TABC CASE NO. 508414

IN RE ANIKA BUSINESS INC	§	BEFORE THE TEXAS
PERMIT NOS. Q-528408, BF-528409	§	
	§	ALCOHOLIC BEVERAGE
(SOAH NO. 458-06-0976)	§	
TRAVIS COUNTY, TEXAS	§	COMMISSION

ORDER

CAME ON FOR CONSIDERATION on this the 28th day of July, 2006, the above-styled and numbered cause.

The hearing in this case was held before the State Office of Administrative Hearings (SOAH), before Administrative Law Judge (ALJ) Zukauckas. The hearing was convened on February 27, 2006. Closing briefs were submitted in writing, and the record was closed on April 14, 2006.

On April 20, 2006, the ALJ filed a Proposal for Decision (PFD), in which he made Findings of Fact and Conclusions of Law. This PFD was properly served on all parties. The parties were given an opportunity to file Exceptions and Replies as part of the record. On May 5, 2006, Staff filed its Exceptions. On May 10, 2006, the ALJ sent a letter to the Administrator in response to Staff's Exceptions. In his letter the ALJ slightly revised his Conclusion of Law No. 5. Respondent did not file a reply by the May 20, 2006 deadline.

Based on the Proposal for Decision, the Administrative Law Judge's letter, Staff's Exceptions and being fully apprised of the facts and law pertinent to this case, the Commission hereby adopts the Findings of Fact and Conclusions of Law as amended herein, and incorporates them in their entirety as part of this Order, and finds:

I. FINDINGS OF FACT

1. On December 7, 2002, Wine Only Package Store Permit BQ-528408 and a Beer Retailer's Off-Premise License, BF-528409, were issued to Anika Business Inc., d/b/a Riverside Grocery, 1729 E. Riverside 'D', Austin, Travis County, Texas. The Respondent runs a convenience store at this location.

2. On September 23, 2005, at approximately 11:23 p.m., four persons were loitering beside Respondent's convenience store. At least two of the four persons loitering on the premises were drinking alcoholic beverages.

3. Lawrence Wayne Tilford, Jr., Respondent's employee was one of the four individuals loitering beside Respondent's store. Although he was not seen drinking, he was

intoxicated on the licensed premises as evidenced by six clues on the horizontal gaze nystagmus test and a positive intoxication reading from a portable breathanalyzer.

4. Mr. Tilford is a homeless individual who occasionally performed stocking or garbage pick up services for Riverside in exchange for food or a small amount of cash or store food products.

5. Mr. Tilford had no authority to sell beer or other alcoholic beverages at Riverside Grocery.

6. Mr. Tilford did not perform any stocking or cleaning or any other services for Respondent on the day in question.

7. No evidence was produced showing that Respondent, or any of its agents, servants, or employees, provided the alcoholic beverage to any of the four loitering individuals besides the Riverside building.

8. Riverside Grocery is, by virtue of its location, frequented by homeless individuals.

9. Respondent maintains a no-tolerance policy with regard to consumption of alcoholic beverages and calls the police if that behavior is observed.

10. Respondent's employee Imram Ismail, who is authorized to sell beer, was working on the date in question and made an inspection of the premises an hour or two before the incident in question. He observed no loitering or alcoholic consumption on premises.

II. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 6.01, 11.05, 11.61, 44.01, 44.03, and 109.53.

2. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related 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. ch. 2003.

3. Respondent received adequate notice of the proceedings and hearing.

4. Although Mr. Tilford was an employee of Riverside, he was not an employee authorized to sell beer and was not working September 23, 2005. Thus, his intoxication did not form the basis of a violation by Respondent of TEX. ALCO. BEV. CODE ANN. §§ 104.01(5) and 11.61(b)(13) and/or 61.71(a)(1).

5. Mr. Tilford had no duty to prevent others from consuming alcoholic beverages on the premises of a package store, therefore, Mr. Tilford's actions or inaction did not cause the Respondent to violate TEX. ALCO. BEV. CODE ANN §§ 11.61(b) (2) and 22.11.

6. Based on the foregoing Findings of Fact and Conclusions of Law Nos. 4 and 5, Respondent's Wine Only Package Store Permit BQ-528408 and Beer Retailer's Off-Premise License BF-528409 should not be suspended.

WITNESS MY HAND AND SEAL OF OFFICE on this the 28th day of July, 2006, at Austin, Texas.

On Behalf of the Administrator,

Jeannene Fox,
Assistant Administrator
Texas Alcoholic Beverage Commission

Bill Zukauckas
Administrative Law Judge
State Office of Administrative Hearings
Houston, Texas
VIA FACSIMILE: (713) 812-1001

Anika Business Inc.
Riverside Grocery
RESPONDENT
1729 E. Riverside Dr. AD=
Austin, Texas 78741
REGULAR MAIL

James Short
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VIA FACSIMILE: (512) 444-0058

Licensing Division

Austin District Office

State Office of Administrative Hearings

Shelia Bailey Taylor
Chief Administrative Law Judge

April 20, 2006

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

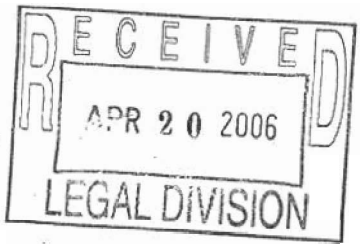
HAND DELIVERY

RE: Docket No. 458-06-0976; Texas Alcoholic Beverage Commission v. Anika Business, Inc., d/b/a Riverside Grocery

Dear Mr. Steen:

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,

Bill Zukauckas
Administrative Law Judge

BZ:nl
Enclosure
xc: Docket Clerk, State Office of Administrative Hearings- **VIA HAND DELIVERY**
Judith L. Kennison, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA HAND DELIVERY**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA HAND DELIVERY**
James Short, 4606 South 2nd Street, Austin, TX 78745 -**VIA REGULAR MAIL**

William P. Clements Building
Post Office Box 13025 ◆ 300 West 15th Street, Suite 502 ◆ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

DOCKET NO. 458-06-0976

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
V.	§	
	§	
ANIKA BUSINESS, INC. D/B/A RIVERSIDE GROCERY, PERMIT NO. BQ-528408, BF-528409 TRAVIS COUNTY, TEXAS (TABC CASE NO. 508414)	§	OF
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Anika Business, Inc. d/b/a/ Riverside Grocery (Respondent or Riverside), alleging that Respondent violated the Texas Alcoholic Beverage Code (the Code) by allowing its agent, servant, or employee to be intoxicated on the premises of a package store and in allowing its agent, servant, or employee to permit consumption of an alcoholic beverage on the premises of a package store. Staff seeks a 25-day suspension of Respondent's permit. The Administrative Law Judge (ALJ) disagrees and finds no suspension of Respondent's permit is appropriate.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 6.01, 11.05, 11.61, 22.01, and 104.01(5) (the Code), and 16 TEX. ADMIN. CODE § 31.1 *et. seq*. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. §2003.021. There were no timely contested issues of notice or jurisdiction in this proceeding.

On February 27, 2006, a hearing convened before Administrative Law Judge (ALJ) Bill Zukauckas, in the Austin SOAH offices. TABC Staff was represented at the hearing by Judith L. Kennison, TABC Staff Attorney. Respondent appeared and was represented by Attorney James Short. The record closed on April 14, 2006, after receipt of closing briefs.

II. DISCUSSION

A. Applicable Law

Staff relies on Section 11.61 of the Code. In the relevant parts relied on by the Staff, that statute provides that the Commission may cancel a permit if it is found, after notice and hearing, that any of the following is true:

- the permittee violated a provision of the Code or a rule of the commission;[1]

or

- the permittee was intoxicated on the licensed premises.[2]

Staff also relies on Section 22.11 of the Code which states:

> Except as authorized under Section 52.01, no person may sell, barter, exchange, deliver, or give away any drink or drinks of alcoholic beverages from a container that has been opened or broken on the premises of a package store.

Staff finally also cites Section 104.01(5) of the Code to be read in conjunction with Section 11.61(b)(13). Section 104.01(5) provides, in relevant part, that:

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[1] TEX. ALCO. BEV. CODE §11.61(b)(2).

[2] TEX. ALCO. BEV. CODE §11.61(b)(13).

> no person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts: . . . (5) being intoxicated on the licensed premises.

B. Incident Facts

On December 7, 2002, Wine Only Package Store Permit BQ-528408 and a Beer Retailer's Off-Premise License, BF-528409, were issued to Anika Business, Inc., d/b/a Riverside Grocery, 1729 E. Riverside 'D', Austin, Travis County, Texas. Respondent runs a convenience store at this location.

Tricia O'Cayce Rutledge is employed as an agent by the TABC. She testified that on September 23, 2005, at approximately 11:23 p.m., she was patrolling the area around Riverside Grocery. On the side of the building she observed four persons loitering on the premises. Two of the four persons were observed drinking alcoholic beverages. One of the other individuals, Lawrence Wayne Tilford, Jr., was not seen drinking but identified himself as an employee of the store. He advised that he was a stocker and performed security for the store. Mr. Tilford told Agent Rutledge that he had been working at Riverside for about three weeks and made about $10.00 per day. Mr. Tilford also told Agent Rutledge that he had advised the two individuals drinking on premises to stop.

On further investigation at the scene, Agent Rutledge concluded Mr. Tilford was "hanging out" with the other individuals she observed consuming alcohol. Mr. Tilford's own statement was that he was on break and indeed hanging out on the side of the store.

Agent Rutledge went inside the building to talk with the Riverside Grocery employee on duty, Imram Ismail. Mr. Ismail advised her that Mr. Tilford occasionally stocks the store for payment and that the payment is often in store products. Agent Rutledge reported that she issued administrative citation #226708 to Riverside, through Mr. Ismail, for having an employee intoxicated

on premises and permitting consumption of alcoholic beverages on an "off-premise" location.[3]

Because Agent Rutledge ultimately concluded Mr. Tilford was an employee of the store, she cited him for allowing persons to consume alcohol on the licensed package store premises. She also concluded he was intoxicated based on observed signs of intoxication, including all six clues on the horizontal gaze nystagmus test and a positive intoxication reading from a portable breath test. Based on her conclusion that he was intoxicated on the Riverside premises, and an employee of Riverside, she arrested him for violating Section 104.01(5) of the Code.

C. Was Lawrence Wayne Tilford, Jr. an intoxicated "Agent, Servant or Employee" of Riverside as contemplated by Section 104.01(5) of the Code?

1. The Parties' Arguments and Evidence

Staff alleges that on September 23, 2005, Respondent's agent, servant, or employee, Mr. Tilford, permitted consumption of an alcoholic beverage on the premises of a package store, in violation of TEX. ALCO. BEV. CODE ANN §§ 11.61(b) (2) and 22.11 and, on that same date, in the same capacity, was intoxicated on the licensed premises, in violation of TEX. ALCO. BEV. CODE ANN §§ 104.01(5) and 11.61(b)(13) and/or 61.71(a)(1).

Staff argues that it has shown a violation of Section 104.01(5) of the Code because it presented uncontroverted evidence that Mr. Tilford was intoxicated and believes, although the Code does not define "employee" specifically, it has shown that he meets the requirements of an *agent, servant, or employee* pursuant to applicable case law. Staff cites *Ackley v State*, 592 S.W. 2d 606, 608 (Tex. Crim. App. 1980) where the court defined "employee" in the context of a conviction for the unlawful solicitation of drinks by an employee of a licensed premises and rejected a technical reading of the term and construed it according to its common usage:

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[3] The ALJ assumes Agent Rutledge means consumption of alcoholic beverage on-premises rather than off-premises, because the ALJ assumes all package store consumption is meant to be off-premises.

> The term "employee" has neither technically nor in general use a restricted meaning by which any particular employment service is indicated. Generally speaking, an employee is simply a person who works for another in return for financial or other compensation. The test to determine whether one person is another's employee is whether or not he is subject to the control of the other person.

Staff also cites *Baird v. Prairie View A & M University*, 1986 WL 9859 (Tex. App.- Hous. (14 Dist)), where the Court held that the "right to control" the details of the work to be performed remains the supreme test to determine whether a person is an employee or an independent contractor. In the instant case, Staff argues that the Respondent's manager admits he controls the actions and manner of Mr. Tilford when he is providing stocking and cleaning services and compensates his work with fast food or small amounts of money. Consequently, Staff believes even under this analysis Mr. Tilford is an employee.

Finally, Staff cites *Pena v. Ludwig*, 766 S.W. 2d 298,305 (Tex. App.-Waco 1989) where the Court of Appeals held that the trial court did not abuse its discretion when it refused to define the term "employee" and "agent" because the context in which they were used indicated they were not to be given a technical or legal meaning, but their ordinary meaning.

Based on these three cases, Staff argues it is unnecessary to define the terms "employee, agent, or servant" in the instant case. Rather, Staff argues it is only necessary to determine whether Respondent controlled Mr. Tilford's action for compensation. Staff argues that the uncontroverted admission of Respondent is that it did control Mr. Tilford's actions.

2. Respondent's Position

Respondent argues that Mr. Tilford is a street person from California who shows up now and then at Riverside Grocery, but had no hourly rate of pay or regularly scheduled hours to do anything at Riverside. Respondent's briefing basically agrees with Staff that the term "employee," although not defined in the Texas Alcoholic Beverage Code, seems generally to define a person in the service of another under a contract of hire (which may be express, implied, oral, or written), which gives the

employer the right to control or direct the person in the material details of how the work is to be performed. Respondent, however, does not agree with Staff that Mr. Tilford qualifies as an employee under the "right to control" because its supervision of Mr. Tilford is very general. For instance, when Mr. Tilford picks up trash around the premises, Respondent never advises him which pieces of trash to collect and when he stocks the grocery shelves, Respondent does not personally supervise the placement of each grocery item.

Alternatively, Respondent argues that the cases of *Ackley, Baird, and Hilstock* cited by Staff require that Mr. Tilford be acting as an employee, agent, or servant, on September 23, 2005, at 11:23 p.m. Respondent argues he was not.

Respondent notes that its employee, Imram Ismail, testified that Mr. Tilford had not been in the store or performed any stocking services on the 23rd from about 2:30 p.m. until the time of his arrest at approximately 11:23 p.m. Respondent argues that an employer is responsible for the actions of their employees, agents, or servants while they are performing the services for the benefit of its employer, but not twenty-four hours a day.

3. ALJ's Analysis

For ease of analysis, the ALJ believes a first easy issue to resolve is the determination of whether Mr. Tilford was intoxicated on the Riverside premises on September 23, 2005. The ALJ finds that testimony from Agent Rutledge indicating that Mr. Tilford exhibited six out of six clues on the horizontal gaze nystagmus test and a positive intoxication value on a portable breath test, both support a finding that he was intoxicated on the premises.

The next issue to be considered is whether Mr. Tilford is an employee. The ALJ agrees with Staff, for sake of argument, that Riverside's "right to control" Mr. Tilford when he is stocking or picking up trash qualifies him as an "employee," in the general sense of the word. Respondent's right to control and supervise his activities, for the limited time he is on the premises working, makes

him more similar to an employee of any grocery store who stocks the shelves under the general supervision of the employer. The employer need not supervise the placement of each product on the shelf, as Respondent implies is necessary, to exercise that requisite control. Conversely, for comparison, an individual with a potato chip route, who stocks his assigned part of the store as and when he chooses, might not be subject to the requisite control contemplated by case law for an employee.

Because the ALJ finds Mr. Tilford is an employee, he would, of course, also fit within the more inclusive phrase in the Code "agent, servant, or employee." The ALJ notes that this phrase of art is used as a catch all for all sorts of statutes across the country.

The ALJ believes the specific and controlling question is whether Mr. Tilford was an agent, servant or employee of Riverside, as that term is used in Section 104.01(5) of the Code. The ALJ notes that Section 50.2 of the Code, although dealing with seller/server training, which is inapplicable to this situation, provides an instructive definition. It defines an employee as:

> [O]ne who sells, serves, dispenses or delivers alcoholic beverages under the authority of a license or permit, including persons who immediately manage, direct, supervise, or control the sale or service of alcoholic beverages. Employee does not include officers of a corporate permittee/licensee who do not manage, direct, supervise or control the sale or service of alcoholic beverages.

The reason this definition of employee is instructive is that it, like the applicable Section 104.01(5) of the Code, places the responsibility on the license holder, only on those employees authorized or participating directly somehow in the sale of alcohol. The ALJ notes specifically that Section 104.01(5) of the Code requires not only that the person be an employee, but also that he be "authorized to sell beer at retail." Regardless of how one describes Mr. Tilford's employment relationship at Riverside, it is clear that he had no authority to sell beer. Consequently, Mr. Tilford's intoxication on the Riverside premises cannot be a violation of Section 104.01(5) of the Code because he is not one of those employees meant to be included by the terms of that statute because

he is not the permittee, and is not one of the permittee's agents, servants, or employees delegated with the authority to sell beer.

Aside from that direct language, as the Texas Supreme Court made clear in 2002, "if an employee deviates from the performance of his duties for his own purposes, the employer is not responsible for what occurs during that deviation."[4] And although some courts have diverged on the exceptions to this general rule,[5] even the most liberal line of reasoning (*i.e.*, the one more likely to find the employer liable for the employee's actions) holds that an employer may be liable if the employee's act arose directly out of and in the prosecution of the employer's business.[6] Even under such a standard, the ALJ cannot conclude that Mr. Tilford's actions of "hanging out" intoxicated alongside the store with fellow loiterers somehow arose directly out of and in the prosecution of the business of Riverside.

The ALJ finds a preponderance of credible evidence failed to indicate that Mr. Tilford's on-premise intoxication or proximity to other individuals drinking on the Riverside premises was in any way in related to his occasional services to Riverside. The ALJ further finds that Mr. Tilford was never authorized to sell beer at retail, as required by Section 104.01(5) of the Code alleged by Staff, and thus Respondent is not liable for his on-premise intoxication as alleged under this Code section.

D. Did Mr. Tilford, as an agent, servant or employee of Respondent, sell, barter, exchange, deliver, or give away any drink or drinks of alcoholic beverages from a container that

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[4] *Minyard Food Stores, Inc. v. Goodman*, 80 S.W.3d 573, 577 (Tex. 2002).

[5] *See Green v. Jackson*, 674 S.W.2d 395, 398 (Tex.App.--Amarillo 1984, writ ref'd n.r.e.); *Rosales v. American Buslines, Inc.*, 598 S.W.2d 706, 708 (Tex.Civ.App.--El Paso 1980, writ ref'd n.r.e.). *See generally* Charles E. Cantu, *Vicarious Liability of an Employer for an Assault by His Servant: A Survey of Texas Cases Reexamining the "Rule of Force,"* 4 ST. MARY'S L.J. 169 (1972).

[6] *See Smith*, 297 S.W.2d at 114; *Houston Transit Co. v. Felder*, 146, Tex. 428, 430, 208 S.W.2d 880, 881-81 (1948); *Durand v. Moore*, 879 S.W.2d 196, 199 (Tex.App.--Houston [14th Dist.] 1994, no writ); *Frito-Lay Inc. v. Ramos*, 770 S.W.2d 887, 888- 89 (Tex.App.--El Paso 1989), *rev'd on other grounds*, 784 S.W.2d 667 (Tex.1990); *Humbert v. Adams*, 361 S.W.2d 458, 461 (Tex.Civ.App.--Dallas 1962, no writ).

has been opened or broken on the premises of a package store in violation of Sections 11.61(b)(2) and 22.11 of the Code?

1. The Parties' Arguments and Evidence

Staff contends that Riverside violated Sections 11.61(b)(2) and 22.11 of the Code because its agent, servant, or employee, Mr Tilford, allowed others to consume alcoholic beverages on the premises. Again, in support of this, the Staff relies on the testimony of Agent Rutledge, who testified that Mr. Tilford told her he was an employee and performed security and stocking services for the store.

In response, Respondent asserts that the entirety of the Staff's case rests on the assumption that Mr. Tilford had some duty to monitor alcohol consumption on its premises because of his part-time stocking services. Respondent disagrees and argues that both of its witnesses testified that Mr. Tilford was a homeless man from California who was given odd chores around the store when the conjunction of his appearance and the need for the chores coincided. Respondent argues that he had no authority to sell anything, including alcoholic beverages, and certainly had no authority to give them away and no evidence was presented that he or Respondent did either. Respondent also argues that its witnesses offered clear testimony that Mr. Tilford performed no services of any kind for Riverside Grocery on the day in question.

2. The ALJ's Analysis

The ALJ concludes that Staff has failed to establish that Mr. Tilford, was an agent, servant or employee of Riverside, who sold, bartered, exchanged, delivered, or gave away any drink or drinks of alcoholic beverages from a container that has been opened or broken on the premises of a package store in violation of Sections 11.61(b)(2) and 22.11 of the Code.

As previously discussed, the ALJ finds that Mr. Tilford had no authority, in his limited part-time employment status, to sell or give alcohol beverages away. Additionally, Staff provided no evidence showing that Mr. Tilford or Riverside provided any of the alcoholic beverages being consumed by the loiterers beside the building.

III. CONCLUSION

The ALJ concludes Respondent was not shown to have committed either of the violations alleged and thus no suspension of its permit is warranted.

IV. FINDINGS OF FACT

1. On December 7, 2002, Wine Only Package Store Permit BQ-528408 and a Beer Retailer's Off-Premise License, BF-528409, were issued to Anika Business Inc., d/b/a Riverside Grocery, 1729 E. Riverside 'D', Austin, Travis County, Texas. The Respondent runs a convenience store at this location.

2. On September 23, 2005, at approximately 11:23 p.m., four persons were loitering beside Respondent's convenience store. At least two of the four persons loitering on the premises were drinking alcoholic beverages.

3. Lawrence Wayne Tilford, Jr., was one of the four individuals loitering beside Respondent's store. Although he was not seen drinking, he was intoxicated as evidenced by six clues on the horizontal gaze nystagmus test and a positive intoxication reading from a portable breath analyzer.

4. Mr. Tilford is a homeless individual who occasionally performed stocking or garbage pick up services for Riverside in exchange for food or a small amount of cash or store food products.

5. Mr. Tilford had no authority to sell beer or other alcoholic beverages at Riverside Grocery.

6. Mr. Tilford did not perform any stocking or cleaning or any other services for Respondent on the day in question.

7. No evidence was produced showing that Respondent, or any of its agents, servants, or employees, provided the alcoholic beverage to any of the four loitering individuals beside the Riverside building.

8. Riverside Grocery is, by virtue of its location, frequented by homeless individuals.

9. Respondent maintains a no-tolerance policy with regard to consumption of alcoholic beverages and calls the police if that behavior is observed.

10. Respondent's employee Imram Ismail, who is authorized to sell beer, was working on the date in question and made an inspection of the premises an hour or two before the incident in question. He observed no loitering or alcoholic consumption on premises.

V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 6.01, 11.05, 11.61, 44.01, 44.03, and 109.53.

2. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related 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. ch. 2003.

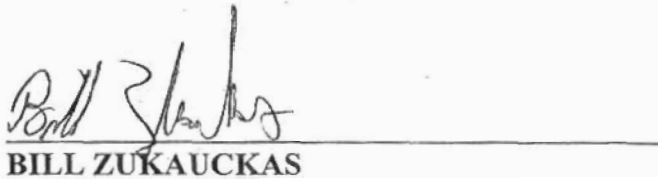
3. Respondent received adequate notice of the proceedings and hearing.

4. Although Mr. Tilford was an employee of Riverside, he was not an employee authorized to sell beer and was not working September 23, 2005. Thus, his intoxication did not form the basis of a violation by Respondent of TEX. ALCO. BEV. CODE ANN. ANN §§ 104.01(5) and 11.61(b)(13) and/or 61.71(a)(1).

5. Mr. Tilford had no authority to permit and no duty to prevent consumption of alcoholic beverages on the premises of a package store. Consequently, Mr. Tilford's actions did not cause Respondent to violate TEX. ALCO. BEV. CODE ANN §§ 11.61(b) (2) and 22.11.

6. Based on the foregoing Findings of Fact and Conclusions of Law Nos. 4 and 5, Respondent's Wine Only Package Store Permit BQ-528408 and Beer Retailer's Off-Premise License BF-528409 should not be suspended.

SIGNED on April 20, 2006.



BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS