

DOCKET NO. 632019

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION, Jurisdictional Petitioner	§	
	§	
NANCY RISTER (WILLIAMSON COUNTY	§	
CLERK'S OFFICE), Protestant	§	
	§	
V.	§	
	§	
	§	
ORIGINAL AND RENEWAL	§	
APPLICATIONS OF SENORITA'S	§	
CANTINA, INC., D/B/A	§	ALCOHOLIC
STOMPIN GROUNDS BAR & GRILL,	§	
Respondent/Applicant	§	
PERMIT MB765332, LB, PE	§	
	§	
	§	
WILLIAMSON COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-15-4620)	§	
	§	
	§	BEVERAGE COMMISSION

ORDER

CAME ON FOR CONSIDERATION this 30th day of December, 2015, 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 Sharon Cloninger presiding. The hearing convened on August 11, 2015 and the SOAH record closed the same date. The Administrative Law Judge made and filed a Proposal for Decision containing Findings of Fact and Conclusions of Law on October 9, 2015. 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. No exceptions were filed.

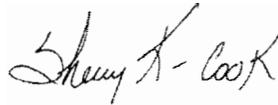
After review and due consideration of the Proposal for Decision, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, and incorporate those Findings of Fact and Conclusions of Law into this Order as if such were fully set out and separately stated herein.

All motions, requests for entry of Proposed Findings of Fact 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 original application for a Mixed Beverage Late Hours Permit and Beverage Cartage Permit be **DENIED**, and the renewal application for Mixed Beverage Permit MB765332 be **GRANTED**.

This Order will become **final and enforceable** on the 23rd day of January, 2016, **unless a Motion for Rehearing is filed by the 22nd day of January, 2016.**

SIGNED this the 30th day of December, 2015, at Austin, Texas.



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 30th day of December, 2015.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Sharon Cloninger
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
300 W. 15th Street, Suite 502
Austin, TX 78701
VIA FACSIMILE: (512) 322-2061

Senorita's Cantina, Inc.
d/b/a Stompin Grounds Bar and Grill
RESPONDENT/APPLICANT
9112 Anderson Mill Rd., Suite B100
Austin, TX 78729
VIA FIRST CLASS MAIL, CMRRR#70150640000460343276

Shannon Francis
ATTORNEY FOR PROTESTANT
Assistant Williamson County Attorney
405 Martin Luther King, Suite 240
Georgetown, TX 78626
VIA FIRST CLASS MAIL, CMRRR#70150640000460343283

John Sedberry
ATTORNEY FOR PETITIONER
TABC Legal Division
VIA E-MAIL: john.sedberry@tabc.texas.gov

SOAH DOCKET NO. 458-15-4620
(TABC CASE NO. 632019)

TEXAS ALCOHOLIC BEVERAGE
COMMISSION,
Jurisdictional Petitioner

AND

NANCY RISTER (WILLIAMSON
COUNTY CLERK'S OFFICE),
Protestant

v.

ORIGINAL AND RENEWAL
APPLICATIONS OF SENORITA'S
CANTINA, INC. D/B/A STOMPIN
GROUNDS BAR & GRILL,
Applicant

PERMIT NO. MB765332
WILLIAMSON COUNTY, TEXAS

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Senorita's Cantina, Inc. d/b/a Stompin Grounds Bar & Grill (Applicant) has filed a renewal application for a Mixed Beverage Permit and an original application for a Mixed Beverage Late Hours Permit and Beverage Cartage Permit with the Texas Alcoholic Beverage Commission (TABC or Commission), for the premises at 9112 Anderson Mill Road, B100, Austin, Williamson County, Texas 78729. Williamson County Clerk Nancy Rister does not protest the renewal application but protests the original application. TABC's Staff is a neutral party in this protest. The Administrative Law Judge (ALJ) recommends that the renewal application be granted and the original application be denied.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Jurisdiction and notice were not disputed; therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing convened on August 11, 2015, at the State Office of Administrative Hearings in Austin, Texas, before ALJ Sharon Cloninger. Applicant appeared through its owner, Dana McConnell, and its general manager, Marc Hartshorne. Ms. Rister appeared and was represented by Shannon Francis, Assistant Williamson County Attorney. John W. Sedberry, attorney, represented TABC. The hearing concluded and the record closed that day.

II. APPLICABLE LAW

A. Basis of Protest

Pursuant to Texas Alcoholic Beverage Code § 11.46(8), the Commission may refuse to issue an original or renewal permit if it has reasonable grounds to believe and finds that the place or manner in which an applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people, and on the public sense of decency.¹

B. Applicable Late Hours Permit Requirements

In a county having a population of 800,000 or more, according to the last preceding federal census, or 500,000 or more, according to the 22nd Decennial Census of the United States, as released by the Bureau of the Census on March 12, 2001, a holder of a mixed beverage late

¹ As set out in the hearing notice, Texas Alcoholic Beverage Code § 11.46(8) is the basis for Ms. Rister's protest. Ms. Francis explained that issuance of the late hours permit would be contrary to law and, therefore, would be against the general welfare, health, peace, morals, and safety of the people, and the public sense of decency.

hours permit may also sell and offer for sale mixed beverages between midnight and 2 a.m. on any day. Tex. Alco. Bev. Code § 105.03(c).

In a county that does not meet the population requirements of Texas Alcoholic Beverage Code § 105.03(c), the sale of mixed beverages between midnight and 2 a.m. is permitted in the unincorporated areas of the county if the extended hours are adopted by an order of the commissioners court. Tex. Alco. Bev. Code § 105.03(d)(1). A violation of an order of a commissioners court adopted pursuant to Subsection (d) is a violation of the Texas Alcoholic Beverage Code. Tex. Alco. Bev. Code § 105.03(e).

The county clerk of the county in which an application for a permit is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the permit is sought is prohibited by any valid order of the commissioners court. Tex. Alco. Bev. Code § 11.37(a).

III. EVIDENCE

The parties stipulated to the Notice of Hearing, which was admitted. Staff offered one exhibit, which was admitted. Protestant offered five exhibits, which were admitted, and the testimony of Ms. Rister. Applicant offered one exhibit, which was admitted, and the testimony of Mr. Hartshorne.

A. Background

Ms. Rister testified that Applicant filed its original application with TABC in September 2010 and, as part of the application process, sought verification from the Williamson County Clerk's office that mixed beverages were permitted to be sold and served between midnight and 2 a.m. at Applicant's location. She explained that although Applicant has an Austin mailing address, and the City of Austin allows mixed beverages to be sold after

midnight, Applicant's premises are located in an unincorporated area of Williamson County, where the sale of mixed beverages after midnight is prohibited.

Ms. Rister testified that she did not see the application. Instead, a deputy clerk in her office incorrectly signed the City Secretary and County Clerk portions,² after which TABC granted the application. When the application came up for renewal the first time, it was renewed through TABC and the Tax Assessor's Office, with no requirement that it be presented to the Williamson County Clerk's office, so Ms. Rister remained unaware of the September 2010 error. Later, Ms. Rister was made aware of the error when another applicant, whose proposed premises are located in the same shopping center as Applicant's business, applied to serve alcoholic beverages until 2 a.m., and a different deputy clerk informed the applicant that extended hours were prohibited there. The applicant pointed out that Applicant's premises are in the same shopping center and that Applicant serves alcoholic beverages until 2 a.m. The deputy clerk discovered the September 2010 error and notified Ms. Rister, who contacted TABC. She was told she could protest renewal of Applicant's late hours permit. Applicant's permit was subject to renewal in January 2015; Ms. Rister lodged a protest in December 2014.

Mr. Hartshorne testified that Applicant's permit was issued almost 4 years ago, when the business was first purchased. He said the owner believed the premises were located in the City of Austin and would not have purchased the business had it not been possible to obtain a late hours permit. The business currently is open from 11 a.m. to 2 a.m. daily, he said, explaining that although the late hours permit expired in January, the Stompin Grounds is permitted to continue serving mixed beverages until 2 a.m. while this case is pending. About \$12,000 per month in income is generated from sales made between 11 p.m. and 2 a.m. on Thursdays, Fridays, and Saturdays, he testified. Monthly revenue is \$50,000; monthly operating costs are \$40,000. Losing \$12,000 per month in late hours sales could cause the business to close, putting six people out of work, Mr. Hartshorne said.

² The document signed by the deputy county clerk is not in evidence.

B. Undisputed Facts

The following facts are undisputed. The evidence establishes that Applicant's premises are located at 9112 Anderson Mill Road, B100, Austin, Texas 78729. While Applicant's premises have an Austin mailing address, the location is within the City of Austin's 2-mile extra territorial jurisdiction, an unincorporated area of Williamson County.³ As further evidence that the premises are not within the Austin city limits, the Williamson County Appraisal District property tax record shows that Applicant is not subject to a City of Austin property tax⁴

The evidence also establishes that in 2000, Williamson County had a total population of 249,967.⁵ By 2014, Williamson County had an estimated population of 489,250, according to the U.S. Census Bureau.⁶ Ms. Rister, who has been the Williamson County Clerk since 1998, testified that Williamson County has never had a population of 800,000.

Ms. Rister further testified that the Williamson County Commissioners have not voted to approve the sale of mixed beverages between midnight and 2 a.m.

IV. ANALYSIS

Applicant filed an application for a Mixed Beverage Late Hours Permit for its location in an unincorporated area of Williamson County, Texas. The mailing address for the premises is Austin, Texas, but the premises are not located within Austin's incorporated city limits. As such, Applicant may not serve alcoholic beverages between midnight and 2 a.m. unless the Williamson County Commissioners Court expressly authorizes such service. Tex. Alco. Bev. Code § 105.03(d)(1). The Commissioners Court has not adopted an ordinance permitting extended

³ Protestant Exs. 2, 3, and 4; *see also* Protestant Ex. 8, maps of the premises' location.

⁴ Protestant Ex. 5.

⁵ Protestant Ex. 6.

⁶ Protestant Ex. 7.

hours for the sale of mixed beverages. Therefore, TABC may renew Applicant's application for sales before midnight, but the original application for a late hours permit may not be granted. Tex. Alco. Bev. Code § 105.03(e).

V. RECOMMENDATION

Applicant's application should be renewed for sales that occur before midnight. However, Applicant is precluded by law from serving mixed beverages after midnight. Therefore, the Commission should not approve Applicant's original application for a late hours permit.

VI. FINDINGS OF FACT

1. Senorita's Cantina, Inc. d/b/a Stompin Grounds Bar & Grill (Applicant) holds Permit No. MB765332 issued by the Texas Alcoholic Beverage Commission (TABC or Commission) for the premises located at 9112 Anderson Mill Road, B100, Austin, Williamson County, Texas 78729.
2. On July 6, 2015, TABC issued proper and timely notice of the hearing to Applicant and Nancy Rister, Williamson County Clerk, who is protesting Applicant's original application for the sale of mixed beverages between midnight and 2 a.m.
3. The notice of hearing informed the parties of the date, time, and location of the hearing; the matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters to be considered.
4. On August 11, 2015, a hearing convened at the State Office of Administrative Hearings (SOAH) in Austin, Texas, before Administrative Law Judge Sharon Cloninger. Applicant appeared through its owner, Dana McConnell, and its general manager, Marc Hartshorne. Ms. Rister appeared and was represented by Shannon Francis, Assistant Williamson County Attorney. TABC's Staff was represented by John W. Sedberry, attorney. The hearing concluded and the record closed that day.
5. Applicant has filed a renewal application for a Mixed Beverage Permit and an original application for a Mixed Beverage Late Hours Permit and Beverage Cartage Permit.
6. Extended late hours are between midnight and 2 a.m.

7. Although Applicant's premises have an Austin, Texas mailing address, the premises are not located within Austin's incorporated city limits but rather in an unincorporated area of Williamson County, Texas.
8. Williamson County does not have a population of 800,000 or more, according to the last preceding federal census, and did not have a population of 500,000 or more, according to the 22nd Decennial Census of the United States, as released by the Bureau of the Census on March 12, 2001.
9. The Williamson County Commissioners Court has not approved late hour sales of mixed beverages.
10. In September 2010, a deputy clerk in the Williamson County Clerk's office incorrectly certified Applicant's application for a Mixed Beverage Late Hours permit, and the permit was issued.
11. In reliance on the incorrectly issued permit, Applicant has been serving mixed beverages daily between midnight and 2 a.m.

VII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Texas Alcoholic Beverage Code Title 1 *et seq.*
2. SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to Texas Government Code ch. 2003.
3. Notice of the hearing was provided to Applicant as required by Texas Government Code §§ 2001.051-.052.
4. County Clerk certification is required on an application for a Mixed Beverage Late Hours permit. Tex. Alco. Bev. Code § 11.37(a).
5. Extended hours are effective for the sale of mixed beverages in a county having a current population of less than 800,000 or of less than 500,000 according to the 2000 census, if the extended hours have been adopted by an ordinance of the governing body of the county Tex. Alco. Code § 105.03(d)(1).
6. It is a violation of the Texas Alcoholic Beverage Code to sell or serve mixed beverages after midnight in unincorporated areas of Williamson County, Texas. Tex. Alco. Bev. Code § 105.03(d), (e).

7. Applicant's renewal application should be granted, and Applicant's original application should be denied.

SIGNED October 9, 2015.



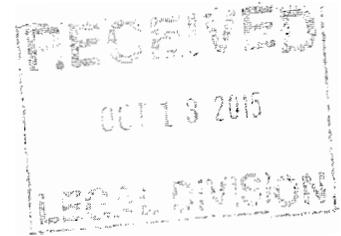
SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

October 9, 2015



Sherry Cook
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA INTERAGENCY MAIL

RE: SOAH Docket No. 458-15-4620; Renewal Application of Senorita's Cantina Inc. d/b/a Stompin Grounds Bar & Grill for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit

Dear Ms. Cook:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Cloninger".

Sharon Cloninger
Administrative Law Judge

SC/lh
Enclosure

cc John Sedberry, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL

Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL

Judith Kennison, Senior Attorney, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731 - VIA INTERAGENCY MAIL (with Certified Evidentiary Record and 1 Hearing CD)

Dana McConnell and Marc Hartshorne, Stompin Grounds, 9112 Anderson Mill Rd., Suite B-100, Austin, TX 78729 - VIA REGULAR MAIL

Shannon Francis, Assistant Williamson County Attorney, 405 M.L.K., Suite 240 Georgetown, Texas 78626 - VIA REGULAR MAIL