

DOCKET NO. 495277

IN RE LONGNECK XPRESS N.P.	§	BEFORE THE TEXAS
d/b/a Longneck Xpress	§	
PERMIT NOS. N-553008 & PE-553009	§	
	§	ALCOHOLIC
	§	
ANGELINA COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-06-1976)	§	BEVERAGE COMMISSION

PROPOSAL FOR DECISION O R D E R

CAME ON FOR CONSIDERATION this 9th day of August, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on May 23, 2006, and adjourned on the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on July 24, 2006. 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.

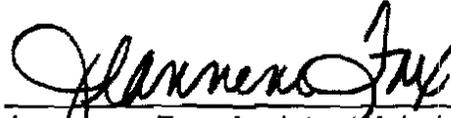
IT IS THEREFORE ORDERED, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that **Respondent's permits be canceled, pursuant to § 28.06(d) of the Code.**

This Order will become final and enforceable on September 4, 2006, 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.

SIGNED on this 14th day of August, 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeanne Fox, Assistant Administrator
Texas Alcoholic Beverage Commission

JF/dn

The Honorable Brenda Coleman
Administrative Law Judge
State Office of Administrative Hearings
VIA FACSIMILE 214-956-8611

LONGNECK XPRESS N.P.
d/b/a Longneck Xpress
RESPONDENT
308 North Timberland
Lufkin, TX 75901
CERTIFIED MAIL NO. 7006 0100 0002 2008 1713
RETURN RECEIPT REQUESTED

Tim Griffith
ATTORNEY FOR PETITIONER
VIA FACSIMILE 214-678-4050

Licensing Division

Longview District Office

RECEIVED
JUL 28 2006
LEGAL DIVISION

TABC Docket# 495277
SOAH DOCKET NO. 458-06-1976

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	OF
V.	§	
	§	
LONGNECK XPRESS N.P.	§	ADMINISTRATIVE HEARINGS
D/B/A LONGNECK XPRESS,	§	
Respondent	§	

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) Staff (Petitioner) brought this enforcement action against Longneck Xpress N.P. d/b/a Longneck Xpress (Respondent), alleging that on May 19, 2005, Respondent purchased alcoholic beverages from an unauthorized source in violation of the Texas Alcoholic Beverage Code (the Code), and that Respondent knowingly possessed the uninvoiced alcoholic beverages on its licensed premises. Petitioner sought cancellation of Respondent's permits for the uninvoiced alcoholic beverage violation. Alternatively, Petitioner requested a 10-day suspension of the permits for the unauthorized purchase violation, or in lieu of any suspension, that Respondent be permitted to pay a civil penalty of \$1,500. The Administrative Law Judge (ALJ) recommends that Respondent's permits be canceled.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. (the Code) ch. 5 and §§ 11.61 and 28.06, 32.08, as well as 16 TEX. ADMIN. CODE (TAC) § 41.50 of the TABC Rules (the Rules). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On May 23, 2006, a hearing convened in Tyler, Texas, before SOAH ALJ Brenda Coleman.

Petitioner was represented at the hearing by Timothy Griffith, Staff Attorney. Respondent appeared *pro se*. After presentation of evidence and argument, the hearing concluded and the record closed on that date.

II. DISCUSSION AND ANALYSIS

A. Background

Respondent's licensed premises are located at 308 North Timberland, Lufkin, Angelina County, Texas. Respondent holds private club registration permit N-553008, and beverage cartage permit PE-553009, issued by the TABC on March 3, 2004. The permits have been continuously renewed. Carl Hale is the owner and manager of the licensed premises.

B. Applicable Law

Pursuant to the Code, Petitioner may suspend or cancel a permit if it is found that the permittee violated a provision of the Code or the Rules.¹ Alcoholic beverages sold by a club holding a private club registration permit must be purchased from a holder of a local distributor's permit.² "Alcoholic beverage" means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.³ Beer is a malt beverage containing one-half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight.⁴

1 Code § 11.61(b)(2).

2 Code §§ 32.08 and 1.04(3).

3 Code § 1.04(1).

4 Code § 1.04(15).

No permittee may knowingly possess or permit to be possessed on the licensed premises any alcoholic beverage which is not covered by an invoice from whom the alcoholic beverage was purchased.⁵ A permittee includes the holder of a private club registration permit, and the agents, servants and employees of such permit holder.⁶ "Premises" means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person,⁷ unless specifically designated to be excluded by the applicant and approved by the commission or administrator.⁸ Invoice is defined as an instrument issued by the seller of the alcoholic beverages to a permittee.⁹ The law requires the Commission or administrator to cancel the permit of any permittee found, after notice and hearing, to have violated § 28.06 (c) of the Code.¹⁰

C. Petitioner's Evidence and Contentions

Petitioner contends that Respondent has operated its premises in violation of the Code and the Rules. Petitioner alleged that Respondent did not purchase beer from a holder of a local distributor's permit, but from an unauthorized source during a stolen beer sting. Petitioner also alleged that Respondent knowingly possessed the uninvoiced alcoholic beverages on the licensed premises. According to Petitioner, knowingly possessing uninvoiced alcoholic beverages on the premises, regardless of its intended purpose or use, requires the cancellation of Respondent's permits. Petitioner presented three exhibits and the testimony of two witnesses involved in the stolen beer sting in support of its allegations.

5 Code § 28.06(c).

6 16 TAC § 41.50(a)(3).

7 Code § 11.49(a).

8 Code § 11.49(b)(1).

9 16 TAC § 41.50(a)(2).

10 Code § 28.06(d).

1. Testimony of TABC Agent Jeff Taylor

Agent Taylor testified that on May 19, 2005, he and undercover officer, Deputy Marshal Tim Barton, participated in the stolen beer sting at Respondent's licensed. According to Agent Taylor, a private club permittee can only purchase alcoholic beverages from a package store which has a local distributor's permit. Agent Taylor instructed Deputy Marshal Barton to attempt to sell the beer to Respondent's owner or manager to see if Respondent would purchase the alcoholic beverages. Approximately twelve 30-packs of beer, including Budweiser, Bud Light, and Coors, were used in the sting. Agent Taylor stated that no documentation or invoice was provided with the beer and that Deputy Marshal Barton did not hold a local distributor's permit. According to Agent Taylor, although no money changed hands on the premises, Respondent committed the unauthorized purchase violation once Respondent agreed to purchase the beer and took possession of the alcohol beverages.

Agent Taylor was present and conducted surveillance of the sting operation. He personally observed Deputy Marshal Barton unload the beer from his vehicle and deliver it inside the fenced area behind Respondent's establishment. According to Agent Taylor, he is familiar with the definition of "licensed premises" as defined in the Code. On May 19, 2005, the beer was not taken inside the establishment, but it was delivered to a location considered to be appurtenant to Respondent's licensed premises, pursuant to the Code. Once Deputy Marshal Barton advised Agent Taylor that Mr. Hale agreed to purchase the beer and instructed the Deputy Marshal to unload the beer inside the fenced area, Agent Taylor entered the establishment and contacted Mr. Hale.

Agent Taylor stated that the only diagram filed with Respondent's original permit application was the diagram showing the adjoining restaurant which provides food for the club as a result of a food service agreement. Agent Taylor added that the diagram only shows the building's interior portion of the licensed premises and does not show the parking lot or any other area under the control

of Respondent.¹¹

2. Testimony of Deputy Marshal Tim Barton, undercover officer

Deputy Marshal Barton testified that he is employed as a Deputy Marshal with the Timpson Marshal's Office. On May 19, 2005, he worked in an undercover capacity for the Deep East Texas Regional Narcotics Traffic and Task Force. On that date, he participated in a stolen beer sting in conjunction with the TABC at Respondent's licensed premises. According to Deputy Marshal Barton, he was instructed by Agent Taylor to try to sell the beer, purportedly purchased at another location, to Respondent's owner or manager at a lower price to see if Respondent would buy it.

Deputy Marshal Barton stated that upon entering the bar area of Respondent's establishment, he asked to speak with the owner or manager and was contacted by Carl Hale. When Mr. Hale contacted him, Deputy Marshal Barton informed Mr. Hale that he had previously purchased too much beer for a party in Jacksonville, Cherokee County, Texas, and wanted to sell it at whatever price Mr. Hale could pay for it. Deputy Marshal Barton informed Mr. Hale that the beer was bootleg alcohol and that if Mr. Hale was not interested in buying it, the Deputy Marshal would go down the road to see if another establishment would purchase the beer. Deputy Marshal Barton and Mr. Hale then exited the establishment, where the Deputy Marshal showed Mr. Hale the large quantity of beer located inside the Deputy Marshal's vehicle parked in the parking lot.

According to Deputy Marshal Barton, Mr. Hale specifically asked, "Are you with TABC?" Mr. Hale also stated, "TABC would try to pull something like this." When the Deputy Marshal replied, "No," Mr. Hale offered to purchase all of the beer for \$130. Mr. Hale, however, was very adamant in instructing Deputy Marshal Barton not to bring the beer inside the building. Mr. Hale instructed him to set it at the fence located at the rear of the establishment. Deputy Marshal Barton

¹¹ See Respondent's Exhibit One, diagram.

delivered the beer inside the gate, approximately 15 feet from Respondent's back door.¹²

Deputy Marshal Barton testified that he does not possess a local distributor's permit and that the beer was sold to Respondent without an invoice. Deputy Marshal Barton stated that, in his opinion, Mr. Hale knew that his conduct was in violation of the Code. When Mr. Hale went back inside the building, a male exited the back door of the establishment with a dolly. The individual loaded the beer onto the dolly, then carried it approximately 15 feet across the alley to the back door. Agent Taylor stopped the individual before he entered Respondent's club with the beer.

According to Deputy Marshal Barton, Mr. Hale delivered no money to him for the beer because TABC Agent Taylor entered the establishment and contacted Mr. Hale before Mr. Hale returned with the money. Deputy Marshal Barton stated that after Mr. Hale agreed to purchase the beer, he never gave any indication that he had changed his mind or wanted to back out of the agreement.

D. Respondent's Evidence and Contentions

Mr. Hale testified at the hearing on behalf of Respondent and presented one exhibit. He also presented the testimony of Alice Slaughter, Respondent's bartender. Respondent contends that no purchase of alcoholic beverages actually occurred because no money was ever tendered for the beer. Respondent also contends that he did not violate the Code because the beer was never delivered inside his licensed premises, which includes just the interior of the private club. The testimony of Mr. Hale and Ms. Slaughter is summarized below:

¹² See TABC Exhibit Three, Deputy Marshal Barton's diagram of Respondent's exterior premises.

1. Testimony of Carl Hale, owner and manager

Mr. Hale explained that he is a member of a motorcycle club which participates in the annual Iron Horse Rodeo held in Cherokee County, Texas. On May 19, 2005, when Deputy Marshal Barton stated that he had some beer to sell, Mr. Hale entered the parking lot and agreed to purchase the beer, however, the beer was never to be brought into the private club or used for the private club. According to Mr. Hale, he intended to purchase the beer for the motorcycle club, then pull his pickup truck to the rear of the establishment to load the beer into his vehicle. That was why he instructed Deputy Marshal Barton not to take the beer into the club.

Mr. Hale stated that after he agreed to purchase the beer, he went to his office. While speaking to his bartender, Alice Slaughter, she informed him that she believed the beer was bootleg alcohol since it had been purchased in Cherokee County and transported across the county line into Angelina County. Based on this conversation, Mr. Hale stated that he changed his mind and decided not to buy the beer. According to Mr. Hale, he was just about to head out the door to tell Deputy Marshal Barton that he could not make the deal. It was at this time that Agent Taylor entered the private club and informed Mr. Hale that he had violated the Code.

Mr. Hale stated that his licensed premises includes only the building interior which he leases for the private club, *i.e.*, the front entrance, bar, cooler, pool room, office, restrooms and rear exit, as shown in his exhibit. Mr. Hale also stated that Deputy Marshal Barton unloaded the beer in the alley behind the establishment, a location which is accessible by anybody, including vagrants and other business customers. Therefore, he is not responsible for that area or any other area outside the actual leased premises. Mr. Hale added that he never instructed Deputy Marshal Barton to unload the beer inside or outside the gate. He only told the Deputy Marshal to place the beer at the gate.

Finally, Mr. Hale stated that numerous people who are not employed by the club, often help out around the club. Mr. Hale added that sometimes, he has to stop them because they do things that

he knows are illegal or would be illegal. On May 19, 2005, Kenneth, the individual who loaded the beer onto the dolly and transported it across the alley, was such a person.¹³ According to Mr. Hale, he never instructed Kenneth to load the beer, carry it into the club or do anything else. Mr. Hale stated that Kenneth empties the trash in the rear dumpster and helps around the club about once a month. Mr. Hale added that on May 19, 2005, Kenneth had apparently dumped some barrels and took it upon himself to move the beer. Mr. Hale also stated that he never observed Kenneth move the beer because Agent Taylor approached him inside the club before he could get back outside. Agent Taylor informed him that Kenneth was loading the beer onto the dolly.

2. Testimony of Alice Slaughter, bartender

Ms. Slaughter testified that on May 19, 2005, she thought it strange that Deputy Marshal Barton had transported the beer all the way from a party in Jacksonville in Cherokee County to Lufkin in Angelina County to sell it. She said that she suggested to Mr. Hale that it was possibly a sting. Ms. Slaughter stated that Mr. Hale and his wife thought the beer would be a good purchase for the motorcycle club. She advised Mr. Hale that the beer was bootleg and told him that it would not be a good idea.

E. Analysis

After considering the evidence, the ALJ concludes that Petitioner has met its burden and proved that Respondent committed the violations of the Code and the Rules as alleged by Petitioner. The following facts were undisputed by the parties: (1) Deputy Marshal Barton does not hold a local distributor's permit; (2) Deputy Marshal Barton told Mr. Hale that he was attempting to sale bootleg beer; (3) Mr. Hale offered to purchase the beer from Deputy Marshal Barton for \$130; and (4) there was no invoice for the beer. The issues to be determined concerning the alleged violations are: (1) whether Respondent purchased the alcoholic beverages from an unauthorized source; and (2)

¹³ Mr. Hale stated at the hearing that he could not recall Kenneth's last name.

whether Respondent knowingly possessed the uninvoiced alcoholic beverages on the licensed premises. Respondent's explanations regarding the alleged violations are not very credible and do not legally excuse or justify the violations.

1. Whether Respondent purchased the alcoholic beverages from an unauthorized source

Respondent's argument that he did not purchase the beer because he never tendered the \$130 to Deputy Marshal Barton is unpersuasive. Under the facts of this case, to find that Respondent did not purchase the beer because Agent Taylor nabbed Mr. Hale before he returned with the money would allow Respondent to circumvent the law, undermine the enforcement power of the TABC, and render the provision of the Code regarding the purchase of alcohol practically unenforceable in such circumstances.

Deputy Marshal Barton testified that Mr. Hale knew that his conduct was prohibited by the Code because, when presented with the opportunity to purchase the bootleg beer, Mr. Hale first asked, "Are you with TABC?" Mr. Hale then stated, "TABC would try to pull something like this." Mr. Hale's statement at the hearing that he did not know the "legalities" of such conduct prior to discussing it with his bartender is not credible. When Deputy Marshal Barton informed Mr. Hale that he would go down the road to sell the beer if Mr. Hale did not want it, Mr. Hale offered to take all of the beer for \$130 and instructed Deputy Marshal Barton to unload the beer at the rear gate.

Mr. Hale, having made the agreement to purchase the beer, re-entered the establishment through the front entrance and went to his office. Mr. Hale never communicated any intention to back out of the agreement to Deputy Marshal Barton or to Agent Taylor. Nor did Mr. Hale mention the possibility of using the beer for any intended purpose other than for resale at the club. The ALJ reasonably infers from the evidence that Mr. Hale entered the club to retrieve the money to pay for the beer, which would be sold at the club.

Based on Mr. Hale's testimony and diagram, there are several gates in the wooden fence behind the establishment. However, the gate Deputy Marshal Barton was directed to use was the one located only 15 feet from Respondent's back door and closest to club. The ALJ opines that it was more than mere coincidence that shortly after Mr. Hale re-entered the club through the front entrance, Kenneth exited the back door with the dolly, loaded the beer and moved it 15 feet to the back door. But for the fact that Agent Taylor stopped Kenneth at the back door, the beer would have made it inside the premises. The ALJ does not find Mr. Hale's statement that he did not direct Kenneth to pick up the beer at the gate to be credible. Mr. Hale admitted that Kenneth, although not an employee, performed jobs around the club on a monthly basis on behalf of the club, *i.e.*, taking trash to the rear dumpster and dumping barrels. Mr. Hale also stated that he monitored or supervised Kenneth and other non-employees who helped around the club because on many occasions, the non-employees did things, or almost did things that Mr. Hale knew were illegal. Kenneth, acting as Respondent's agent, performed duties which benefitted the club.

The ALJ finds that Respondent intended to take possession of the beer as demonstrated by Mr. Hale's offer to pay \$130 for it, and by his instruction to Deputy Marshal Barton to unload the beer at the gate. Respondent took actual possession of the beer when Kenneth, acting as Respondent's agent, loaded the beer onto the dolly and moved it across the alley to the back door. Despite knowing the circumstances regarding the beer, Mr. Hale agreed to purchase the beer for \$130, acquired possession of the beer and exercised control over the beer. Mr. Hale's statement at the hearing that he was on his way to tell Deputy Marshal Barton that he had changed his mind and would not purchase the beer when Agent Taylor arrived carries very little importance, even if true.

2. Whether Respondent knowingly possessed the uninvoiced alcoholic beverages on the licensed premises

Respondent stated that (1) the uninvoiced alcoholic beverages were never brought inside the club; (2) his licensed premises includes only the leased, interior portion of the building and excludes anything outside the building; and (3) he is not responsible for anything which occurred at the rear

of the building in the alley. Therefore, Respondent argued, it never possessed the alcoholic beverages on the licensed premises. Respondent's argument is not persuasive.

Pursuant to the definition of "premises" in the Code, Respondent's premises would include the rear alley area located 15 feet from the back door of Respondent's establishment. Respondent presented no evidence that the TABC approved any specifically designated portion of the grounds, buildings, vehicles, and appurtenances for exclusion from the licensed premises. Based on the evidence presented, the rear area is adjacent to the club and under the control of Mr. Hale. Similarly, the Houston Court of Appeals held that the sidewalk area outside the club at which the delivery of cocaine occurred was considered part of the premises because the area was adjacent to the club's parking lot and was monitored by the person employed as a doorman at the club. Thus, the sidewalk was under the control of the permittee.¹⁴

As the holder of a private club registration permit, Respondent must purchase all alcoholic beverages from the holder of a local distributor's permit. Also, as a permittee, Respondent may not possess any alcoholic beverage on the licensed premises which is not covered by an invoice. A person acts knowingly "with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist."¹⁵ In the instant case, Respondent knowingly possessed the uninvoiced alcoholic beverages on Respondent's licensed premises in violation of the Code and the Rules.

III. Recommendation

Petitioner requested that Respondent's permits be canceled. A permittee's knowing possession of uninvoiced alcoholic beverages on the licensed premises is a major regulatory

¹⁴ See Wishnow v. Texas Alcoholic Beverage Commission, 757 S.W. 2d 404, 410 (Tex. App.—Houston [14th Dist.] 1988).

¹⁵ TEX. PEN. CODE ANN. § 6.03(b).

violation. Pursuant to § 28.06(d) of the Code and the standard penalty chart contained in 16 TAC § 37.60, cancellation is the sanction for this violation. Pursuant to the Code, the ALJ, therefore, recommends that Respondent's permits be canceled.

IV. FINDINGS OF FACT

1. Respondent's licensed premises are located at 308 North Timberland, Lufkin, Angelina County, Texas.
 2. Respondent holds private club registration permit N-553008, and beverage cartage permit PE-553009, issued by the TABC on March 3, 2004.
 3. On May 15, 2005, the TABC conducted a stolen beer sting at Respondent's licensed premises.
 4. Approximately twelve, 30-packs of uninvoiced beer were used in the sting.
 5. As part of the sting operation, TABC Agent Jeff Taylor instructed undercover officer, Deputy Marshal Tim Barton, to attempt to sell the beer to Respondent's owner or manager.
 6. Deputy Marshal Barton was not a holder of a local distributor's permit.
 7. Deputy Marshal Barton informed Respondent's owner and manager, Carl Hale, that the beer was bootleg beer.
 8. When presented with the opportunity to purchase the beer, Mr. Hale asked Deputy Marshal Barton, "Are you with TABC?" Mr. Hale also stated, "TABC would try to pull something like this."
 9. Mr. Hale was aware that the beer was bootleg beer.
 10. Mr. Hale offered to purchase the beer for \$130, instructed Deputy Marshal Barton to unload the beer at the rear gate in the alley behind the club, then went to retrieve the money from his office.
 11. Shortly after Mr. Hale re-entered the club through the front door, Kenneth exited from the back door into the alley with a dolly.
 12. Acting as Respondent's agent, Kenneth loaded the beer onto the dolly and moved it 15 feet across the alley to the back door.
-

13. While Kenneth was loading the beer onto the dolly, TABC Agent Taylor entered the licensed premises and contacted Mr. Hale.
14. Agent Taylor stopped Kenneth with the beer just prior to his entrance through the back door.
15. Respondent made an agreement with Deputy Marshal Barton to purchase the uninvoiced beer, took delivery of the beer, and exercised control over the beer.
16. The rear alley area, which is adjacent to the club and under the control of Mr. Hale, is part of Respondent's licensed premises.
17. Respondent's owner and manager knew or should have known that the uninvoiced alcoholic beverages were possessed by Respondent on the licensed premises.
18. On April 25, 2006, Petitioner issued a notice of hearing notifying Respondent that a hearing would be held concerning Petitioner's allegations and informing Respondent of the time, place, and nature of the hearing and 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.
19. The hearing was held on May 23, 2006, in Tyler, Smith County, Texas, before SOAH ALJ Brenda Coleman. Petitioner appeared and was represented by Timothy Griffith, Staff Attorney. Respondent appeared *pro se*. After presentation of evidence and argument, the hearing concluded and the record closed on that date.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter pursuant to Chapter 5 and §§ 6.01, 11.61, 28.06, and 32.08 of the Code, as well as 16 TEX. ADMIN. CODE (TAC) §§ 41.50 of the TABC Rules (the Rules).
2. SOAH has jurisdiction over all matters related to conducting 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. Chapter 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. Respondent purchased alcoholic beverages from an unauthorized source, in violation of § 32.08 of the Code.

5. Respondent knowingly possessed on the licensed premises alcoholic beverages which were not covered by an invoice, in violation of § 28.06(c) of the Code.
6. Respondent's permits should be canceled pursuant to § 28.06(d) of the Code.

SIGNED July 24, 2006.

Brenda Coleman

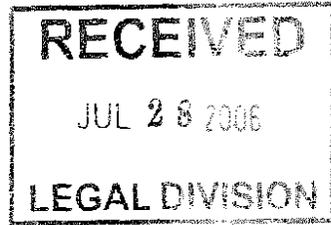
BRENDA COLEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings

TG
cancel



Shelia Bailey Taylor
Chief Administrative Law Judge



For
Shelia's
Review

July 24, 2006

✓

Jeannene Fox
Assistant Administrator
Texas Alcoholic Beverage Commission
5806 Mesa, Ste. 160
Austin, Texas 78731

VIA REGULAR MAIL

Longneck Xpress N. P.
D/B/A Longneck Xpress
c/o Carl Hale
308 N. Timberland
Lufkin, TX 75901

note

VIA REGULAR MAIL

RE: Docket No. 458-06-1976; TABC vs. Longneck Xpress N. P. D/B/A Longneck Xpress

Dear Ms. Fox:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

Brenda Coleman
Brenda Coleman
Administrative Law Judge

BC/SC
Enclosure

cc: Timothy Griffith, Staff Attorney for Texas Alcoholic Beverage Commission, Via Fax