

DOCKET NO. 458-98-1151
TABC CASE NO. 564600

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE
	§	
	§	
vs.	§	
	§	STATE OFFICE OF
KYONG CHA OH D/B/A	§	
BUY LOW DISCOUNT FOOD & BEER	§	
PERMIT NO. BQ-306448	§	
DALLAS COUNTY, TEXAS	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission Staff (Petitioner) brought this action against Kyong Cha Oh d/b/a Buy Low Discount Food & Beer (Respondent) alleging that Respondent submitted false or incorrect information in its original application for a Wine and Beer Retailer's Off-Premise permit, and that Respondent sold alcoholic beverages from a licensed premise within 300 feet of a public school. Petitioner has failed to show, by a preponderance of the evidence, that Respondent's submitting false or incorrect information in its original application for a Wine and Beer Retailer's Off-Premise permit constitutes a violation of the Texas Alcoholic Beverage Code. Petitioner has shown, however, that Respondent sold alcoholic beverages from a licensed premise within 300 feet of a public school. This proposal recommends that Respondent's Wine and Beer Retailer's Off-Premise permit be canceled.

I.

PROCEDURAL HISTORY

On June 17, 1998, Petitioner issued a Notice of Hearing to Respondent alleging that Respondent had submitted false or incorrect information in its original application for a Wine and Beer Retailer's Off-Premise permit and that Respondent was selling alcoholic beverages from a licensed premises within 300 feet of an elementary school. A hearing was scheduled for July 16, 1998. On July 13, 1998, Respondent filed a motion for continuance. The motion was granted and the hearing reset for October 9, 1998. On October 9, 1998, a public hearing was held before Jerry Van Hamme, Administrative Law Judge, at the Offices of the State Office of Administrative Hearings, 6300 Forest Park Road, Dallas, Texas. Petitioner was represented by Timothy Griffith, Attorney. Respondent was represented by Stephen Shaw, Attorney. After the hearing, attorneys for both parties requested that the record remain open for receipt of post-hearing briefs. The record remained open until October 16, 1998, for receipt of Petitioner's brief, and until October 23, 1998, for receipt of Respondent's brief. Neither party submitted post-hearing briefs.

FEB - 1 1999
LEGAL DIVISION

II.
JURISDICTION

The Texas Alcoholic Beverage Commission has jurisdiction over this matter under Tex. Alco. Bev. Code Ann. Sec.6.01(b) and Sec.11.61(b). The State Office of Administrative Hearings has jurisdiction under Tex. Govt. Code Ann. Sec.2003 over all matters related to the hearing of this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law.

III.
DISCUSSION

A. Factual Background

Respondent holds a Wine and Beer Retailer's Off-Premise Permit, BQ-306448, for Buy Low Discount Food & Beer, 4825 Ross Avenue, Dallas, Dallas County, Texas. Respondent was issued this permit on April 7, 1995, and has renewed it continuously.

B. Petitioner's Contentions and Evidence

(1) False or Misleading Statements in Application

Petitioner contends that Respondent submitted false or misleading information in its application for a Wine and Beer Retailer's Off Premise Permit. Respondent stated in its permit application, which was signed on February 10, 1995 (Pet. Ex.#3), that the licensed premises were not within either 300 feet¹ or 1,000 feet² of a public school, measuring from the nearest property line of the school to the nearest public entrance of the premises. However, at the time Respondent submitted this application, the distance between the nearest public entrance of the licensed premise

¹Respondent's application (Pet Ex. #3) lists the following question:

"27. Will your business be located within 300 feet of a public school? Measurements are to be made from nearest property line of the public school along the street lines and in a direct line across intersections to the nearest doorway by which the public may enter the place of business."

Respondent checked the box listed "NO".

²Respondent's application (Pet Ex. #3) also lists the following question:

"28. Will your business be located within 1,000 feet of the nearest property line of a public school? Measurement to be made from door which the public may enter establishment."

Respondent checked the box listed "NO".

and the nearest property line of Fannin Elementary School was 167 feet,³ well within both the 300 foot and 1,000 foot distances. Petitioner therefore alleged in its Notice of Hearing that "[o]n or about February 10, 1995, the Permittee did make a false or misleading statement in connection with his original application, in violation of Section 61.74(a)(4) of the Code."

(2) Selling Alcoholic Beverages Within 300 Feet of a Public School

Petitioner also contends that Respondent sold alcoholic beverages from its licensed premises in violation of Tex. Alco. Bev. Code Ann. Section 109.33.⁴ This code provision authorizes the "governing board of an incorporated city" to enact regulations prohibiting the sale of alcoholic beverages by a dealer whose place of business is within 300 feet of a public school or, under certain circumstances, within 1,000 feet of a public school. Petitioner contends that pursuant to this statutory authority the City of Dallas enacted Dallas City Code Section 6-4(a) & (c) prohibiting the sale of alcoholic beverages within 300 feet of a public school.⁵

³ Both parties presented survey plats showing the distance between the door of Respondent's licensed premise and Fannin Elementary School. Petitioner's plat measures the distance from the location of Respondent's door where it existed at the time of the permit application to both the school's nearest property line (167 feet) and to the school's nearest door (236 feet) (Pet. Ex. #4). Respondent's plat measures the distance from the new location of Respondent's doorway to the school's nearest property line (194.04 feet) and to the school's nearest door (319.88 feet). The doorway to Respondent's business was moved between the time the original application was made and the date of the hearing (Resp. Ex.#2).

⁴Sec. 109.33. SALES NEAR SCHOOL, CHURCH, OR HOSPITAL.

(a) The commissioners court of a county may enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town may enact regulations applicable in the city or town, prohibiting the sale of alcoholic beverages by a dealer whose place of business is within:

- (1) 300 feet of a church, public school, or public hospital; or
- (2) 1,000 feet of a public school, if the commissioners court or the governing body receives a request from the board of trustees of a school district under Section 38.007, Education Code.

(b) The measurement of the distance between the place of business where alcoholic beverages are sold and the ... public schools shall be in a direct line from the property line of the public school to the property line of the place of business, and in a direct line across intersections.

(c) Every applicant for an original alcoholic beverage license or permit for a location with a door by which the public may enter the place of business of the applicant that is within 1,000 feet of the nearest property line of a public school, measured along street lines and directly across intersections, must give written notice of the application to officials of the public school before filing the application with the commission. A copy of the notice must be submitted to the commission with the application. This Subsection (c) does not apply to a permit or license covering a premise where minors are prohibited from entering the premises under Section 109.53. ...

⁵Sec 6-4 Dallas City Code

(a) No person may sell alcoholic beverages if the place of business is within 300 feet of a church,

C. Respondent's Contentions and Evidence

Respondent contends that it purchased an existing business that Petitioner had already licensed for that location, that any violation in the distance requirements between Respondent's business and the public school were preexisting at the time Respondent's license application was made, that any error in the application process concerning this distance was not Respondent's fault, and that Respondent at all times acted in good faith and should not be penalized for mistakes made by either the previous licensee or by Petitioner in measuring the distance between the business establishment and the school. In addition, Respondent presented evidence showing that it had moved the location of its business doorway that was nearest the school to a location on its premises further from the school, so that the door through which the public now entered the licensed premises was greater than 300 feet from the nearest doorway of the school.⁶

D. Analysis and Recommendation

(1) False or Misleading Statements in Application

Petitioner alleged in its Notice of Hearing that Respondent's false or misleading statements in its application constitute a violation of Section 61.74(a)(4). The text of Section 61.74(a)(4) of the Code is set forth below.⁷

public hospital, or public school.

(c) Except as otherwise provided... the measurement of the distance between the place of business where alcoholic beverages are sold and a public school shall be from the nearest property line of the public school to the nearest doorway by which the public may enter the place of business, along street lines and in direct line across intersections.

⁶Respondent offered its plat map (Resp. Ex. 2) for the purpose of showing the distance between the present location of Respondent's doorway and the nearest operational door of the school. It shows the distance as 319.88 feet. However, this "door to door" measurement is not the relevant measurement for purposes of this hearing. The relevant measurement pursuant to Questions 27 and 28 of the permit application and Dallas City Code 6-4(a) & (c) is from the nearest doorway by which the public may enter Respondent's place of business and the nearest property line of the public school. Using this "door to property line" measurement, Respondent's Ex. 2 shows that the present location of the doorway to Respondent's business is 194.04 feet from the school's property line, still well within the 300 foot proscribed limit. Moving the doorway to its present location has, therefore, not moved the business more than 300 feet from the school's property line.

⁷Sec. 61.74. **GROUND FOR CANCELLATION OR SUSPENSION: DISTRIBUTOR.** (a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal general, local, or branch distributor's license if it is found, after notice and hearing, that the licensee:

(4) violated Section 101.41-101.43, 101.68, 102.11-102.15, 104.04, 108.01, or

108.04-108.06 of this code, or a rule or regulation promulgated under Section 5.40 of this code;

The enumerated sections in paragraph (4) above (i.e. Sections 101.41-101.43, 101.68, 102.11-102.15, 104.04, 108.01, 108.04-108.06 and 5.40) are set forth below:

SECTIONS 101.41-101.43

Sec. 101.41. CONTAINERS, PACKAGING, AND DISPENSING EQUIPMENT OF BEER: LABELS.

(a) No manufacturer or distributor, directly or indirectly or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may manufacture, sell, or otherwise introduce into commerce any container, packaging, or dispensing equipment of beer that does not meet the requirements of this section.

(b) Every container of beer must have a label or imprint in legible type showing the full name and address of the manufacturer and, if it contains a special brand brewed for a distributor, of the distributor. Any box, crate, carton, or similar device in which containers of beer are sold or transported must have a label meeting the same requirements.

(c) The label of a container of beer must state the net contents in terms of United States liquor measure.

(d) No container, packaging material, or dispensing equipment may bear a label or imprint that:

- (1) by wording, lettering, numbering, or illustration, or in any other manner refers or alludes to or suggests a manufacturing process, aging, analysis, or a scientific fact;
- (2) refers or alludes to the "proof," "balling," or "extract" of the product;
- (3) is untrue in any respect; or
- (4) by ambiguity, omission, or inference tends to create a misleading impression, or causes or is calculated to cause deception of the consumer with respect to the product.

Sec. 101.42. RETURNABLE CONTAINER: ACCEPTANCE BY ANOTHER MANUFACTURER. No manufacturer of beer may purchase, accept as a return, or use a barrel, half-barrel, keg, case, or bottle permanently branded or imprinted with the name of another manufacturer.

Sec. 101.43. MISBRANDING OF BREWERY PRODUCT. (a) No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may sell or otherwise introduce into commerce a brewery product that is misbranded.

(b) A product is misbranded if:

- (1) it is misbranded within the meaning of the federal Food and Drug Act;
- (2) the container is so made or filled as to mislead the purchaser, or if its contents fall below the recognized standards of fill;
- (3) it misrepresents the standard of quality of products in the branded container; or
- (4) it is so labeled as to purport to be a product different from that in the container.

SECTION 101.68

Sec. 101.68. CONSIGNMENT SALE PROHIBITED. A person commits an offense if he is a party to, or directly or indirectly interested in or connected with, a consignment sale of an alcoholic beverage.

SECTIONS 102.11-102.15

Sec. 102.11. MANUFACTURER OR DISTRIBUTOR: PROHIBITED INTERESTS. No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may:

- (1) own any interest in the business or premises of a retail dealer of beer;
- (2) hold or have an interest in a license to sell brewery products for on-premises

consumption, except to the extent that a manufacturer's license permits on-premises consumption.

Sec. 102.12. COMMERCIAL BRIBERY BY MANUFACTURER OR DISTRIBUTOR. No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may give or permit to be given money or any thing of value in an effort to induce agents, employees, or representatives of customers or prospective customers to influence their employees or principals to purchase or contract to purchase brewery products from the manufacturer or distributor or to refrain from buying those products from other persons.

Sec. 102.13. EXCLUSIVE OUTLET AGREEMENT AS TO BREWERY PRODUCTS. No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may require, by agreement or otherwise, that a retailer engaged in the sale of brewery products purchase any of those products from him to the total or partial exclusion of the products sold or offered for sale by a competitor or require the retailer to take or dispose of a certain quota of the product.

