

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

May 28, 2008

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

**VIA HAND DELIVERY**

**RE: Docket No. 458-07-2971; Texas Alcoholic Beverage Commission v. Buc-ee's Ltd., d/b/a Buc-ee's #16 Lee County Texas (TABC Case No. 559152)**

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in blue ink that reads "Anne K. Perez".

Anne K. Perez  
Administrative Law Judge

AKP/Ls  
Enclosure

xc Judith Kennison, Staff Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 (with 1 hearing tape & Exhibits 1 – 8) - **VIA HAND DELIVERY**  
Clyde W. Burlison, P.C., 6776 Southwest Freeway, Ste. 620, Houston, TX 77074 - **VIA REGULAR MAIL**



William P. Clements Building  
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025  
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994  
<http://www.soah.state.tx.us>

SOAH DOCKET NO. 458-07-2971

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION,  
Petitioner

V.

BUC-EE'S LTD.  
D/B/A BUC-EE'S #16  
LEE COUNTY, TEXAS  
(TABC CASE NO. 559152)  
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Staff or TABC) brought this action against Buc-Ee's Ltd. d/b/a Buc-Ee's (Respondent), for selling alcoholic beverages to a minor. Staff recommended the license be suspended for a period of 15 days, or, in lieu of a suspension, that Respondent pay an administrative penalty of \$2,250. The Administrative Law Judge (ALJ) recommends the license be suspended for seven days, or, in lieu of suspension, that the Respondent pay an administrative penalty of \$1,050.

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

The hearing on the merits convened February 27, 2008, before ALJ Anne K. Perez at SOAH's hearing facility located at 300 West 15<sup>th</sup> Street, 4<sup>th</sup> Floor, Austin, Texas. Staff attorney Judith Kennison appeared on behalf of TABC. Respondent appeared through its attorney, Clyde W. Burleson. The hearing adjourned the same day and the record closed on April 2, 2008, after the submission of post-hearing briefs.

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

## II. APPLICABLE LAW

TABC may cancel or suspend a retail dealer's permit for not more than 60 days if the permittee's agent or employee, "with criminal negligence," sold or served an alcoholic beverage to a minor on the licensed premises.<sup>1</sup> The Code adopts the criminal negligence standard set forth in the Texas Penal Code:<sup>2</sup> 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 and 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 perceived by the actor.

TABC is generally required to allow a permittee to pay a civil penalty in lieu of a permit suspension. But this decision is discretionary if the basis of the suspension is the permittee's sale of alcoholic beverages to a minor.<sup>3</sup> If payment of a civil penalty is appropriate under 16 TAC § 37.61(b),<sup>4</sup> the amount imposed may not be less than \$150 per day nor more than \$25,000 for each day the permit was to be suspended.<sup>5</sup>

Also instructive on the issue of penalties is 16 TAC § 37.60, which contains a standard penalty chart. Although the chart does not bind an ALJ to specific recommendations,<sup>6</sup> it does reflect

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<sup>1</sup> TEX. ALCO. BEV. CODE ANN. (Code) §§ 61.71(a)(5) and 106.13.

<sup>2</sup> Code § 1.08 and TEX. PEN. CODE ANN. § 6.03(d).

<sup>3</sup> Code § 11.64(a) and 16 TEX. ADMIN. CODE (TAC) § 37.61(a)(6).

<sup>4</sup> 16 TAC § 37.61(b), which was adopted by the agency pursuant to Code § 11.64(a), requires the agency to consider the type of permit held by the violating permittee and whether the sale of alcoholic beverages is the primary source of the permittee's business; the type of violation(s) involved; the permittee's history of violations; and any aggravating or ameliorating circumstances.

<sup>5</sup> Code § 11.64(a).

<sup>6</sup> 16 TAC § 37.60(g).

TABC's view of appropriate penalty ranges for various violations. The chart provides for a suspension period of seven to 20 days for the sale of alcoholic beverages to a minor.<sup>7</sup> In addition, the rule provides for the consideration of aggravating or mitigating circumstances in assessing a penalty.<sup>8</sup>

### III. DISCUSSION

#### A. Respondent's Permit

Respondent holds a Wine and Beer Retailer's Off-Premise Permit, BQ-483142, issued by TABC for the convenience store known as Buc-Ec's #16, located at 2375 E. Austin in Giddings, Lee County, Texas. The permit was originally issued on November 6, 2000, and it has been continuously renewed.<sup>9</sup>

#### B. TABC's Minor Sting Guidelines for Law Enforcement (guidelines)<sup>10</sup>

Minor sting operations are performed undercover, and are designed to identify retail establishments that sell or serve alcoholic beverages to minors. The guidelines set forth policies and procedures for TABC agents that use this enforcement method. The purpose of the publication is to ensure that minor sting operations are conducted in a consistent manner by agents throughout the state.

The selection of minors for the program is addressed in the guidelines. The minor cannot be older than age 18 and "must display the appearance which could generally be expected of a person

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<sup>7</sup> 16 TAC § 37.60(a).

<sup>8</sup> 16 TAC § 37.60(f); *also see* 16 TAC § 37.61(c)

<sup>9</sup> Exhibit 2.

<sup>10</sup> This publication is available on TABC's website, at <http://www.tabc.state.tx.us>. A copy of the guidelines was admitted as Exhibit 8.

under 21 years of age.” In addition, “Female minors should wear no (or minimal) make-up and minimal jewelry.” A subsection titled “Prior Acts” states, “It is important that the minor has never previously purchased alcoholic beverages or used or possessed false identification,” and “The minor should not be a regular customer in the licensed premises.”

### **C. Facts Not in Dispute**

The following facts were not challenged.<sup>11</sup> On February 3, 2007, a sale to a minor occurred on Respondent’s licensed premises. On that date, TABC Agents John Altum and Joe Chavez conducted a minor sting operation at Buc-Ee’s #16 in Giddings, Texas. N.G.,<sup>12</sup> a female six months shy of her 18<sup>th</sup> birthday, entered the licensed premises to attempt to purchase alcoholic beverages. N.G.’s activities were under the supervision of undercover Agent Altum, who was present in the store and witnessed the transaction.

N.G. entered the convenience store and retrieved a four-pack of Smirnoff cooler alcoholic beverages. She proceeded to the checkout counter, where Faith Jackson, wearing a red “Buc-Ee’s” polo shirt, was working the register. Ms. Jackson did not question N.G. about her age, nor did she request to see N.G.’s identification. Ms. Jackson proceeded with the transaction and requested payment from the minor. N.G. provided the requested payment in cash and left the licensed premises with the alcoholic beverages.

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<sup>11</sup> The parties stipulated to Exhibits 1-8, which were admitted: the notice of hearing; Respondent’s licensing records maintained by the TABC; three photographs of the minor involved in the sting operation; a photocopy of the minor’s Texas driver’s license; a videotape of the transaction that was recorded on a hidden camera carried by the minor; and TABC’s “Minor Sting Guidelines for Law Enforcement.” Portions of the TABC agents’ testimony were also not disputed.

<sup>12</sup> Although the parties identified N.G. by her full name in their pleadings and at hearing, she is still a minor and will be referred to herein as either “N.G.” or “the minor.”

**D. Testimony****1. Agent John Altum**

Agent Altum has been employed as an agent with the TABC in Austin for the past four years. Just prior to that, he worked for two years as an officer with the Giddings Police Department. He was also employed by the Bastrop County Sheriff's office from 1996 to 2002, and by the Elgin Police Department from 1993 to 1995.

Agent Altum is personally familiar with Buc-Ee's #16 in Giddings. He described it as a large, highly-trafficked convenience store, with approximately 18-20 gas pump stations and 13-15 coolers of ice located outside the building. He was unaware of any of previous administrative violations committed by the licensee at this location.

In accordance with the TABC's minor sting program, Agent Altum came from Austin to serve as an undercover officer. He first met N.G. on the day of the sting operation at the Bastrop County Sheriff's office, where she was waiting with Agent Chavez. Agent Altum understood that the minor's mother worked as a dispatcher there, but he did not know (nor did he inquire) whether N.G. had ever lived in Giddings; whether she had ever visited Buc-Ee's #16 before; or whether she had previously purchased alcoholic beverages from that location.

The agents and N.G. traveled from the Bastrop County Sheriff's office to Giddings, where they separated. Agent Altum and the minor arrived at Buc-Ee's #16 in an unmarked car.<sup>13</sup> Agent Altum then instructed N.G. to go directly to the beer cooler in the store and pick out a "girly" alcoholic beverage.<sup>14</sup> He entered the store as well. Agent Altum witnessed N.G. retrieve the

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<sup>13</sup> Agent Chavez was located somewhere nearby, but he did not enter the licensed premises.

<sup>14</sup> Agent Altum testified this meant "something girls would typically drink."

alcoholic beverages from the cooler. He was standing three or four feet behind the minor when she moved to the counter, and he observed Ms. Jackson accept cash from N.G. for the Smirnoff coolers. He said the minor then exited the store with the alcoholic beverages.

Agent Altum verified that the three photographs of N.G. (Exhibits 3, 5, and 6) were true and accurate representations of her appearance on the night of the sting operation. He acknowledged that she was wearing jewelry and relatively heavy eyeliner, and that her long hair was bleached blonde. However, Agent Altum could not tell whether her cheeks were colored with blush, and he disagreed with the suggestion that her lipstick was heavy in appearance. He concluded that N.G. had a "typical teenage appearance." He denied she "looked any older than she was."

## **2. Agent Joe Chavez**

Agent Chavez has been employed as an agent with TABC in Bastrop for over four years. He previously worked for six years at high schools in the Austin Independent School District (AISD).

Agent Chavez set up the TABC minor sting operation in Giddings on February 3, 2007. He had seen N.G. with her mother on multiple occasions at the Bastrop County Sheriff's office, and he recruited her through her mother. Agent Chavez initially screened N.G. for the program and confirmed she had never received a citation for "minor in possession" or "minor in consumption" of alcoholic beverages. He admitted, however, that he did not know whether N.G. had ever lived in Giddings; whether she had previously been a customer at Buc-ee's #16; whether she had ever possessed or used false identification; or whether she had previously attempted to purchase alcoholic beverages at this or any other location.

With respect to the pre-sting instructions Agent Chavez imparted to N.G., he testified he told her to enter the licensed premises and go directly to the coolers, where she was to retrieve an alcoholic beverage. She was instructed to then walk to the sales counter and place the alcoholic

beverages there. What happened next was up to the store clerk. Agent Chavez told the minor that if the clerk requested to see identification she should present her valid Texas driver's license, indicating her actual age of 17. Also, if the clerk asked her age N.G. was to tell the truth. If the clerk made the sale, the minor was instructed to walk out of the licensed premises and return to the car, where a TABC agent would collect the alcoholic beverages and the receipt reflecting payment.

On cross-examination, Agent Chavez admitted that before N.G. entered the convenience store he told her to purchase "flavored" beer (wine coolers) because, based on his field experience, those are the type of beverages young women tend to consume. He agreed with counsel's suggestion that if N.G. had attempted to purchase an 18-pack of Budweiser it might have set off "alarm bells" for the store clerk.

Once the minor exited Buc-ee's #16 carrying the Smirnoff coolers, Agent Chavez was notified that a violation had occurred. He entered the licensed premises, identified Ms. Jackson as the store clerk who made the sale to N.G., and gathered other information pertinent to the TABC's investigation. He determined that Ms. Jackson was not seller-certified by the TABC.<sup>15</sup>

Agent Chavez acknowledged that Respondent had notices posted on the licensed premises designed to prevent the sale of alcoholic beverages to minors, and that Respondent generally required its employees to attend seller-server training. He also said that Ms. Jackson had been working at Respondent's convenience store for less than three weeks. Agent Chavez explained that permittees are given a "30-day window" in which to have their employees seller-certified by the TABC, and such certification may work to restrain prosecution of a violation that occurs on the licensed premises. However, he said the affirmative defense was not available to Respondent for two

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<sup>15</sup> That is, Ms. Jackson had not attended a TABC-approved training course that educates employees how to make responsible sales of alcoholic beverages.

reasons: Ms. Jackson had not attended seller-server training and she was the actual employee who made the prohibited sale.<sup>16</sup>

With respect to N.G.'s appearance on February 3, 2007, Agent Chavez denied being "nervous" about it. He reviewed the minor's photographs (Exhibits 3, 5, and 6) and testified that her appearance was the same as he had observed on previous occasions. He acknowledged that N.G. was wearing make-up during the sting operation. Agent Chavez at first refused to characterize the minor's eyeliner and lipstick as "heavy" or "light," but when pressed by counsel he testified her make-up application was "light." He ultimately concluded, based on his employment experience with AISD, that her appearance was typical of a high school student.

Agent Chavez testified that Buc-Ee's #16 had no record of previous administrative violations. He agreed there were no aggravating factors that might justify additional sanctions beyond Staff's recommendation of a 15-day suspension or a \$2,250 fine. He also acknowledged that, consistent with TABC enforcement policy, Respondent's location was placed under surveillance approximately three weeks after the violation occurred (a "re-sting") and no illegal activities were observed.

#### **E. The Minor's Appearance (Photographs, Videotape, and Driver's License)**

The photographs of N.G. from her waist up (Exhibits 3, 5, and 6) were taken on the evening of the sting operation. She is wearing a blue sweater with a semi-cowl neck and a blue jean jacket over it, as well as bright-colored earrings that "dangle" about three inches below her ears. No other jewelry is visible. N.G. is full-faced with firm skin. Her long blonde hair appears to be bleached, with visible dark roots. She is wearing heavy black eyeliner, eyeshadow, foundation and/or blush, and lipstick and/or lip gloss. Her eyebrows are plucked and shaped. She appears large in stature, with a mature figure.

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<sup>16</sup> Agent Chavez' testimony is consistent with the requirements of Code § 106.14(a) and 16 TAC § 50.10.

N.G.'s driver's license (Exhibit 4) reflects she is five feet, nine inches tall. The videotape (Exhibit 7) indicates she was wearing blue jeans during the sting operation, but it reveals nothing else of her appearance.

#### **F. Parties' Arguments**

Respondent argued that the manner in which the sting operation was conducted violated TABC guidelines, and was inappropriate in other respects as well. The agent working undercover, John Altum, was formerly employed by the local police department and should not have participated in a Giddings sting operation. In addition, the transaction itself was "tailored": the type of alcoholic beverages purchased by the minor was contrived so as not to raise the store clerk's suspicions. N.G.'s appearance was also not in accordance with TABC guidelines. The minor was wearing heavy make-up and jewelry and appeared to be in her mid-twenties. She was only a few months short of her 18<sup>th</sup> birthday (*i.e.*, in a short period of time N.G. would be ineligible to participate in the program). And, the agents failed to verify that N.G. had not: (1) previously purchased alcoholic beverages; (2) used or possessed false identification; or (3) previously been a customer at the licensed premises. Because TABC guidelines were not followed, Respondent argued, the element of criminal negligence has been negated. Staff has not met its required burden of proof and no sanction should be imposed upon Respondent.

Staff relies on the photographs of N.G. in arguing the prohibited sale was made with criminal negligence. Staff asserts that N.G.'s youthful appearance was obvious. This is true despite the fact that she wore make-up and jewelry, Staff urged, and her appearance was consistent with that of a female under 21 years of age. A reasonable person under the same circumstances as Ms. Jackson would have requested that N.G. provide identification before making the sale. Respondent also presented no legal authority that the agents' departure from TABC guidelines constitutes a defense in this case, similar to entrapment.

#### IV. ANALYSIS

A preponderance of the evidence establishes that on February 3, 2007, alcoholic beverages were sold to a minor at Respondent's licensed premises. The prohibited sale was made by Respondent's employee, Ms. Jackson, who was not seller-certified by the TABC.

Respondent is subject to administrative sanction for this violation if the sale was made with criminal negligence.<sup>17</sup> It is Staff's burden to demonstrate, by a preponderance of the evidence, that Ms. Jackson was criminally negligent in selling alcoholic beverages to N.G., a minor.

Based on the definition of "criminal negligence" in the Texas Penal Code, Staff is required to show that: (1) Ms. Jackson's failure to be aware of the substantial risk that N.G. was a minor was unjustifiable; (2) Ms. Jackson's failure to ask N.G. for identification created a substantial or unjustifiable risk that alcohol would be sold to a minor; and (3) Ms. Jackson's failure to perceive this substantial risk was a gross deviation from the standard of care an ordinary seller would exercise under the same circumstances.

Respondent raised several valid points. Consistency of enforcement requires that minor sting operations be conducted in accordance with agency guidelines. That was not done in Respondent's case. N.G. was not properly screened for the program (or, for this sting operation in particular). The TABC agents failed to ask N.G. certain questions necessary to determine whether: (1) she had ever been a customer at Buc-Ec's #16; (2) she had previously purchased alcoholic beverages at Buc-Ee's #16 or any other location; and (3) she had ever used or possessed false identification. In addition, N.G.'s appearance on the night of the sting operation did not conform with the published parameters

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<sup>17</sup> Code §§ 61.71(a)(5) and 106.13.

of the program. N.G. was wearing obvious (or even heavy) make-up, and some might describe her earrings as flashy.<sup>18</sup>

In her photographs N.G. appears several years older than her age, which was 17 at the time. She could easily have been mistaken for a 21-year old female. Her mature appearance is the result of her height and fully-developed figure, as well as her clearly visible make-up, jewelry, and bleached hair.

However, N.G. still presented as a very young woman *not obviously age 21 or older*, and this is the standard required by statute. N.G.'s appearance alone required Ms. Jackson to ask for identification before selling alcoholic beverages to her. Ms. Jackson should have been aware of the substantial risk that N.G. was a minor. And, because N.G. was not clearly the age of majority, Ms. Jackson should have been aware that her failure to ask N.G. for identification created a substantial and unjustifiable risk that alcohol would be sold to a minor. Ms. Jackson's conduct grossly deviated from the standard of care an ordinary seller would exercise under the same circumstances, as viewed from the perspective of an ordinary seller.

Even so, there are a number of situational circumstances that may be viewed as ameliorating or mitigating. There is no evidence the violation occurred intentionally. It was instead the result of a mistake in judgment, made by an individual who had been employed by Respondent for less than three weeks. That individual had not yet attended seller-server training, which Respondent generally required of its employees.<sup>19</sup> Respondent had also posted notices on the licensed premises designed to reduce the possibility that alcoholic beverages would be sold to minors. In addition, there was no

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<sup>18</sup> Agent Chavez, who was employed for six years in a high-school environment, testified that N.G.'s appearance (including her make-up and jewelry) was typical of a high school student.

<sup>19</sup> The "30-day window" for Ms. Jackson to attend server training was still open on the date of the violation. 16 TAC § 50.10(b). The ALJ views this as a mitigating factor even though the affirmative defense under Code § 106.14 is not available to Respondent.

continuous pattern of sales to minors at Respondent's location, and when the location was placed under surveillance several weeks after the violation occurred, no illegal activity was observed. Respondent also has no history of other prior violations.

These circumstances, in addition to the fact that the minor N.G. had the appearance of a young woman closer to age 21 than to age 17, provide support for a lesser sanction than that recommended by Staff. The ALJ therefore recommends that Respondent's license be suspended for seven days, or, in lieu of a suspension, that the Respondent pay an administrative penalty of \$1,050.

#### **V. PROPOSED FINDINGS OF FACT**

1. Buc-Ee's Ltd. d/b/a Buc-Ee's #16 (Respondent) holds a Wine and Beer Retailer's Off-Premise Permit, BQ-483142, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 2375 E. Austin, Giddings, Lee County, Texas.
2. This permit was originally issued on November 6, 2000, and it has been continuously renewed.
3. On February 3, 2007, TABC Agents Joe Chavez and John Altum conducted a minor sting operation at Respondent's licensed premises.
4. Under the supervision of undercover Agent Altum, N.G., a 17½-year-old female, entered the licensed premises to attempt to purchase alcoholic beverages. Agent Altum was present in the store to observe.
5. Agent Chavez, who was nearby but off-location, had previously instructed N.G. to present her valid Texas driver's license, indicating her actual age of 17, upon request; and, to tell the truth about her age if questioned.
6. After entering Respondent's premises, N.G. retrieved a four-pack of Smirnoff cooler alcoholic beverages and proceeded to the checkout counter.
7. Faith Jackson was at the store's checkout counter, working the register.
8. Ms. Jackson did not question N.G. concerning her age, nor did she request to see N.G.'s identification.

9. Ms. Jackson proceeded with the transaction and requested payment from N.G..
10. N.G. provided the requested payment and left the premises with the alcoholic beverages.
11. N.G. was not screened for the program in accordance with TABC's Minor Sting Guidelines for Law Enforcement. The agents failed to determine whether N.G. had ever been a customer at Buc-Ee's #16; whether she had previously purchased alcoholic beverages at this or any other location; or whether she had ever used or possessed false identification.
12. N.G.'s appearance on the date of the sting operation did not conform with agency sting guidelines. N.G. appeared several years older than her age, and she could easily have been mistaken for a 21-year old female. Her mature appearance was due to her height and fully-developed figure, as well as her visible make-up, bleached hair, and jewelry.
13. N.G. nonetheless presented as a very young woman *not obviously age 21 or older*, and her appearance alone required Ms. Jackson to ask for identification before selling alcoholic beverages to her.
14. Ms. Jackson should have been aware of the substantial risk that N.G. was a minor.
15. Ms. Jackson should have been aware that her failure to ask N.G. for identification created a substantial and unjustifiable risk that alcohol would be sold to a minor.
16. Ms. Jackson's conduct grossly deviated from the standard of care an ordinary seller would exercise under the same circumstances, as viewed from the perspective of an ordinary seller.
17. On the date of the sting operation, Ms. Jackson had been employed by Respondent for less than three weeks.
18. Ms. Jackson had not yet attended a TABC-approved seller-server training course, although Respondent generally required its employees to obtain seller-certification.
19. Respondent's violation did not occur intentionally, but was the result of a new employee's mistake in judgment.
20. Respondent had notices posted on the licensed premises designed to prevent the sale of alcoholic beverages to minors.

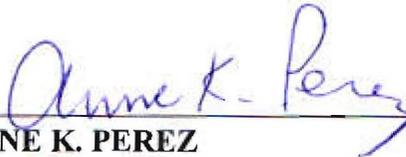
21. Respondent's location was placed under surveillance approximately three weeks after the violation occurred and no illegal activities were observed.
22. There was no continuous pattern of sales to minors at Respondent's location.
23. Respondent has no record of previous administrative violations.
24. On April 26, 2007, TABC staff issued a notice of the alleged violation to Respondent at its address of record.
25. On May 30, 2007, TABC staff issued its notice of hearing, directed to Respondent's attorney of record, as well as the Respondent.
26. 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.
27. The hearing on the merits convened February 27, 2008, before ALJ Anne K. Perez at SOAH's hearing facility located at 300 West 15<sup>th</sup> Street, 4<sup>th</sup> Floor, Austin, Texas. The hearing adjourned the same day.
28. Staff attorney Judith Kennison appeared on behalf of the TABC. Respondent appeared through its attorney, Clyde W. Burleson.
29. After the submission of post-hearing briefs, the record closed on April 2, 2008.

## VI. PROPOSED CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter. TEX. ALCO. BEV. CODE ANN. (Code) §§ 11.61(b)(2), 61.71 and 106.13.
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to the conduct of a hearing in this matter, including the preparation of a proposal for decision with findings of fact and conclusions of law. TEX. GOV'T CODE CH. 2001 and 2003.

3. Staff sent notice of the hearing as required by the Administrative Procedure Act and SOAH's rules. TEX. GOV'T CODE Ch. 2001; 1 TEX. ADMIN. CODE (TAC) § 155.27.
4. Based on Findings of Fact Nos. 4-10 and 13-16, Respondent's employee, with criminal negligence, sold an alcoholic beverage to a minor on the licensed premises, in violation of Code §§ 61.71(a)(5) and 106.13.
5. Based on Findings of Fact Nos. 12 and 17-23, there were mitigating circumstances associated with Respondent's violation, which are properly considered. 16 TAC § 37.60(f).
6. Based on Conclusions of Law Nos. 4 and 5, Respondent's permit should be suspended for a period of seven days, or, in lieu of a suspension, Respondent should pay an administrative penalty of \$1,050. Code §§ 11.61, 11.64, 61.71, and 106.13.

**SIGNED May 28, 2008.**



**ANNE K. PEREZ**

**ADMINISTRATIVE LAW JUDGE**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**