

**DOCKET NO. 578048**

TEXAS ALCOHOLIC BEVERAGE COMMISSION	§	BEFORE THE TEXAS
	§	
	§	
VS.	§	
	§	
MARTIN GERALD OFLYNN D/B/A FLYNN'S IRISH PUB PERMIT/LICENSE NO(s). BG628877, BL	§	ALCOHOLIC
	§	
TARRANT COUNTY, TEXAS (SOAH DOCKET NO. 458-09-2527)	§	BEVERAGE COMMISSION

**ORDER ADOPTING PROPOSAL FOR DECISION**

**CAME ON FOR CONSIDERATION** 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 Phyllis W. Crazz. The hearing convened on April 7, 2009 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on April 24, 2009. The 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.

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 renewal application is hereby **DENIED AND CANCELLED**.

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 in the manner indicated below.

**SIGNED** this the 29<sup>th</sup> day of May, 2009, at Austin, Texas.



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Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

ADMINISTRATIVE LAW JUDGE  
State Office of Administrative Hearings  
6777 Camp Bowie Blvd., Suite 400  
Ft. Worth, Texas 76116  
**VIA FACSIMILE (817) 377-3706**

Martin Gerald O'Flynn  
D/B/A Flynn's Irish Pub  
**RESPONDENT**  
3601 Williams Road  
Fort Worth, TX 76116  
**VIA FIRST CLASS MAIL**

Sandra K. Patton  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Fort Worth District Office

SKP/aa

# State Office of Administrative Hearings



**Cathleen Parsley**  
Chief Administrative Law Judge

April 24, 2009

Alan Steen, Administrator  
Texas Alcoholic Beverage Commission

VIA FACSIMILE 512/206-3498

**Re: Docket No. 458-09-2527; Texas Alcoholic Beverage Commission,  
v, Martin Gerald O'Flynn d/b/a Flynn's Irish Pub (TABC 578048)**

Dear Mr. Steen:

Enclosed please find the Proposal for Decision in the above-referenced case. It contains my recommendation and underlying rationale.

Pursuant to the Administrative Procedure Act, each party has the right to file exceptions to the proposal, accompanied by supporting briefs. Exceptions, replies to the exceptions, and supporting briefs must be filed with the Commission according to the agency's rules, with a copy to the State Office of Administrative Hearings, located at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Texas 76116. A party filing **exceptions, replies, and briefs** must serve a copy on the other party hereto.

Sincerely,

A handwritten signature in cursive script, appearing to read "Phyllis W. Cranz".

Phyllis W. Cranz

PC/ll  
attachments

**DOCKET NO. 458-09-2527**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, Pctitioner**

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**BEFORE THE STATE OFFICE**

**V.**

**OF**

**MARTIN GERALD O'FLYNN  
D/B/A FLYNN'S IRISH PUB  
Respondent  
TARRANT COUNTY, TEXAS  
(TABC No. 578048)**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Martin Gerald O'Flynn (Respondent), alleging that Respondent failed to pay a debt for taxes, fees, or penalties and did not hold a sales tax permit for the business. A hearing was scheduled and convened, however, the Respondent did not appear and was not represented. The Administrative Law Judge (ALJ) finds that TABC Staff's allegations are true and recommends that Respondent's permit and license be denied, refused, cancelled or suspended.

**I. PROCEDURAL HISTORY**

On February 13, 2009, TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permit and license: 3601 Williams Road, Fort Worth, Texas 76116. The Notice of Hearing was sent by certified mail (7006 0810 0000 2143 5623), return receipt requested. The Notice of Hearing was returned to TABC Staff by the U.S. Postal Service on March 15, 2009, as evidenced by stamped returned letter.

As of the day of hearing, the certified mail had been returned and was not signed for. Notice sent by regular mail service had not been returned to the TABC.

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A hearing convened as scheduled before ALJ Phyllis Franz at the Office of Administrative Hearings, 601 South Boulevard Suite 400, Worth, Texas 75090. On April 11, 2009, TAB staff represented at the hearing by Sandra Patton, TABC Staff Attorney via telephone conference. Respondent did not appear and was not represented at the hearing.

During the hearing, arguments were offered by TAB Staff and admitted in evidence to support a recommendation for default against Respondent. The hearing concluded on April 11, 2009, and closed that same day. The ALJ proceeded with consideration of TABC Staff's request for default judgment and cancellation, as discussed below.

**II REASON FOR PROPOSED DECISION**

Based on Respondent's failure to appear at the hearing, TABC Staff requested that the default provisions of TEX. ADMIN. CODE Chapter 63 be invoked. The ALJ finds that TABC Staff issued notice of the hearing in compliance with TEX. ADMIN. CODE Chapter 63 and TEX. ALCO. BEV. CODE Article 63. Pursuant to TEX. ADMIN. CODE Chapter 63, the allegations presented in the Notice of Hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings below.

TABC Staff provided a copy of Respondent's licensing history which was maintained by TAB Staff in support of its request.

### III. PROPOSED FINDINGS OF FACT

1. The Martin Gerald O'Flynn (Respondent) holds a wine and beer retailer's on premise permit and retailer's on premise late hours license, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 3601 Williams Road, Fort Worth, Tarrant County, Texas.
2. On February 13, 2009, the TABC Staff issued a Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permit and license: 3601 Williams Road, Fort Worth, Texas 76116. This notice was sent by certified mail (7006 0810 0000 2143 5623), return receipt requested, and was returned by the U.S. Post Office on March 15, 2009.
3. The Notice of Hearing 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 statement of the matters asserted.
4. The Notice of Hearing also properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the notice would be deemed as true, and the relief sought may be granted by default.
5. On April 7, 2009, a hearing was convened before ALJ Phyllis Cranz at the State Office of Administrative Hearings, at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Texas 76107. TABC Staff was represented at the hearing by Sandra Patton, a TABC Staff Attorney via telephone conference call. Respondent did not appear and was not represented at the hearing.
6. Respondent, through its agent, servant, or employee did not pay sales tax and had no sales tax permit as noted on July 22, 2008, in the TABC violation history. (TABC Exhibit B)

### IV. PROPOSED CONCLUSIONS OF LAW

- The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. ch. 5 and §§6.01 and 11.61.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
  3. Based upon Proposed Findings of Fact Nos. 2 - 4 Staff issued its notice of hearing in

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PROPOSAL FOR DECISION

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compliance with TEX. ADMIN. CODE §§ 155.401 and 155.501 and TEX. ALCO. BEV. CODE ANN § 11.63.

4. Based upon Proposed Findings of Fact Nos. 2 - 5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.501.
5. Based upon Proposed Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN §§ 11.61 (b)(5), 11.61 (c) (1), and 61.71 (a) (1).
6. Based upon Proposed Findings of Fact Nos. 6, Conclusion of Law No. 5, and TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(5), 11.61 (c) (1), and 61.71 (a) (1), Respondent's permit and license should be denied, refused, cancelled or suspended.

**SIGNED April 24, 2009.**



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**P. W. CRANZ  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**