

**DOCKET NO. 597839**

IN RE ISAC CORPORATION D/B/A	§	BEFORE THE
THROCKMORTON MINING COMPANY	§	
PERMIT NOS. MB207652, LB207653	§	
	§	TEXAS ALCOHOLIC
	§	
DALLAS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-02-2352)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 29th day of July 2002, 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 on May 10, 2002, and adjourned May 10, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 3, 2002. This Proposal For Decision (attached hereto as Exhibit "A"), 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.

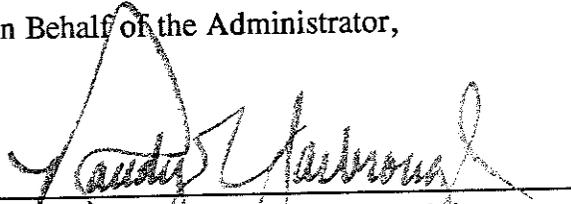
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the violations against Permit Nos. MB207652 and LB207653 are hereby **DISMISSED**.

This Order will become final and enforceable on August 19, 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 or through the U.S. Mail, as indicated below.

SIGNED this the 29th day of July, 2002.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

TEG/bc

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

Martin J. Sweeney  
**ATTORNEY FOR RESPONDENT**  
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ISAC CORPORATION  
D/B/A THROCKMORTON MINING COMPANY  
**RESPONDENT**  
2501 Oak Lawn #800  
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VIA REGULAR MAIL

Timothy E. Griffith  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Dallas District Office

DOCKET NO. 458-02-2352

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

VS.

ISAC CORPORATION  
D/B/A THROCKMORTON MINING COMPANY  
DALLAS COUNTY, TEXAS  
(TABC CASE NO. 597839)

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff) sought suspension of the mixed beverage permits held by Isac Corporation d/b/a Throckmorton Mining Company (Respondent) because of the place or manner in which Respondent conducts its business. This proposal finds that the Staff's allegation is not true. The Administrative Law Judge (ALJ) does not recommend suspension of the permits.

**I. PROCEDURAL HISTORY & JURISDICTION**

Notice and jurisdiction were not contested in this proceeding. Those matters are set out in the findings of fact and conclusions of law without further discussion.

On May 10, 2002, a hearing was convened before ALJ Robert F. Jones Jr., at 6333 Forest Park Road, Suite 150-A, Dallas, Dallas County, Texas. Staff was represented by Timothy E. Griffith, Staff Attorney. Respondent was represented by its counsel Martin J. Sweeney and Mitchell S. Milby, and appeared through Jack Polachek, its president. The record closed on June 4, 2002.

**II. DISCUSSION**

**A. Applicable Law**

The Texas Alcoholic Beverage Commission (TABC) may cancel or suspend Respondent's mixed beverage permits if it finds that Respondent violated the Texas Alcoholic Beverage Code (the Code) or TABC rule. § 11.61(b)(2) of the Code. Respondent's permits may be suspended if the "place or manner" in which Respondent<sup>1</sup> conducts its business "warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency." § 11.61(b)(7). Respondent would violate § 11.61(b)(7) if any sexual offense under the Texas Penal Code was committed by Respondent in the course of conducting its alcohol related business. 16 TEX. ADMIN. CODE (TAC) § 35.31(a), (b)(1),(c).

<sup>1</sup> Respondent is a "permittee" because it is the holder of a permit. § 1.04(11) of the Code. "Permittee" includes "an agent, servant, or employee" of the permittee. *Id.* When used in this proposal, "Respondent" includes an agent, servant, or employee of the Respondent.

Respondent would also violate § 11.61(b)(7) if any person committed a sexual offense on Respondent's premises, and Respondent "knew or, in the exercise of reasonable care, should have known of the offense or the likelihood of its occurrence and failed to take reasonable steps to prevent the offense." *Id.* § 35.31(a), (b)(2)&(3),(c). A person commits the sexual offense called "indecent exposure" if "he exposes his anus or any part of his genitals with intent to arouse or gratify the sexual desire of any person, and he is reckless about whether another is present who will be offended or alarmed by his act." TEX. P. CODE ANN. § 21.08(a). Finally, Respondent may not permit, nor may its employees engage in, conduct on Respondent's premises "which is lewd, immoral, or offensive to public decency, including . . . the exposure of person or permitting a person to expose his person." § 104.01(2) of the Code.

