DOCKET NO. 613230

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	**BEFORE THE TEXAS**
	§	
	§	
	§	
	§	
VS.	§	
	§	**ALCOHOLIC**
TECHEN-BROCKMAN, INC	§	
D/B/A GOLD CROWN BILLIARDS,	§	
Respondent	§	
PERMITS MB546839,PE	§	
	§	
HAYS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-14-0669)	§	**BEVERAGE COMMISSION**

ORDER

CAME ON FOR CONSIDERATION this 12th day of September, 2014, 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 (ALJ) John H. Beeler presiding. The hearing on the merits convened on January 6, 2014 and the SOAH record closed that same day. The Administrative Law Judge issued a Proposal for Decision containing Findings of Fact and Conclusions of Law on March 6, 2014. The Proposal for Decision was properly served on all parties and the parties were given an opportunity to file exceptions and replies as part of the record herein. Exceptions were filed by the Petitioner on March 27, 2014. Respondent did not reply to the Exceptions. On May 1, 2014 the ALJ filed a letter responding to the Exceptions. In this letter, the ALJ recommended that the Exceptions should not be adopted.

After review and due consideration of the Proposal for Decision, the Exceptions, and the Administrative Law Judge's letter responding to the Exceptions, 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.

THEREFORE, IT IS ORDERED that **NO ACTION BE TAKEN.**

This Order will become **final and enforceable** on the 7th day of October, 2014, **unless a Motion for Rehearing is filed by the 6th day of October, 2014.**

SIGNED this the 12th day of September, 2014, at Austin, Texas.

Sherry K-Cook

Sherry K-Cook, Executive Director
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 12th day of September, 2014.

Martin Wilson

Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

John Beeler
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SOAH DOCKET NO. 458-14-0669

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner V. TECHEN-BROCKMAN, INC., D/B/A GOLD CROWN BILLIARDS PERMIT NO. MB546839, PE Respondent HAYS COUNTY, TEXAS (TABC CASE NO. 613230)	§ § § § § § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Techen-Brockman, Inc. d/b/a Gold Crown Billiards (Respondent) alleging that Respondent committed several violations of the Texas Alcoholic Beverage Code (Code). The Administrative Law Judge (ALJ) finds Petitioner failed to prove the allegations by a preponderance of the evidence and recommends that no action be taken against Respondent's permit.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The hearing in this matter convened on January 6, 2014, before State Office of Administrative Hearings (SOAH) ALJ John H. Beeler. David Duncan, staff attorney, represented Staff at the hearing. Clyde W. Burleson, attorney, represented Respondent. The hearing concluded and the record closed the same day.

There are no contested issues of notice or jurisdiction in this case. Therefore, notice and jurisdiction are addressed only in the findings of fact and conclusions of law.

II. APPLICABLE LAW

Staff alleges six violations of the Code based on three separate occurrences and references the following Code sections.

Code § 11.61(b)(2) and (7):

> (b) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true:
>
> (2) the permittee violated a provision of this code or a rule of the commission;
>
> (7) the place or manner in which the permittee conducts his business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency[.]

Code § 28.11:

> The commission or administrator may suspend or cancel a mixed beverage permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

Code § 104.01(9):

> No 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:
>
> (9) possession of a narcotic or any equipment used or designed for the administering of a narcotic or permitting a person on the licensed premises to do so.

"Narcotic" is defined by 16 Texas Administrative Code § 35.41(2) as any substance defined in the Texas Controlled Substances Act, § 481.002(5), (6), (7), or (26).

III. EVIDENCE AND ALJ'S ANALYSIS OF EVIDENCE

A. Background Information

Respondent holds a Mixed Beverage Permit and Beverage Cartage Permit No. MB546839 PE, for the premises known as Gold Crown Billiards, located at 205 W. San Antonio 'A', San Marcos, Hays County, Texas 78666.

B. Evidence

TABC Agent Joe Franco, San Marcos Police Officer Elias Verver, former Gold Crown bartender Terra Jean Gravitt, and owner Shea Ronsonette testified. The premises' violation history and a written statement from Ms. Ronsonette were admitted.

1. The July 5, 2012 Allegation

The relevant facts concerning the July 5, 2012 allegation are not in dispute. On that date, Ms. Ronsonette was on the premises and observed a man enter the bar who did not "look right." She recognized the man, approached him, put her arm around him, and detected what she thought might be a weapon. She immediately requested that he leave the premises and he complied. His brother was called to come and give him a ride home, but before the brother arrived, the man fired a shot in the parking lot. No one was injured in the incident.

2. The July 17, 2012 Allegation

Agent Franco testified that he conducted an inspection of the premises on July 17, 2012. Upon entering the bar, he smelled the odor of burnt marijuana. He did not, he stated, see anyone smoking marijuana and did not discover any evidence of marijuana being smoked. During the inspection, however, he did find a small amount of marijuana in an Altoids container in the purse of

the bartender. He discovered the purse in a closet and the bartender, Ms. Gravitt, was the only employee on duty. No owner of the bar was present.

Ms. Gravitt testified that, although the marijuana was hers, she had forgotten that it was in her purse. No one had smoked marijuana on the premises. The odor of marijuana, she stated, was coming from a tattoo parlor that shared the building and the ventilation system with the bar. She was fired as a result of the incident.

Ms. Ronsonette testified that she had no way of knowing her employee brought marijuana onto the premises and fired her immediately upon finding out she did so.

3. The July 30, 2012 Allegation

The relevant facts concerning the July 30, 2012 allegation are not in dispute. On that date, an individual entered the bar and attempted to stab Ms. Ronsonette, apparently in a robbery attempt. He was apprehended by patrons of the bar and the police were called.

