

DOCKET NO. 576423

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
VS.	§	
	§	
PAKSE INC. D/B/A QUICK STOP LIQUOR PERMIT/LICENSE NO(s). P506022, BF506023	§	ALCOHOLIC
	§	
NEWTON COUNTY, TEXAS (SOAH DOCKET NO. 458-09-2067)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION on this 29th day of May 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Timothy Horan. The hearing convened on March 6, 2009 and adjourned on the same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on April 23, 2009. This Proposal for Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, that are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's permits are herein **SUSPENDED for ten (10) days**.

IT IS FURTHER ORDERED that unless the Respondent pays a civil penalty in the amount of **\$1,500.00** on or before the **7th day of July 2009**, all rights and privileges under the above described permits will be **SUSPENDED for a period of ten (10) days beginning at 12:01 A.M. on the 15th day of July 2009**.

This Order will become final and enforceable on June 22, 2009, unless a Motion for Rehearing is filed before that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

SIGNED on May 29, 2009.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

Hon. Timothy Horan
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 North Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

Pakse Inc.
d/b/a Quick Stop Liquor
RESPONDENT
P.O. Box 285
Call, TX 75933
VIA REGULAR MAIL

Shelia A. Lindsey
ATTORNEY FOR PETITIONER
TABC Legal Section

Houston District Office

Beaumont District Office

SAL/aa

TEXAS ALCOHOLIC BEVERAGE COMMISSION
CIVIL PENALTY REMITTANCE

DOCKET NUMBER: 576423

REGISTER NUMBER:

NAME: PAKSE INC.

TRADENAME: QUICK STOP LIQUOR

ADDRESS: 2621 FM 1004, CALL TX, 75933

DUE DATE: JULY 7, 2009

PERMITS OR LICENSES: P506022, BF506023

AMOUNT OF PENALTY: \$1,500.00

Amount remitted \$ _____ Date remitted _____

You may pay a civil penalty rather than have your permits and licenses suspended if an amount for civil penalty is included on the attached order.

YOU HAVE THE OPTION TO PAY THE CIVIL PENALTY ONLY IF YOU PAY THE ENTIRE AMOUNT ON OR BEFORE THE DUE DATE. AFTER THAT DATE YOUR LICENSE OR PERMIT WILL BE SUSPENDED FOR THE TIME PERIOD STATED ON THE ORDER.

Mail this form with your payment to:

TEXAS ALCOHOLIC BEVERAGE COMMISSION
P.O. Box 13127
Austin, Texas 78711
Overnight Delivery Address: 5806 Mesa Dr., Austin, Texas 78731

You must pay by postal money order, certified check, or cashier's check. No personal or company check nor partial payment accepted. Your payment will be returned if anything is incorrect. You must pay the entire amount of the penalty assessed.

Attach this form and please make certain to include the Docket # on your payment.

Signature of Responsible Party

Street Address

P.O. Box No.

City

State

Zip Code

Area Code/Telephone No

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

April 23, 2009

RECEIVED

APR 24 2009

TABC HOUSTON
LEGAL

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

VIA REGULAR MAIL

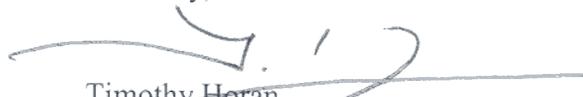
RE: Docket No. 458-09-2067; Texas Alcoholic Beverage Commission vs. Pakse Inc. d/b/a Quick Stop Liquor

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,


Timothy Horan
Administrative Law Judge

TH/rlm
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL
Shelia Lindsey, 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
Pakse Inc., d/b/a Quick Stop Liquor, P.O. Box 285, Call, TX 75933 -VIA REGULAR MAIL

SOAH DOCKET NO. 458-09-2067

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
V.	§	
	§	
PAKSE INC.	§	OF
D/B/A QUICK STOP LIQUOR,	§	
NEWTON COUNTY, TEXAS	§	
(TABC CASE NO. 576423)	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission’s Staff (Petitioner) brought this disciplinary action against Pakse Inc. dba Quick Stop Liquor (Respondent), alleging that on or about April 26, 2008, Respondent’s agent, servant or employee, consumed or permitted the consumption of an alcoholic beverage on the premises of a package store in violation of Texas Alcoholic Beverage Code (the Code) §§ 11.62 (b) (2) and 22.11. Based on the evidence, the Administrative Law Judge (ALJ) finds the Petitioner proved the allegation by a preponderance of the evidence and recommends that the Respondent’s permit be suspended for ten days or in lieu of any suspension, that the Respondent pay a civil penalty in the amount of \$1,500.00.

I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY

The Commission and the State Office of Administrative Hearings have jurisdiction over this matter as reflected in the conclusions of law. The notice of intention to institute disciplinary action and of the hearing met the notice requirements imposed by statute and by rule as set forth in the findings of fact and conclusions of law

II HEARING AND EVIDENCE

On March 6, 2009, a hearing was convened before ALJ Timothy Horan, at the State Office of Administrative Hearings, 2020 North Loop West, Suite # 111, Houston, Texas. Petitioner was represented by Shelia A. Lindsey, attorney. Hong Xayaseng, president of Pakse Inc. appeared and represented Respondent. The record closed the same day.

III. LEGAL STANDARDS AND APPLICABLE LAW

Pursuant to the Code §§ 1.61 and 22. TABC may cancel or suspend a permit if it is found that the Respondent's agent, servant or employee, consumed or permitted the consumption of an alcoholic beverage on the premises of a package store.

IV. EVIDENCE

A. Petitioner's Documentary Evidence and Testimony

Petitioner offered into evidence three exhibits, including the green card for the Notice of Hearing issued in the case, a copy of the Notice of Hearing, and the Respondent's permit history. All exhibits were admitted into evidence.

TABC Agent Cole.

TABC Agent Cole testified that on April 26, 2008, he drove by the Respondent's store, Quick Stop Liquor because of past problems with individuals drinking alcohol on the licensed premises. The store is located at 2621 FM 1004, Call, Newton County, Texas. Agent Cole testified that the store has a package permit which prohibits consuming alcohol on the premises. This would include the parking lot used by Quick Stop Liquor Store. Agent Cole drove by the store and

observed a male standing in the parking lot next to a garbage barrel. The man appeared to be consuming alcohol. Agent Cole also observed a woman walking from outside the liquor store carrying boxes to throw in the garbage barrel. He further testified that the woman was walking in the same direction as the man who was drinking alcohol by the garbage barrel. Agent Cole drove back to the location, stopped in the parking lot, and confirmed that the male in the parking lot was drinking alcohol from an open container. The man, later identified as Mr. Moore, was given a citation for drinking on the Respondent's premises. Agent Cole then entered Respondent's place of business and observed a woman working as the clerk for the liquor store. This was the same woman that he had seen earlier throwing boxes away. The clerk identified herself as Chitpeuth Phonthephaseone. Agent Cole gave the clerk a citation for allowing consumption of alcohol on the premises. According to Agent Cole, the store clerk would have been in a situation to observe the man consuming alcohol since she passed the man on her way to the garbage barrel.

B. Respondent's Evidence and Testimony

Chithpeuth Phonthephaseone.

Chithpeuth Phonthephaseone testified she was working that day as the store clerk for Respondent at Quick Stop Liquor Store. She testified that she did not go outside to throw away any boxes and did not leave the store at any time because she was the only employee at the store. Ms. Phonthephaseone was not aware of anyone drinking alcohol in the parking lot of Quick Stop Liquor Store.

Kenneth Glenn

Mr. Glenn testified that he was talking to friends in the parking lot outside Quick Stop Liquor Store. He said it was not uncommon for him to gather with his friends by the garbage barrel. He

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VI. PROPOSED FINDINGS OF FACT

Pakse Inc. dba Quick Stop Liquor, Newton County, Texas, holds Package Store Permit No. P-506022 and Beer Retailer's On Premise License BF-506023, issued by the Texas Alcoholic Beverage Commission (TABC or Commission) for the premises located at 2621 FM 1004, Call, Newton County, Texas.

2. The Respondent received proper and timely notice of the hearing from the TABC in a notice of hearing dated February 19, 2009.
3. The hearing on the merits convened March 6, 2009, at the State Office of Administrative Hearings, 2020 North Loop West, Suite # 111, Houston, Texas. The TABC was represented by attorney Shelia A. Lindsey. Hong Xayaseng, president of Pakse Inc. appeared and represented Respondent. The record closed on the same day.
4. On April 26, 2008, Agent Cole observed a man consuming alcohol in the parking lot of the licensed premises.
5. Agent Cole issued a citation to a man for consuming alcohol on the Respondent's premises.

On April 26, 2008, the Respondent employed Chithpeuth Phonthephaseone as a clerk at the licensed premises.
7. The Respondent's agent, servant or employee, was in a position to observe the consumption of an alcoholic beverage on the licensed premises.

VII. PROPOSED CONCLUSIONS OF LAW

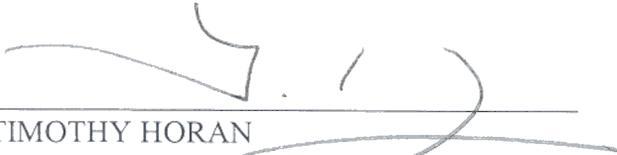
The Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§ 6.01, 11.61, and 22.11.

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. 4-7, Respondent violated the Code on April 26, 2008 having an agent, servant or employee, consumed or permitted the consumption of an alcoholic beverage on the premises of a package store in violation of Texas Alcoholic Beverage Code (the Code) §§ 11.62 (b)(2) and 22.11.
5. Based on the foregoing, suspension of Respondent's permits for a period of ten days, or in lieu of any suspension, the Respondent pay a civil penalty in the amount of \$1,500.00.

SIGNED APRIL 23, 2009.



TIMOTHY HORAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS