

II. HEARING AND EVIDENCE

On August 24, 2007, a hearing was convened before ALJ Don Smith, at the State Office of Administrative Hearings, Houston, Harris County, Texas. Petitioner was represented by its attorney, Sandra Patton. Respondent was represented by its attorney, Allen Parker. The hearing concluded and the record closed the same day.

III. LEGAL STANDARDS AND APPLICABLE LAW

CODE § 11.37 (b) provides that the city secretary or clerk of the city in which an application for a permit is made shall certify whether the location of address given in the application is in a “wet” area and whether the sale of alcoholic beverages for which the permit is sought is prohibited by charter or ordinance.

The Commission may refuse to issue an original permit with or without a hearing if it has reasonable grounds to believe and finds that the applicant will sell liquor unlawfully in a “dry” area. CODE § 11.46 (10).

IV. EVIDENCE

Petitioner offered into evidence the permit history for Respondent that an original application for a Mixed Beverage Permit, Mixed Beverage Late Hours Permit, and Beverage Cartage Permit was submitted to TABC by Walter Roy Hancock, doing business as Capri Club, 8585 9th Avenue, Port Arthur, Jefferson County, Texas, with a letter from Evangeline Green, City Secretary for the City of Port Arthur, Texas that “the City Secretary’s Office cannot certify that the place of business located at 8585 Ninth Avenue is in a ‘wet’ area for a Mixed Beverage Permit.”

V. ANALYSIS

Respondent failed to file an application for the requested permits with a certificate from the City Secretary's Office that the business location is in a "wet" area for a Mixed Beverage Permit. Respondent submitted evidence with his application that the business location was previously in a "wet" area. The City of Port Arthur will not issue the certificate that the business location is in a "wet" area for a Mixed Beverage Permit, therefore, it is reasonable to conclude that if Respondent were granted a permit, he would be selling liquor unlawfully in a "dry" area.

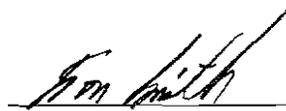
VI. PROPOSED FINDINGS OF FACT

1. An original application for a Mixed Beverage Permit, Mixed Beverage Late Hours Permit, and Beverage Cartage Permit was submitted to the Texas Alcoholic Beverage Commission (Commission or TABC) by Walter Roy Hancock, doing business as Capri Club, 8585 9th Avenue, Port Arthur, Jefferson County, Texas.
2. The Commission issued an order refusing the application as a matter of law, finding that Respondent failed to receive all certifications required for a complete application.
3. Respondent filed a Motion for Rehearing.
4. The Commission issued an Order Granting Motion for Rehearing on the merits.
5. Respondent received proper and timely notice of the hearing from the TABC in a notice of hearing dated August 13, 2007.
6. The hearing on the merits convened August 24, 2007, at the State Office of Administrative Hearings, 2020 North Loop West, Suite 111, Houston, Harris County, Texas. The TABC was represented by attorney Sandra Patton. The Respondent was represented by Allen Parker, attorney. The record closed on the same day.
7. The City Secretary for the City of Port Arthur refused to issue a certificate that the business location is in a "wet" area for a Mixed Beverage Permit.

VII. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. § 11.31.
2. SOAH has jurisdiction to conduct the 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 TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. Based upon Findings of Fact No. 7, Respondent did not present a certification as required by TEX. ALCO. BEV. CODE ANN. § 11.37 (b) that the location of the address given in the application is in a "wet" area for a Mixed Beverage Permit.
5. Based upon Findings of Fact No. 7, the Commission should refuse to issue an original permit because reasonable grounds exist to believe that the applicant would sell liquor unlawfully in a "dry" area in violation of TEX. ALCO. BEV. CODE ANN. § 11.46 (10), if the permit were granted.

SIGNED: August 28, 2007.

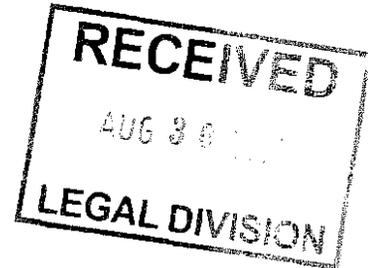


DON SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Shelia Bailey Taylor
Chief Administrative Law Judge



August 27, 2007

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

VIA REGULAR MAIL

RE: Docket No. 458-07-3844/Texas Alcoholic Beverage Commission vs. Capri Club

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 black ink that reads "Don Smith". The signature is written in a cursive style with a large, sweeping flourish at the end.

Don Smith
Administrative Law Judge

DS/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL
Sandra Patton, Staff 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
Allen Parker, Attorney for Respondent, 1 Plaza Square, Port Arthur, Texas 77642 -VIA REGULAR MAIL