

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
FEBRUARY 8, 2012**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on February 8, 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 JANUARY 11, 2012**

Commissioner Guy asked for a motion to waive the reading of the minutes of the January 11, 2012 meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the January 11, 2012 meeting. Motion Passed. Commissioner Guy asked for a motion to approve the minutes of the January 11, 2012 meeting. Commissioner Briggs made a motion to approve the minutes from the January 11, 2012 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 – 58**

Commissioner Guy confirmed with Assistant Counsel K. Renee Cowick that contested case #1 and hearing case #19 were moved to the March 7, 2012 Commission Meeting Agenda.

Assistant Counsel Cowick stated that Dr. Randy Schilsky and Jeff Melendy, the owner of hearing case #45, Lollipops, were present to speak on behalf of the business. Dr. Schilsky stated that they were told different interpretations of a rule by different ALE agents. They stated that they were told by an ALE agent that independent contractors were allowed to consume alcoholic beverages either before or during the time they leased space within the establishment. They were told that if persons leased space they were not employees and did not fall under the ABC Rules. At a later time, another ALE agent sent a violation report to the Commission when these persons consumed alcoholic beverages. Dr. Schilsky stated that he was informed by Chief Counsel Fred Gregory that an employee could not consume alcohol, but an independent contractor who was not an employee could consume alcohol.

In addition, Dr. Schilsky stated that the two violations for open to the general public for failing to limit use of the facilities of the private club to members and their guests occurred within 15 minutes of each other.

Assistant Counsel Cowick stated that an independent contractor is allowed to consume alcoholic beverages, but an independent contractor is a person that comes in for an event; but a person that leases the space on a regular basis is an employee. Mr. Melendy stated that ALE agents in certain areas do not enforce the rules. Assistant Counsel Cowick stated that violation reports are submitted from other areas of

the state. Assistant Counsel Cowick read the Rule 02S.0101 (1) "Employee" means any person who performs a service for any person holding an ABC permit, regardless of whether that person is compensated for the performance of those services." Assistant Counsel Cowick stated that anyone performing a service for on behalf of an ABC permit holder is considered an employee and it is an evaluation process for determining whether an individual is an independent contractor or an employee.

Assistant Counsel Cowick stated that the penalty could be reduced as the two open to the public violations could be considered as one.

Commissioner Briggs made a motion to lower the penalty to \$900.00. Motion Passed.

Assistant Counsel Cowick stated that Steve Williams, Commander of hearing case #15, Veterans of Foreign Wars Post 5465, was present to speak on behalf of the establishment. Mr. Williams stated that the violation occurred during a Toys for Tots event. The bartender was a very conscientious individual, but it was very busy and she made a bad decision. The person that was served has been barred from the location. The bartenders were taking the RASP class in Charlotte today.

Assistant Counsel Cowick stated that the individual had arrived on the premises very intoxicated. The bartender realized that the individual was very intoxicated and gave her a bottle of beer with the cap still on it. The malt beverage was sold, but the individual was not able to consume. Mr. Williams asked for a reduction of the penalty.

Commissioner Briggs made a motion to reduce the penalty to by one-half to \$600.00. Motion Passed.

Assistant Counsel Cowick stated that Kamal Abu-Hammad, the owner of hearing case #32, Corner Pantry, was present to speak on behalf of the business. Mr. Abu-Hammad admitted that the employee sold to an underage person and that identification was not checked. Mr. Abu-Hammad asked for a reduction. Assistant Counsel Cowick stated that this was a surveillance case; a 19-year old exited the premises and carried malt beverages to a car of 17 – 19-year olds.

Commissioner Briggs made a motion to reduce the penalty to by 25% to \$900.00. Motion Passed.

Assistant Counsel Cowick stated that Harmeet Singh, a corporate officer and owner of hearing case #26, X Mart, was present to speak on behalf of the business. Mr. Singh received the violation for possession of a controlled substance (synthetic cannabis). Mr. Singh stated that he consulted with the ALE Agents on numerous occasions on the legality of selling the synthetic cannabis. When Mr. Singh was informed by an ALE Agent that it was no longer legal to sell the substance, he removed it from the store area to a collection area in the storage area and intended to return the substance to the business that sold it to him. When questioned by the ALE Agent, Mr. Singh told him that he was no longer selling the substance and showed the Agent that it had been removed to the storage area. At this time, the ALE Agent issued the citation. Assistant Counsel LoRita K. Pinnix confirmed that Mr. Singh's recollection of the incident was accurate. Assistant Counsel Pinnix stated that there was flexibility in the penalty as the law change was so new.

Commissioner Briggs made a motion to reduce the penalty to by one-half to \$600.00. Motion Passed.

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

## **II. ABC STORE LOCATION – GREENSBORO ABC BOARD – RELOCATION**

Administrator Michael Herring addressed the Commission regarding the relocation of an ABC Store on Pisgah Church Road in Greensboro, North Carolina. On January 9, 2012, the Commission received a request from Mr. Fred McCormick, General Manager of the Greensboro ABC Board. On January 25, 2012, ALE Agent Brian Doward began an investigation of the request to relocate the ABC Store located at 409 Pisgah Church Road, Greensboro, North Carolina to 403 Pisgah Church Road, Greensboro, North Carolina. This request is to relocate an ABC Store from one location within a strip shopping center to a larger location within the same strip shopping center. The new facility is 4,800 SF and is to be leased at \$15.00 per SF or \$72,000.00 per year. They hope to be in the new location at May 1, 2012. The nearest church and nearest school are .5 miles from the location.

The notice to the public was properly posted in the storefront of this new location.

There was an objection from the pastor of Hillcrest Baptist Church which is located in the area. This objection was voiced during the ALE Agent's interview process. They objected to the sale of alcohol. No one was present at the Commission Meeting to object to this location.

The projected sales volume at the proposed location is approximately \$2,800,000.00 per year.

Mr. Herring recommended that the Commission approve the relocation of the ABC Store.

Commissioner Briggs made a motion to approve the new ABC Store location. Motion Passed.

## **III. OTHER BUSINESS**

Commissioner Guy stated that approval of future Commission Meeting dates was the only remaining business. Administrator Mike Herring stated that the dates were July 11, 2012, August 15, 2012, September 12, 2012, October 10, 2012, November 14, 2012 and December 12, 2012.

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

With no further business, the meeting adjourned.

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A.D. "Zander" GUY, JR., Commissioner  
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

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Caroline Y. Washburn, Legal Division