past two years, and it has been a part of the community without incident. Ultimately, the Protestants simply have not presented any evidence why the issuance of the permits would present any harm or is somehow incompatible with the community's morals, peace, safety, and general welfare. The ALJ cannot conclude that the evidence supports a finding that the place or manner in which Applicant may conduct business warrants the refusal of the permits. There is no legitimate basis for denying the permits. For this reason, the ALJ recommends that the requested permit and certificate be issued.

IV. PROPOSED FINDINGS OF FACT

1. On June 3, 2005, Juan Francis Castilleja d/b/a Otra Parte Night Club (Applicant) filed an original application with the Texas Alcoholic Beverage Commission (Commission) for a mixed beverage permit, mixed beverage late hours permit, and beverage cartage permit for premises located at 1705 North Carroll Avenue, Dallas, Dallas County Texas
2. Commission Staff determined that Applicant met all of the technical requirements to obtain the permit and certificate.

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3. Protestants contested the issuance of the permits on the basis that the manner in which Respondent may conduct its business warrants the refusal of the permits based upon the general welfare, health, peace, morals, and safety of the people and the public sense of decency.
4. On September 15, 2005, Commission Staff issued a notice of hearing notifying all parties that a hearing would be held on the permit and certificate requests.
5. The notice of hearing included a statement regarding the time, place, and nature of the hearing; referenced the legal authority upon which the hearing would be held; cited the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
6. The hearing was held on October 20, 2005, in Dallas, Dallas County, Texas, before ALJ Kyle Groves, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings. The hearing concluded and the record closed that same day.
7. Applicant has purchased an existing club that currently sells alcoholic beverages.
8. Applicant seeks to obtain permits under his own name to sell alcoholic beverages at the existing club.
9. The club is in close proximity to a school.
10. There have been no problems associated with the operation of the existing club.
11. The issuance of the permits would not create a danger to the children attending the school.
12. The issuance of the permits would not be detrimental to the general welfare, health, peace, morals, and safety of the people in the surrounding neighborhood.

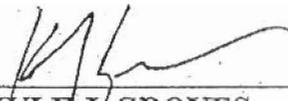
V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. Chapters 1 and 5 and §§ 6.01 and 11.46 (the 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 TEX. GOV'T CODE ANN. §2003.
3. The parties received proper and timely notice of the proceedings and hearing, pursuant to

TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

4. Based on the foregoing findings, the evidence shows this application meets all requirements for issuance by the Commission. TEX. ALCO. BEV. CODE chs. 11, 28, 32 and 44.
5. Since Applicant met all the standards set forth by the Commission, the burden of proof is upon the Protestants to show the permits should not be issued. The Protestants failed to meet this standard of proof.
6. Based on the foregoing findings, a preponderance of the evidence does not show that issuance of the requested permits will adversely affect the safety of the public, the general welfare, peace, or morals of the people, nor violate the public sense of decency, as prohibited by TEX. ALCO. BEV. CODE ANN. §11.46(a)(8).
7. The application of Juan Francis Castilleja d/b/a Otra Parte Night Club for a mixed beverage permit; mixed beverage late hours permit, and beverage cartage permit should be granted.

ISSUED December 22, 2005



KYLE J. GROVES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: TABC vs. Juan Francis Castilleja d/b/a Otra Parte Night Club

DOCKET NUMBER: 458-06-0124

AGENCY CASE NO: 505329

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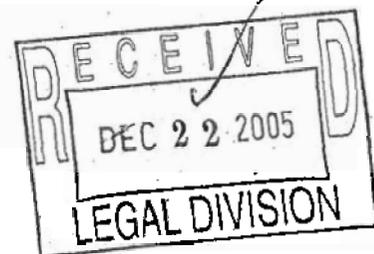
as of: December 22, 2005

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State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



December 22, 2005

Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Suite 160
Austin, Texas 78731

RE: Docket # 458-06-0124
TABC VS. JUAN FRANCIS CASTILLEJA
D/B/A OTRA PARTE NIGHT CLUB

Dear Ms. Fox:

Please find enclosed a PROPOSAL FOR DECISION in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

Kyle J. Groves
Administrative Law Judge

KJG/sr
Enclosure

cc: Timothy Griffith, Agency Council for Texas Alcoholic Beverage Commission, Via Fax,
Juan Francis Castilleja, Respondent, Via Mail, Juan Francis Castilleja, Respondent, Via
Mail, Valerie Carrilo, Protestant, Via Mail