

DOCKET NO. 458-98-1000  
(TABC NO. 576192)

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
PERMIAN DISTRIBUTING CO. LICENSE NOS. BB-302833 & BI-302834 PERMIT NOS. X-250826 & O-250827 MIDLAND COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS

### PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff), Petitioner, brought this action against, Permian Distributing Company, Respondent, to suspend its General Distributor's License, its Importer's License, its General Class B Wholesaler's Permit, and its Private Carrier's Permit for violations of the Texas Alcoholic Beverage Code (hereinafter Code) and the Texas Alcoholic Beverage Commission Rules (hereinafter Rules). Petitioner alleged that on two occasions the Respondent agreed with organizations which purchased its products to exclude its competitor and that on those occasions Respondent also made gifts to those organizations. The Petitioner requested a suspension of Respondent's licenses and permits. This proposal recommends a suspension for 10 days, or in the alternative, a penalty of \$30,000.

#### I. Procedural History

On December 2, 1998, a hearing was held before Administrative Law Judge Louis Lopez in the Midland City Hall, City Council Chambers, 300 North Loraine, Midland, Texas. The Petitioner was represented by attorney Gayle Gordon. The Respondent was represented by attorneys Eugene Palmer and Ruben Valadez. Evidence was received, and the hearing was closed on the same day. A joint motion to extend time for filing briefs was filed and granted. The record was closed on January 29, 1999.

#### II. Jurisdiction, Venue, and Notice

The sufficiency of jurisdiction and of the notice of hearing, which is set out in the conclusions of law, was stipulated by the parties.

### III. Discussion

#### A. Statutory Provisions

The following provisions are relevant in the consideration of this cause of action:

Code Section 109.08:

**EXCLUSION.** Notwithstanding any other provision of this code, no person engaged in business as a distiller, brewer, manufacturer, winery, or any other manufacturing level producer of liquor or beer, or their wholesalers, may directly or indirectly or through an affiliate require, by agreement or otherwise, that any retailer engaged in the sale of liquor or beer purchase any such products from such person to the exclusion in whole or in part of liquor or beer sold or offered for sale by other persons, or prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to any retailer.

Rule Sec. 45.110:

#### **Exclusion.**

##### (a) General.

(1) This section is promulgated pursuant to the authority expressed in the Texas Alcoholic Beverage Code §109.08, pertaining to the exclusion of alcoholic beverages at any location.

(b) Nothing in the Texas Alcoholic Beverage Code, §109.08, shall be construed as authorizing any of the following:

.....

(5) the furnishing, giving, lending or selling by a manufacturer or wholesaler to a retailer or consumer of anything not clearly authorized specifically by statute, by rule of the commission, or by expressed approval in a marketing practices opinion that such practice is legal under the Texas Alcoholic Beverage Code.

(c) Any of the activities listed in subsection (b) of this section shall be considered violations of the Texas Alcoholic Beverage Code, §109.08.

Code Section 108.06:

**PRIZES AND PREMIUMS.** No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may offer a prize, premium, gift, or other inducement to a dealer in or consumer of brewery products.

Code §102.15:

**MANUFACTURER OR DISTRIBUTOR: PROHIBITED DEALINGS WITH RETAILER**

No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may:

(1) furnish, give, or lend any money or other thing of value to a person engaged or about to be engaged in selling brewery products for on-premises or off-premises consumption, or give the person any money or thing of value for his use, benefit, or relief; or

(2) guarantee the repayment of a loan or the fulfillment of a financial obligation of a person engaged in or about to be engaged in selling beer at retail.

B. Evidence Received

The witnesses called by the Petitioner were Antonio Valadez III, Jerry Brooks, Sergio Rendon, Pete Almanza, and Ruben Velasquez, Jr., along with TABC Agents James White, Scott Armstrong, and Dyer Lightfoot. The Respondent called Ponciano Torres, Jr., Pat DeAnda, and Antonio Valadez.

Few of the facts brought out by the testimony and exhibits could be reasonably disputed by either party. On May 31, 1997, the Second Annual Tejano Jam \$1,000 Washer Tournament took place at the Rodeo Bowl located at 2901 Old Highway 80 in Big Spring, Texas. The event was organized as a fundraiser by local chapter number 4375 of the League of United Latin American Citizens (LULAC). Ponciano Torres, Jr., was the representative of LULAC in organizing the event. In May 1997, he approached Monty Couch, a salesperson employed by Standard Sales, the area distributor for Anheuser-Busch products, including Budweiser beer. Mr. Torres told Mr. Couch that Permian Distributing Company, the area's Coors beer distributor, was giving LULAC \$2,500 to sell its beer at the tournament. He then asked for a corresponding \$2,500 from Standard Sales in order to allow it to sell its Anheuser-Busch products. Mr. Couch said no. Permian Distributing and Standard Sales are the only beer distributors in the area. Antonio (Tony) Valadez III is the general manager and managing partner of Permian Distributing Company, which gave \$2,500 to the LULAC scholarship fund on or about May 6, 1997. Shortly before the tournament, Respondent also gave LULAC at least seven dozen T-shirts with a large, colorful logo saying, "Coors Light the Silver Bullet." According to an affidavit filled out by Mr. Torres, these T-shirts "could be given to [LULAC's] volunteers to wear and/or give away as door prizes at the event." Several people were seen wearing the T-shirts at the tournament. There was conflicting testimony about the sale of the T-shirts at the tournament, but it is not relevant and will not be reviewed. Permian products were sold at the event, but Anheuser-Busch did not have a sales booth there.

The Petitioner presented no direct evidence of any agreement between Permian and Mr. Torres or LULAC that would exclude Standard Sales. The affidavit of Mr. Couch, which was introduced into evidence by the Petitioner, stated that Mr. Torres had said he had already approached Permian for a contribution before talking to Mr. Couch about a contribution. Mr. Couch did not, either in his affidavit or in his live testimony, mention anything about Mr. Torres ever talking about giving any company an exclusive right to sell its beer. It appears Mr. Torres was perfectly willing to accept money from both sides.

There were certain undisputed facts in connection with the second event which formed the basis of the action against the Respondent. The undisputed facts are the following: On May 2, 1998, the Barrio Lions Club held a concert to raise funds for its charity programs. The concert was to celebrate the Cinco de Mayo Mexican Independence Day. It was held at Fiesta Park located at 2220 Whitney Lane in Odessa, Texas. Pete Almanza, president of the Barrio Lions Club, organized the event. He approached the advertising representative for Standard Sales in March 1998, with an advertising proposal in connection with the concert. Permian donated \$4,000.00 to the Barrio Lions Club by check dated May 1, 1998. Once again, Permian products were sold, but Anheuser-Busch did not have a sales booth there.

There was clear disagreement between the parties over whether Permian had been involved in any agreement to sell its beer exclusively. At the center of the controversy was Pete Almanza and advertising proposals he presented to both Standard Sales and Permian Distributing. Jerry Brooks, area manager for Standard Sales, testified that in early March he was presented with an advertising proposal by Standard's advertising agent. The proposal was called a sponsorship package, and it came from Mr. Almanza, who is general manager of radio station KQLM (Petitioner's Exhibit Number 6). It was drawn up in connection with the Cinco de Mayo concert and mentioned the benefits to Standard Sales, including "product exclusivity" [sic]. The total cost was \$5,000. Mr. Brooks had one of his salespeople, Sergio Rendon, approach Mr. Almanza. Mr. Rendon told Mr. Almanza that while his company would not be able to make a donation in order to sponsor the event because to do so would be illegal, it was ready and willing to sell Anheuser-Busch products at the concert. Mr. Almanza told him he would get back with him. Mr. Rendon called Mr. Almanza several times during the next several weeks, but Mr. Almanza did not return any of his calls.

On May 5, 1998, three days after the concert took place, Mr. Almanza met with TABC Lieutenant Dyer Lightfoot to give him information about his dealings with Permian Distributing in connection with the event. Lieutenant Lightfoot typed up what Mr. Almanza had to say and read it back to him. Mr. Almanza agreed that was what he wanted to say and then signed the statement, which was notarized by the lieutenant. The important statements in the affidavit are reprinted here:

I drew up a proposal which I presented to Tony Valadez at Coors which stated if he gave \$4,000.00 to the Barrio Lions Club that the concert would be a Coors-sponsored event. Tony Valadez agreed and presented me a check of \$4,000.00 and as a result of the check we only handled products that were sold by Coors. There were no Budweiser products for sale at the event (Petitioner's Exhibit Number 8).

In an affidavit executed on August 13, 1998 (Respondent's Exhibit Number 2), Mr. Almanza repudiated the May 5, 1998 affidavit, as he did again at the hearing. This second affidavit was given to attorney Ruben Valadez, brother of Antonio Valadez. Mr. Almanza said that he had been mistaken about what he said. He also said that Lt. Lightfoot had not properly typed what he had said. He said his statements were either taken out of context or misunderstood. He claimed he never prepared any proposal for consideration by Antonio Valadez. He stated that exclusive rights to sell Coors beer were never discussed and that Antonio Valadez had informed him that Barrio Lions Club could sell any beer products it desired.

Ruben Velasquez, Jr., also signed an affidavit (Petitioner's Exhibit Number 9), after giving information to Lt. Lightfoot. In it he stated, "Pete Almanza sold only Coors products because Coors had made a cash donation to the Barrio Lions Club." Velasquez also repudiated this affidavit in a second affidavit given to Antonio Valadez' brother on August 13, 1998 (Respondent's Exhibit Number 3). Mr. Velasquez recanted, saying that the statement quoted above had been taken out of context. He said that Mr. Almanza had never told him why only Permian Distributing products had been sold at the concert.

Antonio Valadez admitted at the hearing that Permian gives about five out of every six of its charitable donations in connection with events at which its products are to be sold. Lt. Lightfoot testified that prior to May 1998, he had met with employees of both Standard Sales and Permian Distributing to warn them that agreeing to sell beer exclusively at events was against the law. The lieutenant also opined that, from the practice over the last few years, it looked like exclusivity agreements were being used frequently.

### C. Analysis

Certain actions were taken by the Respondent Permian Distributing that violated the law. The important questions are which laws were violated and how serious were those violations.

Permian gave a gift of seven dozen T-shirts to LULAC--the sponsor of the 1997 Big Spring tournament. The T-shirts were to be given away to volunteers and attendees, and all had an advertisement for Coors Light beer on the front. Permian also gave \$2,500.00 to LULAC on May 6, 1997, about three weeks before the tournament. Petitioner TABC urges that these gifts were part of an agreement between LULAC's representative, Ponciano Torres, and Permian by which Anheuser-Busch products would be excluded from sale at the event. There is little evidence for this contention. The only evidence that could be used to point to such an agreement might be the 1998 concert in Odessa. The Petitioner apparently expects that an inference has to be drawn from the dealings on that subsequent occasion to reach a conclusion that there was an agreement to exclude Standard Sales one year before, in 1997, but any connection is too thin. Mr. Torres went to Standard Sales after he had received an assurance from Permian that it would donate \$2,500. This action would indicate that Mr. Torres had every intention to allow the sale of Anheuser-Busch products along with those of Permian Distributing. The only condition was that something like an "entry fee" be paid by each distributor. Neither were there any statements or affidavits made by Mr. Torres or anyone else that claimed that there had been any exclusion agreement with Permian. Also, the actions of Mr. Torres were much different from those taken by Mr. Almanza a year later in the Odessa situation. There was no agreement to exclude anyone in Big Spring and thus no violation of Code §109.08, which is related to exclusion agreements..

By contrast, in connection with the Odessa concert in 1998, there was ample evidence that there had been an agreement to exclude Standard Sales from selling its products. The documents first presented by Mr. Almanza to Standard Sales show that he started out with a clear intent to give one distributor an exclusive privilege to sell its products at the concert. After Standard Sales refused to give \$5,000 for exclusive sales at the concert, he went to Permian and received \$4,000. At the same time, he never returned the telephone calls from the salesperson from Standard Sales, who had told Mr.

Almanza that his company was fully prepared to provide alcoholic refreshments at the event. This by itself might not be sufficient to implicate Permian, through its partner Mr. Valadez, in any agreement to sell its Coors beverages exclusively, but the first affidavit by Mr. Almanza tips the scales in favor of finding that there was an exclusion agreement.

Mr. Almanza claimed in a second affidavit that he had been mistaken in his statements in the first affidavit. He also claimed that what he had said had been taken out of context and misstated by his interrogator, Lt. Lightfoot. There was the implication that Lt. Lightfoot had been intimidating and was trying to bring out statements from Mr. Almanza that might be deleterious to Permian.

This is all hard to believe. First, Lt. Lightfoot did not appear to be an intimidating person at the hearing. He was soft-spoken and mild-mannered. Of course, persons can act very differently in a hearing than in a situation in which they have power over another person, but that seems highly unlikely in this case.

Second, the statements made in the first affidavit are simple and straightforward ones. It is true that being interrogated by a law enforcement officer can be a frightening experience and that the fear felt could make a person make erroneous statements. Nevertheless, it is difficult to see how Mr. Almanza could have become confused about the basic facts he reported in the quote above. The simple facts he reported were that Antonio Valadez had agreed to donate \$5,000 to the Barrio Lions Club in exchange for being granted a Coors sponsorship of the concert, which entailed exclusive rights to sell Coors products. That was not a long and complex proposition on which the declarant could easily become confused or be misunderstood by the interviewer. It is hard to see how there could be any confusion that would have caused Mr. Almanza to make an erroneous statement, especially one that was as far off the mark as he claimed it to be. It is difficult to see how Mr. Almanza could have been misled by anyone. Mr. Almanza did not appear to be a naive or ignorant man, unaware of dealings with other people in formal situations. He is, after all, general manager of a radio manager which has to mean that he has to have business savvy. On the witness stand, he was very calm and self-assured, even under intense questioning by Petitioner's attorney. It is also hard to see why Mr. Almanza would lie to Mr. Velasquez about having given exclusive sellership to Permian. Ultimately, it is difficult to find a motive for Mr. Almanza to lie at the time of the concert about the exclusion agreement. Perhaps it could be said that he wanted to brag about obtaining \$4,000 from Permian. He then supposedly added the part about having given an exclusive right to Permian in return. Yet, if all he wanted to do was brag, he could have simply boasted about receiving the \$4,000 outright. Receiving the money unconditionally would have been even more of a coup than obtaining the money by giving something in return.

This is what apparently happened. Mr. Almanza first approached the Anheuser-Busch people in order to obtain a hefty contribution to his Lions Club by offering them exclusive rights for \$5,000. They rejected the offer, so he went to Permian with the same plan except that the amount demanded was lowered to \$4,000. Permian decided to take a bite and entered into the agreement. All the evidence, however, showed that Mr. Almanza had masterminded the deal. There was no evidence that the Respondent had initiated any relationship or that it had required that Barrio Lions Club sell its products exclusively.

