

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JANUARY 11, 2007**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on January 11, 2007, beginning at 10:15 a.m. The meeting was tape-recorded and the disk(s) are 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 14, 2006 MEETING

Chairman Fox made a motion to waive the reading of the minutes from the December 14, 2006, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the December 14, 2006, meeting. Seconded by Commissioner Lyon. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order One, Chairman Fox asked Commissioner Joyner and Commissioner Lyon 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 stated that he found no conflicts of interest. Commissioner Lyon recused himself from #30, Fosters Saloon and First Offense Case #21, Jason's Deli Winston Salem. Chairman Fox recused himself from #34, Lake Park Beverage and #41, Food Lion 1193.

I. HEARING CASES – 54 Listed

Chief Counsel Fred Gregory stated that Mr. Kenneth Jones, the permittee, was not present to speak regarding contested case #1, Ken One Stop. Assistant Counsel Renee Cowick represented the Commission at the hearing. Mr. Kenneth Jones was not present at the hearing in High Point, NC on November 29, 2006, and Administrative Law Judge Beecher R. Gray granted Ms. Cowick's motion for sanctions. Mr. Gregory recommended that the Commission adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge and impose a 12-day suspension and a \$500.00 penalty.

Chairman Fox made a motion to adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge. Seconded by Commissioner Lyon. So Ordered.

Ms. Maria Payne, owner of hearing case #38, North Side Tavern, was present to speak on behalf of her business. Ms. Payne stated she would like some leniency. The business opened in 1986 and this was her first problem. Ms. Payne stated the employee said she did not sell or serve the minor a beer; it was her boyfriend's beer. Ms. Payne found out what had taken place and immediately fired the bartender. Ms. Payne stated she wanted her employees to attend an ABC class to make them aware of the dos and don'ts.

Chairman Fox asked Ms. Payne if her employees had taken a class. Ms. Payne stated she had not been to a class in several years.

Chairman Fox made a motion that all employees attend a RASP class within the next 45 days and eliminate the penalty of \$500.00. Seconded by Commissioner Joyner. So Ordered.

Mr. Kenny Efird, owner of hearing case #46, Greene Street, was present to speak on behalf of his business. Mr. Efird stated one of the managers had resigned due to the private club violations, and he had purchased a driver's license scanner.

Commissioner Joyner asked Mr. Efird about the scanner. Mr. Efird stated the scanner stores membership information to a database.

Chairman Fox asked if the scanner was just a tool to make sure the people coming into the club were members and did not have anything to do with determining age. Mr. Efird stated security would be checking I.D.s for age.

Chairman Fox made a motion to reduce the penalty to \$400.00 upon the stipulation that all the employees attend a RASP class within the next 45 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Glenn Lassiter, attorney for hearing case #41, Food Lion 1193, was present to speak on behalf of his client. Mr. Lassiter stated he has worked with Food Lion in developing interactive computer training in which each employee goes through one and one-half hour of training with a test at the end. Mr. Lassiter stated he has represented Food Lion since 1997, and last year they had the least number of violations for a year that they ever had. Mr. Lassiter stated the employee working the register did not check the I.D. of the person coming in for a compliance check and sold beer without verifying age. Mr. Lassiter asked for additional training and/or pay an additional monetary penalty to avoid the five-day suspension.

Commissioner Lyon made a motion to increase the penalty to \$4,000.00 with no active suspension and with further stipulation that all employees attend a RASP class within the next 45 days. Seconded by Commissioner Joyner. So Ordered.

Ms. Stella Mare, owner for hearing case #3, Stella Mare Ristorante and Pizzeria, was present to speak on behalf of her business. Ms. Mare stated they have had the business for five years with no violations. Ms. Mare stated they check I.D.s.

Commissioner Joyner asked how she would characterize the restaurant as big or small. Ms. Mare stated it is a small business with an occupancy of about 65 people. Commissioner Joyner asked if there was a bar in the restaurant. Ms. Mare stated there is a small bar which most of the time is not operating because they are not successful in selling alcoholic beverages.

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

Commissioner Joyner made a motion to ratify hearing case #34, Lake Park Beverage. Seconded by Commissioner Lyon. So Ordered.

Chairman Fox made a motion to ratify hearing case #30, Fosters Saloon. Seconded by Commissioner Joyner. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise with the exception of contested case #1 Ken One Stop, hearing case #38, North Side Tavern, hearing case #41, Food Lion, hearing case #46, Greene Street and hearing case #3, Stella Mare Ristorante and Pizzeria, which had already been ratified. Seconded by Commissioner Lyon. So Ordered.

The following were add-on Hearing cases:

- #47 – Graduate Food and Pub
- #48 – Arnies Place Billiards Bar and Grill
- #49 – Café Cyclo
- #50 – Carniceria La Fortuna VI
- #51 – Q A Express Mart
- #52 – Ellis Crossroads Grocery
- #53 – Double Ds
- Tiki Cabaret - #54, #54(a), #54(b), #54(c), #54(d), #54(e), #54(f), #54(g)

The following was an add-on First Offense case:

- #22F – Peakway One Stop

II. FIRST OFFENSE CASES – 22 Listed

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on January 11, 2007, pursuant to the Commission’s authorizing resolution dated November 8, 2002:

1. 61 Truck Stop Bar and Grill – 6412 Wade Stedman Road, Wade, NC 28395
2. 8 Pinehurst Resort and Country Club – Centennial Boulevard, Pinehurst, NC 28374
3. Corner Stone Market – 3108 Hwy 14, Reidsville, NC 27320
4. Swift Mart – 1728 Marshburn Road, Wendell, NC 27591
5. Sun Do Kwik Shops – 1145 Roberts Avenue, Lumberton, NC 28358
6. Wilco 1814 – 3314 Neuse Boulevard, New Bern, NC 28560
7. Ocean Breeze B P – 2301 North Croatan Hwy, Kill Devil Hills, NC 27948
8. Niks Pizza and Restaurant – 406-E South Church Street, Kenly, NC 27542
9. Mountain Energy 8 – 843 Russ Avenue, Waynesville, NC 28786
10. Lowes Foods 185 – 1845 Aversboro Road, Garner, NC 27529
11. Riddick and Windley – 235 Pamlico Street, Belhaven, NC 27810
12. Hooters – 7702 Gateway Lane, Concord, NC 28207
13. Frankies Italian Grille – 800 East Morehead Street, Charlotte, NC 28210
14. Yamato Japanese Steak and Seafood House – 1683 East Dixon Boulevard, Shelby, NC 28150
15. Shop and Save 8 – 1000 West Union Street, Morganton, NC 28655
16. Mustang II – 507 East Main Street, Forest City, NC 28018
17. Exprezit Convenience Store 215 – 742 Harkers Island Road, Beaufort, NC 28516
18. Community Stop Food Mart – 1941 Brevard Road, Arden, NC 28704
19. First Street Mart – 1514 West First Street, Winston-Salem, NC 27104
20. Single Stop VI – 1786 Soco Road, Maggie Valley, NC 28751
21. Jasons Deli Winston Salem – 1005 Hanes Mall Boulevard, Winston-Salem, NC 27103

Chairman Fox made a motion to ratify First Offense case #21 Jasons Deli Winston Salem. Seconded by Commissioner Joyner. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise for the First Offense cases. Seconded by Commissioner Joyner. So Ordered.

III. ABC STORE LOCATION – TOWN OF CRAMERTON ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC store in Gaston County. On November 29, 2006, the Commission received a request from Barry Smith, Chairman of the Cramerton ABC Board for a proposed new ABC store in Cramerton. On December 21, 2006, ALE Agent Paul Howard began an investigation and found that the proposed location for the ABC Store is the Cramer Market Place Shopping Center which is located at 202-C Market Street in Cramerton, North Carolina.

No conflict of interest exists between the Cramerton ABC Board and the property owners.

The space is 2,000 square feet and currently vacant and will be renovated. The proposed opening date was January 15, 2007, but has changed to next month.

The property is owned by ALLJOY, LLC in Charlotte, North Carolina.

The Cramerton ABC Board plans to lease this property for two years, the first year at \$1,665.00 per month. They are projecting sales at this location to be \$750,000.00 for the first year.

The nearest church is Cramerton Church of God and is approximately .1 of a mile from the proposed location.

The nearest school is Cramerton Christian Academy and is approximately .3 of a mile from the proposed location.

The nearest ABC store is the Gastonia ABC store on Cox Road and is approximately 3.4 miles from the location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on November 29, 2006, in compliance with the ABC Commission's 30-day requirement. There has been one local phone call in objection to the store but a name or number was not left. The ABC Commission has received no objections to this proposed location.

Mr. Herring recommended the ABC Commission approve this request for a new ABC Store and the first store for Cramerton.

Commissioner Lyon made a motion to approve the new ABC Store. Seconded by Commissioner Joyner. So Ordered.

IV. ABC STORE LOCATION – CITY OF ASHEVILLE ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Buncombe County. On December 12, 2006, Curtis Canty, General Manager of the Asheville ABC Board, requested Commission approval to purchase property for a new ABC Store. On December 15, 2006, ALE Agent John Pace began an investigation and found that the proposed location is located at Leicester Crossing, 343 New Leicester Highway in Asheville, North Carolina.

The ABC Board has offered to purchase the property which is .4 of an acre, and the property is represented by Pullium Properties of Asheville with a purchase price of \$323,125.00.

No financial conflicts of interest exist between the City of Asheville ABC Board and the property owners.

The completion date for this property is July of 2008 and there is no drawing of the proposed building. The Board is planning a 3,600 square foot single story building on the property.

The nearest church is Erwin Hills Baptist Church and is approximately .3 of a mile from the proposed location.

The nearest school is Johnston Elementary School and is approximately 1.9 miles of a mile from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on December 1, 2006, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this proposed location.

The nearest ABC Store is 2.3 miles and is the established ABC Store #5 located at 205 Louisiana Avenue, Asheville, North Carolina.

Sales at this location are projected to be a little over a million dollars the first year.

Mr. Herring recommended the ABC Commission approve this request for a new ABC Store.

Commissioner Joyner made a motion to approve the new ABC Store. Seconded by Commissioner Joyner. So Ordered.

IV. OTHER BUSINESS – Commission Activity

Administrator Michael Herring presented the Commission activity for the month of December, 2006. In December, the Permit Division issued 467 permits compared to 600 in December, 2005. They approved 557 wines compared to 340 wines in December, 2005. There were 33 beers approved compared to 21 beers in December, 2005. The Legal Division received 121 violations which were up 13%. The Education/Training Division was active especially in the area of educating students with 1,865 student participants compared to 120 in December, 2005.

At the last meeting, the warehouse was projecting big increases in shipments and it did not happen. The warehouse was down about 11,000 cases or three percent. Overall for the year, warehouse shipments were up about 4.78 percent or 190,481 cases.

Commissioner Joyner complimented Mr. Herring on the price list. Mr. Herring stated the book is totally supported by the monies collected from the vendors and the Commission has no cost in the price book.

Chairman Fox made a motion to approve Thursday, April 12, 2007, and Thursday, May 3, 2007, as future Commission meeting dates. 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