

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
FEBRUARY 16, 2011**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on February 16, 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 JANUARY 13, 2011

Chairman Williams asked for a motion to waive the reading of the minutes from the January 13, 2011 meeting and the January 19, 2011 special meeting into the record. Commissioner Guy made a motion to waive the reading of the minutes from the January 13, 2011 meeting and the January 19, 2011 special meeting. Motion Passed. Commissioner Guy made a motion to approve the minutes from the January 13, 2011 meeting and the January 19, 2011 special 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, Commissioner Guy and Commissioner Briggs stated that they found no conflicts of interest.

I. HEARING CASES – 93

Chief Counsel Fred Gregory asked if there was anyone present to speak regarding contested case #1, El Gavilan. Assistant Counsel Tim Morse represented the Commission. Mr. Morse stated that Administrative Law Judge Selina M. Brooks issued an order to the parties to file Prehearing Statements. The permittee failed to comply with the order and Judge Brooks recommended that the permittee pay a penalty of \$500.00 and the permits be suspended for ten days. Mr. Morse asked the Commission to adopt the recommended decision of the administrative law judge.

Chairman Williams made a motion to adopt the recommended decision of the administrative law judge. Motion Passed.

Chief Counsel Gregory stated that hearing case #2, Mexico Restaurant, was the next case to be heard. Mr. Gregory stated that the original offer in compromise was for the cancellation of the Mixed Beverage Restaurant permit for failure to submit financial reports on an annual basis. He went on to state that there was a language barrier and the permittee had hired an attorney to help him with filing the reports. Mr. Gregory stated that the penalty in the offer in compromise was amended to a two- day suspension or \$200.00. He asked the Commission to accept the amended offer.

Commissioner Guy made a motion to accept the amended offer in compromise. Motion Passed.

Chief Counsel Gregory stated that the Mrs. Judith Gayle Bedsole, owner of hearing case #10 Cheers Too, was present to speak on behalf of her business. Mrs. Bedsole stated that she had applied and received

approval to have a drinking area designated behind her business in November of 2010, which was before she was aware of the pending violation. She went on to state that she and her staff have taken the ABC training.

Chairman Williams made a motion to issue a Written Warning. Motion Passed.

Chief Counsel Gregory stated that Mr. Rajiv Rajbanshi, the owner of hearing case #19, M and R Exxon, was present to speak on behalf of his business. Mr. Rajbanshi stated that he had been frustrated with having to clean a backed up toilet and he miscalculated the age of the buyer. He asked the Commission to waive the suspension or to lower the penalty.

Chairman Williams asked Mr. Rajbanshi if his staff had attended any alcohol training classes. Mr. Rajbanshi stated that they had not attended any classes.

Chairman Williams made a motion to reduce the penalty by 25% to \$1,050.00, on the stipulation that he and his staff attend a RASP Class. Motion Passed.

Chief Counsel Gregory stated that Mr. Jason Pulliam, owner of hearing case #16, Hoplite Pub and Beer Garden, was present to speak on behalf of his business. Mr. Pulliam stated that he was embarrassed by the employee's underage violation and the employee is no longer employed with the business. He further stated that after the violation occurred, he and his employees immediately took the RASP class offered by the Commission. He later hired new employees and they also took the RASP class.

Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$900.00. Motion Passed.

Chief Counsel Gregory stated that Mrs. Krystal Glenn, owner of hearing case # 41, J R's Corner Tavern, was present to speak on behalf of her business. Mrs. Glenn stated that the young lady who was arrested for possessing drugs and drug paraphernalia, was a college student and Mrs. Glenn asked her to volunteer and work for tips while she was out caring for her husband; who had recently undergone heart surgery. Mrs. Glenn stated that she received a phone call from ALE Agent Chris Poole stating that he had come in to do a routine inspection and had found Ms. Burkhart's purse behind the bar. After obtaining consent from Ms. Burkhart, her purse was searched and the drugs and drug paraphernalia were found and she was arrested. Mrs. Glenn further stated that Agent Poole told her that the bar was secure, the money was left in the register and she could come and reopen the business. Ms. Glenn stated that she was shocked that this had occurred and had always made it a point to tell the women who volunteered at the business to leave their purses in their vehicles.

After some discussion with Commissioner Guy and Commissioner Briggs, Chairman Williams stated that the penalty would not be changed. Motion Passed.

Chief Counsel Gregory stated that Mrs. Li Ni, owner of hearing case #38, Genki Restaurant and Sushi Bar, was present to speak on behalf of her business. She stated that when the violation occurred she had been out on maternity leave and the manager was running the business for her. She further stated that she does have all the invoices but had taken some of them home and that was why the manager couldn't provide the invoices to the ABC officer.

Chairman Williams stated that ABC Officer Lawrence found several bottles of alcoholic beverages that had damaged tax stamps attached. Mrs. Ni stated that the manager did not have enough alcohol, so he went to an ABC Store and bought the alcohol. Mrs. Ni asked the Commission for a reduction in penalty.

After conferring with the Commissioner Guy and Commissioner Briggs, Chairman Williams made a motion to waive the seven days active time, but to keep the penalty as 35 days suspension or \$4,000.00. Motion Passed.

Chief Counsel Gregory stated that Mr. Jim Brown, District Manager for hearing case # 30, Carolina Ale House, was present to speak on behalf of the business. Mr. Brown asked the Commission for a reduction in the penalty. He stated that the staff had received internal training. He further stated that his staff is scheduled to receive RASP training.

After conferring with Commissioner Guy and Commissioner Briggs, Chairman Williams made a motion to reduce the penalty from \$1,500.00 to \$1,125.00, upon the stipulation that all the employees attend a RASP class. Motion Passed.

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

III. OTHER BUSINESS - EXEMPTION REQUEST
G.S. §18b-1116(a) – E&J GALLO WINERY

Mr. Keith Kapp, attorney for E & J Gallo Winery, asked the Commission to grant an exemption from G.S. 18B-1116(a). He stated that E & J Gallo Winery would like to work with Harris Teeter on creating online “Digital Wine Clubs” for retailers that would use innovative electronic communications platforms to educate consumers about wines and assist them in their wine purchasing decisions. This would be a pilot program between E & J Gallo Winery and Harris Teeter. If the program is successful, it would be expanded to include participation of other interested wineries and retailers nationwide.

Mr. Kapp stated that Ms. Karen Mizell, Shopper Marketing Manager for E & J Gallo Winery, was present to provide additional information regarding the “Digital Wine Clubs”. Ms. Mizell explained how shopper marketing helps retailers grow an entire product category by using technology to shoppers in purchasing wine. The “Digital Wine Clubs” would allow members to rate and review their purchased wines and then the website would use that information to educate consumers and provide suggestions of other wines to try. Harris Teeter would have ultimate control of the website and there will be no external links.

Chairman Williams asked how other retailers’ inventory would be handled, since Harris Teeter information is already in the database. Ms. Mizell stated that the backend version would work with any retailer, in other words the retailer would enter their information. The frontend version would be different.

Mr. Richard Carlton, attorney for Harris Teeter, stated that he felt that this was a very responsible way to promote commerce in North Carolina and that this program would only be for a one year trial period.

Mr. Ed Cook, Director of Wine and Beer for Harris Teeter, stated that the wine club would be open to anyone twenty-one years old and up and would involve no fees.

Chief Counsel Gregory asked if consumers would have access to the website while in the store. Mr. Cook stated that it would be possible for consumers to access the website through their cell phones, but there would not be any computers in the stores to gain access to the website.

Mr. Kris Gardner with the North Carolina Beer & Wine Wholesalers Association stated that the perception is that E&J Gallo Winery and Harris Teeter already work too closely together and if the

Commission grants the exemption, this would not help the perception. He went on to state the following concerns the members have. E&J Gallo Winery providing the hardware and software to Harris Teeter at no cost, E&J Gallo Winery hosting the "Digital Wine Clubs" on their servers, the potential to change the formulas with the way pop ups are done and Harris Teeter being dependent on E&J Gallo Winery for technical support. The Association opposes the request.

Mr. Andy Ellen, General Counsel for the Retail Merchants Association, stated that he had spoken with Mr. Kapp, Mr. Cook and Mr. Carlton about some of the concerns they had, but feels that those concerns can be worked out over time. He went on to state that there was no strong opposition to the exemption request.

Chairman Williams made a motion to continue the exemption request to the March 16, 2011 Commission meeting. Motion Passed.

**IV. OTHER BUSINESS – EXEMPTION REQUEST
G.S. §18B-1116(a) – NC ASSOCIATION OF ABC BOARDS**

Mr. Joe Wall, Executive Director of the NC Association of ABC Boards, stated that the Association of ABC Boards is having a general managers meeting on March 22, 2011 through March 23, 2011, at the Sheraton Four Seasons in Greensboro, North Carolina. On March 22, 2011, they are planning a product knowledge session with alcohol producers from North Carolina. A trade show will follow and will include brokers and exhibitors of products used by North Carolina ABC Boards, such as cash registers, bags and insurance. Mr. Wall ended by stating that he was requesting an exemption to allow the tasting of new spirituous liquor products at the March 22, 2011 meeting.

Commissioner Guy made a motion to grant the exemption request. Motion Passed.

**V. OTHER BUSINESS – ADJUSTMENT INCREASE OF BAILMENT – G.S. §18B-208(b)
EFFECTIVE MAY 1, 2011**

Administrator Michael Herring stated that in 1982, the General Assembly established a special ABC fund that allows the Commission to collect monies on each case of liquor shipped from the state warehouse to ABC Boards. The monies collected are in the form of Bailment Surcharge fee, which funds the ABC Commission budget and a Bailment fee which pays the warehouse contractor, currently LB&B Associates...for the receipt storage and distribution of spirituous liquor out to the local ABC Boards. These fees are part of the mark-up pricing formula for liquor as outlined in General Statute 18B-804 and the statute gives you the authority to determine the amount of each fee.

Mr. Herring went on to state that he was requesting that the Commission consider increasing only the bailment fee to pay for the increasing costs at the ABC warehouse. The current bailment fee is \$1.10 per case which was set in 2006. In 2006, the warehouse contractor received and shipped 4,170,000 cases to 157 local boards. In 2010, 4,570,000 cases were received and shipped to 168 ABC Boards.

Additionally, on July 1 this year, we are entering into the first of two option years left on the current contract. Beginning July 1, the amount we pay LB&B Associates increases by 5% or \$241,188. We are also obligated to pay LB&B for fuel used in excess of 145,000 gallons a year and for fuel cost in excess of \$2.69.

With diesel fuel costs currently exceeding \$3.19 per gallon, I am projecting we will owe LB&B in excess of \$200,000 in fuel cost next fiscal year beginning July 1. The additional compensation coupled with increased fuel costs will require an additional \$440,000 in revenue to meet our contractual obligations.

Increasing the bailment fee by 10 cents will result in additional monies of \$460,000 a year to cover the remaining 2 years we have left on the warehouse contract.

In closing, due to increasing expenses over the past five years from processing and shipping 400,000 additional cases, 11 additional ABC Boards to make deliveries to, the 5% additional compensation due to LB&B by exercising the first option year extension of the contract, along with the increasing cost of fuel, Mr. Herring recommended that the Commission approve a 10 cent increase in bailment raising the bailment fee to \$1.20 cent per case, effectively May 1, 2011.

Mr. Steve Metcalf, with the American Wine Institute stated that they were in opposition of the increase in bailment.

Commissioner Guy made a motion to approve the adjustment increase in bailment. Motion Passed.

**VI. OTHER BUSINESS – REVIEW AND CONSIDERATION OF PUBLIC COMMENTS
AND THE CONSIDERATION FOR ADOPTION OF RULES
PUBLISHED IN VOLUME 25, ISSUE 12 OF THE NC REGISTER
(04 NCAC 02S AND 02T)**

Rules Coordinator Bob Hamilton stated that the only comments that he had received were from the North Carolina Beer & Wine Association and the North Carolina Retail Merchants Association in reference to Rule **04 NCAC 02T .0712** and that involved adding text pertaining to shelf management plans. The legal staff recommended making those changes prior to adopting the rule. There was another public comment in reference to Rule **04 NCAC 02T .0303** that involved label contents. The word “net” had been inadvertently struck through. The word was added back into the rule. He went on to ask that the Commission approve the authority of GS §18B-100 to apply to all of the rules. Mr. Hamilton asked that the Commission adopt the suggested rules changes

Commissioner Briggs made a motion to adopt the suggested rule changes. Motion Passed.

**VII. OTHER BUSINESS – REVIEW OF THREE PROPOSED
04 NCAC 02R RULE ADOPTIONS**

Mr. Hamilton stated that he had three proposed rules for adoption. The rules are as follows: **04 NCAC 02R .2001, 04 NCAC 02R .2002 and 04 NCAC 02R .2003**. The rules will be published on the Office of Administrative Hearings' website. Mr. Hamilton asked the Commission to adopt the proposed rules and to approve the public hearing date of March 10, 2011, at 10:00 AM, in order to have the mandatory public hearing for the proposed rules.

Chairman Williams made a motion to adopt rules **04 NCAC 02R .2001, 04 NCAC 02R .2002 and 04 NCAC 02R .2003** and to approve the public hearing date of March 10, 2011. Motion Passed.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Tiffany Goodson, Legal Division