

TEXAS ALCOHOLIC BEVERAGE \* BEFORE THE STATE OFFICE  
COMMISSION \*  
\*  
VS. \* OF  
\*  
TAYLOR REED DBA \*  
TAYLOR'S HANGOUT \*  
(TABC NO. 579209) \* ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

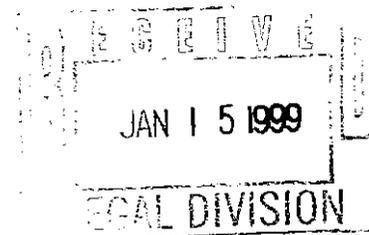
The Staff of the Texas Alcoholic Beverage Commission (Staff) brought this action against Respondent, a licensee of the Commission for allowing an intoxicated employee to be on the licensed premises. The Staff recommended the license be suspended for a period of seven days. The Administrative Law Judge agrees with the Staff's recommendation that in lieu of suspension, Respondent be allowed to pay an administrative penalty of \$1050.00.

**I. Procedural History, Notice & Jurisdiction**

On June 29, 1998, Taylor Rae Reed, doing business as Taylor's Hangout (Respondent), 3937 Highway 377, Fort Worth, Tarrant County, Texas, was notified that the Staff would seek disciplinary action against Respondent because an agent, servant or employee of Respondent was intoxicated on the licensed premises. Staff asserted that such an act constituted grounds for suspension of Respondent's license or permit or an administrative penalty in lieu of the permit suspension.

Since there were no contested issues of general notice or jurisdiction in this proceeding, these matter are set out in the proposed findings of fact and conclusions of law without further discussion here.

On August 20, 1998, a hearing was convened before Stuart C. Shelton, Administrative Law Judge (ALJ) in the State Office of Administrative Hearings, the Vinnedge Building, 2100 N. Main Street, Suite 10, Fort Worth, Texas. Staff was represented by Timothy E. Griffin, Staff Attorney for the Commission. Respondent appeared representing himself at the hearing. Evidence and argument were heard on that date. The record closed on August 20, 1998, at the conclusion of the arguments. No proposed findings of fact and conclusions of law were filed.



## II. Discussion

### A. Introduction

Respondent holds a Wine and Beer Retailer's Permit BG-412229 issued by the Commission. Respondent operates the business known as Taylor's Hangout, located at 3937 Highway 377, in Fort Worth, Tarrant County, Texas. Staff alleged that on or about March 18, 1998, a servant, agent or employee of the Respondent was intoxicated on the licensed premises, in violation of Texas Alcoholic Beverage Code Section 104.01(5). Respondent denied the allegations.

### B. Statutory Provisions

Inasmuch as the events leading up to this case occurred in the parking lot of Respondent's business, it is appropriate to consider TEX. ALCO. BEV. CODE ANN Section 11.49(a). The section states:

In this code, "premises" means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.

Since the conduct complained of was an employee being intoxicated on the premises, TEX. ALCO. BEV. CODE ANN Section 104.01(5) is applicable. The section states:

person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts: (5) being intoxicated on the licensed premises.

### C. Evidence Received

The Staff presented the testimony of Tana Travis and Officer Chris Williams. The Staff also presented documentary evidence consisting of a copy of the notice of hearing, the certified mail return receipt card, a certified copy of Respondent's license, and a certified copy of records of the Fort Worth, Texas, Municipal Court. The Respondent presented the testimony of Judy Hutchens.

Judy Hutchens testified that she was an employee of Respondent on March 18, 1998, the date in question, and she was so employed on the date of the hearing. She said that employees were permitted to drink beer or wine while on duty. When Hutchens arrived at the premises that day, Valerie Lanning was working as the bartender and asked Hutchens to take over as bartender so that she could go out into the parking lot to see about a disturbance involving her family. Hutchens stated that Ms. Lanning was not "really drunk" at the time.

Officer Williams, Fort Worth Police Department, was dispatched to Respondent's premises because of a disturbance and arrived there on March 18, 1998, at approximately 6:00 p.m. Other Fort Worth Police Department Officers Milian and Roberts were already present. Officer Williams spoke with Ms. Lanning in the parking lot adjacent to the building, noticing that Ms. Lanning had the odor of an alcoholic beverage on her breath. Officer Williams also observed that Ms. Lanning was at first helpful, but became uncooperative and belligerent towards the officers, swearing, shouting, and not behaving like a rational person. Officer Williams believed that Ms. Lanning was dangerous to herself or others and arrested her for public intoxication.

Tana Travis, an agent for the Texas Alcoholic Beverage Commission, identified Exhibit 2 as a copy of Respondent's permit. Exhibit 3 indicated that Valerie Lanning had entered a guilty plea on April 30, 1998, to a charge of Public Intoxication for the events of March 18, 1998, in the Fort Worth Municipal Court.

#### D. Analysis and Recommendation

The Administrative Law Judge recommends that sanctions be taken against Respondent, since an employee of Respondent was on the premises while intoxicated. It is felt that inasmuch as there is no evidence of previous violations on the premises that the recommended sanction is adequate to punish Respondent for the infraction of his employee, to impress upon Respondent the importance of fully complying with the Commission's rules, and to cause Respondent to take actions to prevent any future recurrence of violations of the rules. Therefore, it is recommended that Respondent's license be suspended for a period of seven days or, in lieu of suspension the Respondent be allowed to pay an administrative penalty of \$1050.00.

### III. Proposed Findings of Fact

1. On July 24, 1998, the Commission sent notice of the time and location of the hearing to Taylor Rae Reed, dba Taylor's Hangout, 3937 Hwy 377, Fort Worth, Texas 76116-7844, by certified mail, return receipt requested. which was held on August 20, 1998.
2. On March 18, 1998, Taylor Reed, dba Taylor's Hangout, held permit number BG-412229 for the premises located at 3937 Highway 377, Fort Worth, Tarrant County, Texas.
3. On March 18, 1998, Valerie Lanning was employed of Respondent, as a bartender at the licensed premises.
4. On that date, police officers in the Respondent's parking lot noticed that Ms. Lanning was intoxicated.
5. The parking lot where police officers observed Ms. Lanning is adjacent to the licensed premises and is directly or indirectly controlled by Taylor Reed.

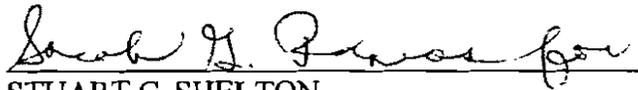
6. The parking lot where police officers observed Ms. Lanning is a part of the licensed premises.
7. On March 18, 1998, Ms. Lanning was intoxicated while on the licensed premises.

#### IV. Proposed Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to Section 106.13 of the TEX. ALCO. BEV. CODE. (Vernon 1995).
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including authority to issue a proposal for decision with proposed findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. Chapter 2003 (Vernon 1998).
3. Respondent violated Section 104.01(5) of the TEX. ALCO. BEV. CODE because his employee engaged in conduct which was lewd, immoral, or offensive to public decency.

Based upon the foregoing, a seven day suspension of the license for the premises is warranted. In lieu of suspension, the Respondent should be allowed to pay an administrative penalty of \$1050.00. TEX. ALCO. BEV. CODE section 11.64 (Vernon 1995).

SIGNED this 4<sup>th</sup> day of January 1999.

  
STUART C. SHELTON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARING

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