C. The Parties' Positions

1. The July 5, 2012 Allegation

Staff argues that Ms. Ronsonette should have immediately called the police when she first suspected the man possessed a weapon on the premises. In Staff's opinion, her failure to do so resulted in a breach of the peace in violation of Code § 28.11 and warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency pursuant to Code § 28.11.

Respondent argues that Ms. Ronsonette's actions were reasonable under the circumstances and calling the police, instead of insisting the individual leave the premises, would not have been a better course of action.

The ALJ agrees that Ms. Ronsonette's actions were reasonable under the circumstances. Insisting that a patron who might be armed should leave is more sensible than calling the police on a mere suspicion. If the man had refused to leave when requested to, then calling the police would have been prudent, but in this case the man did leave. It could not have been anticipated that he would discharge his weapon after complying with the request to leave. Because Ms. Ronsonette's actions were reasonable, the ALJ finds no violation occurred.

2. The July 17, 2012 Allegation

Staff argues that an employee's possession of marijuana on the premises is a violation of to Code § 104.01(9). Respondent argues it could not have been known the employee possessed the marijuana, and the Department previously dismissed a case against another permittee for that very reason. In support, Respondent presented a TABC Information Report and dismissal order issued by TABC Administrator Sherry K. Cook in the case of Cross-National Financial, L.L.C., D/B/A Vintage Pub (Vintage).

The ALJ finds that no violation occurred. The TABC Administrator's order in the Vintage case stated, "On the particular facts of this case, the employee had a reasonable expectation of privacy in the contents of her purse. On the particular facts of this case, there is insufficient evidence that the permit holder permitted prohibited conduct, i.e., knew or should have known that its employee's purse contained contraband."

While the above order is not controlling in this case, the facts of this case are exactly the same as those described in the order. Further, finding a violation in such a case would mean that any employee could cause a permittee to commit a violation simply by bringing a controlled substance onto the premises, even if the permittee discovered the controlled substance and called the police. Such a result cannot be the intent of the statute. While there are types of violations that, if committed by employees, the permittee would have ways of discerning, possession of marijuana within an employee's purse is not one of them. Surveillance cameras could be installed to detect the

failure to check IDs of youthful appearing patrons or the visual appearance of intoxicated patrons, but no such tool could be reasonably used to detect marijuana in an employee's purse. As the dismissal order in Vintage states, the employee had "a reasonable expectation of privacy in the contents of her purse."

Because no evidence was presented to demonstrate Respondent knew or should have known the employee brought the marijuana onto the premises, no violation occurred.

3. The July 30, 2012 Allegation

Although the Notice of Hearing alleged that the July 30, 2012 incident constitutes a breach of the peace within the control of the permittee and a place or manner violation, Staff only asserted the place or manner aspect at the hearing. In short, Staff argued that the manner in which Respondent operated the premises attracted the type of people who would tend to cause trouble.

Respondent argues that the attempted robbery could not have been anticipated and was handled correctly. Respondent pointed out that the incident took place 18 months prior to the hearing and no other incidents have occurred since that time. The absence of subsequent incidents, Respondent argues, demonstrates that the premises were not operated in a manner that attracts trouble.

The ALJ agrees with Respondent and finds no violation occurred. In addition, no specifics were offered by Staff concerning exactly how Respondent operated the premises that would constitute a place or manner violation.

IV. PROPOSED FINDINGS OF FACT

1. Techen-Brockman, Inc. d/b/a Gold Crown Billiards (Respondent) holds a Mixed Beverage Permit and Beverage Cartage Permit No. MB546839 PE, issued by the Texas Alcoholic Beverage Commission (TABC) for the premises located at 205 W. San Antonio 'A', San Marcos, Hays County, Texas 78666.

2. On July 5, 2012, owner Shea Ronsonette suspected that an individual who entered the premises might possess a weapon and instructed him to leave the premises.

3. On that date, the individual left the premises but subsequently discharged his weapon in the parking lot.

4. On July 17, 2012, an employee of the premises was discovered to have a small amount of marijuana concealed in her purse.

5. Respondent did not know, and had no way of knowing, the employee possessed marijuana.

6. Respondent fired the employee upon learning she possessed marijuana.

7. On July 30, 2012, an individual attempted to stab Shea Ronsonette.

8. On that date, the individual was apprehended by patrons of the bar and the police were called.

9. On December 20, 2013, Staff issued a notice of hearing informing all parties of the hearing in this matter. Staff's notice contained the time, place, and nature of the hearing; stated the legal authority and jurisdiction under which the hearing was to be held; referenced the particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.

10. The hearing convened on January 6, 2014, before State Office of Administrative Hearings (SOAH) ALJ John H. Beeler. David Duncan, staff attorney, represented TABC's Staff at the hearing. Clyde Burleson, attorney, represented Respondent. The hearing concluded and the record closed the same day.

V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Texas Alcoholic Beverage Code (Code) ch. 5 and § 11.61.

2. SOAH has jurisdiction over all matters relating 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 Texas Government Code ch. 2003.

3. Respondent received proper and timely notice of the hearing pursuant to Texas Government Code §§ 2001.051 and 2001.052 and 1 Texas Administrative Code ch. 155.

4. On July 5, 2012, and July 30, 2012, no breach of the peace occurred that was not beyond the control of Respondent, as contemplated by Code § 28.11.

5. Respondent did not operate the licensed premises in a manner that warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency, as contemplated by Code § 11.61(b)(7).

6. Respondent did not permit the possession of marijuana by its employee, as contemplated by Code § 104.01(9).

5. Based on the findings of fact and conclusions of law, no action should be taken against Respondent's permit.

SIGNED March 6, 2014.

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