

**DOCKET NO. 458-06-1323**

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION</b>	§	
	§	
<b>V.</b>	§	
	§	
<b>TAIL GATERS PRIVATE CLUB INC.</b>	§	<b>OF</b>
<b>PERMIT NOS. N-553827, FB-553829 &amp;</b>	§	
<b>PE-5553828</b>	§	
<b>COLLIN COUNTY TEXAS</b>	§	
<b>(TABC NO. 496304)</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this action against Tail Gaters Private Club, Inc. (Respondent) seeking cancellation Respondent's Private Club Registration Permit N-553827, Beverage Cartage Permit PE-553828, and Food and Beverage Certificate FB-553829. TABC alleged that Respondent violated numerous sections of the Texas Alcoholic Beverage Code. Among the allegations is that on or about April 11, 2005, Respondent failed to maintain membership committee minutes, in violation of TEX. ALCO. BEV. CODE ANN. § 11.61 (b)(2).

This Proposal for Decision finds the Respondent's Permits and Certificate should be cancelled.

**I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY**

The hearing in this matter convened on March 28, 2006. Attorney Diane Brown represented TABC. The Respondent did not appear and was not represented at the hearing. Administrative Law Judge (ALJ) Kyle J. Groves presided. The hearing was concluded and the record closed that same day.

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No party challenged notice or jurisdiction. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

## II. EVIDENCE

TABC staff offered documentary evidence showing:

(a) On March 15, 2004, Respondent was issued Private Club Registration Permit N-553827, Beverage Cartage Permit PE-553828, and Food and Beverage Certificate FB-553829.

(b) On February 8, 2006, Petitioner sent a Notice of Hearing, by certified mail, return receipt requested, to Respondent's address of record asserting that the TABC was seeking to cancel Respondent's permits and certificate. The Notice of Hearing was returned with the notation, "moved left no address, unable to forward."

(c) The Notice of Hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the allegations in the notice of hearing will be deemed admitted as true, and the relief sought may be granted by default."

## III. STATUTORY AUTHORITY

TEX. ADMIN. CODE § 61.71 (a) (1) states:

The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on or off premise license if it is found, after notice and hearing, that the licensee violated a provision of this code or a rule of the commission during the existence of the license sought to be canceled or suspended or during the immediately preceding license period.

TEX. ADMIN. CODE §155.55 states:

(a) If, after receiving notice of a hearing, a party fails to appear in person or by representative

on the day and time set for hearing or fails to appear by telephone in accordance with this chapter, the ALJ may proceed in that party's absence and, as authorized by applicable law, may enter a default judgment against the defaulting party.

(b) For purposes of this section, entry of a default judgment means the issuance of a proposal for decision or order, where provided by law, against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.

#### IV. PROPOSED FINDINGS OF FACT

1. Tail Gaters Private Club Inc. (Respondent) is the holder of Private Club Registration Permit N-553827, Beverage Cartage Permit PE-553828, and Food and Beverage Certificate FB-553829.
2. Respondent was notified of the factual allegations against Respondent in the Notice of Hearing issued by Petitioner on February 8, 2006. The Notice of Hearing stated in 12-point bold-faced type, "If you fail to appear at the hearing, the allegations in the notice of hearing will be deemed admitted as true, and the relief sought may be granted by default."
3. Respondent was notified of the date, time, and location of the scheduled hearing by the Notice of Hearing dated February 8, 2006.
4. On March 28, 2006, the hearing in this matter convened before ALJ Kyle J. Groves. Diane Brown appeared for Petitioner. Respondent failed to appear.
5. On or about April 11, 2005, Respondent failed to maintain membership committee minutes, in violation of TEX. ALCO. BEV. CODE ANN. § 11.61 (b)(2).

#### V. PROPOSED CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 11.11.
  2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Ch. 2003.
  3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
  4. The factual allegations in the notice of hearing are deemed admitted as true.
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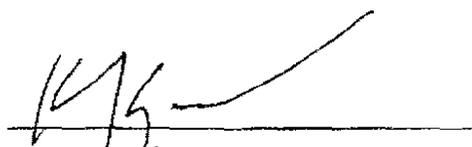
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- 5. By failing to maintain membership committee minutes, Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.61 (b)(2).
  
- 6. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent's Private Club Registration Permit N-553827, Beverage Cartage Permit PE-553828 and Food and Beverage Certificate FB-553829 should be cancelled.

SIGNED JUNE 1<sup>ST</sup>, 2006



**KYLE J. GROVES**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

## SERVICE LIST

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: TABC vs. Tail Gaters Private Club Inc.

DOCKET NUMBER: 458-06-1323

AGENCY CASE NO: 496304

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Allen, TX 75013-3725

**RESPONDENT**  
**VIA REGULAR MAIL**

as of June 01, 2006