

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

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LEGAL

November 18, 2011

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

VIA REGULAR MAIL

**RE: Docket No. 458-11-7335; Texas Alcoholic Beverage Commission vs. Trione, Inc. d/b/a T's Bar**

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](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in black ink that reads "S. Burger".

Stephen Burger  
Administrative Law Judge

SJB/mr  
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- VIA REGULAR MAIL  
Ramona Perry, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20<sup>th</sup> Street, Suite 600, Houston, TX 77008- VIA REGULAR MAIL (with Certified Evidentiary Record and 1 hearing CD)  
Emily Helm, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- VIA REGULAR MAIL  
Ian Beliveaux, Attorney for Respondent, 3200 S.W. Freeway, Suite 1200, Houston, Texas 77027 -VIA REGULAR MAIL  
Ron Saikowski, Protestant, 304 North Main Street, Suite #1, Conroe, Texas 77301 - VIA REGULAR MAIL

2020 North Loop West Suite 111 Houston, Texas 77018  
713.957.0010 (Telephone) 713.812.1001 (Fax)  
[www.soah.state.tx.us](http://www.soah.state.tx.us)



## I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction or venue were raised in this proceeding. Therefore, these matters are set out in the Findings of Fact and Conclusions of Law without further discussion.

A public hearing was held and the record closed on September 30, 2011, before Stephen J. Burger, ALJ, in Houston, Harris County, Texas. Protestant appeared and represented himself. The TABC Staff Attorney was Ramona Perry. Respondent was represented by attorney Ian Beliveaux.

## II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission or Administrator may refuse to issue a permit if it has reasonable grounds to believe that the place or manner in which the applicant may conduct his business warrants the refusal based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8). Additionally, case law states that in order to deny a permit to a qualified applicant proposing to operate a lawful business in a wet area and in compliance with zoning laws, an unusual condition or situation must be shown. Kermit Concerned Citizens Committee v. Colonial Food Stores, Inc., 650 S.W.2d 208 (Tex. Civ. App. 8<sup>th</sup> Dist., 1983); In re Simonton Gin, Inc., 616 S.W.2d 274 (Tex. Civ. App. 1<sup>st</sup> Dist., 1981).

## III. DISCUSSION OF EVIDENCE AND ANALYSIS

### A. Protestant's Case

Mr. Saikowski opposes renewal of Respondent's permits because he claims that Respondent's bar is detrimental to the general welfare, health, and peace of the community. He testified that he lives near Respondent's bar and drives past it when leaving and entering his development. He is a trained volunteer with the county and removes signs that are placed on the

county right-of-way. He has in the past removed signs advertising Respondent's bar. However, since the filing of the protest, he has not seen any of Respondent's signs in the right-of-way.

Mr. Saikowski also takes issue with the advertising appearing on the signs, whether they are posted on the bar itself or elsewhere. He claims that because the bar advertises lingerie shows and poker games presented and played at Respondent's bar, the advertising presents immorality and a nuisance to the nearby community in which he resides. He finds the advertising particularly offensive when he drives his granddaughter past it. He also believes the advertising presents a safety issue to passing motorists. Mr. Saikowski cites a March 17, 2011 serious motor vehicle accident caused by an intoxicated driver who reportedly had been at Respondent's bar before the accident.

Mr. Saikowski also believes that Respondent's bar is within several hundred feet of a church, in violation of county law.

#### **B. Respondent's Case**

James Sloan, an agent with the TABC, testified that he has reviewed Protestant's allegations. He found that there are no Montgomery County laws on how far a bar such as Respondent's must be located from a church. The church in question is about 500 feet from Respondent's bar. He also has spoken with the pastor of the church who stated that he has no problem with Respondent's bar.

Regarding signs on the county right-of-way, Agent Sloan stated that Respondent's owner informed him that he had in the past placed signs on the right-of-way, but he assured the Agent that he would no longer do so. Agent Sloan has since then not seen any of Respondent's signs on the county right-of-way.

Agent Sloan investigated the lingerie shows and the poker games held at Respondent's bar and found that neither violated TABC or county laws.

Regarding the accident cited by Protestant, Agent Sloan investigated that accident and issued a citation to Respondent's bar for selling alcohol to an inebriated person. He determined that a driver involved in the accident had been at Respondent's bar, and bartenders had refused to serve him more drinks and had offered to get the driver a cab, but the bartenders lost track of the patron before he drove away. Agent Sloan determined Respondent's bartenders did not promote the over-service of the involved driver, and the TABC and Respondent settled on a five-day suspension. Agent Sloan has also reviewed police calls-for-service for Respondent's bar and found three for the last year. Two were alarm calls, and one for a reported domestic disturbance.

It is Agent Sloan's opinion that Respondent's bar, which is located in a commercial area, operates in a well above-average manner when compared to other similar establishments.

### **C. Analysis**

Protestant must prove his case by a preponderance of the evidence. The ALJ finds that Protestant has shown insufficient evidence to deny Respondent's permit renewal on the basis of the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. Nor has Protestant shown that some unusual condition or situation exists preventing Respondent, a qualified applicant requesting to operate in a wet area, from operating at Respondent's present premises.

The ALJ finds based on the credible testimony of Agent Sloan that Respondent no longer places advertising on county right-of-way, has had minimum calls-for-service over the past year, and is not in violation of any church proximity laws.

Agent Sloan's testimony regarding the accident involving a patron served at Respondent's bar is also credible. He made a determination that Respondent's bartenders did not promote the over-serving of the patron involved. The ALJ also finds credible Agent Sloan's opinion that Respondent's bar is operated in a manner well-above other similar establishments.

The ALJ also notes that the bar has met all TABC requirements and the TABC has no

independent evidence to protest the permits renewal.

The ALJ is cognizant of Protestant's perceptions that Respondent's bar presents an affront to his personal sensibilities and morals. However, after reviewing all the evidence, Protestant has not proven that permitting Respondent's permit renewal would violate the Texas Alcoholic Beverage Code.

#### IV. RECOMMENDATION

The ALJ recommends that Respondent's renewal permit application be granted.

#### V. FINDINGS OF FACT

1. Trione Inc. d/b/a T's Bar (Respondent/bar) filed a renewal application with the Texas Alcoholic Beverage Commission (TABC) for a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit and a Beverage Cartage Permit for the premises located at 8542 Hwy. 242, Conroe, Montgomery County, Texas.
2. Ron Saikowski (Protestant) filed a Protest against Respondent's renewal application asserting that the application should be denied based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency.
3. A Notice of Hearing dated July 19, 2011, was issued by the TABC notifying the 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 September 30, 2011, a public hearing was held before Administrative Law Judge (ALJ) Stephen J. Burger in Houston, Texas. The TABC appeared at the hearing and was represented by Ramona Perry, Staff Attorney. Protestant represented himself. Respondent was represented by attorney Ian Beliveaux. Evidence was received and the record closed on the same date.
5. Respondent has met all TABC requirements to hold the permits for its location, and the TABC has no independent evidence to protest the permits being renewed.
6. Respondent's bar is located in a commercial area.

7. Protestant lives in a development adjacent to Respondent's bar and regularly drives past it.
8. Respondent's bar hosts lingerie shows and poker games, and has in the past placed signs advertising the shows and games on the county's nearby right-of way, in violation of county law.
9. Since the filing of Protestant's protest Respondent has not placed its advertising signs on the county's right-of-way and has agreed not to do so in the future.
10. Protestant finds Respondent's lingerie shows and poker games offensive, immoral and a nuisance.
11. Respondent's lingerie shows and poker games do not violate any TABC or county laws.
12. On March 17, 2011, a motor vehicle accident occurred in Montgomery County, and a driver involved had been served alcohol at Respondent's bar prior to the accident. The bar's bartenders did not promote the over-service of alcohol to that involved driver.
13. Police have responded to calls-for-service to Respondent's bar three times over the past year. Two were alarm calls and one for a domestic disturbance.
14. A church is located approximately 500 feet from Respondent's bar. The pastor of the church has no problems with Respondent's bar.
15. Montgomery County has no laws regarding how far bars must be located from a church.

## VII. CONCLUSIONS OF LAW

1. The TABC has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (Code) §§ 1.06 and Subchapter B of Chapter 5.
2. The State Office of Administrative Hearings (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. The parties received proper and timely notice of the hearing pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Respondent does not conduct its business in a place or manner that warrants the non-renewal of its permits based on the general welfare, peace, and safety of the people. Code § 11.46(a)(8).

5. The place or manner in which Respondent conducts its business does not present an unusual condition or situation warranting the denial of the Respondent's permit renewals.
6. Respondent's permits should be renewed.

**SIGNED November 18, 2011.**

  
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STEPHEN J. BURGER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

**DOCKET NO. 602958**

<b>TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner</b>	§	<b>BEFORE THE TEXAS</b>
	§	
	§	
<b>RON SAIKOWSKI, Protestant</b>	§	
	§	
<b>VS.</b>	§	
	§	
<b>TRIONE INC. D/B/A T'S BAR, Respondent</b>	§	<b>ALCOHOLIC</b>
	§	
	§	
<b>PERMIT NO. MB719884, LB &amp; PE</b>	§	
	§	
<b>MONTGOMERY COUNTY, TEXAS (SOAH DOCKET NO. 458-11-7335)</b>	§	<b>BEVERAGE COMMISSION</b>

**ORDER**

**CAME ON FOR CONSIDERATION** this 14TH day of AUGUST, 2012, the above-styled and numbered cause.

After proper notice was given, this case was heard by the State Office of Administrative Hearings (SOAH), with Administrative Law Judge Stephen J. Burger presiding. The hearing convened on September 30, 2011 and the SOAH record closed on that same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on November 18, 2011. 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. As of this date no exceptions have been filed.

After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All motions, requests for entry of Proposed Findings of Facts and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

THEREFORE, the renewal application of Trione Inc. d/b/a T's Bar for Mixed Beverage Permit MB719884, and the associated Mixed Beverage Late Hours Permit and Beverage Cartage Permit, is approved and the permits are renewed.

**This Order will become final and enforceable on the 10TH day of SEPTEMBER, 2012, unless a Motion for Rehearing is filed on or before the 7TH day of SEPTEMBER, 2012.**

**SIGNED** this the 14TH day of AUGUST, 2012, at Austin, Texas.



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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 14TH day of AUGUST, 2012.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

Stephen J. Burger  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
2020 North Loop West, Suite 111  
Houston, Texas 77018  
**VIA FACSIMILE: 512.322.0474**

Trione Inc.  
d/b/a T'S Bar  
**RESPONDENT**  
8542 Hwy. 242  
Conroe, Texas 77385  
**VIA CERTIFIED MAIL NO. 7007 0710 0005 4782 8459**

Ian Beliveaux  
**ATTORNEY FOR RESPONDENT**  
3200 S.W. Freeway, Suite 1200  
Houston, Texas 77027

Ron Saikowski  
**PROTESTANT**  
304 North Main Street, Suite #1  
Conroe, Texas 77301  
**VIA REGULAR MAIL**

Ramona Perry  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division  
**VIA EMAIL: [RAMONA.PERRY@TABC.STATE.TX.US](mailto:RAMONA.PERRY@TABC.STATE.TX.US)**