

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
APRIL 23, 2009**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on April 23, 2009, 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 and Commissioner John Lyon were present at the meeting.

MINUTES OF MARCH 24, 2009, MEETING

Chairman Fox made a motion to waive the reading of the minutes from March 24, 2009, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the March 24, 2009, 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 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 Lyon stated he found no conflicts of interest. Chairman Fox stated that he had no conflicts.

I. HEARING CASES – 52

Chief Counsel Fred A. Gregory stated that Mr. Adolfo Aguilar, owner of add-on First Offense case #21, Fast Pass, was present to speak. Mr. Aguilar stated that an employee received a ticket for selling alcohol to an underage person. Mr. Aguilar said the employee was to go to court and attend class, but he left town. Mr. Aguilar stated he received a letter about the violation and he came to ask for a reduction in the fine.

Chairman Fox asked Mr. Aguilar if this was a drive thru store. Mr. Aguilar replied yes. Chairman Fox said that an eighteen year old went through the drive thru and bought a six-pack. Mr. Aguilar stated it was their first violation.

Chairman Fox stated that in the officer's report the employee did not ask for an I.D. Chairman Fox said he didn't think that the fine could be lowered.

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

Chief Counsel Gregory stated that Mr. Billy Reynolds, landlord and Young Sam Yoon, owner of First Offense case #1, Colony Mini Mart, were present. Mr. Reynolds stated that Mr. Yoon had been at the business for about three years. Mr. Reynolds stated that the customer who came and got the beer was the underage brother of a regular customer whose I.D. had previously been checked. Mr. Yoon thought it was the person he had checked many times before.

Mr. Reynolds asked for relief on the fine since it was the first violation. Mr. Reynolds stated that Mr. Yoon and his wife operate the store and business is not good.

Chairman Fox made a motion to reduce the penalty to \$800.00 with the stipulation that Mr. Yoon and his wife take a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Ms. Iris Perez, the daughter of the owner and also an employee and Mrs. Rosalinda Martinez, owner of hearing case #30, El Forastero Restaurant Bar, were present. Ms. Perez stated that three officers came into the business and observed for a while. One of the officers came up to her and asked her to step out of the restaurant because he was going to arrest her for selling beer to an intoxicated person.

Ms. Perez said the patron who she supposedly sold beer to and his two friends stepped outside and because they could not speak English, the off duty officer who works for the business translated for them. Ms. Perez said the off duty officer asked the patron who was not intoxicated who sold the beer to his friend. The patron who was not drunk said he bought the beers and gave them to his friend. Ms. Perez stated that she sold the beer to the patron who was not drunk.

Ms. Perez stated they had their license for nine years and this was the first violation. Ms. Perez said she didn't think it was her fault because she didn't personally give the beer directly to that person.

Commissioner Lyon made a motion to reduce the penalty to \$300.00 with the stipulation that Ms. Perez and other employees take a RASP class within 45 days. Seconded by Chairman Fox. So Ordered.

Chief Counsel Gregory stated that Mr. Gregory Saldanha, owner of hearing case #37, Sandys Steaks and Subs, was present to speak. Mr. Saldanha stated that they had been in business for about ten years and this was their first violation. Mr. Saldanha said they had taken classes.

Chairman Fox asked Mr. Saldanha how was business. Mr. Saldanha replied slow.

Commissioner Lyon made a motion to reduce the penalty to \$300.00. Seconded by Chairman Fox. So Ordered.

Chief Counsel Gregory stated that Mr. Man Baik, owner of First Offense case #11, Big Apple Supermarket, was present to speak. Mr. Baik stated he had already taken an alcohol education program on February 21, 2009. Mr. Baik said he had been in business for about four years and this was the first violation. Mr. Baik stated that the underage person had been in with her boyfriend and other older people. Mr. Baik said she had been in by herself to purchase cigarettes and he had asked to check her I.D. several times but the day she purchased a case of beer he was confused and that is why he sold.

Commissioner Lyon asked Mr. Baik what he was confused about. Mr. Baik stated that she had been to the store to buy cigarettes and he thought she was old enough.

Commissioner Lyon asked Mr. Baik if this was the first time the underage person had bought beer. Mr. Baik replied yes.

Chairman Fox asked how many employees did they have. Mr. Baik replied he and his wife. Chairman Fox asked if his wife had taken the class and Mr. Baik replied no.

Chairman Fox made a motion to reduce the penalty to \$900.00 with further stipulation that his wife take the RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Jim Lanning, President of Ingles Markets, add-on hearing case #51, Ingles Markets 50, was present to speak. Mr. Jim Lanning introduced Mr. Mike Lee, Vice President of Operations and Mr. Grant Herring, District Manager. Mr. Lanning stated they were embarrassed because they normally do a better job than the violation indicated. Mr. Lanning said they had a good program in place but it depends on the store manager. Mr. Lanning stated that the store manager had been with them for over twenty years and they felt good about him but were wrong. The employee was terminated.

Mr. Lanning stated employees are taught all of the rules and they sign off on a sheet. Employees resign the sheet saying they understand the rules. Mr. Lanning stated that if they do not I.D. and get caught that they are terminated. Mr. Lanning showed Chairman Fox and Commissioner Lyon driver's license guidebooks which are at the cash registers.

Mr. Lanning did not have a problem with the fine but just the active suspension. Commissioner Lyon asked Mr. Gregory if he had any suggestions. Mr. Gregory stated that another offer in compromise could be prepared. Chairman Fox stated that the underage person was 15 years old and the business had four violations in sixteen months.

Two new offers were prepared, signed and presented to the Commission.

Chairman Fox made a motion to approve the two Offers in Compromise each with a 50 day suspension or a \$5,000.00 penalty. Seconded by Commissioner Lyon. So Ordered.

Assistant Counsel LoRita K. Pinnix stated that Mr. Mark Rogers, owner of First Offense case #20, T Mart 4 Angier, was present to speak. Mr. Rogers stated he had been in business for 12 years and this was the first alcohol violation. Mr. Rogers said business was not good and asked for leniency.

Commissioner Lyon asked Mr. Rogers if the I.D. was checked. Mr. Rogers replied he didn't think it was checked. Mr. Rogers said they have zero tolerance and terminated the employee.

Commissioner Lyon asked if he and his employees had taken the class. Mr. Rogers replied years ago.

Chairman Fox made a motion to reduce the penalty to \$800.00 with the stipulation that Mr. Rogers and all employees attend a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Kirk Irish, district manager of hearing case #31, Empire Distributors of North Carolina Inc, was present to speak. Mr. Irish stated he was asked by a store manager at Harris Teeter in Boone, North Carolina, to make a contribution to an auction for the American Heart Association. Mr. Irish said he took three snow boards to the store manager. Mr. Irish stated that an ALE Agent went into the store and found out where the snow boards came from and what they were for. Mr. Irish stated he was cited with a five day suspension or a \$500.00 fine. Mr. Irish stated he hoped he could get it reduced to a written warning. Mr. Irish said he had been in the business for nineteen years and had never had a violation.

Chairman Fox asked Mr. Irish why he didn't give it to the American Heart Association without going through Harris Teeter. Mr. Irish replied that would happen if he had that opportunity again. Mr. Irish said he did give the snow boards to Harris Teeter with the intent they be used for the auction.

Commissioner Lyon asked Chief Counsel Gregory if the fine had been cut in half. Mr. Gregory replied one third.

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

Chief Counsel Gregory stated that Mr. Edward Sinram, owner of hearing case #23, Port City Pub, was present to speak. Mr. Sinram stated it was their first violation. Mr. Sinram said he had received two letters from the Commission and he had misunderstood that he was to wait for his bartender's case to be heard. Mr. Sinram stated he spoke to Mr. Morse and he explained his situation to him. Mr. Sinram stated that Mr. Morse suggested that he come and speak to the Commission. Mr. Sinram said the fine was lowered in the second letter to \$500.00 and 12-day suspension. Mr. Sinram stated that was why he waited to get in contact with the Commission to find if his bartender was found guilty or not. Mr. Sinram said he assumed if not found guilty that he would not be charged the fine. Mr. Sinram stated that Mr. Morse informed him that it was two different situations (the bartender and the business). Mr. Sinram said he understood. Mr. Sinram asked to pay the fine of \$500.00 or some leniency.

Commissioner Lyon asked what the original offer was. Assistant Counsel Renee Cowick replied 12 days or \$1,200.00 was the original offer if it was settled. Assistant Counsel Cowick stated that if a petition is filed there is a request for a monetary fine and a suspension which was \$500.00 and a 12-day suspension.

Chairman Fox asked what happened to the bartender. Mr. Sinram stated he was still employed.

Mr. Sinram stated all of his employees had taken the course with ABC.

Chairman Fox made a motion to reduce the penalty to \$500.00. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Omar Baloch, attorney for hearing case #18, Friendly Quick Mart, was present to speak on behalf of his client. Mr. Baloch stated that the person charged had taken a class. Mr. Baloch stated he felt the penalty payment seemed fairly substantial since this was a first violation in nine years. Mr. Baloch asked for a reduction.

Commissioner Lyon asked if the person charged was one of the owners. Mr. Baloch stated it was a fairly small operation with two partners and the person charged with the violations was one of the owners. Mr. Baloch stated he did not dispute the first violation but did dispute the second violation. Mr. Baloch stated that this person called him immediately after the first violation and he told him not to do it again. Mr. Baloch said that on the second violation that same night he did ask for the driver's license and did not sell the alcohol. Mr. Baloch stated the client told him he felt the second violation was a wrongful charge against him.

Assistant Counsel LoRita K. Pinnix stated that these were the first two violations and the business has held the permits for 12 years. Ms. Pinnix stated that instead of giving them a break in the offer they did go with the regular penalties for two first offense cases.

Chairman Fox asked Mr. Baloch how many employees. Mr. Baloch replied two partners and every now and then they will have a temp.

Chairman Fox asked Mr. Baloch if they had taken the RASP class. Mr. Baloch replied yes.

Chairman Fox made a motion to reduce the penalty to \$1,600.00 with the stipulation that the other partner take the RASP class. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mrs. Sherry Evans, owner of First Offense case #16, S and S Grocers, was present to speak. Mrs. Evans stated she is an owner with her husband and they have been in business for about three years. Mrs. Evans stated she sold a 12-ounce beer to an underage person. Mrs. Evans stated she checked the underage person's I.D. and the undercover officer came in with him. The undercover officer was hanging around the counter and the business had a break in the previous two months so she was paying attention to the officer more than the guy in front of her and the other customers. Mrs. Evans said she looked at the driver's license and did not compute the year. She now has a calendar that gives the dates for cigarettes and alcohol. Mrs. Evans said the business is small and is in a rural area.

Chairman Fox asked Mrs. Evans if she had taken the RASP class. Mrs. Evans replied no.

Chairman Fox made a motion to reduce the penalty to \$400.00 with the stipulation that Mrs. Evans and her husband take the RASP within 45 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Ms. Chrystal Thaxton, manager of hearing case #14, Wake Cross Roads Express, was present to speak. Ms. Thaxton asked to have their fine reduced and they knew it was their second violation. Ms. Thaxton stated that all of their employees had been to the training class and it is a requirement for all new employees. Ms. Thaxton stated they encourage everyone to check I.D.s. They have the stoplight signs and calendars with the dates. Ms. Thaxton said the employee who sold to the underage person checked the I.D. but did not correctly calculate it. Ms. Thaxton stated the registers are set up to when you scan anything that needs an I.D. it would automatically ask, but the employee neglected to do that and the employee was terminated.

Chairman Fox made a motion to reduce the penalty to \$1,000.00. Seconded by Commissioner Lyon. So Ordered.

Assistant Counsel Renee Cowick asked the Commission to review an add-on hearing case #52, The Club at Heritage Square, Hendersonville, North Carolina. Assistant Counsel made a special request for the Commission to review a letter from Mr. Matt Armstrong, the owner. Ms. Cowick stated that Mr. Armstrong could not be present at the Commission meeting.

Chairman Fox asked Ms. Cowick if Mr. Armstrong wanted a reduction in fine and penalty. Ms. Cowick stated the biggest problem was the active suspension or the timing of the suspension.

Commissioner Lyon read from the letter that Mr. Armstrong stated it was an isolated event and not a common practice. Mr. Armstrong asked in the letter for a fine reduction and a lesser permit suspension with the suspension beginning May 23.

Chairman made a motion to reduce the penalty to \$2,750.00 with 15 days active and the suspension time can be selected by the permittee with further stipulation that they take the RASP class. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Alex Little, employee and Ms. Kimberly Neal, owner of First Offense case #17, Coliseum Food Mart, were present to speak. Mr. Little stated he sold alcohol to a regular customer who had presented identification to him. Mr. Little said an ALE Agent was in the store at the time, thought she was young and took her outside. Mr. Little stated the ALE Agent found out she

was 20 years old. Ms. Neal stated they were busy because there was a concert across the street and Alex did not take the time to card the underage person.

Commissioner Lyon asked if she had a good fake I.D. Mr. Little replied she had a good I.D. Mr. Little replied it was a fake out-of-state I.D. because she was a college student.

Chairman Fox asked Mr. Little if they had taken the RASP class. Mr. Little replied yes.

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

Chief Counsel Gregory stated that hearing case #13, Tee Time Sports and Spirits, be continued. Chairman Fox made a motion to continue. Seconded by Commissioner Lyon. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise with the exception of hearing #30, El Forastero Restaurant Bar, hearing case #37, Sandys Steaks and Subs, add-on hearing case #51, Ingles Markets 50, hearing case #23, Port City Pub, hearing case #18, Friendly Quick Mart, hearing case #14, Wake Cross Roads Express and add-on hearing case #52, Club at Heritage Square. Seconded by Commissioner Lyon. So Ordered.

The following were Add-On Hearing cases:

- #50 – Kangaroo Express 916
- #51 – Ingles Markets 50
- #52 – Club at Heritage Square

The following was an Add-On First Offense case:

- #21 – Fast Pass

II. FIRST OFFENSE CASES - 21

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on April 23, 2009, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Colony Mini Mart – 725 North Madison Boulevard, Roxboro, NC 27573
2. Circle K 2708379 – 101 Mount Holly Road, Belmont, NC 28012
3. Hooters – 463 Western Boulevard, Jacksonville, NC 28546
4. Stop N Buy – 1201 West Main Street, Elizabeth City, NC 27909
5. Express Way Mini Mart – 1261 Gum Branch Road, Jacksonville, NC 28540
6. Friendly Discount Beverage – 1305 Winston Road, Lexington, NC 27292
7. Handy Howards Food Mart – 3687 Gastonia Hwy, Lincolnton, NC 28092
8. One Stop Food Mart 2 – 301 East Fairfield Road, High Point, NC 27263
9. Parma – 4351 Main Street – Suite 111, Harrisburg, NC 28075
10. Zapatas Mexican Restaurant and Cantina – 8927 J M Keynes Drive, Charlotte, NC 28262
11. Big Apple Supermarket – 112 West Vance Street, Fuquay Varina, NC 27526
12. Curveview Express Food Mart – 305 West Warren Street, Shelby, NC 28150
13. E Z Way Grocery – 2906 High Point Road, Greensboro, NC 27403
14. Hams Restaurant – 310 West Franklin Street, Chapel Hill, NC 27514

15. Nics Pic Kwik 3 – 24381 Main Street, Wagram, NC 28396
16. S and S Grocers – 3754 Ita Road, Enfield, NC 27823
17. Coliseum Food Mart – 521 Deacon Boulevard, Winston Salem, NC 27105
18. Kangaroo Express 3840 – 170 Beverly Lane, Southern Pines, NC 28387
19. Food Lion 939 – 4621 Hillsborough Road, Durham, NC 27705
20. T Mart 4 Angier – 300 North Raleigh Road, Angier, NC 28501

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases with the exception of First Offense case #1, Colony Mini Mart, First Offense case #11, Big Apple Supermarket, First Offense case #20, T Mart 4 Angier, First Offense case #16, S and S Grocers and First Offense case #17, Coliseum Food Mart. Seconded by Commissioner Lyon. So Ordered.

III. ABC STORE LOCATION – ASHEVILLE ABC BOARD

Administrator Michael Herring addressed the Commission concerning a request from Asheville ABC Board. This matter was continued from the last Commission meeting. The letter was a request concerning the proposed location of a new ABC Store site located at 131 Old Charlotte Highway, Asheville, North Carolina.

The Asheville ABC Board purchased land in September, 2007. This land has been annexed into the City of Asheville and is located near Fairview east of Asheville. There is a building on the property and they will occupy a 3,500 square foot space in the building with approximately 2,600 square feet retail space.

The nearest church is four-tenths of a mile from the proposed site.

The nearest school is two-tenths of a mile from the proposed site.

The nearest ABC Store is the Asheville ABC Store on Tunnel Road.

Pursuant to ABC Commission Rules, Notice of Intent was posted on December 23, 2008. This came before the Commission about two months ago and it was continued because of a sign issue. The sign was reposted and came before the Commission last month. There were some questions about the property and its location due to some of the pictures that were hard to visualize the exact location.

Mr. Herring introduced Mr. Curtis Canty, General Manager for the Asheville ABC Board. Mr. Canty addressed the Commission to answer any questions at last month's Commission meeting.

Mr. Canty spoke about the questions concerning the location of the site and the proximity to the City of Asheville. Mr. Canty pointed out the overview of the Eastwood Village residential business center and stated the center is the point that serves the eastern part of Asheville. Mr. Canty stated this lies about 1.9 miles outside of the city limits and is an incorporated area. Mr. Canty said there is a diner which has ABC permits. Mr. Canty stated the county of Buncombe is dry. Mr. Canty stated that when there was an application for a site outside of the city limits, the city did a spot annexation to allow it to come under the jurisdiction of the ABC laws for the City of Asheville. Mr. Canty stated he did not think this was an unusual request. Chairman Fox stated he disagreed with that and thought it was an unusual request.

Chairman Fox asked Mr. Canty why would they buy the ABC store site property eighteen months ago. Mr. Canty replied he started with the Board in 2004 as the general manager. Mr. Canty said he began a five year study of the system as how it compares to the needs of Asheville. Mr. Canty stated they planned their growth to match what is happening. Mr. Canty stated this site was identified in 2007 and made an

offer on it, the site was to be posted and an application sent to the Commission. Mr. Canty stated there was an administrative glitch in their process because the letter for the application to the Commission was not sent. Mr. Canty said they took the property through the steps that the city requires as relates for spot annexation and zoned it. Mr. Canty stated that it was approved by the City of Asheville.

Chairman Fox asked Mr. Canty when was the last county election or request for Buncombe County to be wet. Mr. Canty replied he didn't think that had occurred since the initial referendum that established Asheville. Mr. Canty said he was not aware of any request by Buncombe County to be wet.

Mr. Canty stated that the closest store for residents is over the mountain, into the Fairview area. Mr. Canty said the new store would allow them to travel half the distance to gain access to spirituous liquor in a safe and legal manner. Mr. Canty stated the closest system in the county to Asheville is Black Mountain which is about eight miles away.

Chairman Fox stated that Asheville ABC appears to be directing that Buncombe County go wet and he had an issue with that. Chairman Fox stated he had a problem approving a store almost two miles from the city limits.

Commissioner Lyon asked Mr. Canty if there were any active plans by the City of Asheville to annex. Mr. Canty replied there is nothing active.

Chairman Fox stated he understands the county is dry and 1.9 miles from the city line covers a lot of county people. Chairman Fox stated he would not vote in favor of a store at that site. Commissioner Lyon agreed with Chairman Fox in upholding the wishes of the county.

Mr. Canty stated the county had benefited from the revenue of the ABC system. Mr. Canty stated the county had not posted an opposition to the stores which are in the other areas that are spot annexed in.

Chairman Fox read 18B-801 subsection (b)(2) dealing with location of stores. The Commission in making its decision on a location may consider a health, safety and welfare of the community whether or not it will be adversely affected but also more importantly whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election.

Chairman Fox made a motion to not approve the ABC Store site due to it being 1.9 miles away from the city limits and Buncombe County being dry. Seconded by Commissioner Lyon. So Ordered.

With no further business, the meeting adjourned.

John D. Lyon, Jr., Commissioner
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Dottie L. Taylor, Legal Division