

IT IS THEREFORE ORDERED that the Original Application of L.W. Cafe, Inc. d/b/a Club Continental for the issuance of a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit is **GRANTED**.

This Order will become **final and enforceable** on the 12th day of October, 2012, **unless a Motion for Rehearing is filed by the 11th day of October, 2012.**

SIGNED this the 10th day of September, 2012, at Austin, Texas.



Sherry K-Cook, Administrator
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 10th day of September, 2012.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

John H. Beeler
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
300 W. 15th Street, STE 502
Austin, Texas 78701
VIA FACSIMILE: 512.322.2061

L.W. Cafe, Inc.
d/b/a Club Continental
RESPONDENT

3830 Parkdale, STE 103
San Antonio, Texas 78229
VIA REGULAR MAIL

Dewey Brackin
ATTORNEY FOR APPLICANT/RESPONDENT
600 Congress Ave., STE 3000
Austin, Texas 78701
VIA REGULAR MAIL
AND VIA FACSIMILE: 512.542.7324

David T. Duncan, Jr.
ATTORNEY FOR PETITIONER
TABC Legal Division

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of notice, jurisdiction, or venue in this proceeding. Therefore, those matters are set out in the proposed Findings of Fact and Conclusions of Law without further discussion here.

On May 23, 2012, a public hearing was convened in this matter in San Antonio, Texas, before ALJ John H. Beeler. Petitioner was represented by attorney David Duncan and Respondent was represented by attorney Dewey Brackin. Protestants did not appear and were not represented, and the record closed that same day.

II. APPLICABLE LAW

The statutory foundation for the protest to this application is Tex. Alco. Bev. Code § 11.46(a)(8), which provides:

The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exist:

- (8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, peace, morals, and safety of the people and on the public sense of decency.

III. DISCUSSION

Protestants bear the burden of proof in establishing that Respondent's business operations would be contrary to the general welfare, peace, morals, and safety of the people and the public sense of decency. Prior to the date of the hearing, Protestants informed the other parties and the ALJ that they did not intend to be designated as protestants in this matter and would not participate in the hearing. Petitioner did not offer any evidence.

Because no evidence was presented in support of the protest of the application, the ALJ recommends that the permits be issued.

IV. FINDINGS OF FACT

1. L.W. Café, Inc. d/b/a Club Continental (Respondent) has filed an original application with the Texas Alcoholic Beverage Commission (TABC) for a mixed beverage permit and mixed beverage late hours permit, for premises located at 3830 Parkdale Suite 103, San Antonio, Bexar County, Texas.
2. San Antonio City Councilman W. Reed Williams and San Antonio Police Lieutenant Andy Rodriguez protested the application based on the general welfare, health, peace, morals and safety of the people and on the public sense of decency.
3. A First Amended Notice of Hearing, dated May 4, 2012, was issued by TABC Staff notifying all parties that a hearing would be held on the application and informing the parties of the time, place, and nature of the hearing.
4. On May 23, 2012, a hearing was conducted by ALJ John H. Beeler in San Antonio, Texas. TABC Staff appeared at the hearing through Staff Attorney David Duncan and Respondent appeared and was represented by attorney Dewey Brackin. Protestants did not appear and were not represented, and the record closed that same day.
5. No evidence was offered at the hearing establishing that Respondent's business operations would create an unusual condition or situation that is contrary to the general welfare, peace, morals, and safety of the people and the public sense of decency.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Tex. Alco. Bev. Code chs. 5, 11, 28, and 29, and §§ 6.01 and 11.46(a)(8).
 2. The State Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Tex. Gov't Code ch. 2003.
 3. Proper and timely notice of the hearing was provided to all parties pursuant to the Administrative Procedure Act, Tex. Gov't Code ch. 2001, and 1 Tex. Admin. Code § 155.401.
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4. Granting of the requested permits will not adversely affect the general welfare, health, peace, morals or safety of the people or violate the public sense of decency. Tex. Alco. Bev. Code § 11.46(a)(8).
5. Respondent's application for a mixed beverage permit and mixed beverage late hours permit, for the premises located at 3830 Parkdale Suite 103, San Antonio, Bexar County, Texas, should be granted.

SIGNED July 18, 2012.



JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS