

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
DECEMBER 7, 2011**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on December 7, 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

Commissioner Zander Guy and Commissioner Daniel L. Briggs were present at the meeting.

MINUTES OF NOVEMBER 9, 2011

Commissioner Guy asked for a motion to waive the reading of the minutes of the November 9, 2011 meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the November 9, 2011 meeting. Motion Passed. Commissioner Guy asked for a motion to approve the minutes of the November 9, 2011 meeting. Commissioner Briggs made a motion to approve the minutes from the November 9, 2011 meeting. Motion Passed.

CONFLICTS OF INTEREST

As required by North Carolina General Statute 138A-35, Commissioner Guy asked 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. Commissioner Briggs stated that he had found no conflicts of interest. Commissioner Guy stated that he had found no conflicts of interest.

I. HEARING CASES – 69

Chief Counsel Fred Gregory stated that Kate Allred, manager of hearing case #41, Lowes Foods 161, was present to speak on behalf of the business. Ms. Allred stated that the cashier chose to disregard the training and other safeguards that Lowes Foods had in place to prevent the sale of alcohol to underage persons. Lowes Foods has computer-based training for cashiers that references the sale of age-restricted items, sale alerts and date of birth prompts built into the registers and point-of-sale signage at the registers. This is the first violation for this store in over twelve years. Ms. Allred respectfully asks for a reduction. Assistant Counsel LoRita K. Pinnix concurred with the statements of Ms. Allred regarding this sale and the outstanding record of the store.

After conferring with Commissioner Briggs, Commissioner Guy made a motion to reduce the penalty by 25%. Motion Passed

Chief Counsel Gregory stated that Marlana Perkins, an employee of hearing case #7, Fast Express 1, was present to speak on behalf of the business. Ms. Perkins stated that this was her first job and the violation occurred on the first day of the job. The store was busy and she was nervous and overwhelmed. She admitted to making a mistake and asked that the fine be reduced. Assistant Counsel Tim Morse spoke on behalf of the Commission, stating that the underage sale was an ALE campaign.

Commissioner Guy made a motion to reduce the penalty by 25%. Motion Passed.

Chief Counsel Gregory stated that Bashar Zeiden, owner of hearing case #33, Citgo, was present to speak on behalf of the business. Mr. Zeiden admitted that he sold alcohol to a minor. He stated that he took the

classes and he was sorry about the violation. Assistant Counsel Pinnix stated that the violation occurred during a standard campaign and identification was not checked. Assistant Counsel Pinnix stated that training would be appropriate.

Commissioner Briggs made a motion to lower the penalty by 25% upon the completion of a RASP class. Motion Passed.

Chief Counsel Gregory stated that Julian Ramos, vice-president of hearing case #68, Zapatas Mexican Restaurant and Cantina, was present to speak on behalf of the business. Mr. Ramos stated that the employee, Julio Cesar Osorio, was no longer employed and did not have the authority to sign the Offer in Compromise that had been accepted at the November 9, 2011 Commission Meeting. Mr. Ramos asked that the Commission rescind that Offer in Compromise and Final Agency Decision. Assistant Counsel Pinnix confirmed that she had spoken to Mr. Ramos and that they were asking for the previous Offer and Order to be rescinded.

Commissioner Briggs made a motion to rescind the Offer in Compromise and Final Agency Decision. Motion Passed.

Chief Counsel Gregory stated that no one was present to speak on behalf of hearing case #69, El Corral Restaurant. Assistant Counsel Morse stated this is a reconsideration. The previous order was for a cancellation of the permits. However, the financial reports were filed and that the penalty is adjusted to a five-day suspension with credit for the suspension that the permittee already served.

Commissioner Briggs made a motion to accept the penalty as suspension days already served. Motion Passed.

Chief Counsel Gregory stated that William Whitaker and RaDonna Marshall, officers of hearing case #42, 109, were present to speak on behalf of the business. Mr. Whitaker stated 109 was operated by US Paragames as a volunteer, nonprofit organization and creates sporting and athletic activities for mobility disabled individuals, primarily veterans and first responders. Ms. Marshall admitted that it was a mistake. Assistant Counsel Pinnix stated that this was violation occurred during a campaign.

Commissioner Briggs made a motion to reduce the penalty by 50%. Motion Passed.

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

II. ABC STORE LOCATION – WINGATE ABC BOARD

Administrator Michael Herring stated that on October 28, 2011, the Commission received a letter from Elizabeth Hyatt, Chairperson for the new Wingate ABC Board in Union County. On October 31st, ALE Special Agent Omar Qureshi began an investigation into the proposed site for the new ABC Store. Special Agent Qureshi found that the proposed location will be at 4104 Hwy. 74, Wingate, North Carolina. The property is adjacent to the Wingate Police Department and across the highway from Wingate University. The property is also adjacent to a mobile home park. The building is a single building with metal siding and is 4000 square feet. The property is owned by Retail Properties Group LLC of Polkton, North Carolina and there are no conflicts of interest between the property owners and the ABC Board. The ABC Board plans to lease the building. The annual lease is \$24,360.00. The nearest ABC Store is the Monroe ABC Store located 8 miles away. The nearest church is .3 miles from the proposed site and the nearest school is .6 miles from the proposed site. Notice to the public was properly posted on the property on October 25, 2011. There have been some objections received by the town and

the NC ABC Commission regarding public safety to the entrance/exit of a neighborhood with small children and proximity to a public school bus stop. The store projects sales of \$1,000,000.00 the first year with sales volume projected at \$1,288,650.00 by the fourth year of operation.

Ms. Hyatt was present to answer any questions on behalf of the Wingate ABC Board. Ms. Hyatt stated that the neighborhood is adjacent to the rear of the proposed location property with a separate driveway. The school bus stop is actually two properties over from the proposed location property and is not adjacent. The driveway for the proposed location exits onto Highway 74 as do the other neighborhoods and properties nearby. Ms. Hyatt does not believe the proposed ABC Store would generate enough traffic to create a problem. No one else was in attendance to speak regarding the proposed ABC Store.

Mr. Herring stated that he recommended that the Commission approve the new ABC Store location.

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

III. OTHER BUSINESS – Consideration of Adoption of Permanent Rules Published in NC Register Volume 26, Issue 6 904 NCAC 2R .0802 and 04 NCAC 2S .1008)

Rules Coordinator Bob Hamilton stated that the two rules were in the NC Register and there was no public comment during the public comment period. Attorney Glenn B. Lassiter, Jr. sent an email to Mr. Hamilton objecting to Rule 2R .0802 in reference to his interpretation of the service of process in line #9. His comment was that the Rules of Civil Procedure superseded the proposed change in the rule. Mr. Hamilton said he had spoken to Chief Counsel Gregory and there does not appear to be a conflict as a matter is not a contested case at this point in the violation process. The purpose of this rule is to define how the Commission perceives service of the initial notice. Attorney William H. Potter, Jr. expressed his concern regarding the rule change.

Commissioner Briggs made a motion for approval of the two rules so they can move forward to the Rules Review Commission. Motion Passed.

III. OTHER BUSINESS

Commissioner Guy stated that the only other business is the approval of the future Commission Meeting dates. Administrator Mike Herring stated that the dates were March 7, 2012 and April 4, 2012.

Commissioner Briggs made a motion to accept the dates. Motion Passed.

With no further business, the meeting adjourned.

A.D. "Zander" GUY, JR., Commissioner
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

Caroline Y. Washburn, Legal Division