



## Case Summaries January 31, 2022

### CORPORATIONS

#### Public Corporations

*Gabriel Inv. Grp., Inc. v. Tex. Alcoholic Comm'n*, certified question accepted, — Tex. Sup. Ct. J. — (January 31, 2022) [22-0062]

This case concerns an exception to the Texas Alcoholic Beverage Code's prohibition against publicly owned corporations selling alcohol.

“Package stores” sell alcohol to the public and require a permit issued by the Texas Alcoholic Beverage Commission. In 1995, the Legislature amended Section 22.16 of the Texas Alcoholic Beverage Code to prohibit public corporations from owning or controlling package stores (subsection (a)). Gabriel Investment Group owns forty-five package stores in South Texas. Although publicly owned, it fell under a grandfather clause (subsection (f)) that excepted it to the 1995 amendment.

In 2019, Gabriel filed for Chapter 11 bankruptcy protection. It considered selling itself to another public corporation, but it was unsure if it would still fall under subsection (f). Gabriel sued the Commission for a declaratory judgment, and the bankruptcy court granted summary judgment declaring that Gabriel would no longer be grandfathered in and it would not be able to receive package-store permits for new stores.

Gabriel appealed to the Fifth Circuit, which certified the following questions to the Court:

1. If Texas Alcoholic Beverage Code Section 22.16(f) exempts a package store from Section 22.16(a), and if the package store sells any, most, or all of its shares to a corporation that does not itself qualify under Section 22.16(f), will the package store's package store permits remain valid?

2. If yes to (1), can the package store validly accumulate additional package store permits by reason of Section 22.16(f)?

The Court accepted the certified questions. Oral argument is set for March 24, 2022.