

DOCKET NO. 592469

IN RE PLAYER'S BILLIARDS & SPORTS GRILL	§	BEFORE THE
D/B/A PLAYER'S BILLIARDS & SPORTS GRILL	§	
ORIGINAL APPLICATION NL	§	
	§	TEXAS ALCOHOLIC
	§	
BOWIE COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-01-2250)	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 27th day of June, 2001, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Sharon Cloninger. The hearing convened and adjourned on May 2, 2001. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on June 5, 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.

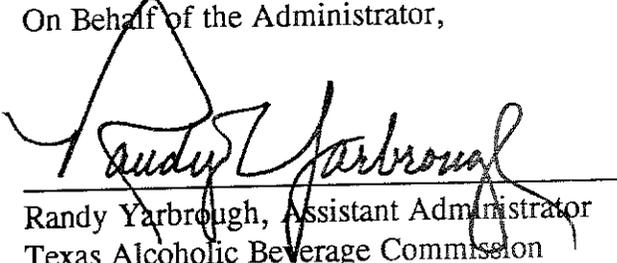
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application for a Private Club Late Hours Permit be **DENIED**.

This Order will become final and enforceable on July 18, 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 27th day of June, 2001.

On Behalf of the Administrator,


Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/bc

The Honorable Sharon Cloninger
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE (512) 475-4994

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TABC Legal Section

Licensing Division
Longview District Office

SOAH DOCKET NO. 458-01-2250

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION	§	
	§	
	§	
VS.	§	
	§	
PLAYER'S BILLIARDS & SPORTS GRILL	§	OF
d/b/a PLAYER'S BILLIARDS &	§	
SPORTS GRILL	§	
ORIGINAL APPLICATION NL	§	
BOWIE COUNTY, TEXAS	§	
(TABC CASE NO. 592469)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Player's Billiards & Sports Grill (Respondent) applied for a Private Club Late Hours Permit from the Texas Alcoholic Beverage Commission (Commission). The Commission denied the application because Respondent's business is located in an area that does not allow alcoholic beverages to be sold, served or consumed during the hours specified in the permit. This Proposal for Decision recommends that Respondent's application be denied.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Administrative Law Judge Sharon Cloninger convened the hearing May 2, 2001, at the State Office of Administrative Hearings, Stephen F. Austin Building, 1700 N. Congress Ave., Ste. 1100, Austin, Texas. Staff attorney Christopher Burnett represented the Commission. Attorney Stephen F. Shaw represented the Respondent, who was not present. The record closed the same day.

No party challenged notice or jurisdiction. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

II. EVIDENCE AND ARGUMENT

A. EVIDENCE

The Commission offered the Notice of Hearing, and a document outlining stipulations by the parties. Both documents were admitted without objection. Respondent did not offer any documentary evidence. Neither party called witnesses.

The undisputed facts in this case are that Respondent applied for a Private Club Late Hours Permit in November, 2000.¹ If issued, the permit would allow Respondent to serve mixed beverages between the hours of 1 a.m. and 2 a.m. on Sundays, and between midnight and 2 a.m. any other day of the week, at Player's Billiards & Sports Grill, located at 4501 N. State Line, #111 in Texarkana, Texas.

The parties agreed that under the Texas Alcoholic Beverage Code, mixed beverages may not be sold between 1 a.m. and 2 a.m. on Sundays, and between midnight and 2 a.m. any other day of the week, in counties with populations under 500,000, unless the local county or city government passes an ordinance or adopts orders allowing for the sale of mixed beverages during those extended hours. Player's Billiards & Sports Grill is located in Bowie County, which has a population of under 500,000. To the knowledge of the Commission and Respondent, neither the Bowie County Commissioners Court nor the City of Texarkana has adopted orders or ordinances permitting the sale of mixed beverages during extended hours.

The Commission has in the past granted approximately seven Private Club Late Hours Permits in Bowie County, and an unspecified number of Private Club Late Hours Permits in other counties with populations under 500,000, where extended hours have not been adopted. The Commission continues to recognize previously granted Private Club Late Hours Permits and to issue new Private Club Late Hours Permits in locations without extended hours.

B. ARGUMENT

1. Commission's argument

The Commission argued that TEX. ALCO. BEV. CODE ANN. § 105.03, relating to the hours of sale for mixed beverages, prevents the Commission from granting Respondent's application, because Respondent's premises are located in an area in which the sale of mixed beverages during extended hours is not allowed.

2. Respondent's argument

Respondent argued that Private Club Late Hours Permits have always been granted under TEX. ALCO. BEV. CODE ANN. § 33.01, relating to authorized activities for the holder of a private club late hours permit, and that the restrictions of TEX. ALCO. BEV. CODE § 105.03 do not apply. Respondent noted that the Commission continues to grant Private Club Late Hours permits to other businesses in areas that do not meet the requirements of TEX. ALCO. BEV. CODE ANN. § 105.03. Counsel for Respondent pointed out that customers leave Respondent's premises at midnight -- when Respondent must stop serving alcoholic beverages -- to go a block away to other Texarkana

¹ The Notice of Hearing states the application was filed November 30, 2000. The document containing the parties' stipulations states the application was filed November 17, 2000. For purposes of this proposal for decision, the November 17, 2000, date will be used.

businesses that have late hours permits. Counsel for Respondent said he knows of Private Club Late Hours Permits being renewed since the filing of this appeal, the insinuation being that the Commission renewed those permits despite the restrictions imposed by TEX. ALCO. BEV. CODE ANN. § 105.03, and that the denial of Respondent's application might constitute selective enforcement of the law.

III. STATUTORY AUTHORITY

A. PRIVATE CLUB LATE HOURS PERMIT

The applicable statutory provision at TEX. ALCO. BEV. CODE ANN. § 33.01 states:

The holder of a private club late hours permit may allow persons to consume or be served alcoholic beverages on club premises on Sunday between the hours of 1:00 a.m. and 2 a.m. and on any other day between the hours of 12 midnight and 2 a.m. if the licensed premises are in an area where consumption or service of alcoholic beverages in a public place during those hours is authorized by this Code.

B. HOURS OF CONSUMPTION

The permitted hours of consumption are found at TEX. ALCO. BEV. CODE ANN. § 105.06:

(a) In this section:

(1) "Extended hours area" means an area subject to the extended hours of sale provided in Section 105.03 or 105.05² of this Code.

(2) "Standard hours area" means an area which is not an extended hours area.

(b) In a standard hours area, a person commits an offense if he consumes or possesses with the intent to consume an alcoholic beverage in a public place at any time on Sunday between 1:15 a.m. and 12 noon or on any other day between 12:15 a.m. and 7 a.m.

(c) In an extended hours area, a person commits an offense if he consumes or possesses with the intent to consume an alcoholic beverage in a public place at any time on Sunday between 2:15 a.m. and 12 noon and on any other day between 2:15 a.m. and 7 a.m.

² Section 105.05 contains the same hours of sale provision as Section 105.03, except that Section 105.05 applies to the sale or delivery of beer and Section 105.03 applies to the sale or delivery of mixed beverages.

C. MIXED BEVERAGES AFTER HOURS PERMIT

The applicable statutory provisions at TEX. ALCO. BEV. CODE ANN. § 105. 03 state:

- (a) No person may sell or offer for sale mixed beverages at any time not permitted by this section.
- (b) A mixed beverage permittee may sell and offer for sale mixed beverages between 7 a.m. and midnight on any day except Sunday. On Sunday he may sell mixed beverages between midnight and 1:00 a.m. and between 10 a.m. and midnight, except that an alcoholic beverage served to a customer between 10 a.m. and 12 noon on Sunday must be provided during the service of food to a customer.
- (c) In a county having a population of 500,000 or more, according to the last preceding federal census, a holder of a mixed beverage late hours permit may also sell and offer for sale mixed beverages between midnight and 2 a.m. on any day.
- (d) In a county having a population of less than 500,000, according to the last preceding federal census, the extended hours prescribed in Subsection (c) of this section are effective for the sale of mixed beverages and the offer to sell them by a holder of a mixed beverages late hour [sic] permit:
 - (1) in the unincorporated areas of the county if the extended hours are adopted by an order of the commissioners court; and
 - (2) in an incorporated city or town if the extended hours are adopted by an ordinance of the governing body of the city or town.
- (e) A violation of a city ordinance or order of a commissioners court adopted pursuant to subsection (d) of this section is a violation of this code.

IV. ANALYSIS

The issue to be decided in this case is whether the fact that neither Bowie County nor Texarkana has adopted extended hours is relevant to determining if Respondent's application for a Private Club Late Hours Permit should be granted or denied. TEX. ALCO. BEV. CODE ANN. § 33.01 permits the holder of a Private Club Late Hours Permit to allow persons to consume or be served alcoholic beverages on club premises on Sunday between the hours of 1 a.m. and 2 a.m., and on any other day between the hours of midnight and 2 a.m., *if the licensed premises are in an area where consumption or service of alcoholic beverages in a public place during those hours is authorized by the Code.* [emphasis added].

TEX. ALCO. BEV. CODE ANN. § 105.06 does not allow alcoholic beverages to be consumed during extended hours in a standard hours area, such as Texarkana, unless the county or municipality has adopted extended hours for either the sale of mixed beverages or beer. The parties stipulated that neither the Bowie County Commissioners Court nor City of Texarkana has adopted orders or ordinances permitting the sale of mixed beverages during extended hours, so the provisions for late hours consumption under TEX. ALCO. BEV. CODE ANN. § 105.06 via TEX. ALCO. BEV. CODE ANN. § 105.03 do not apply. The parties presented no evidence regarding whether or not the county or city has adopted extended hours for the sale of beer, so the ALJ does not know whether the consumption of alcoholic beverages could be allowed on Respondent's premises under TEX. ALCO. BEV. CODE ANN. § 105.06 via TEX. ALCO. BEV. CODE ANN. § 105.05. Therefore, under the evidence presented in this case, the Commission may deny Respondent's application.

Although the Commission has approved and continues to renew Private Club Late Hours Permits for other businesses located in Bowie County, the ALJ finds that fact to be irrelevant to whether the Commission may legally deny Respondent's application. Respondent provided no authority for the ALJ to grant the application on this basis.

V. RECOMMENDATION

The ALJ recommends that Respondent's application be denied, in accordance with applicable law.

VI. FINDINGS OF FACT

1. On November 17, 2000, Player's Billiards & Sports Grill d/b/a Player's Billiards & Sports Grill (Respondent) filed a Private Club Late Hours Permit application with the Texas Alcoholic Beverage Commission (Commission).
2. On March 13, 2001, the Commission sent proper and timely notice of hearing to Respondent.
3. Respondent is located in Bowie County at 4501 N. State Line, #111, Texarkana, Texas.
4. Bowie County has a population of under 500,000.
5. Neither the Commissioners Court of Bowie County nor the City of Texarkana has adopted orders or ordinances that permit the sale of mixed beverages between 1 a.m. and 2 a.m. on Sundays, and between midnight and 2 a.m. on any other day.

VII. 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 11.11.

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. Pursuant to TEX. ALCO. BEV. CODE ANN. § 33.01 and Findings of Fact Nos. 3, 4, and 5, even if Respondent were issued a Private Club Late Hours Permit, he would not be allowed to permit persons to consume or be served alcoholic beverages during extended hours, because Respondent's premises are not located in an extended hours area.
4. Pursuant to TEX. ALCO. BEV. CODE ANN. § 105.03 and Finding of Fact Nos. 4 and 5, no person may sell or offer for sell mixed beverages in Texarkana from 1 a.m. to 2 a.m. on Sundays, or from midnight until 2 a.m. any other day.
5. Pursuant to TEX. ALCO. BEV. CODE ANN. § 105.06 and Finding of Fact Nos. 4 and 5, if persons were to consume alcoholic beverages on Respondent's premises during extended hours, they would be violating the law.
6. Based on the foregoing Findings of Fact and Conclusions of Law, the Commission should not grant Respondent's application for a Private Club Late Hours Permit.

SIGNED this 5th day of June, 2001.


SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS