

DOCKET NO. 585138

IN RE PRINCE GAS, INC.	§	BEFORE THE
D/B/A JACK'S FOOD STORE	§	
PERMIT NO. BQ-438595	§	
	§	TEXAS ALCOHOLIC
	§	
CHAMBERS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-2274)	§	BEVERAGE COMMISSION

ORDER

**CAME ON FOR CONSIDERATION** this 18<sup>th</sup> day of December, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Don Smith. The hearing convened on October 20, 2000, and adjourned October 20, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on November 14, 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 Permit No. Q-444378 is herein **SUSPENDED**.

**IT IS FURTHER ORDERED** that unless the Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the **7th** day of **February, 2001**, all rights and privileges under the above described permit will be **SUSPENDED** for a period of **ten (10) days, beginning at 12:01 A.M. on the 14th day of February, 2001.**

**This Order will become final and enforceable on January 8, 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 18<sup>th</sup> day of Dec., 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

KGG/vr

The Honorable Don Smith  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE (713) 812-1001**

Holly Wise, Docket Clerk  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701  
**VIA FACSIMILE (512) 475-4994**

Prince Gas, Inc.  
d/b/a Jack's Food Store  
**RESPONDENT**  
6729 Hwy. 146  
Baytown, Tx 77520  
**CERTIFIED MAIL/RRR NO. Z 280 626 770**

Gayle Gordon  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

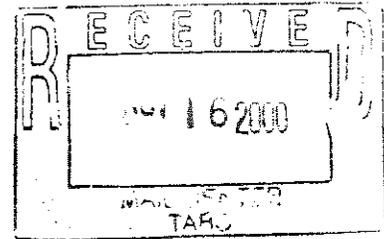
Licensing Division  
Beaumont District Office  
Compliance Division

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

November 14, 2000



Mr. Doyne Bailey, Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa, Suite 160  
Austin, Texas 78731

VIA REGULAR MAIL

**RE: Docket No. 458-00-2274; TABC vs. Prince Gas, Inc., d/b/a Jack's Food Store;  
Permit No. BQ-438595**

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 Gayle Gordon, Staff Attorney representing the Texas Alcoholic Beverage Commission, and to Prince Gas, Inc., d/b/a Jack's Food Store, (Respondent). For reasons discussed in the Proposal for Decision, the Staff of TABC (the Staff) sought to have the Respondent's license suspended for a period of 10 days or that Permittee be allowed to pay a fine of \$1,500.00 in lieu of suspension. This proposal agrees with the recommendation of the Staff.

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 cursive script that reads "Don Smith".

Don Smith  
Administrative Law Judge

DS\mc  
Enclosure

xc: Gayle Gordon, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - VIA REGULAR MAIL  
Prince Gas, Inc., d/b/a Jack's Food Store, 6729 Hwy. 146, Baytown, Texas 77520 -VIA REGULAR MAIL  
Rommel Corro, Docket Clerk, State Office of Administrative Hearings- VIA FACSIMILE

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LEGAL DIVISION

North Loop Office Park  
2020 North Loop West, Suite 111 ♦ Houston, Texas 77018  
(713) 957-0010 Fax (713) 812-1001

**DOCKET NO. 458-00-2274**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION**

**VS.**

**PRINCE GAS, INC.  
D/B/A JACK'S FOOD STORE  
PERMIT NO. BQ-438595  
HARRIS COUNTY, TEXAS  
(TABC CASE NO. 585138)**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Prince Gas, Inc. d/b/a Jack's Food Store (Permittee) for three offenses committed in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b). The Permittee did not make an appearance at the hearing. This Proposal for Decision finds the allegations proven and adopts the recommendation of the staff that the license be suspended for a period of 10 days or that Permittee be allowed to pay a fine of \$1,500.00 in lieu of suspension.

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

The hearing in this matter convened on October 20, 2000, at the offices of the State Office of Administrative Hearings in Houston, Harris County, Texas. TABC was represented by its counsel, Gayle Gordon. Because the hearing proceeded on a default basis and Staff's factual allegations are deemed admitted as true, the Administrative Law Judge (ALJ) has incorporated those allegations into the findings of fact.

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute enforcement action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law.

**II. EVIDENCE AND APPLICABLE STATUTORY PROVISIONS**

TEX. ALCO. BEV. CODE ANN. §61.73(b) authorizes the Commission to cancel or suspend a license for not more than 60 days if it is found, after notice and hearing, that the Permittee gave a distributor a check for payment which is dishonored when presented for payment. As described in the findings of fact, the Permittee violated TEX. ALCO. BEV. CODE ANN. §61.73(b) on three occasions by writing checks to distributors that were subsequently returned for insufficient funds.

The staff attorney introduced three exhibits into evidence:

Exhibit TABC 1 is the Notice of Hearing to Prince Gas, Inc. with attached returned letter stating "undeliverable as addressed: forwarding order expired." The notice was mailed on September 21, 2000 to Prince Gas, Inc. d/b/a Jack's Food Store, 6729 Highway 146, Baytown, Texas 77520.

Exhibit TABC 2 is an affidavit of Brian L. Guenther, Licensing Department Director, that the Permit No. BQ-438595 was issued to Prince Gas Inc., doing business as Jack's Food Store. The mailing address of Prince Gas Inc., d/b/a Jack's Food Store is 6729 Highway 146, Baytown, Texas 77520.

Exhibit TABC 3 is a TABC 54(c) letter mailed to Permittee on August 12, 1999 and received by Permittee on August 14, 1999 as shown on the green card attached. The letter was mailed to Prince Gas, Inc. d/b/a Jack's Food Store, 6729 Highway 146, Baytown, Texas 77520.

### III. RECOMMENDATION

The Notice of Hearing, in bold lettering, states "if you fail to appear at the hearing, the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default." TABC rules authorize service of the notice of hearing by sending it to the party's last known address as shown by the agency's records, and there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to Permittee's last known address, as shown by the agency's records. Therefore, the allegations that Permittee violated TEX. ALCO. BEV. CODE ANN. §61.73(b) on three occasions are admitted as true. The relief sought should be granted, and the permit should be suspended for ten days, or in lieu of suspension the Permittee should pay a fine of \$1,500.00.

### IV. FINDINGS OF FACT

1. Permit No. BQ-438595 was issued to Prince Gas, Inc., doing business as Jack's Food Store by the Texas Alcoholic Beverage Commission. The mailing address of Prince Gas, Inc. is 6729 Highway 146, Baytown, Texas 77520.
2. The staff sent a Notice of Hearing regarding the violations of the Texas Alcoholic Beverage Code to the Permittee by certified or registered mail, return receipt requested, and mailed the notice to Permittee's last known address as shown in the agency's records.
3. The notice of hearing contained the following language in capital letters in 10 point or larger boldface type:

**If you fail to appear at the hearing, the allegations in the notice will be deemed admitted as true, and the relief sought may be granted by default.**

4. The hearing on the merits was held on October 20, 2000, at the offices of the State Office of Administrative Hearings, Houston, Harris County, Texas. Staff was represented by its counsel, Gayle Gordon. The Permittee did not appear and was not represented at the hearing.

5. The hearing proceeded on a default basis, and the factual allegations were deemed admitted as follows:

Permittee, by making payment for beer in its original containers and packages with dishonored checks, committed three offenses in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b).

- (a). The first violation occurred on or about May 25, 1999, when Permittee, its agent, servant, or employee gave a check for \$300.00 to Wismer Dist. Co., of Baytown, Texas. On or about June 2, 1999, the check was returned by Drawee, Bank of America of Houston, Texas for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b).
- (b). The second violation occurred on or about December 21, 1999, when Permittee, his agent, servant, or employee gave a check for \$1,286.87 to Wismer Dist. Co. of Houston, Texas. On or about December 29, 1999, the check was returned by Drawee, Bank of America of Houston, Texas for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b).
- (c). The third violation occurred on or about December 22, 1999, when Permittee, his agent, servant, or employee gave a check for \$582.23 to Faust Distributing Company of Houston, Texas. On or about December 29, 1999, the check was returned by Drawee, Bank of America of Houston, Texas for insufficient funds, in violation of TEX. ALCO. BEV. CODE ANN. §61.73(b)

## V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 61.71.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Notice of the hearing was sufficient to allow entry of default judgment under State Office of Administrative Hearings Rules, 1 Tex. Admin. Code §155.55.
5. Based upon finding of fact No. 5, Permittee violated TEX. ALCO. BEV. CODE ANN. §61.73(b) by making payment for beer in its original containers and packages with dishonored checks.

6. Based on the foregoing Findings of Fact and Conclusions of Law, a ten-day suspension of the permit and license is warranted. Pursuant to TEX. ALCO. BEV. CODE ANN. § 11.64, the Permittee should be allowed to pay a \$1,500 civil penalty in lieu of suspension of its permits and licenses.

SIGNED this 14 day of November, 2000.



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Don Smith  
Administrative Law Judge  
State Office of Administrative Hearings