## B. Evidence

Respondent's licensed premises (hereafter referred to as TMC) are located at 3014 Throckmorton, Dallas, Dallas County, Texas. Respondent holds mixed beverage permit MB207652 and mixed beverage late hours permit LB207653. On November 17, 2001, at approximately 1:30 p.m., Patrick Price, a dancer at TMC, allegedly exposed his genitals to patrons. TABC Agent Kenneth Peters, Patrick Price, Lee Seale, Jesse Leyva, Daniel E. Friessen, and Richard Curtin were present at TMC that night, and each testified at the hearing.

**Figure 1**, on page 10 of this proposal, is based upon exhibits admitted in the hearing and the testimony of the witnesses present that night.<sup>2</sup> The drawing is not to scale, and is included to show the relative locations of the witnesses in TMC at 1:30 a.m. on November 17, 2001.

- TABC Agent Kenneth Peters was sitting at the table labeled with his name in the lower left of **Figure 1**. He was oriented so he could observe both the Front Bar and the Dance Floor.
- Patrick Price was dancing on a small, square dance stage depicted in the lower left corner of the Dance Floor as a black square. The dance stage is two to three feet high. The black square is labeled with Mr. Price's name.
- Lee Seale was dancing on a small square dance stage depicted outside the lower right corner of the Dance Floor as a white square. The white square is labeled with Mr. Seale's name. Mr. Seale's dance floor is on the second level of TMC, which overlooks the entire Dance Floor. Mr. Price's dance stage can be observed from Mr. Seale's.
- Jesse Leyva was dancing on a small, square dance stage depicted in the lower right corner of the Dance Floor as a black square. The dance stage is two to three feet high. The black square is labeled with Mr. Leyva's name. Mr. Price's dance stage is approximately 20 feet from Mr. Leyva's.
- Daniel E. Friessen was tending bar in the half of the Front Bar nearest Agent Peters' Table.

<sup>2</sup> See Respondent's Exhibit 1; Transcript (TR.) 21-23 (Peters), 40-43 (Price), 60-61, 68-69 (Seale), 75-77 (Leyva), and 86-87, 93 (Friessen).

- A blond woman, and two male companions, are depicted between Mr. Price's stage and the Pool Table in the lower left corner of **Figure 1**. The woman, depicted as a white circle, stood between the two men, depicted as black circles. The three faced toward Mr. Price's stage.

### 1. Agent Kenneth Peters' Testimony

Agent Peters was at the TMC on November 17, 2001. Transcript (TR.) at 9. He was at TMC to check for sales to intoxicated persons or any other observed violations, and not in response to a complaint. TR. at 18. Agent Peters testified that he encountered Patrick Price that night. He identified Mr. Price as an employee of TMC, and a dancer at the club. Mr. Price was dancing on a well-lit "stage" about two feet tall. TR. at 10. Agent Peters indicated Mr. Price was wearing underwear and boots, but no pants or shirt. He recalled that Mr. Price was wearing "white, bikini type briefs." TR. at 19.

Agent Peters said a man and a woman approached Mr. Price, the woman placed "currency" in the elastic waist band of his underwear, and "then a few minutes later, he pulled down his pants and exposed his penis to her." Agent Peters described the woman as short and blond. He observed that the woman and her companion talked to Mr. Price a minute or less. TR. at 20. Agent Peters described Mr. Price as pulling his briefs down to mid-thigh, using both hands but not exposing his buttocks. Agent Peters stated that no one around him reacted when Mr. Price exposed himself. TR. at 23-24. Agent Peters said Mr. Price exposed only his genitals. Agent Peters said he was a "couple of feet" from Mr. Price and "could see his genital area." Agent Peters stated Mr. Price pulled his briefs out and down. Agent Peters stated this occurred in an open area, was observable by TMC's management, was in a public place, and was intentional rather than accidental. TR. at 12-13. Agent Peters stated it appeared to him that Mr. Price's conduct was related to the tip from the woman. TR. at 13.

Agent Peters tried to locate the woman and man, but could not find them, and does not know who they were. TR. at 24. Agent Peters stated the woman did not pull down Mr. Price's underwear, and that Mr. Price did this himself. TR. at 11. He stated, "If somebody grabbed the dancer's shorts, I would not have arrested the dancer for public lewdness." TR. at 20.

### 2. Patrick Price's Testimony

Mr. Price is a dancer at TMC. He identified a copy of the rules and regulations for dancers at TMC. TR. at 37. Mr. Price stated that exposing oneself is not allowed at TMC. TR. at 39. He was dancing at TMC on November 17, 2001. He denied exposing himself. TR. at 36.

Mr. Price stated he was wearing a pair of Calvin Klein sports briefs (which were produced), and which were black in color with a white waist band. He was also wearing black boots and socks. TR. at 39-40. Five to ten people were standing around his stage. One person was a white female with blonde hair wearing a nice dress. She was accompanied by two men. TR. at 43-44. Mr. Price spoke with the woman. She held out some cash and would ask him, "what can I see for about -- for \$20?," and "what can I see for 20? Can you pull it out? Can you show me something?" Mr. Price would

respond "I can't do that." Mr. Price reported the conversation went on for five to 10 minutes. He was facing the woman as they were talking. TR. at 44. Mr. Price stated the woman would act like she was going to give him the money, and then stop, complaining she had not seen "anything." He decided the game had gone long enough, and told the woman, "this is it." TR. at 45.

According to Mr. Price, the woman handed the cash to the man to her right. Mr. Price was kneeling on the dance stage, and the woman and the man had to bend over a railing. Mr. Price stated that the man, while placing the cash in his waistband, tugged at his shorts, pulling them out but not down. Mr. Price got to his feet quickly, and the man and woman walked away. TR. at 46-47. Mr. Price indicated his shorts were pulled out three inches. TR. at 48. Mr. Price stated he turned back to the dance floor and continued to dance until his was contacted by TABC agents. TR. at 49. He did not recall seeing Agent Peters. TR. at 50.

### 3. Lee Seale's Testimony

Mr. Seale has known Mr. Price for more than seven years, and they have worked together as dancers at TMC for a year. Mr. Seale stated that Mr. Price has never exposed his genitals at work or anywhere else. TR. at 56-57. He agreed that exposing genitals is not allowed at TMC. TR. at 57-58. He is the "lead dancer" and as such enforces the rules, by reminding other of the rules, and by keeping an eye on the other dancers. TR. at 58-59.

Mr. Seale was dancing at TMC on November 17, 2001. TR. at 59. From his vantage point on his dance box, Mr. Seale could see where Mr. Price was dancing. TR. at 61. He observed that Mr. Price was wearing black briefs, "boots, necklace, probably earrings." TR. at 65. Mr. Seale was making an effort to observe what was happening, because business was slower at 1:30 a.m., and patrons had been drinking for a period of time. TR. at 62-63.

Mr. Seale saw a "girl" with blond hair and a red dress with two men in the group near Mr. Price. He testified, "It seemed like they were trying to talk to [Mr. Price] for a long time." TR. at 63. Mr. Seale described that Mr. Price would kneel down, then get up on his feet, and the repeat the process, while speaking to the woman. Mr. Seale said this went on for 10 to 15 minutes. Mr. Seale said one of the men touched Mr. Price and pulled at his briefs. TR. at 64. He stated the man pulled Mr. Price's briefs straight out, that "Patrick backed off," and that it "seemed like that was all there was to it." Mr. Seale stated Mr. Price's briefs were not pulled down. TR. at 65.

### 4. Jesse Leyva's Testimony

Mr. Leyva was dancing at TMC on November 17, 2001. TR. at 71. Mr. Leyva stated Mr. Price was wearing black or dark-colored shorts. TR. at 75-76. He indicated he was 20 feet from Mr. Price, and his view of Mr. Price was unobstructed and well lit. TR. at 77. Mr. Leyva did not see Mr. Price expose himself. He asserted that if Mr. Price had exposed himself, it would have caused a "commotion," which did not occur. TR. at 81. Mr. Leyva did not see the blond woman and her companions described by the others. TR. at 78.

Mr. Leyva has worked with Mr. Price in the past few years and has known him for eight

years. TR. at 73-74. He was "real surprised" that Mr. Price had been charged with exposure. TR. at 74.

#### 5. Daniel Friessen's Testimony

Mr. Friessen is a manager at TMC, a position he has held for seven years. TR. at 84. He supervises the dancers and has never had a complaint that a dancer exposed himself. He was bartending and was the manager on duty at TMC on the night of November 17, 2001. TR. at 85-86.

Mr. Friessen has not seen Mr. Price wear anything other than black shorts while dancing, and has never seen Mr. Price wear white shorts. TR. at 90-91. Prior to the TABC making contact with Mr. Price, Mr. Friessen had not had any complaints about Mr. Price, that night or before. He had not received a complaint that Mr. Price had engaged in "some improper type of dancing procedure to arouse patrons." Mr. Friessen described Mr. Price as "as kind of introverted. I'd say he's probably proud of his body, but he doesn't flaunt it. He doesn't -- he doesn't mess with the customers a lot." TR. at 92. He stated that Mr. Price was not an exhibitionist. TR. at 93. Mr. Friessen did not observe Mr. Price expose himself. TR. at 95-96. Mr. Friessen acknowledged that he was not watching Mr. Price at all times, because he was also serving customers, making change, assuring the employees were doing their jobs and that the customers were safe. TR. at 104-05.

#### 6. Richard Curtin's Testimony

Mr. Curtin is the entertainment director for Caven Enterprises, Inc. which wholly owns Isac Corporation d/b/a Throckmorton Mining Company. TR. at 108. Mr. Curtin is also the entertainment director for TMC. TR. at 109. He hires all the dancers. He manages the dancers and makes them familiar with the dancers' rules and regulations. TR. at 109. Mr. Curtin hired Mr. Price. TR. at 109. He discussed the rules with Mr. Price when Mr. Price was hired. Mr. Curtin and Mr. Jack Polachek had formulated the rules; Mr. Curtin is specifically in charge of enforcing them. TR. at 110-11. Mr. Curtin stated that Mr. Price agreed to be governed by the rules. TR. at 112.

Mr. Curtin described Mr. Price, and the other dancers, as an independent contractor. Mr. Curtin signs the dancers in at 10:00 p.m., he observes them periodically throughout the night, and then "pays them out" at 2:00 a.m. TR. at 112. He agreed the dancers are present to entertain TMC's patrons. TR. at 123. Mr. Curtin stated the dancers add "energy to the dance floor," and as a "decoration to the bar." He did agree that the "bar aspect" of TMC benefits from having the dancers. TR. at 124.

Mr. Curtin has been the entertainment director at TMC for four years. TR. at 114. He has never seen Mr. Price engage in "improper dancing," he has never received any complaint from any source concerning Mr. Price's dancing, or any such complaint concerning any dancer at TMC. TR. at 113. He stated that if a dancer is observed breaking the rules, "it's brought to my attention, and he is pulled from the box, and he is sent home." TR. at 114.

Mr. Curtin describes Mr. Price as a reliable employee, but "a bit shy. He's introverted, which most dancers tend to be extroverted." TR. at 120. He has not observed Mr. Price to be an

exhibitionist. He did not believe Mr. Price would expose himself. Mr. Curtin stated that Mr. Price does not have alcohol or drug problems, and is not intoxicated at work. TR. at 121.

C. The Parties' Contentions

The Staff emphasizes that Agent Peters' testimony shows that Mr. Price exposed his genitals at TMC. The Staff notes that Respondent's evidence demonstrated that Mr. Price was supervised and controlled by Respondent's manager, Mr. Friessen, and its entertainment director, Mr. Curtin. The Staff notes that the circumstances of the event show that Mr. Price intended to arouse the sexual desires of another person. Mr. Price was scantily clad. Mr. Price, in the Staff's view, exposed himself for the \$20.00 tip. Mr. Price's position was highly public; as a dancer Mr. Price was intended to be seen. The Staff infers Mr. Price was reckless as to whether others would be offended. The Staff further notes that Mr. Price was in effect the Respondent under § 1.04(11) of the Code.

The Staff noted that Mr. Price was still working at TMC, was not reprimanded, and that Respondent had not taken any corrective actions, either on the night in question or afterward. The Staff noted that Agent Peters was not shown to have any bias or prejudice against Mr. Price or the Respondent. On the other hand, Mr. Price, Mr. Seale, Mr. Friessen, and Mr. Curtin, are all still Respondent's employees. Mr. Seale and Mr. Leyva are Mr. Price's friends.

The Staff recommended that Respondent's permits be suspended for 10 days, or that alternatively Respondent pay a civil penalty of \$1,500.00.

The record remained open until June 4, 2002, to allow both parties to make written final arguments. Petitioner did not file any written arguments by that date, and did not seek an extension of time in which to file.

D. Analysis, Conclusion, and Recommendation

Respondent's permits may be suspended if the Staff has proved:

- Respondent violated the Texas Alcoholic Beverage Code (the Code) or TABC rule by Respondent permitting, or its employees engaging in, conduct on Respondent's premises "which is lewd, immoral, or offensive to public decency, including . . . the exposure of person or permitting a person to expose his person."
- the "place or manner" in which Respondent conducts its business "warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency."
- if any sexual offense under the Texas Penal Code was committed by Respondent in the course of conducting its alcohol related business, it has committed a "place or manner" violation.
- if any person commits a sexual offense on Respondent's premises, and

Respondent "knew or, in the exercise of reasonable care, should have known of the offense or the likelihood of its occurrence and failed to take reasonable steps to prevent the offense," it has committed a "place or manner" violation.

Respondent is a "permittee" because it is the holder of a permit. "Permittee" includes "an agent, servant, or employee" of the permittee. "Respondent" includes an agent, servant, or employee of the Respondent. Mr. Price is Petitioner's employee, an independent contractor. Accordingly, under § 1.04(11) of the Code, Mr. Price's actions are the Respondent's actions.

The dispositive issue is whether Mr. Price exposed himself. Agent Peters was adamant that Mr. Price had exposed himself; Mr. Price, and his co-workers, were equally certain he had not. Agent Peters testified that Mr. Price was wearing "white bikini-type briefs." TR. 19. He stated he was sure of the color. *Id.* The clothing admitted as Respondent's Exhibit 3 were black sports briefs, with a white band. Mr. Curtin testified that Mr. Price rolled the white band inside the briefs while dancing. He explained that the white band would glow in the black lights in the club, make the dancer to appear to be "cut" in the middle, and to "[look] funny." TR. 118. Mr. Price did not wear white shorts but habitually wore black, and wore black on the night in question. TR. at 39-40 (Price); TR. at 65 (Seale); and TR. 90-91 (Friessen).

Agent Peters testified that Mr. Price exposed himself in response to a tip from the unnamed blond woman. Mr. Seale corroborated Mr. Price's testimony that a man with the blond woman had pulled at Mr. Price's briefs, and that Mr. Price had not exposed himself. TR. 64-65. Mr. Leyva was 20 feet from Mr. Price, with an unobstructed and well-lit view. TR. at 77. Mr. Leyva did not see Mr. Price expose himself. Exposing himself would be contrary to Mr. Price's character. TR. at 56-57 (Seale); TR. at 73-74 (Leyva); TR. at 92 (Friessen); and TR. at 120-21 (Curtin).

No evidence demonstrated that Agent Peters had any bias or prejudice against Mr. Price, or Respondent. Mr. Seale and Mr. Leyva, on the other hand, are long term friends of Mr. Price. Mr. Price is a valued and well-liked employee of Mr. Friessen, Mr. Curtin, and Respondent. All of the witnesses were persuasive and credible, but their testimony cannot be reconciled. For example, Agent Peters described Mr. Price as wearing white bikini briefs, while Mr. Price and his coworkers asserted Mr. Price was wearing black sport briefs, which were admitted in evidence. White briefs could not be mistaken for black briefs, or sports briefs for bikinis. Although all of the evidence demonstrates that Mr. Price's briefs were pulled away from his waist, Agent Peters stated Mr. Price pulled his briefs down to mid-thigh, using both hands, exposing his genitals but not exposing his buttocks. Mr. Price and Mr. Seale state that the blond woman's companion pulled at Mr. Price's briefs while placing a twenty-dollar bill in the waistband. Agent Peters described Mr. Price's encounter with the blond woman as lasting only a few minutes. Mr. Price and Mr. Seale asserted the conversation lasted 10 to 15 minutes. Mr. Price and Mr. Seale stated Mr. Price's briefs were pulled while he was on his knees and that Mr. Price scrambled t his feet. Agent Peters did not describe such an action on Mr. Price's part, and that Mr. Price (from the agent's description) was on his feet when he exposed himself.

The Staff's burden was to prove the facts by a preponderance of the evidence, meaning the "greater weight of evidence, or evidence which is more credible and convincing." *Black's Law*

*Dictionary* (West 5<sup>th</sup> ed. 1979). A preponderance is not necessarily determined by the mere number of witnesses, but by "the greater weight of all evidence" considering such as "opportunity for knowledge, information possessed, and manner of testifying." *Id.* Based on the evidence as a whole, the ALJ is not convinced that events transpired as described by Agent Peters. As described by Agent Peters, Mr. Price exposed himself in a public place, in plain sight of a number of people, which went unremarked by anyone aside from Agent Peters (and the blond woman who had ostensibly paid for the performance). Mr. Leyva's assertion that if Mr. Price had exposed himself, it would have caused a "commotion," TR. at 81, is reasonable and credible. Agent Peters agreed that when Mr. Price allegedly exposed himself, there was no crowd response. TR. at 23-24. Accordingly, the ALJ cannot find from a preponderance of the evidence that Mr. Price deliberately exposed himself to the blond woman, and thereby committed a sexual offense.

The ALJ recommends that the Commission not find that Respondent violated the Code and not impose any suspension or penalty.

### III. FINDINGS OF FACT

1. Respondent's licensed premises (hereafter referred to as TMC) are located at 3014 Throckmorton, Dallas, Dallas County, Texas.
2. Respondent holds mixed beverage permit MB207652 and mixed beverage late hours permit LB207653.
3. On January 25, 2002, the Staff sent Respondent a complaint alleging that on November 17, 2001, at approximately 1:30 p.m., Respondent's employee, Patrick Price, a dancer at TMC, had allegedly exposed his genitals to patrons.
4. On March 28, 2002, Staff issued a notice of hearing notifying all parties that a hearing would be held concerning Staff's allegations 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.
5. The hearing was held on May 10, 2002, in Dallas, Texas, before Robert F. Jones Jr., an administrative law judge with the State Office of Administrative Hearings (SOAH). Staff was represented by Timothy E. Griffith, an attorney with the Texas Alcoholic Beverage Commission's (TABC) Legal Division. Respondent was represented by its counsel Martin J. Sweeney and Mitchell S. Milby, and appeared through Jack Polachek, its president. The record closed on June 4, 2002.

IV. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Chapter 5 of the Texas Alcoholic Beverage Code (the Code).
2. SOAH 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 2002).
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 2002).
4. Based on the foregoing findings, Staff failed to prove the allegations in the NOH by a preponderance of the evidence.
5. Based on the foregoing findings and conclusions, Respondent's permit's should not be canceled or suspended.

SIGNED July 3, 2002.

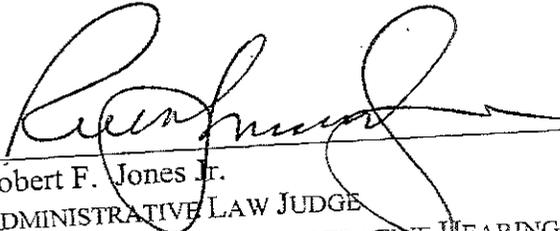
  
\_\_\_\_\_  
Robert F. Jones Jr.  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

FIGURE 1

-  — Front Door Out
-  — Front Door In

