

DOCKET NO. 612150

IN RE RED LION PRIVATE CLUB INC.	§	BEFORE THE
D/B/A RED LION 3040 PRIVATE CLUB	§	
ORIGINAL APPLICATION N & PE	§	
	§	TEXAS ALCOHOLIC
	§	
DENTON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-05-1718)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 3rd day of March, 2005, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on December 13, 2004 and adjourned on December 13, 2004. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on February 11, 2005. This Proposal For Decision (**attached hereto as Exhibit "A"**), was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application of Red Lion Private Club Inc. d/b/a Red Lion 3040 Private Club, be **DENIED**.

This Order will become final and enforceable on March 24, 2005 unless a Motion for Rehearing is filed **before** that date.

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

SIGNED this 3rd day of March, 2005

On Behalf of the Administrator,


Jeanene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (214) 956-8611

Red Lion Private Club Inc.
d/b/a Red Lion 3040 Private Club
RESPONDENT
351 FM 3040 East
Lewisville, Texas 75067
CMRRR#7000 1530 0003 1930 1265

PROTESTANTS:

Karen Crawford
1905 Thornberry Drive
Melissa, Texas 75454
Via regular mail

Larry Finney
Building Official
City of Lewisville
151 West Church Street
P.O. Box 299002
Lewisville, Texas 75209-9002
Via Fax 972 219 3772

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

Dallas District Office

SOAH DOCKET NO. 458-05-1718

TEXAS ALCOHOLIC BEVERAGE COMMISSION,	§	BEFORE THE STATE OFFICE
Petitioner and	§	
KAREN CRAWFORD & THE CITY OF LEWISVILLE,	§	
Protestants	§	
V.	§	OF
RED LION PRIVATE CLUB INC. D/B/A RED LION 3040 PRIVATE CLUB,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Red Lion Private Club, Inc. d/b/a Red Lion 3040 Private Club (Applicant) filed an application for issuance of a Private Club Registration Permit and a Beverage Cartage Permit (the permits) for a premises to be located at 351 FM 3040 East, Lewisville, Denton County, Texas, from the Texas Alcoholic Beverage Commission (TABC) staff (Petitioner). Karen Crawford and the City of Lewisville protested issuance of the permits. After an investigation, Petitioner joined in the protests.

Petitioner and Protestants alleged that Applicant has or will violate provisions of the Texas Alcoholic Beverage Code (the Code) or the Texas Alcoholic Beverage Commission rules (the Rules). Petitioner specifically alleged that Applicant has failed to secure a suitable location for the proposed premises; Applicant gave false or incorrect answers to questions in its application; Applicant lacks good moral character; Applicant will sell liquor contrary to law, and the place and manner in which Applicant may operate its proposed premises will be contrary to the general welfare, health, peace, morals and safety of the people or contrary to the public sense of decency. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends denial of the permits.



I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.46 and 32.03. 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 proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On September 30, 2004, Applicant filed an original application for the permits. Petitioner informed Applicant that TABC had received protests against issuing the permits. Petitioner, upon a review of the application, determined that the application did not meet requirements of the Code or Rules as listed above. The matter was referred to SOAH.

Petitioner issued a notice of hearing on November 10, 2004, informing all parties a hearing would be held on the application, as required by § 2001.052 of the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001. On December 13, 2004, a hearing convened before SOAH ALJ Brenda Coleman at 6333 Forest Park Road, Dallas, Dallas County, Texas. Petitioner was represented by Timothy Griffith, TABC Staff Attorney. Protestants appeared personally. Applicant appeared *pro se*. The record closed on that date.

II. DISCUSSION AND ANALYSIS

A. Applicable Law

Pursuant to the Code, Petitioner may refuse to issue an original permit if it has reasonable grounds to believe that the following circumstances exist:¹ the applicant failed to answer or falsely or incorrectly

¹ TEX. ALCO. BEV. CODE ANN. (the Code) § 11.46(a).

