

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
AUGUST 10, 2011**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on August 10, 2011, 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 Zander Guy and Commissioner Daniel L. Briggs were present at the meeting.

**MINUTES OF JULY 13, 2011**

Chairman Williams asked for a motion to waive the reading of the July 13, 2011 meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the July 13, 2011 meeting. Motion Passed. Commissioner Guy made a motion to approve the minutes from the July 13, 2011 meeting. Motion Passed.

**CONFLICTS OF INTEREST**

As required by North Carolina General Statute 138A-35, Chairman Williams asked Commissioner Guy and 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 Guy and Commissioner Briggs stated that they had found no conflicts of interest. Chairman Williams stated that he had no conflicts of interest.

**I. HEARING CASES – 59**

Chief Counsel Fred Gregory stated that Mr. Joshua Bennett, attorney for contested case #1, AMF Winston-Salem Lanes 123, was present to speak on behalf of his client.

Assistant Counsel K. Renee Cowick stated that a group of young people entered the bowling alley. Some of the young people were of age and some were underage. One of the underage young men and a male, who was over 21, went into the bathroom and moved the wristband to the wrist of the underage young man. The young man over 21 was able to receive a second wristband and both were served alcoholic beverages. No employee checked the underage person's identification. Prior to the hearing both parties agreed that alcoholic beverages was in fact given to Mr. Joshua Burns, who was the underage buyer. At the hearing, Mr. Bennett presented one witness, Ms. Sue Wyrick, who is the owner and director of the Professional Bartending Institute. Based on what Ms. Wyrick testified to and her opinion, Administrative Law Judge J. Randall May issued a decision that the charges against AMF Winston-Salem Lanes 123 be dismissed.

Ms. Cowick further stated that she provided exceptions and summarized those exceptions to the Commission. A lot of the exceptions had to do with incorrect quotations in the transcript. Ms. Cowick stated that she wanted the language to reflect what was exactly in the transcript versus an interpretation of what was in the transcript. Ms. Cowick stated that because the respondent stipulated to the fact that an underage was given alcoholic beverages, she didn't have to prove anything further. The burden then shifts to the respondent to prove one of the defenses. Ms. Cowick stated that it was her argument that the

respondent did not prove their defense by a preponderance of the evidence, because there was no evidence presented as to what Mr. John Belk reasonably relied upon that night.

Chairman Williams asked Mr. Bennett if he would agree that the burden of proof was on the respondent.

Mr. Bennett stated that he did agree. He went on to state that they did raise a defense through the stipulations and by bringing in an expert witness. The expert witness testified that the business system of using wristbands presented reasonable facts that showed that there was no knowledge of the respondent serving anyone underage and had taken appropriate steps to make sure that no one underage was being served alcohol. He went on to state that there isn't a system that is foolproof.

Chairman Williams stated that the witness who testified presented opinion testimony and was not present at the business when the incident occurred. Chairman Williams further stated that the eye witness testimony was that the use of wristbands was a widely accepted practice, but it wasn't accepted by the North Carolina ABC Commission. The recommended decision by the administrative law judge was based on the fact that the North Carolina ABC Commission did not have a rule prohibiting reliance on wristbands.

Mr. Bennett argued that a permittee would have to be willfully blind and deliberately ignore facts to be responsible for a violation. The bartender was TIPS trained and attended and graduated from a bartending school. The question is, was the permittee deliberately blind?

Chairman Williams stated that there was no evidence of what Mr. Belk knew, nor was there any testimony on how the wristbands were implemented or administered. There wasn't any evidence to show what the wristband looked like or how tight they were around the wrists of the people using them. There was evidence that Mr. Belk attended someone's training classes.

Commissioner Briggs asked if there was any precedent in the State of North Carolina or other states regarding the use of wristbands. Mr. Bennett stated that there was no precedence in the State of North Carolina.

Ms. Cowick stated that she felt that the judge's decision should be accurate. She went on to state that G.S. §18B-1005 and G.S. §18B-302 are two separate defenses.

After some discussion with Commissioner Guy and Commissioner Briggs, Chairman Williams made a motion to adopt Ms. Cowick's exceptions and to add the additional Finding of Fact that there was no evidence of the actual knowledge of the server, John Belk. The Chairman also added Conclusion of Law that the witness's opinion testimony was not admissible as an expert for the purposes offered and that her testimony was not relevant because it was not based on any review of the wrist banding system implemented in the AMF Winston-Salem Lanes 123 that night. Chairman Williams further adopted the recommended 60 day suspension and \$500.00 penalty offered in the exceptions. Motion Passed.

Chief Counsel Gregory stated that Mr. Greg Munning, owner of hearing case #2, Taqueria El Azteca, was present to speak on behalf of his business.

Ms. Cowick stated that the Office of Administrative Hearings had the permittee's correct address, but somehow, through clerical error, an additional number was added to his address, so the permittee was not receiving mail from the Office of Administrative Hearings. She went on to state that Mr. Munning had submitted his audit reports and could settle the case.

Chairman Williams asked Ms. Cowick if she had any suggestions as to the penalty. Ms. Cowick stated that Mr. Munning is a little hard to get in contact with, so she would suggest a higher penalty of \$400.00.

Mr. Munning stated that his previous manager used to handle the audit reports, but he has since taken over the handling of the audit reports. Mr. Munning asked the Commission to issue a Written Warning or impose the lowest possible fine.

Chairman Williams made a motion to accept the recommended penalty of \$400.00, to be reduced by \$100.00, which would leave the penalty at \$300.00 upon stipulation that the employees attend a RASP Class. Motion Passed.

Chief Counsel Gregory stated that Mr. Jaswinder Taya, owner of contested case #3, Quick Quality, was present to speak on behalf of the business.

Assistant Counsel Timothy W. Morse stated that there were two underage sale violations. After the permittee failed to comply with Administrative Law Judge Selina M. Brooks order to file Prehearing Statements, Mr. Morse filed a Motion for Sanctions. Judge Brooks recommended a 48 day suspension of the ABC permits and pay a penalty of \$750.00.

Mr. Taya stated that the case was dismissed in district court. He went on to state that he never received any notification from the Office of Administrative Hearing.

Chairman Williams asked the legal staff if there was a recommendation regarding the penalty.

Mr. Morse stated that a previous offer in compromise was sent for a 48 day suspension or \$4,800.00 penalty.

Chairman Williams told Mr. Taya that he would allow him to accept the original offer in compromise of 48 days or \$4,800.00 or he would adopt the recommended decision of 48 day suspension and pay \$750.00.

Mr. Taya stated that he would accept the offer in compromise of 48 day suspension or \$4,800.00.

Chairman Williams made a motion to accept the original offer in compromise of a 48 day suspension or \$4,800.00. Motion Passed.

Chief Counsel Gregory stated that Mr. William Potter, attorney and Mr. Todd Chriscoe, manager for hearing case #9, Downtown Sports Bar and Grill were present to speak on behalf of the business.

Mr. Potter asked the Commission if they would allow his clients to take the RASP Class and hopefully reduce the penalty.

Chairman Williams made a motion to reduce the penalty from \$1,800.00 to \$900.00 upon the stipulation that all the employees attend a RASP Class. Motion Passed.

Chief Counsel Gregory stated that Mr. William Potter, attorney for hearing case #16, That's Amore Pizza, was present to speak on behalf of his clients.

Mr. Potter asked the Commission if they would allow his clients to take a RASP Class and hopefully reduce the penalty.

Chairman Williams made a motion to reduce the penalty by 25%, upon the stipulation that the employees take a RASP Class. Motion Passed.

Chief Counsel Gregory stated that Mr. Pat Cundari, manager of hearing case #25, Lowes Foods 182, was present to speak on behalf of the business.

Mr. Cundari stated the clerk did briefly look at the identification and proceeded on with the sale. The clerk did sign the store alcohol policy letter and no longer works at the business.

Mr. Cundari asked the Commission for a reduction in the penalty and to allow them to take a class.

Chairman Williams made a motion to reduce the penalty by 25% upon the stipulation that all the employees including the customer service manager, who oversees the clerks, attend a RASP Class. Motion Passed.

Chief Counsel Gregory stated that Ms. Jing Yi, owner of hearing case #18, was present to speak on behalf of her business.

Ms. Yi stated that the Irish Cream had been purchased to be used by the employees in their coffee, not for the public use. She went on to state that she didn't know that she had done anything wrong.

Chairman Williams made a motion to reduce the penalty from \$800.00 to \$100.00, upon the stipulation that all the employees attend a RASP Class. Motion Passed.

Chief Counsel Gregory stated that Ms. Michelle Russell, owner of hearing case #21, Eastend Tavern, was present to speak on behalf of her business.

Ms. Russell stated that the employee who sold alcohol to an underage person no longer works at the business. She went on to state that the bottle of alcohol that was found was purchased at the same time that the liquid order for the business was picked up. The bottle was inadvertently put on the shelf with the other alcohol, when it should have been taken home. She further stated that she had already scheduled a class for August 16, 2011.

Ms. Pinnix stated that she didn't have a problem lowering the penalty to \$1,400.00 since one of the violations was an underage sale.

Chairman Williams made a motion to reduce the penalty from \$4,700.00 to \$1,800.00 and to waive the active suspension. Motion Passed.

Chief Counsel Gregory stated that Mr. Steve Alf, owner of hearing case #36, Crossroads Exxon, was present to speak on behalf of the business.

Mr. Alf stated that it was his understanding that when one of the violations was dismissed by the Greensboro District Attorney's Office, Mr. Liston's violation was added with the three violations that had already been settled and they had paid a \$5,000.00 fine. He went on to state that he thought the violation had already been settled.

Chairman Williams made a motion to reduce the penalty from \$5,000.00 to \$1,200.00 and to waive the active suspension. Motion Passed.

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

## **II. ABC STORE LOCATION – HENDERSONVILLE ABC BOARD**

Administrator Michael Herring stated that the Commission listened to a request from the Hendersonville ABC Board for a new ABC Store location at the June 15, 2011 Commission hearing. The request was continued due the objections from the Hendersonville County Commissioners. The proposed property for the store has been “spot annexed” into the county, which is dry. The Commission continued the matter to allow the Hendersonville ABC Board to talk with the County Commission in Henderson County. They were able to work matters out. The Commission received a letter dated July 21, 2011, from the Chairman of the Henderson County Board of Commissioners advising the Commission that they now support the location of the new ABC Store at 755 Upward Road in Hendersonville North Carolina.

Mr. Herring further stated that based on the support of the Henderson County Board of Commissioners, he recommended that the Commission approve the new ABC Store location.

Chairman Williams asked that the July 21, 2011 letter be added into the record. He further stated that he no longer had any reservations, now that the Hendersonville ABC Board and Henderson County Board of Commissioner have come to an agreement.

Chairman Williams made a motion to approve the new ABC Store location. Motion Passed.

## **III. OTHER BUSINESS – PUBLIC HEARING OF THE RULES PUBLISHED IN VOLUME 26, ISSUE 2 OF THE NC REGISTER (04 NCAC 02R .0902, .0173, .1706, .1711, AND 04 NCAC 02S .0201, .1010 AND .1011)**

Chairman Williams asked that the written comments be entered into the record and open the public hearing portion.

Rules Coordinator Bob Hamilton stated that Mr. Neil Yarborough, attorney for the Cumberland County ABC Board wanted to speak regarding the rules.

