

SOAH DOCKET NO. 458-07-3287

IN RE THE ORIGINAL APPLICATION	§	BEFORE THE STATE OFFICE
OF CRYSTALS' CANTINA ALLEY N.P.	§	
D/B/A CRYSTAL'S CANTINA ALLEY,	§	OF
APPLICANT	§	
SAN JACINTO COUNTY, TEXAS	§	
(TABC CASE NO. 556633)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Crystals' Cantina Alley N.P. d/b/a Crystal's Cantina Alley (Applicant) has applied to the Texas Alcoholic Beverage Commission (Commission) for a private club registration permit, a beverage cartage permit, and a food and beverage certificate for a premises located at 52 SH 150, in Coldspring, San Jacinto County, Texas. Some citizens of Coldspring, Texas (Protestants), filed a protest to the issuance of the permits based upon concerns for the general welfare, health, peace, moral, and safety of the people in the community. The Commission's staff (Staff) remained neutral on the application.

At the hearing Protestants stated that they were protesting the issuance of the permits based on City Ordinance 2006-09 creating an alcohol-free zone in the city of Coldsprings. On November 27, 2006, the Commission received a letter from Mayor Pat Eversol, City of Coldsprings protesting that the issuance of the permits would violate the municipal ordinance against the public's general welfare, health, peace, morals, safety and sense of decency. After considering the arguments and evidence presented by the parties, the Administrative Law Judge (ALJ) finds that there is insufficient basis for denying the application and recommends that the permits be issued.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are set out in the proposed findings of fact and conclusions of law without further discussion here.

On July 20, 2007, a public hearing was convened on this matter in Houston, Harris County, Texas, before Administrative Law Judge Don Smith. The Applicant was represented by Steven Roberts, attorney. Staff was represented by Sandra Patton, attorney. Protestants were represented pro se, and designated Pastor Shanon and Pastor Smith as their spokesmen. The hearing concluded on July 20, 2007, and the record closed the same day.

II. DISCUSSION AND ANALYSIS

A. Applicable Law.

Protestants challenge the application on the basis of § 11.46(a)(8) of the Texas Alcoholic Beverage Code (Code), which provides:

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, peace, morals, and safety of the people and on the public sense of decency.

B. Evidence.

Protestants' Case.

The Protestants, who have the burden of proof, oppose issuance of the permits because of the location of Crystal's Cantina Alley (the Cantina). The Cantina is located on the town square of Coldspring, directly across the street from the county's courthouse, and in close proximity to two churches, a day-care facility, and a community center used by senior citizens. Mayor Eversole of Coldspring did not want to testify, but made a comment that the Cantina is 195 feet from Coldspring

United Methodist Church. Billie Trapp, who is head of the Coldspring Courthouse Square Historic District Committee, did not want to testify, but made a comment that she is concerned that the Cantina will change the historical ambience of the square. Pastor Shanon of the First Baptist Church testified that the Cantina is within sight of his church, and he is concerned the Cantina will be a nuisance like the saloons around the courthouse prior to Prohibition. Pastor Larry Smith of the Coldspring United Methodist Church testified that the Cantina is within an alcohol-free zone in the city limits of Coldspring; there are only 210 feet between the property lines of the Cantina and the church, and he expressed general concerns about safety.

C. Analysis.

Protestants did not offer any actual evidence that the Cantina would have an adverse effect on the general welfare, health, peace, morals, and safety of the community. Although the Cantina is near to two churches, a day-care facility, and a senior citizens community center, there was no evidence submitted that the Cantina will violate the peace and safety of the community. The Cantina has been open for six years with hours of operation on Thursday through Saturday (11-2 for lunch and 6-10 for dinner). The only adverse evidence submitted was that sometimes Pastor Shanon of the First Baptist Church can hear the music at night when he goes to bed at 9:00 p.m., but he also testified that the music does not effect his sleeping.

The City of Coldspring has an ordinance creating an alcohol-free zone prohibiting the sale, the serving, or the delivery of alcoholic beverages by a “dealer” for on-site consumption within 300 feet of a church, public school, public hospital, day-care center, or child-care center. Protestants want the Commission to apply the ordinance to Applicant’s application. Staff informed Protestants that even though the location is in the city’s alcohol-free zone because it is within 300 feet of a church, the Commission has no authority to deny the application on this basis, and that the grounds for refusal are defined in § 11.46(a)(8) of the Texas Alcoholic Beverage Code. A legal brief prepared by Applicant’s attorney, Steven Roberts of Fulbright & Jaworski L.L.P., was provided to Protestants explaining why a private club registration permit holder is not subject to the alcohol-free

zone, mainly for the reason that a private club registration permit holder is not a “dealer” under the Code.

There are several “dealers” within the City of Coldspring that have alcoholic beverage licenses and permits for off-site consumption. On cross-examination the Protestants were questioned about the “dealers,” and did not present any evidence that the “dealers” have had any adverse effect on the general welfare, health, peace, morals, and safety of the community. The Exxon Convenient Store has beer and wine permits, and is closer in location to the Coldspring United Methodist Church than the Applicant. Brookshire Brothers Supermarket is in close proximity to Applicant, and has beer and wine permits.

Presently, customers are encouraged to bring their own bottles of alcoholic beverages to the Cantina, and have been doing so for six years. There has not been any documented problems during the six years of on-site consumption at the Cantina. The Sheriff’s Department is close to the premises, and no evidence was presented that law enforcement has ever received a complaint about Applicant.

More than eighty citizens came to the hearing, many being for, and many being against the issuance of the permits. Pastor Shannon and Pastor Smith testified for the citizens opposing the issuance of the permits, and expressed concern about the issuance of the licenses, but they had no actual evidence to verify the concerns that the issuance of the permits would have an adverse effect on the general welfare, health, peace, morals, and safety of the community. The evidence does not establish that the place or manner in which the Applicant may conduct business warrants the refusal of a permit based on the general welfare, peace, morals, and safety of the people and on the public sense of decency.

III. FINDINGS OF FACT

1. Crystals' Cantina Alley N.P. d/b/a Crystal's Cantina Alley (Applicant), filed an original application with the Texas Alcoholic Beverage Commission (the Commission) for a private club registration permit, a beverage cartage permit, and a food and beverage certificate for a premises located at 52 SH 150, Coldspring, San Jacinto County, Texas.
2. Protests to the application were filed by residents of the area where the premises is located.
3. The Commission's Staff issued a notice of hearing on June 20, 2007.
4. The notice of hearing 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.
5. The hearing was held on July 20, 2007, in Houston, Harris County, Texas, before Don Smith, an Administrative Law Judge with the State Office of Administrative Hearings (SOAH). The Applicant was represented by Steven Roberts, attorney. The Commission's Staff appeared and was represented by Sandra Patton, attorney. Protesting citizens (Protestants) appeared pro se. The hearing concluded on July 20, 2007, and the record closed the same day.
6. The requested permits are for a private club with a restaurant on the town square in Coldspring, San Jacinto County, Texas.
7. There was no evidence demonstrating the issuance of the permits would violate the general welfare, health, peace, morals, or safety of the people or the public sense of decency.
8. Applicant has had alcoholic beverage consumption on the premises for six years and no negative impacts were demonstrated as the result of that practice.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO BEV. CODE ANN. Chapters 1 and 5 and §§ 6.01, 11.41, 11.46, and 32.01.
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. Based on the foregoing findings of fact, issuance of the requested permits will not adversely affect the safety of the public, the general welfare, peace, or morals of the people, nor violate the public sense of decency, as described in TEX. ALCO. BEV. CODE ANN. § 11.46.
5. Based on the foregoing findings and conclusions, the application of Crystals' Cantina Alley N.P. should be granted.

Signed this 9th day of August, 2007.



DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge

August 09, 2007

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

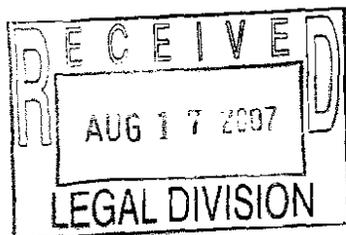
VIA REGULAR MAIL

RE: Docket No. 458-07-3287/Texas Alcoholic Beverage Commission vs. Crystal's Cantina Alley, N.P. d/b/a Crystal's Cantina Alley

Dear Mr. Steen:

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,

A handwritten signature in cursive script that reads "Don Smith".

Don Smith
Administrative Law Judge

DS/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL
Sandra Patton, Attorney, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008-
VIA REGULAR MAIL
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731-
VIA REGULAR MAIL
Pat Eversole, Mayor, City of Coldspring, P.O. Box 247, Coldspring, Texas 77331 - VIA REGULAR MAIL
Dr. Don M. Shannon, Pastor, First Baptist Church, 100 E. Pine Avenue, Coldspring, Texas 77331 - VIA REGULAR MAIL
Robert H. Trapp, Chairman, Coldspring United Methodist Church, P.O. Box 1520, Coldspring, Texas 77331 - VIA REGULAR MAIL
Steven L. Roberts, Attorney for Respondent, 1301 McKinney, Suite 5100, Houston, Texas 77010-3085 -VIA REGULAR MAIL