

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MAY 12, 2010**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on May 12, 2010, 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 J.D. Lyon and Commissioner Zander Guy were present at the meeting.

MINUTES OF APRIL 15, 2010

Chairman Williams asked if there was a motion to waive the reading of the minutes from the May 12, 2010 meeting into the record. Commissioner Lyon made a motion to waive the reading of the minutes from the May 12, 2010 meeting. Seconded by Commissioner Guy. So Ordered. Chairman Williams asked if there was a motion to approve the minutes from the May 12, 2010 meeting. Commissioner Lyon made a motion to approve the minutes from the May 12, 2010 meeting. Seconded by Commissioner Guy. So Ordered.

CONFLICTS OF INTEREST

As required by North Carolina General Statute 138A-15, Chairman Williams asked Commissioner Lyon and Commissioner Guy 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 Lyon and Commissioner Guy stated that they found no conflicts of interest.

I. HEARING CASES – 69

Chief Counsel Fred Gregory stated that Mr. Lee Shuler, owner of hearing case #55, Irving Park B P, was present to speak on behalf of his business. Assistant Counsel Timothy W. Morse stated that the violation was the result of a compliance check. The manager checked that buyer's identification, but sold alcohol to the buyer anyway. The manager stated that she keyed in the wrong date.

Mr. Schuler addressed the Commission and stated that he was not contesting the violation. The employees have had some education classes and they are required to attend monthly meetings, where the importance of checking identification is stressed. He asked the Commission for a reduction in the penalty.

Chairman Williams asked Mr. Shuler if his staff had attended any alcohol training classes with the ABC Commission or Alcohol Law Enforcement. Mr. Shuler stated that his staff had attended the RASP Training on April 12, 2010.

After conferring with Commissioner Lyon and Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$900.00, based upon the fact that the staff had attended a RASP Training Class. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that the Ms. Amber Moshakos, owner of hearing case #22, Raleigh Ale House, was present to speak on behalf of her business. Ms. Moshakos stated that she along with her District Manager, Jim Brown, were present to let the Commission know how seriously they took the

violation that occurred at the business. The employee, who served to the intoxicated buyer, was fired once they were aware of the violation.

Mr. Brown stated that they re-wrote all the alcohol awareness information and all the employees are required to complete alcohol awareness training every six months.

Ms. Moshakos asked the Commission for some leniency.

After conferring with Commissioner Lyon and Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$2,400.00 to \$1,200.00. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Jaime Fuentes, partner of hearing case # 25, Taqueria Guadalajara II, was present to speak on behalf of the business.

Mr. Fuentes told the Commission the circumstances surrounding the first violation when his friend became intoxicated and brought spirituous liquor onto the licensed premises. At the end of the night Mr. Fuentes took his friend home, but forgot to dispose of the alcohol bottle. Mr. Fuentes told the Commission about the second violation. The manager purchased the alcohol from the ABC store for personal use not affiliated with the business. He brought the alcohol into the business because he didn't want the alcohol to get hot sitting outside in the car. Mr. Fuentes told the manager that he would no longer purchase alcohol from the ABC store for the business.

Commissioner Guy asked Mr. Fuentes to explain about the hole in the wall, where alcohol was found. Mr. Fuentes stated that the hole was there when he moved into the building and he didn't know about it.

Chairman Williams stated that after conferring with Commissioner Lyon and Commissioner Guy and given the information provided, the Commission, would not make any changes to the signed offer in compromise.

Chief Counsel Gregory stated that Mr. Cook, owner of hearing case #20, Pravda, was present to speak on behalf of his business. Mr. Cook, along with his doorman, Mr. Craig Sheppard provided the Commission some background information on the violation. On that particular night, the underage person entered the business without having her identification checked. The bartender, along with Mr. Sheppard, was busy and made a mistake by not checking her identification. Mr. Cook further stated that he wanted the Commission to know how serious he took the violation. Mr. Sheppard stated that it was totally his fault and he took full responsibility for it.

Chairman Williams asked if they taken any alcohol training classes. Mr. Cook stated that he had his certificate showing that they had attend an alcohol training class.

After conferring with Commissioner Lyon and Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$600.00, based upon fact that they had taken the alcohol training class. Seconded by Commission Lyon. So Ordered.

Chief Counsel Gregory stated that hearing case #56, Japan Inn, was the next case to be heard. Mrs. Wei Ni, the wife of the owner spoke to the Commission regarding the violations. Assistant Counsel Timothy Morse stated that some of the violations involved the transfer of alcohol bottles from a business the permittee owned in Wake County to the business in Pitt County. The ABC Law Enforcement noticed the different color of the tax stamp. Pitt County's tax stamp is yellow and Wake County's is white. One bottle had no tax stamp on it at all and was used for cooking.

Mrs. Wei Ni stated that they didn't know that they had to have a permit to transport alcohol from one location to another. She went on to state that they do recycle. The recycle is usually picked up on Monday's, but wasn't and the container was overflowing. An employee put some bottles in a trash bag in the kitchen. Mrs. Wei Ni further stated that a friend had given her a bottle of alcohol from China celebrating the Chinese New Year and she had forgotten that the alcohol was in the restaurant.

After conferring with Commissioner Guy and Commissioner Lyon, Chairman Williams made a motion to reduce the penalty from \$1,800.00 to \$500.00. Seconded by Commissioner Lyon. So Ordered

Chief Counsel Gregory stated that Mr. Will Stevens, president of hearing case #14, Lucky 32, was present along with Mr. Shane Garrity, general manager, to speak with the Commission about the business.

Mr. Garrity stated that the manager on duty at the time went to an ABC Store and purchased alcohol for some of the employees to consume after work. An ALE Agent noticed that the employee was wearing a work uniform and followed her back to the restaurant, where she brought the alcohol into the business and stored it behind the counter until she was off work. Mr. Garrity went on to state the manager was not aware that she had done something wrong and he takes full responsibility for his employee's actions. Mr. Garrity asked the Commission for leniency.

Chairman Williams made a motion to reduce the penalty from \$600.00 to \$300.00, based upon the permittee having a clean record. Seconded by Commission Lyon. So Ordered.

Chief Counsel Gregory stated that Mrs. Wiyada Khamkam, manager of hearing case #6, Dan Thai Jazz Bistro, was present to speak on behalf of the business.

Mrs. Khamkam stated that there was a bottle of Jim Bean in the business. The alcohol was given to an employee, who could not drink for the next three months because of his religious beliefs and had left the liquor behind the bar. There was only one server on that busy night and the server didn't check the bottle for a tax stamp. The employees have now attended a RASP Training Class.

After conferring with Commissioner Lyon and Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$1,800.00 to \$1,500.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that the next case to be heard was hearing case #30, Bucks County Tavern. Assistant Counsel LoRita Pinnix told the Commission that the permittee sent a letter requesting to change the active suspension date.

Chairman Williams asked Ms. Pinnix if the permittee was present. Ms. Pinnix stated that he was not present today. Commissioner Lyon asked Ms. Pinnix what the dates he wanted to close the business were. Ms. Pinnix stated that the permittee would be on vacation and the business would be closed from June 5, 2010 through June 14, 2010.

Chairman Williams stated that the Commission could not change the compliance dates to run with his vacation time. Both Commissioner Lyon and Commissioner Guy agreed. Request denied.

Chairman Williams asked for a motion to approve the remaining offers in compromise, with the exception of previously ratified cases. Commissioner Lyon made a motion to approve the remaining offers in compromise, with the exception of previously ratified cases. Seconded by Commissioner Guy. So Ordered.

II. ABC STORE LOCATION – VALDESE COUNTY ABC STORE

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Burke County. On April 9, 2010, the Commission received a letter from Jeffrey V. Morse, Chairman of the Valdese ABC Board, requesting approval to lease property for a new ABC Store in Valdese, North Carolina. The property would be located at 1018 Main Street West, North Carolina. On April 16, 2010, ALE Agent Michael Bradshaw began an investigation and found that the current site is 6,039 square feet.

J & S Wholesale and Rentals LLC are the property owners and have agreed to hold the proposed site for the Valdese ABC Board for 45 days, so that the board can obtain approval from the NC ABC Commission.

The investigation found there are no financial conflicts of interest between the property owners and the Valdese ABC Board.

The nearest church is River of Life Church and is located .1 miles from the proposed location.

The nearest school is Valdese Elementary School and is located .8 miles from the proposed location.

Pursuant to ABC Commission Rules, two Notices of Intent were properly posted on April 9, 2010, in compliance with the ABC Commission's 30-day requirement.

The Commission received eight objections from the River of Life Church members. Mr. Morse, met with the church members and they have agreed to disagree.

Chairman Williams asked Mr. Morse how much of the area is residential. Mr. Morse stated that going further west of highway 70 is a mixture of residential and business. The church is located on highway 70.

Mr. Herring recommended that the Commission approve the new location.

Chairman Williams asked for a motion. Commissioner Guy made a motion to approve the location.

III. OTHER BUSINESS – EXEMPTION REQUEST-RALEIGH AMPHITHEATER

Chief Counsel Gregory stated that Mr. John Glover, President of Harris Wholesale was present to ask the Commission for an exemption from Rule N.C.A.C. 2T.0714. The City of Raleigh approached Harris Wholesale regarding a sponsorship agreement for naming rights for the Raleigh Amphitheater. The proposed name is the Bud Light Amphitheater. The City of Raleigh owns the venue and is the ABC permit holder. An exemption request is needed to allow Anhushier Busch and Harris Wholesale to provide something of value to a retailer.

Chairman Williams stated that he didn't feel comfortable making a decision at this time. Commissioner Lyon stated that he also had concerns. Commissioner Guy made a motion to continue the exemption request to the next meeting.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Tiffany Goodson, Legal Division