

DOCKET NO. 590341

IN RE KATHERINE FRANCES JONES	§	BEFORE THE
D/B/A THE COUNTRY BAR & POOL	§	
LICENSE NO. BE413793	§	
	§	TEXAS ALCOHOLIC
	§	
LIVE OAK COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-00-2356)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 27th day of October, 2000, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Michael J. Borkland. The hearing convened telephonically on September 22, 2000 and concluded on September 22, 2000. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on October 3, 2000. 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 Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which 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.

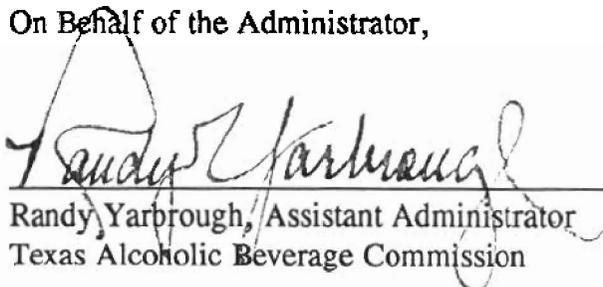
**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1 of the Commission Rules, that Respondent's conduct surety bond in the amount of **\$5,000.00** be **FORFEITED**.

**This Order will become final and enforceable on November 17, 2000**, 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.

WITNESS MY HAND AND SEAL OF OFFICE on this the 27th day of October, 2000.

On Behalf of the Administrator,



Randy Yarbrough, Assistant Administrator  
Texas Alcoholic Beverage Commission

CB/bc

The Honorable Michael J. Borkland  
Administrative Law Judge  
State Office of Administrative Hearings  
VIA FACSIMILE (512) 475-4994

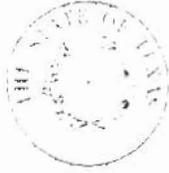
Holly Wise, Docket Clerk  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701  
VIA FACSIMILE (512) 475-4994

Katherine Frances Jones  
d/b/a The Country Bar & Pool  
**RESPONDENT**  
P.O. Box 1956  
George West, Texas 78022  
VIA CERTIFIED MAIL/RRR NO. Z 473 039 272

Christopher Burnett  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division  
Corpus Christi District Office

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

October 3, 2000

OCT - 3

SN 590341

Mr. Doyne Bailey, Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa, Suite 160  
Austin, Texas 78711

HAND DELIVERY

RE: **Docket No. 458-00-2356; TABC vs. KATHERINE FRANCES JONES D/B/A THE COUNTRY BAR & POOL, BE-413793**

Dear Mr. Bailey:

Please find enclosed a Proposal for Decision that has been prepared for your consideration in the above referenced case. Copies of the Proposal for Decision are being sent to Christopher Burnett, Staff Attorney representing the Texas Alcoholic Beverage Commission, and to Katherine Frances Jones d/b/a The Country Bar & Pool (Respondent). For reasons discussed in the Proposal for Decision, I recommend that the Respondent's conduct surety bond be forfeited.

Pursuant to TEX. GOV'T CODE ANN. §2001.062 (Vernon 2000), each party has the right to file exceptions to the Proposal for Decision and to present a brief with respect to the exceptions. If any party files exceptions or briefs, all other parties may file a reply. Exceptions and replies must be filed according to the time limits specified in TABC rules. A copy of any exceptions, briefs on exceptions, or reply must also be filed with the State Office of Administrative Hearings and served on the other party in this case.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Borkland".

Michael J. Borkland  
Administrative Law Judge

MJB/sa  
Enclosure

cc: ✓ Christopher Burnett, Staff Attorney, TABC, 5806 Mesa, Suite 160, Austin, Texas - VIA HAND DELIVERY  
Katherine Frances Jones, c/o The Country Bar & Pool, P. O. Box 1956, George West, Texas 78022 - VIA FIRST CLASS MAIL  
Rommel Corro, Docket Clerk, State Office of Administrative Hearings- VIA HAND DELIVERY

SOAH DOCKET NO. 458-00-2356

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

BEFORE THE STATE OFFICE

VS.

