

DOCKET NO. 608722

TEXAS ALCOHOLIC BEVERAGE COMMISSION, Petitioner	§	BEFORE THE TEXAS
	§	
AND	§	
	§	
LETICIA OZUNA, SGT. MICHAEL SAENZ, & LT. ANDY RODRIGUEZ, Protestants	§	
	§	
VS.	§	ALCOHOLIC
	§	
OK WEST CLUB, LLC D/B/A OK WEST, Respondent/Applicant	§	
	§	
ORIGINAL APPLICATION FOR MB, LB & PE PERMITS	§	
	§	
BEXAR COUNTY, TEXAS (SOAH DOCKET NO. 458-12-7101)	§	BEVERAGE COMMISSION

**ORDER**

**CAME ON FOR CONSIDERATION** this 21st day of December, 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 John H. Beeler presiding. The hearing convened on August 21, 2012 and the SOAH record closed that same day. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on October 15, 2012. 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, with the following exceptions only to Finding of Fact No. 1 and Conclusion of Law No. 5, 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.

Substitute the following as Finding of Fact No. 1:

OK West Club, LLC d/b/a OK West (Respondent) filed an original application with the Texas Alcoholic Beverage Commission (TABC) Staff

(Petitioner) for a mixed beverage permit, mixed beverage late hours permit, and beverage cartage permit for the premises located at 2502 Pleasanton Road, San Antonio, Bexar County, Texas.

Substitute the following as Conclusion of Law No. 5:

Respondent's application for a mixed beverage permit, mixed beverage late hours permit, and beverage cartage permit for the premises located at 2502 Pleasanton Road, San Antonio, Bexar County, Texas, should be granted.

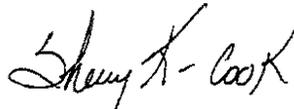
The modifications to Finding of Fact No. 1 and Conclusion of Law No. 5 are made pursuant to Government Code §2001.058(e)(3) to change the incorrect term "beverage cartel permit" to the correct term "beverage cartage permit".

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.

**IT IS THEREFORE ORDERED** that Respondent's application for a Mixed Beverage Permit, a Mixed Beverage Late Hours Permit, and a Beverage Cartage Permit be **GRANTED**.

This Order will become final and enforceable on the 11th day of January, 2013, unless a Motion for Rehearing is filed by the 10th day of January, 2013.

**SIGNED** this the 21st day of December, 2012, at Austin, Texas.

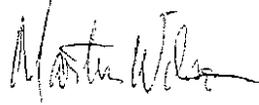


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Sherry K-Cook, Assistant Administrator  
Texas Alcoholic Beverage Commission

**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 21st day of December, 2012.



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Martin Wilson, Assistant General Counsel  
Texas Alcoholic Beverage Commission

John Beeler  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
P.O. Box 13025  
Austin, TX 78711-3025  
**VIA FACSIMILE: (512) 322-2061**

OK West Club, LLC  
d/b/a OK West  
**RESPONDENT**  
2502 Pleasanton Road  
San Antonio, TX 78221  
**VIA REGULAR MAIL**

Dewey Brackin  
**ATTORNEY FOR RESPONDENT**  
600 Congress Ave., Suite 3000  
Austin, TX 78701  
**VIA REGULAR MAIL**  
**AND VIA FACSIMILE: (512) 542-7225**

David Duncan  
**ATTORNEY FOR PETITIONER**  
TABC Legal Division



## I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of notice, jurisdiction, or venue in this proceeding. Therefore, those matters are set out in the proposed Findings of Fact and Conclusions of Law without further discussion here.

On August 21, 2012, a public hearing was convened in this matter in San Antonio, Texas, before ALJ John H. Beeler. Petitioner was represented by attorney David Duncan and Respondent was represented by attorney Dewey Brackin. The record closed that same day.

## II. APPLICABLE LAW

The statutory foundation for the protest to this application is Tex. Alco. Bev. Code § 11.46(a)(8), which provides:

The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exist:

- (8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, peace, morals, and safety of the people and on the public sense of decency.

## III. DISCUSSION

Protestants bear the burden of proof in establishing that Respondent's business operations would be contrary to the general welfare, peace, morals, and safety of the people and the public sense of decency. In support of the request to deny the application, Protestants presented the testimony of TABC agent Robert Charles, resident Arturo Benavidas, and city employee Josh Mann. Agent Charles testified that he is opposed to the issuance of the permits due to the large number of calls

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for police service at the location. During the time of the calls, the location was operated by a different permittee than Respondent and Agent Charles knows of no connection between the former permittee and Respondent.

Arturo Benavidas testified that he lives not far behind the premises and is concerned with violence and other criminal activity in the area of the premises. His concerns are based on the prior permittee's operation. He agreed that, if the premises was operated correctly, he would have no objection to it being there. Josh Mann testified that his employer, San Antonio City Councilwoman Leticia Ozuna, is opposed to the granting of the permits due to the concerns of her constituents. He stated that he has no personal knowledge of problems at the location in question.

Respondent offered the testimony of Richard Garcia and Charles Siegel. Mr. Garcia testified that he will be in charge of the club, has experience working at businesses that sold alcohol, never had any problems in those businesses, and will operate the premises according to the law and assure minors will not be able to consume alcohol. He will also employ extensive security, including commissioned police officers.

Mr. Siegel testified that he is a partner in the real estate company that leased the property to Respondent. He stated that he is confident Respondent will operate the club according to the law and that, if he does not, the lease will be canceled.

Based on the evidence, the ALJ recommends that the permits be granted. Nothing in the record would indicate that Respondent will operate the premises in a manner contrary to the general welfare, peace, morals, and safety of the people and the public sense of decency.

#### **IV. FINDINGS OF FACT**

1. OK West Club, LLC d/b/a OK West (Respondent) filed an original application with the Texas Alcoholic Beverage Commission (TABC) staff (Petitioner) for a mixed beverage permit, mixed beverage late hours permit, and beverage cartel permit for the premises located at 2502 Pleasanton Road, San Antonio, Bexar County, Texas.

2. The TABC, San Antonio City Councilwoman Leticia Ozuna, San Antonio Police Sergeant Michael Saenz, and San Antonio Police Lieutenant Andy Rodriguez (Protestants) protested the granting of Respondent's permits based on the general welfare, peace, morals, and safety concerns of the public.
3. A Notice of Hearing, dated July 20, 2012, was issued by TABC Staff notifying all 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 August 21, 2012, a hearing was conducted by ALJ John H. Beeler in San Antonio, Texas. TABC Staff appeared at the hearing through Staff Attorney David Duncan and Respondent appeared and was represented by attorney Dewey Brackin. The record closed that same day.
5. The police calls for service to the location of the licensed premises occurred before Respondent had any interest in the premises.
6. Respondent has no connection to the prior permittee of the premises.
7. No evidence was presented indicating that Respondent will operate the premises contrary to the general welfare, peace, morals, and safety concerns of the public.

#### V. CONCLUSIONS OF LAW

1. TABC has jurisdiction over this matter under Tex. Alco. Bev. Code chs. 5, 11, 28, and 29, and §§ 6.01 and 11.46(a)(8).
2. The State Office of Administrative Hearings has jurisdiction over all matters related 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 Tex. Gov't Code ch. 2003.
3. Proper and timely notice of the hearing was provided to all parties pursuant to the Administrative Procedure Act, Tex. Gov't Code ch. 2001, and 1 Tex. Admin. Code § 155.401.
4. Granting of the requested permits will not adversely affect the general welfare, health, peace, morals or safety of the people or violate the public sense of decency. Tex. Alco. Bev. Code § 11.46(a)(8).

5. Respondent's application for a mixed beverage permit, mixed beverage late hours permit, and beverage cartel permit for the premises located at 2502 Pleasanton Road, San Antonio, Bexar County, Texas, should be granted.

**SIGNED October 15, 2012.**



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