Mr. Yarborough stated that rule 04 NCAC 02R .0902, Maintenance of Working Capital, didn’t have a particular detrimental effect because they were within their current range of working capital, but felt this rule was being overly intrusive into the flexibility of the local government to administer the ABC Systems. He further stated that rule 04 NCAC 02R.1703- Stores: Appearance and State List reads if the bottles and shelves are not dusted weekly, the ABC Store would be closed or if the sign is faded or worn. That rule makes them feel like they’re being micromanaged. It may not be a priority to replace a sign that may be slightly faded or slightly worn.

Mr. Yarborough went on to state that rule 04 NCAC 02R .1711, Shelf Management- (a), should read as follows: Each local board shall establish and maintain a shelf management plan. (b) Each local board shall keep a copy of its shelf management plan at each store location and, upon request, provide a copy to a Commission representative.

Chairman Williams stated that he had also reviewed the rules and felt that the rule dealing with shelf management dusting weekly could be changed to “keep shelves clean.” He said it would better to have clean shelves than to have a chart in the back with someone’s initialing that the shelves had been dusted. He further stated that the Commission is going on the instructions received from the Governor and the Legislature, to try and create more uniformity and customer service throughout the ABC System.

Mrs. Sarah Brewer, Secretary of Treasurer, stated that rule 04 NCAC 02R .1703, Stores: Appearance and State List (d), was too strict to cover every store.

Mrs. Neta Grady, with Onslow County ABC, expressed her concerns that these rules could become permanent rules. She asked the Commission to continue the open dialogue. She further stated that she has used management practices in all her stores, but the same practices can't be used in every store.

Mr. Mike Myrick stated that they were not there to cause a problem, but to help the Commission. The concern is that once the rules are in place, if another Commission comes along, that Commission could make the rules stricter.

Mr. Joel Keith, President of the ABC Boards, stated that he understands the concept of what the Commission is trying to do, but he was concerned how the proposed rules addressed store dusting, the security system and TV, news or weather. Common sense should be used when operating a store, whether the issue is dusting the shelves, the way employees are dressed or what is on the TV. Five years from now, there could be a whole new Commission who interpret these rules differently. One size doesn't fit all ABC System.

Mr. Joe Wall, Executive Director of the North Carolina Association of ABC Boards, stated that he had a concern with rule 04 NCAC 02R .1703(d). He felt that that section needed to be reworded and a proposed time frame given. He also asked that the Commission think about North Carolina House Bill 1717 that requires ABC boards to publish their proposed budgets. Mr. Wall stated that the bill does not define what publish means. He suggested that the Commission look into whether a rule could be added so that the boards can publish their budget on their websites.

Mr. Glenn Lassiter, attorney, stated that he felt that the individual boards that are the problem should be addressed and not add a uniform rule be made for everyone to follow.

Mr. Lassiter expressed concerns about checking identification for alcohol sales and using wristbands.

Mr. William Potter, attorney, stated that he felt that rule 04 NCAC 02S .0201(b) was in the authority of the Commission. He further stated that he didn't think that the Commission has the authority to define what the law states.

Chairman Williams closed the public hearing of the rules.

**IV. OTHER BUSINESS – CONSIDERATION OF THE PUBLICATION OF PROPOSED PERMANENT RULES**

Chairman Williams made a motion to publish rules 04 NCAC 02R .0802, Notice of Proposed Commission Action and 04 NCAC 02S .1008, Advertising of Malt Beverage, Wine and Mixed Beverages by Retailers. Motion Passed.

Chairman Williams asked if there was any old or new business to come before the Commission.

Chief Counsel Gregory stated that the Commission needed to set a future date to deal with the local ABC board members who had not attended the mandatory ethics training. After some discussion, the Commission decided to wait to set a date until all the paperwork has come into the Commission and there is an idea of how much time will be needed to address the matter.

With no further business, the meeting adjourned.

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

Respectfully submitted by

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Tiffany Goodson, Legal Division