

TEXAS ALCOHOLIC	§	BEFORE THE STATE OFFICE
BEVERAGE COMMISSION	§	
	§	
V.	§	
	§	OF
JOSE A. LUNA D/B/A BURNET	§	
FOOD MARKET	§	
PERMIT NO. BQ-101719	§	
BEXAR COUNTY, TEXAS	§	
(TABC CASE NO. 577842)	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Alcoholic Beverage Commission brought this enforcement action against Jose A. Luna dba Burnet Food Market (the Permittee) for paying for beer with a check for which funds were insufficient. The Permittee did not appear at the hearing. This Proposal for Decision finds the allegation proven and recommends a five-day suspension of the permit or a fine of \$750 in lieu of suspension.

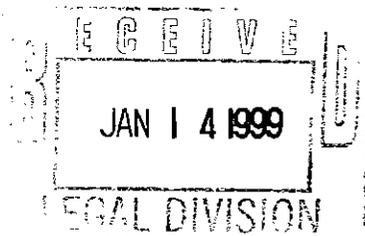
**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter convened on December 14, 1998, at the offices of the State Office of Administrative Hearings in San Antonio, Bexar County, Texas. The staff of the Commission (Staff) was represented by its counsel, Dewey Brackin. The Permittee did not appear and was not represented at the hearing.

**II. THE ALLEGATIONS AND APPLICABLE STATUTORY PROVISIONS**

There was one allegation in this proceeding, asserting the Permittee or his agent or employee paid beer distributors for beer with checks that were subsequently returned for insufficient funds. It is a violation of TEX. ALCO. BEV. CODE ANN. (Code) §61.73(b) for a permittee to give a beer distributor a check for payment of beer which is dishonored when presented for payment. Such a violation may be punished by cancellation or a maximum 60-day suspension of a permit.



### III. CHECKS FOR INSUFFICIENT FUNDS

As described in the Findings of Fact, the Permittee violated Code §61.73(b) by writing a check for beer that was subsequently returned for insufficient funds. The Permittee, his agent, servant, or employee wrote the check. The Permittee is responsible for his own acts and the acts of his agents.

### IV. RECOMMENDATION

Penalties for the violations of §61.73(b) may be determined in accordance with the Commission's standard penalty chart found at 16 TEX. ADMIN. CODE §37.60. The penalty chart prescribes suspensions of varying lengths, depending on a permittee's history of violations.

In this case, Staff recommended a five-day suspension; the Administrative Law Judge agrees with the recommendation. Pursuant to Code §11.64, the Permittee must be offered the opportunity to pay a civil penalty in lieu of a suspension. The penalty may not be less than \$150 nor more than \$2,500 for each day of the suspension. Staff recommended the minimum amount be used to determine the civil penalty. The ALJ agrees with Staff's recommendation.

### V. FINDINGS OF FACT

1. Jose A. Luna dba Burnet Food Store (the Permittee), located at 1030 Burnet, San Antonio, Texas, holds Permit No. BQ-101719.
2. On October 29, 1998, the staff of the Texas Alcoholic Beverage Commission sent a notice of hearing by certified mail, return receipt requested, to the Permittee regarding an alleged violation of the Texas Alcoholic Beverage Code.
3. The notice was sent to the Permittee's address of record.
4. The hearing on the merits was held on December 14, 1998, at the offices of the State Office of Administrative Hearings, San Antonio, Bexar County, Texas. The staff of the Commission was represented by its counsel, Dewey Brackin. The Permittee did not appear and was not represented at the hearing.
5. On or about December 5, 1997, Permittee, its agent, servant, or employee gave a check written in the amount of \$84.00 to a beer distributor, BudCo, Inc. of San Antonio, Texas, in payment for beer.
6. The check described in Finding 5 was returned by the drawee, Frost National Bank of San Antonio, Texas, for insufficient funds.

## VI. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this matter pursuant to TEX. ALCO. BEV. CODE ANN. (Code) §§6.01, 61.71, and 61.73 (Vernon 1998).
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 (Vernon 1998).
3. Notice of the hearing was provided as required by the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§2001.051 and 2001.052 (Vernon 1998).
4. The Permittee, his agent, servant, or employee gave a check in payment for beer, which was dishonored for insufficient funds when presented for payment, in violation of Code §61.73(b).
5. Based on the foregoing Findings and Conclusions, a five-day suspension of the permit is warranted. 16 TEX. ADMIN. CODE §37.60.
6. Pursuant to §11.64 of the Code, the Permittee should be allowed to pay a \$750 civil penalty in lieu of suspension of its permit.

SIGNED this 13<sup>th</sup> day of January, 1999.

for Kendy Ingham Hunt  
GARY W. ELKINS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS