

DOCKET NO. 589023

IN RE THE PLACE

PERMIT NOS. N-212102, PE212103

DAWSON COUNTY, TEXAS
(SOAH DOCKET NO. 458-01-2427)

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§

BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 21st day of June 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge B.L. Phillips. The hearing convened and adjourned on April 24, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on May 21, 2001. 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.

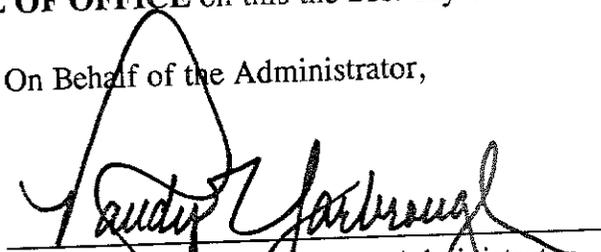
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that Permit Nos. N-212102 and PE212103 be hereby **CANCELED FOR CAUSE**.

This Order will become final and enforceable on July 12, 2001, 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 21st day of June 2001.

On Behalf of the Administrator,


Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable B.L. Phillips
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (806) 792-0149

Jerry Slough, President
The Place
RESPONDENT
1011 N. 3rd
Lamesa, Texas 79331
CERTIFIED MAIL NO. 7000 1530 0002 0152 7117

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Odessa District Office

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| TEXAS ALCOHOLIC BEVERAGE | § | BEFORE THE STATE OFFICE |
| COMMISSION | § | |
| | § | |
| VS. | § | |
| | § | OF |
| | § | |
| THE PLACE | § | |
| D/B/A THE PLACE | § | |
| PERMIT NOS. N212102, PE212103 | § | |
| DAWSON COUNTY, TEXAS | § | ADMINISTRATIVE HEARINGS |
| (TABC CASE NO. 589023) | § | (SOAH) |

PROPOSAL FOR DECISION

The staff of the Texas Alcoholic Beverage Commission (Staff or Commission) initiated this action against The Place d/b/a The Place (Respondent) for allegedly permitting a person who was not a guest or member to consume an alcoholic beverage on club premises. Staff recommended Respondent's permits be canceled. The Administrative Law Judge (ALJ) finds that Petitioner did prove by a preponderance of the evidence that Respondent permitted a person who was not a guest or member to consume an alcoholic beverage on club premises. Respondent's permits should be canceled accordingly.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

The hearing on this matter convened on April 24, 2001, before ALJ B. L. Phillips, at the SOAH Office, Lubbock, Lubbock County, Texas. Staff was represented by Timothy E. Griffith, Staff Attorney, Legal Division, Commission. Mr. Jerry Slough, Club President, appeared for Respondent and represented himself. The record closed on April 24, 2001.

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. DISCUSSION

A. Testimony.

David Benavides, TABC Agent. Benavides testified that on February 18, 2000 he entered the club premises with Agent James White. On that date he was not a member of the club, part of a member's family or a guest of a member and he purchased a Coors Light Beer from Jerry David Slough for consumption on the

premises and consumed a portion of the beer. Benavides understood that Slough is the president of the private club and he was later introduced to him by Agent White.

James White, TABC Agent. White testified that on February 18, 2000, Agent Benavides entered the club in an undercover capacity. Benavides identified Jerry Slough as the person who sold an alcoholic beverage to him, and White introduced Slough to Benavides after the sale of the alcoholic beverage took place. White also testified that the club has an extensive violation history for private clubs.

Jerry Slough, President, The Place. Slough could neither confirm or deny that the sale of the alcoholic beverage to Agent Benavides took place on February 18, 2000, even though he was the bartender that night. He testified that the person who regularly checked club memberships at the door was not working that night. Finally, he stated that he did not know if there was an open saloon that night.

B. Documentary Evidence.

The Staff introduced into evidence the Permit and Violation History for Respondent which shows that the private club has an extensive violation history. These violations include failures to remit monthly tax payments, at least three instances of operating an open, sale to a minor, sale to an intoxicated person and permitting a minor to possess/consume at the private club.

C. Analysis.

Pursuant to TEX. ALCO. BEV. CODE § 32.17(a)(1), the Commission may suspend or cancel a private club registration permit on finding that the permittee club has sold, offered for sale, purchased, or held title to any liquor so as to constitute an open saloon. Section 31.17(b) defines the term "open saloon" as any place where an alcoholic beverage manufactured in whole or in part by distillation, or liquor composed or compounded in part of distilled spirits, is sold or offered for sale for beverage purposes by the drink or in broken or unsealed containers, or a place where any of the liquors are sold or offered for sale for on-premises consumption. Section 32.01 states that a private club registration permit authorizes alcoholic beverages belonging to members of the club to be served for on-premises consumption only to members of the club and their families and guests. This restriction is also found in 16 TEXAS ADMINISTRATIVE CODE § 41.52 (d) which reiterates that alcoholic beverages owned by members of a private club may be served only to and consumed only by a member, a member's family, or their guests.

In this case, the testimony is clear that Jerry Slough was working as the bartender for the private club that night and that he sold an alcoholic beverage to Agent Benavides who was not a member, part of a member's family or a guest of a member. Even Mr. Slough did not deny that the sale took place as Agent Benavides testified but only stated that he did not know that it occurred. Further, he testified that he does not know if there was an open saloon that night, which is prohibited by

the Code. The sale of an alcoholic beverage to the undercover agent on the night in question constituted an open saloon. Mr. Slough argued that the private club's permit should not be canceled because, in his words, the town needs the club. However, Staff argued that cancellation is the proper penalty based on the extensive history of violations by the private club. The ALJ finds that Respondent violated TEX. ALCO. BEV. CODE § 32.01 and that the permits should be canceled.

III. FINDINGS OF FACT

1. On April 24, 1990, the Texas Alcoholic Beverage Commission (the Commission) issued a Private Club Registration Permit N-212102, and Beverage Cartage Permit PE-212102, to Respondent for the premises known as The Place, 202 N. Dallas Avenue, Lamesa, Dawson County, Texas.
2. Respondent received proper and timely notice of the hearing from the staff for the Commission (Staff) in a notice of hearing dated March 29, 2001.
3. The hearing was convened on April 24, 2001, at the SOAH Office located in Lubbock, Lubbock County, Texas. Respondent appeared *pro se*. Timothy Griffith, Staff Attorney, represented Staff.
4. On February 18, 2000, Jerry Slough was President of Respondent.
5. On that date, he was working as a bartender for the private club and sold a beer to Agent Benavides who was not a member, part of a member's family or a guest of a member of the private club.

IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (Commission) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01 and 11.61 (Vernon 2000).
2. The State Office of Administrative Hearings has jurisdiction to conduct the hearing in this proceeding and to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. ALCO. BEV. CODE ANN. § 5.43 (Vernon 2000) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. Service of proper and timely notice of hearing was effected upon Respondent pursuant to TEX. GOV'T CODE ANN. ch. 2001 (Vernon 2000).
4. Based upon Finding of Facts Nos. 4-5, Respondent violated TEX. ALCO. BEV. CODE § 32.01 by permitting a person who was not a member, a member's family or a guest of a member of the private club to purchase and consume an

alcoholic beverage belonging to members of the club, which constituted an open saloon.

5. Based on the foregoing, cancellation of Respondent's Private Club Registration Permit N-212102, and Beverage Cartage Permit PE-212102 is warranted.

SIGNED this 21st day of May, 2001.



B.L. PHILLIPS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS