

DOCKET NO. 458-02-2829

**TEXAS ALCOHOLIC BEVERAGE
COMMISSION**

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BEFORE THE STATE OFFICE

v.

OF

**PORCINE PRODUCTIONS, INC.
D/B/A THE PIG AND WHISTLE PUB
TARRANT COUNTY, TEXAS
(TABC CASE NO. 598741)**

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) brought this enforcement action against Porcine Productions, Inc. d/b/a The Pig and Whistle Pub (Respondent). Petitioner sought cancellation of Respondent's permits, alleging Respondent failed to pay delinquent ad valorem taxes. For reasons discussed in this proposal, the Administrative Law Judge (ALJ) recommends cancellation of Respondent's permits.

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5, §§ 6.01, 11.61, and 11.38(e). The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2003. There were no contested issues of jurisdiction or venue.

Petitioner sent Respondent written notice of its intent to seek cancellation of Respondent's permit by a letter dated March 26, 2002. On May 6, 2002, Petitioner issued its Notice of Hearing, directed to Respondent's address of record, Porcine Productions, Inc. d/b/a The Pig and Whistle Pub, 210 E. 8th Street, Fort Worth, Texas 76102-5419, via certified mail, return receipt requested. An Amended Notice of Hearing was issued on June 25, 2002, directed to the above address. Although both notices were returned unclaimed, Jo Meredith, Respondent's representative, appeared on behalf of Respondent for pre-hearing matters and was made aware of the hearing dates set forth in the notices and subsequent continuance orders.

On October 8, 2002, a hearing convened before SOAH ALJ Cindy T. Greenleaf at 6777 Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared by phone through its representative, Jo Meredith. Both parties agreed to proceed under the original Notice of Hearing



dated May 6, 2002. Evidence was received on that date. The record closed on November 8, 2002.

LEGAL STANDARDS AND APPLICABLE LAW

TABC is authorized under TEX. ALCO. BEV. CODE ANN. § 11.38(e) to cancel Respondent's permits for the retail sale or service of alcoholic beverages if Respondent has not paid delinquent ad valorem taxes due on the permitted premises to any taxing authority in the county of the premises. Pursuant to § 11.38(e) of the Texas Alcoholic Beverage Code:

The commission or administrator may cancel or deny a permit for the retail sale or service of alcoholic beverages, including a permit held by the holder of a food and beverage certificate, if it finds that the permit holder or applicant has not paid delinquent ad valorem taxes due on that permitted premises or due from a business operated on that premises to any taxing authority in the county of the premises. For purposes of this subsection, a permit holder or applicant is presumed delinquent in the payment of taxes due if the permit holder or applicant:

- (1) is placed on a delinquent tax roll prepared under Section 33.03 Tax Code;
- (2) has received a notice of delinquency under Section 33.04 Tax Code; and
- (3) has not made payment required under Section 42.08, Tax Code.

EVIDENCE AND PARTIES' CONTENTIONS

Petitioner alleged that Respondent is the holder of a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit issued by TABC. Respondent did not dispute this allegation. Permit records contained in TABC Exhibit Two establish that a Mixed Beverage Permit, MB-137665, and a Mixed Beverage Late Hours Permit, LB-137932, were issued to Porcine Productions, Inc. d/b/a The Pig and Whistle, 210 E. 8th Street, Fort Worth, Tarrant County, Texas by the TABC on February 4, 1982.

Petitioner alleged that Respondent failed to pay delinquent ad valorem taxes to Tarrant County, in violation of § 11.38 of the Texas Alcoholic Beverage Code. In support of its allegations, TABC presented the testimony of Morris Booth, Delinquent Collections Officer for Tarrant County. Mr. Booth testified to the following: The Respondent has not paid delinquent ad valorem taxes in the amount of \$3,719.46 as of October 8, 2002, to Tarrant County, Texas. These taxes are owed for the permitted premises located at 210 E. 8th Street, Fort Worth, Tarrant County, Texas. Respondent has received notice of the said delinquency, and Respondent has been placed on the delinquent tax roll.

Respondent presented no evidence.

ANALYSIS

The relevant facts are clear and undisputed. Respondent holds a Mixed Beverage Permit, MB-137665, and a Mixed Beverage Late Hours Permit, LB-137932, and Respondent failed to pay delinquent ad valorem taxes for the permitted premises to Tarrant County, Texas, in violation of § 11.38 of the Texas Alcoholic Beverage Code.

RECOMMENDATION

The ALJ recommends that Respondent's Mixed Beverage Permit, MB-137665, and Mixed Beverage Late Hours Permit, LB-137932, be canceled.

PROPOSED FINDINGS OF FACT

1. Respondent, Porcine Productions, Inc. d/b/a The Pig and Whistle, holds a Mixed Beverage Permit, MB-137665, and a Mixed Beverage Late Hours Permit, LB-137932, issued on February 4, 1982, by the Texas Alcoholic Beverage Commission (TABC).
2. Respondent's permits were issued for the premises located at 210 E. 8th Street, Fort Worth, Tarrant County, Texas.
3. Respondent failed to pay delinquent ad valorem taxes to Tarrant County, Texas.
4. Respondent has been placed on a delinquent tax roll.
5. Respondent received notice of this delinquency.
6. Petitioner sent Respondent written notice of its intent to seek cancellation of Respondent's permits by a letter dated March 26, 2002.
7. On May 6, 2002, Petitioner issued its Notice of Hearing to Respondent at its address of record, 210 E. 8th Street, Fort Worth, Texas 76102-5419.
8. On October 8, 2002, a hearing convened before SOAH ALJ Cindy T. Greenleaf at 6777

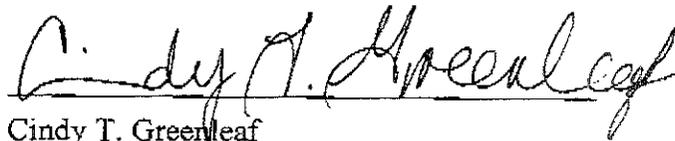
Camp Bowie Blvd., Suite 400, Fort Worth, Tarrant County, Texas. Petitioner was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent appeared through its representative, Jo Meredith.

9. Respondent did not contest notice or jurisdiction.

PROPOSED CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. ch. 5 and § 11.38 (e).
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a proposal for decision with proposed findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2003.
3. Respondent received proper notice of the hearing.
4. Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.38(e), warranting the cancellation of Respondent's permits.
5. Respondent's Mixed Beverage Permit, MB-137665, and Mixed Beverage Late Hours Permit, LB-137932, should be cancelled.

SIGNED this the 2nd day of January, 2003.



Cindy T. Greenleaf

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

DOCKET NO. 598741

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| IN RE PORCINE PRODUCTIONS INC. | § | BEFORE THE |
| D/B/A THE PIG AND WHISTLE PUB | § | |
| PERMIT NO. MB137665, LB137932 | § | |
| | § | TEXAS ALCOHOLIC |
| | § | |
| TARRANT COUNTY, TEXAS | § | |
| (SOAH DOCKET NO. 458-02-2829) | § | BEVERAGE COMMISSION |

ORDER

CAME ON FOR CONSIDERATION this 29th day of January 2003, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Cindy Greenleaf. The hearing convened on October 8, 2002, and adjourned on October 8, 2002. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on January 2, 2003. This Proposal For Decision (**attached hereto as Exhibit "A"**), 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 Permit Nos. MB137665 and LB137932 are hereby **CANCELED FOR CAUSE**.

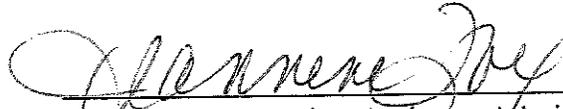
This Order will become final and enforceable on February 19, 2003, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by facsimile or through the U.S. Mail, as indicated below.

SIGNED this 29th day of January, 2003.

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On Behalf of the Administrator,



Jeannene Fox, Acting Assistant Administrator
Texas Alcoholic Beverage Commission

/bc

The Honorable Cindy Greenleaf
Administrative Law Judge
State Office of Administrative Hearings
VIA FAX (817) 377-3706

PORCINE PRODUCTIONS INC.
D/B/A THE PIG AND WHISTLE PUB
RESPONDENT
210 E. 8th St.
Fort Worth, TX 76102-5419
CERTIFIED MAIL NO.7001 2510 0003 8688 6612

Timothy E. Griffith
ATTORNEY FOR PETITIONER
TABC Legal Section

Regulatory Division

Fort Worth District Office