



SOAH Docket No. 458-07-2882  
TABC Docket No. 548210

Proposal for Decision

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asserted, as required by TEX. GOV'T CODE ANN. § 2001.052.

On September 17, 2007, a hearing convened before SOAH ALJ Monica Garza at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Jerry R. McClain, TABC Staff Attorney. Respondent appeared through its representative, Riyaz Juma. Following presentation of evidence, the record closed on September 17, 2007.

## II. APPLICABLE LAW

Pursuant to TEX. ALCO. BEV. CODE ANN. § 106.13, TABC may cancel or suspend a permit for not more than 90 days if the permittee, "with criminal negligence, sold, served, dispensed, or delivered an alcoholic beverage to a minor" on the licensed premises.

Further, criminal negligence is defined in TEX. PEN. CODE ANN. § 6.03(d) as follows:

A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

## III. EVIDENCE

### A. Respondent's Permit

Respondent holds a Wine and Beer Retailer's Off-Premise Permit, BQ-459788, issued by TABC, for the premises located at 1320 Harrison, Wichita Falls, Wichita County, Texas. This permit was originally issued on October 28, 1999, and it has been continuously renewed.

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**B. Alleged Sale to Minor on Licensed Premises**

The following evidence describes a sale to a minor occurring on Respondent's premises on September 30, 2006. This evidence was undisputed.

On September 30, 2006, TABC Agent Todd Carroll conducted a "minor" sting operation at Respondent's licensed premises. Lindsey Miller, an 18-year-old female, entered the licensed premises to attempt to purchase alcoholic beverages. Ms. Miller's activities were under the supervision of Agent Carroll. Before entering the premises, Agent Carroll had instructed Ms. Miller to present her valid Texas driver's license, indicating her actual age of 18, upon request.

After entering Respondent's premises, Ms. Miller retrieved a six pack of Bacardi Silver Raz alcoholic beverages and proceeded to the checkout counter. Kalyana Ankala was at the checkout counter working the register. Mr. Ankala checked Ms. Miller's identification. He then proceeded with the transaction, requesting \$7.57 in payment. Ms. Miller provided the requested payment and left the premises with the alcoholic beverages.

When confronted by TABC agents, Mr. Ankala claimed he was not Respondent's employee. However, it is undisputed that he requested identification from Ms. Miller, quoted a price for payment from her, collected her money, and allowed her to leave with the alcoholic beverages.

**C. Respondent's Violation History**

Prior to the incident in question, Respondent incurred three violations for the sale of an alcoholic beverage to a minor. These violations occurred on October 13, 2004, December 9, 2004, and June 3, 2005.

#### IV. ANALYSIS

The evidence clearly establishes that Respondent's agent sold an alcoholic beverage to 18-year-old Ms. Miller on Respondent's licensed premises. The evidence also establishes that this act was committed with criminal negligence because Mr. Ankala should have been aware that Ms. Miller was a minor. Mr. Ankala was presented with Ms. Miller's valid Texas driver's license which indicated Ms. Miller's actual age of 18. Nevertheless, Mr. Ankala proceeded to sell alcoholic beverages to Ms. Miller. Regarding Mr. Ankala's relation to Respondent, he clearly acted as an agent on Respondent's behalf during the incident. Whether or not he was employed by Respondent, Mr. Ankala was allowed to exercise control over the premises. Therefore, his actions are attributed to Respondent.

In regard to the penalty requested, Petitioner has proved the existence of aggravating circumstances based on Respondent's history of three prior violations for the sale of an alcoholic beverage to a minor. Due to this continuous pattern of selling alcoholic beverages to minors, the ALJ agrees with Petitioner's recommendation that Respondent's permit be cancelled.

#### V. PROPOSED FINDINGS OF FACT

1. KSJ Corporation d/b/a Auto's Grocery & Market (Respondent) holds a Wine and Beer Retailer's Off-Premise Permit, BQ-459788, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 1320 Harrison, Wichita Falls, Wichita County, Texas.
2. This permit was originally issued on October 28, 1999, and it has been continuously renewed.
3. On September 30, 2006, TABC Agent Todd Carroll conducted a "minor" sting operation at Respondent's licensed premises.
4. Under the supervision of Agent Carroll, Lindsey Miller, an 18-year-old female, entered the licensed premises to attempt to purchase alcoholic beverages.
5. Before entering the premises, Agent Carroll instructed Ms. Miller to present her valid Texas

driver's license, indicating her actual age of 18, upon request.

6. After entering Respondent's premises, Ms. Miller retrieved a six pack of Bacardi Silver Raz alcoholic beverages and proceeded to the checkout counter.
7. Kalyana Ankala was at the checkout counter working the register.
8. Mr. Ankala checked Ms. Miller's identification.
9. Mr. Ankala then proceeded with the transaction, requesting \$7.57 in payment.
10. Ms. Miller provided the requested payment and left the premises with the alcoholic beverages.
11. By exercising control of Respondent's premises during this transaction, Mr. Ankala was acting as Respondent's agent.
12. Prior to the incident in question, Respondent incurred three violations for the sale of an alcoholic beverage to a minor. These violations occurred on October 13, 2004, December 9, 2004, and June 3, 2005.
13. On May 25, 2007, TABC staff (Petitioner) issued its notice of hearing, directed to Respondent at its address of record.
14. The notice contained a statement of the time, place, and 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 matters asserted.
15. On September 17, 2007, a hearing convened before State Office of Administrative Hearings (SOAH) Administrative Law Judge Monica Garza at the SOAH field office located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas.
16. Petitioner was represented at the hearing by Jerry R. McClain, TABC Staff Attorney. Respondent appeared through its representative, Riyaz Juma.
17. Following presentation of evidence, the record closed on September 17, 2007.

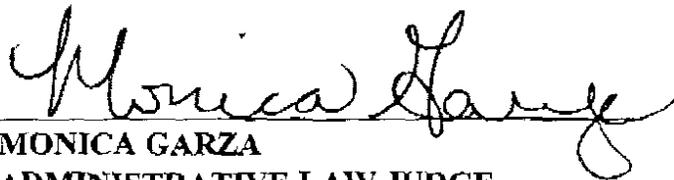
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**VI. PROPOSED CONCLUSIONS OF LAW**

1. TABC has jurisdiction over this matter. TEX. ALCO. BEV. CODE ANN. ch. 5 and §§ 11.61(b)(2) and 106.13.
2. 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. TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received proper notice of the hearing. TEX. GOV'T CODE ANN. § 2001.052.
4. Respondent's agent, with criminal negligence, sold an alcoholic beverage to a minor on the licensed premises. TEX. PEN. CODE ANN. § 6.03(d).
5. Respondent's permit should be cancelled. TEX. ALCO. BEV. CODE ANN. § 106.13 and 16 TEX. ADMIN. CODE § 37.60.

SIGNED September 18, 2007.



**MONICA GARZA**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd.  
Ft. Worth, Texas 76116  
Phone (817) 731-1733  
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**SERVICE LIST**

AGENCY: TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE: KSJ Corporation d/b/a Auto's Grocery & Market

DOCKET NUMBER: 458-07-2882

AGENCY CASE NO: 548210

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Jerry McClain  
Staff Attorney  
Texas Alcoholic Beverage Commission  
Fax: 214/678-4050  
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AGENCY COUNSEL  
BY FAX

K.S.J. Corporation  
d/b/a Auto's Grocery & Market  
1320 Harrison  
Wichita Falls, Texas 76301

RESPONDENT  
BY MAIL

as of May 21, 2007

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

6777 Camp Bowie Blvd., Suite 400  
Ft. Worth, Texas 76116  
Phone (817) 731-1733  
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**FACSIMILE TRANSMISSION**

DATE: September 18, 2007

SOAH Docket No. 458-07-2882 &  
458-07-2885  
TABC vs. KSJ Corporation  
d/b/a Auto's Grocery & Market

FROM: Diana Dupre', Administrative Tech

NUMBER OF PAGES: 16  
(Including cover sheet)

FAX TO:	FAX NO.:	Transaction No./Time:
Alan Steen	512/206-3498	
Jerry McClain	214/678-4050	

**Message:** Attached are the **Proposals for Decision** for the above referred to cause numbers.

**Note:** If all pages are not received, please contact Diana Dupre' at 817/731-1733

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# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

September 18, 2007

Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

**RE: Docket No. 458-07-2882 & 458-07-2885; Texas Alcoholic Beverage Commission vs KSJ Corporation  
d/b/a Auto's Grocery and Market, (TABC Case Nos. 548210 & 507440)**

Dear Mr. Steen:

Enclosed please find the Proposals for Decision in the above-referenced cause numbers for the consideration of the Texas Alcoholic Beverage Commission.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing exceptions, replies, and briefs must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in cursive script that reads "Monica Garza".

Monica Garza  
Administrative Law Judge

MG/ll

Jerry McClain, TABC Staff Attorney, VIA FACSIMILE 214/678-4050  
KSJ Corporation d/b/a Auto's Grocery and Market, VIA FIRST CLASS MAIL