

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
FEBRUARY 13, 2004**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on February 13, 2004. The meeting was tape-recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Acting Chair Ann Scott Fulton was present for the meeting, along with Commissioner Ricky Wright and Commissioner Mike Joyner.

MINUTES OF JANUARY 9, 2004 MEETING

The Chairman asked Commission Member Mike Joyner and Commission Member Ricky Wright if they had any corrections or additions regarding the Commission minutes from the January 9, 2004, meeting. Neither Commissioner Joyner nor Commissioner Wright had any corrections or additions. The Chairman made a motion to approve and waive the reading of the minutes into the record. Seconded by Commissioner Joyner. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, the Chairman asked Commissioners Joyner and Wright if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Joyner stated that he had no conflict of interest with regard to the cases. Commissioner Wright stated that he had no conflict of interest. The Chairman stated she found no conflict of interest with regard to herself.

I. HEARING CASES – 66 listed.

Chief Deputy Counsel Fred A. Gregory stated that Attorney, Robert Bode was present on behalf of his client, case #1, Fast Fare NC 576. Mr. Gregory stated that Administrative Law Judge Beecher Gray heard the case on August 6, 2003. He further stated that there was no question of the sale of malt beverage to the underage person. The administrative law judge recommended a ninety suspension and a penalty in the amount of \$1,000.00. The Chairman asked Mr. Bowdey if he had anything to add. Mr. Bowdey stated that he did not. The Chairman asked Mr. Gregory if he had any comments with regard to the recommended decision of Judge Gray. Mr. Gregory stated that he did not. The Chairman made a motion to ratify and approve the recommended decision.

Seconded by Commissioner Wright. So Ordered. The Chairman asked Mr. Bode why his client wasn't making sure that they had at least two people working during peak times to try avoiding these violations from occurring again. Mr. Bode stated that he agreed and would speak with his client about that.

Mr. Gregory stated that Thurman Glenn Langston was present to speak on behalf of his establishment, case #23, Langstons Country Store and Restaurant.

Mr. Langston stated that as far as the violation, they were definitely guilty. He went on to state that he normally looks after the bar, but had had recent colon surgery. During that time his wife and daughter were watching the bar for him. He had purchased some Whiskey and half gallon bottles. He further stated that his wife and daughter told him that they had poured it into a fifth bottle so they could handle it easier. The Chairman asked if the bottles that they had purchased if they were mixed beverage tax stamped. Mr. Langston stated that they were. Mr. Gregory stated that penalty was for refilling, which was probably not appropriate. The Chairman asked Mr. Gregory if he felt like a lower penalty was appropriate and if so what would he suggest. Mr. Gregory recommended \$1,000.00 penalty with no active time. Commissioner Joyner made a motion to reduce the penalty further to \$500.00. The Chairman stated that the penalty that would be imposed would be a thirty-day suspension, which may be avoided upon payment of a penalty of \$500.00. So Ordered.

REMAINING OFFERS IN COMPROMISE

Commissioner Wright made a motion to ratify all remaining offers in compromise. Seconded by Commissioner Joyner. So Ordered.

The Chairman stated that Miller Brewing Company made a request to use a plastic display unit. Industry members are permitted to provide display units to its retailers with a dollar limitation of \$160.00 per brand. The dollar limit had never been increased. The display unit is made of plastic and designed so that the Miller Wholesalers can move it from retail account to retain account. The cost to Miller Brewing Company for this particular type of unit is \$1,100.00, which will exceed the dollar unit of \$160.00. Miller Light and Miller Genuine Draft, both of which are on the display, are treated like two separate brands, so theatrically this could be doubled to \$320.00 if it were made of card board, but this is plastic. The \$160.00 dollar limitation has not been increased to reflect inflation. Miller Brewing Company has asked for permission to use the plastic display unit, not withstanding the cost. Commissioner Joyner and Commissioner Wright stated that they didn't have a problem with it. The Chairman stated that she felt that by resolution the Commission needed to suspend the enforcement of the limitation, but make the industry aware that the Commission would consider the display units on a case-by-case basis. The limitation of the units would be \$1,100.00.

The Chairman asked Chris Valauri, President of the Wine Wholesaler if he had seen the display unit. Mr. Valauri stated that he had not seen the display unit and asked the Commission that they be allowed to discuss it and be placed on a later Commission date. The Chairman gave him a copy of the display unit for his review. The Chairman asked the Commission Members if they had a problem with allowing them time to review the display unit. Neither Commission member had a problem.

II. The following is a list of first offense violation cases, in which Orders were signed by the Chairman on February 13, 2004, pursuant to the Commission's authorizing resolution dated November 8, 2002:

Full Moon Saloon – 3224-A Neuse Boulevard, New Bern, NC 28560
Legal Grounds – 109 West 2nd Street, Rutherford, NC 28139
TruBuy 80 – 1237 North Main Street, Fuquay-Varina, NC 27526
Apple Tree Grocery – 1105 East Green Drive, High Point, NC 27260
Uncle Bills Mini Mart – 1825 New Hope Road, Raleigh, NC 27604
TruBuy 42 – 820 North Main Street, High Point, NC 27262
L and G's – 2502 English Road, High Point, NC 27262
Jack's Convenience Store – 717 East Caswell Street, Wadesboro, NC 28170
Light House Café – 264 Albert J Ellis Airport Road, Jacksonville, NC 28547
Talk of the Town II – 114-A Texie Lane, Jacksonville, NC 28540

III. OTHER BUSINESS

Administrator Michael Herring provided some background information regarding the JA Jones contract. Mr. Herring stated that the Commission approved a three-extension year that is set to expire July 2007. JA Jones Services Group Inc. filed for Chapter 11 Bankruptcy protection on September 29, 2003. Last month the Commission learned that our contract, along with the ABC Warehouse contract in Iowa had been carved out of the assets of J A Jones and had been placed out for bid. Four companies had submitted bids to the bankruptcy courts and currently there is one company that the bankruptcy courts are working with and that is LB&B Associates, Inc. Mr. Ed Brandon, president of LB&B Associates, Inc., along with his attorney Mr. Ben Thompson was present to speak to the Commission regarding LB&B buying the ABC Warehouse contract.

Mr. Thompson stated that LB&B Associates, Inc. is a North Carolina Corporation, with a principle office in Colombia, Maryland. He further stated that LB&B is a national diversified service contractor performing a number of activities for the local, state and federal agencies, including United States Department of Homeland Security, NASA, United States Department of Agriculture and United States Department of Justice. Mr. Thompson went on to state that they were contacted a few of weeks ago to see if there was any interest on the part of the company in regard to the warehouse contract with the State of North Carolina and the similar contract with the State of Iowa. Mr. Thompson said that he was

initially with the transfer of the contract from Dynateria to JA Jones in 1990. Mr. Ed Brandon at that time was the Chief Executive Officer of JA Jones and brings together a wealth of experience. Commissioner Joyner asked Mr. Thompson who contacted LB&B. Mr. Thompson stated that JA Jones did. Mr. Thompson went on to state that it was common knowledge in the industry that JA Jones had filed for Chapter 11 bankruptcy, but didn't realize the extent or depth of it. They were first contacted about four weeks ago in the form of a proposal. He stated that it was contingent upon the approval of the ABC Commission, the State of Iowa and the United States Bankruptcy Court. Commissioner Joyner asked Mr. Herring if he was aware or if they asked for his input in taking the bids. Mr. Herring stated that he was not aware nor did they ask for our input. The Chairman stated we did know that the contract had been carved out and was going to be offered and bids would be solicited.

Mr. Brandon provided some information of what he knew regarding the bankruptcy issue of JA Jones. He said that JA Jones is comprised of about twenty companies and they were going through and selling off all those companies. He stated that from his understanding he felt that JA Jones would take LB&B's bid. On the 19th of February they would go to bankruptcy court to get their approval. Providing the ABC Commission approved, on the 24th of February they would close on the contract.

Mr. Thompson stated that LB&B Associates, Inc. is in excellent financial shape and has an excellent record through the country with federal agencies. Many of the federal courthouses including some in North Carolina are maintained and operated by LB & B Associates, Inc.

Mr. Brandon stated that he was told that there was one other bid higher than theirs, but that company did not have the experience that LB&B has. He went on to state that they have six operating divisions, the first division, which is the manufacturing division. In that division they manufacture computers, test equipment for cellular telephone phone companies and prototype electronic equipment. The second division is the Systems Division. In that division they maintain and operate trainers and simulators for the military. The third division is Facility Services Division. In that division they operate approximately sixty-five federal buildings and courthouses. The fourth division is the Support Services division. In that division they handle refueling services of aircrafts. In that division they also do administrative services, security services and warehouse operations in that division and if they are able to obtain the ABC Warehouse contract it would go under that division. The fifth division is the Base Operation Division. In that division they operate the military base operations. The sixth division is the Research and Education division. They operate the Southwest Higher Education Center for the State of Virginia. They operate research centers for the Food and Drug Administration, US Geological Survey also operate three NASA sites.

Commission Joyner expressed disappointment over no one from JA Jones being present at today's Commission Hearing.

Mr. Brandon stated that he felt that the reason that no one from JA Jones was present at today's Commission Hearing was because with the exception of a couple of accountants, the rest were gone, out of business. He went on to state that Mr. Casteneda has no one to report today.

The Chairman asked Mr. Brandon what he had thought of the way things were operating at the warehouse. Mr. Brandon stated that he noticed that there were three vehicles that were not operational and JA Jones had to lease vehicles. Ten vehicles need to be replaced. The employees have not received a raise in three years. The computer system has not completely been installed. Phase 1 and 1a has been installed. Phase 2 is ready, but JA Jones has not paid the estimated \$65,000.00 amount due. Phase 3 will be more than \$200,000.00 to install and that amount wasn't figured into the JA Jones bid. Mr. Brandon went on to state that the company that JA Jones hired to install the computer system is not a computer company that does warehouse software packages. They do maintenance packages for companies. After the computer system would be installed there would be a \$100,000.00 a year maintenance cost and that wasn't figured into the JA Jones bid. Mr. Brandon stated that they hired a consultant to come in and reviewed the warehouse last week and they will be submitting a quotation to do the job. This company is located in Charlotte, North Carolina. The insurance and the bonds have been obtained. The breakage is an issue that really needs to be addressed. He estimates about \$1,500.00 to \$2,500.00 a month in breakage.

The Chairman stated that despite JA Jones filing for bankruptcy, the company has continued to perform and a lot of it is contributed to the employees at the warehouse. The Chairman asked Commissioner Wright and Commissioner Joyner if they had any further comments. Neither Commissioner Wright nor Commissioner Joyner had any. Lauren Freeman with the Attorney General's Office had a question regarding the contingency in the agreement that stated that it be approved by the ABC Commission. She asked if they put it in there or did JA Jones. Mr. Thompson stated that LB&B did. They did not want to do anything that the ABC Commission did not agree with.

The Chairman made a motion to go into closed session to G.S. 143-318.11(a)(3) for the purpose of consulting with staff attorneys for the purpose of consulting with attorneys for the purpose of discussing the JA Jones contract.

OPEN SESSION

The Chairman stated that the Commission is back in open session. Commissioner Wright had to leave. The Chairman asked Commissioner Joyner if he had in comments. He had none. The Chairman asked the legal staff if they had any and they had none. The Chairman made a motion to adjourn the meeting. Seconded by Commissioner Joyner. So ordered.

With no further business, the meeting adjourned.

Ann Scott Fulton, Acting Chair
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany C. Goodson, Legal Division