Sec. 102.14. MANUFACTURER OR DISTRIBUTOR: FURNISHING EQUIPMENT OR FIXTURES. (a) No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may furnish, give, rent, lend, or sell any equipment, fixtures, or supplies to a person engaged in selling brewery products for on-premises consumption. (b) This section does not apply to equipment, fixtures, or supplies furnished, given, loaned, rented, or sold before November 16, 1935, except that transactions made before that date may not be used as consideration for an agreement made after that date with respect to the purchase of brewery products. If a manufacturer or distributor of brewery products or an agent or employee of one of them removes the equipment, fixtures, or supplies from the premises of the person to whom they were furnished, given, loaned, rented, or sold, the exemption granted by this subsection no longer applies to the equipment, fixtures, or supplies.

(c) Notwithstanding any other provision of this code, a manufacturer or distributor may, with written approval of the administrator, sell for cash devices designed to extract brewery products from legal containers subject to the following conditions:

- (1) the legal containers must not exceed a one-eighth barrel capacity and must not be reused or refilled;
- (2) the selling price of such devices may be no less than the cost of acquisition to the manufacturer or distributor; and
- (3) such devices which extract brewery products from legal containers covered by this section may not be furnished, given, rented, or sold by the manufacturer or distributor to a licensee or permittee authorized to sell or serve brewery products for on-premise consumption, or to the ultimate consumer.

Sec. 102.15. MANUFACTURER OR DISTRIBUTOR: PROHIBITED DEALINGS WITH RETAILER. No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may:

- (1) furnish, give, or lend any money or other thing of value to a person engaged or about to be engaged in selling brewery products for on-premises or off-premises consumption, or give the person any money or thing of value for his use, benefit, or relief; or
- (2) guarantee the repayment of a loan or the fulfillment of a financial obligation of a person engaged in or about to be engaged in selling beer at retail.

SECTION 104.04

Sec. 104.04. DRAFT BEER DISPENSER: SIGN REQUIRED. No retail dealer may dispense draft beer unless each faucet or other dispensing apparatus is equipped with a sign clearly indicating the

This section indicates that a permittee may be disciplined for the violation of certain enumerated Code sections. None of these Code sections, however, make any mention

name or brand of the product being dispensed through the faucet or apparatus. The sign must be in full sight of the purchaser, and the letters on it must be legible.

SECTION 108.01

Sec. 108.01. DECEPTIVE, DISPARAGING, OR OTHERWISE UNLAWFUL ADVERTISING. (a) No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may publish, disseminate, or cause to be published or disseminated by any medium enumerated in Subsection (b) of this section an advertisement of a brewery product that:

- (1) causes or is reasonably calculated to cause deception of the consumer with respect to the product advertised;
- (2) directly or by ambiguity, omission, or inference tends to create a misleading impression;
- (3) is untrue in any particular;
- (4) refers to the alcohol content of the product;
- (5) disparages a competitor's product; or
- (6) is obscene or indecent.

(b) The media covered by this section include:

- (1) radio broadcasting;
- (2) newspapers, periodicals, and other publications;
- (3) signs and outdoor advertising; and
- (4) any printed or graphic matter.

SECTION 108.04-108.06

Sec. 108.04. ACTS OF PROMOTIONAL OR COURTESY NATURE: ADMINISTRATIVE DISCRETION. The commission may promulgate rules which shall set definite limitations consistent with the general provisions of this code, relaxing the restrictions of Sections 102.14, 102.15, and 108.06 of this code, with respect to:

- (1) the sale or gift of novelties advertising the product of a manufacturer or distributor;
- (2) the making of gifts to civic, religious, or charitable organizations;
- (3) the cleaning and maintenance of coil connections for dispensing draught beer;
- (4) the lending of equipment for special occasions; and
- (5) acts of a purely courtesy nature.

Sec. 108.05. ALLOWANCE FOR ADVERTISEMENT OR DISTRIBUTION. No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may pay or make an allowance to a retail dealer for an advertising or distribution service.

Sec. 108.06. PRIZES AND PREMIUMS. No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may offer a prize, premium, gift, or other inducement to a dealer in or consumer of brewery products.

SECTION 5.40

Sec. 5.40. REGULATION OF BEER CONTAINER DEPOSITS. If the commission finds it necessary to effectuate the purposes of this code, it may adopt rules to provide a schedule of deposits required to be obtained on beer containers delivered by a licensee.

of false or misleading information on applications. In fact, nothing in these code sections indicate that making false or misleading statements in connection with a permit application is a violation of the Texas Alcoholic Beverage Code at all.

This is the only statutory section cited by Petitioner in its notice of hearing as authority to support its request to discipline Respondent for providing false or misleading information on the permit application.⁸ The referenced statutory section does not support Petitioner's contention that false and misleading statements on an application constitute grounds for discipline. Petitioner has therefore failed to plead and prove that the alleged false or misleading statements made by Respondent on its application for a Wine and Beer Retailer's Off-Premise Permit constitute a violation of the Texas Alcoholic Beverage Code for which Respondent may be disciplined.⁹

⁸Petitioner offered into evidence a letter from the Attorney General's Office dated October 10, 1995, addressed to Respondent, alleging that Respondent had made a false or misleading statement in connection with its original application in violation of Section 61.71 (a)(4) Tex. Alco. Bev. Code (emphasis added), and inviting Respondent to explore the possibility of settling the case. It further stated that Respondent's failure to respond to this letter would cause this case to be "promptly scheduled for hearing with proper notice to all parties."

The notice of hearing, however, alleged Respondent had made a false or misleading statement in connection with the original application in violation of Section 61.74 (a)(4), not Section 61.71 (a)(4).

It is possible, based on the reference in this letter to Section 61.71(a)(4), that Petitioner intended to cite Section 61.71(a)(4) in its notice of hearing rather than Section 61.74(a)(4). However, that is an inference this court cannot make. The fact that Section 61.71 was referenced in earlier correspondence between the parties does not mean that Petitioner intended to cite this provision in any and all other documents or pleadings. This court cannot assume that every issue about which a party is willing to entertain settlement negotiations is necessarily an issue that will be ultimately pleaded as part of the contested case.

According to Tex. Gov't Code Ann. Section 2001.052, which is made applicable to these proceedings by 1 TAC 155.27(a), the notice of hearing "must include...a reference to the particular sections of the statutes and rules involved" (emphasis added). Failure to do so deprives Respondent of adequate notice of the alleged statutory violations.

This court may neither assume that another statute was intended to be cited in the notice of hearing, nor may it infer what that other statute might have been. Accordingly, Petitioner shall be held to the allegations as set forth and pleaded in its notice of hearing.

⁹This is not to say that the information in Respondent's application was not false or misleading. On the contrary, Respondent's answers to questions 27 and 28 of the application, whereby Respondent asserted that its licensed premises were not located within either 300 feet or 1000 feet of the nearest public school, are demonstrably false. But Petitioner has failed to show, under the code provisions cited in its notice of hearing and relied upon as its basis for discipline, that Respondent's false and misleading answers subject it to discipline under the TABC code. Petitioner has presented no statutory basis to support its request to discipline Respondent. This

(2) Selling Alcoholic Beverages Within 300 Feet of a Public School

To establish a basis for discipline under this allegation, Petitioner must prove three separate elements: (a) that the Dallas City Council passed an ordinance prohibiting the sale of alcohol from businesses located within 300 feet of a public school; (b) that Respondent's business is within 300 feet of a public school as measured by the standards relevant under that ordinance; and (c) that Respondent has sold alcoholic beverages from that location.

(a) Dallas City Council Ordinance

Petitioner presented at the hearing a copy of Section 6-4, Dallas City Code, and requested that official notice be taken of that section. Official notice was taken pursuant to Tex. Govt. Code Ann. Sec.2001.090(a)(1).¹⁰ Section 6-4(a) & (c) of the Dallas City Code show that the City of Dallas has adopted an ordinance prohibiting the sale of alcoholic beverages from businesses located less than 300 feet from a public school, that distance being determined by measuring along street lines and in a direct line across intersections from the nearest property line of the public school to the nearest doorway by which the public may enter the place of business.

(b) Respondent's Business is Within 300 Feet of a Public School

Respondent's plat map, which shows the present location of the doorway to Respondent's business, indicates that the distance between Respondent's present door and the nearest property line of Fannin Elementary School, using the appropriate "door to property line" measurement set forth in Sec. 6-4(c), Dallas City Code, is 194.04 feet (Resp. Ex.#2). Respondent's place of business is, therefore, presently located within the proscribed 300 foot distance from a public school.

(c) Respondent Has Sold Alcoholic Beverages from the Licensed Premises

court was not asked to take official notice of any other TABC code provisions, nor is this court obligated to read the entire TABC code in search of provisions that Respondent may have violated. Petitioner pleaded its case and presented its evidence as it deemed appropriate. The code provisions cited by Petitioner simply do not authorize discipline for the facts presented.

¹⁰Tex. Govt. Code Ann. Sec.2001.090(a)(1) states: (a) In connection with a hearing held under this chapter, official notice may be taken of :

(1) all facts that are judicially cognizable;

Those facts that are judicially cognizable include facts set forth in TRE 204 which states, in pertinent part: "A court ...upon the motion of a party shall, take judicial notice of the ordinances of municipalities ... of Texas...."

Petitioner's witness Ms. Ligon, a compliance officer for the Texas Alcoholic Beverage Commission, testified at the hearing that she had personally visited Respondent's licensed premises prior to the hearing and that Respondent was selling alcoholic beverages pursuant to its permit at that location.

IV. RECOMMENDATION

Petitioner has shown that Respondent's business is located within 300 feet of a public school in violation of the Dallas City Code and that Respondent's permit is subject to cancellation. However, Petitioner has not shown that Respondent made false or misleading statements on its permit application for which Respondent may be disciplined. This proposal recommends that, due to Respondent's business being located within 300 feet of a public school, Respondent's Wine and Beer Retailer's Off-Premise permit be canceled.

V. PROPOSED FINDINGS OF FACT

1. All parties received notice of the hearing, all parties appeared, and no objection was made to notice.
2. Respondent holds a Wine and Beer Retailer's Off-Premise Permit, BQ-306448, for Buy Low Discount Food & Beer, 4825 Ross Avenue, Dallas, Dallas County, Texas. Respondent was issued this permit on April 7, 1995, and has renewed it continuously.
3. Petitioner presented no statutory authority to support its request to discipline Respondent for submitting false or misleading information to Petitioner in its original permit application.
4. The Texas Alcoholic Beverage Code authorizes the governing board of an incorporated city or town to enact regulations prohibiting a licensed premise from operating within 300 feet of a public school.
5. The Dallas City Council has enacted Section 6-4(a) & (c) of the Dallas City Code prohibiting the sale of alcoholic beverages from businesses located less than 300 feet from a public school, that distance being determined by measuring along street lines and in a direct line across intersections from the nearest property line of the public school to the nearest doorway by which the public may enter the place of business.
6. At all times subsequent to Respondent's receipt of its permit, Respondent's licensed premises, measuring from the nearest property line of the public school along the street lines and in a direct line across intersections to the nearest doorway by which the public enters Respondent's place of business, has been located less than 300 feet from Fannin Elementary School, a public school in Dallas, Texas.

7. Respondent sells alcoholic beverages from its business which is located less than 300 feet from a public school.

VI.
PROPOSED CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing of this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to Tex. Gov't. Code Ann. Ch. 2003.

2. Based on Findings of Fact Nos. 1 & 2, the Texas Alcoholic Beverage Commission has jurisdiction over this matter. Tex. Alco. Bev. Code Ann. Sections 6.01 & 11.61.

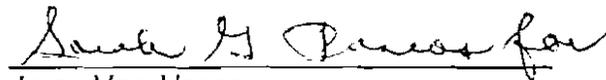
3. Based on Finding of Fact No. 3, Respondent is not subject to discipline for submitting false or misleading information to Petitioner in its original permit application. Tex. Alco. Bev. Code Ann. Sec. 61.74(a)(4).

4. Based on Findings of Fact Nos. 4, 5, & 6, Respondent's business is located in an area in which the Dallas City Council has prohibited the sale of alcoholic beverages -- i.e. within 300 feet of a public school. Tex. Alco. Bev. Code Ann. Sec. 109.33(a)(1).

5. Based on Findings of Fact Nos. 4, 5, 6 & 7, Respondent's operation of its licensed premise within 300 feet of a public school violates the Dallas City Code and Texas Alcoholic Beverage Code. Tex. Alco. Bev. Code Ann. Sec. 109.33(a)(1).

6. Based on Conclusion of Law Nos. 4 & 5 and Findings of Fact Nos. 5, 6 & 7, The Texas Alcoholic Beverage Commission is authorized to cancel Respondent's permit. Tex. Alco. Bev. Code Ann. Sec. 11.61.

SIGNED and entered this 29th day of January, 1999.



Jerry Van Hamme
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS