

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JANUARY 20, 2006**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on January 20, 2006, beginning at 10:00 a.m. The meeting was tape-recorded and the tape(s) are on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox, Commissioner Mike Joyner and Commissioner John Lyon were present at the meeting.

MINUTES OF DECEMBER 9, 2005, MEETING

Chairman Fox made a motion to waive the reading of the minutes from the December 9, 2005, meeting into the record. Seconded by Commissioner Joyner. So Ordered. Chairman Fox made a motion to approve the minutes from the December 9, 2005, meeting. Seconded by Commissioner Lyon. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioner Joyner and Commissioner Lyon if there were any known 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 Joyner and Commissioner Lyon both stated that they found no conflicts of interest. Chairman Fox stated that he had to recuse himself from hearing cases# 25, Honeys Mini Mart and case# 34, Value Exp 1.

I. HEARING CASES - 78 Listed

Chief Counsel Fred Gregory stated that the hearing for contested case# 1, N and R Grocery 2 was held in Charlotte, NC on August 2, 2005, and was heard by Administrative Law Judge Melissa Owens Lassiter. No one was present to speak on behalf of N and R Grocery 2. Mr. Gregory stated that the permittee purchased malt beverages from someone other than a licensed wholesaler who maintains a place of business in this State. Mr. Gregory recommended that the Commission adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge. Assistant Counsel LoRita Pinnix stated that she wanted to note that the Administrative Law Judge confused the parties in her decision in calling the Commission the Respondent.

Chairman made a motion to adopt the judge's decision, with the correction of the judge's findings. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that the manager and the assistant manager were present to speak on behalf of hearing case# 37 San Felipe Mexican Restaurant 3. The assistant manager stated that she was there to translate for the manager. She stated that one of the vendors came to the restaurant and showed them the Tequila shot bottles and asked if they would like to work with them. The vendor gave them her card and they put the two bottles in the office. The next day when she and the manger were both off, a new employee put the two bottles in the bar area and Alcohol Law Enforcement came in and found the bottles.

Commissioner Joyner asked if it was common that the vendors hand out the bottles. She stated that it was the first time it had happened to them and she asked the vendor if she usually gives out the bottles. The vendor stated that she does.

Chairman Fox asked them if they had attended any education classes. She stated that she was signed up for a class and the manager had already taken a class.

Chairman Fox made a motion to reduce the fine \$250.00 upon the stipulation that they attend an RASP Class within the next 30-45 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Mr. Kyle Khemvisai was present to speak on behalf on case# 77, Quick Way. Mr. Khemvisai stated that a ABC Law Enforcement agent came into his business looking for roses in glass tubes. They found an alcohol bottle in a backroom that had been there for years. One of the poker machines was broken. Mr. Khemvisai stated that he was only allowed to have three poker machines on the premise. There ended up being four machines on the premise. The one that was broken was put in a backroom and it was replaced with a new one while the broken one was being worked on.

Commissioner Joyner asked if they repaired the broken machine, then why wasn't one of the machines removed from the premises. Mr. Khemvisai stated that the machine was put in a backroom.

Chairman Fox asked Mr. Khemvisai if he was aware that he was only allowed to have three machines on the premises. Mr. Khemvisai stated that he was aware of that.

Commissioner Joyner asked if he had a receipt showing that the machine was repaired. Mr. Khemvisai stated that he did not.

Commissioner Lyon asked where the fourth poker machine was set up. Mr. Khemvisai stated that it was in a backroom.

Commissioner Joyner asked if it was possible for someone to go to the backroom and play the machine. Mr. Khemvisai stated no they could not. Chairman Fox stated that the fourth machine was in the restroom.

Chairman Fox asked Mr. Khemvisai how long had he been in business. Mr. Khemvisai stated that he had been in business at this location for about a year and half. Chairman Fox asked Ms. Cowick if this case had been on the agenda before. Ms. Cowick replied that it had been on the December agenda; Mr. Khemvisai had called her and asked if the case could be continued so that he could come speak to the Commission. Mr. Khemvisai stated that he got caught in traffic and couldn't find the building. He got to the Commission about 11:00 a.m., after the meeting was over.

Chairman Fox asked about the violation regarding establishing living quarters on the premises. Mr. Khemvisai stated that he has two daughters and last summer when they were out of school, they were there with him and his wife while they were working. Chairman Fox asked how old was his daughters. Mr. Khemvisai stated that they are eleven years old and six years old.

Commissioner Joyner asked if the store was a convenience store. Mr. Khemvisai stated that it was and that people can pay their utility bills and use Western Union to pay bills. The neighborhood is mostly non-English speaking residents.

Commissioner Joyner made a motion to reduce the penalty to \$1,500.00 upon the stipulation that they attend and RASP class within the next 30 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Gregory stated that Mr. Dwayne Cutlet was present to speak on behalf of add-on case#80, Henderson Citgo 116 regarding an underage sale. Mr. Cutlet stated that he brought Ms. Dawn Faye, who is the manager of Henderson Citgo 116. Ms. Faye stated that Mr. Parneo, who is the spouse of the assistant manager, was helping with unloading and putting away the inventory. They got busy in the store and Mr. Parneo ran the cash register. Mr. Parneo asked the underage person for his ID but he didn't key the birth date into the register in the correct form, so he compared the date of birth to the "We Card" date pad. There is slight language barrier because Mr. Parneo was born and raised in Hawaii.

After this violation occurred, all the employees including Mr. Parneo, have been retrained.

Chairman Fox asked Ms. Faye what was the age of sale for tobacco products. Ms. Faye said that it is 18 years old. Chairman Fox stated that the person that bought the alcohol was 17 years old; therefore he was not old enough to buy neither tobacco products nor alcohol. Ms. Faye stated that she wasn't aware that he was not 18 years old. Chairman Fox read ALE Agent Tony Mills narrative from the violation report stating that he spoke with Mrs. Parneo, when she arrived and explained the situation to her. Mrs. Parneo asked her husband if he keyed in the birth date and he stated "No I always over use the override key".

Mr. Cutlet stated that he was just asking the Commission for some leniency.

Chairman Fox asked what they had done to prevent this from happening again. Mr. Cutlet stated that they have retrained on the registers and clarified the dates with the employees regarding the "We Card" signs.

Commissioner Lyon asked if anyone used addition and subtraction like they use to anymore. Mr. Cutlet stated that one of the reasons they have implemented the cash register system is because there are some people who don't speak English and they can be trained on the registers. Commissioner Lyon stated that it is very simply for someone to hit the override key if they don't want to key in the birth date. Mr. Cutlet agreed that it was. Ms. Faye stated that when the employees ask for ID, then they had better key in the birth date because it covers them. She went on to state that she will pull out the journal tape from the register and can see if they actually keyed in the birth date or hit the override key.

Chairman Fox asked how many employees did they have between their two stores. Ms. Faye stated that they have a total of 15 including herself.

Chairman Fox made a motion to reduce the penalty to \$1,500.00, upon the stipulation that all 15 employees attend an RASP class within the next 30 days. Seconded by Commissioner Joyner. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise with the exception of contested case#1 N and R Grocery 2, hearing case#77, Quick Way and add on case#79, Henderson Citgo 116, which had been earlier, ratified. Seconded by Commissioner Joyner. So Ordered.

Commissioner Joyner made a motion to ratify hearing cases #25 Honeys Mini Mart and case #34, Value Exp. 1. Seconded by Commissioner Lyon. So Ordered.

II. FIRST OFFENSE CASES – 44 Listed

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on January 20, 2006, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Beatties Food Mart – 112-A Beatties Ford Road, Charlotte, NC 28216
2. Convenient Shop Mart – 2020-I Beatties Ford Road, Charlotte, NC 28216
3. Exxon 40576 – 1501 North Tryon, Charlotte, NC 28204
4. Eckerd Drugs 3615 – 15221 John J Delaney Drive, Charlotte, NC 28277
5. Highbeams – 1506 Hwy 70 West, Garner, NC 27529
6. Petro Mart 6 – 4900 New Bern Avenue, Raleigh, NC 27610
7. Quick Trip 3 – 507 North Louisiana Avenue, Asheville, NC 28806
8. Sams Mart 23 – 668 West John Street, Matthews, NC 28105
9. Wembi6 Grocery – 269 South Hoskins Road, Charlotte, NC 28208
10. Anthonys Amoco – 1925 Brentwood Street, High Point, NC 27260
11. Cubbard Expresss 1 – 191 Hwy 321 NW, Hickory, NC 28601
12. Brick Stone Pizza and Pasta – 3 West Main Street, West Jefferson, NC 28694

13. Dean and Deluca, 7804 Rea Road, Charlotte, NC 28277
14. Lowes Foods 70 – 1340 Hwy 321 NW, Hickory, NC 28601
15. La Regia Latina Mexican Restaurant – 2601 Apex Hwy, Durham, NC 27713
16. Lowes Food Store 445 – 116 Granville Corners Shopping Center, Oxford, NC 27567
17. Lakewood Discount Grocery – 3325 Rozzelles Ferry Road, Charlotte, NC 28216
18. Bi Lo 229 – 2725 East Northwest Boulevard, Newton, NC 28658
19. Dos Amigos Restaurante Mexicano – 187 New Market Center, Boone, NC 28607
20. Frasers – 108 South Jefferson Avenue, West Jefferson, NC 28694
21. Leland B P 322 Village Road, Leland, NC 28451
22. Pin Station – 525 West A Street, Newton, NC 28658
23. Pizza Hut 014487 – 2025 North Westside Boulevard, Newton, NC 28658
24. Sagebrush Steakhouse – 2410 Hwy 70 SE, Hickory, NC 28602
25. Boudreaux's Louisiana Kitchen – 501 East 36th Street, Charlotte, NC 28205
26. Bills Quick Stop – 1042 East Webb Avenue, Burlington, NC 27215
27. Boykins Save on Gas – 12177 West Finch Avenue, Middlesex, NC 27557
28. Citgo Light House – 277 Hwy 55 West, Kinston, NC 28504
29. Jerrys Quick Mart – 7353 Hwy 22, Carthage, NC 28327
30. Tienda Hispana La Comercial – 109 North Main Street, Raeford, NC 28376
31. Stop and Shop – 610 North Houghton Street, Williamston, NC 27892
32. Wilco 229 – 1206 Sandhills Boulevard, Aberdeen, NC 28315
33. Bottles – 130 Main Street – 202 Village Condo, Banner Elk, NC 28604

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases. Seconded by Commissioner Joyner. So Ordered.

III. ABC STORE LOCATION – TYRRELL COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed relocation of the Columbia ABC store. On November 16, 2005, the Commission received a letter from Mr. J. D. Brickhouse, Clerk for the Tyrrell County ABC Board, requesting approval to relocate the Columbia store to a new location in the same township. On December 15, 2005, Alcohol Law Enforcement Agent J. Eric Swain conducted an investigation and found that the Tyrrell County owns two parcels of land. The cost of the new building will be \$135,000.00. He also found that the Tyrrell County ABC Board plans to pay for the building with the cash that they have on hand and borrow the remainder, using the property as collateral. The current ABC store will be sold and the money from the sale will also be used to pay for the building.

The property is zoned properly. No conflict of interest exists between the property owner and the Tyrrell County ABC Board.

The nearest church is All Souls Catholic Church and is approximately .5 miles west of the proposed location. The nearest school is Columbia Middle School located .5 miles west of the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on November 14, 2005, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections.

Mr. Herring recommended that the ABC Commission approve the relocation request. Chairman Fox made a motion to approve the relocation. Seconded by Commissioner Joyner. So Ordered.

IV. ABC STORE LOCATION – NASH COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the location of an ABC store in Nash County. On December 20, 2005, the Commission received a request from Michael Murray, General Manager for the Nash County ABC Board, requesting approval to open a new store. On December 21, 2005, Alcohol Law Enforcement Supervisor Jeff Lasater conducted an investigation and found that the Nash County ABC Board are being forced out of their current location at 716 Raleigh Road. Their lease is up in March 2006.

The proposed ABC store will be constructed and located at the intersection of Calvary Street and Westwood Avenue in Rocky Mount. No conflict of interest exists between the property owner and the Nash County ABC Board.

The nearest churches are Word Tabernacle Church, Ebenezer Baptist Church and Victoria En Cristo Baptist Church; all three are approximately .3 miles from the proposed location. The nearest school is Edwards Middle School and is .6 of a mile from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on December 21, 2005, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no complaints.

Mr. Herring recommended that the ABC Commission approve the request. Commissioner Joyner made a motion to approve the new store location. Seconded by Chairman Fox. So Ordered.

V. OTHER BUSINESS

Mr. Herring stated that on June 27, 2005, LB&B had requested compensation adjustment to the annual base fee that the Commission pays them for services. Mr. Herring passed out copies of that letter to the Commission members for their review. The request was divided into two parts, one part was for an increase in the price adjustment for fuel and the other request was for the increase volume of cases of spirituous liquor received and distributed last year. At the November 9, 2005, Commission meeting, the Commission approved \$105,646.59 price adjustment for fuel only. Mr. Timothy W. Morse, Assistant Counsel, had prepared a resolution to the ABC Warehouse contract for the Commission to sign.

Chairman Fox asked if the computer system had gotten better. Mr. Herring stated that he didn't know.

Mr. Herring recommended that the Commission approve the request for \$145,920.00 for the increase in the shipment of cases that are being shipped from the Warehouse.

Commissioner Joyner made a motion to approve the adjustment. Seconded by Chairman Fox. So Ordered.

Commissioner Joyner asked Mr. Herring about the status of the High Point ABC Board. Commissioner Joyner asked if all the board members have resigned. Mr. Herring stated that the remaining members have resigned and new members have been appointed. He went on to state that he had hoped to present some information to the Commission regarding the High Point ABC Board, but he was waiting on the final report from Alcohol Law Enforcement.

Chairman Fox reviewed a list of proposed future Commission dates. Chairman Fox made a motion to approve the April 12, 2006, Commission date. Seconded by Commissioner Joyner. So Ordered. Chairman Fox stated that he would have to review his calendar and meet with Commissioner Joyner and Commissioner Lyon in regard to the other dates and would let the staff know the additional dates.

With no further business, the meeting adjourned.

Douglas A. Fox
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany Goodson, Legal Division