OF

KATHERINE FRANCES JONES  
D/B/A THE COUNTRY BAR & POOL  
BE-413793

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission (TABC) brought this enforcement action against Katherine Frances Jones d/b/a The Country Bar & Pool (Respondent) seeking forfeiture of the full amount of the Respondent's conduct surety bond. TABC alleged the Respondent committed three violations of the Texas Alcoholic Beverage Code since September 1, 1995. TABC also alleged the violations have been finally adjudicated. The Respondent appeared and contended the matters had been settled with TABC and that forfeiture of the bond amounted to a double penalty. This Proposal for Decision finds the Respondent's conduct surety bond should be forfeited.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing in this matter convened telephonically on September 22, 2000. Staff Attorney Christopher Burnett represented TABC. The Respondent appeared and was represented by its manager, James M. Caruso. Michael J. Borkland, Administrative Law Judge (ALJ), presided. The record closed at the conclusion of the hearing.

The notice of hearing, dated June 23, 2000, was sent, by certified mail, return receipt requested, to the Respondent at P.O. Box 15956, George West, Texas. Petitioner requested that it be allowed to appear by telephone, and Respondent did not object. No party challenged notice, jurisdiction, or venue. 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 enforcement 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. EVIDENCE AND ANALYSIS**

**A. Evidence.**

The staff of TABC (Staff) offered documentary evidence from the TABC files. Those documents show:

(a) On April 30, 1997, Respondent posted a conduct surety bond in the amount of \$5,000 asserting it would faithfully conform with the Texas Alcoholic Beverage Code (the Code) and the rules of TABC.

(b) Katherine Frances Jones dba The Country Bar & Pool was issued a renewal of Beer Retailer's On Premise License, BE-413793, by TABC on June 5, 2000.

(c) On August 14, 1998, July 8, 1999, and April 26, 2000, Respondent was issued citations for alleged violations of the Code.

(d) On November 24, 1998, November 16, 1999, and May 16, 2000, the Respondent signed a document entitled "Agreement and Waiver of Hearing" which, in each instance, included the following language, "I neither admit nor deny that the violations stated above have occurred and do hereby waive my right to a hearing . . . The signing of this waiver may result in the forfeiture of any related conduct surety bond."

(e) The November 24, 1998, waiver document listed the alleged violation as giving a check which was dishonored and returned for insufficient funds; the November 16, 1999, waiver document listed the alleged violation as giving a check which was dishonored for insufficient funds; and the May 16, 2000, waiver document listed the alleged violation as intoxicated permittee/licensee/employee on the premises.

(f) On November 30, 1998, November 19, 1999, and May 31, 2000, respectively, based on the "Agreement and Waiver of Hearing" documents signed by the Respondent, TABC issued Orders assessing the Respondent penalties for the violations listed. The November 30, 1998 Order assessed a three day suspension of license number BE-413793 unless the Respondent paid a \$450.00 penalty before November 25, 1998. The November 19, 1999 Order assessed an eight day suspension of the same license unless the Respondent paid a \$1,200.00 penalty before November 17, 1999. The May 31, 2000 Order assessed a seven day suspension of the license unless the Respondent paid a \$1,050.00 penalty before July 5, 2000.

James M. Caruso testified he has been the manager of the business for eight months. He stated that the third violation involved his wife. In his opinion, she was not intoxicated because she had only three beers in a two to three hour period. He also said that she was not working at the time. Additionally, he feels that forfeiting the bond in addition to paying the \$1050.00 fine is paying double.

## **B. Analysis.**

The Staff had the burden of proof in this hearing. The issues to be decided are whether the Respondent was the subject of "final adjudication" of three violations of the Code after September 1, 1995, and if so, did TABC waive its right to pursue action against the Respondent's conduct surety bond.

The rules of TABC, at 16 TEX. ADMIN. CODE CODE (TAC) §33.24(j) provide:

(1) When a license or permit is canceled, or a final adjudication that the licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995, the commission shall notify the licensee or permittee, in writing, of its intent to seek forfeiture of the bond.

(2) The licensee or permittee may . . . request hearing on the question of whether the criteria for forfeiture of the bond, as established by the Alcoholic Beverage Code, §11.11 and §61.13 and this rule have been satisfied.

