

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
APRIL 14, 2011**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on April 14, 2011, beginning at 10:00 AM. The meeting was recorded and the disk is on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Jonathan S. Williams, Commissioner Zander Guy and Commissioner Daniel L. Briggs were present at the meeting.

MINUTES OF MARCH 16, 2011

Chairman Williams made a motion to approve the November 4, 2010 special teleconference meeting. Motion Passed.

Chairman Williams asked for a motion to waive the reading of the March 16, 2011 meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the March 16, 2011 meeting. Motion Passed. Commissioner Briggs made a motion to approve the minutes from the March 16, 2011 meeting. Motion Passed.

CONFLICTS OF INTEREST

As required by North Carolina General Statute 138A-35, Chairman Williams asked Commissioner Guy and Commissioner Briggs if there were any 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. Chairman Williams recused himself from contested case #2, 5 O'Clock Somewhere and reconsideration case #106, Goels Plaza. Commissioner Guy and Commissioner Briggs stated that they had found no conflicts of interest.

I. HEARING CASES – 106

Assistant Counsel K. Renee Cowick stated that contested case #1, Club Phoenix, was the first case to be heard. Ms. Cowick asked if there was anyone present to speak in regard to the case. No one was present. Assistant Counsel Timothy W. Morse was the Commission's attorney for the case. Mr. Morse stated that the charge was illegal possession of spirituous liquor. After the permittee failed to comply with Administrative Law Judge Donald W. Overby's order to file Prehearing Statements, Judge Overby recommended that the permittee pay \$750.00 and the permits be suspended for ten days. Commissioner Guy made a motion to adopt the recommended decision of the administrative law judge. Motion Passed.

Assistant Counsel Cowick stated that Mr. Thomas Voncannon, general manager of hearing case #96, Rudinos Pizza and Grinders Rooftop, was present to speak on behalf of the business. Mr. Voncannon stated that he was very embarrassed that the violation occurred. All the employees have taken the RASP Class.

Chairman Williams made a motion to reduce the penalty from \$1,000.00 to \$750.00. Motion Passed.

Assistant Counsel Cowick stated that Mr. James Perkins, supervisor of hearing case #75, Eblen's Short Stop, was present to speak on behalf of the business. Mr. Perkins talked about recent

store policy changes: a zero tolerance for infractions involving age verification policy, enforcing a maximum penalty of automatic dismissal when a clerk commits an infraction to any offending clerks, requiring the use of age verification software and clearly posting “We ID” signs and graphics. The store has increased the required training for all 50 clerks and managers. He further stated that he had character references from ALE and the police. Mr. Perkins asked for a reduction in the suspension of the ABC permits.

After conferring with the other Commissioners, Chairman Williams made a motion to reduce the active suspension to 10 days. Motion Passed.

Assistant Counsel Cowick stated that Ms. Diane Cunningham, facility manager for hearing case #106, Goels Plaza, was present to speak on behalf of the business. Ms. Cunningham presented the Commission with paperwork regarding the business and asked the Commission to issue a written warning.

Commissioner Briggs made a motion to issue a written warning and dismiss the case. Motion Passed.

Assistant Counsel Cowick stated that Mr. Mike Kohler was present to speak on behalf of hearing case #69, Carrboro Food Mart. Mr. Kohler stated that the clerk who sold was a 70 year old woman who worked at the business for 12 years. He further stated that she was a good employee, but made a bad mistake because of her eyesight. Mr. Kohler apologized to the Commission.

Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$900.00, upon the stipulation that all the employees attend a RASP Class. Motion Passed.

Assistant Counsel Cowick stated that Mr. Anwar Alsaïdi, president of hearing cases #7, D’s Drive Thru and case #43, D’s Drive Thru, was present to speak on behalf of the business. Ms. Cowick further stated that she processed one violation and later another violation came in and was assigned to Assistant Counsel LoRita K. Pinnix. The two separate violations somehow ended up on the same agenda.

Mr. Alsaïdi asked the Commission for a reduction in the penalty.

Chairman Williams made a motion to reduce the combined penalty of \$3,600.00 by 25%, if all the employees attend a RASP Class. Motion Passed.

Assistant Counsel Cowick stated that Mr. Valentine Cleary, owner of hearing case #47, Harp, was present to speak on behalf of the business. Mr. Cleary stated that one of his employees had slipped on some spilled water. He went to get a mop, but he had already consumed some alcohol. He further stated that he had not been working that night, but had only gotten a mop for his employee because of the spill on the floor.

After some discussion with the other Commissioners, Chairman Williams made a motion to issue a written warning. Motion Passed.

Assistant Counsel Cowick stated that Mr. Kristian Bawcom, owner of hearing case #81, Four Corners, was present to speak on behalf of the business. Mr. Bawcom stated that he recently purchased the business and trained all the staff. Since the violation he has re-trained all the staff. He was embarrassed by the violation. He concluded by asking the Commission for leniency.

After conferring with the other Commissioners, Chairman Williams made a motion to reduce the penalty by 25%. Motion Passed.

Assistant Counsel Cowick stated that Mr. Matthew Pidakal, was present to speak on behalf of hearing case #55, Low Price Mart. Mr. Pidakal stated that he reviewed the video tape and spoke with the clerk and found out that the violation occurred during the shift change. He further stated that this will not happen again.

Commissioner Guy made a motion to reduce the penalty by 25%, upon the stipulation that all the employees attend a RASP Class. Motion Passed.

Assistant Counsel Cowick stated that Mr. Michael Santos, owner of hearing case #39, Chefs 505, was present to speak on behalf of his business. Mr. Santos stated that he took full responsibility for the violation. He further stated that a large group of patrons came into the restaurant and he didn't have the alcohol to serve them. He asked the Commission for some leniency.

Commissioner Guy made a made a motion to reduce the penalty from \$4,000.00 to \$3,000.00. Motion Passed.

Assistant Counsel Cowick stated that Mr. Joey Maples was present to speak on behalf of hearing case #68, Carlie C's I G A 830. Mr. Maples presented the Commission with a written statement and stated that he was embarrassed to come before the Commission regarding the violation. After learning of the violation the employee was fired immediately and will remain ineligible for re-hire. The company has a no tolerance alcohol policy and he personally teaches the class to every new employee. Mr. Maples concluded by asking the Commission for a reduction in the penalty.

Chairman Williams made a motion to reduce the penalty by 25%, upon the stipulation that all the employees attend a RASP Class. Motion Passed.

Assistant Counsel Cowick stated that Mr. Curtis Orwig, was present to speak on behalf of hearing case #61, T G I Fridays and add on hearing case #107, T G I Fridays.

In hearing case #61, T G I Fridays, Chairman Williams made a motion to reduce the penalty by 25%, upon the stipulation that all the employees attend a RASP Class. Motion Passed.

In add on case #107, T G I Fridays, Chairman Williams made a motion to issue a written warning. Motion Passed.

Assistant Counsel Cowick stated that the permits for hearing case #64, Zen Mart have been cancelled.

Assistant Counsel Cowick stated that Mr. Mike Ordnung, owner of Valley Pine Country Club, #23, on the March Agenda, was present to receive some clarification of ABC Rule 2S 1101, regarding what can or cannot occur on a licensed premise while under a period of suspension. Ms. Cowick asked the Commission to continue the case until the legal staff has a unified legal opinion.

Chairman Williams made a motion to continue the suspension till next month. Motion Passed.

Assistant Counsel Cowick stated that Ms. Amanda Mingo, attorney for contested case #2, 5 O'Clock Somewhere, was present to speak on behalf of the business.

Ms. Mingo stated that the Commission had not made a decision within the statutory time period and that the decision of Administrative Law Judge Gray was the final decision.

Ms. Pinnix stated that she had emailed Ms. Mingo about the extension in the case coming before the Commission and Ms. Mingo had agreed to the extension.

Ms. Pinnix showed a ten minute video of a night that the police were called to the business.

After conferring with Commissioner Briggs, Commissioner Guy made a motion to reverse the decision of the administrative law judge and revoke the ABC permits. Motion Passed.

Chairman Williams made a motion to approve the remaining offers in compromise, with the exception of the previously ratified cases. Motion Passed.

II. ABC STORE LOCATION – GREENSBORO ABC BOARD – RELOCATION

Administrator Michael Herring addressed the Commission regarding the relocation of an ABC Store in Summerfield, North Carolina. On March 9, 2011, the Commission received a request from Mr. Fred McCormick, Interim General Manager with the Greensboro ABC Board requesting Commission approval to relocate the ABC Store located at 4446-J US Highway 220, Summerfield North Carolina to 4548 US Highway 220, Suite 102 & 103, Summerfield North Carolina. On March 31, 2011, ALE Agent Iris L. Redd conducted an investigation and found that the property is currently owned by Kotis Summerfield LLC.

The projected sales volume at the proposed location is approximately \$950,000.00 per year.

The investigation found that no conflicts of interest exist between the Greensboro ABC Board members and the property owners.

The nearest church is Cathedral of Faith Christian Center and is approximately .4 miles from the proposed location.

The nearest school is Summerfield Elementary School and is 1 mile from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on March 4, 2011, in compliance with the ABC Commission's 30-day requirement.

One objection has been received from the Pastor of Cathedral of Faith Christian Center. His objection is based on his religious views.

Mr. Herring recommended that the Commission approve the relocation of the ABC Store.

Commissioner Guy made a motion to approve the new ABC Store location. Motion Passed.

III. ABC STORE LOCATION – GREENSBORO ABC BOARD – RELOCATION

Administrator Michael Herring addressed the Commission regarding the relocation of an ABC Store in Greensboro, North Carolina. On March 12, 2010, the Commission received a request from Mr. Fred McCormick, Interim General Manager with the Greensboro ABC Board requesting Commission approval to relocate the ABC Store located at 409 Pisgah Church Road, Greensboro, North Carolina to 305-A Pisgah Church Road, Greensboro North Carolina. On March 30, 2010, ALE Agent K. Gee conducted an investigation and found that the property is currently owned by Koury Corporation.

The projected sales volume at the proposed location is approximately \$2.6 million per year.

The investigation found that no conflicts of interest exist between the Greensboro ABC Board members and the property owners.

The nearest church is Hillcrest Baptist Church and is approximately .3 miles from the proposed location.

The nearest school is Scale School and is approximately .28 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on March 11, 2011, in compliance with the ABC Commission's 30-day requirement.

The investigation found that the ABC Board had received two complaints from citizens. One unidentified caller said that he was worried it would bring a "gangster mentality" and the other caller stated that she is the mother of a four-year old and lives in an apartment behind the shopping center where the proposed location would be. Her concern was that the store would be robbed and the suspect could run into the apartment building area where she lives.

Mr. Herring recommended that the Commission approve the relocation of the ABC Store.

Commissioner Guy made a motion to approve the new ABC Store location. Motion Passed.

IV. OTHER BUSINESS – EXEMPTION REQUEST – MEDALONI CELLARS

Chairman Williams stated that the request would be continued until the Commission receives a formal request in writing.

V. OTHER BUSINESS – PROPOSAL FOR EXPANSION OF ABC WAREHOUSE LB&B ASSOCIATES

Administrator Michael Herring stated that the final matter to come before the Commission was a request to expand warehouse operations and negotiate a five year contract extension with LB&B Associates, the current warehouse contractor to promote the efficient distribution of spirituous liquor in the state.

Mr. Herring stated that last month he outlined the need to expand capacity at the State ABC warehouse. In 2007, the Commission recognized this need and hired a consultant who provided different options for expansion. Unfortunately, the Commission was unable to move forward on any of the options and the past two years started experiencing the problems of managing a growing business in a warehouse without enough space to handle demand. To keep up with growth, steps have been taken to discontinue product and reduced allocated space on items. This has resulted in less selection and out of stocks and created issues at the retail level effecting the ABC Boards ability to maximize profits by purchase low and selling high when items are increasing in price. It also has led to lost sales at retail.

Mr. Herring further stated that last month, he recommended, and the Commission approved for the current warehouse contractor, LB&B Associates to put together a short term proposal to lease an additional 200,000 square feet of space at a nearby location for five years until a long term solution can be found. LB&B submitted a proposal last week and Mr. Herring met with them to shape it into something that offers good value to the State and the ABC Boards.

In particular the small ABC Boards will see increased deliveries allowing them the opportunity to maximize profits. The large ABC boards will benefit from an increase selection of product and all boards will benefit from not having out-of-stocks on the retail shelf. As the state grows over the next 5 years we

will be able to manage the growth until a long term solution can be put into place. Additionally, LB&B will be providing upgrades to their trucks, forklifts, trailers and scanners.

Mr. Herring presented an overview of the cost structure of the second warehouse and said that if Commission had any questions, Graham Thompson, Project Manager for LB&B along with Ben Thompson, Attorney for LB&B were present.

Mr. Herring advised that he and LB&B have been able to settle on \$1.7 million a year for 5 years to operate the second warehouse for 5 years. 46% of this cost is the property and building lease. Labor will run close to \$400,000 annually and the rest of the expense is in insurance, equipment cost and miscellaneous costs.

Merging the cost of operating the two warehouse, Mr. Herring stated that he and LB&B have settled on \$7.3 million for the first 2 years and \$7.7 million for the final 3 years of the contract extension. The first two years consist of our current cost obligations of \$5.6 million and adding \$1.7 million to it for operating the second warehouse. The agreement allows the Commission to adjust its fuel obligations to keep up with the increasing cost of diesel fuel.

Bailment fees which pay for the operation of the warehouse will need to increase by 45 cent to \$1.65. On 4.6 million cases shipped, \$7,590,000 will be collected annually to cover the first 2 years of the contract extension. Base on projected growth in shipments, this fee should be at a sufficient level to cover the last 3 years of the contract. On a 750 ml of Jim Beam, increasing bailment from \$1.20 a case to \$1.65 a case will cause the bottle price to go up ten cents.

In conclusion Mr. Herring stated that we can manage our operations more efficiently and this short term warehousing and distribution plan will allow us to supply local ABC stores more effectively and should help them to improve profitability.

Chairman Williams made a motion to authorize an increase in the bailment to a total of \$1.65 per case, effective August 1, 2011. Motion Passed.

Chairman Williams made a motion to delegate the authority to Mr. Michael Herring to negotiate the necessary amendments to the ABC Warehouse Contract with LB&B Associates to expand the operations. Motion Passed.

**VI. OTHER BUSINESS – PUBLIC HEARING OF THE RULES PUBLISHED IN
VOLUME 25, ISSUE 18 OF THE NC REGISTER
(04 NCAC 02R .2001, .2002 AND .2003)**

Chairman Williams opened the public hearing for the rules 04 NCAC 02R .2001, .2002 AND.2003. Chairman Williams asked if there was anyone who wished to be heard. Seeing no one, Chairman Williams closed the public hearing.

VII. OTHER BUSINESS – CONSIDERATION OF PUBLICATION OF PROPOSED PERMANENT RULES

Rules Coordinator Bob Hamilton stated that he received two comments in reference to the temporary rules. The first comment was from Mr. Joe Wall, who requested that the Commission set standards for nonapproved courses or sponsors for courses. Mr. Hamilton felt that it would slow the process down. The comments from the Youngsville ABC Board can be handled within the rules and there doesn't need to be a rule change to implement that if the Commission can hold webinars across the state. The third set of comments came from the Durham County ABC Board in reference to how particular classes and instructors can be handled within the current rules. The staff recommended proceeding with the temporary rules as written and as posted on the Office of Administrative Hearing's website.

Chairman Williams made a motion to accept the staff recommendation. Motion Passed.

Chairman Williams read aloud Executive Order No. 34, from Governor Purdue, requiring appointees to attend at least 75 percent of a board's regularly scheduled meetings.

With no further business, the meeting adjourned.

Jonathan S. Williams, Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany Goodson, Legal Division