SOAH DOCKET NO. 458-05-1718

PROPOSAL FOR DECISION

PAGE 3

answered a question in an original . . . application;² the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad;³ the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, peace, morals, and safety of the people and on the public sense of decency;⁴ the applicant will sell liquor unlawfully . . . in a manner contrary to law or will knowingly permit an agent, servant, or employee to do so.⁵

A private club registration permit may only be issued to a club if it meets the provisions of ch. 32 of the Code.⁶ In particular, § 32.03 states the club must own, lease, or rent a building or space in a building of such extent and character as in the judgment of the Commission is suitable and adequate for the club's members and their guests.⁷

Petitioner also relies on § 35.31 of the Rules which relates to the place or manner provision of the Code. Pursuant to the Rules, the permittee violates § 11.46(a)(8) of the Code if it is found to be in violation of any law, regulation or ordinance of the federal government, county or municipality in which the licensed premises is located, that is detrimental to the general welfare, health, peace and safety of the people.⁸

2 § 11.46(a)(4) of the Code.

3 § 11.46(a)(6) of the Code.

4 § 11.46(a)(8) of the Code.

5 § 11.46(a)(10) of the Code.

6 § 32.03(a) of the Code.

7 § 32.03(f) of the Code.

8 § 35.31(c)(16) of the Rules

SOAH DOCKET NO. 458-05-1718

PROPOSAL FOR DECISION

PAGE 4

B. Petitioner's Evidence and Contentions

Petitioner contends that the application filed by Applicant, and its supporting documents, contain false or incorrect information. Petitioner further contends that violations of provisions of the Code and Rules exist, and the personal history sheets and criminal background checks of Applicant's three officers reveal numerous alcohol-related offenses and a lack of good moral character.

1. Testimony of Larry Finney

Larry Finney is Chief Building Officer for the City of Lewisville. He filed a written protest of Applicant's application on behalf of the city on the basis that the proposed premises does not have a current Certificate of Occupancy.⁹ According to the Lewisville Zoning Ordinance approved by the Lewisville City Council on March 6, 1995, and still in effect, a Certificate of Occupancy is required for occupancy and use of a building structurally altered.¹⁰ The purpose of the ordinance is to promote the health and general welfare of the public.

Mr. Finney stated that a Certificate of Occupancy will be required in this case due to the fact that a business was located at the location of Applicant's proposed premises previously. An addition was made illegally to the building while the business was in operation. The business subsequently closed its doors and was vacant for a year. Applicant will therefore require a new Certificate of Occupancy because its structure has been altered. According to Mr. Finney, Applicant did not have a Certificate of Occupancy at the time it submitted its application to TABC. Nor has it had one since the filing. Therefore, Applicant cannot occupy and lawfully operate its premises.

⁹ TABC Exhibit 17.

¹⁰ § 36.01(A), Lewisville City Code, Ordinance No. 2007-3-95 (TABC Exhibit 16).

SOAH DOCKET NO. 458-05-1718

PROPOSAL FOR DECISION

PAGE 5

2. Testimony of Agent David Doggett

a. False or Incorrect Answers in the Application

Agent David Doggett has been a TABC agent for four years and is knowledgeable about the requirements of the Code and Rules applicable to the permits sought by Applicant. He conducted the investigation of Applicant's permits and reviewed all of Applicant's bank records. Agent Doggett discussed several responses to questions contained within Applicant's application which were false or incorrect in his opinion. They are listed as follows:

1. Applicant's statement in the application that it deposited a \$12,650 loan from The Station, Inc., into Applicant's bank account was false. Applicant's bank account records did not show that the funds were deposited.

2. Applicant's statement on July 20, 2004, that it deposited a \$10,000 loan from The Station, Inc. into Applicant's bank account was false. Applicant's bank account records did not show that the funds were deposited.

