

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JANUARY 15, 2008**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on January 15, 2008, 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 Douglas A. Fox, Commissioner Mike Joyner and Commissioner John Lyon were present at the meeting.

MINUTES OF DECEMBER 6, 2007, MEETING

Chairman Fox made a motion to waive the reading of the minutes from the December 6, 2007, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the December 6, 2007, meeting. Seconded by Commissioner Lyon. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioner Lyon and Commissioner Joyner 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. Commissioner Joyner and Commissioner Lyon both stated that they found no conflicts of interest. Chairman Fox stated that he had no conflicts.

I. HEARING CASES - 76

Chief Counsel Fred Gregory stated that Mr. John Jones, manager of First Offense case #28, Lowes Food Stores 169, was present to speak on behalf of the business. Mr. Jones stated the violation occurred when a young man was sold beer in August. The store has several procedures to prevent underage sales and this was their first violation. Employees must sign a statement they understand they must check the identification of anyone under 30 years of age. The birth date of the customer can be entered in the register in order to see if the employee can sell or not. Mr. Jones stated that the employee failed to follow the instructions that were given to him.

Chairman Fox asked Mr. Jones if he had anything that would mitigate this. Mr. Jones said "no sir."

Commissioner Lyon stated that the report said the clerk did not even check the I.D. Mr. Jones agreed and stated the clerk did not even check the I.D. and failed to follow procedure.

Chairman Fox asked Mr. Jones if the employee was still working for him and Mr. Jones said no. Chairman Fox asked if he was a good employee. Mr. Jones said he was a very good employee but he didn't follow instructions.

Chairman Fox made a motion to ratify the Offer in Compromise as is. Seconded by Commissioner Lyon. So Ordered.

Mr. Dave Picard, owner of First Offense case #11, Highlander Café and Pub, was present to speak on behalf of the business. Mr. Picard described the Highlander as a small Scottish theme restaurant and pub with less than fifty seats, had held permits without violations since December, 2000 and had four employees. Mr. Picard stated the Agent and the underage person took seats half way down the bar with the Agent ordering a glass of water and the underage ordering a beer. The bartender checked the underage person's identification, apparently read 1980 instead of 1990, returned the identification and took four to five steps to the end of the bar. Mr. Picard stated the bartender returned to the underage who was already outside and told the Agent that she needed to recheck the identification. Mr. Picard stated the Agent said it was too late and identified himself as an ALE Agent. Mr. Picard stated there was no intent to serve alcohol to an underage person. Mr. Picard asked the Commission to consider dismissing the violation so that they could retain their seven year clean record or reduce the \$900.00 penalty.

Chairman Fox asked if the bartender was still employed by him. Mr. Picard said "yes sir". Chairman Fox asked if he realized the underage person was sixteen years old. Mr. Picard said "yes sir".

Chairman Fox made a motion to reduce the penalty to \$500.00 upon the stipulation that all the employees attend a RASP class within the next 45 days. Seconded by Commissioner Lyon. So Ordered.

Ms. Leslie Gunter, owner of hearing case #46, J C Gunter Convenience, was present to speak on behalf of the business. Ms. Gunter stated the convenience store had been in the family since 1970. Ms. Gunter stated they have had no violations on their record since 2000. Ms. Gunter stated she had completed the RASP class in November, 2007 and that all thirteen employees had read information, been quizzed and signed documents. The business has posted the color-coded chart on the register. Ms. Gunter stated the employee had been terminated per company policy as soon as they had found a replacement. Ms. Gunter stated that on November 14, ALE came back and a sale was not made. Ms. Gunter stated that they plan to have all their employees go through the class at the store by March. At this time they are having problems with employee turnover but once there is a full staff they will go through the class.

Chairman Fox stated that an underage person was sold an alcoholic beverage who was 18 years old. Chairman Fox stated "it is your responsibility." Ms. Gunter said "it is very serious".

Chairman Fox made a motion to reduce the penalty to \$300.00 based upon completing the class and accepting responsibility. Seconded by Commissioner Lyon. So Ordered.

Mr. Ralph Baker, owner of First Offense case #18, Pops Country Store, was present to speak on behalf of the business. Mr. Baker stated that they were guilty of selling alcoholic beverage to an underage person. Mr. Baker asked for mercy from the Commission. The ABC officer came by the store, checked their license and told him he would be back within the next two weeks to make sure they didn't sell beer to an underage person. Mr. Baker stated he told his cashiers about this and told them to be careful. Mr. Baker stated that the employee asked to see the I.D. twice, returned it back to the customer and sold beer to the underage person. Mr. Baker said he and his secretary had taken the class in November, 2007, so they could pass what they learned to other employees.

Chairman Fox made a motion to reduce the penalty to \$600.00. Seconded by Commissioner Lyon. So Ordered.

Mr. Jack Nichols, attorney for hearing case #68, Walnut Creek Amphitheater, was present to speak on behalf of his client. Mr. Nichols stated that there was an Offer In Compromise and there were prior violations.

Mr. Nichols stated the client was willing to do an active suspension beginning in February for this underage sale violation. Mr. Nichols stated that Aramark has an internal training policy and the employees are told if

they commit an illegal sale they will be terminated. He had advised the permittee to take additional training offered by the Commission and they will take the training.

Chairman Fox thanked Mr. Nichols for coming to the Commission and the Offer in Compromise was ratified as is.

Ms. Denise Russ, owner of hearing case #28, Fubar, was present to speak on behalf of the business for failure to deface a tax stamp. Ms. Russ stated the bartender had served two customers, put the bottle down and handed them their drinks. Ms. Russ stated the entire staff had been to meetings telling them about defacing empty bottles. Ms. Russ stated she would like to schedule a class for the entire staff.

Ms. Russ stated it was their first violation and explained to the staff it would be mandatory to take the education class.

Chairman Fox made a motion to reduce the fine to a written warning with the stipulation to take a RASP class. Seconded by Commissioner Lyon. So Ordered.

Ms. Mary Wells, attorney for hearing case #50, Howards Mini Mart, was present to speak on behalf of the business regarding the underage sale violation. Ms. Wells stated the business has held a permit since 1997. Ms. Wells stated the business had a violation earlier in the year and had taken steps to educate the employees. Ms. Wells stated they had taken the ALE class, posted signs throughout the business and talked to the employees. Ms. Wells asked for a reduction in the monetary penalty.

Mr. Emory Howard, owner, said all of their employees had gone through the ABC class, two employees went to the BARS class and signs were posted in the store that customers under forty be prepared to present identification. Mr. Howard said he wrote reminders on the schedule and paychecks and purchased calendars for each cash register.

Mr. Howard said the first time the underage person came in his head was shaved, he had a goatee and looked thirty-five years old. Commissioner Lyon stated that the report read the underage person was nineteen years old and was not carded. Mr. Howard said he was not carded.

Mr. Howard asked for leniency because of the appearance of the underage person.

Assistant Counsel Renee Cowick stated that this campaign was done by the Clayton Police Department.

Commissioner Joyner made a motion to reduce the penalty to \$1,200.00. Seconded by Commissioner Lyon. So Ordered.

Mr. Eddie Ma, employee of First Offense case #33, Oriental Café, was present to speak on behalf of the business. Mr. Ma stated the business is a Chinese restaurant with a bar that has very little business. Mr. Ma stated that a young lady came to order beer and he checked her I.D. but he got the day mixed up and made a honest mistake.

Chairman Fox asked Mr. Ma if they were not selling that much would it be in their best interest to take an active suspension.

Mr. Ma asked if the penalty could be reduced.

Chairman Fox made a motion to reduce the penalty to \$600.00 with the stipulation that Mr. Ma and the owner complete the RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Aaron Jones and Mr. Michael Hamuka, owners of First Offense #27, Press, were present to speak on behalf of the business. Mr. Jones stated that the business is a small wine café in Greensboro, North Carolina. A private party was going on in the back room of the restaurant when the ALE Agent came in the building to conduct an underage campaign. The underage person ordered a beer and the server identified her as someone previously I.D. in the party and handed her the beer. Mr. Jones stated it was their first offense. Mr. Jones stated that within 24 hours their employees went through the BARS on-line training, contacted Agent Hill to come in and talk with the staff. The business has passed their compliance check since then and they are planning to send everyone to the next RASP class.

Mr. Jones stated the Greensboro restaurant industry was doing horribly the last quarter of this year and they were asking for mercy to reduce the fine.

Mr. Hamuka stated they were not trying to down play the severity of what happened and understood this was a violation.

Commissioner Joyner made a motion to reduce the penalty to \$600.00 with the stipulation that they complete the RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Leandro Mariano, owner of hearing case #59, Arnies Place Billiards Bar and Grill, was present to speak on behalf of the business. Mr. Mariano stated he was seeking dismissal of the violation and penalty. Mr. Mariano stated he wanted to surrender his permits and would never open a bar in North Carolina.

Chairman Fox asked if he just wanted to turn in his permits. Mr. Mariano said "yes sir". Chairman Fox told Mr. Mariano to give them to Mr. Gregory.

Mr. Glenn Lassiter, attorney for hearing case #58, Kangaroo Express 3175, was present to speak on behalf of his client. Mr. Lassiter stated the store was facing the third offense in a short period of time. The store had agreed to a five-day suspension and a \$3,000.00 fine. Mr. Lassiter stated that he could not offer any mitigating factors for the sale to a 17 year old girl. Mr. Lassiter stated this is a location where they have a hard time finding help and there is a large turnover. Mr. Lassiter stated that the manager told the corporate office that all employees had been trained when they had not been. The manager had been relieved of duties and is no longer employed with the store.

Mr. Lassiter stated that the end result was everybody had been retrained, the manager has been replaced and signed up for a RASP class. Mr. Lassiter requested that they be given the option of taking the class and paying a larger fine in this matter with a chance of reduction in some of the five-day suspension.

Chairman Fox asked if the same location had an offer at the last Commission meeting. Mr. Lassiter stated that there was one settled last month. Mr. Lassiter stated that there were three pending violations all with the same underage person. When the next violation comes before the Commission they will probably pay the full fine and take a fifteen day suspension.

Chairman Fox stated that the Pantry was not getting the message if they were here last month, this month and next month.

Chairman Fox asked if the violation at the Commission meeting last month was in the record. Mr. Lassiter stated it was the September 16, 2006 violation.

Chairman Fox made a motion to ratify the Offer in Compromise as is. Seconded by Commissioner Joyner. So Ordered.

Chief Counsel Fred A. Gregory stated that hearing case #20 – Royal Player Sport Bar & Billiards Grill and hearing case #51 – E Zee Food Mart will be carried over to the February 12, 2008, Commission meeting.

Chairman Fox made a motion to approve the remaining Offers in Compromise, with the exception of hearing case #46, J C Gunter Convenience, hearing case #28, Fubar, hearing case #50, Howards Mini Mart and hearing case #59, Arnies Place Billiards Bar and Grill, which had been ratified earlier. Seconded by Commissioner Lyon. So Ordered.

The following were Add-On Hearing cases:

- #74 – City Tavern
- #75 – Three Monkeys
- #76 – Stool Pigeons

II. FIRST OFFENSE CASES – 33

The following is a list of offense violation cases in which Final Agency Decisions were signed by the Chairman on January 15, 2008, pursuant to the Commission’s authorizing resolution dated November 8, 2002:

1. Green Tea Japanese Restaurant – 2 Regent Park Boulevard, Asheville, NC 28806
2. Cruizers 20 – 1914 Sedwick Road, Building 600, Durham, NC 27713
3. We Market – 4010 Martin Luther King Jr Boulevard, New Bern, NC 28562
4. M and A Food Mart – 807 Cokey Road, Rocky Mount, NC 27801
5. Park N Shop 1 – 110 East Ehringhaus Street, Elizabeth City, NC 27909
6. One Stop Food Stores 107 – 2040 East Dixon Boulevard, Shelby, NC 28152
7. Oakland Kwik Stop – 810 Oakland Road, Spindale, NC 28160
8. Los Palmas – 1036 South Main Street, High Point, NC 27262
9. Ingles Supermarket 114 – 265 Westgate Plaza, Franklin, NC 28734
10. Hawthornes NY Pizza and Bar – 5814-B5 Prosperity Church Road, Charlotte, NC 28269
11. Highlander Café and Pub – 1217 Hay Street, Fayetteville, NC 28305
12. Grocery Boy Jr 30 – 8604 Mt Pleasant Church Road, Willow Springs, NC 27592
13. Four Brothers Food Store 216 – 831 South Main Street, Kernersville, NC 27284
14. U S Fast Lane Drive Thru – 201 West Stadium Drive, Eden, NC 27288
15. Wilco 110 – 3600 South Main Street, Winston Salem, NC 27107
16. Ruby Tuesday 4968 – 5227 Hwy 70, Morehead City, NC 28557
17. Wal Mart Supercenter 5046 – 805 Town Centre Boulevard, Clayton, NC 27520
18. Pops Country Store – 5285 US Hwy 601 North, Salisbury, NC 28147
19. Tumbleweeds Bar and Grille – 2300-A West Roosevelt Boulevard, Monroe, NC 28110
20. Kangaroo Express 3001 – 2450 Ireland Drive, Fayetteville, NC 28306
21. Big Kmart 7382 – 1800 Four Seasons Boulevard, Hendersonville, NC 28729
22. Fida Mart – 400 South Front Street, Hamilton, NC 27540
23. Outback Steakhouse 3466 – 4937 Arendell Street, Morehead City, NC 28557
24. Bella Cucina – 5177 Southport Supply Road – Unit A, Southport, NC 28461
25. Pizza Hut of Farmville – 902 West Marlboro Road, Farmville, NC 27828
26. Pancho Villas Mexican Restaurant – 206 West Fairfield Road, High Point, NC 27263
27. Press – 301 Martin Luther King Jr Drive, Greensboro, NC 27406
28. Lowes Food Stores 169 – 11711 US Hwy 70 West, Clayton, NC 27520
29. Time Saver Food Stores 6 – 1454 Vinson Boulevard, Brunswick, NC 28424
30. Gils Market – 805 Chatham Street, Newport, NC 28570

31. Bi Lo 242 – 2226 Park Road, Charlotte, NC 28203
32. Big Johns Mini Mart – 2321 Raleigh Road, Chapel Hill, NC 27514
33. Oriental Café – 612 Hanes Mall Boulevard, Winston Salem, NC 27103

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases with the exception of First Offense case #11, Highlander Café and Pub, First Offense case #18, Pops Country Store, First Offense case #33, Oriental Café, First Offense case #27, Press, which had been ratified earlier. Seconded by Commissioner Lyon. So Ordered.

III. OTHER BUSINESS –

Administrator Michael Herring addressed the Commission concerning a request from Brunswick County. Mr. Herring stated that Mr. Larry L. Jones Sr. of Oak Island had been appointed to the Oak Island ABC Board. Mr. Herring stated that Mr. Jones was on the Oak Island ABC Board and served twelve years. Mr. Jones is an ABC permittee and owns a business called Jones Seafood House. It is a family seafood house that purchases \$5,400.00 worth of liquor a year from the ABC Board.

Mr. Herring stated that 18B-201 prohibits an ABC permittee from serving on an ABC Board unless the Commission gives an exemption. The Commission may exempt from this provision any person when the financial interest in question is so insignificant or remote that is unlikely to affect the person's official actions in any way. Mr. Herring stated that Mr. Jones does own 50% of the stock.

Mr. Herring stated he had a call from John Ramsey, Chairman of the Brunswick County ABC Board, who gave a strong reference for Mr. Jones.

Commissioner Lyon asked if Mr. Jones was already on the Board. Mr. Herring replied he was just appointed last week.

Mr. Herring stated that the manager realized it could be a conflict since Mr. Jones was an ABC permittee. Mr. Herring stated the manager called him and asked what they could do. Mr. Herring told her they needed to send a letter requesting an exemption from the Commission.

Commissioner Lyon asked Mr. Herring if he saw a problem with this. Mr. Herring replied he did not and recommended the Commission approve the exemption.

Commissioner Lyon made a motion to grant the exemption from the conflict of interest statute 18B-201. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory requested dates for the April and May Commission meetings. Chairman Fox left the April Commission meeting open for April 17 or April 18 until Commissioner Lyon could let them know.

Commissioner Lyon spoke regarding the temporary permit and the training issue. Commissioner Lyon stated he thought that the Commission should take steps to make education a permanent requirement for licensing.

Commissioner made a motion to start the rule-making process for education. Seconded by Commissioner Joyner. So Ordered.

With no further business, the meeting adjourned.

Douglas A. Fox, Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Dottie L. Taylor, Legal Division