

DOCKET NO. 615152

IN RE MARIA FLORES	§	BEFORE THE
D/B/A CLUB CENTENARIO	§	
PERMIT/LICENSE NOS. BG469114	§	
	§	TEXAS ALCOHOLIC
	§	
TRAVIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-0903)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 29th day of June, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Michael J. O'Malley. The hearing convened on March 28, 2006, and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 7, 2006. 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 in this cause.

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 Respondent's permit(s) and license(s) shall be **SUSPENDED**.

IT IS FURTHER ORDERED, that unless the Respondent pays a civil penalty in the amount of **\$4,500.00** on or before the **25th** day of **August, 2006**, or all rights and privileges under the above described permits shall be **SUSPENDED for a period of thirty (30) days, beginning at 12:01 A.M. on the 1st day of September, 2006.**

This Order will become final and enforceable on July 20, 2006, unless a Motion for Rehearing is filed before that date.

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

SIGNED on this 29th day of June, 2006.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

WMC/bc

The Honorable Michael J. O'Malley
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (512) 475-4994

Don Edward Walden
ATTORNEY FOR RESPONDENT
7200 North Mopac, Suite 300
AUSTIN, TX 78731
VIA FAX (512) 795-8079

MARIA FLORES
RESPONDENT
d/b/a CLUB CENTENARIO
3701 AIRPORT BLVD
AUSTIN, TX 78722
CERTIFIED MAIL NO. 7001 2510 0000 7274 1409

W. Michael Cady
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division

TEXAS ALCOHOLIC BEVERAGE COMMISSION

CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 615152

REGISTER NUMBER:

NAME: MARIA FLORES

TRADENAME: CLUB CENTENARIO

ADDRESS: 3701 Airport Blvd., Austin, Texas 78722

DATE DUE: August 25, 2006

PERMITS OR LICENSES:BG469114

AMOUNT OF PENALTY: \$4,500.00

Amount remitted \$ _____ Date remitted _____

If you wish to a pay a civil penalty rather than have your permits and licenses suspended, you may pay the amount assessed in the attached Order to the Texas Alcoholic Beverage Commission in Austin, Texas. **IF YOU DO NOT PAY THE CIVIL PENALTY ON OR BEFORE THE 15TH DAY OF JUNE 2006, YOU WILL LOSE THE OPPORTUNITY TO PAY IT, AND THE SUSPENSION SHALL BE IMPOSED ON THE DATE AND TIME STATED IN THE ORDER.**

When paying a civil penalty, please remit the total amount stated and sign your name below. **MAIL THIS FORM ALONG WITH YOUR PAYMENT TO:**

TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711

WE WILL ACCEPT ONLY U.S. POSTAL MONEY ORDERS, CERTIFIED CHECKS, OR CASHIER'S CHECKS. NO PERSONAL CHECKS. NO PARTIAL PAYMENTS.

Your payment will not be accepted unless it is in proper form. Please make certain that the amount paid is the amount of the penalty assessed, that the U.S. Postal Money Order, Certified Check, or Cashier's Check is properly written, and that this form is attached to your payment.

Signature of Responsible Party

Street Address P.O. Box No.

City State Zip Code

Area Code/Telephone No.

LEGAL

State Office of Administrative Hearings

MCT



Shelia Bailey Taylor
Chief Administrative Law Judge

June 6, 2006

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

RE: Docket No. 458-06-0901 TABC Vs. JOE GONZALES d/b/a DOGHOUSE SALOON

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

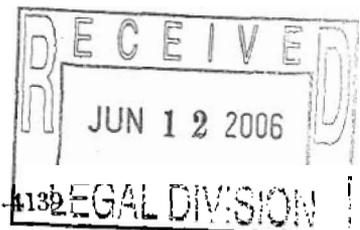
Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

Melissa M. Ricard
Administrative Law Judge

MMR; MAR
Enclosure

xc: **Natalie Howard, State Office of Administrative Hearings- VIA REGULAR MAIL**
W. Michael Cady, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA REGULAR MAIL
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA REGULAR MAIL
Epimenio Ysassi, Attorney for Respondent, 555 N. Carancahua, Suite 200, Corpus Christi, Tx 78478 -**VIA REGULAR MAIL**



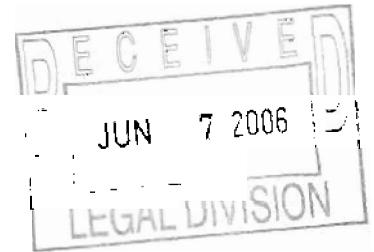
State Office of Administrative Hearings

MC



Shelia Bailey Taylor
Chief Administrative Law Judge

June 7, 2006



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

HAND DELIVERY

**RE: Docket No. 458-06-0903; Texas Alcoholic Beverage Commission v.
Maria Flores d/b/a Club Centenario**

Dear Mr. Steen:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

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

Sincerely,

A handwritten signature in cursive script that reads "Michael J. O'Malley".

Michael J. O'Malley
Administrative Law Judge

MJO/s
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings - **VIA HAND DELIVERY**
W. Michael Cady, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 -
VIA HAND DELIVERY
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 -
VIA HAND DELIVERY
Don E. Walden, Attorney and Counselor at Law, 7200 North Mopac, Suite 300, Austin, TX 78731 - **VIA REGULAR
MAIL**

DOCKET NO. 458-06-0903

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Petitioner**

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BEFORE THE STATE OFFICE

V.

OF

**MARIA FLORES D/B/A
CLUB CENTENARIO,
Respondent**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Maria Rosario Flores d/b/a Club Centenario (Respondent) alleging that on or about February 7, 2005, at approximately 12:15 a.m., Dayadira Lizbeth Gamez-Gomez, a waitress at Club Centenario, was intoxicated on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. (the Code) §§ 104.01(5) and 11.61(b)(13). TABC seeks a 30-day suspension of Respondent's alcoholic beverage permit, or in lieu of the suspension, a civil penalty of \$150 per day for each day of the recommended penalty range or \$4500. Ms. Flores argues that TABC is not authorized to suspend a permit on ground that an off-duty employee was intoxicated on the licensed premises. The Administrative Law Judge (ALJ) finds that Ms. Gomez was working on February 6-7, 2005, and recommends a 30-day suspension of Respondent's permit or, instead of the suspension, a civil penalty of \$4500.¹

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I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

ALJ Michael J. O'Malley convened the hearing on March 28, 2006, at the State Office of Administrative Hearings in Austin, Texas. Staff attorney W. Michael Cady appeared on behalf of TABC. Don E. Walden appeared on behalf of Respondent. The record closed on April 21, 2006,

¹ Respondent has two prior violations of sales to intoxicated persons.

after the parties filed post-hearing briefs. There were no contested issues on notice or jurisdiction; therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion.

II. DISCUSSION

A. Background

Club Centenario currently operates under the authority of a Wine and Beer Retailer's Permit No. BG469114, in Austin, Travis County, Texas. The following facts are not in dispute. Ms. Gomez had been employed as a waitress at Club Centenario for approximately one month before the incident on February 7, 2005. On the night of February 6, 2005, Ms. Gomez showed up at Club Centenario intoxicated. At about midnight, Ms. Gomez began fighting with two other employees at the licensed premises. The Austin Police Department (APD) arrived at Club Centenario and arrested Ms. Gomez for public intoxication. Upon discovering that Ms. Gomez was an employee of Respondent, APD notified TABC. TABC Agents Doris Board and Tricia Rutledge responded. On arrival, Agents Board and Rutledge observed Ms. Gomez in the back of the APD patrol car. They removed Ms. Gomez from the APD patrol car and placed her in the TABC patrol car. Ms. Gomez could not stand up without help, and she exhibited all the standard clues of intoxication. Agents Board and Rutledge determined that all elements of the violation had been met, and they issued Respondent a citation for violation of TEX. ALCO. BEV. CODE ANN. § 104.01(5).

The only contested factual issue involves whether Ms. Gomez was on duty as a waitress the night of the incident. Although Ms. Flores admits that Ms. Gomez was a waitress at Club Centenario, she contends that Ms. Gomez was not working the night of the incident. TABC argues that Ms. Gomez was working at the time of the incident. Even if Ms. Gomez was not working that night, TABC contends Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b) and 104.01(5)

because the Code does not require that the intoxicated employee be working, only that she be on the licensed premises while intoxicated.

B. Applicable Law

TEX. ALCO. BEV. CODE ANN. § 11.61(b) states:

(b) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true:

(13) the permittee was intoxicated on the licensed premises.

TEX. ALCO. BEV. CODE ANN. § 104.01(5) provides:

No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to the public decency, including, but not limited to any of the following acts:

(5) being intoxicated on the licensed premises.

C. TABC's Evidence and Argument

1. Factual Issue—Was Ms. Gomez working on February 6-7, 2005?

Agent Rutledge testified that Ms. Flores told her that Ms. Gomez showed up for work intoxicated. Agent Rutledge further stated that Ms. Flores admitted to allowing Ms. Gomez to work despite the fact she was intoxicated. Agent Rutledge's testimony is supported by her incident report.² In addition, Agent Rutledge testified that Ms. Gomez was dressed provocatively that night, as is the custom for waitresses at Club Centenario. Based on the facts given to Agent Rutledge,

² Ms. Rutledge completed her incident report on February 8, 2005.

TABC concluded that Ms. Gomez showed up late for work and was intoxicated. After being at work for about an hour, she got into a fight with two other waitresses at the club.

2. Legal Issue—Do TEX. ALCO. BEV. CODE ANN. §§ 11.61(b) and 104.01(5) require Ms. Gomez to be in the course and scope of her employment for a violation to occur?

TABC argues that TEX. ALCO. BEV. CODE ANN. § 104.01(5) does not require that the employee be within the course and scope of employment for a violation to occur. TABC contends that the exclusion of the course and scope of employment language was for a purpose and must be given effect. *Chastain v. Koonce*, 700 S.W.2d 579, 582 (Tex. 1985); and *Cameron v. Terrell & Grant, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981). TABC further argues that the term employee is simply a person who works for another for financial or other compensation. *Ackley v. State*, 592 S.W.2d 606, 608 (Tex. Crim. App. 1980). TABC emphasizes that an employee includes anyone who works for compensation, and there is no distinction between an on- or off-duty employee.

TABC also points out that TEX. ALCO. BEV. CODE ANN. § 104.01(5) states that the licensee must not allow any immoral or indecent conduct on the premises, and this provision would apply to all patrons of the establishment. According to TABC, the Code makes no distinction between intoxicated patrons and intoxicated employees; therefore, since the Code prohibits lewd, immoral, and indecent conduct for all patrons, there would be no public policy reason to exclude off-duty employees who are engaging in this type of conduct.

Finally, TABC asserts that the purpose of the Texas Alcoholic Beverage Code—to protect the health and safety of the people of the state—is advanced by liberally construing the statute to include off-duty employees. TEX. ALCO. BEV. CODE ANN. § 1.03.

D. Respondent's Evidence and Argument**1. Factual Issue—Was Ms. Gomez working on February 6-7, 2005?**

Ms. Flores testified that Ms. Gomez was not working February 6-7, 2005. She stated that if Ms. Gomez had shown up to work intoxicated, she would have been sent home. Genaro Jiminez, a bartender at the club who helps maintain the time sheets, also testified that Ms. Gomez was not on duty the night of February 6, 2005. In addition, Respondent entered in evidence the handwritten time sheet for February 6, 2005, and the time sheet indicates that Ms. Gomez was not working on February 6, 2005.

2. Legal Issue—Do TEX. ALCO. BEV. CODE ANN. §§ 11.61(b) and 104.01(5) require Ms. Gomez to be in the course and scope of her employment for a violation to occur?

Respondent relies on SOAH Docket No. 458-00-1367, *Texas Alcoholic Beverage Commission v. Robert Manriquez d/b/a Lady Luck*. In that case, the TABC Administrator adopted the proposal for decision in which the ALJ held that the intoxication of an off-duty employee on the licensed premises did not violate the Code because the respondent in that case did not have the right to control the off-duty conduct of the employee. Respondent further argues that the purpose of the Code is to promote public safety; however, if an off-duty, intoxicated employee is forced to leave the licensed premises, she jeopardizes the public safety.

E. ALJ's Recommendation and Analysis

With regard to the fact issue, the ALJ finds that Ms. Gomez was working the night of February 6, 2005. The incident report, dated February 8, 2005, clearly indicates that Ms. Flores admitted to Agent Rutledge that Ms. Gomez had reported to work intoxicated. Agent Rutledge further testified at the hearing that Ms. Flores told her that Ms. Gomez was on duty at the time of the

incident. The February 8, 2005 report is reliable because it was written one day after the incident.³ Not only does the report mention that Ms. Gomez was working the night of February 6, 2005, it also mentions that Ms. Flores stated that she allowed Ms. Gomez to work despite the fact she was intoxicated. Agent Rutledge still maintains that the facts in her incident report are correct. Furthermore, it is unlikely that one day after the incident Agent Rutledge would misstate or fail to recollect facts.

Additionally, the ALJ did not find the testimony of Mr. Jiminez nor the time sheets to be reliable. The time sheets admitted in evidence were a copies of the originals and handwritten.⁴ Handwritten time sheets, especially if written with a pencil, are not reliable and may not be accurate.⁵ Finally, because Mr. Jiminez had limited involvement in the February 6-7, 2005 incident, it seems unlikely he would have clear recollection of whether Ms. Gomez was working that night.

With regard to the legal issue, the ALJ does not find that an employee⁶ has to be in the course and scope of his employment for a violation to occur. The Code is clear and unambiguous and does not require that the employee be within the course and scope of employment. Because the language of the Code is clear, there is no reason to look beyond the clear intent. *Government Personnel Mut. Life Ins. Co. v. Wear*, 251 S.W.2d 525, 528-529 (Tex. 1952); and *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241-242 (Tex. 1994). Furthermore, as noted by TABC, the words excluded from the Code should be presumed to have been exclude for a purpose. *Cameron v. Terrell & Grant, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981). A requirement should not be assumed if it was excluded by the

³ TABC Ex. 1.

⁴ Respondent's Ex. 1. Because the time sheets were copies, the ALJ could not determine if they were written with a pencil or pen.

⁵ Because the waitresses received a very low hourly wage, the accuracy of their hours may not be important, especially given that the bartenders assumed responsibility for tracking the waitresses' hours. The waitresses made the majority of their wages from tips.

⁶ There is no dispute that Ms. Gomez worked as a waitress and was an employee of the club. Respondent argues, however, that she was off duty.

legislature. The legislature did not include a course and scope requirement in TEX. ALCO. BEV. CODE ANN. §§ 11.61(b) or 104.01(5). In other sections of the Code, the legislature included a course and scope requirement. For example, TEX. ALCO. BEV. CODE ANN. § 106.05 states that a minor may possess an alcoholic beverage while in the course and scope of his employment if he is an employee of the licensee and the employment is not prohibited by the Code. If the legislature had intended a course and scope of employment requirement in TEX. ALCO. BEV. CODE ANN. §§ 11.61(b) and 104.01(5), it could have included such a requirement.

Not only is it clear that the language (or lack thereof) of the Code does not require the employee be in the course and scope of employment for a violation to occur, the Code makes course and scope irrelevant for purposes of this case. In this case, it is irrelevant whether Ms. Gomez was working that night; she was intoxicated on the premises, and Ms. Flores knew she was intoxicated. Therefore, Ms. Flores *permitted* Ms. Gomez to be intoxicated on the licensed premises, which is prohibited. Specifically, TEX. ALCO. BEV. CODE ANN. § 104.01(5) states that no person authorized to sell beer may permit intoxication on the licensed premises. This prohibition would include patrons of the club as well as on- or off-duty employees. This provision of the Code does not distinguish between intoxicated on- and off-duty employees; therefore, course and scope are irrelevant. Furthermore, there is no public policy reason to distinguish between on- and off-duty employees because the purpose of this provision is to prevent any person from being intoxicated on the licensed premises. As TABC notes, because TEX. ALCO. BEV. CODE ANN. § 104.01(b) broadly applies to patrons (not permitting patrons to engage in this behavior), there would be no reason to carve out an exception for off-duty employees.⁷ Moreover, by not permitting lewd, immoral, or offensive conduct, specifically intoxication, on the licensed premises, “the protection of the welfare, health, peace, temperance, and safety of the people of the state” is accomplished. TEX. ALCO. BEV. CODE ANN. § 1.03.

⁷ If one were to accept Respondent’s interpretation of TEX. ALCO. BEV. CODE ANN. § 104.01(5), only off-duty employees could be intoxicated on the licensed premises. Clearly, the legislature did not create an exception allowing off-duty employees to be intoxicated on the licensed premises, especially if the owner had knowledge of the intoxication.

Moreover, Respondent's argument that the intoxication of the off-duty employee on the licensed premises does not constitute a violation because the permit holder has no control of the employee's off-duty conduct is without merit under the facts in this case. As previously stated, Ms. Flores knew and permitted Ms. Gomez to be intoxicated on the licensed premises. The permit holder obviously would not have complete control over every patron (whether an employee or not) on the licensed premises.⁸ The purpose of the Code, however, is for the permit holder and her employees not to engage in the offensive conduct and not to permit other patrons, including off-duty employees, from engaging in such conduct, thus protecting the public safety. In this case, once Ms. Flores became aware that Ms. Gomez was intoxicated, she should have called a cab or had someone drive Ms. Gomez home. Public safety would not have been compromised had Ms. Flores called a cab or found appropriate transportation.⁹

For these reasons, the ALJ recommends a 30-day suspension of Respondent's permit or, instead of the suspension, a civil penalty of \$4500.

III. FINDINGS OF FACT

1. The Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Maria Rosario Flores d/b/a Club Centenario (Respondent) alleging that on or about February 7, 2005, at approximately 12:15 a.m., Dayadira Lizbeth Gamez-Gomez, a waitress at Club Centenario, was intoxicated on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. (the Code) §§ 104.01(5) and 11.61(b)(13).
2. TABC seeks a 30-day suspension of Respondent's alcoholic beverage permit, or in lieu of the suspension, a civil penalty of \$150 per day for each day of the recommended penalty range or \$4500.

⁸ The ALJ believes, however, that an employer has a great degree of control over an off-duty employee, especially if that employee is engaging in lewd, immoral, or offensive conduct on the licensed premises.

⁹ Respondent argues that forcing an off-duty employee out of the club places that person on the streets, compromising the public safety. In this case, Ms. Flores had many other options other than throwing Ms. Gomez out on the street.

3. Administrative law Judge Michael J. O'Malley convened the hearing on March 28, 2006, at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff attorney W. Michael Cady appeared on behalf of TABC. Don E. Walden appeared on behalf of Respondent. The record closed on April 21, 2006, after the parties filed post-hearing briefs.
4. Club Centenario currently operates under the authority of a Wine and Beer Retailer's Permit No. BG469114, in Austin, Travis County, Texas.
5. Ms. Gomez had been employed as a waitress at Club Centenario for approximately one month before the incident on February 7, 2005.
6. On the night of February 6, 2005, Ms. Gomez showed up for work intoxicated.
7. Ms. Gomez was dressed provocatively that night, as is the custom for waitresses at Club Centenario.
8. Ms. Flores allowed Ms. Gomez to work despite the fact she was intoxicated.
9. At about midnight, Ms. Gomez began fighting with two other employees on the licensed premises.
10. The Austin Police Department (APD) arrived at the club and arrested Ms. Gomez for public intoxication.
11. Upon discovering that Ms. Gomez was an employee of Respondent, APD notified TABC.
12. TABC Agents Doris Board and Tricia Rutledge responded.
13. On arrival, Agents Board and Rutledge observed Ms. Gomez in the back of the APD patrol car. They removed Ms. Gomez from the APD patrol car and placed her in the TABC patrol car.
14. Ms. Gomez could not stand up without help, and she exhibited all the standard clues of intoxication.
15. Agents Board and Rutledge determined that all elements of the violation had been met, and they issued Respondent a citation for violation of TEX. ALCO. BEV. CODE ANN. § 104.01(5).

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN., Subchapter B of Chapter, and §§ 6.01, 11.61, 61.71, and 32.01.
2. The State Office of Administrative Hearings has jurisdiction over all matters pertaining to the contested case hearing, including the issuance of a proposal for decision containing findings of fact and conclusions of law, pursuant TEX. GOV'T CODE ANN. ch. 2003.
3. Notice of the hearing was timely and adequate, as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.
4. On February 6-7, 2005, Ms. Gomez was an employee of Club Centenario. TEX. ALCO. BEV. CODE ANN. § 104.01(5); and *Ackley v. State*, 592 S.W.2d 606, 608 (Tex. Crim. App. 1980).
5. Because the language of the TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(13) and 104.01(5) is clear, there is no reason to look beyond the clear intent. *Government Personnel Mut. Life Ins. Co. v. Wear*, 251 S.W.2d 525, 528-529 (Tex. 1952); and *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241-242 (Tex. 1994).
6. The words excluded from TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(13) and 104.01(5) should be presumed to have been exclude for a purpose. *Cameron v. Terrell & Grant, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981).
7. Sections 11.61(b) or 104.01(5) OF TEX. ALCO. BEV. CODE ANN. do not include a course and scope of employment requirement.
8. Because Ms. Flores allowed Ms. Gomez to work, despite being intoxicated, she permitted her to be intoxicated on the licensed premises in violation of TEX. ALCO. BEV. CODE ANN. § 104.01(5).

9. Pursuant to TEX. ALCO. BEV. CODE ANN. §§ 61.71(a)(1), and considering the history of prior violations, TABC is justified in suspending Permit No. BG469114 held by Maria Flores d/b/a Club Centenario for 30 days, or imposing a \$4500 civil penalty in lieu of the suspension.

SIGNED June 7, 2006.


MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS