



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

March 19, 1990

Mr. Joe Darnall  
General Counsel  
Texas Alcoholic Beverage  
Commission  
P.O. Box 13127  
Capitol Station  
Austin, Texas 78711-3127

Open Records Decision No. 544

Re: Whether orders of summary suspension issued by the Texas Alcoholic Beverage Commission are excepted from disclosure under the Open Records Act, article 6252-17a, V.T.C.S. (RQ-1918)

Dear Mr. Darnall:

The Texas Alcoholic Beverage Commission received an open records request for copies of the commission's orders of summary suspension, which are administrative determinations of tax liability issued by the commission that summarily suspend without a hearing permits to sell alcoholic beverages. Suspension orders are issued for failure to pay gross receipts liquor taxes or failure to file a gross receipts liquor tax return. Alco. Bev. Code § 202.14(a); see Big D Bamboo, Inc. v. State, 567 S.W 2d 915 (Tex. Civ. App. - Beaumont 1978, no writ). A licensee who disagrees with the order must make payment under protest of any taxes due or file all required returns as a prerequisite to filing suit. See Tax Code § 112.051. Trial of the issues in such a suit is de novo. Id. § 112.054. Upon payment of taxes or filing of returns, the suspension is terminated. Alco. Bev. Code § 202.14(c). The commission seeks to withhold these summary suspension orders from required public disclosure under section 3(a)(1) of the Open Records Act as information deemed confidential by law, specifically section 5.48 of the Alcoholic Beverage Code, and the common law right of privacy as incorporated into section 3(a)(1) of the Open Records Act.

Section 5.47 of the Alcoholic Beverage Code provides as follows:

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. (Emphasis added.)

Section 5.48 of the Alcoholic Beverage Code provides as follows:

(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.

There are previous decisions of this office discussing sections 5.47 and 5.48 and the predecessor statute to them, article 666-12a(5) of the Penal Code. See generally Attorney General Opinion M-213 (1968); Open Records Decision Nos. 186 (1978); 94, 66 (1975); 62 (1974).

Open Records Decision No. 186 held that the predecessor statute to section 5.47 of the Alcoholic Beverage Code was intended to make public those records of all violations by permittees and licensees that had previously been privileged. The decision held that the phrase "records of all violations of this code by permittees and licensees" describes a category of information distinct from "records introduced and made public at hearings." This holding indicates that records of all violations of the Alcoholic Beverage Code by permittees are public even if they are not introduced in a hearing. The information at issue in Open Records Decision No. 186 included an order for permit suspension, a plea of guilty of administrative offenses, and

a waiver of notice and hearing. Records of the violation were determined to be open even though no hearing was held.

Although the suspension addressed in Open Records Decision No. 186 was not a summary suspension, the reasoning in Open Records Decision No. 186 is nevertheless applicable to the summary suspension orders here. A summary suspension order under section 202.14 is the agency's final determination of tax liability. Tax evasion and tax delinquency clearly constitute a violation of the code, since every permittee has a duty to file a tax return under section 202.03, while section 202.05 imposes a civil penalty for failure to file a return or pay a tax. The provision for "records of all violations" in section 5.47 is broad enough in scope to include the agency's determination that a violation has occurred that is embodied in the summary suspensions for failure to file a tax return or pay a tax. As the summary suspensions are thus records of violations specifically made public, they are necessarily not private records of a permittee for purposes of section 5.48.

Summary suspension orders are within the scope of information specifically made public by section 5.47. In making records of violations open, section 5.47 abrogates any common-law privacy interest. Therefore, we conclude that the summary suspension orders must be released.

S U M M A R Y

Orders of summary suspension issued by the Alcoholic Beverage Commission are specifically made public by section 5.47 of the Alcoholic Beverage Code.

Very truly yours,



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