

**DOCKET NO. 585960**

IN RE B. A. TEXAN	§	BEFORE THE
D/B/A COOTERS	§	
ORIGINAL APPLICATION: N, PE & FB	§	
	§	TEXAS ALCOHOLIC
	§	
BURNET COUNTY, TEXAS	§	
(SOAH DOCKET NO 458-00-0945)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 17th day of August, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Georgie B. Cunningham. The hearing convened on May 5, 2000, and adjourned M, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 25, 2000. This Proposal For Decision 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 Original Applications for a Private Club Registration Permit, Beverage Cartage Permit and Food and Beverage Certificate are herein **DENIED**.

This Order will become final and enforceable on September 7, 2000, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 17th day of August, 2000.

On Behalf of the Administrator,



---

Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/yt

Administrative Law Judge  
State Office of Administrative Hearings  
VIA FACSIMILE (512) 475-4994

Holly Wise, Docket Clerk  
State Office of Administrative Hearings  
VIA FACSIMILE (512) 475-4994

B. A. Texan, Inc.  
d/b/a Cooters  
**APPLICANT**  
618 Broadway  
Marble Falls, Texas 78654-5206  
**CERTIFIED MAIL NO. Z 473 042 526**

Dewey A. Brackin  
**ATTORNEY FOR PETITIONER**

Austin District Office  
Licensing Division

DOCKET NO. 458-00-0945

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
V.	§	
B. A. TEXAN, INC.	§	OF
D/B/A COOTERS	§	
BURNET COUNTY, TEXAS	§	
(TABC CASE NO. 585960)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

B. A. Texan, Inc: d/b/a Cooters (Applicant) filed an application for a Private Club Registration Permit, Beverage Cartage Permit, and Food and Beverage Certificate with the Texas Alcoholic Beverage Commission (the Commission). The Commission's staff (Staff) protested the issuance of the application for two reasons: (1) Applicant falsely or incorrectly answered a question in an original application, and (2) Applicant engaged in a scheme to allow an unauthorized person to use a permit and, thus, attempted to secure a permit by subterfuge. This proposal for decision finds the application should be denied on the grounds asserted by Staff.

I.

**PROCEDURAL HISTORY, JURISDICTION, AND NOTICE**

On May 5, 2000, Georgie B. Cunningham, Administrative Law Judge, State Office of Administrative Hearings, convened a hearing at the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas. Notice of the hearing and jurisdiction were sufficient, as reflected in the proposed findings of fact and conclusions of law. Dewey A. Brackin, Attorney, represented Staff, and Stephen Mrazek, President, represented Applicant. After evidence was received, the hearing was recessed and reconvened on May 25, 2000, to permit Applicant an opportunity to offer additional evidence. After Applicant offered additional evidence and three protestants appeared to speak against granting the permits, the hearing was closed on May 25, 2000.

II.

**INTRODUCTION**

**A. Overview of the Case**

On June 2, 1999, Applicant filed an application with the Commission for the private club permits specified above. The club is to be located at 6886 FM 1431 West in Granite Shoals, Burnet County, Texas. The sale of alcoholic beverages is prohibited by local option in this area. Applicant, a nonprofit corporation doing business as "Cooters," was incorporated in this state on March 9, 1999. The corporation was organized to promote interest in water sports among its members and the general public and to promote tourism and recreation in Burnet County, Texas.

Mr. Mrazek, Applicant's President; Luther D. Rollins, Applicant's Secretary-Treasurer; and the Commission's agents James Poole and Paul Morgan testified. Both parties presented documentary evidence. Three protestants, Shirley King, Betsy Reese, and Barbara Rodriguez, spoke against granting the permits. Additionally, Pastor Jackie M. English submitted written comments opposing the application. The protestants' statements will be summarized for the Commission's consideration.<sup>1</sup> This proposal for decision will set forth the relevant statutory criteria, discuss the evidence and arguments presented, and conclude by recommending the application be denied.

## **B. Statutory Criteria**

The Commission may refuse to issue a permit if it finds the existence of circumstances specified in Section 11.46 of the Texas Alcoholic Beverage Code (the Code).<sup>2</sup> The burden of proof is on the party contending the permit should be denied. Section 11.46(a) provides:

The Commission ... may refuse to issue an original ... permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists:

- (4) The applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application ....

Section 11.05 of the Code provides that no permittee may consent to or allow the use or display of a permit by a person other than the person to whom the permit was issued. Furthermore, Section 109.53 of the Code states in part:

It is the intent of the legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this Code shall be liberally construed to carry out this intent, and it shall be the duty of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge ownership ....

Any device, scheme or plan which surrenders control of the employees, premises, or business of the permittee to persons other than the permittee shall be unlawful.

## **III. EVIDENCE PRESENTED**

### **A. False Answers in the Application**

---

<sup>1</sup> The statements were not sworn testimony subject to cross-examination.

<sup>2</sup> TEX. ALCO. BEV. CODE. ANN. § 1.01 et. seq.

Staff asserted Applicant falsely answered questions in the original application in violation of Section 11.46(a)(4) of the Code. According to Mr. Mrazek, he and his friend, Jeanne Carolyn Gershon, started the club as a hobby, and the application is his first. He contended he was merely learning about regulatory requirements as the application was developed, and he would show he had not lied. He further contended the Commission did not intend to take action on the permits until a state legislator intervened.<sup>3</sup>

### **1. Members' Contributions to Liquor Pool Account**

On April 8, 1999, Mr. Mrazek signed the permit application subsequently submitted to the Commission. The application form quotes Section 101.69 of the Code regarding making a false statement or false representation in an application for a permit. The applicant is warned the offense is punishable by imprisonment for not less than two years nor more than ten years. Immediately below this warning, Mr. Mrazek signed the application under oath he had read the application, and all the facts therein were true and correct. Mr. Morgan reviewed the application to determine its compliance with relevant regulatory provisions, and Mr. Poole performed the field investigatory work. Mr. Morgan testified the Commission relies on the information provided in the application to assess whether all regulatory criteria have been met and whether the permits should be granted.

The application indicated Applicant would use the pool system of liquor storage, and each member of the pool had participated equally in the purchase of all alcoholic beverages. Mr. Rollins, in his role as Secretary-Treasurer, swore that each of the members on the list had made a contribution to the liquor pool. Applicant's members paid a membership fee of \$3.00, which was designated as their contribution to the liquor pool account.<sup>4</sup>

Mr. Morgan testified he found Applicant reported a membership of 94 persons, but did not account for any membership fees paid as an investment in the club. As part of his investigation, Mr. Poole interviewed seven individuals whose names appear on the membership list. His investigation revealed the following information:

- (1) Larry Dulin stated he had not contributed to the club for the purchase of alcohol.
- (2) Barbara England stated she had not contributed to the club for the purchase of alcohol.
- (3) Brad Harman stated he had not contributed to the liquor pool, but had advised Mr. Mrazek to collect from each person. Mr. Mrazek advised Mr. Harman that the fee collection did not matter as long as the state got its money.

---

<sup>3</sup> Although Applicant made this assertion, no further argument or evidence was presented on this point.

<sup>4</sup> Subsequently, members would pay for the service of each alcoholic beverage.

- (4) Deborah Tate stated she only completed a membership application and had not contributed to the pool account or to membership.
- (5) Daniel Clifton stated he had not contributed to the pool account, as Cindi Grumbles, a member, advised him he did not have to pay any fees when he joined.
- (6) Leni Kirkman stated she had not contributed and had not received a membership card.
- (7) Tina Taff contended Mr. Mrazek and Ms. Gershon told her they were "covering" the membership fees. She recruited three friends and received \$9.00, but Mr. Mrazek told her she could keep the fees as a tip.

According to Mr. Poole, Ms. Taff asserted the membership committee did not review the prospective members' applications or vote on the applications purportedly approved on April 2 and April 3, 1999. Instead, Ms. Taff, who was a member of the committee, contended she was instructed by Ms. Gershon to sign a statement that the applications were approved.

Additionally, each of Applicant's three officers had to complete personal history forms. Two of the forms were typed and one was handwritten. Each officer signed under oath that he had read his personal history information and that all the facts were true and correct. All of the forms were executed before different notaries on different days. Both Mr. Morgan and Mr. Poole testified that in response to the question regarding the total amount each officer had invested in the club, none of the officers responded he had made a \$3.00 contribution to the liquor pool account.

Mr. Mrazek testified that all members contributed equally, with one or two exceptions, to the pool account for the purchase of liquor. He explained that he made a contribution on behalf of two members of a narcotics enforcement team, because he thought their presence would be advantageous to the club. Their names do not appear on the membership list, however. He personally collected \$3.00 from Mr. Dulin at a local VFW hall. Although he did not recruit any of these other members and cannot guarantee they personally paid, he received the fees on their behalf and deposited the funds in the liquor pool account. Mr. Mrazek explained that two individuals named Brad Harman reside at Mr. Harman's address listed on the 1999 membership list.<sup>5</sup> Mr. Mrazek established that Mr. Poole spoke with the older Mr. Harman, although the younger Mr. Harman may have been the member.<sup>6</sup>

According to Mr. Mrazek, he did not tell Ms. Taff she could keep the membership fees or that he was responsible for the fees. Although the membership committee may not have voted to

---

<sup>5</sup> It appears that the individuals may be father and son.

<sup>6</sup> Both individuals are presently members, but present membership is not relevant.

accept or reject the applications, Mr. Mrazek asserted the decision was made by unanimous consent eliminating the need for a discussion and vote. He added that Ms. Taff was a nuisance who had threatened to cause trouble over the club's food service, which she wanted to operate as her personal business.

Mr. Mrazek admitted he and the other officers may have overlooked reporting their own contributions to the liquor pool account. He further testified that he personally paid attorney's fees and other fees in incorporating the club, and Ms. Gershon invested money in equipment for the club.

## **2. Organizational Funding**

The application showed that the total amount invested in the business was \$1,000.00, which was an interest-free loan from Ms. Gershon. According to Mr. Morgan, the Commission's application fees alone are \$1,004.00. In Mr. Morgan's experience, an applicant can expect to incur expenses of approximately \$10,000.00 for attorney's fees, incorporation expenses, application preparation, newspaper notices, purchasing the initial liquor stock, supplies, and equipment, and for other start-up costs. Mr. Morgan found Applicant provided the Commission insufficient information about its finances.

Mr. Mrazek explained that Applicant did not have to pay all the expenses when it filed its application. As of the date of the hearing, the 1999 memberships have expired, and the membership renewal has resulted in additional income of \$162.00. He expects the club will have as much as \$500.00 to purchase the liquor inventory. He also reiterated the club had the loan from Ms. Gershon.

## **3. Business Entity**

After representing on the application that Applicant would be doing business as "Cooters" and that it would not share its premises with another business entity, Applicant submitted a sample menu showing that an entity doing business as Tina's Burger Basket operated at the same location. As a result of the information, Mr. Morgan questioned which business entities would be operating on the premises. Citing portions of Section 109.53 of the Code, Mr. Morgan reiterated that a permittee shall have and maintain exclusive occupancy and control of the entire licensed premises. Any device, scheme, or plan which surrenders control of the employees, premises, or business of the permittee to persons other than the permittee shall be unlawful.

Mr. Mrazek thought Ms. Gershon had stated in the application that the restaurant would be B. A. Texan, Inc. d/b/a Tina's Burger Basket. After the previous club owner at that location recommended Ms. Taff, Ms. Gershon employed her to manage Tina's Burger Basket. Mr. Mrazek stated, "We operated the restaurant a little bit," but he did not provide details. He added, "I have to provide food service. I hope to do it differently from the former club owner." Mr. Mrazek and Ms. Gershon had a dispute with Ms. Taff, and the relationship has been severed.

#### **4. Business Focus**

According to the application, Applicant's primary business will be a restaurant. Nevertheless, Applicant estimated annual income of \$120,000.00 from alcoholic beverage sales and only \$90,000.00 from food sales and indicated greater space would be devoted to the bar than to the restaurant. Mr. Morgan testified that usually a private club's alcoholic beverage sales and food service are separate. Otherwise, a member of the private club would have equal ownership of the restaurant, equipment, and food sales revenue.

Food sales, according to Mr. Mrazek's testimony, would constitute approximately 40 percent of the business. He explained the previous club owner at that location provided the estimated income figures, and the facility is not divided into distinct sections. Mr. Mrazek did not think it was fair to judge him on someone else's figures.

#### **5. Hours of Operation**

Mr. Morgan addressed inconsistencies he found in the application regarding hours of operation. According to the application, Applicant plans to serve alcoholic beverages from 4:00 p.m. until midnight daily and provide food service from 11:00 a.m. until midnight daily. The menu for Tina's Burger Basket shows its hours of operation are 11:00 a.m. to 8:30 p.m., Monday through Saturday. According to Mr. Morgan, the Commission requires food service to be available until one hour before the end of liquor sales.

In response, Mr. Mrazek testified that Applicant has submitted another menu in which the hours of operation are not listed. He understands now that food service must not deviate more than one hour from alcoholic beverage sales.

#### **6. Analysis**

Evidence was sufficient to establish that Ms. Tate, Mr. Clifton, and Ms. Kirkman did not make contributions to the liquor pool account; however, some of the members' statements during the investigation should be disregarded. For example, Mr. Dulin and Ms. England may not have understood that the membership fee was a contribution to the liquor pool account. Clearly, Mr. Mrazek established that Mr. Dulan paid him directly. The younger Mr. Harman may have made a contribution to the liquor pool account by paying his membership fees. Ms. Taff may have been disgruntled over the food service arrangements and may have embellished her story. Her statement focused on what she was told as opposed to what she actually did regarding the contributions. Other than his testimony that he had received their applications and fees, Mr. Mrazek made no attempt to corroborate members' payments. By his own admission, Mr. Mrazek made the contributions for two members.

Mr. Mrazek's testimony about the officers having overlooked their contributions to the club leaves unresolved questions about how each officer could have neglected to record the correct

information. Mr. Mrazek's and Mr. Rollins' names do not appear on the membership list as having made their contributions to the account. Of even more importance, the application failed to report members' total contributions to the liquor pool account, Mr. Mrazek's payment of attorney's fees and incorporation fees, and Ms. Gershon's investment in equipment. Mr. Mrazek did not explain why Ms. Gershon had invested an unspecified amount of money in equipment if the restaurant will belong to the members. Neither did he explain how the profits, if any, from the early operation of the restaurant will be distributed. Although Mr. Mrazek did not think it fair to be judged by another person's income estimates, he adopted those figures as Applicant's own and swore they were correct.

Even though the information Applicant provided about the restaurant operations was inconsistent and not always entirely clear, it does not appear that a separate legal entity, Tina's Burger Basket, will operate on the premises. In fact, it appears that Applicant may have been confused about regulatory requirements related to food service, and was simply trying to meet the requirements. Nonetheless, Applicant failed to provide correct information about food service operations and days and hours of service, as required on the application.

Accepting Mr. Mrazek's explanation that any incorrect information was a result of the application development would render the statutory provision and requirements of the truthfulness of information on an application meaningless. Considering the instructions in the application and the oath required of an applicant, Mr. Mrazek and Mr. Rollins knew or should have known that all the facts in the application had to be true and correct when signed and submitted. Furthermore, they should have realized the issuance of the permits would be dependent, in part, on the information provided. Thus, evidence shows it was reasonable for the Commission to believe Applicant falsely or incorrectly answered questions in its application.

Although the Commission received the application on June 3, 1999, and submitted a request on March 24, 2000, for the May hearing, Applicant did not develop his contention about the Commission's delay in acting on the application. The record contains no evidence regarding the usual time to process an application or how the length of time to process the application affects whether Applicant answered the questions truthfully.

## **B. Subterfuge Ownership**

Staff asserted the manner of establishment and proposed operation of the club is ~~nothing~~ more than a device or scheme to enable several individuals rather than the membership to benefit from the sale and service of the private club's alcoholic beverages in a dry area. Subterfuge ownership is prohibited by Section 109.53 of the Code. Mr. Morgan testified that he examined Applicant's lease, management agreement, loan information, organizational documents, and other information submitted in the application and concluded that Applicant is not a true nonprofit corporation. During the investigation, he focused on eight concerns he had about the application. As of the date of the hearing, six issues were still unresolved, in his opinion. Mr. Morgan called the application a classic example of a subterfuge application. Mr. Poole concluded members had no say in the club's operations and that the club is not for the benefit of the members.

Mr. Mrazek contended he was just trying to provide a good place in the area for people to go for a drink. He also contended the Commission erroneously decided the application was submitted on behalf of a former club owner at that location

#### **1. Organization and Control**

The application showed that club was incorporated on March 9, 1999, with Mr. Mrazek, Mr. Rollins, and Catherine J. Farr-Jackson named as the initial Board of Directors. The organizational meeting occurred on the same day. The Directors took the following action:

- (a) approved the Bylaws;
- (b) elected Mr. Mrazek as President, Ms. Farr-Jackson as Vice President, and Mr. Rollins as Secretary-Treasurer, each to serve until the election of his or her successor;
- (c) resolved that the corporation should apply for the private club permits;
- (d) authorized the officers to enter into agreements with Ms. Gershon for rental of the premises and for management services for food and beverage operations;
- (e) authorized the officers to incur debt and execute evidences of indebtedness for provision of initial working capital;
- (f) authorized the Board to serve as a temporary membership committee and approved the three officers as members;
- (g) decided the Corporation should obtain an insurance policy with liquor liability coverage;
- (h) decided that the Corporation should obtain and pay the premium for a liability insurance policy for officers and directors; and
- (i) specified that notice is not required for an annual membership meeting at which directors would be elected.

The Bylaws provide that the three-member Board shall have control and management of the corporation and sole authority to amend, alter, or restate the Bylaws. Vacancies on the Board may be filled by remaining Directors. After the organizational meeting, Ms. Farr-Jackson resigned, and the Board selected Geron Grant Grumbles as a Director.

In assessing whether subterfuge exists, Mr. Morgan testified he considers control and benefit issues. According to Mr. Morgan, club members generally come together for a stated purpose, contribute to the club's finances, decide whether the club should be incorporated, make operational decisions, and elect directors or officers. In his opinion, no select group controls the club. Here, members did not get to make any decisions about the club's purpose, location, food service, management contracts, incorporation, bylaws, or directors' authority. While it is not illegal for directors to have control of a club, according to Mr. Morgan, such control starts to show a pattern of subterfuge.

Mr. Mrazek explained that the club incorporated for legal protection and then recruited members. By April 1999, the club had approximately 100 members. When the membership expired in April 2000, the club had only the three directors remaining as members. Since then, 54 members have renewed or joined. The club held a membership meeting and now has a provision that any three members except officers can constitute the membership committee.

## **2. Profit**

Mr. Poole testified that one question to be answered in determining whether an application is a subterfuge relates to profit. In investigating club applications, Mr. Poole closely examines the relationship of an applicant, manager, and building and land owner. Here, he found that Mr. Mrazek is Applicant's Director and President. He is residentially domiciled with Ms. Gershon, with whom he has a joint checking account. Ms. Gershon owns the land and building leased to Applicant for an annual rental fee of \$18,000.00. Additionally, Ms. Gershon has the contract for managing the club for 40 percent of the annual liquor sales, which is an estimated \$48,000.00. The Directors made the decisions about the lease and management contract at their March 9, 1999, meeting, and Mr. Mrazek signed the management agreement with Ms. Gershon on that date.

Mr. Morgan determined that the corporation is a shell corporation organized to benefit a few persons rather than a true membership association. One member or group cannot benefit at the expense of the other members, and any profit has to be returned to the club members equally.

According to Mr. Mrazek, Ms. Gershon will have very little profit left after she employs staff, buys insurance and replacement equipment, pays for utilities, and provides maintenance. Ms. Gershon is not going to "run" the club. Instead, she will make sure bills and taxes are paid. It is Ms. Gershon's responsibility to hire a manager or sub-contractor. Moreover, Mr. Mrazek testified the corporation will operate the restaurant for the benefit of the membership. He will volunteer, the bartenders will work for tips, and a "self-service" system will be used. The restaurant business is very profitable, and he anticipates having about \$45,000.00 profit annually to transfer to the membership. Using the profits, the club could make campaign contributions, donate money to charities, make improvements on the building, or distribute the money to the membership. Furthermore, Mr. Mrazek testified that the club was not designed for profit. Instead, he stated, "It was designed so we could run some local politicians for office."

### **3. Discussion**

Subterfuge ownership is illegal, because it involves misrepresentations to the Commission as to who will truly be in control of a permit granted by the Commission. The Commission needs to know precisely who is in charge of a given permit, so it may effectively regulate the licensed entity. In the case of a club, the subterfuge lies within the concept of the club itself. Moreover, all club members must benefit equally from holding an alcoholic beverage permit, pursuant to Section 32.01 of the Code. Presented then are questions about control and benefit as well as the identity of the licensed entity.

Staff established that the application is an attempt by several individuals to obtain a license to sell alcoholic beverages in a dry area for profit. The application shows that Ms. Gershon will earn \$18,000.00 annually in rental fees and \$48,000.00, less certain expenses, in management fees. What the application does not show is the proposed disposition of the estimated \$45,000.00 in profit from the restaurant business, although Mr. Mrazek suggested profit might be used to improve Ms. Gershon's building or to make political contributions. He did not address using the profit in support of the club's stated purposes to promote interest in water sports or tourism. Neither did he reveal whether the club has an established method of distributing profit equally to club members.

The Bylaws give the Directors authority to conduct the business of the corporation at their discretion, including entering into contracts to benefit Ms. Gershon and Mr. Mrazek. Moreover, the Directors have the freedom to change the Bylaws at will and appear to have unfettered control of the club. Although members may elect Directors at the annual meeting, the corporation does not have to give members notice of the meeting. Admittedly, the annual meeting has a date certain, but no information was provided that members even have this information. Here, no evidence was presented that members got to make any decisions about organizing the club or had an opportunity to approve the organization afterward. Members did not get to elect Directors at an annual meeting in July 1999.

Mr. Mrazek testified as if the corporation and the club belong to him rather than to the membership. His testimony included numerous references to what he planned to do rather than to what the members planned. Furthermore, it appears the organizational structure of the corporation has little meaning to Mr. Mrazek, who uses it for his own purposes. The Bylaws do not provide for the annual expiration of membership or the amount of the dues. Mr. Mrazek thought maybe this decision had been made at a meeting; however, his testimony suggested the officers' membership did not expire yearly. He provided insufficient evidence to rebut Staff's evidence regarding control of Applicant. Several individuals, rather than the club members, control the corporation, and thus, would control any permit issued. Staff did not attempt to establish that a previous club owner controlled Applicant.

### **C. Conclusion and Recommendation**

Staff had the burden of proof to show grounds exist to deny the application. Staff showed

Applicant falsely or incorrectly answered questions in the original application and that the establishment and proposed operation of the club is a subterfuge to permit several individuals to benefit from the sale of alcoholic beverages in a dry area. Thus, Staff showed by a preponderance of the evidence that the application for the permits should be denied pursuant to the statutory standards. Accordingly, the Administrative Law Judge recommends denial of the application.

**IV.  
PROPOSED FINDINGS OF FACT**

1. On June 2, 1999, B. A. Texan, Inc. d/b/a Cooters (Applicant) filed an application with the Texas Alcoholic Beverage Commission (the Commission) for a Private Club Registration Permit, Beverage Cartage Permit, and Food and Beverage Certificate.
2. Applicant was incorporated as a nonprofit corporation.
3. Applicants' directors and officers are Stephen Mrazek, President; Geron Grant Grumbles, Vice President; and Luther D. Rollins, Secretary-Treasurer.
4. Applicant's proposed location is 6886 FM 1431 West in Granite Shoals, Burnet County, Texas.
5. The sale of alcoholic beverages is prohibited by local option in this area.

**False Statement on Application**

6. On April 8, 1999, Mr. Mrazek signed the permit application referenced in Finding of Fact No. 1.
7. In signing the application, Mr. Mrazek swore he had read the application and all the facts therein were true and correct.
8. The application stated that Applicant would use the pool system of liquor storage.
9. In response to the question regarding whether each member had contributed equally toward the purchase of alcoholic beverages, Applicant responded, "Yes."
10. Mr. Rollins, as Secretary-Treasurer, swore that each member had contributed toward the purchase of alcoholic beverages.
11. The following members did not contribute toward the purchase of alcoholic beverages:
  - (a) Deborah Tate;
  - (b) Daniel Clifton;

- (c) Leni Kirkman;
  - (d) Stephen Mrazek;
  - (e) Luther D. Rollins;
  - (f) Geron Grant Grumbles; and
  - (g) two members of a narcotics enforcement team.
12. In response to the question on the application regarding the total amount invested in the business, Applicant responded \$1,000.00.
  13. Applicant did not show that any membership fees had been collected as of the date of the application.
  14. Applicant did not reveal the expenses Mr. Mrazek invested for attorney's fees and for incorporation of the club.
  15. Applicant did not reveal the expenses Jeanne Carolyn Gershon invested for equipment for the club.
  16. As part of the application, each of Applicant's three officers had to complete a personal history form.
  17. Each of Applicant's three officers signed under oath that he had read his personal history information and that all the facts were true and correct.
  18. In response to the question on the personal history form regarding the total amount each officer had invested in the club, none of the officers responded he had made a \$3.00 investment in the liquor pool account.
  19. Mr. Mrazek failed to show on his personal history form that he had paid attorney's fees and incorporation fees for Applicant.
  20. In response to the question on the application regarding sharing its premises with another business entity, Applicant responded, "No."
  21. Applicant submitted a sample menu to the Commission showing that Tina's Burger Basket would provide food service on the premises.
  22. In response to the question on the application regarding the hours for sale and service of alcoholic beverages and food, Applicant indicated it would sell alcoholic beverages from 4:00 p.m. midnight daily and food from 11:00 a.m. until midnight daily.
  23. Applicant submitted its sample menu for Tina's Burger Basket showing the hours for the sale of food as 11:00 a.m. until 8:30 p.m. Monday through Saturday.

On the application, Applicant did not explain the legal relationship between itself and Tina's Burger Basket.

25. In response to the question on the application regarding its primary business, Applicant indicated it was a restaurant.
26. Applicant projected its yearly sales from food service would be \$90,000.00 and its yearly sales from alcoholic beverage sales would be \$120,000.00.
27. Applicant projected more space would be allocated to the bar than to the restaurant

#### Subterfuge Ownership

28. Applicant was incorporated in Texas on March 9, 1999.
29. The Directors have control and management of the corporation and sole authority to amend, alter, or restate the Bylaws.
30. Directors are to be elected at the annual meeting at noon on the first Monday in July.
31. No notice of the annual meeting to the members is required.
32. An election was not conducted at an annual meeting in July 1999
33. Vacancies on the Board of Directors may be filled by remaining Directors.
34. Members were not recruited until after the club was incorporated.
35. Applicant's members did not get to make decisions about its incorporation, purpose, operations, finances, location, food service, management contracts, Bylaws, or election of Directors.
36. On March 9, 1999, the Directors decided the corporation should apply for the private club permits.
37. On March 9, 1999, the Directors authorized the Officers to incur debt and execute evidences of indebtedness for provision of initial working capital.
38. On March 9, 1999, Mr. Mrazek executed a promissory note on behalf of Applicant for a \$1,000.00 loan from Ms. Gershon.
39. Ms. Gershon is the owner of the land and building at the proposed location.

On March 9, 1999, the Directors authorized the officers to enter into agreements with Ms. Gershon for rental of the premises and for management services for food and beverage operations.

41. On March 9, 1999, Mr. Mrazek signed a management agreement with Ms. Gershon to manage Applicant for a fee of 40 percent of estimated gross receipts of \$120,000.00 from service of alcoholic beverages.
42. Applicant agreed to pay Ms. Gershon annual rental fees of \$18,000.00
43. Applicant will have estimated profits of \$45,000.00 from the operation of the food service.
44. Applicant does not have an established method of distributing profits equally to club members.
45. Some of the club's profits may be used to improve Ms. Gershon's building.
46. Mr. Mrazek and Ms. Gershon are residentially domiciled together.
47. Mr. Mrazek and Ms. Gershon maintain a joint checking account.
48. On March 3, 2000, the Commission sent Applicant notice of the hearing by certified mail, return receipt requested. The hearing notice informed Applicant of the issues to be decided, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.

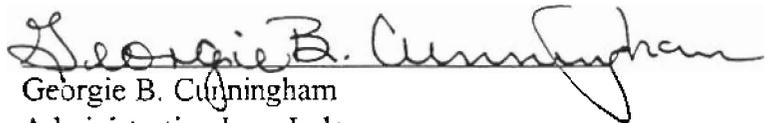
## V.

### PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter, pursuant to the TEX. ALCO. BEV. CODE ANN. §11.46(a) (Vernon Supp. 2000).
2. The State Office of Administrative Hearings has jurisdiction over 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. ch. 2003 (Vernon 2000).
3. Service of proper and timely notice of the hearing was effected upon Applicant, pursuant to TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000) and TEX. ALCO. BEV. CODE ANN. §11.63.
4. Applicant filed an application for a private club under the provisions of TEX. ALCO. BEV. CODE ANN. ch. 32.

5. Based on Findings of Fact Nos. 6 - 19, Applicant falsely or incorrectly answered questions in the application, as prohibited by TEX. ALCO. BEV. CODE ANN. §11.46(a)(4) and set forth on the Commission's application form.
6. Based on Findings of Fact Nos. 20 - 39, the establishment and proposed operation of the club is a subterfuge to permit several individuals to benefit from the issuance of a private club permit, as prohibited by TEX. ALCO. BEV. CODE ANN. §§11.05 and 109.53.
7. Based on the foregoing Findings of Fact and Conclusions of Law, the application of B. A. Texan, Inc. d/b/a Cooters, Burnet County, Texas, for a Private Club Registration Permit, Beverage Cartage Permit, and Food and Beverage Certificate should be denied.

SIGNED this 18<sup>th</sup> day of July, 2000

  
Georgie B. Cunningham  
Administrative Law Judge  
State Office of Administrative Hearings

## APPENDIX

### PUBLIC COMMENT

Section 5.435 of the Code requires the Commission to adopt rules to provide the public with a reasonable opportunity to appear and speak on issues related to a hearing. This section further requires the Commission to consider the public comment in making a decision on the hearing. Shirley King, Betsy Reese, and Barbara Rodriguez, who live in the area where the club would be located, provided public comment summarized below. Additionally, Jackie M. English, pastor of Christ Redeemer Fellowship of Granite Shoals, Texas, submitted comments in writing. The public comments were not made under oath.

Mrs. King appeared on behalf of herself and Mr. King and others in the community. The Kings' business, King Portable Buildings, and their home are near the club. Mrs. King presented a petition, with approximately 90 signatures, of citizens opposed to the application. According to Mrs. King, two other private clubs are located within one mile. The citizens of Granite Shoals think that having so many clubs hurts their property values and reputation. She expressed concern about safety and mentioned the two fatalities which occurred when patrons left the club previously known as Cooters and one other club. School buses travel on the road where Cooters would be located. The citizens also fear that Cooters, like the previous Cooters operating at the same site, will feature strippers as entertainment.

Ms. Reece, a former member of the zoning commission and Granite Shoals City Council, expressed concern about community image. She commented about the need for more family oriented places rather than clubs where one can go just to drink.

Ms. Rodriguez expressed concern about excessive availability of alcoholic beverages in the community and the potential harm that can be caused. For example, in April 1998, her son, who is an alcoholic, called her from the club previously known as Cooters. When she went to get him, he was so drunk he could barely stand.

Pastor English expressed serious reservations about the application. The concerns were focused not on the sale or consumption of alcoholic beverages, but on two other areas. First, Pastor English expressed concern that the club previously licensed as Cooters lacked careful and responsible supervision, which may have contributed to a tragic accident. Pastor English stated that the accident was the worst but not the only blight the community has come to associate with Cooters, which, in the past, seemed to encourage a number of inappropriate and unseemly behaviors.

Second, Pastor English expressed concern about the abilities of the proposed new management team. Pastor English wrote:

I have no information that would encourage me to believe that Cooters would be supervised in a manner that would be any more responsible or professional than it was run before .... [O]ur community would continue to suffer and the quality of life ... would be negatively impacted.