

**DOCKET NO. 586130**

IN RE THE ORIGINAL APPLICATION OF	§	BEFORE THE
OF KALI ENTERTAINMENT, INC	§	
D/B/A GIORGIO'S	§	
FORA MB AND LB	§	
	§	TEXAS ALCOHOLIC
BEXAR COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-99-1825)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 12th day of September, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge John Beeler. The hearing convened on December 7, 1999, and concluded on December 9, 1999. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 21, 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.

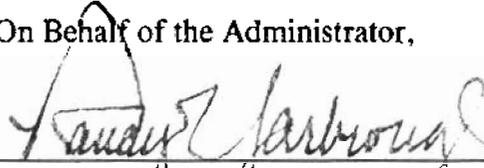
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the issuance of a Mixed Beverage Permit and Mixed Beverage Late Hours Permit is hereby **DENIED**.

**This Order will become final and enforceable on October 3, 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 12th day of September, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

DAB/yt  
The Honorable John Beeler  
State Office of Administrative Hearings  
1015 Jackson Keller, Ste. 102B  
San Antonio, Texas 78213  
**VIA FACSIMILE (210) 308-6854**

Holly Wise, Docket Clerk  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701  
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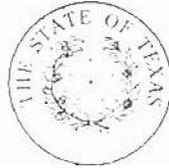
Jennifer Riggs  
**ATTORNEY FOR APPLICANT**  
HILL GILSRAP, et al.  
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Dennis Drouillard  
Office of the City Attorney, San Antonio  
401 South Frio Street, Ste. 204  
San Antonio, Texas 78207

Dewey A. Brackin  
**ATTORNEY FOR PETITIONER**

San Antonio District Office  
Licensing Division

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge  
June 21, 2000

JUN 21 2000 ✓

Mr. Doyme Bailey, Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa, Suite 160  
Austin, Texas 78711

**HAND DELIVERY**

**RE: Docket No. 458-99-1825; TABC, Petitioner; St. Luke's Catholic Church & Jennifer Cortese, Protestants; v. Kali Entertainment, Inc., Applicant**

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal for Decision are being sent to Dewey Brackin, Staff Attorney representing the Texas Alcoholic Beverage Commission, and to Kali Entertainment, Inc., (Applicant). For reasons discussed in the Proposal for Decision, I find that the permits be denied because the Protestants proved the Applicant would conduct business in violation of the law.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon 2000), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

A handwritten signature in black ink, appearing to read "John Beeler".

John Beeler  
Administrative Law Judge

JB/rk  
Enclosure

xc: **Dewey Brackin, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - VIA HAND DELIVERY**  
**Jennifer Riggs, Hill, Gilstrap, Adams, & Graham, 1005 Congress Ave., Ste. 880, Austin, Texas 78701 VIA CERTIFIED MAIL NO. Z 567 738 780, RETURN RECEIPT REQUESTED**  
**Dennis Drouillard / Elsa Nava, Office of the City Attorney, City of San Antonio, 401 South Frio Street, Suite 204, San Antonio, Texas 78207 VIA CERTIFIED MAIL NO. Z 567 738 781, RETURN RECEIPT REQUESTED**  
**Rommel Corro, Docket Clerk, State Office of Administrative Hearings- VIA HAND DELIVERY**



**I.**  
**PROCEDURAL HISTORY, NOTICE & JURISDICTION**

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

On December 7, 1999, a public hearing was convened at the Bexar County Courthouse in San Antonio, Texas. The Applicant was represented by Jennifer S. Riggs, attorney with Hill, Gilstrap, Adams, and Graham. Staff was represented by Dewey Brackin, an attorney for the Legal Division of TABC. Al Philippus and Ed Garza were represented by Dennis J. Drouillard and Elsa Nava of the Office of the City Attorney, City of San Antonio, Texas. The hearing concluded on December 9, 1999, but the record was left open for the filing of closing arguments and for the preparation of the record by the court reporter.

Although the court reporter estimated that the record would be completed in four weeks, she was never able to complete it. The ALJ had tape recorded the proceedings and, when it appeared clear that the reporter was not going to provide a transcription, forwarded the tapes to a transcribing service. The transcript was received and the record closed on April 10, 2000, but because of the delay, parties were allowed to file additional briefs and arguments after that date.

**II.**  
**REASONS FOR DECISION**

**A. The Legal Issue.**

The Protestants asserted that the application should be denied because the Applicant would conduct business in violation of TEX. ALCO. BEV. CODE ANN. §11.46(a)(8), which provides that the administrator may refuse to issue permits if there are reasonable grounds to believe that the following circumstances exist:

the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency;

Applicant seeks beverage permits so it can purchase and operate a sexually orientated business known as Giorgio's located at 6109 Callaghan Road, San Antonio, Bexar County, Texas. Giorgio's has, in fact, been in business at that location for several years, owned and operated by

NATCO Incorporated (NATCO). TABC learned, through NATCO's attorney Collis White, that an officer of NATCO had a felony conviction. As a result, an agreement was reached between TABC and NATCO, in which Giorgio's would close for 30 days and then its beverage licenses would be canceled. In exchange, NATCO would be allowed to sell Giorgio's, and as long as the new owner met the technical requirements, TABC would not oppose the granting of beverage permits. An agreement has been made between NATCO and Applicant (Kali) for Applicant to purchase Giorgio's. Kali is owned by Collis White.

Therefore, the issue in this case is whether Protestants proved that Kali would operate Giorgio's in a manner that would violate the above-referenced statutory provision.

## **B. The Evidence.**

### **1. Testimony.**

There were three days of testimony in the hearing. The following is a summary of the relevant testimony of most of the witnesses in the order they appeared. Several witnesses testimony is not included because the ALJ determined it was not relevant to any issue in the case. Likewise, a significant portion many of the testimony of the witnesses below is not addressed for the same reason.

**Ed Garza.** Mr. Garza has been a City Councilman for the city of San Antonio since June of 1997, and represents District 7 where Giorgio's and Saint Luke's is located. He is familiar with the area and with the club. His office has received numerous calls complaining about the club. The complaints include public exposure, reckless driving, and criminal activity. Because of its location, Giorgio's is detrimental to the general welfare of peace, morals, and safety of the area. A sexually oriented business, and one that sells alcohol, should not be located in the area.

Garza is concerned that the operation of the club will not change under the management of Kali, because Collis White will not commit to excluding the current managers from the premises.

**Patrick Michalec.** Mr. Michalec is a detective with the City of San Antonio Police Department and has worked for that department for 26 years. He has received numerous complaints concerning Giorgio's and conducted an investigation of the club. From June 16, 1995, to October 26, 1999, there were 213 calls to the police concerning Giorgio's. In addition, there have been eight TABC administrative violations during that period.

**Patrick Ragsdale.** Patrick Ragsdale is the pastor of Saint Luke's Catholic Church and has held that position for eleven years. Father Ragsdale is concerned about having a business such as Giorgio's so close to his church, school, and daycare. The church was damaged on one occasion when a young woman from Giorgio's broke glass and entered the church. The woman was naked and was bleeding and it took several people to subdue her. On another occasion, one of his parishioners was stuck by a driver who had just left Giorgio's.

**Al Philippus.** Al Philippus is the Chief of Police for the City of San Antonio and has received a wide variety of complaints concerning Giorgio's. The majority of the complaints concern alcohol, reckless activities, and indecent exposure.

**Michael Nostonik.** Mr. Nostonik is an officer with the San Antonio Police Department in the Technical Surveillance Unit. On November 23, 1999, Nostonik entered Giorgio's and secretly videotaped its activities. While at the club, Nostonik observed various illegal acts, such as topless dancers sitting on patron's crotches and moving up and down, and patrons touching dancers bare buttocks.

**Scott Cope.** Mr. Cope is a police officer with the City of San Antonio Police Department and was at Giorgio's when the above mentioned videotape was recorded. While there he observed both an intoxicated employee and a sexual act in the corner of the club. The intoxicated employee was in plain view of the managers of the club.

**Christina Guerra.** Ms. Guerra is a lieutenant with TABC and is familiar with Giorgio's. She conducted an investigation concerning an after hours party at Giorgio's in which a woman was assaulted. A case was filed against the club and while attempting to settle it, she came in to contact with attorney Collis White, who was representing the club. During a meeting between the two, Mr. White inadvertently informed Guerra that one of NATCO's officers was a convicted felon. A check of the applications on file revealed that the conviction was not disclosed. It was finally agreed that Giorgio's would close for 30 days and then the beverage permits would be canceled. In exchange, NATCO could then sell the club.

Guerra reviewed Kali's beverage application and concluded that Mr. White provided incorrect information concerning his residence and about the financing for Kali's purchase of Giorgio's.

**Anthony Gomez.** Mr. Gomez is employed by the City Of San Antonio and collected information regarding Giorgio's for the city. The information revealed that Giorgio's is located 214 feet from Saint Luke's Catholic Church.

**Joseph Riley.** Mr. Riley is an agent for TABC and was at Giorgio's on October 30, 1999. While there, he observed lewd conduct on the part of two dancers. One dancer rubbed her bare buttocks on his crotch, bit his penis through his pants, and exposed her vagina. The second dancer rubbed her bare buttocks on his crotch, massaged his penis with her hand, rubbed his hand with her vagina, and penetrated her vagina with her finger. The manager of the club was about three away when the second dancer was there but did nothing to stop her from committing the illegal acts.

**Michael Katzfey.** Mr. Katzfey is a police officer with the City of San Antonio and went to Giorgio's at 6:00 A.M. one day in January of 1998. Cars were in the parking lot, but the door to the club was locked. The club was often open after legal hours, but not usually as late as 6:00 A.M. Katzfey and other officers identified themselves as officers, and were allowed in the club after several minutes of requesting entrance. Once inside, he discovered a woman dressed as a waitress with her shirt torn. She was bleeding and bruised as the result of an assault in the club.

**Brandon Cansino.** Mr. Cansino is an officer with the San Antonio Police department and responded to call concerning an assault in Giorgio's parking lot of a woman employed by Giorgio's.

**Toni Acuri.** Mr. Acuri is an officer with the San Antonio Police Department and investigated a recent shooting near Giorgio's. His investigation revealed that the shooting was the result of a drug deal that occurred inside the club. On several occasions he has gone to Giorgio's after 2:00 A.M. and found the club still occupied. Typically, a person would be standing outside the door of the club and would go inside when the officers approached. The officers would then find the door locked and it would be several minutes before they were allowed inside. Once inside, they would be told a business meeting was being conducted.

**John Slaughter.** Mr. Slaughter is an officer with the City of San Antonio Police Department and has found Giorgio's open after legal hours on various occasions.

**Bobby Bradley.** Mr. Bradley is an officer with the San Antonio Police Department and has observed dancers at Giorgio's putting their breasts in patrons mouths.

**Brian Sullivan.** Mr. Sullivan is an officer with the San Antonio Police Department and has found Giorgio's open after legal hours on several occasions. He also has found cocaine in the club.

**Jeffery Margrat.** Mr. Margrat is an officer with the San Antonio Police Department and has observed dancers at Giorgio's place their nipples in patron's mouths. He has also investigated disturbances and property damage close to the club.

**Collis White.** Mr. White, the owner and only officer of Kali Entertainment Inc., is attempting to obtain beverage permits so he can purchase Giorgio's. He is an attorney and has represented NATCO as well as one of its officers. He has never owned or operated any type of bar but is friends with the officers of NATCO and sees Giorgio's as a good business opportunity. At this time, Mr. White does not intend to stop practicing law. He would not ban the present owners and managers from the club, and would consider using the same staff now employed.

The activity portrayed on the videotape was not lewd conduct, but it would not be the type of entertainment he would provide to customers. The club would, however, have topless dancers and lap dances. All employees would be required to undergo drug testing and would be fired if they refused. Finally, employees would not be allowed to be intoxicated on the premises.

**Deborah Rojas.** Ms. Rojas is a waitress at Giorgio's and was on duty on October 22, 1999. That evening several police officers entered the club and harassed customers. One customer was beaten by the police. She later signed an affidavit concerning the events of that evening. The affidavit was prepared in Collis White's office.

**Hernato Rios.** Mr. Rios is a bartender at Giorgio's and was on duty on October 22, 1999. That night he observed police officers beating a customer.

**George Delacruz.** Mr. Delacruz is the day manager at Giorgio's and was at the club on October 22, 1999. That night he observed police officers beating a customer.

**James Raglow.** Mr. Raglow assists sexually oriented businesses and has done work for NATCO and Kali. He negotiated the terms of the sale of Giorgio's and has been offered a job at Giorgio's.

**Keith Sutton.** Mr. Sutton attended Saint Luke's elementary and middle schools and is now employed as a manager at Giorgio's. While attending Saint Luke's, he was unaware that Giorgio's existed. He was at Giorgio's and was on duty on October 22, 1999, and observed police officers beating a customer. He does not allow lewd conduct at the club.

## **2. Other evidence.**

In addition to the testimony summarized above, numerous pieces of physical evidence were admitted. Of most import were two videotapes. The first depicts the area outside of Giorgio's and the second is a secretly made tape of the activities inside the club.

### **a) The outside video.**

The area around Giorgio's, as depicted on the video, is both residential and commercial. Across the street from the club are single family middle class homes. Also across the street is Saint Luke's Catholic Church. From a single location, the video camera is able to view patrons and employees entering the club, and then turn to show young children playing at the church daycare.

### **b) The inside video.**

The video secretly taken inside Giorgio's depicts various activities occurring. While the quality of the tape and the position of the camera make it difficult to determine whether certain acts shown are legally lewd, other acts are easily seen. Many of the acts that can be seen clearly do constitute lewd conduct. Patron's crotches are in contact with the bare buttocks of dancers, dancers' breasts are in contact with patrons' faces and mouths, dancers allow patrons to touch their bare buttocks with their hands, and a dancer's crotch is in contact with a patron's mouth.

## **C. Analysis**

The Protestants argue that the permits should not be issued for several reasons. Primarily, Giorgio's is located in an area that contains businesses, residences, and Saint Luke's church, school, and daycare facility. The church complex is located across the street. There have been problems for several years that include traffic congestion, narcotics, public exposure, and intoxicated individuals.

Protestants also argue that illegal activity occurs on a regular basis in the club and that it would likely continue under the management of Kali. Two questions must be answered to determine whether the applicant should be issued the beverage permits. First, has Giorgio's been operated in a place or manner in detrimental to the general welfare, health, peace, morals, and safety of the people and to the public sense of decency. If so, is the Applicant likely to operate in the same place and manner.

## 1. Place

The testimony and the outside videotape demonstrate that Giorgio's is located in a residential area that also is home to a large church. The church operates a school and daycare where young children learn, play, and develop. The video, taken in the early afternoon, shows that customers are at the club at the same time that children are outside playing nearby. The inside video was also taken during the afternoon and demonstrates that the activity in the club during the day time is lewd and illegal. A church member was struck by a hit and run driver who had just left Giorgio's, and shootings and drug deals have occurred on the premises. Having this type of business in a residential location that also is home for a church is surely detrimental to the general welfare, health, peace, morals, and safety of the people and to the public sense of decency.

## 2. Manner.

The extensive testimony of the officers who investigated Giorgio's demonstrates that the manner in which Giorgio's has been operated is also detrimental to the general welfare, health, peace, morals, and safety of the people and to the public sense of decency. The club regularly stays open after legal hours and lewd contact and illegal narcotics were common. The question becomes, then, would Applicant likely operate Giorgio's in a like manner. Applicant testified that several changes would be made to assure the club was in compliance with law. These included drug testing and monitoring employees alcohol consumption.

Applicant would not commit, however, to banning the current officer's of NATCO, or the managers of Giorgio's from the club. He refers to some managers as fine employees that he would like to have work for him. This is troubling because these are the same people that have allowed illegal activity to occur in the club. The employees were present when the club was open after hours and when lewd conduct was being committed. Also troubling is Applicant's testimony concerning the inside videotape. While he stated that the acts depicted were not the type of entertainment he would offer, he saw nothing illegal occur. If Applicant, with his legal training, cannot find the conduct lewd, it seems unlikely that he would be able to prevent illegal acts from occurring if he were in charge. Further, Applicant testified that he intends to continue to practice law, which would surely interfere with his duties of monitoring the activities at the club.

Finally, Applicant is friends with the officers of NATCO, and has been the attorney for the company and at least one of its officers. It was his inadvertent statement to TABC that caused NATCO to have to sell Giorgio's. The terms of the sale were negotiated by James Raglow, who works for both NATCO and Applicant. These facts, along with the fact that most of the same employees will work at the club, indicate that, while the official ownership may change, the everyday operation of the club will remain the same.

Based upon the above, it is likely that the manner in which Giorgio's will be operated would be detrimental to the general welfare, health, peace, morals, and safety of the people and to the public sense of decency.

**III.**  
**PROPOSED FINDINGS OF FACT**

1. Service of proper and timely notice of the hearing was effected upon the parties.
2. On July 26, 1999, Kali Entertainment, Inc. (Applicant), filed its application for a Mixed Beverage Permit and a Late Hours Mixed Beverage Permit, for premises known as Giorgio's located at 6109 Callaghan Road, San Antonio, Bexar County, Texas.
3. Staff of the Texas Alcoholic Beverage Commission (TABC) determined that Applicant met all of the technical requirements to obtain the permits.
4. Al Philippus, Chief of Police for the City of San Antonio, and Ed Garza, San Antonio City Councilman, District Seven, protest the issuance of the permits described in finding of Fact No. 2.
5. Giorgio's is a sexually orientated business that serves alcohol.
6. Giorgio's is located in an area that is both commercial and residential.
7. Giorgio's is located across the street and 214 feet from Saint Luke's Catholic Church.
8. Saint Luke's Catholic Church operates a school and day care on the church property.
9. Giorgio's is open for business at the same time that children are at the day care and school described in finding of fact No. 8.
10. From June 16, 1995, through October 26, 1999, there were 213 calls to the police concerning Giorgio's and eight administrative TABC violations.
11. On October 30, 1999, lewd conduct occurred at Giorgio's.
12. On November 23, 1999, lewd conduct occurred at Giorgio's.
13. Several San Antonio Police officers have observed lewd conduct at Giorgio's.
14. Managers at Giorgio's did not attempt to stop lewd conduct at Giorgio's.
15. An assault occurred at Giorgio's in January of 1998.
16. Giorgio's regularly stays open after legal hours.

17. Applicant is friends with the current owners of Giorgio's.
18. Applicant has been the attorney for the current owners of Giorgio's.
19. Applicant will not commit to banning the current managers from Giorgio's.
20. Applicant is responsible for the current owners of Giorgio's be required to sell the club.
21. Applicant considers several of the current managers of Giorgio's to be valued employees and will allow them to continue to work in the club.
22. The place that Giorgio's has conducted business is detrimental to the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.
23. The manner of business conducted at Giorgio's is detrimental to the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.
24. Applicant will conduct business at the same location that Giorgio's presently conducts business.
25. Applicant will likely conduct business in the same manner as currently conducted at Giorgio's.
26. Issuing beverage permits to Applicant would be detrimental to the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

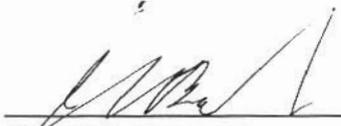
#### **IV.**

#### **PROPOSED CONCLUSIONS OF LAW**

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §11.46(a) (Vernon 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. §§2003.021(b) and 2003.042(5) (Vernon 2000).
3. As referenced in Finding 1, the parties received proper and timely notice of the hearing pursuant to TEX. GOV'T. CODE ANN. §2001.051 (Vernon 2000).

4. Based on Findings 5-26, the permits should not be issued pursuant to TEX. ALCO. BEV. CODE ANN. §11.46(a)(8).
5. For the foregoing reasons, the application should be denied

SIGNED this 21<sup>st</sup> day of June, 2000.

  
\_\_\_\_\_  
JOHN H. BEELER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS