

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JANUARY 11, 2012**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on January 11, 2012, 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 DECEMBER 7, 2011

Commissioner Guy asked for a motion to waive the reading of the minutes of the December 7, 2011 meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the December 7, 2011 meeting. Motion Passed. Commissioner Guy asked for a motion to approve the minutes of the December 7, 2011 meeting. Commissioner Briggs made a motion to approve the minutes from the December 7, 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 – 68

Assistant Counsel Timothy Morse stated that no one was present for contested case #1, Super Mart 3. Assistant Counsel Morse stated that the administrative law judge's decision was based on his motion for sanctions and recommended that the Commission adopt Administrative Law Judge Beecher R. Gray's Decision to impose a 12-day suspension of Permittee's ABC permits and a civil penalty of \$500.00.

Commissioner Briggs made a motion to adopt the Administrative Law Judge's Decision. Motion Passed.

Assistant Counsel Timothy Morse stated that no one was present for contested case #2, Leather Pockets Billiards and Lounge. Assistant Counsel Morse stated that based on his motion for sanctions, the location was deemed no longer suitable and recommended that the Commission adopt Administrative Law Judge Beecher R. Gray's Decision to impose a revocation of Permittee's ABC permits.

Commissioner Guy made a motion to adopt the Administrative Law Judge's Decision. Motion Passed.

Assistant Counsel Morse stated that Janak Marhatta, owner of hearing case #53, J P Food Mart, was present to speak on behalf of the business with the assistance of an interpreter, Rajid. Mr. Morse stated that this was an underage sale during a campaign run by the Greensboro Police Department. The clerk checked the ID and sold anyway. Mr. Marhatta admitted that the clerk sold alcohol to a minor while Mr. Marhatta was in the back room. The clerk was new and checked the ID and miscalculated. Rajid stated that the employee and permittee have taken training. Mr. Marhatta asked for a reduction of the penalty.

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

Assistant Counsel LoRita K. Pinnix stated that Judy Murray, owner of hearing case #68, Baja Burrito, was present to speak on behalf of the business. Ms. Murray stated that they have signed up for the training. Ms. Murray stated that the rules are perplexing and that neither she nor her employee had any idea about the rules. She stated that no one has titles so the employee did not have a title showing he was in charge. She stated that she did not know all of the laws and would not know them if she took the class. Ms. Murray stated that she thinks people should be warned if they are not doing anything really that wrong.

Ms. Pinnix stated that the business has had permits since 1995 and this is the first violation.

Commissioner Briggs made a motion to reduce the penalty to \$250.00 upon the completion of training. Motion Passed.

II. PROPOSAL FOR EXTENSION OF ABC WAREHOUSE CONTRACT WITH LB&B ASSOCIATES

Administrator Michael Herring stated that in April 2011, the Commission authorized a five-year extension to the ABC warehouse contract with LB&B Associates for the receipt storage, and distribution of spirituous liquor in the state. The extension included and required LB&B to lease an additional 200,000 sq. ft. of warehouse space nearby to provide for additional storage. This lease was designed to improve efficiency and customer service of warehouse operations. In addition, the lease was a quick, inexpensive fix for an aging 28 year old warehouse that was at capacity.

Mr. Herring reported that the additional warehouse space has exceeded expectations. Product flow has vastly improved along with product selection and enhanced service to the liquor industry and the ABC Boards. As the transition into the new warehouse has been made, product allocations have been reorganized and approximately 200 new items will be added in 2012 for the ABC Boards to choose from. A good short-term solution that allowed examination of the benefits of building a new warehouse or adding on to the existing facility has turned into a viable long term solution that has the potential to offer good value to the state and serve the ABC Commission's needs for many years into the future.

In October 2011, Mr. Herring approached LB&B to explore interest in extending the five-year lease to 10 years for a better and longer term solution for warehousing services. In particular, Mr. Herring wanted to determine if operating efficiencies could be found to prevent costs from escalating at the end of the current five-year lease. After several meetings with LB&B, fair and reasonable terms were negotiated that need the ABC Commission's approval.

As the contract stands now, the ABC Commission is obligated to pay LB&B \$7.3 million this current fiscal year, \$7.3 million next fiscal year and \$7.7 million in each of the following three years. Along with this base annual fee, the ABC Commission is obligated to consider additional compensation for fuel costs in excess of \$4.00 a gallon and fuel gallons used in excess of 190,000 gallons.

The contract extension presented for approval today increases the base fee in years six and seven by only \$50,000. The annual base fee would be \$7.75 million. In years eight and nine, it would increase \$50,000 each year. In year ten or year 2020, the base annual fee would reach \$7.9 million. The cost increase in years six and seven represents a .006 percent increase in costs from the present contract and overall cost increase of 2.5 percent by year five.

Additionally, by approving this extension, the ABC Commission will be able to move away from the fixed price on fuel adjustment it is obligated to consider each year. The new contract language bases all fuel adjustments on a percentage of fuel cost and gallons used over the previous year.

Mr. Herring stated that while a 10-year contract sounds long, the 365-day termination clause remains if the Commission were to find it wanted to go in a different direction in the future.

Before the recession, spirituous liquor shipments were growing each year by approximately 150,000. While case shipments slowed in 2009 and 2010, cases shipped still increased each year. In 2011, cases shipped grew by 100,000 cases over 2010 and we set a new all-time high of 4.7 million cases shipped out to the local ABC boards. Mr. Herring projects this case shipment will grow and even accelerate in the next few years. In four short years, the ABC Commission will be handling in excess of five million cases a year and could reach six million cases by year 2020. By approving a contract extension along with a lease extension today, the ABC Commission can be assured of a low rate that will allow us to actually reduce the fees the ABC Boards now pay for warehouse services. LB&B has an excellent reputation among the ABC boards for providing superior customer service.

Two members of the NC ABC Board of Directors, Mr. Mike Myrick of Wayne County ABC and Ms. Sarah Brewer of High Country ABC were present to answer questions; as well as LB&B Project Manager, Graham Thompson and his attorney, Ms. Jen Miller.

Commissioner Guy asked about the case fee. Mr. Herring stated that the local boards are paying \$1.65 per case. Those fees are placed in a fund that is used to pay LB&B. Due to the contract fee remaining flat, Mr. Herring predicts that the fee can be lowered from \$1.65 to \$1.55 and maybe in 2015 can be lowered to \$1.45. The extension allows the prices per case to be lower for the local Boards. Product remains in the warehouse for 30 days as inventory is turned over quickly.

Mr. Myrick stated that the NC ABC Board was pleased with the performance of LB&B Associates.

Mr. Herring stated that he recommended that the Commission approve the contract extension.

Commissioner Briggs made a motion to approve the contract extension. Motion Passed.

III. OTHER BUSINESS – Consideration of Technical Changes to Rules 04 NCAC 02R .0802 and 04 NCAC 02S .1008

Rules Coordinator Bob Hamilton stated that the Rules Review Committee had requested that the Commission make technical changes to two rules.

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 approval of future Commission Meeting dates was necessary. Administrator Mike Herring confirmed that the dates were May 9, 2012 and June 13, 2012.

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

With no further business, the meeting adjourned.

The meeting was reopened due to the late arrival of a Permittee.

Assistant Counsel Morse stated that Twinkal Patel, owner of hearing case #56, M S Food Mart, was present to speak on behalf of the business with the assistance of an employee. Assistant Counsel Morse stated that this was a joint surveillance effort between the Greensboro Police Department and UNC-Greensboro Police Department. This was an underage sale and the employee did not check the identification of the underage. The employee stated that Ms. Patel was busy and just assumed that this individual was old enough. He stated that the officer noted that during the surveillance identifications were checked for the other sales.

Commissioner Briggs made a motion to rescind the previous Offer in Compromise. Motion Passed.

Commissioner Guy made a motion to reduce the penalty 25% upon the completion of training. 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