3. Applicant's statement on July 20, 2004, that interest payments of \$83.33 per month were made from Applicant's bank account beginning on December 1, 2003, for the \$10,000 loan from The Station, Inc., was false. Applicant's bank account records did not show that the funds were withdrawn.

b. Place or Manner Contrary to General Welfare

Agent Doggett determined the Applicant's application did not meet requirements of the Code or Rules. A private club is required to have suitable premises for its members and guests. Since Applicant has no Certificate of Occupancy for its proposed premises, it is in violation of the City of Lewisville's zoning ordinance. Such violation is detrimental to the general welfare, health and safety of the public, and in

SOAH DOCKET NO. 458-05-1718

PROPOSAL FOR DECISION

PAGE 6

violation of the TABC Rules.¹¹

c. Lack of Good Moral Character

Applicant's organizational structure is comprised of the following three officers: Robert Gilani, President; James Gilani, Director; and Joseph Goodsell, Secretary and Director. Based upon the personal history sheets submitted, and independent background checks performed by Agent Doggett, he opined that Applicant's officers and agents are not peaceable, law-abiding citizens of good moral character.

1. A check of the criminal history for Robert Gilani indicated the following arrests: driving while intoxicated in 1993; two counts of public intoxication in 1993 (pleaded no contest and paid fine); and driving with a suspended license in 1993.

2. A check of the criminal history for James Gilani indicated he currently has an outstanding warrant for his arrest in Denton County, Texas, for serving alcoholic beverages to minors. Also indicated are the following previous arrests: public intoxication and resisting arrest in 2001; driving while intoxicated in 2000 (found not guilty); public intoxication in 2000 (dismissed); public intoxication in 1993; and two counts of driving with a suspended license in 1999.

3. A check of the criminal history for Joseph Goodsell indicated the following arrests: domestic violence in 2003 (dropped); obstruction and noise violation in 2000 (dropped); and public intoxication in 1998 (dropped).

3. Testimony of Karen Crawford

Karen Crawford testified that she objects to the issuance of the permits on the basis that

¹¹ § 11.46(a)(8) of the Code; § 35.31(a) of the Rules.

SOAH DOCKET NO. 458-05-1718

PROPOSAL FOR DECISION

PAGE 7

Applicant's officers (specifically James Gilani) are not law-abiding citizens of good moral character. She filed a written protest of the application by letter dated July 13, 2004.¹² Ms. Crawford stated that she was a member of one of Applicant's clubs from 2001 until 2004, and has personal knowledge of Applicant's prior business dealings.

According to Ms. Crawford, there are approximately five Red Lion clubs in operation, all with related officers. She stated that the clubs do not conduct business in keeping with the Code. She also stated that she has personally witnessed gambling at the Red Lion Club located in Highland Village, Texas, and that it routinely occurs on Friday and Saturday nights. She has also observed employees of the clubs operating an open saloon and serving alcohol to minors.

C. Applicant's Evidence and Contentions

Applicant contends that it has not acted maliciously with regard to the application submitted to TABC on September 30, 2004. According to Applicant, it has made a good faith attempt at taking the necessary steps over the last few months to resolve any issues for 100 percent compliance. Specifically, Applicant claims to have been recently working with Agent Doggett for assistance.

Applicant has also contacted Pamela Craig, Licensing Consultant with ABC Licensing for advice and recommendations with regard to the problems which led to the protests of the application. Applicant stated it has no intention of misleading anyone or operating its business in an inappropriate manner. Applicant offered the testimony of Ms. Craig concerning her recommendations after reviewing the protest documents along with Applicant's records.

SOAH DOCKET NO. 458-05-1718

PROPOSAL FOR DECISION

PAGE 8

1. Testimony of Pamela Craig

Ms. Craig laid out her findings and recommendations regarding the steps Applicants should take to obtain the permits by letter dated November 30, 2004.¹³ According to Ms. Craig, all of the issues presented by Agent Dogett in regard to the application and supporting documents can be easily fixed. Ms. Craig pointed out that the character issue for Robert Gilani is minor because the offenses for which he was arrested are over 10 years old. However, she suggests that his brother, James Gilani be discharged as director and replaced. She also suggested that Applicant follow the procedure specified by the City of Lewisville for obtaining a current Certificate of Occupancy. Lastly, Ms. Craig stated that to the best of her knowledge over the past couple of months, Applicant is operating as it should be operating.

2. Testimony of Soheila Arefkia

Soheila Arefkia testified that she owns the building from whom Applicant will lease its space. At the time of the hearing, Ms. Arefkia stated that the property was in foreclosure proceedings, however, she would know in January 2005 if she would lose the property.

According to Ms. Arefkia, the City of Lewisville issued Applicant a Certificate of Occupancy for 300 people by mistake two years ago. She stated it was a mistake because the property is not large enough to accommodate 100 people. In response to Mr. Finney's statement that the proposed premises was structurally altered, Ms. Arefkia insisted that the building was not changed. Instead, she stated that a minor addition was made by removing two doors and a window from the back wall of the building and adding or attaching a pre-fabricated sunroom to the wall. Other than that, nothing was changed. Ms. Arefkia did admit, however, that after the sunroom was added, she did not get another Certificate of Occupancy because she did not think she needed one.

¹³ Applicant's Exhibit One.

SOAH DOCKET NO. 458-05-1718

PROPOSAL FOR DECISION

PAGE 9

3. Testimony of Robert Gilani

Robert Gilani testified at the hearing. Mr. Gilani did not deny that (1) the application signed by him on June 1, 2004, (2) the affidavit in support of the application signed on July 20, 2004, as well as (3) the promissory note signed on October 8, 2003, which were submitted to TABC on September 30, 2004, contain false or incorrect information with regard to money borrowed from The Station Inc. and the repayment of the money.

Mr. Gilani stated that he relied upon the assistance and advice of an application preparation service, Labarbra Licensing Company, operated by Joe Labarbra, to complete the application. According to Mr. Gilani, he often felt confused during the application process, and attributed any incorrect answers in his application and accompanying documents to his confusion and/or possible miscommunication between himself and Mr. Labarbra.

D. Analysis, Conclusion, and Recommendation

Based on the evidence presented by Petitioner and Applicant's witnesses, the ALJ finds that Applicant's application contains several false or incorrect answers. Applicant stated that it relied upon an application service to properly complete the required forms. While it was perhaps unintentional, it remains the responsibility of Applicant and its representatives to insure that all information contained within an application is correct prior to its filing with TABC.

The ALJ also finds that Applicant does not have a current Certificate of Occupancy pursuant to § 36.01(A) of Lewisville Zoning Ordinance No. 2007-3-95. Therefore, Applicant cannot occupy and lawfully operate its proposed premises. Further, the ALJ finds the requested permits would be detrimental to the general welfare, health, peace and safety of the public in contradiction of local and state laws. Given the seriousness of these violations alone, the ALJ recommends that the requested permits be denied. No further analysis of additional alleged violations is warranted. Accordingly, Applicant's request for the

SOAH DOCKET NO. 458-05-1718

PROPOSAL FOR DECISION

PAGE 10

permits should be denied.

III. FINDINGS OF FACT

1. On September 30, 2004, Red Lion Private Club, Inc. d/b/a Red Lion 3040 Private Club (Applicant) filed an original application with the Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) for a Private Club Registration Permit and a Beverage Cartage Permit (the permits).
2. Applicant's proposed premises are located at 351 FM 3040 East, Lewisville, Denton County, Texas.
3. The proposed premises are owned by Soheila Arefkia, from whom Applicant will lease the building.
4. The proposed premises was structurally altered when a pre-fabricated sunroom was added to the back wall.
5. The proposed premises has no current Certificate of Occupancy from the City of Lewisville, which is required for occupancy and use of a building that is structurally altered.
6. The proposed premises is in violation of the city's zoning ordinance, which was enacted to promote the health and general welfare of the public.
7. Karen Crawford and the City of Lewisville protested the issuance of the permits.
8. TABC Agent David Doggett reviewed Applicant's application and supporting documents and formed the opinion that the application did not meet requirements of the Texas Alcoholic Beverage Code (Code) or the Texas Alcoholic Beverage Commission rules (Rules).
9. Petitioner joined in the protests.
10. TABC Staff protested the application asserting, among other things, that the permits should be denied because false or incorrect answers were given in response to questions on the application form.
11. Applicant's statement in the application that it deposited a loan from The Station, Inc., totaling \$12,650 into Applicant's bank account was false. Applicant's bank account records did not show that the funds were deposited.

SOAH DOCKET NO. 458-05-1718

PROPOSAL FOR DECISION

PAGE 11

12. Applicant's statement on July 20, 2004, that it deposited a loan from The Station, Inc., totaling \$10,000 into Applicant's bank account was false. Applicant's bank account records did not show that the funds were deposited.
13. Applicant's statement on July 20, 2004, that interest payments of \$83.33 per month were made from Applicant's bank account beginning on December 1, 2003, on the \$10,000 loan from The Station, Inc., was false. Applicant's bank account records did not show that the funds were withdrawn.
14. Issuing the requested permits would be detrimental to the general welfare, health, peace, morals, and safety of the public.
15. On November 10, 2004, Petitioner issued a notice of hearing informing all parties that a hearing would be held on the application and informing the parties of the time, place, and nature of the hearing, of the legal authority and jurisdiction under which the hearing was to be held, giving reference to the particular sections of the statutes and rules involved, and including a short, plain statement of the matters asserted.
16. On December 13, 2004, a hearing convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge Brenda Coleman at 6333 Forest Park Road, Dallas, Dallas County, Texas. Petitioner was represented by Timothy Griffith, TABC Staff Attorney. Protestants appeared personally. Applicant appeared *pro se*. Following presentation of evidence, the record closed the same day.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter. TEX. ALCO. BEV. CODE ANN. (Code) ch. 5 and §§ 11.46 and 32.03
2. 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. TEX. GOV'T CODE ANN. Ch. 2003.
3. Notice of hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Applicant falsely or incorrectly answered a question in an original application, in violation of § 11.46(a)(4) of the Code.
5. The place or manner in which Applicant may conduct business warrants the refusal of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, in violation of § 11.46(a)(8) of the Code.

SOAH DOCKET NO. 458-05-1718

PROPOSAL FOR DECISION

PAGE 12

6. The application of Red Lion Private Club, Inc. d/b/a Red Lion 3040 Private Club for a Private Club Registration Permit and Beverage Cartage Permit should be denied pursuant to § 11.46(a) of the Code.

SIGNED February 11, 2005.

Brenda Coleman

BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: TABC vs. Red Lion Private Club Inc. d/b/a Red Lion 3040 Private Club

DOCKET NUMBER: 458-05-1718

AGENCY CASE NO: 612150

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RESPONDENT
VIA REGULAR MAIL

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PROTESTANT
VIA REGULAR MAIL

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Lewisville, TX 75209-9002

PROTESTANT
VIA FAX: (972) 219-3772

as of February 11, 2005

2-28

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge
February 11, 2005

FEB 11 2005

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

RE: TABC Vs. Red Lion Private Club Inc., D/B/A
Red Lion 3040 Private Club
SOAH Docket No. 458-05-1718
TABC Case No. 612150

Dear Ms. Fox:

Enclosed please find the Proposal For Decision in the above reference cause for the consideration of the Texas Alcoholic Beverage Commission.

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,

Brenda Coleman
Brenda Coleman
Administrative Law Judge

BC/sr

Enclosure

cc: Timothy Griffith, Staff Attorney for Texas Alcoholic Beverage Commission, Via Fax; Red Lion Private Club Inc., D/B/A Red Lion 3040 Private Club, Respondent, Via Mail; Karen Crawford, Protestant, Via Regular Mail; Larry Finney, Protestant, Via Fax