TABC contended that Permian violated Code §109.08 simply by entering into an exclusion agreement with Almanza. Respondent countered that it did not "require" the Lions Club to exclude Standard Sales from the Odessa concert. Therefore, it did not violate Code §109.08, since the section clearly reads that a wholesaler may not "require" a retailer to exclude others. It mentions no prohibition against a retailer requiring a wholesaler to make a contribution as a condition of doing business. TABC answered in its closing brief that a violation based on the section should still be found on the basis of Code §1.03 which provides that the Code be "liberally construed," keeping in mind the protection of the public. Petitioner further cited the Code Construction Act §311.021 and §311.023, found in the Texas Government Code. Relevant wording in those sections speaks about reaching the intended just and reasonable result, taking into account the public interest, and considering the object sought to be attained. Petitioner is correct in being concerned that, as the provision now reads, if a retailer broaches the subject of exclusion to the wholesaler, then the latter is free to enter into an exclusion agreement with the retailer. The prohibition was apparently made with the concern of preventing contracts made on any basis other than the sale of products based on demand by the public. There is also the goal of preventing unfair competition. It is hard to see the purpose in leaving open a loophole which allows exclusion agreements initiated by retailers. Respondent's interpretation leaves the door open for sly arrangements that could make exclusion agreements always look as if they had been the idea of the retailer and thus defeat the purpose of Code §109.08.

Even with all these problems in mind, the section is very clear. It is a one-way street. It only sanctions wholesalers who require retailers to sell their products exclusively. Retailer-initiated agreements are plainly not prohibited. To liberally construe legal provisions is one thing, to obviate their plain meaning is another. While it is difficult to see why the Legislature did not prohibit a retailer's initiating an exclusivity agreement, it may nevertheless have consciously intended that very situation. It may also have had good reasons for doing what it did, but we simply cannot discern those reasons. To interpret the section as requested by TABC would be to put a wholesaler like Permian at a great disadvantage in trying to interpret the law. The linguistic meaning of the section is very plain, and a wholesaler should be able to rely on it to decide on a course of conduct to follow. A sincere, law-abiding wholesaler involved in no hidden collusion with a retailer would read §109.08 and assume it had nothing to fear in accepting the latter's exclusion proposal.

If TABC wants a provision in the Code that would prohibit an exclusion agreement initiated by a retailer, it should approach the Legislature. It would seem easy to write a provision that simply prohibited all exclusion agreements. In this case, the Respondent did not violate the exclusion provision of Code §109.08 in connection with the Odessa concert. It is another matter whether other Code provisions were violated.

The Code contains several provisions which prohibit gifts. There is a clear prohibition of gifts under Rule 45.110(b)(5). This rule was cited in TABC's original and amended notices of hearing as a basis for the proceeding. Paragraph (b)(5) makes a general exception allowing gifts that are "clearly authorized" by statute or by rule. No provision could be found, however, which clearly authorizes gifts of money or clothing in connection with the sale of alcoholic beverages, such as those made in this case. Thus the Respondent's gifts did not fall under any of the exceptions. Respondent violated

TABC Rule 45.110(b)(5) in three different instances: when it gave T-shirts at the Big Spring tournament, money at the Big Spring tournament, and money at the Odessa concert.

Paragraph (c) of the rule provides that a violation of any of the prohibitions listed in paragraph (b) is to count as a violation of Code §109.08. Respondent thus indirectly violated Code §109.08 by violating TABC Rule 45.110(b)(5) in three different instances: when it gave T-shirts at the Big Spring tournament, money at the Big Spring tournament, and money at the Odessa concert.

In addition, the Respondent violated Code §108.06. Respondent argued that Code §108.06 only applies to gifts made in connection with advertising. It is true that the section appears under the heading of advertising, but the section itself does not mention or even imply that it is to be applied only in connection with advertising. The section clearly applies to the gift of Coors Light T-shirts at the Big Spring concert. While in that instance there was no agreement that the T-shirts be given as a condition for Permian's being allowed to sell its products, they were nevertheless a gift, and a gift is clearly prohibited under Code §108.06. The word "gift" is clearly used alone in the section and is apparently to be given almost a strict-liability interpretation. While the phrase "other inducement" is included in the section, it does not require that TABC actually prove that the gift acted as an inducement. Instead, it appears that a gift is to be automatically presumed to act as an inducement since it is hard to think of a situation in which it would not so operate. Furthermore, gifts would seem to have at least a tendency to encourage a donee to exclude a donor's competitors. Even under the Respondent's theory that Code §108.06 applies only to advertising, the gift of the T-shirts was related to advertising. The colorful Coors logo on the front of the T-shirts clearly showed the intention normally attached to apparel with product logos--that the wearer act as a human billboard, even if unwittingly.

Respondent violated Code §108.06 in three different instances. It clearly violated the provision when it gave T-shirts at the Big Spring tournament. It also violated the section when it gave money in the Big Spring tournament and when it gave money in the Odessa concert.

There was also a violation of Code §102.15 which prohibits gifts, and this prohibition is not connected with advertising. Chapter 102 is entitled "Intra-Industry Relationships." Code §102.15 prohibits giving of money to a "person." Code §1.04(6) includes "association of natural persons" and "organization" under the definition of "person." Civic and charitable groups would thus fall under the ban. Respondent violated Code §102.15 in three different instances: when it gave T-shirts at the Big Spring tournament, money at the Big Spring tournament, and money at the Odessa concert.

At one point, counsel for TABC stated that there is no prohibition against a distributor's making charitable donations to organizations. This may be, but there seems to be a definite problem in the making of those gifts in relation to the sale of alcoholic beverages. Unfortunately, the copies of pages of the books of Permian showed that, in roughly an average of five out of six instances, gifts were made in very close time-proximity to an event at which it sold beer (Respondent's Exhibits 1 and 6).

In deciding the proper penalty to assess against Respondent, it will be considered that it wasn't the first time that Permian had given gifts in exchange for business. By its own records, it had done this numerous times. At the same time, the practice was an open and apparently ingenuous one, done with no apparent thought by Permian or its customers that the practice might be illegal. Thus, Permian may have been lulled into considering it as normal. The TABC Odessa office warned the distributors against entering exclusionary agreements but not against the simple making of gifts. On the other hand, Standard Sales was able to conclude that the making of gifts alone could be violative of the law when it refused to give donations in connection with each of the two events. In 1995, Permian was found to have engaged in two miscellaneous violations.

Petitioner did not ask for a specific period of suspension at the conclusion of the evidence, since closing arguments were not made. Petitioner's Exhibit Number 11, however, specified penalties for violations related to each of the two events. The assessments were both based on a tax amount of \$654,976 and a bracket description in the range between \$100,000 and \$1,000,000. For the Big Spring event, a suspension was set for 5 days with a civil penalty of \$2,000 per day for a total civil penalty of \$10,000. For the Odessa event, a suspension was set for 8 days with a civil penalty of \$3,000 per day for a total civil penalty of \$24,000. The grand total for both civil penalties was \$34,000.

#### D. Recommendation

The Respondent violated the law by giving three different gifts. The Respondent's permits should be suspended for a period of 10 days. A civil penalty in lieu of suspension should be assessed at \$3,000 per day. This would be a total penalty of \$30,000.

### FINDINGS OF FACT

#### A. Preliminary Matters

1. Respondent Permian Distributing Company was issued General Distributor's License BB-302833, Importer's License BI-302834, General Class B Wholesaler's Permit X-250826, and Private Carrier's Permit O-250827 by the Texas Alcoholic Beverage Commission (TABC) on December 19, 1994. The permits have since been continuously renewed.
2. Permian Distributing Company is located at 3909 CRD 1290 South, Midland, Midland County, Texas.
3. Notice of hearing was sent by the Petitioner and received by the Respondent, to which the parties stipulated, and the Respondent appeared at the hearing with several witnesses.
4. On December 2, 1998, a hearing was held before Administrative Law Judge Louis Lopez in the Midland City Hall, Council Chambers, 300 North Loraine, Midland, Texas. The Petitioner was represented by attorney Gayle Gordon. The Respondent was represented by attorneys Eugene Palmer and Ruben Valadez. Evidence was received, and the hearing was closed on the same day. The attorneys were allowed until January 29, 1999 to submit briefs.

5. Antonio (Tony) Valadez III is the general manager and managing partner of Permian Distributing Company.
6. Permian Distributing Company is a distributor for Coors, and Standard Sales Company is a distributor of Anheuser-Busch products.
7. Permian Distributing and Standard Sales are the only beer distributors in approximately the Permian Basin area.

B. Specific Facts

8. On May 31, 1997, the Second Annual Tejano Jam \$1,000 Washer Tournament took place at the Rodeo Bowl located at 2901 Old Highway 80 in Big Spring, Texas.
9. The event was organized as a fundraiser by local chapter number 4375 of the League of United Latin American Citizens (LULAC).
10. Ponciano Torres, Jr. was the representative of LULAC in organizing the event.
11. Permian Distributing Company gave \$2,500 to the LULAC scholarship fund on or about May 6, 1997.
12. In May 1997, Mr. Torres for a corresponding \$2,500 from Standard Sales in order for it to be allowed to sell its alcoholic beverage products at the upcoming LULAC event.
13. Mr. Torres never mentioned anything to the Standard Sales representative about giving any company an exclusive right to sell its beer.
14. There was no agreement between Permian Distributing and LULAC which allowed Permian to sell its products exclusively at the tournament.
15. Shortly before the tournament, Respondent also gave LULAC at least seven dozen T-shirts with a large Coors Light logo on the chest, saying that the T-shirts could be given to its volunteers to wear and/or give away as door prizes at the event.
16. On May 2, 1998, the Barrio Lions Club held a concert at Fiesta Park located at 2220 Whitney Lane in Odessa, Texas, for the purpose of raising funds for its charity programs.
17. Pete Almanza organized the event.
18. Mr. Almanza approached Standard Sales in March 1998, with an advertising proposal that gave it exclusive right to sell its products at the May concert for a total cost of \$5,000.
19. Standard Sales rejected the proposal and further refused to make any contribution to the Lions Club on the ground that it was illegal.
20. Standard Sales did offer to sell its products at the May 2, 1998 concert.

21. After that, Anheuser-Busch was never contacted about selling its products at the event and consequently did not sell its products there.
22. Antonio Valadez agreed to have Permian Distributing give \$4,000.00 to the Barrio Lions Club.
23. Permian donated \$4,000.00 to the Barrio Lions Club by check dated May 1, 1998.
24. Permian products were sold at the concert.
25. Permian did not require the Barrio Lions Club to sell its products exclusively at the concert.
26. Permian gives about five out of every six of its charitable donations in connection with events at which its products are soon to be sold.
27. Prior to May, 1998, TABC Lieutenant Dyer Lightfoot had warned Standard Sales and Permian Distributing against entering into agreements to sell their own products exclusively.

#### CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code (Code) Sections 5.31--5.44, 6.01(b), 25.04(b), and 61.71.
2. Venue was proper in accordance with Code §11.015 and 1 Texas Administrative Code §155.13.
3. Service of proper notice of the hearing was made on Respondent pursuant to Code §11.63 and the Administrative Procedure Act, Texas Government Code §§2001.051 and 2001.052.
4. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding pursuant to Code §5.43(a) and Tex. Govt. Code Chapter 2003.
5. Respondent violated TABC Rule 45.110(b)(5) in three different instances: when it gave T-shirts at the Big Spring tournament, money at the Big Spring tournament, and money at the Odessa concert.
6. As provided in Rule 45.110(c), Respondent violated Code §109.08 by violating Rule 45.110(b)(5).
7. Respondent violated Code §108.06 when it gave T-shirts with an advertising logo at the Big Spring tournament.
8. Respondent violated Code §108.06 in two more instances: when it gave money at the Big Spring tournament and money at the Odessa concert.

9. Respondent violated Code §102.15 in three different instances: when it gave T-shirts at the Big Spring tournament, money at the Big Spring tournament, and money at the Odessa concert.
10. Based upon the foregoing Findings of Fact and Conclusions of Law, Petitioner TABC should suspend Respondent's permits for a period of ten days and, in lieu, impose a civil penalty of \$30,000.

SIGNED this 13 day of February, 1999.

  
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for LOUIS R. LOPEZ  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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