The applicable statutory provisions at TEX. ALCO. BEV. CODE ANN. §§11.11(b)(2) state:

(b) . . . the holder of the permit agrees that the amount of the bond shall be paid to the state if the permit is revoked or on final adjudication that the holder violated a provision of this code. . . .

The Staff takes the position that the Orders issued on November 30, 1998, November 19, 1999, and May 31, 2000, each amounts to a "final adjudication." The Orders are final. In addition to being final, each Order finds the Respondent "has agreed that the violation of law did occur . . . The agreed violations are as stated in the agreement and waiver of hearing." The Orders contain a warning to the Respondent that the Order will become final and enforceable either at the time it is signed or 21 days after the date it is signed unless the Respondent files a motion for rehearing. There is no evidence the Respondent filed such a motion. The undersigned ALJ agrees with the Staff's position that the Orders issued on November 30, 1998, November 19, 1999, and May 31, 2000, each became a final adjudication that the Respondent had violated the Code when the Respondent failed to seek a rehearing. The instant hearing is not the proper forum to challenge the findings contained in the Order.

### III. RECOMMENDATION

Based on a preponderance of the evidence, the Respondent committed three violations of the Code since September 1, 1995, in violation of Texas Alcoholic Beverage Commission rules, 16 TAC §33.24. As a consequence, the full amount of the conduct surety bond, or any instrument serving in place of a conduct surety bond (including, but not limited to certificates of deposit and letters of credit), should be forfeited.

### IV. PROPOSED FINDINGS OF FACT

1. Katherine Frances Jones d\b\ a The Country Bar & Pool (Respondent) is the holder of Beer Retailer's On Premises License No. BE-413793, renewed by the Texas Alcoholic Beverage Commission (TABC) on June 5, 2000.

2. On April 30, 1997, the Respondent executed a conduct surety bond in the amount of \$5,000.00 payable to TABC.
3. On June 23, 2000, the staff of TABC (the Staff) sent a Notice of Hearing by certified mail, return receipt requested, to the Respondent asserting that TABC was seeking to forfeit the Respondent's surety bond. The Respondent timely received the notice letter.
4. The hearing on the merits was conducted telephonically on September 22, 2000. Staff Attorney Christopher Burnett represented the Staff. The Respondent appeared and was represented by its manager, James M. Caruso. Michael J. Borkland, Administrative Law Judge (ALJ) presided.
5. On November 24, 1998, the Respondent signed an "Agreement and Waiver of Hearing" regarding an alleged violation of the Texas Alcoholic Beverage Code (the Code), for which TABC entered an Order finding the Respondent committed the violation and imposed a three day suspension or a civil penalty of \$450.00 on the Respondent.
6. On November 16, 1999, the Respondent signed an "Agreement and Waiver of Hearing" regarding an alleged violation of the Code, for which TABC entered an Order finding the Respondent committed the violation and imposed an eight day suspension or a civil penalty of \$1,200.00 on the Respondent.
7. On May 16, 2000, the Respondent signed an "Agreement and Waiver of Hearing" regarding an alleged violation of the Code, for which TABC entered an Order finding the Respondent committed the violation and imposed a seven day suspension or a civil penalty of \$1,050.00 on the Respondent.
8. The Respondent did not timely file a motion for rehearing with TABC and the Orders described in Findings of Fact Nos. 5, 6, and 7 became final.
9. The Respondent has committed three violations of the Code since September 1, 1995.

## V. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. §§6.01 and 11.11.
2. The State Office of Administrative Hearings has jurisdiction to conduct the administrative 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 Administrative Procedure Act, TEX. GOV'T. CODE ANN. §§2001.051 and 2001.052.

4. The Respondent violated the rules of TABC found at 16 TEX. ADMIN. CODE §33.24 by committing three violations of the Texas Alcoholic Beverage Code (the Code) since September 1, 1995.
5. TABC is permitted by TEX. ALCO. BEV. CODE ANN. §11.11 and 16 TEX. ADMIN. CODE §33.24 to forfeit the conduct surety bonds of permittees who commit three or more violations of the Code since September 1, 1995.
6. Based on the foregoing Findings of Fact and Conclusions of Law, the conduct surety bond executed by the Respondent should be forfeited to the State.

SIGNED this 3<sup>d</sup> day of October, 2000.



MICHAEL J. BORKLAND  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS