

DOCKET NO. 591064

IN RE SCOTT LAWRENCE JONES
D/B/A SCOTT'S STARLITE
PERMIT NOS. MB463644, LB463645

TARRANT COUNTY, TEXAS
(SOAH DOCKET NO. 458-01-0431)

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BEFORE THE

TEXAS ALCOHOLIC

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 5th day of February, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Robert F. Jones, Jr. The hearing convened and adjourned on December 20, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 12, 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. MB463644 and LB463645 are herein **SUSPENDED**.

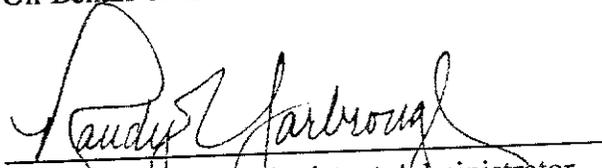
IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$4,500.00** on or before the **7th** day of **May, 2001**, all rights and privileges under the above described permits will be **SUSPENDED** for a period of **thirty (30) days**, beginning at **12:01 A.M.** on the **14th** day of **May, 2001**.

This Order will become final and enforceable on **February 23, 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 5th day of February, 2001.

On Behalf of the Administrator,



Randy Yarborough, Assistant Administrator
Texas Alcoholic Beverage Commission

TEG/bc

The Honorable Robert F. Jones, Jr.
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (817) 377-3706

Abe Factor
Factor, Campbell & Shepherd
ATTORNEY FOR RESPONDENT
6301 Airport Freeway, Ste. 160
Fort Worth, Texas 76117
CERTIFIED MAIL NO. Z 280 626 939

Scott Lawrence Jones
d/b/a Scott's Starlite
RESPONDENT
3137 Alta Mere Dr.
Fort Worth, Texas 76116-5204
CERTIFIED MAIL NO. Z 280 626 940

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Licensing Division
Fort Worth District Office

TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 591064

REGISTER NUMBER:

NAME: SCOTT LAWRENCE JONES

TRADENAME: SCOTT'S STARLITE

ADDRESS: 3137 Alta Mere Drive, Fort Worth, Tarrant County, Texas 76116-5204

DATE DUE: May 7, 2001

PERMITS OR LICENSES: MB463644, LB463645

AMOUNT OF PENALTY: \$4,500.00

Amount remitted \$ _____ Date remitted _____

If you wish to 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 7TH DAY OF MAY, 2001, 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.

DOCKET NO. 458-01-0431

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE STATE OFFICE

OF

VS.

SCOTT LAWRENCE JONES
D/B/A SCOTT'S STARLITE
TARRANT COUNTY, TEXAS
(TABC CASE NO. 591064)

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this action to suspend the permits of Scott Lawrence Jones d/b/a Scott's Starlite (Respondent or Scott's Starlite). The Administrative Law Judge (ALJ) recommends Respondent's permits should be suspended, or in lieu of suspension a civil penalty should be imposed on Respondent.

I. PROCEDURAL HISTORY & JURISDICTION

On September 22, 2000, Staff sent Respondent a complaint alleging that Respondent refused to permit or interfered with an inspection of Respondent's licensed premises by an authorized Texas Alcoholic Beverage Commission (TABC) representative or peace officer. This matter was referred to the State Office of Administrative Hearings on October 6, 2000. On October 11, 2000, Staff issued a notice of hearing notifying 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. On December 20, 2000, a public hearing was convened before ALJ Robert F. Jones Jr., at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the TABC Legal Division. Respondent appeared personally and through his counsel, Abe Factor. The record was closed on January 12, 2001.

The Commission has jurisdiction over this matter pursuant to §§ 11.61(b)(2) and 101.04 of the Code. The State Office of Administrative Hearings has authority to conduct a hearing in this matter and make recommendations to the Commission, including the issuance of a proposal for decision containing findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000) and TEX. ALCO. BEV. CODE ANN. § 5.43 (the Code)(Vernon 2000).

II. DISCUSSION

A. Applicable Law

In Section 101.04 the Code provides the following

By accepting a license or permit, the holder consents that the commission, an authorized representative of the commission, or a peace officer may enter the licensed premises at any time to conduct an investigation or inspect the premises for the purpose of performing any duty imposed by this code.

The TABC may cancel or suspend a permit if the permittee violates a provision of the Code. §11.61(b)(2) of the Code.

B. Evidence

Respondent is the holder of a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for premises called Scott's Starlite, located at 3137 Alta Mere Drive, Fort Worth, Tarrant County, Texas (the premises).

TABC agents Scott D. Jones¹ and Brent Hardtner testified that on July 27, 2000, they appeared at the premises at approximately 1:45 a.m. to carry out a standard inspection. A lighted sign above one door of the premises indicated that the establishment was open. However, both doors to the premises were closed and locked. The agents knocked on the doors, identified themselves as peace officers, and requested entry. The agents were denied entry for approximately five to ten minutes. The occupants of the premises responded to the agents' demands for entry by responding, "what do you want," "we're closed," and "we're going to call the police." The occupants also knocked back on the door. The agents called the police for assistance. The occupants opened the door a few seconds before the police arrived. Respondent was not present. A female identified by the surname of Hooten was determined to be the employee in charge of the premises. The agents did conduct their inspection and finished within an hour.

C. Analysis, Conclusion, and Recommendation

No one disputes that the agents were denied access to the premises in violation of §101.04 of the Code. No evidence was admitted, however, to prove that the Respondent had knowledge of Hooten's actions or sanctioned them. The ALJ finds that Hooten violated §101.04 without Respondent's knowledge. Hooten's violation was a technical violation of the Code, because the agents were delayed for less time than it eventually took them to complete the inspection. See

¹ Agent Scott D. Jones, Respondent Scott L. Jones, and ALJ Robert F. Jones Jr., are not related.

§11.64(c)(3), (5) of the Code.²

The Staff seeks suspension of Respondent's permits for sixty days, or in lieu of suspension a fine of \$9,000.00. The TABC standard penalty chart, 16 TEX. ADMIN. CODE § 37.60, indicates that for a first violation a maximum penalty of twenty days suspension may be imposed. The standard penalty chart, however, is not binding. The record is "the determining factor as to the sufficiency of the penalty assessed." § 37.60(g) of the Code. A penalty may deviate from the chart if "mitigating circumstances are involved." *Ibid*.

The ALJ recommends that the TABC relax the suspension mandated by §11.61(b)(2) of the Code, and assess a sanction which is just under the circumstances. The ALJ recommends Respondent's permits be suspended for six days, or in lieu of suspension Respondent be permitted to pay a civil penalty of \$900.00. See §11.64(a), (b) of the Code.³

III. FINDINGS OF FACT

1. Scott Lawrence Jones d/b/a Scott's Starlite(Respondent) is the holder of a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit for premises called Scott's Starlite located at 3137 Alta Mere Drive, Fort Worth, Tarrant County, Texas (the premises).
2. On July 27, 2000, Texas Alcoholic Beverage Commission (TABC) agents Scott D. Jones and Brent Hardtner appeared at Respondent's premises, at approximately 1:45 a.m., to carry out a standard inspection.
3. The agents were denied entry to the premises by Respondent's employee for approximately five to ten minutes.
4. The agents were denied entry to the premises without Respondent's knowledge.
5. The agents did conduct their inspection of the premises and were finished within an hour.
6. On October 11, 2000, Staff issued a notice of hearing notifying all parties that a hearing would be held on the application and informing the parties of the time, place, and nature of

² §11.64(c) "The following circumstances justify the application of Subsection (b) of this section: (3) that an agent, servant, or employee of the permittee or licensee violated this code without the knowledge of the permittee or licensee; (5) that the violation was a technical one."

³ § 11.64: "(a) When the commission or administrator is authorized to suspend a permit or license under this code, the commission or administrator shall give the permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended The amount of the civil penalty may not be less than \$150 or more than \$25,000 for each day the permit or license was to have been suspended."

(b) In the case of a violation of this code by a permittee or a retail dealer's off-premise licensee, the commission or administrator may relax any provision of the code relating to the suspension or cancellation of the permit or license and assess a sanction the commission or administrator finds just under the circumstances"

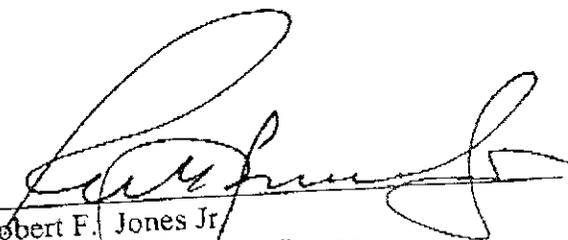
the hearing, of the legal authority and jurisdiction under which the hearing was to be held, giving reference to the particular sections of the statutes and rules involved, and including a short, plain statement of the matters asserted.

7. On December 20, 2000, a public hearing was convened before Administrative Judge Robert F. Jones Jr., at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. Staff was represented by Timothy E. Griffith, an attorney with the TABC Legal Division. Respondent personally and through his counsel, Abe Factor. The record was closed on January 12, 2001.

IV. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code), TEX. ALCO. BEV. CODE ANN. §1.01 et seq. (Vernon 2000).
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 2000).
4. Based on the foregoing findings, the preponderance of the evidence shows that Respondent violated §101.04 of the Code.
5. Based on the foregoing findings, the preponderance of the evidence shows the violation of §101.04 of the Code was without the knowledge of Respondent, and was a technical violation of the Code. §11.64(c)(3), (5) of the Code.
6. Based on the foregoing findings and conclusions, the ALJ recommends Respondent's permits be suspended for six days, or in lieu of suspension Respondent be permitted to pay a civil penalty of \$900.00. §11.64(a), (b) of the Code.

SIGNED January 12, 2001.


Robert F. Jones Jr.
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS