

DOCKET NO. 596269

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

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BEFORE THE TEXAS

VS.

ALCOHOLIC

RENEWAL APPLICATION OF SANDY'S
D/B/A SANDY'S, N-088573
BELL COUNTY, TEXAS
(SOAH DOCKET NO. 458-02-1462)

BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 15th day of August, 2002, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Suzan Moon Shinder. The hearing convened on May 7, 2002, and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 1, 2002. 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. Exceptions to the Proposal were filed by the Applicant. No replies were filed by the Petitioner.

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.

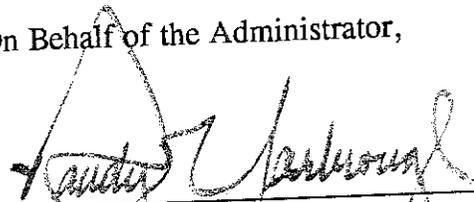
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Renewal Application of Sandy's d/b/a Sandy's for a Private Club Registration Permit be **DENIED**.

This Order will become final and enforceable on September 5, 2002, 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 15th day of August, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator
Texas Alcoholic Beverage Commission

DAB/yt

Suzan Moon Shinder, Administrative Law Judge
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TABC Legal Section

Waco District Office
Licensing Division

DOCKET NO. 458-02-1462

TEXAS ALCOHOLIC BEVERAGE
COMMISSION

VS.

SANDY'S D/B/A SANDY'S
PERMIT NO. N-088573
BELL COUNTY, TEXAS
(TABC DOCKET NO. 596269)

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Sandy's (the Applicant) has applied to the Texas Alcoholic Beverage Commission (the Commission) for a Renewal Permit for the premises known as Sandy's, located at 14600 F.M. 439, Killeen, Bell County, Texas 77036. The Commission opposed the issuance of the Renewal Permit, alleging that the place or manner in which the Applicant may conduct its business warrants the denial of the renewal application of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, in violation of Section 32.01 of the Texas Alcoholic Beverage Code (the Code), asserting that the location is subject to an inordinate amount of Driving While Intoxicated (DWI) arrests in which the arrested drivers admit coming from the licensed premises. This Proposal for Decision recommends that the renewal application be denied.

I. Procedural History, Notice, and Jurisdiction

There are no contested issues of notice or jurisdiction, and these matters are set out in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing on the merits was convened on May 7, 2002, at 801 Austin Avenue, Suite 750, Waco, Texas, before Administrative Law Judge (ALJ) Suzan Shinder. The Commission appeared by its staff attorney, Dewey Brackin. The Applicant appeared by its president, Cleat Roberts, and was represented by attorney Don Walden. Several citizens¹ appeared and voiced their protests to the issuance of the Renewal Permit. Evidence and argument were heard and the record closed the same day.

¹Tawnee Matthews; Chad McGrath; Shannon Barkwell, with Mothers Against Drunk Driving (MADD); Melanie Sargent, with MADD; Cindy McKee, who lives seven miles from the Club and whose sixteen year-old son was killed on F.M. 439 two years ago; and Kara Neely, the Executive Director of MADD, Central Texas Chapter.

II. The Statute

In pertinent part, Code §32.01, regarding Private Club Registration Permits, authorizes alcoholic beverages belonging to members of a club to be stored, possessed, and mixed on the club premises; and served for on-premises consumption only to members of the club and their families and guests, by the drink or in sealed, unsealed, or broken containers of any legal size.

In pertinent part, Code §11.46(a)(8) states:

The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exist:

(8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.

III. The Evidence

Public comment in this case included several citizens, who voiced their opposition regarding the renewal of the Applicant's permits for several reasons.² These are best summarized as a belief that the Applicant serves intoxicated patrons, and thereby puts the public traveling on F.M. 439 in jeopardy. One of these citizens related that her sixteen-year-old son was killed on F.M. 439 two years ago. The Executive Director, for the Mother's Against Drunk Driving (MADD) chapter serving the central Texas area that includes the Applicant's premises (the Club) stated that this area requires the "most outreach" in the thirteen county area that they serve.

²Section 5.435 of the Texas Alcoholic Beverage Code states that, under these circumstances, public testimony shall be considered in making a decision on the hearing.

The Commission's six exhibits were admitted.³ The Applicant's four exhibits were admitted.⁴ The Commission called four witnesses,⁵ and the Applicant called four witnesses,⁶ including its president, Cleat Roberts. The testimony pertaining to the issues raised by these witnesses is summarized below by subject matter⁷.

A. The Permitted Premises:

The permitted premises (the Club) is approximately two miles from the Killeen, Texas, city limits. It is on F.M. 439, which is a two-lane road with shoulders. In that area, F.M. 439 extends from Fort Hood toward Belton Lake. Cleat Roberts is the Applicant's president. The Club has been in this location for twenty-eight years, and was originally established by the Applicant's president's father. Mr. Robert's father died three years ago, and Mr. Roberts has been actively involved in the management of the Club for the last five or six years. It is a large club, a "country bar" popular with a variety of patrons, including a variety of ages, and military and nonmilitary persons. Persons less than twenty-one years of age are excluded unless they are at least eighteen years of age and are the "designated driver." The Club has indoor and outdoor areas on approximately five acres of land. There is more than one bar area, and during the summer they serve patrons indoors and outdoors.

³Commission's Exhibit No. 1 is a collection of certified copies of the Respondent's permits, and its violation history; Commission's Exhibit No. 2 is the Applicant's Application For A Retailer's Permit Or License; Commission's Exhibit No. 3 is a collection of arrest and offense reports for the period of time from 1999, through October, 2000, including two fatality reports in which the responsible person was coming from the Club, and approximately twenty-four offense reports with questionnaires filled out by arrested subjects, who admit that they were coming from the Club; Commission's Exhibit No. 4 are statistics regarding DWI arrests on F.M. 439 for the year 1999, through October, 2000, and is a summary of Commission's Exhibit No. 3; Commission's Exhibit No 5, a letter from the Mother's Against Drunk Driving, Central Texas Chapter, "To Whom It May Concern," at the Commission's office in Waco, Texas, was admitted for the limited purpose of showing the information upon which the Commission acted; Commission's Exhibit No. 6 is a document with lists of names and dates under the titles, "Fatalities Coming From Sandy's," "DWI Arrests Admitting Coming From Sandy's," "Hit & Runs In Parking Lot Of Sandy's," and "Bartenders arrested For Sale To Intoxicated Person," and was admitted for the limited purpose of showing the information upon which the organization acted; Commission's Exhibit No. 8, a copy of a page out of the Temple Daily Telegram, was admitted solely as an offer of proof.

⁴Applicant's Exhibit No. 1 is the Texas Alcoholic Beverage Commission Narrative; Applicant's Exhibit No. 2 is "Sandy's Alcohol and Tobacco Awareness Policy"; Applicant's Exhibit No. 3 is "Sandy's Bar Manual"; Applicant's Exhibit No. 4 is a collection of examples out of the Club's "incident journal."

⁵Trooper Michael Perez; and Reita Hill, a grant administration-trainer of victim's services across the State of Texas from the State Office of the Mother's Against Drunk Driving.

⁶Commission Agent, Daniel Garcia; Killeen police officer, Michael Watts; Wallace Frazier, who is the head of security at the Club; Michelle Amundson, a Club waitress; and Douglas Cargill, the Club's manager.

⁷Documentary evidence pertaining to the issues is included in this summary by subject matter, but in contrast to the summarized testimony, documentary evidence is specifically identified, either in footnotes or in the text.

The higher volume of business is seasonal. In the summer the Club has forty to fifty employees. In the winter the Club has thirty to forty employees. There is a five-dollar cover charge every night of the weekend, and a total average crowd for a Friday or Saturday night is six hundred to seven hundred people. The Club opens at noon and closes at 2:00 a.m. The kitchen stays open the whole time, but selling food is relatively new to the Club.

B. Procedures in the Club:

When a customer appears to be becoming intoxicated, several procedures are utilized by the employees at the Club: a "C" is written on his hand with a permanent marker⁸; a person with a "C" on their hand is not to be served any more alcohol; an armband identifying a customer as more than twenty-one years old, which is required to purchase alcohol, is removed; the customer is advised to eat, and they are given free "Cokes." The customer is advised that if they are observed drinking alcohol, receiving alcohol from another customer, or attempting to wash the "C" off of their hand, they will be required to sit on a bench by the door, with the door man, until they can leave safely. The employees are then to check for this person's "designated driver," to call a taxi for this person, or to find an employee to drive them. If a taxi has to be called for a customer under these circumstances, the Club pays for the taxi.

The monitoring of customers is supposed to start at the door. The "door man" is to assess whether or not each customer entering and leaving the Club is intoxicated. He is not to allow an intoxicated person to enter the Club, and he is not to allow an intoxicated person to leave the Club, unless someone else is providing the intoxicated person with transportation.

For special events, (live music, etc.) they may employ an off-duty uniformed officer to help with security. Officer Michael Watts has been a peace officer for more than fifteen years. Officer Watts was paid twenty-five to thirty dollars per hour to work for the Club in this capacity three or four times, and believes that the Club has the best procedures, to prevent an intoxicated person from driving while intoxicated, of all of the ten to twenty clubs in the area with which he has some familiarity.

All employees are required to become "TABC certified," even the employees who mow the lawn, because they might be pressed into service on a busy night. All employees are required to read and sign "Sandy's Alcohol and Tobacco Awareness Policy"⁹ and "Sandy's Bar Manual"¹⁰ when they start work. Regular all-employee meetings are conducted monthly, where they discuss measures to increase business and measures to provide a safe environment. They never utilize the "happy hour" method to induce business, believing this to be an unsafe practice. As of approximately one year ago, an "incident journal"¹¹ has been kept, in which all unlawful or undesirable actions are documented. This journal is shared with the police, if requested.

⁸"C" is intended to mean "cut off" (denied) the service of alcoholic beverages.

⁹Applicant's Exhibit No. 2.

¹⁰Applicant's Exhibit No. 3.

¹¹Applicant's Exhibit No. 4.

Mr. Roberts makes every attempt to hire experienced employees, and feels that his "door men" are the best in the business. James Cargill has been the manager at the Club for the last two months, but worked at the Club for two years as a "bouncer," working the door, and working as a "bar-back," and a bartender.

C. Intoxicated Persons at the Club:

1. Serving Alcohol to Intoxicated Persons:

Prior to November 2000, the Commission received a complaint that intoxicated persons were being served at the Club. Because of this complaint, four different undercover investigations were conducted beginning in November 2000. As a result of these investigations, a settlement agreement was reached in which the Applicant did not deny that there were two sales of alcoholic beverages to an intoxicated person on November 19, 2000, in the Club.

The Texas Alcoholic Beverage Commission Narrative,¹² written by Agent Garcia, relates that on the above date, two Club employees were arrested for serving an intoxicated person, and the intoxicated person, an off-duty Club employee, was arrested for Public Intoxication. During this investigation the agents observed that several patrons were in an intoxicated state, but rather than arrest these individuals, they were released to responsible parties and escorted from the Club.

Agent Garcia's report summarizing this investigation stated that "insufficient facts [exist] to warrant a protest hearing," but the Agent also stated that he was "unable to determine" whether sufficient facts existed for a protest hearing. Agent Garcia's report appeared to indicate that these conclusions were based on his opinion that there was not substantial direct evidence to prove that these violations would occur in the future.

2. Other Incidents in the Club:

According to Officer Michael Watts, he has been called to "many" disturbances at the Club, which he described as calls from the Club's employees or calls from intoxicated persons who were being prevented from leaving the Club.¹³ He was personally dispatched to these calls in a dozen or more incidents ("probably more"). On these calls, he observed that customers were intoxicated, and he made arrests for Public Intoxication in approximately 10 percent of these cases, because the customer would not make arrangements to get home safely and became belligerent. According to Cleat Roberts, the Club has paid for taxi transportation under these circumstances thirty or forty times in the last two or three years.

¹²Applicant's Exhibit No. 1.

¹³Sometimes the police were called when an intoxicated person refused to get into a taxi or accept other transportation.

According to The Texas Alcoholic Beverage Commission Narrative¹⁴ by Agent Garcia, in October of 2000, there were two reports of Assault with Bodily Injury and one report of Aggravated Assault at the Club that were investigated but resulted in no formal charges.

Wallace Frazier, who is the head of the Club's security, has driven intoxicated persons home more than five times in two years, and has had his security staff take away the car keys from intoxicated persons more than twenty times in two years. He believes that "C's" are written on a customer's hands from two to ten times per night at the Club.

The "Incident Journal," is a dated log of "illegal" and "undesirable" incidents that have occurred in the Club, documented by Club employees. There is more than one journal in use at any given time, in different locations in the Club, and not all of the entries are legible; however, an example of the journal was admitted as Applicant's Exhibit No. 4, and this exhibit reflects some of the entries from October 26, 2001, until March 16, 2002. A review of this exhibit is illustrative of the more recent problems encountered in the Club, and is summarized as follows:

1. On Friday, October 26, 2001, three men were "cut off," and one of the men "took a swing at bar-back . . . A customer attempted to intervene, and got hit by irate customer . . ."

[Although the other two "cut off" customers were noted to have designated drivers, there was no explanation regarding the violent customer, who was cut off; unlike the other two entries, there was no assertion that this customer was kept from driving, or that the authorities were called.]

2. On Saturday, October 27, 2001, three men were "cut off." Of these three, one refused to have his hand marked with a "C," and was asked to leave. He threatened one of the Club employees with a knife; a fight ensued, the police were called, and this customer was arrested for Public Intoxication. Additionally, that same evening, two men were ejected from the Club for fighting on the dance floor.

[There was no entry regarding their level of intoxication or their transportation, and no indication that the authorities were called.]

3. On Friday, November 9, 2001, one man, who had a designated driver, was "cut off."

4. On Saturday, November 10, 2001, seven persons were "cut off," but only one was noted to have a designated driver.

[There was no entry regarding the transportation or the level of intoxication of the other six, when they left the Club; except, one woman ignored the Club's employee's directives not to drive, and when she left the Club, the Sheriff's office was called.]

5. On Friday, November 16, 2001, one man was "cut off."

[There was no entry regarding his transportation or his level of intoxication when he left the Club.]

¹⁴Applicant's Exhibit No. 1.

6. On Friday, November 30, 2001, one man was "cut off." He was seen drinking again, after he was cut off, and was asked to leave; at which time, he "left without incident."

[There was no entry regarding his transportation or his level of intoxication when he left the Club.]

7. On Friday, December 7, 2001, five persons were "cut off."

[There was no entry regarding their transportation or their level of intoxication when they left the Club.]

8. On Friday, December 14, 2001, one man was "cut off."

[There was no entry regarding his transportation or his level of intoxication when he left the Club.]

On that same date, one man tried to "head-butt" another customer, and he was ejected from the Club.

[There was no entry regarding his transportation or his level of intoxication when he left the Club.]

9. On Saturday, December 15, 2001, one customer attempted to strike another customer; the attacker had to be escorted to the door and restrained by multiple Club employees, but he was eventually driven home by one of his friends.

On that same date, two men were "cut off." They became angry; one spit at another customer, swung an ashtray at a Club employee, was escorted to the door by Club employees, and had to be subdued by the Club's security personnel when he swung at another Club employee.

[There was no entry regarding his transportation or his level of intoxication when he left the Club.]

10. On Friday, December 28, 2001, two men were "thrown out for fighting," and "left without incident."

[There was no entry regarding their transportation or their level of intoxication when they left the Club.]

11. On Sunday, December 30, 2001, two men were "cut off."

[Although it is clear that one of these men left the Club, there was no entry regarding their transportation or their level of intoxication when they left the Club.]

12. On Wednesday, January 2, 2002, there was an altercation between two customers, and one of the customers was "escorted" to the front door.

[He apparently left the Club, because the next entry states that he "snuck" back into the Club and started another fight. There is no entry regarding this man's level of intoxication, and the portion, regarding the second time he was ejected, is not legible.]

13. On Saturday, February 2, 2002, several men starting fighting and a female bystander was injured as a result. Emergency medical personnel were called to the Club to attend to her, and "all other part(ies) left without any other problems."

[There was no entry regarding their transportation or their level of intoxication when they left the Club.]

14. On Saturday, February 9, 2002, one intoxicated customer, who had been "cut off," refused to wait for a cab, and walked away from the Club. Club employees called authorities to "look out for him."

15. On Friday, February 15, 2002, one customer was asked to leave because he was observed attempting to induce other customers to purchase drinks for him, and because he was observed "pulling out an unmarked pill bottle and take a hand full." He left "with no problem."

[Despite his bizarre behavior, there was no entry regarding his transportation or his level of intoxication when he left the Club.]

16. On Saturday, February 23, 2002, approximately nine persons were "cut off." Of these, one, who was "fallen down intoxicated" was picked up by his wife; one drove away with two passengers, and Club employees notified the sheriff's department.

[There was no entry regarding the transportation or the level of intoxication for the remainder of these nine customers.]

17. On Thursday, February 28, 2002, two persons refused to take the suggested taxi, refused to accept a ride from employees, and "insisted" on leaving.

[This language not only suggests the couple's intoxicated state, but also suggests that at least one of them drove away from the Club. There is no statement that authorities were notified.]

18. On Friday, March 8, 2002, at least four customers were "cut off."

[Although some of these entries are illegible, there is clearly no information regarding the transportation of at least four of the persons who were cut off, or their level of intoxication when they left the Club.]

19. On Saturday, March 9, 2002, one man was "cut off."

[There was no entry regarding this person's transportation or his level of intoxication when he left the Club; however, the last six or seven words of this entry are illegible.]

On this same date, one person had to be told "numerous times" "to keep pants up." Then there is the notation, "intoxicated - left for the night."

[There was no entry regarding this person's transportation.]

20. On Saturday, March 16, 2002, at least one person was "cut off."

[There was no entry regarding that person's transportation or level of intoxication when they left the Club. The last entry of these examples is illegible.]

D. Arrests for Driving While Intoxicated (DWI):

Trooper Michael Perez of the Department of Public Safety (DPS) recalled that as a result of a complaint from the Mother's Against Drunk Driving, the "Texas Department of Public Safety DWI Interview Standardized Field Sobriety Testing" form (the "TLE-1A"), which are forms completed in DWI arrests, were reviewed, reflecting the DWI arrests on F.M. 439, for the period of time from 1999, until October 2000. Using these questionnaires, standard questions were asked of all of these arrested persons, including where they "started from" (or where they were "coming from"),¹⁵ and their intended destination. The review revealed the number of persons who stated that they "started from" (or were "coming from") the Club over this period of time in 1999, and 2000.¹⁶

E. The DWI Statistics¹⁷:

Traffic statistics that were prepared by the Texas Department of Public Safety, in Austin, Texas, reflect the following:

In 1999, State Troopers arrested twenty-one persons on F.M. 439 for DWI, ten of which had come from the Club. Additionally, in the first ten months of 2000, State Troopers arrested thirty-three persons for DWI in that area, fourteen of which had come from the Club.¹⁸

F. Fatalities:

Trooper Perez was aware of two fatalities from motor vehicle accidents, in which the person responsible for the accident had come from the Club, and was determined to have a blood alcohol "in excess of the legal limit." In the accident that occurred on February 19, 2000, the driver, who did not survive, was traveling on F.M. 439; he veered off the road, hit a bar ditch, rolled his vehicle several times, and was ejected from his vehicle. His blood alcohol was determined to be approximately 0.23, "three times the legal limit." An investigation revealed that this person had come from the Club.

¹⁵In Commission's Exhibit No. 3, the majority of the offense reports that accompanied the TLE-1A included statements that the arrestees admitted that they were "coming from" the Club, or that they had "just left" the Club, or that the officer observed their vehicle leaving the Club.

¹⁶Copies of these records, and a summary of these records, were admitted as Commission's Exhibits Nos. 3 and 4, and the statistics themselves were not elicited during testimony.

¹⁷Commission's Exhibits Nos. 3 and 4, and Applicant's Exhibit No. 1, all contain such statistics.

¹⁸These statistics only reflect cases in which there has been a final disposition.

In another accident, on March 12, 2000, a DPS trooper had pulled over a Chevrolet Tahoe and was working this traffic stop, when he saw a Chevrolet Camaro headed toward them. He was able to jump out of the way, but when the oncoming Camaro struck the Tahoe, an occupant of the Camaro was killed. All four of the persons in the Camaro had come from the Club. The driver of the Camaro was determined to have an "alcohol analysis result" of 0.08 (grams) and was charged with Intoxication Manslaughter.¹⁹

Cleat Roberts has also inquired into the above incident, involving the DPS trooper. He was reluctant to testify about this incident, stating that he was involved in ongoing litigation (in another case) regarding the incident. He eventually testified that while he believed that the intoxicated driver's passengers had come from the Club, he did not believe that the intoxicated driver was inside the Club. He believed that the intoxicated driver had come from a party, and was sleeping in his vehicle while his passengers were inside the Club. However, he stated that because this incident occurred approximately two years ago, trying to do an investigation at this time is difficult.

G. Mothers Against Drunk Driving (MADD):

Reita Hill is the MADD grant administrator-trainer of victim services across the State of Texas working with victim advocates and teaching them how to help the victims of drunk driving accidents. She is also the former Executive Director of the Central Texas Chapter of MADD, serving the area that includes the Club, and she lives in the Killeen area. She is personally familiar with the Club, and knows of the Club from complaints from the public regarding the number of intoxicated persons leaving the Club. In February of 2000, a concerned father called and told her that his son had been killed on F.M. 439, and that his son had been arrested for DWI after leaving the Club three months prior to his death. Ms. Hill was contacted three months later by a person who told her about another fatality involving a driver who had come from the Club. As a result of all of these telephone calls, MADD sent a letter to the Commission containing their concerns regarding intoxicated persons coming from the Club. This is the first establishment in this area that MADD felt was such a threat to the community that they mobilized to this degree. In her opinion, the Applicant's permit should not be renewed, because the Club has demonstrated that it is a threat to the safety of persons in the community.

Discussion

The focus of the allegations and the evidence was on the manner in which the Applicant conducts his business and the general welfare and safety of the public. The parties acknowledged that much of the evidence was circumstantial; however, this circumstantial evidence is overwhelming and is not without weight. When the circumstantial evidence regarding "manner" in this case is added together, the sum of this evidence is the threat to public safety as reflected by the two fatalities, the numbers of DWI's coming from the Club, and the continuing problems that the Club has with intoxicated customers.

¹⁹The detail regarding the type of vehicles, the date of the accident, the "alcohol analysis result," and the charge came from the accident report that was admitted as part of Commission's Exhibit No. 3.

The Applicant complained that the TLE-1A could contain examples in which the arrestee "started from" the Club but went to other bars after they went to Club, and before they were stopped. A review of the admitted offense reports accompanying these TLE-1A's makes this unlikely. The vast majority of the offense reports that accompanied these TLE-1A's included statements that the arrestees admitted that they were "coming from" the Club, or that they had "just left" the Club, or that the officer observed their vehicle leaving the Club. However, it should be noted that solely utilizing the responses on the TLE-1A for these statistics would omit cases in which the arrestee left from the Club just before they were stopped and then detained for suspicion of driving while intoxicated, but in which the arrestee did not specify "Sandy's" during the TLE-1A questioning, either because they did not understand the question, or because they did not wish to incriminate themselves further by admitting that they were coming from a bar.

The Applicant argued that if intoxicated persons are being served alcohol in the Club, it is not by Club employees, but may be by the intoxicated person's friends, who are purchasing alcohol for the intoxicated customer. While this may be true in some cases, this should have been anticipated by the Club, and measures should have been taken to reveal this behavior and to prevent it. When behavior should be expected, and the Club takes inadequate measures to prevent the behavior, the Club becomes a participant in the behavior. The fact that this type of prophylactic exercise may be difficult to apply to large groups of people is not an excuse.

The Club is a large and popular place, serving six hundred to seven hundred persons on an average Friday or Saturday night. Although the total number of employees may appear substantial, it is unknown how many employees are actually working on a Friday or Saturday, trying to implement the Club's policies and procedures as they serve this crowd. The Applicant may be a victim of its own success. The large number of persons served on an average Friday or Saturday night may be contributing to the Applicant's problem. This is especially true, because persons are being served from more than one bar area, and outdoors as well as indoors during the summer months. On an average weekend, and especially on a busier than average weekend, when the employee who normally mows the lawn²⁰ is pressed into the service of customers, the safety net that the Applicant hoped to weave with its procedures may simply not be adequate to hold the number of customers that are served at the Club. The Applicant should be commended for many of the procedures that have been implemented, that are intended to prevent the service of alcohol to intoxicated customers; however, based on the Public Intoxication arrests, the two sales of alcoholic beverages to an intoxicated person on November 19, 2000, the current number of problems with intoxicated persons in the Club (as reflected by the incident journal), the DWI statistics, and the fatalities, these procedures have obviously been insufficient to curb the number of intoxicated persons who consume alcohol at the Club and then drive away. This contradicts the testimony that intoxicated persons are not allowed to come into the Club, are not served alcohol, and are not allowed to leave the Club without some measures being taken to ensure their safe transportation.

Based on the foregoing, more likely than not, the manner in which the Applicant conducts his business does not prevent an unacceptable number of intoxicated persons from consuming alcohol in the Club, and from driving away from the Club, endangering themselves and the public on F.M.

²⁰Based on Cleat Robert's testimony, even the person who mows the grass is required to be "TABC certified," because they might be pressed into service on a busy night.

439. Therefore, this Proposal for Decision recommends that the renewal application be denied.

Findings of Fact

1. A Private Club Registration Permit, N-088573, Beverage Cartage Permit, PE-088574, and Private Club Late Hours Permit, NL-142432, were issued to Sandy's d/b/a Sandy's, 14600 FM 439, Killeen, Bell County, Texas, by the Texas Alcoholic Beverage Commission (the Commission) on June 4, 1975, and have been continuously renewed.
2. On January 30, 2002, the Commission sent notice of the hearing on the merits to the Applicant.
3. This notice of hearing contained: a statement of the date, time, location and the nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short plain statement of the allegations and the relief sought by the Commission.
4. The hearing on the merits was convened on May 7, 2002, at 801 Austin Avenue, Suite 750, in Waco, Texas, before Administrative Law Judge Suzan Shinder. The Commission appeared by its staff attorney, Dewey Brackin. The Applicant appeared by its president, Cleat Roberts, and was represented by attorney Don Walden. Several citizens appeared and voiced their protests to the issuance of the Applicant's Renewal Permit. Evidence and argument were heard and the record closed the same day.
5. The Renewal Permit would be for the permitted premises (the Club) known as Sandy's, which has been open and operating for more than twenty years, on F.M. 439, approximately two miles from the Killeen city limits, in Bell County, Texas.
6. F.M. 439 is a two-lane road with shoulders that extends from Fort Hood toward Belton Lake.
7. The Club, a popular "country" bar, has indoor and outdoor areas on approximately five acres of land. There is more than one bar area, and during the summer they serve patrons indoors and outdoors.
8. On November 19, 2000, two Club employees were arrested for serving an intoxicated person, and the intoxicated person, who was an off-duty Club employee, was arrested for Public Intoxication. During this investigation the Commission's agents observed that several of the Club's customers were intoxicated.
9. There have been many disturbances at the Club, caused by intoxicated customers; a significant percentage of which resulted in arrests for Public Intoxication.
10. Since October 2001, many customers who appeared to be becoming intoxicated, were refused service of alcoholic beverages, but were not considered problematic because they left the Club without further incident.

11. Since October 2001, some customers (e.g., violent customers), whose bad behavior was an indication of impairment of normal social inhibitions and therefore of impaired mental capacity and intoxication, did not have the same Club procedures applied to them as the intoxicated customer who was not behaving badly.
12. In the summer the Club has forty to fifty employees. In the winter the Club has thirty to forty employees.
13. A total average crowd for a Friday or Saturday night is six hundred to seven hundred people.
14. When a customer appears to be becoming intoxicated, several procedures are supposed to be utilized by the Club employees, including refusing to serve the customer any more alcohol; but the Club's policies and procedures have not prevented intoxicated customers from consuming alcohol in the Club.
15. The employee who works the door at the Club is supposed to assure that no intoxicated person enters the Club, and that no intoxicated person leaves the Club unless someone else is providing the intoxicated person with transportation; but the Club's policies and procedures have not prevented an unacceptable number of their intoxicated customers from driving away from the Club.
16. Currently, intoxicated customers are not an infrequent occurrence at the Club, and most problems with intoxicated customers occur on Friday and Saturday nights, which are historically the Club's busiest nights.
17. In 1999, State Troopers arrested twenty-one persons on F.M. 439 for Driving While Intoxicated, at least ten of which had come from the Club.
18. In the first ten months of 2000, State Troopers arrested thirty-three persons for Driving While Intoxicated on F.M. 439, at least fourteen of which had come from the Club.
19. On February 19, 2000, an intoxicated driver, who had come from the Club, was killed in a one-car motor vehicle accident on F.M. 439.
20. On March 12, 2000, an intoxicated driver, who had come from the Club, caused a two-vehicle motor vehicle accident in which one of his passengers was killed.
21. Based on the foregoing, the manner in which the Applicant conducts his business does not prevent an unacceptable number of intoxicated persons from consuming alcohol in the Club, and from driving away from the Club, endangering themselves and the public on F.M. 439.

Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV.CODE ANN. Subchapter B of Chapter 5.

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed 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 under the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Based on the Findings of Fact, the place or manner in which Applicant may conduct its business will be detrimental to the general welfare, health, peace, morals, and safety of the people, or on the public sense of decency, under TEX. ALCO. BEV.CODE ANN. 11.46(a)(8).
5. Based on the foregoing Findings of Fact and Conclusions of Law, the application of Sandy's d/b/a Sandy's for a Renewal Permit, should be denied.

Signed this 1st day of July, 2002.



SUZAN MOON SHINDER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS