



The Attorney General of Texas

April 5, 1978

JOHN L. HILL
Attorney General

Supreme Court Building
P.O. Box 12548
Austin, TX. 78711
512/475-2501

701 Commerce, Suite 200
Dallas, TX. 75202
214/742-8944

4824 Alberta Ave., Suite 160
El Paso, TX. 79905
915/533-3484

723 Main, Suite 610
San Antonio, TX. 77002
512/58-0701

806 Broadway, Suite 312
Lubbock, TX. 79401
806/747-5238

4313 N. Tenth, Suite F
McAllen, TX. 78501
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205
512/225-4191

An Equal Opportunity
Affirmative Action Employer

Honorable W. S. McBeath
Administrator
Texas Alcoholic Beverage Commission
Capitol Station P. O. Box 13127
Austin, Texas 78711

Open Records Decision No. 186

Re: Whether information on ownership of licensee and reports of investigations of possible violations are public.

Dear Mr. McBeath:

You have received a request for certain information concerning a mixed beverage permittee, and you request our decision pursuant to section 7 of article 6252-17a, V.T.C.S., the Texas Open Records Act, whether the information is excepted from required public disclosure under section 3(a)(1) as information deemed confidential by law, specifically under section 5.48 of the Texas Alcoholic Beverage Code, or whether it is excepted under any other provision of law.

The requestor asks for the names and addresses of persons having an ownership interest in a certain business which operates under a mixed beverage permit; for a list of all bank accounts, including account numbers, used in connection with the business; for copies of all reports of investigations of acts of violence at the licensed premises, and for copies of all reports relating to any actions seeking to suspend or cancel the permit held by the permittee.

You contend that the information requested is excepted from required disclosure by section 5.48 of the Alcoholic Beverage Code which provides:

(a) "Private records," as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permittee or licensee.

(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or before a court in this state or the United States.

This provision excludes from the category of "private records" the name of a permittee or licensee. The permit application requires a statement by whom the application is filed, and if the applicant is an individual or partnership, the name, address, sex and interest of each person who owns an interest. We believe that the name of each person with an ownership interest in the business is public and is required to be disclosed. See Open Records Decision No. 62 (1974).

The request asks for a list of bank accounts used in the business. This information is contained in item 22 of the permit application. We believe that this information is a private record of a permittee required by the commission and is privileged under section 5.48(b), of the Alcoholic Beverage Code, and is thus excepted from required public disclosure by section 3(a)(1) of the Open Records Act.

Another portion of the request asks for copies of all reports of investigations of acts of violence at the licensed premises. Section 5.47 of the Alcoholic Beverage Code provides:

Records of all violations of this code by permittees and licensees, records introduced and made public at hearings, and decisions resulting from the hearings relating to the violations shall be kept on file at the office of the commission in the city of Austin. The records are open to the public.

The predecessor of this section originated in a 1937 amendment to the Texas Liquor Control Act. It provided: "All notices, orders, records, and publications authorized or required by the terms of this Act shall be privileged." Acts 1937, 45th Leg., ch. 448, § 13, at 1064. See Attorney General Opinion M-213 (1968). Section 12(a)(5) of the Texas Liquor Control Act was amended in 1969 to change this provision to read:

Records of all violations of this Act by holders of licenses and permits and records introduced and made public at hearings, and decisions resulting therefrom relating to such violations shall be kept on file at the office of the Liquor Control Board at Austin, Texas, and such records shall be open to the public. . . .

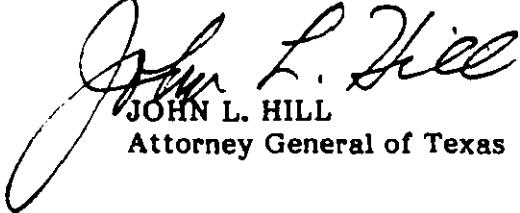
Acts 1969, 81st Leg., ch. 38, § 1, at 81.

The Alcoholic Beverage Code is a formal revision of the Texas Liquor Control Act and the reorganization and restatement of the provisions were intended to be "without substantive change." Tex. Alcoholic Beverage Code § 1.01(a). It is clear that the 1969 amendment to the Texas Liquor Control Act, on which section 5.47 of the Code is based, was intended to make public those records of all violations by permittees and licensees which had previously been privileged. We believe it is clear that the reference to "[r]ecords of all violations of this code by permittees and licensees," describes a category of information distinct from "records introduced and made public at hearings" referred to in the second clause. Thus, we believe that records of all violations are made public by section 5.47 whether or not a hearing is conducted. See Providence Journal Co. v. Shea, 292 A.2d 856 (R.I. 1972).

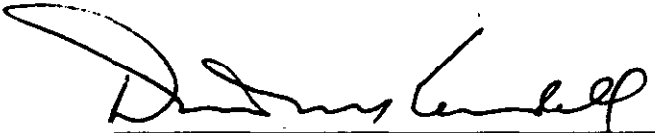
In connection with the request here, you have submitted an Administrator's Order Docket No. 127322 ordering a suspension of the permit in question for 45 days. This is accompanied by a document headed Plea of Guilty of Administrative Offenses; Waiver of Notice of Hearing and Hearing; Suggested Penalty. Other documents include a form entitled Administrative Case Report Information, inter-office communications dated November 16, 1976, and October 20, 1976, affidavits dated November 15, 1976; October 15, 1976; October 13, 1976; October 7, 1976; October 6, 1976; October 5, 1976 (six); October 4, 1976 (three). It is our decision that this information constitutes records of violations by a holder of a permit which is expressly made public by section 5.47 of the Alcoholic Beverage Code.

In summary, it is our decision that the names of the persons with an ownership interest in these premises with a mixed beverage permit are public, that the bank accounts and bank account numbers are excepted from required public disclosure under section 3(a)(1) because section 5.48 of the Alcoholic Beverage Code makes this information privileged, and that the records concerning violations of the Code are public.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant

A handwritten signature in cursive script, appearing to read "Robert Heath". The signature is written in black ink and is positioned above a horizontal line.

**C. ROBERT HEATH, Chairman
Opinion Committee**

jst